



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

FOURTH SECTION

CASE OF DEMADES v. TURKEY

(Application no. 16219/90)

JUDGMENT
(Just satisfaction)

STRASBOURG

22 April 2008

FINAL

01/12/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Demades v. Turkey,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Stanislav Pavlovski,

Ljiljana Mijović,

David Thór Björgvinsson, *judges*,

Metin A. Hakki, *ad hoc judge*,

and Fatos Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 16219/90) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr John (Ioannis) Demades (“the applicant”), on 24 January 1990.

2. In a judgment delivered on 31 July 2003 (“the principal judgment”), the Court dismissed various preliminary objections raised by the Turkish Government and found continuing violations of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for his home and of Article 1 of Protocol No. 1 by virtue of the fact that the applicant was denied access to and control, use and enjoyment of his property and any compensation for the interference with his property rights. Furthermore, it found that it was not necessary to examine the applicant's complaint under Article 13 of the Convention (*Demades v. Turkey*, no. 16219/90, §§ 37, 46 and 48 and points 1-4 of the operative provisions).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 226,516 Cyprus pounds (CYP) for the deprivation of his property concerning the period between 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, and 31 December 2007. A valuation report, setting out the basis of the applicant's loss, was appended to the applicant's observations. Furthermore, the applicant claimed CYP 120,000¹ in respect of non-pecuniary damage and CYP 1,663.80 for costs and expenses incurred before the Court following the adoption of the principal

¹ The equivalent of approximately 209,000 euros

judgment. The applicant also requested commensurate increase on both amounts in view of the continuing nature of the violations and the lapse of time after the submission of the relevant observations.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non-pecuniary damage, the Court reserved it (*ibid.*, § 54, and point 6 of the operative provisions). However, it awarded the applicant 2,875 euros (EUR) in respect of costs and expenses (*ibid.*, § 57, and point 5 of the operative provisions).

5. The parties filed submissions with the Registry in the context of friendly settlement negotiations (Article 38 § 1 (b) of the Convention and Rule 62 of the Rules of Court). No settlement was reached.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section.

7. Following the retirement of Mr F. Gölcüklü (see § 5 of the principal judgment), the Government appointed Mr M. Hakki to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

8. By letter dated 14 September 2006 the applicant's lawyer informed the Court that the applicant had died on 12 September 2006. The application is being pursued by his heirs: his wife, Mrs Roula Demades; his son, Mr Demetris Demades; and his daughter, Mrs Anna Demades Gavrielides.

9. The Chamber decided that the heirs of the deceased applicant had the requisite interest and standing to continue the application².

10. The parties then filed submissions with the Registry in the context of friendly settlement negotiations (Article 38 § 1 (b) of the Convention and Rule 62 of the Rules of Court) but no settlement was reached.

11. The Government filed an opinion concerning the valuation of the property in question given by the “Immovable Property Commission” (hereinafter “the I P Commission”) which was established under the “Law for the Compensation, Exchange and Restitution of Immovable Properties” (“Law no. 67/2005”). This law was enacted by the authorities of the “Turkish Republic of Northern Cyprus” and entered into force on 22 December 2005 (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, §§ 10-11, 7 December 2006).

12. The applicant filed comments in reply to the above-mentioned opinion, an updated claim in respect of pecuniary damage and a supplementary claim for costs and expenses incurred before the Court following the adoption of the principal judgment. The respondent Government made further comments in response.

² For the sake of convenience, Mr Demades will be continued to be referred to as the applicant in the text of this judgment.

THE LAW

13. 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. Pecuniary damage

1. The parties' submissions

(a) The applicant

14. The applicant emphasised that he did not claim compensation for any purported expropriation since he was still the legal owner of the property and no issue of expropriation arose. His claim was thus confined to the loss of use and enjoyment of the land and the consequent loss of opportunity to lease or rent it. Relying on a valuation report, dated 13 November 2007, assessing the value of his property and the return that could be expected from it, the applicant claimed CYP 668,217 by way of pecuniary damage concerning the period between 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, and the end of 2007.

15. The method employed in the valuation report was a combination of the direct comparison method of valuation and the net replacement cost for the assessment of the capital value of the property: the estimation of the annual rent value was derived as a percentage of the amount of capital value of the property. The market price of the property was calculated as it stood in 1974 and increased by 6.25% per year to calculate the value that the property would have had if Kyrenia had not been occupied by the Turkish army. The market value of the applicant's property was estimated as being CYP 57,730 in July 1974. It was emphasised that the property had “open views to the coast” and was situated in a prime area of Kyrenia which in 1974 had been undergoing intensive residential and tourist development. The report also took into account the high quality residential units, beach facilities and pleasant surroundings.

16. Although the applicant's expert stated that the correct estimation of the average annual increase in the value of the land would have been 14%, he had adopted a “more conservative” approach by presuming that property prices in the Kyrenia area would have risen constantly by 6.25 % each year.

17. The total sum claimed by way of pecuniary damage represented the aggregate of ground rent that could have been collected from 22 January

1987 until 31 December 2007, calculated as 6.25% of the estimated market value of the property for each of the years in question, plus interest from the date on which such rent was due until the date of payment. For that period therefore the sum amounted to CYP 313,492 plus CYP 354.725 as compound interest at a rate of 8% from 1 January 1987 up to the end of 1999 and 6% from 2000 until the end of 2007. The examination of the trends in rent increases was made on the basis of the Consumer Price Index 1960-1998 in respect of Rents and Housing, issued by the Department of Statistics and Research of the Government of Cyprus.

(b) The Government

18. The Government submitted that the I P Commission which had been established under “Law no. 67/2005” (see paragraph 9 above) had proceeded to examine *ex officio* the applicant's claims. In its opinion the I P Commission concluded that the pecuniary damages to be awarded to the applicant amounted to CYP 258,053³ for the period between 1 January 1990 and 1 December 2006. This amount included CYP 163,053 for loss of use and CYP 95,000 in respect of the value of the market value of the plot and the house. In reaching these amounts the I P Commission took into consideration the interest rates of the Central Bank of Cyprus between 1974 and 2006. The value of the property was calculated by applying interest rates on the market value of the property in 1974 assessed at CYP 31,000 by the “TRNC Ministry of Interior” for the period 1 January 1990 until 1 December 2006. According to the above Ministry the property was a military zone. The ground rent was calculated as 5% on the market value of the house in 1974. Furthermore a tax of 10% was deducted. Moreover, in its opinion the I P Commission stated that, as regards compensation for loss of use, it had collected data from the Land Registry and Surveys Department on the 1973-74 purchase prices for comparable properties in Kyrenia.

19. The I P Commission noted that under Law 67/2005 it was entitled to take a decision to restore property, a decision which would take effect after the settlement of the Cyprus problem. In the present case this would not be possible in order to protect the rights of the current possessors. They noted in this respect that the house was inhabited by a civilian.

20. Finally, the I P Commission observed that under “Law no. 67/2005” it was entitled to offer a Turkish-Cypriot property located in the south of the buffer zone of equal value to the applicant's property.

2. The Court's assessment

21. The Court recalls that in its principal judgment it held that there had been a continuing violation of the applicant's rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 by reason of the complete

³ The equivalent of approximately 445,400 euros

denial of the rights of the applicant with respect to his home and the peaceful enjoyment of his property in Kyrenia (§§ 37 and 46 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 his land since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his property (§ 46 of the principal judgment). He is therefore entitled to a measure of compensation in respect of losses directly related to this violation of his 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 *Cankocak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001).

22. Insofar as the Government refers to the new compensation and restitution mechanism which had been found in *Xenides-Arestis* (just satisfaction) (cited above, § 37), in principle, to provide for adequate and effective redress, the Court, as in that case, cannot accept the argument that the applicant should now be required at this stage of the proceedings where the Court has already decided on the merits to apply to the new Commission in order to seek reparation for his damages (*ibid*, § 37, citing *Doğan and Others v. Turkey* (just satisfaction), nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 50, 13 July 2006). It must therefore proceed to determine the issues of just satisfaction in this case.

23. In that regard, the Court observes that the valuations furnished by the parties involve a significant degree of speculation due to the absence of real data with which to make a comparison and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou* (Article 50), cited above, p. 1817, § 31). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by the parties. In general it 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 (*Loizidou* (Article 50), cited above, p. 1817, § 33). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou* (preliminary objections), judgment of 23 March 1995, cited above, p. 33, § 102, and (merits), judgment of 18 December 1996, cited above, p. 2227, § 32).

24. As concerns the parties' respective valuations it notes, firstly, that the applicant has adopted lower percentage increases than Mrs Loizidou concerning the market value of the property but has made an additional claim in the form of annual compound interest in respect of the loss because of the delay in the payment of the sum due (see paragraph 17 above). While the Court considers that certain compensation in the form of legal interest

should be awarded to the applicant, it finds that the rates applied by the applicant are on the high side. Secondly, the Court has taken note that part of the amount proposed as compensation by the Turkish Government represents the market value of the land. In this regard the Court reiterates its finding in *Loizidou (merits)* (§ 62), *Cyprus v. Turkey* (§§ 186-187) and *Xenides-Arestis v. Turkey* (no. 46347/99, § 28, 22 December 2005) that displaced Greek Cypriots, like the applicant, cannot be deemed to have lost title to their property and that the compensation to be awarded by this Court in such cases is confined to losses emanating from the denial of access and loss of control, use and enjoyment of his property (see paragraph 21 above; see *Loizidou (Article 50)* § 31 and *Xenides-Arestis* (just satisfaction) cited above, § 38). Thirdly, having regard to the materials provided by the parties and the respective levels of substantiation and explanatory detail contained therein, the Court has taken as a starting point the applicant's figures for the valuation of the property in 1974 rather than the assessment put forward by the 'TRNC Ministry of the Interior'.

25. Having regard to the above considerations the Court, making its assessment on an equitable basis, awards the applicant 785,000 euros (EUR)⁴ under this head.

B. Non-pecuniary damage

1. The parties' submissions

(a) The applicant

26. The applicant claimed CYP 120,000 in respect of non-pecuniary damage with commensurate increase for the period following the submission of his claim. In particular, he firstly claimed CYP 30,000 for the anguish and frustration he suffered on account of the continuing violation of his property rights under Article 1 of Protocol No. 1. The applicant stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case (Article 50, cited above) by way of compensation for non-pecuniary damage, taking into account, however, that the period of time for which the damage was claimed in the instant case, was longer than that claimed in the *Loizidou* case. Further he claimed CYP 90,000 for the distress and suffering he and his family had been subjected to due to the denial of their home in breach of Article 8 of the Convention. He considered this to be more serious than the violation of his property rights under Article 1 of Protocol No. 1.

⁴ Approx. CYP 459,000

27. The applicant emphasised the fact that the quality of life of both himself and his family had been severely and negatively affected since 1974 in view of the loss of not only his property but also his home.

(b) The Government

28. The Government noted that the I P Commission in its opinion had found that since the applicant had not made any submissions to it on this point they were not in a position to make an assessment in respect of non-pecuniary damage.

2. The Court's assessment

29. 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 his property as he saw fit and to enjoy his home. Making an equitable assessment and taking into account that the house was the applicant's secondary home (see § 35 of the principal judgment), the Court awards EUR 45,000 under this head.

C. Costs and expenses

1. The parties' submissions

(a) The applicant

30. Finally, the applicant claimed CYP 7,499.85, including value-added tax, for costs and expenses incurred in the proceedings before the Court for the period between 15 February 2004 and 27 November 2007 following the adoption of the principal judgment. He submitted bills of costs containing an itemised breakdown of the work and invoices in respect of the valuer's fees for the preparation of valuation reports and other services rendered. The applicant's claim was composed of the following items:

(a) CYP 4,600⁵, plus value-added tax, for the fees of the applicant's lawyer covering work carried out in respect of the friendly settlement negotiations with the respondent Government. This included conducting correspondence with the Court and preparation of comments on the matter;

(b) CYP 1,650⁶, plus value-added tax, for the fees of two valuation reports submitted to the Court and for advice given by the valuer during this period;

⁵ The equivalent of approximately 2,850 euros

⁶ The equivalent of approximately 3,450 euros

(c) CYP 272⁷, plus value-added tax, for out of pocket expenses. These included mainly communication costs (faxes, telephone bills, mail etc).

31. The value-added tax on the above sums was assessed at a rate of 15% and amounted to a total of CYP 977.85⁸.

(b) The Government

32. The Government considered these claims excessive and unjustified.

2. The Court's assessment

33. 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).

34. The Court notes that a certain amount of work was carried out on behalf of the applicant by his lawyer subsequent to the adoption of the principal judgment, both in relation to the friendly settlement negotiations that took place during this period and comments made to the Court. In relation to the latter the Court observes that the costs associated with producing updated valuation reports in view of the continuing nature of the violations at stake were essential for enabling it to reach its decision regarding the issue of just satisfaction.

35. Although the Court does not doubt that the fees claimed were actually incurred, it considers that the total sum claimed is excessive. In this regard it observes that this stage of the proceedings involved no particular complexity and that the applicant's comments under this head focused on his just satisfaction claim.

36. Accordingly, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 under this head.

D. Default interest

37. 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.

⁷ The equivalent of approximately 470 euros

⁸ The equivalent of approximately 1,690 euros

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one
 - (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 comprehensive sums:
 - (i) EUR 785,000 (seven hundred and eighty-five thousand euros) in respect of pecuniary damage;
 - (ii) EUR 45,000 (forty-five thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 5,000 (five thousand euros) 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;
2. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partly dissenting opinion of Judge Metin A. Hakkı is annexed to this judgment.

N.B.
F.A.

PARTLY DISSENTING OPINION OF JUDGE METIN A. HAKKI

I am unable to agree with the Court's decision to award the applicant in this case compensation in the sum of EUR 785,000 in respect of pecuniary damage and EUR 45,000 in respect of non-pecuniary damage, for the reasons set out below. I should like to deal with the award in respect of non-pecuniary damage first.

Non-pecuniary damage:

As I understand it, the EUR 45,000 which the majority intends to award to the applicant covers the period from 22 January 1987 until the end of 2007, and is intended to be granted in respect of the anguish and feelings of helplessness and frustration experienced over this period by the applicant. It is on record that Mr Demades, the applicant, died on 12 September 2006 (see paragraph 8 of the judgment). It is also on record that the Court (see paragraph 9) decided that the deceased applicant's heirs had the requisite interest and standing to continue the application. I agree with this observation, but in the absence of additional facts on this point, I am inclined to consider that that decision dealt with a procedural matter. In the matter of an award for non-pecuniary damage, I disagree with the majority as a matter of substantive rather than procedural law.

Why has an award been made in respect of non-pecuniary damage? As mentioned above, such damages are awarded to the applicant, in line with the Court's established case-law, in respect of the anguish and feelings of helplessness and frustration experienced over the years in not being able to use his property as he saw fit and to enjoy his home. I consider that, after Mr Demades' death, this head of damages should be considered to have died with him. It is a well-known principle that, under English common law, the death of the plaintiff or applicant extinguishes the cause of action in tort cases. Two cases from the United States of America, a great common-law country, may be cited to illustrate this point:

(1) *Louren Oliveros, as personal representative of the estate of Jeremy Blouin (deceased) v. Vince Michell; Glenn Mearls, City of Farmington*, U.S. Court of Appeals, 10th Circuit, 17 May 2006, no. 05-2163¹, and

(2) *John Doe v. Cutter Biological Inc., a division of Miles Laboratories*, U.S. Court of Appeals, 9th Circuit, no. 95/35238, 24 June 1996 [89F.3d 844].

In certain types of cases this common-law principle is reversed by statute. I am not aware of any treaty at international level reversing the common-law position as regards the applicability of this principle to the facts of the present case. As the cause of action in this case is based on tort,

¹ See <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=10th&navby=docket&no=052>.

and thus the judgment on the merits (see *Demades v. Turkey*, application no. 16219/90, judgment of 31 July 2003) was given on that basis, I am in favour of applying the common-law rule, by virtue of the provisions of Article 38 (1)(c) of the Statute of the International Court of Justice. In the absence of a specific provision in the European Convention on Human Rights or the Protocols thereto, I believe the common law may be cited as a source of international law by virtue of this section of the Statute.

Regarding the position of Mr Demades' heirs following his death, if the property is still registered in the deceased's name then they should not be entitled to damages under this head: if the property is not registered in their names, the heirs have suffered no anguish or feelings of helplessness and frustration. I have seen no evidence in the records to the effect that the property has been registered in the name of the heirs. I do not know, and the Court does not know, whether or not Mr Demades left a will or died bankrupt. How can one suffer feelings of helplessness and frustration or anguish in respect of property which is not registered in one's name and thus is not one's own?

If the property has indeed been registered in the name of the heirs, I consider that only the registered owners ought to be entitled to an award under this head. If all the heirs are co-owners, they should be entitled to damages jointly, but only from the date on which they became registered owners until the end of 2007; considering the relatively short period of time involved, the award should be only a fraction of the figure the Court is contemplating. On the basis of the information before the Court, we do not even know if Mr Demades' heirs had a 'legitimate expectation' of obtaining effective enjoyment of the property right, in the sense envisaged by the case-law. A mere expectation is not sufficient to make an award to them in respect of non-pecuniary damage (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, where the Court noted in paragraph 50 that "this Article (Article 1 of Protocol No. 1) does no more than enshrine the right of everyone to the peaceful enjoyment of 'his' possessions, that consequently it applies only to a person's existing possessions and that it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions").

How can my decision be compared or reconciled with this Court's case-law? I am not aware of any decision where this point has been directly argued and decided. In cases concerning fatal incidents, there have been many instances in which the Court has made an award for non-pecuniary damage to the applicants, to be held for the deceased's heirs (if they are not the same). For example, in *Taş v. Turkey* (no. 24396/94, 14 November 2000), a 'disappearance' case in which the Court found violations of Articles 2, 3 and 13, it made an award for non-pecuniary damage of 20,000 pounds sterling, to be paid to the applicant (the victim's father) and held by him for his son's heirs. The case of *Şemsi Önen v. Turkey* (no. 22876/93, 14 May

2002) concerned the killing of the applicant's brother and parents, and the Court held that it was empowered under Article 41 to make a non-pecuniary award not only to the applicant, but also to other members of her family who were victims of the violations found by the Court and on whose behalf she had brought the application and sought just satisfaction.

Leaving aside fatal incident cases and turning to the other type of case, in *Karner v. Austria* (no. 40016/98, ECHR 2003-IX) the Court found a violation of Article 14 of the Convention taken together with Article 8. The applicant in this case had also died in the course of the proceedings and in paragraphs 22-28 of the judgment, for the reasons provided, the Court gave leave for the action to continue and rejected the respondent Government's request for the application to be struck out of its list. Nevertheless, in paragraph 47 the Court considered that in the absence of an injured party no award could be made under Article 41 of the Convention with regard to the claims for pecuniary *and* non-pecuniary damage (emphasis added). Accordingly, the Court rejected these claims, and awarded costs only.

In the more recent case of *Varnava and Others v. Turkey* (nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 10 January 2008) which, like the instant case, is intertwined with the Cyprus issue, the Court noted in paragraph 39:

'In the unique circumstances of these cases therefore, the Court finds that the finding of violations constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.'

No award was made in respect of non-pecuniary damage.

Lastly, I wish to cite the case of *Stretch v. the United Kingdom*, (no. 44277/98, 24 June 2003) which, like the instant case, concerned property. The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 and awarded the applicant's estate EUR 31,000 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage, although Mr Stretch, like Mr Demades, died during the course of the proceedings. However, nowhere in that judgment do I see the point I am making raised, argued and dismissed. I thus submit that my analysis has not been undermined by the understanding gained through examining this issue in the light of the Court's case-law.

Pecuniary damage:

In determining the amount of the award to be made to Mr Demades in respect of pecuniary damage, the majority takes as a basis the valuation report submitted by the applicant, which overlooks or disregards the fact that the property in question is located in the military zone. Or perhaps I should say that the majority does not give enough weight to or make enough allowance for this factor. In assessing pecuniary loss, can the Court in this case overlook and ignore the fact that the house is in the military zone? Surely this fact has an adverse effect both on the capital value of the house

and on its rental value, and should thus decrease the amount available in respect of pecuniary damage.

In Section B, under the sub-heading (b) “The Government”, the judgment states that the respondent Government also submitted observations regarding the quantum of damages to be offered to the applicant, prepared by the TRNC Ministry of the Interior and adopted by the Immovable Property Commission (the Immovable Property Commission estimated the applicant's pecuniary damages at a total of CYP 258,053 (equivalent to approximately EUR 445,400). This figure took into consideration the fact that the property is located in a military zone, and reduced the valuation accordingly. This criterion appeals to me as being more dependable and realistic, and should be used as a basis in preference to the applicant's valuation report.

In assessing pecuniary damage, can we turn a blind eye to the presence of the military in the area, and ignore it? We might have been able to do so if the Turkish military were there illegally. Is it there illegally? Has a competent Court ever decided on this matter? I am not aware of any such case or decision; in fact I would go further and assert that no competent international tribunal has ruled on this issue or controversy.

The most that can be said on this matter is that the topic is highly controversial. There are those who accept the Turkish intervention in Northern Cyprus in 1974 as lawful and there are those who hold it to be illegal. For the sake of brevity, I will give only two examples of documents which hold that the presence of the Turkish army in North Cyprus is lawful. My first example is from the 26th Ordinary Session of the Parliamentary Assembly of the Council of Europe, namely Resolution 573 (1974), adopted on 29 July 1974. The second example comes from the decision of the Greek Supreme Court of Appeals, dated 21 March 1979, in case no. 2658/79, where it was accepted that Turkey had intervened in Cyprus in 1974 using its legal rights (underline supplied), in other words, that the intervention was lawful. An excerpt from decision no. 2658/79 reads:

On 15th July 1974, General Yoannidis, together with General Yorgitsis, the Commander of the Greek Regiment in Cyprus and General Yanakomidis organized a coup d'etat against Makarios with 102 other Greek officers. The President's Palace in Nicosia was kept under fire by heavy weapons but President Makarios survived this attack through a miracle. After Greek officers violated the Cyprus Constitution, Nikos Sampson was appointed as the new president of Cyprus Republic. Turkey intervened (sic) to Cyprus using its legal right, on 20th July 1974 [emphasis added].

The first example is a Resolution of the Parliamentary Assembly of the Council of Europe, the other is a judicial decision of a national court, as opposed to a decision of an international tribunal. In both cases the legality of the Turkish military intervention in Cyprus in 1974 was only a side issue, not the main issue; in neither case, however, was it stated that the Turkish intervention was unlawful under international law. Although, to be fair and

objective, I should also add that there exist various other decisions by other international bodies accepting the contrary view. Further examples incorporating both views may conveniently be found in a book published in 2007 by I. B. Tauris, London, entitled *The Cyprus Issue, A Documentary History (1878-2007)* and edited by Murat Metin Hakkı. I prefer not to refer further to this work, since the editor happens to be my son.

Who is to settle this controversy? Obviously not the European Court of Human Rights. The Court has already declined to comment on this question, stating that “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’” (see *Loizidou v. Turkey* (Article 50), judgment of 29 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1817, § 40).

In the absence of a decision from a competent international tribunal holding that the presence of the Turkish Army in Kyrenia (and more particularly in the area where the property in question is situated) is unlawful under international law, I believe that the valuation report submitted by the respondent State and prepared and adopted by the Immovable Property Commission, making allowance for the presence of the military in the area as a factor which decreases the property’s value and rental value, should have been accepted by the Court. *A fortiori*, in the last property case concerning Cyprus which came before this Court, it held:

“...in the absence of an agreement between the parties, the Court, making its assessment on an equitable basis and formally in accordance with the Commission’s proposal awards the applicant EUR 800,000 under this head” (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 42, 7 December 2006).

Thus, it would have been more consistent with the Court’s previous decision to act in this case on the basis of the valuation report submitted on behalf of the respondent Government, as opposed to the other reports, when assessing and making an award in respect of pecuniary damage.