



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF EPIPHANIOU AND OTHERS v. TURKEY

(Application no. 19900/92)

JUDGMENT
(merits)

STRASBOURG

22 September 2009

FINAL

01/03/2010

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 Epiphaniou and Others v. Turkey,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Işıl Karakaş, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 19900/92) 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 six Cypriot nationals, Mr Phanos Epiphaniou, Mrs Sofi Phitidou, Mr Kleanthis Stavri, Mr Christodoulos Demetriades, Mr Theodoros Economou and Mr Anastassis Georgiou (“the applicants”), on 26 January 1990.

2. The applicants were represented by Mr A. Adamides, a lawyer practising in Limassol. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicants alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived them of their home and properties.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 26 September 2002 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. Applicant no. 5 (Mr Theodoros Economou) died on 24 February 2005. His heirs (Mr Phivos Economou and Mrs Elli Economou) stated that they wished to continue the examination of the case on behalf of the deceased. On 12 August 2005 applicant no. 4 (Mr Christodoulos Demetriades) passed away. His heirs (his wife, Mrs Androulla Demetriades, his daughter, Mrs Marina Demetriades, and his son, Mr Angelos

Demetriades) stated that they wished to continue the examination of the case on his behalf.

THE FACTS

8. The applicants were born in 1934, 1947, 1936, 1925, 1924 and 1933 respectively. The first three applicants live in Nicosia, the fourth applicant lived in Limassol and the fifth and sixth applicants live in Larnaca.

9. The applicants had been permanent residents of Famagusta (northern Cyprus), where some of their properties were located.

10. Applicant no. 1 (Mr Phanos Epiphaniou) claimed to be the owner of the following immovable properties:

(a) Famagusta, Ayios Ioannis, plot no. 370, sheet/plan 33/12.3.1, block B; use: residence on 1st floor and shops on ground floor; share: $\frac{1}{2}$ (other $\frac{1}{2}$ in the name of his wife);

(b) Famagusta, Ayios Loukas, plot no. 974, sheet/plan 33/11.E.1, block C; use: building site for investment; share: whole;

(c) Famagusta, Milia, Haragkas, plot no. 214/4/3, sheet/plan 23/14; use: land to be divided into building sites; share: whole.

11. Applicant no. 2 (Mrs Sofi Phitidou) claimed to be the owner of the following immovable properties:

(a) Famagusta, Ayios Nicolaos, plot no. 200, sheet/plan 33/12.6.2, block E; use: land for development; share: whole;

(b) Famagusta, Kantara-Davlos, plot no. 68.9/1, sheet/plan 7/50.6.1; use: house with yard used as holiday house; share: whole.

Applicant's no. 2 home in Famagusta was registered in the name of a family company established by her father.

12. Applicant no. 3 (Mr Kleanthis Stavri) claimed to be the owner of the following immovable property:

Famagusta, Ayias Zonis, plot no. 105, sheet/plan: 33/12.6.IV, block F; use: house with yard; share: $\frac{1}{2}$ (other $\frac{1}{2}$ in the name of his wife).

13. Applicant no. 4 (Mr Christodoulos Demetriades) claimed to be the owner of the following immovable properties:

(a) Famagusta, Ayios Loucas, plot no. 752, sheet/plan 24/59.E.2, Block D; use: building site; share: whole;

(b) Famagusta, Ayios Loucas, plot no. 753, sheet/plan 24/59.E.2, block D; use: building site; share: whole;

(c) Famagusta, Ayios Loucas, plot no. 754, sheet/plan 24/59.E.2, block D; use: building site; share: whole;

(d) Famagusta, Ayios Loucas, plot no. 755, sheet/plan 24/59.E.2, block D; use: building site; share: whole;

(e) Famagusta, Ayios Loucas, plot no. 948, sheet/plan 24/59.E.2, block D; use: land; share: whole;

(f) Famagusta, Spathariko, plot no. 270, sheet/plan 24/2.E.2, block D; use: land; share: ½.

Applicant no. 4's home in Famagusta was registered in his wife's name. He was informed that some of his plots of land were used or permitted to be used by the respondent Government for building part of a university or other structures.

14. Applicant no. 5 (Mr Theodoros Economou) claimed to be the owner of the following immovable property:

Famagusta, Chrysospiliotissa, plot no. 371, sheet/plan 33/19.3.IV, block D; use: land with two houses, one used by the applicant as his residence and the other one for renting; share: whole.

15. Applicant no. 6 (Mr Anastassis Georghiou) claimed to be the owner of the following immovable properties:

(a) Famagusta, Latsia, Trikomo, plot no. 137/1/6/2, sheet/plan 15/43; use: land with trees for agriculture; share: 1/6;

(b) Famagusta, Pervolia Trikomou, Kokkines, plot no. 127/2/2, sheet/plan 15/43; use: land for agriculture; share: whole;

(c) Famagusta, Pervolia Trikomou, Kokkines, plot no. 141, sheet/plan 15/43; use: land for agriculture; share: whole.

Applicant no. 6's home in Famagusta was registered in his wife's name.

16. In support of their claims to ownership the applicants submitted cadastral plans (on which their properties were marked) as well as affidavits in verification of their personal status and immovable property rights. Moreover, applicants nos. 1, 2, 3, 5 and 6 produced certificates of affirmation of ownership of Turkish-occupied immovable properties issued by the Republic of Cyprus for all the properties claimed by them. Applicant no. 4 produced copies of the certificates of registration of the plots of land described in paragraph 13 above.

17. Upon the 1974 Turkish intervention, the applicants left for southern Cyprus. They claimed that they had been deprived of their property rights, all their property being located in the area which was under the occupation and control of the Turkish military authorities. They had made several attempts to return to their homes and properties in Famagusta (the last occasion being on 23 December 1989), but they had not been allowed to do so by the Turkish military authorities. The latter had prevented them from having access to and from using their houses and properties.

THE LAW

I. PRELIMINARY ISSUE

18. The Court notes at the outset that applicants nos. 4 and 5 died on 12 August and 24 February 2005, after the lodging of their application, while the case was pending before the Court. Their heirs informed the Court that they wished to pursue the application lodged by them (see paragraph 7 above). Although the heirs of a deceased applicant cannot claim a general right for the examination of the application brought by the latter to be continued by the Court (see *Scherer v. Switzerland*, 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see *Deweert v. Belgium*, 27 February 1980, § 37, Series A no. 35, and *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A).

19. For the purposes of the instant case, the Court is prepared to accept that the heirs of applicants nos. 4 and 5 can pursue the application initially brought by Mr Christodoulos Demetriades and Mr Theodoros Economou (see, *mutatis mutandis*, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 85, 9 June 2005, and *Nerva and Others v. the United Kingdom*, no. 42295/98, § 33, ECHR 2002-VIII).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

20. The Government raised preliminary objections of inadmissibility for non-exhaustion of domestic remedies and lack of victim status. The Court observes that these objections are identical to those raised in the case of *Alexandrou v. Turkey* (no. 16162/90, §§ 11-22, 20 January 2009), and should be dismissed for the same reasons.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

21. The applicants complained that since 1974, Turkey had prevented them from exercising their right to the peaceful enjoyment of their possessions.

They invoked Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

22. The Government disputed this claim.

23. The Court first notes that the documents submitted by the applicants (see paragraph 16 above) provide *prima facie* evidence that they had a title of ownership over the properties at issue. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicants had a “possession” within the meaning of Article 1 of Protocol No. 1.

24. The Court recalls that in the case of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions* 1996-VI, §§ 63-64, 18 December 1996), it reasoned as follows:

“63. ... as a consequence of the fact that the applicant 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. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment.

64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.

It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.

Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention. In such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1.”

25. In the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV) the Court confirmed the above conclusions (§§ 187 and 189):

“187. The Court is persuaded that both its reasoning and its conclusion in the *Loizidou* judgment (*merits*) apply with equal force to displaced Greek Cypriots who, like Mrs *Loizidou*, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the 'TRNC' authorities on their physical access to

that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.

...

189. ... there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.”

26. The Court sees no reason in the instant case to depart from the conclusions which it reached in the *Loizidou* and *Cyprus v. Turkey* cases (*op. cit.*; see also *Demades v. Turkey* (merits), no. 16219/90, § 46, 31 July 2003).

27. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicants were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicants submitted that in 1974 they had had their homes in northern Cyprus. As they had been unable to return there, they were the victims of a violation of Article 8 of the Convention.

This provision reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

29. The Government disputed this claim.

30. The applicants submitted that, contrary to the applicant in the *Loizidou* case, they all had their principal residence in the District of Famagusta. They claimed that any interference with their Article 8 rights had not been justified under the second paragraph of this provision.

31. The Court first observes that applicants nos. 2, 4 and 6 were not the owners of the houses where they were allegedly residing at the time of the Turkish invasion. The house of applicant no. 2 was registered in the name of a family company established by her father (see paragraph 11 above), while the houses of applicants nos. 4 and 6 belonged to their wives (see paragraphs 13 and 15 above). Under these circumstances, the Court is not convinced that a separate issue may arise under Article 8 of the Convention.

It therefore considers that it is not necessary to examine whether there has been a continuing violation of this provision with respect to applicants nos. 2, 4 and 6.

32. As to the other applicants, the Court notes that the Government failed to produce any evidence capable of casting doubt upon their statement that, at the time of the Turkish invasion, they were regularly residing in the District of Famagusta and that their houses were treated by them and their families as homes.

33. Accordingly, the Court considers that in the circumstances of the present case, the houses of applicants nos. 1, 3 and 5 qualified as “homes” within the meaning of Article 8 of the Convention at the time when the acts complained of took place.

34. The Court observes that the present case differs from the *Loizidou* case (merits, *op. cit.*) since, unlike Mrs Loizidou, applicants nos. 1, 3 and 5 actually had a home in the District of Famagusta.

35. The Court notes that since 1974 applicants nos. 1, 3 and 5 have been unable to gain access to and to use their home. In this connection the Court recalls that, in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 172-175), it concluded that the complete denial of the right of Greek-Cypriot displaced persons to respect for their homes in northern Cyprus since 1974 constituted a continuing violation of Article 8 of the Convention. The Court reasoned as follows:

“172. The Court observes that the official policy of the 'TRNC' authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.

173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in 'legislation' and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General ...

174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.

175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.”

36. The Court sees no reason in the instant case to depart from the above reasoning and findings (see also *Demades* (merits), cited above, §§ 36-37).

37. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention by reason of the complete denial of the right of applicants nos. 1, 3 and 5 to respect for their homes.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

38. The applicants complained of a violation under Article 14 of the Convention on account of discriminatory treatment against them in the enjoyment of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1. They alleged that this discrimination had been based on their national origin.

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

39. The Court recalls that in the *Alexandrou* case (cited above, §§ 38-39) it has found that it was not necessary to carry out a separate examination of the complaint under Article 14 of the Convention. The Court does not see any reason to depart from that approach in the present case (see also, *mutatis mutandis*, *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 37-38, 31 July 2003).

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicants submitted that, contrary to Article 13 of the Convention, they did not have at their disposal any effective remedy to redress the above-mentioned grievances.

This provision reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

41. In the circumstances of the present case, the Court considers that it is not necessary to examine this complaint (see, *mutatis mutandis*, *Demades v. Turkey* (merits), cited above, § 48).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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 and non-pecuniary damage

1. *The parties' submissions*

(a) **The applicants**

43. In their just satisfaction claims of 22 April 2003, the applicants requested sums for pecuniary damage. With the exception of applicant no. 6, they relied on expert's reports assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their 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 1990 until December 2003. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation reports contained a description of the town of Famagusta, of its development perspectives and of the applicants' properties.

44. The starting point of the expert's reports was the open market value of the properties in August 1974. The annual rent obtainable from them was then calculated as a percentage (varying from 4% to 6%) of their estimated value. The expert further took into account the trends of rent increase on the basis of: (a) the nature of the area of property; (b) the trends for the period 1970-1974; (c) the trends in the unoccupied areas of Cyprus from 1974 onwards. This last trend was based on the Consumer Price Index for rents and houses issued by the Department of Statistics and Research of the Government of Cyprus, increased by a percentage of 25%. For agricultural lands, the expert proceeded on the basis of a certain annual rental value per decare (generally between CYP 3 and CYP 5 in 1974). Moreover, compound interest for delayed payment was applied at a rate of 8% (6% from 2001 onwards) per annum.

45. For applicant no. 1, the figures given by the expert were the following:

- property described in paragraph 10 (a) above: market value in 1974: CYP 42,000 (approximately EUR 71,761); annual rent in 1974: CYP 2,520

(approximately EUR 4,305); estimated loss plus interest: CYP 226,081 (approximately EUR 386,281);

- property described in paragraph 10 (b) above: market value in 1974: CYP 3,000 (approximately EUR 5,125); annual rent in 1974: CYP 520 (approximately EUR 888); estimated loss plus interest: CYP 22,632 (approximately EUR 38,669);

- property described paragraph 10 (c) above: the rent payable in 1974 calculated on the basis of CYP 5 per decare; rental value in 1974: CYP 5.25 (approximately EUR 9); estimated loss plus interest: CYP 545 (approximately EUR 931).

Thus, the total sum claimed by applicant no. 1 for pecuniary damage was CYP 249,258 (approximately EUR 425,882).

46. For applicant no. 2, the figures given by the expert were the following:

- property described in paragraph 11 (a) above: market value in 1974: CYP 25,500 (approximately EUR 43,569); estimated loss plus interest: CYP 287,255 (approximately EUR 490,803);

- property described in paragraph 11 (b) above: market value in 1974: CYP 15,600 (approximately EUR 26,654); annual rent in 1974: CYP 624 (approximately EUR 1,066); estimated loss plus interest: CYP 55,982 (approximately EUR 95,650).

Thus, the total sum claimed by applicant no. 2 for pecuniary damage was CYP 343,237 (approximately EUR 586,454).

47. For applicant no. 3, the expert considered that the 1974 market value of the property described in paragraph 12 above was CYP 28,000 (approximately EUR 47,840), the 1974 annual rent was CYP 1,120 (approximately EUR 1,913) and the estimated loss plus interest was CYP 100,480 (approximately EUR 171,680).

48. As concerns the four building sites and the plot of land in Ayios Loucas belonging to applicant no. 4 (see paragraph 13 (a), (b), (c), (d) and (e) above), the expert considered that the overall 1974 market value of these properties was CYP 53,000 (approximately EUR 90,555) and that the estimated loss plus interest was CYP 396,935 (approximately EUR 678,203). For the land described in paragraph 13 (f) above the rent payable in 1974 was calculated on the basis of CYP 3 per decare; the 1974 rental value was CYP 112.37 (approximately EUR 192) and the estimated loss plus interest was CYP 5,741 (approximately EUR 9,809).

Thus, the total sum claimed by applicant no. 4 for pecuniary damage was CYP 402,676 (approximately EUR 688,012).

49. For applicant no. 5, the expert considered that the 1974 market value of the property described in paragraph 14 above was CYP 24,000 (approximately EUR 41,006), the 1974 annual rent was CYP 960 (approximately EUR 1,640) and the estimated loss plus interest was CYP 86,126 (approximately EUR 147,154).

50. Applicant no. 6 did not submit any expert report. He stated that as he was living only on his pension and had no other income, he could not afford to pay for the valuation of his plots of land. However, to the best of his knowledge and belief, the 1974 value of the properties described in paragraph 15 above was not less than CYP 10,000 (approximately EUR 17,086) and the estimated loss plus interest was at least CYP 8,500 (approximately EUR 14,523).

51. On 24 January 2008, following a request from the Court for an update on the developments of the case, applicants nos. 1 and 2 and the heirs of applicant no. 4 submitted updated claims for just satisfaction, which were meant to cover the loss of the use of the properties from 1 January 1990 to 31 December 2007. They produced revised valuation reports, which, on the basis of the criteria adopted in the previous reports, concluded that the whole sum due for the loss of use was: EUR 645,157.1 for applicant no. 1; EUR 1,006,711.4 for applicant no. 2; EUR 1,200,290.8 for applicant no. 4.

52. In their just satisfaction claims of 22 April 2003, the applicants also claimed CYP 100,000 (approximately EUR 170,860) each in respect of non-pecuniary damage. In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1 and 2 and the heirs of applicant no. 4 increased their claim to CYP 140,000 (approximately EUR 239,204) each.

(b) The Government

53. In reply to the applicants' just satisfaction claims of 22 April 2003, the Government submitted that the documents provided by the applicants in support to their claim to ownership were either insufficient or wrong and did not truly reflect the situation of ownership in 1974. The properties claimed by applicants nos. 1 and 5, as well as the property described in paragraph 11 (a) above and claimed by applicant no. 2 could not be traced in the Land Registry Books; serious doubts might therefore arise as to the existence of a "possession" within the meaning of Article 1 of Protocol No. 1.

54. According to the Government, the issue of reciprocal compensation for Greek-Cypriot property left in the north of the island and Turkish-Cypriot property left in the south was very complex and should be settled through negotiations between the two sides rather than by adjudication by the European Court of Human Rights, acting as a first-instance tribunal and relying on the reports produced by the applicant side only.

55. Challenging the conclusions reached by the Court in the *Loizidou* judgment ((just satisfaction), *Reports* 1998-IV, 28 July 1998), the Government 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 applicants' inability to have access to their properties depended on the political situation of the island and, in particular, on the

existence of the UN recognized 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.

56. The Government filed comments on the applicants' updated claims for just satisfaction on 30 June 2008 and 15 October 2008. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and maintained that the claims for just satisfaction were not ready for examination. The Government had in fact encountered serious problems in identifying the properties and their present owners. The information provided by the applicants in this regard was not based on reliable evidence. Moreover, owing to the lapse of time since the lodging of the applications, new situations might have arisen: the properties could have been transferred, donated or inherited within the legal system of southern Cyprus. These facts would not have been known to the respondent Government and could be certified only by the Greek-Cypriot authorities, who, since 1974, had reconstructed the registers and records of all properties in northern Cyprus. Applicants should be required to provide search certificates issued by the Department of Lands and Surveys of the Republic of Cyprus. In cases where the original applicant had passed away or the property had changed hands, questions might arise as to whether the new owners had a legal interest in the property and whether they were entitled to pecuniary and/or non-pecuniary damages.

57. The Government further noted that some applicants had shared properties and that it was not proven 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.

58. The Government 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 applicants had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

59. 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 applicants the option to sell the property to the State, thereby relinquishing title to and claims in respect of it.

60. 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 properties described in paragraphs 11 (a) and 12 above. The other immovable properties referred to in the application were possessed by 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 property between 1974 and the date of payment. Had the applicants applied to the Immovable Property Commission, the latter would have offered CYP 720,771.63 (approximately EUR 1,231,510) to compensate the loss of use and CYP 767,719.51 (approximately EUR 1,311,725) for the value of the properties. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the applicants' properties was the following:

- property described in paragraph 10 (a) above: CYP 42,373 (approximately EUR 72,398);
- property described in paragraph 10 (b) above: CYP 1,695 (approximately EUR 2,896);
- property described in paragraph 10 (c) above: CYP 1,695 (approximately EUR 2,896);
- property described in paragraph 11 (a) above: CYP 7,203 (approximately EUR 12,307);
- property described in paragraph 11 (b) above: CYP 11,864 (approximately EUR 20,270);
- property described in paragraph 12 above: CYP 5,084 (approximately EUR 8,686);
- properties described in paragraph 13 (a), (b), (c) and (d) above: CYP 4,237 (approximately EUR 7,239) for each plot of land;
- property described in paragraph 13 (e) above: CYP 5,932 (approximately EUR 10,135);
- property described in paragraph 13 (f) above: CYP 4,745 (approximately EUR 8,107);
- property described in paragraph 15 (a) above: CYP 2,825 (approximately EUR 4,826);
- property described in paragraph 15 (b) above: CYP 8,983 (approximately EUR 15,348);
- property described in paragraph 15 (c) above: CYP 11,864 (approximately EUR 20,270).

No estimate was given for the property described in paragraph 14 above.

61. Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicants exchange of their properties with Turkish-Cypriot properties located in the south of the island.

62. Finally, the Government did not comment on the applicants' submissions under the head of non-pecuniary damage.

2. The Court's assessment

63. The Court first notes that the Government's submission that doubts might rise as to the applicants' title of ownership over the properties at issue (see paragraphs 53 and 56 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. Such an objection should have been raised before the application was declared admissible or, at the latest, in the context of the parties' observations on the merits. In any event, the Court cannot but confirm its finding that the applicants had a "possession" over the properties claimed in the present application within the meaning of Article 1 of Protocol No. 1 (see paragraph 23 above).

64. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that the parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention. This failure renders it difficult for the Court to assess whether the estimate furnished by the applicants of the 1974 market value of their properties is reasonable. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

65. In their just satisfaction claims of 22 April 2003, relying on bills from their representative, the applicants sought CYP 3,310.25 (approximately EUR 5,655) each for the costs and expenses incurred before the Court. Applicants nos. 1, 2, 3, 4 and 5 also sought the reimbursement of the costs of the expert report assessing the value of their properties (amounting to CYP 460, 402.5, 345, 575 and 345 respectively). In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1, 2 and 4 submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.98 and EUR 982.45 for each of them.

66. The Government did not comment on this point.

67. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of costs and expenses is not ready for decision. The question must accordingly be reserved and the

subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the heirs of applicants nos. 4 and 5 have standing to continue the present proceedings in their stead;
2. *Dismisses* by six votes to one the Government's preliminary objections;
3. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 8 of the Convention with respect to applicants nos. 2, 4 and 6;
5. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention with respect to applicants nos. 1, 3 and 5;
6. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Articles 13 and 14 of the Convention;
7. *Holds* unanimously that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 22 September 2009, 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 separate opinion of Judge Karakaş is annexed to this judgment.

N.B.
F.A.

DISSENTING OPINION OF JUDGE KARAKAŞ

Unlike the majority, I consider that the objection of non-exhaustion of domestic remedies raised by the Government should not have been rejected. Consequently, I cannot agree with the finding of violations of Article 1 of Protocol No. 1 and Article 8 of the Convention, for the same reasons as those mentioned in my dissenting opinion in the case of *Gavriel v. Turkey* (no. 41355/98, 20 January 2009).