



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ANTHOUSA IORDANOU v. TURKEY

(Application no. 46755/99)

JUDGMENT
(Just satisfaction)

STRASBOURG

11 January 2011

FINAL

20/06/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Anthousa Iordanou v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Işıl Karakaş,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 7 December 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 46755/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mrs Anthousa Iordanou (“the applicant”), on 17 December 1998.

2. In a judgment delivered on 24 November 2009 (“the principal judgment”), the Court dismissed various preliminary objections raised by the Turkish Government and found a continuing violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of her properties as well as any compensation for the interference with her property rights (*Anthousa Iordanou v. Turkey*, no. 46755/99, §§ 15 and 25 and points 1-2 of the operative provisions, 24 November 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 375,000 Cypriot pounds (CYP – approximately 640,725 euros (EUR)) for the deprivation of her properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 31 December 2007. Two valuation reports, setting out the basis of the applicant's loss, were appended to her observations. Furthermore, the applicant claimed approximately EUR 41,464 for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any

agreement they might reach (*ibid.*, §§ 42 and 45, and point 3 of the operative provisions).

5. On 12 May 2010 the Court invited the applicant and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment. The applicant was moreover invited to submit written evidence that the properties at stake were still registered in her name or to indicate and substantiate any transfer of ownership which might have taken place.

6. The applicant and the Government each filed observations on these matters. On 7 September 2010 the applicant indicated that on 24 September 2009 she had produced an affidavit, to which “relevant exhibits” were annexed, stating that the properties described in paragraph 15 (i), (l) and (j) below were registered in her name; no change had taken place since then.

7. The relevant exhibits in question were:

- three certificates of affirmation of ownership of Turkish-occupied immovable properties issued on 15 September 2009 by the Republic of Cyprus, in which it was stated that the applicant was the owner of the properties described in paragraph 15 (i), (l) and (j) below;

- three search certificates concerning Turkish-occupied immovable properties issued on 15 September 2009 by the Republic of Cyprus, in which it was stated that the properties described in paragraph 15 (i), (l) and (j) below had been transferred to the applicant on 24 July 1985 by her mother, Mrs Anastasia Panayiotou (see paragraphs 13 and 14 of the principal judgment).

8. In respect of the other properties concerned by the principal judgment, the applicant submitted, on 4 September 2002, certificates of affirmation of ownership of Turkish-occupied immovable properties, issued on 12 August 2002 by the Departments of Lands and Surveys of the Republic of Cyprus. She also produced an affidavit in which she declared that she owned eight pieces of land in Lapithos “all on the mountain slope, very suitable for building purposes”. It transpires from the above-mentioned certificates that in 2002 the properties described in paragraph 15 (a), (b), (c), (d), (e), (f), (g) and (h) below were registered in the name of Iordanou Iordani Anthousa, daughter of Polykerpos Panagiotou (see paragraph 12 of the principal judgment).

THE LAW

I. PRELIMINARY ISSUE

9. In a letter of 22 April 2010 the Government requested the Court to decide that it was not necessary to continue the examination of the applicant's just satisfaction claims. They invoked the principles affirmed by the Grand Chamber in *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) and argued that the applicant should address her claims to the Immovable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005. They reiterated their position on the issue of exhaustion of domestic remedies in the present case and in other similar cases on 8 and 22 June 2010.

10. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of the time-limit for filing comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in *Demopoulos*. It could therefore be held that the Government are estopped from raising the matter at this stage of the proceedings.

11. In any event, the Court cannot but reiterate its case-law according to which objections based on non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Alexandrou v. Turkey* (merits), no. 16162/90, § 21, 20 January 2009) or at a later stage. This approach has not been modified by the Grand Chamber, as the cases of *Demopoulos and Others* had not been declared admissible when Law 67/2005 entered into force and when Turkey objected that domestic remedies had not been exhausted.

12. Furthermore, the Court considers that its previous finding in the present case that the applicant was not required to exhaust the remedy introduced by Law 67/2005 constitutes *res judicata*. It recalls that after the compensation mechanism before the IPC was introduced, the Government raised an objection based on non-exhaustion of domestic remedies. This objection was rejected in the principal judgment (see paragraph 15 of the principal judgment and point 1 of its operative provisions). The Government also unsuccessfully requested the referral of the case to the Grand Chamber.

13. It follows that the Government's request to stay the examination of the applicant's claims for just satisfaction should be rejected. The Court will therefore continue to examine the case under Article 41 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. *The parties' submissions*

(a) **The applicant**

15. In her just satisfaction claims of 4 September 2002, the applicant requested CYP 207,000 (approximately EUR 353,680) for pecuniary damage. She relied on an expert's report assessing the value of her loss which included the loss of annual rent collected or expected to be collected from renting out her properties, plus interest from the date on which such rents were due until the day of payment. The rents claimed were for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until 2002. The applicant did not claim compensation for any purported expropriation since she was still the legal owner of the properties. The latter were registered as follows (see paragraph 12 of the principal judgment):

Lapithos village – Agia Paraskevi and Agia Anastasia:

(a) Land certificate no. 1613 of 22 April 1971, plot no. 199 of sheet/plan XI/22 (Mantres tou Kazeli), with a total extent of 4,683m²; share: whole; on this plot of land there was a small house for shepherds and two shelters for the animals;

(b) Land certificate no. 1459 of 27 April 1971, plot no. 331 of sheet/plan XI/23 (Persterkonas), with a total extent of 25,753 m²; share: whole; use: field with trees;

(c) Land certificate no. 2312 of 27 April 1971, plot no. 51 of sheet/plan XI/31 (Kaminia), with a total extent of 3,679 m²; share: whole; use: field with trees;

(d) Land certificate no. 1623 of 27 April 1971, plot no. 201 of sheet/plan XI/22 (Syrtaros), with a total extent of 16,723 m²; share: whole; use: field with trees;

(e) Sheet/plan 11/23W.1.E.2, plot no. 53; this plot comprised running water and was registered in the name of the applicant for the 1/120 share (equivalent to 3 hours continuous flow fortnightly every 15 days);

(f) Land certificate no. 2774 of 27 April 1971, plot no. 2 of sheet/plan XI/31 (Livadi tou Kolymbou), with a total extent of 89,457 m² (registered for 1/24 share in the name of the applicant); use: field;

(g) Land certificate no. 2744 of 27 April 1971, plot no. 133 of sheet/plan XI/30 (Kolymbes Livadiou), with a total extent of 110,704 m² (registered for 1/96 share in the name of the applicant); use: field;

(h) Land certificate no. 2760 of 27 April 1971, plot no. 1 of sheet/plan XI/31 (Livadi), with a total extent of 227,427 m² (registered for 1/96 share in the name of the applicant); use: field with trees;

Sysklipos village (according to a search certificate produced by the applicant – see paragraph 7 above –, these properties were registered in the name of the applicant by declaration of gift from her mother Anastasia Polycarpou Panayiotou):

(i) Land certificate of 24 July 1985, plot no. 341 of sheet/plan XI/47 (Pappares), with a total extent of 21,424 m²; share: whole; use: field;

(l) Land certificate of 24 July 1985, plot no. 357 (united with plot no. 368) of sheet/plan XI/47 (Diplopotama), with a total extent of 9,031 m²; share: whole; use: field with trees;

(j) Land certificate of 24 July 1985, plot no. 370 of sheet/plan XI/47 (Diplopotama), with a total extent of 8,362 m²; share: whole; use: field.

16. The starting point of the valuation report was the market value of each property in 1974. Depending on their use and building potentialities, the rent which could have been obtained from the applicant's plots of land was fluctuating from 3 to 6 percent of their market value. Thus, the total annual rent which could have been obtained in 1974 was CYP 2,458 (approximately EUR 4,200). The expert took into account also the fact that the applicant was entitled to the revision of the rent at a compound interest of 5 percent per annum and to compound interest for delayed payment of 8 percent per annum.

17. On 22 January 2008, following a request from the Court for an update on the developments of the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the loss of use of the properties from 1 January 1987 to 31 December 2007. She produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was CYP 375,000 (approximately EUR 640,725).

18. On 7 September 2010 the applicant produced another revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and the autumn of 2010. It indicated that the whole sum due for pecuniary damage was CYP 519,758 (approximately EUR 888,058).

19. The expert appointed by the applicant also submitted a synoptic table summarising the sales of 23 fields, gardens, building sites and sources of running water which had taken place in northern Cyprus between 1962 and

1974. It transpires from this table that in the relevant period the market value of fields and gardens was between CYP 0.30 (approximately EUR 0.51) and CYP 8.47 (approximately EUR 14.47) per square metre, while building sites had been sold for a price comprised between CYP 3.84 (approximately EUR 6.56) and CYP 9.28 (approximately EUR 15.85) per square metre. The right to exploit a source of running water 10 minutes every 15 days had a value of CYP 84 (approximately EUR 143), while the analogous right for 30 minutes every 15 days had a value of CYP 410 (approximately EUR 700).

20. The applicant did not make any request for non-pecuniary damage.

(b) The Government

21. In reply to the applicant's just satisfaction claims of 4 September 2002, the Government challenged the conclusions reached by the Court in the *Loizidou* case ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV). They considered that in cases such as the present one, no award should be made by the Court under Article 41 of the Convention. They underlined that the applicant's inability to have access to her properties depended on the political situation of Cyprus and, in particular, on the existence of the UN recognised cease-fire lines. If Greek-Cypriots were allowed to go to the north and claim their properties, chaos would explode on the island; furthermore, any award made by the Court would undermine the negotiations between the two parties.

22. The Government filed comments on the applicant's updated claims for just satisfaction on 30 June 2008, 15 October 2008 and 17 September 2010. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and noted that some applicants had shared properties and that it was not proved that their co-owners had agreed to the partition of the possessions. Nor, when claiming damages based on the assumption that the properties had been rented after 1974, had the applicants shown that the rights of the said co-owners under domestic law had been respected.

23. The Government also submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment, and that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data with which to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicant had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

24. The Government produced a valuation report prepared by the Turkish-Cypriot authorities, which they considered to be based on a “realistic assessment of the 1974 market values, having regard to the relevant land records and comparative sales in the areas where the properties [were] situated”. This report contained two proposals, assessing, respectively, the sum due for the loss of use of the properties and their present value. The second proposal was made in order to give the applicant the option to sell the properties to the State, thereby relinquishing title to and claims in respect of them.

25. The report prepared by the Turkish-Cypriot authorities specified that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the fields described in paragraph 15 (a), (b), (c), (d), (e) and (g) above. The other immovable properties referred to in the application were in the possession of refugees; they could not form the object of restitution but could give entitlement to financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the properties between 1974 and the date of payment. Had the applicant applied to the IPC, the latter would have offered CYP 68,539.26 (approximately EUR 117,106) to compensate the loss of use and CYP 72,992.96 (approximately EUR 124,715) for the value of the properties. According to an expert appointed by the authorities of the “TRNC”), the 1974 open-market value of the properties described in paragraph 15 above was:

- property under (a): CYP 525 (approximately EUR 897);
- property under (b): CYP 7,700 (approximately EUR 13,156);
- property under (c): CYP 550 (approximately EUR 939);
- property under (d): CYP 1,250 (approximately EUR 2,135);
- property under (f): CYP 223 (approximately EUR 381);
- property under (g): CYP 89.3 (approximately EUR 152);
- property under (i): CYP 800 (approximately EUR 1,366);
- property under (l): CYP 415 (approximately EUR 709);
- property under (j): CYP 375 (approximately EUR 640).

No estimate was given for the properties under (e) and (h).

26. Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of her properties with Turkish-Cypriot properties located in the south of the island.

27. In their comments of 17 September 2010, the Government recalled that in the case of *Demopoulos and Others* (cited above) the Grand Chamber had found that the IPC was an adequate domestic remedy for those claiming a violation of Article 1 of Protocol No. 1. Notwithstanding the adoption of a judgment on the merits, it would still be open to the applicant to apply to the IPC, which would calculate the current value and the 1974 value of the properties “in a credential way bas[ed] on actual data”. On

6 August 2010 the IPC had sent a letter to the applicant's representative, inviting his client to introduce an application before it.

28. The Government further noted that in making its assessment as regarded compensation for the loss of use, the IPC had collected data from the Department of Lands and Surveys on the 1973-1974 purchase prices for comparable properties. It had also examined the development of interest rates of the Cyprus Central Bank. The loss of income was then calculated by assuming that the obtainable rent would have been 5% of the value of the properties; this last value had been modified every year on the basis of the land market value index. Cyprus Central Bank interest rates had been applied on the sums due since 1974.

29. The Government indicated that had the applicant applied to the IPC, the latter would have increased its offer up to CYP 78,379.41 (approximately EUR 133,919) to compensate the loss of use and up to CYP 79,905.94 (approximately EUR 136,527) for the value of the properties concerned by the principal judgment. They further observed that the latter were located at a high altitude on a mountainous and rocky region above Lapithos, which was not accessible by road and could not be used for agricultural purposes. They had generally been described as “fields” with some olive and/or carob trees, which were growing wild. The applicant's plots bore no buildings, exception made for a derelict one-room shelter for shepherds of approximately 10 square metres; her properties had no infra-structures, electricity or telephone lines.

30. The Government also underlined that according to the Land Registry a comparable plot of land was sold on 5 March 1973 for CYP 10 (approximately EUR 17) per donum (unit of area used in the Ottoman Empire and normally corresponding to “forty standard paces in length and breadth”). The current reasonable market value of similar land should therefore be “in the region of CYP 200 [approximately EUR 341] per donum”. Under these circumstances, the offer made by the IPC should be considered “very reasonable, if not generous”. The applicant's claims were “highly exorbitant and out of proportion of all reasonable estimates”; the 1974 market-values applied by her were “far from being realistic” and had produced unreasonable results. The Government therefore requested the Court to accept the assessments made by the IPC.

31. Finally, the Government noted that the applicant had not made any request for non-pecuniary damages (see paragraph 20 above) and that, therefore, no sum should be awarded under this head.

2. The Court's assessment

32. The Court recalls that it has concluded that there had been a continuing violation of the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention by reason of the complete denial of the rights of the applicant with respect to her peaceful enjoyment of her

properties in northern Cyprus (see paragraph 25 of the principal judgment). Furthermore, its finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being continuously denied access to her real estate since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy her properties (see paragraph 24 of the principal judgment). She is therefore entitled to a measure of compensation in respect of losses directly related to this violation of her rights as from the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, namely 22 January 1987, until the present time (see *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and *Demades v. Turkey* (just satisfaction), no. 16219/90, § 21, 22 April 2008).

33. In connection with this, the Court observes that the affirmation of ownership of Turkish-occupied immovable properties produced by the applicant (see paragraph 7 above) show that on 15 September 2009 she was still the owner of the properties described in paragraph 15 (i), (l) and (j) above. However, notwithstanding an explicit request of the Court (see paragraph 5 above), the applicant has failed to produce any fresh written evidence showing the current ownership of the properties described in paragraph 15 (a), (b), (c), (d), (e), (f), (g) and (h) above. The certificates of affirmation of ownership of Turkish-occupied immovable properties relating to these plots of land and source of running water were dated 12 August 2002, which is almost eight years before the Court's request for an update on current ownership (see paragraph 8 above). The Court has taken note of this failure; it considers that it may result in a reduction of the awards to be made under the head of pecuniary damage.

34. In the opinion of the Court, the valuations furnished by the applicant involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou* (just satisfaction), cited above, § 31). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by her (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers as reasonable the approach to assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (see *Loizidou* (just satisfaction), cited above, § 33, and *Demades* (just satisfaction), cited above, § 23). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

35. The Court notes that in response to its request to submit material relevant to assessing the 1974 market value of the applicant's properties, the Government have relied on the accuracy of the IPC's calculations and on the sale of comparable land in 1973 (see paragraphs 27, 28 and 31 above), while the applicant has referred to a synoptic table summarising the sales of several plots of land showing that in the period 1962/1974 the market value of fields and gardens was between EUR 0.51 and EUR 14.47 per square metre (see paragraph 19 above).

36. The Court further observes that the applicant submitted an additional claim in the form of annual compound interest in respect of the losses on account of the delay in the payment of the sums due. While the Court considers that a certain amount of compensation in the form of statutory interest should be awarded to the applicant, it finds that the rates applied by her are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

37. Finally, the Court notes that the applicant has not made any request under the head of non-pecuniary damage with respect of the anguish and feelings of helplessness and frustration which she might have experienced over the years in not being able to use her properties as she saw fit (see, *a contrario*, *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47). Therefore, no award should be made under this head.

38. Having regard to the above considerations, the Court is of the opinion that the sum claimed by the applicant in respect of pecuniary damage (EUR 888,058 – see paragraph 18 above) is manifestly excessive. It recalls that according to the expert report attached to her observations of 4 September 2002 (see paragraph 15 above), no construction was built on her plots of land, with the exception of a small house for shepherds and two shelters for the animals. The Court considers that the amount which, according to the Government, the IPC could have offered the applicant in respect of loss of use (approximately EUR 133,919 – see paragraph 29 above) constitutes a fair basis for compensating the damage sustained by her. In connection with this, it is to be recalled that the properties concerned by the principal judgment were seven fields and shares (of 1/24 and 1/96) in three other fields located in the villages of Lapithos and Sysklipos, as well as the right to use a source of running water; the total area of the applicant's land was approximately 96,904 square metres (see paragraph 15 above). Making its assessment on an equitable basis, the Court decides to award the applicant EUR 135,000.

B. Costs and expenses

39. Relying on a bill from her representative, the applicant sought EUR 38,047.5 for the costs and expenses incurred before the Court and

CYP 2,000 (approximately EUR 3,417) for the costs of the expert reports assessing the value of her properties. On 7 September 2010 she sought the additional sum of EUR 3,417 for the second revised valuation report.

40. The Government submitted that the applicant had failed to show that her alleged costs and expenses had been actually and necessarily incurred; moreover, they were unreasonable as to quantum.

41. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

42. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation. In particular, the costs associated with producing valuation reports in view of the continuing nature of the violation at stake were essential to enable the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34).

43. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award a total sum of EUR 8,000.

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request to stay the examination of the applicant's claims for just satisfaction;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 135,000 (one hundred and thirty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President