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

**CASE OF LOIZIDOU v. TURKEY**

**(Article 50)**

**(40/1993/435/514)**

JUDGMENT

STRASBOURG

28 July 1998

SUMMARY[1]

Judgment delivered by a Grand Chamber

*Turkey – claims for just satisfaction in respect of Court's finding, in principal judgment, of violation of Article 1 of Protocol No.1 to the Convention*

I. ENTITLEMENT TO JUST SATISFACTION

Court's finding in principal judgment that denial of access to property in northern Cyprus was imputable to Turkey is *res judicata* – applicant entitled to compensation.

*Conclusion*: respondent State's claim dimissed (fifteen votes to two).

II. PECUNIARY DAMAGE

Given uncertainties inherent in assessing economic loss caused by denial of access, sum awarded on equitable basis.

*Conclusion*: respondent State to pay applicant specified sum (fourteen votes to three).

III. NON-PECUNIARY DAMAGE

Award made in respect of anguish, helplessness and frustration suffered by applicant.

*Conclusion*: respondent State to pay applicant specified sum (fifteen votes to two).

IV. APPLICANT'S COSTS AND EXPENSES

Awarded in full.

*Conclusion*: respondent State to pay applicant specified sum (thirteen votes to four).

V. CYPRIOT GOVERNMENT'S COSTS AND EXPENSES

In principle not appropriate that States which act in interests of Convention community be reimbursed costs and expenses.

*Conclusion*: Cypriot Government's claims dismissed (unanimously).

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1. This summary by the registry does not bind the Court.

**In the case of Loizidou v. Turkey**[1],

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A[2], as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr A. SPIELMANN,
Mr S.K. MARTENS,
Mrs E. PALM,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Sir John FREELAND,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr P. JAMBREK,
Mr U. LÕHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 29 November 1997 and 25 June 1998,

Delivers the following judgment on Article 50, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case was referred to the Court by the Government of the Republic of Cyprus ("the Cypriot Government") on 9 November 1993, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 15318/89) against the Republic of Turkey ("the Turkish Government") lodged with the European Commission of Human Rights ("the Commission") under Article 25 by a Cypriot national, Ms Titina Loizidou, on 22 July 1989.

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*Notes by the Registrar*

1. The case is numbered 40/1993/435/514. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In its judgment of 23 March 1995 the Court dismissed various preliminary objections raised by the Turkish Government but joined to the merits a preliminary objection *ratione temporis* (Series A no. 310).

In its judgment on the merits of 18 December 1996 ("the principal judgment") the Court dismissed the objection *ratione temporis* and found that the continuous denial of the applicant's access to her property in northern Cyprus and the ensuing loss of all control over the property was a matter which fell within Turkey's "jurisdiction" within the meaning of Article 1 of the Convention and was thus imputable to Turkey. It also found that there had been a breach of Article 1 of Protocol No. 1 in that the applicant had effectively lost all control over, as well as all possibilities to use and enjoy, her property. However it found that there had been no interference with the applicant's right to respect for her home under Article 8 of the Convention (*Reports of Judgments and Decisions* 1996-VI, pp. 2227–38, §§ 31–66, and points 1–4 of the operative provisions).

3. As the question of the application of Article 50 was not ready for decision, it was reserved in the principal judgment. The Court invited the Turkish Government and the applicant to submit, within six months, their written observations on the matter and, in particular, to notify the Court of any agreement they may have reached (ibid., pp. 2238–39, §§ 67–69, and point 5 of the operative provisions).

4. No agreement having been reached, the applicant and the Turkish Government submitted their memorials on 23 and 24 June 1997. A valuation report, setting out the basis for the calculation of the applicant's loss, was appended to the applicant's memorial. The comments of the Delegate of the Commission in reply were received on 28 July 1997.

5. In their memorial the Turkish Government contested the Court's decision that the interference with the applicant's property rights was imputable to Turkey and submitted that, given the political and legal complications of proceeding with the case, the Court should adjourn further consideration of it until a political solution to the Cyprus issue was found.

6. On 30 August 1997 the Court dismissed the Turkish Government's request for an adjournment *sine die* of the Article 50 proceedings and invited the applicant, the Turkish and Cypriot Governments and the Delegate of the Commission to submit before 31 October 1997 any further observations on Article 50 that they might wish to make. It was also decided to hold a hearing on the matter.

7. The observations of the Cypriot Government were received on 3 November 1997 and those of the applicant and the Turkish Government on 4 November 1997. The Delegate indicated that he would address the issues in the course of the hearing.

8. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government of Turkey*
Mr R. TÜRMEN, Ambassador, Permanent Representative of Turkey to the Council of Europe, *Agent*,
Mr M. ÖZMEN, Legal Counsellor, Ministry of Foreign Affairs,
Mrs D. AKÇAY, Deputy to the Permanent Representative of Turkey to the Council of Europe, *Co-Agents*,
Mr H. GOLSONG, *Adviser*,
Mr Z. NECATIGIL, Legal Counsellor,
Mr N. AKINCI, Deputy Director General, Ministry of Foreign Affairs,
Mr H. GÜVEN, Deputy Director General, Ministry of Foreign Affairs, *Counsel*;

*(b) for the Government of Cyprus*
Mr A. MARKIDES, Attorney-General, *Agent*,
Mr M. SHAW, Barrister-at-Law,
Mr P. POLYVIOU, Barrister-at-Law,
Ms T. POLYCHRONIDOU, Counsel of the Republic A',
Ms S.M. JOANNIDES, Counsel of the Republic A', *Counsel*,
Mrs C. PALLEY, Consultant to the Attorney-General, *Adviser*;

(c) *for the Commission*
Mr S. TRECHSEL, *Delegate*;

(d) *for the applicant*
Mr A. DEMETRIADES, Barrister-at-Law,
Mr I. BROWNLIE, CBE, QC,
Ms J. LOIZIDOU, Barrister-at-Law, *Counsel*.

The Court heard addresses by Mr Trechsel, Mr Demetriades, Mr Brownlie, Mr Markides, Mr Shaw, Mr Türmen, Mr Necatigil and Mr Golsong.

9. On 12 December 1997 the applicant submitted her revised claims as regards costs and expenses in connection with the Article 50 proceedings in the light of the hearing that had taken place.

10. Subsequently, Mr R. Bernhardt, then Vice-President of the Court, replaced Mr R. Ryssdal as Acting President of the Grand Chamber following Mr Ryssdal's death on 18 February 1998 (Rules 21 § 6 and 51 § 6 of Rules of Court A).

11. On 25 February 1998 the Acting President, in the presence of the Registrar, drew by lot the name of Sir John Freeland, pursuant to Rule 54 § 2, in order to complete the Grand Chamber.

Following the death of Mr B. Walsh, Mr J. Makarczyk was chosen in the same manner on 31 March 1998.

# AS TO THE FACTS

## THE CIRCUMSTANCES OF THE CASE

12. The applicant, a Cypriot national, grew up in Kyrenia in northern Cyprus. In 1972 she married and moved with her husband to Nicosia.

13. She is the owner of plots of land nos. 4609, 4610, 4618, 4619, 4748, 4884, 5002, 5004, 5386 and 5390 in Kyrenia. Prior to the Turkish occupation of northern Cyprus on 20 July 1974, work had commenced on plot no. 5390 for the construction of a block of flats, one of which was intended as a home for her family. The applicant had entered into an agreement with the property developer to exchange her share in the land for an apartment of 100 sq. m. Her ownership of the properties is attested by certificates of registration issued by the Cypriot Lands and Surveys Department at the moment of acquisition.

14. Since 1974 the applicant has been prevented from gaining access to her properties in northern Cyprus and "peacefully enjoying" them as a result of the presence of Turkish forces there.

15. On 19 March 1989 the applicant participated in a march organised by a women's group ("Women Walk Home" movement) in the village of Lymbia near the Turkish village of Akıncılar in the occupied area of northern Cyprus. The aim of the march was to assert the right of Greek Cypriot refugees to return to their homes.

Leading a group of fifty marchers she advanced up a hill towards the Church of the Holy Cross in the Turkish-occupied part of Cyprus passing the United Nations' guard post on the way. When they reached the churchyard they were surrounded by Turkish soldiers and prevented from moving any further. She was detained by the Turkish Cypriot police for a period of ten hours and subsequently released.

# FINAL SUBMISSIONS TO THE COURT

16. The applicant submitted that she is entitled to just satisfaction by virtue of the continuing violation of her property rights for which Turkey is responsible.

17. The Cypriot Government endorsed the applicant's claims and submitted that they should also be reimbursed their costs and expenses in respect of the present proceedings.

18. The Turkish Government requested that the Court dismiss the claims made by the applicant for pecuniary compensation as not being "necessary" under the terms of Article 50. In addition, these claims should not be entertained in view of the requirement in Article 50 that the "decision" or "measure" must be that of a "High Contracting Party".

# AS TO THE LAW

19. Article 50 provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

20. The applicant and the Cypriot Government submitted that an award of compensation should be made in the present case in the light of the Court's finding of a violation of her property rights. In the course of the hearing before the Court the applicant withdrew a claim which had been made in her memorial for the restoration of her rights.

The Turkish Government, on the other hand, submitted that there was no entitlement to just satisfaction.

## I. ENTITLEMENT TO JUST SATISFACTION

21. In the submission of the Turkish Government they cannot be held liable in international law for the acts of the "Turkish Republic of Northern Cyprus". There is no legal basis for holding Turkey liable as it is well settled in international law that the first condition that has to be satisfied for a State to incur liability is that the unlawful act or conduct is attributable to the State on whose behalf the perpetrator of the unlawful act or conduct was acting.

Regard should be had to the fact that the Commission has accepted, even in cases where the allegedly unlawful act resulted directly from the actions of a national authority, that a national authority cannot incur liability where jurisdiction in the relevant sphere has been transferred to an international organisation (see M. and Co. v. Germany, Decisions and Reports 64, p. 138).

Any power that Turkey has in Cyprus is derived from the Zürich and London Agreements of 1959 and the treaties signed in 1960, which remain in force. Subsequent agreements or texts (such as the Geneva Declaration of 30 August 1974, the "ten-point" agreement of 1979 or the Set of Ideas of 1992) have not conferred any new responsibilities on Turkey. The activity complained of, in other words the alleged unlawful act, must result directly from an act attributable to the State, whether it be an administrative act, an act of the military authorities, of the legislature or of the judiciary. There is no case where a third-party State has been held liable for the acts of another State – whether or not such State is recognised – which exercises effective authority through constitutionally established organs.

It would therefore be incompatible with principles of international law to award compensation against Turkey.

In addition, the Turkish Government stressed that the question of property rights and reciprocal compensation is the very crux of the conflict in Cyprus. These issues can only be settled through negotiations and on the basis of already agreed principles of bi-zonality and bi-communality. Inevitably the principle of bi-zonality will involve an exchange of Turkish Cypriot properties in the south with Greek Cypriot properties in the north, and, if need be, the payment of compensation for any difference. An award under Article 50 would undermine the negotiations between the two communities and would spoil the efforts to reach a settlement on the basis of agreed principles and criteria.

In conclusion, it was submitted that compensation was not "necessary" under the terms of Article 50. Moreover the claim should be disallowed on the basis that this provision requires that the "decision" or "measure" involved be that of a "High Contracting Party". For the reasons given above that was not the situation in the present case.

22. The applicant pointed out that the Court's principal judgment on the merits had established that there was a continuous breach of Article 1 of Protocol No. 1 which was imputable to Turkey. In accordance with the principle *ubi jus ibi remedium* it was necessary to make an award to ensure that the applicant was not left without a remedy.

23. The Cypriot Government emphasised that Article 50 proceedings do not constitute an appeal from the Court's judgments on the preliminary objections and the merits. It was not open to those appearing before the Court to seek to relitigate issues upon which the Court had already decided. Article 50 was applicable in the present case since no reparation had been made by the Turkish Government in respect of the violation of the applicant's property rights.

24. The Delegate of the Commission also maintained that the applicant should receive just satisfaction. The fact that political efforts were being made to resolve the "Cyprus problem" was not a valid reason for refusing to make an award.

25. The Court recalls its finding in paragraph 57 of its principal judgment on the merits in the present case "that the continuous denial of the applicant's access to her property in northern Cyprus and the ensuing loss of all control over the property is a matter which falls within Turkey's 'jurisdiction' within the meaning of Article 1 and is thus imputable to Turkey" (the principal judgment, *Reports of Judgments and Decisions* 1996-VI, p. 2236).

The Court also found that the applicant must be regarded to have remained the legal owner of the land for the purposes of Article 1 of Protocol No. 1 and that "as a consequence of the fact that [she] has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy her property" (ibid., p. 2237, § 63). It concluded that the continuous denial of access to her property was an unjustified interference with her property rights in breach of Article 1 of Protocol No. 1 (ibid., pp. 2237–38, § 64).

26. In view of the above the Court is of the opinion that the question of Turkey's responsibility under the Convention in respect of the matters complained of is *res judicata*. It considers that it should make an award under Article 50. It is not persuaded by the argument that in doing so it would undermine political discussions concerning the Cyprus problem any more than it was by the same argument at the merits stage as regards finding a violation of Article 1 of Protocol No. 1 (ibid., pp. 2236–38, §§ 59 and 64).

That being the case the Court finds that the applicant is entitled under Article 50 to a measure of just satisfaction by way of compensation for the violation of her property rights.

## II. PECUNIARY DAMAGE

27. The applicant stressed that she did not claim compensation for any purported expropriation of her property. In the light of the Court's finding that she is still the legal owner of the property no issue of expropriation arises. Her claim is thus confined to the loss of use of the land and the consequent lost opportunity to develop or lease it. With reference to a valuation report assessing the value of her property and the return that could be expected from it, she claimed 621,900 Cypriot pounds (CYP) by way of pecuniary damage concerning the period between 22 January 1990, the date of the acceptance by Turkey of the compulsory jurisdiction of the Court, and the end of 1997 (see paragraph 4 above).

The method employed in the valuation report involved calculating the market price of the property as at 1974 and increasing it by 12% per year to calculate the value that the property would have had if the northern part of Cyprus had not been occupied by the Turkish army. It was emphasised that the property was situated in an area of Kyrenia which in 1974 had been undergoing intensive residential and tourist development. The occupation of the properties had deprived the owner of her right to lease and thus resulted in a substantial loss of rent.

The sum claimed by way of pecuniary damage represented the aggregate of ground rents that could have been collected during the period 1990–97 calculated as 6% of the estimated market value of the property for each of the years in question.

28. The Cypriot Government supported the applicant's claim. In particular they contended that Turkey's continued unlawful occupation of part of the Republic of Cyprus should not be used as a reason to reduce the amount awarded by way of pecuniary damage. To do so would be to permit a wrongdoer to benefit from his wrongdoing since the violation of the Convention found in the present case arose as a consequence of the unlawful invasion and occupation of part of the island by Turkey.

29. The Turkish Government maintained that the claim for damage should not be entertained by the Court for the reasons set out above (see paragraph 21). They did not offer any comments on the amount claimed by the applicant under this head.

30. The Delegate of the Commission submitted that the valuer's opinion on the development potential of the land which had been prepared on the applicant's behalf did not provide a realistic basis for the assessment of the pecuniary damage (see paragraph 4 above). The historical events in Cyprus affected not only the applicant individually but numerous other people in a similar situation. They could not therefore be completely disregarded. The applicant was entitled to be fully compensated for loss of access to and control of her property but not for the diminished value of that property due to the general political situation. In his view CYP 100,000 would be a more appropriate award.

31. The Court recalls that the applicant is still the legal owner of nine plots of land and one apartment (see paragraph 13 above) and that its finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being denied access to her land since 1974, she had effectively lost all control as well as all possibilities to use and enjoy her property (see the principal judgment cited above, pp. 2237–38, §§ 60-64). 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 Turkey's acceptance of the compulsory jurisdiction of the Court, namely 22 January 1990, until the present time.

32. Although the Turkish Government have limited their submissions to contesting the applicant's right to compensation and have thus not sought to challenge the applicant's approach to the calculation of her economic loss, the Court does not for this reason alone accept without question the estimates provided by the applicant.

33. In this regard the Court considers as reasonable the general 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 property, that could have been earned on the properties during the relevant period.

However, the applicant's valuation inevitably involves a significant degree of speculation due to the absence of real data with which to make a comparison and makes insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. Her method of assessment presupposes that property prices in the Kyrenia area would have risen consistently by 12% each year from 1974 until 1997 and that the applicant would have actually sought to or have been able to rent her plots of land at 6% of this enhanced value. Even making allowances for the undoubted development potential of the area in which the land is situated, the presumption that the property market would have continued to flourish with sustained growth over a period of twenty-three years is open to question. The Court accordingly cannot accept these percentage increases as a realistic basis for calculating the applicant's loss.

34. Taking into account the above-mentioned uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant, and making an assessment on an equitable basis, the Court decides to award CYP 300,000 under this head.

## III. NON-PECUNIARY DAMAGE

35. The applicant also claimed CYP 621,900 in respect of non-pecuniary damage. She contended that various aggravating factors directly concerning her should be taken into account in the Court's assessment. These encompassed distress and feelings of frustration in face of the prolonged deprivation of her rights as well as feelings of helplessness connected to the presence of the Turkish army in northern Cyprus and her unsuccessful efforts to have the property returned to her. It also had to be borne in mind that the applicant had grown up in Kyrenia where her family had lived for generations and was now a displaced person in her own country. The fact that the Turkish Government had not sought to provide any justification for the interference with her property rights was a further aggravating factor to be taken into account.

In the applicant's submission there were also factors related to considerations of the public interest and the public order of Europe. In addition to the obligation to compensate there was in the present situation a need for a large award of non-pecuniary damages to act as an inducement to observe the legal standards set out in the Convention. The slowness and depressing effects of the procedural pathways open to the applicant, the dilatory attitude of the respondent Government and the various unfounded objections raised by them throughout the procedure also had to be taken into account.

A further aggravating factor related to the consistent policy of Turkey and her agents in the occupied area to exercise control over, and to exclude, the Greek Cypriot owners of property on a discriminatory basis. Such policies amounted to racial discrimination, were a source of distress to the applicant and constituted an affront to international standards of human rights.

36. The Cypriot Government supported the applicant's claims under this head. They considered that the sense of helplessness and frustration was deeply felt by the applicant in relation to denial of access and that there was a strong family relationship with regard to the property in question which forms part of the family heritage. The ethnic discrimination practised against Greek Cypriots was also a relevant consideration and must have had an impact upon the feelings of the applicant.

37. The Turkish Government offered no observations under this head.

38. The Delegate of the Commission considered that an award should be made but was unable to accept some of the "aggravating circumstances" invoked by the applicant, in particular her arguments that she had been deprived of her home – the Article 8 complaint having been dismissed by the Court – and that she had been discriminated against as a Greek Cypriot – no complaint under Article 14 having been raised in the original application. He further considered that no punitive element should be imported into the application of Article 50 since the "public policy" considerations adduced by the applicant concerned the global situation of displaced Greek Cypriots

and thus went far beyond the perimeters of the individual case. He considered that CYP 20,000 would be an appropriate award.

39. The Court is of the opinion that an award should be made under this head in respect of the anguish and feelings of helplessness and frustration which the applicant must have experienced over the years in not being able to use her property as she saw fit.

40. However, like the Delegate of the Commission, the Court would stress that the present case concerns an individual complaint related to the applicant's personal circumstances and not the general situation of the property rights of Greek Cypriots in northern Cyprus. In this connection it recalls that in its principal judgment it held that "[it] need not pronounce itself on the arguments which have been adduced by those appearing before it concerning the alleged lawfulness or unlawfulness under international law of Turkey's military intervention in the island in 1974" (cited above, p. 2236, § 56). It also rejected the applicant's allegations that there had been a violation of the right to respect for her home (ibid., p. 2238, §§ 65–66) and made no finding concerning the question of racial discrimination which had not formed part of the applicant's complaint under the Convention.

Making an equitable assessment, the Court awards CYP 20,000 under this head.

## IV. THE APPLICANT'S COSTS AND EXPENSES

41. The applicant, who had submitted detailed bills of costs in connection with the different stages of the proceedings before the Commission and Court, claimed CYP 137,084.83 by way of costs and expenses, inclusive of value-added tax. The Cypriot Government supported her claim which was composed of the following items:

(a) CYP 34,571.25 concerning the proceedings before the Commission;

(b) CYP 30,190 concerning the preliminary objections phase before the Court;

(c) CYP 49,112.38 concerning the merits phase before the Court;

(d) CYP 23,211.20 concerning the Article 50 proceedings.

She submitted that in this kind of exceptional case involving many hearings before both the Commission and Court it was justified to have recourse to the services of two Cypriot lawyers as well as Queen's Counsel.

42. The Turkish Government did not comment on the applicant's submissions under this head.

43. The Delegate considered that the costs were excessive since it was not necessary for the applicant to have been represented at most stages of the proceedings by two lawyers and additional advisers. In addition, the applicant had obtained substantial support from the Cypriot Government.

44. The Court considers that, within the context of the applicant's property complaints, the present case raised complex issues of fundamental importance concerning the Convention system as a whole. It also involved several hearings before the Commission and three hearings before the Court. The applicant was thus entitled to avail of the services of two Cypriot

lawyers and a specialist Queen's Counsel from the United Kingdom in order to represent her interests.

It concludes that the costs and expenses were actually and necessarily incurred and reasonable as to quantum and should be awarded in full.

## V. THE CYPRIOT GOVERNMENT'S COSTS AND EXPENSES

45. The Cypriot Government submitted that they should also be reimbursed the costs and expenses in bringing the case before the Court. They claimed CYP 48,315.77 in this respect. They explained that they were seeking to recover expenses only – and not compensation – since significant resources had been allocated to the case, an approach which had been amply justified by the two judgments of the Court.

46. The Turkish Government made no remarks concerning this claim.

47. The Delegate of the Commission, however, opposed it.

48. The Court recalls the general principle that States must bear their own costs in contentious proceedings before international tribunals (see, for example, Article 64 of the Statute of the International Court of Justice and the Advisory Opinion of that Court in "Application for Review of Judgement no. 158 of the United Nations Administrative Tribunal", ICJ Reports 1993, p. 211, § 96). It considers that this rule has even greater application when, in keeping with the special character of the Convention as an instrument of European public order (*ordre public*), High Contracting Parties bring cases before the Convention institutions, whether by virtue of Article 24 or Article 48 (c), as part of the collective enforcement of the rights set out in the Convention or by virtue of Article 48 (b) in order to protect the rights of their nationals. In principle, it is not appropriate, in the Court's view, that States which act, *inter alia*, in pursuit of the interests of the Convention community as a whole, even where this coincides with their own interests, be reimbursed their costs and expenses for doing so.

Accordingly the Court dismisses the Cypriot Government's claim for costs and expenses.

## VI. DEFAULT INTEREST

49. According to the information available to the Court, the statutory rate of interest applicable in Cyprus at the date of adoption of the present judgment is 8% per annum.

## FOR THESE REASONS, THE COURT

1. *Dismisses* by fifteen votes to two the respondent State's claim that the applicant has no entitlement to an award of just satisfaction under Article 50 of the Convention;

2. *Holds* by fourteen votes to three that the respondent State is to pay the applicant, within three months, 300,000 (three hundred thousand) Cypriot pounds for pecuniary damage;

3. *Holds* by fifteen votes to two that the respondent State is to pay the applicant, within three months, 20,000 (twenty thousand) Cypriot pounds for non-pecuniary damage;

4. *Holds* by thirteen votes to four that the respondent State is to pay to the applicant, within three months, 137,084 (one hundred and thirty-seven thousand and eighty-four) Cypriot pounds and 83 (eighty-three) cents for costs and expenses;

5. *Holds* by fifteen votes to two that simple interest at an annual rate of 8% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* unanimously the Cypriot Government's claims for costs and expenses;

7. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 28 July 1998 pursuant to Rule 55 § 2, second sub-paragraph, of Rules of Court A.

*Signed*: Rudolf BERNHARDT
President

*Signed*: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following dissenting opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Morenilla;
(b) partly dissenting opinion of Mr Mifsud Bonnici;
(c) dissenting opinion of Mr Gölcüklü;
(d) dissenting opinion of Mr Pettiti.

*Initialled*: R. B.
*Initialled*: H. P.

# PARTLY DISSENTING OPINION OF JUDGE MORENILLA

I agree with the majority that the applicant should receive just satisfaction for the continuing denial of access to her property in northern Cyprus and the ensuing loss of all control over it which was imputable to Turkey, as stated by the Court in the principal judgment of 18 December 1996. (*Reports of Judgments and Decisions* 1996-VI, p. 2236, § 57). I disagree, however, with points 2 and 4 of the operative provisions for the following reasons:

As regards point 2, the majority has unrealistically disregarded the general political situation of the region where the applicant has property when examining her claim for pecuniary damage for the loss of use of the land and the consequent loss of opportunity to develop or lease it during the past eight years, and when making an equitable assessment of this (paragraphs 33 and 34 of this judgment). As the Delegate of the Commission (paragraph 30), I consider that CYP 100,000 would be the appropriate compensation.

As regards point 4, I find excessive the sum of CYP 137,084.83 for costs and expenses awarded to the applicant to be paid by the respondent State. Under Article 50 of the Convention, as interpreted by case-law of the Court (see, the Pine Valley Developments Ltd and Others v. Ireland judgment of 9 February 1993 (*Article 50*), Series A no. 246-B, p. 89, § 19), the injured party is entitled to recover costs which were necessarily incurred. But in the present case, I do not consider it necessary for the applicant to have been represented before the Commission and the Court by two Cypriot lawyers and a foreign international-law specialist, since, in my view, one lawyer would have sufficed to deal properly with the legal issues involved in this case. I therefore consider that the respondent State should only be held liable to pay one third of this amount.

# PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1. I could not vote in favour of granting to the applicant the sum of CYP 137,084.83 for the costs and expenses claimed by her. The sum is equivalent to GBP 185,064.52 at the rate of exchange quoted by the applicant of CYP 1= GBP 1.35.

2. Like the Delegate of the Commission in his oral pleadings before the Court and a minority of my brother judges, I find the claim to be excessive and exaggerated.

3. It is of course clear that the case was complicated and difficult, but, nevertheless, these qualifications do not justify the hefty bill of costs and expenses which was submitted and which, surprisingly, the majority of the Court accepted. The Turkish Government contributed to this result by omitting to make any submissions on the matter. That Government, likewise, did not make any submissions as to the applicant's calculations of her economic loss (see paragraph 32 of the judgment) but nevertheless the Court cannot for this reason alone accept without question the applicant's submissions. No doubt the same principle applies to the question of costs and expenses.

4. To illustrate my criticism of the applicant's claim under this head, I will limit myself to the following details:

(a) According to the bill of costs dated 26 June 1995 the fees for the two Cypriot lawyers engaged in the research, preparation of submissions, as well as submissions in reply and the conduct of the *hearing on the merits* amounted to GBP 18,900 (CYP 14,000) while those relating to the services of specialist counsel and advocate for research work, a visit to Cyprus for consultations, preparation of submissions in reply and conduct of the *hearing on the merits* amounted to GBP 35,888 (CYP 29,416) i.e. a total of GBP *54,788*.

(b) For that part of the case which dealt with the preliminary objections, on the same description – the Cypriot lawyers charged GBP 12,150 (CYP 9,000) while the specialist counsel and advocate billed GBP 24,000 (CYP 17,760) – a total of GBP *36,150*.

(c) Lastly, for the third and last stage – that concerning Article 50 – for the preparation of the applicant's memorial and the oral hearing, the bills amounted to GBP 9,045 (CYP 6,700) and GBP 18,795 (CYP 15,406) a total of GBP *27,840*.

The memorial in question consisted of 22 double-spaced pages, a third of which is devoted to quotations mostly from judgments of the Court.

A grand total of GBP 118,778 in lawyers' fees is in my opinion excessive and unjustified.

(d) Finally, to illustrate further why I did not vote in favour of awarding the costs and expenses, in full and "*en bloc*", I noticed that, in connection with her claims under Article 50, the applicant commissioned a valuation report of her property in Cyprus, by a firm of Cypriot valuers. The total cost amounted to CYP 1,734. Their approach set out in this report was not accepted by the Court as it involved a significant degree of speculation and did not make any allowance for the volatility of the property market and its susceptibility to domestic and international influences (paragraph 33). In spite of this, the cost was allowed.

# DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(*Translation*)

I regret that I am unable to agree with the opinion of the majority of the Court concerning "just satisfaction".

My opinion on the application of Article 50 not only extends and reiterates my dissent regarding the judgments on "preliminary objections" of 23 March 1995 (40/1993/435/514) and on the "merits" of 18 December 1996 (40/1993/435/514), but is also based on substantive issues inherent in the concept of just satisfaction as provided for in Article 50 of the Convention.

1. According to the words of that provision, the Court's case-law and the unanimous opinion of legal writers, Article 50 does not necessarily create an absolute obligation for the Court to award compensation.

The discretionary nature of the Court's powers regarding just satisfaction is derived both from its power to determine *if necessary* to award compensation and from the fact that such a decision by the Court does not concern a matter of *ordre public*. There is therefore no requirement under the Convention, nor any subsequent practice of the Court obliging it to award any particular sum to the applicant.

The Court itself, even in strictly individual cases having no bearing on international politics, has very often – and in connection with certain Articles of the Convention systematically – chosen not to award just satisfaction, taking the view that the finding of a violation already constituted sufficient satisfaction.

As President Bernhardt also pointed out in his dissenting opinion attached to the principal judgment, the Loizidou case concerns the possessions of a large number of people, a question which forms an inseparable part of the solution to the Cypriot problem. The proposals of the directly interested parties appear in the "Set of ideas on an overall framework agreement on Cyprus" (S/24472).

Ignoring the complexity and political difficulties of an international problem that has already lasted thirty-five years and confining it to an individual dimension will surely not help to bring about a rapid solution.

2. I am of the opinion that in this case "just satisfaction" *should not be awarded*, nor *should costs be reimbursed*.

3. This Loizidou case is not an isolated case concerning the applicant alone (the intervention of the Greek Cypriot administration is manifest proof of that); it concerns on the contrary all the inhabitants of the island, whether of Turkish or Greek origin, who were displaced following the events of 1974, a fact which should cause no surprise.

At the heart of the Loizidou v. Turkey case lies the future political status of a State that has unfortunately disappeared, a question to which all the international political bodies (the United Nations, the European Union, the Council of Europe, etc.) are now seeking an answer. A question of such importance can never be reduced purely and simply to the concept of the right of property and thus settled by application of a Convention provision which was never intended to solve problems on this scale.

I agree entirely with Judge Morenilla's statement in his dissenting opinion that "the majority has unrealistically disregarded the general political situation of the region where the applicant has property when examining her claim for pecuniary damage for the loss of use of the land and the consequent loss of opportunity to develop or lease it during the past eight years, and when making an equitable assessment of this (paragraphs 33 and 34 of this judgment)".

4. Lastly, as I observed above, by intervening in this case, that is by bringing it before the Court, the Greek Cypriot administration has completely altered the nature of the case for Convention purposes. It has become an inter-State case. In spite of its deceptive appearance, the judicial and legal stage in this case is occupied by the representatives of the Greek Cypriot administration. As the Court has itself accepted in inter-State cases, the parties must themselves bear the costs and expenses they incur in such proceedings. The applicant should not therefore be awarded costs. In the alternative, I would say, in agreement with Judge Morenilla in his dissenting opinion, that in the present case it was not necessary "for the applicant to have been represented before the Commission and the Court by two Cypriot lawyers and a foreign international-law specialist, since … one lawyer would have sufficed to deal properly with the legal issues involved in this case".

# DISSENTING OPINION OF JUDGE PETTITI

*(Translation)*

I voted with the minority against the decisions set out in point 1 of the operative provisions (the principle) and in points 2 to 5 awarding various sums to Mrs Loizidou.

This was necessary so that I could remain consistent with my votes and dissenting opinions in the first two Loizidou judgments, particularly as the present judgment again refers, as regards international law, to the first judgment. My votes in the first two judgments were prompted by the political situation in Cyprus and my interpretation of international law. The fact that an international force controls the "green line" and prohibits the free movement of persons from one zone to the other and access to property in another zone should in my opinion have been taken into account by the Court. Current political developments show that the problem of Cyprus unfortunately goes well beyond the dimensions of a mere lawsuit.