



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF RAMON v. TURKEY

(Application no. 29092/95)

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 Ramon 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. 29092/95) 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 Dinos Ramon (“the applicant”), on 4 September 1995.

2. The applicant was represented by Mr A. Demetriades, a lawyer practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged that the Turkish occupation of the northern part of Cyprus had deprived him of his 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 24 August 1999 the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS

7. The applicant was born in 1937 and lives in Nicosia.

8. Until 15 August 1974 the applicant, a chiropractor, had been living with his family in a flat he was renting at 5 Iras street in Famagusta (northern Cyprus). His surgery was located at 36 Socratous street in Famagusta.

9. On 1 August 1972 the applicant entered into a contract with a public body, the Boghaz Improvement Board, for the purchase of a plot of land in the District of Famagusta. He produced a copy of the relevant contract, in which the plot of land in question was described as “part of plot no. 343/1 according to the map attached”. The plot was registered under sheet/plan 15/28 E.1, Block E, Boghaz Village, Famagusta, Ayios Spyridon locality and had a surface of 8,947 square metres. The applicant also produced a copy of a letter he had addressed to the President of the Boghaz Improvement Board on 22 April 1974, in which it was stated that he had paid the agreed price in full. However, no title deed had been issued in the applicant's name before 15 August 1974, as the procedure for the parcelling of plot no. 343/1 had not been completed. On 6 December 1991 the Republic of Cyprus issued, in the applicant's name, an affirmation of ownership of Turkish-occupied land. A copy of this document was attached to the present application.

10. The applicant claimed that by August 1974 he had nearly finished the construction of a clinic/health centre on the plot of land described in paragraph 9 above. This clinic had 32 rooms with private balconies, a restaurant, a lecture room, a library and a swimming pool. However, on 15 August 1974 the applicant had been forced to flee Famagusta as the Turkish troops were advancing. Since then he had been unable to gain access to or use his home, surgery and plot of land. The applicant discovered, through a newspaper article published on 13 August 1989 and an advertising brochure, that persons unknown to him had taken over the plot of land and completed the construction of the clinic/health centre and transformed it into a hotel.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

11. The Government raised preliminary objections of inadmissibility *ratione loci* and *ratione temporis*, 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.

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

12. The applicant complained that since July 1974, Turkey had prevented him from exercising his right to the peaceful enjoyment of his possessions.

He invoked Article 1 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.”

13. The Government disputed this claim.

A. The arguments of the parties

1. *The Government*

14. The Government submitted that the property claimed by the applicant was situated outside the jurisdiction of Turkey and that the latter had no knowledge about it. In any event, the applicant had not been deprived of his possessions because of the Turkish intervention of 1974. The property at issue was, by the applicant's own admission, in course of construction. At the material time, the applicant was neither living there nor was he using it as a clinic. He never became the legal owner of the property as an agreement for sale could not create ownership. In addition, there was no evidence that all the conditions of the said agreement had been fulfilled. No title deed had been issued in the applicant's name and the plot of land and the construction thereon remained in the name of the Boghaz Improvement Board. They had subsequently been expropriated by the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”). Moreover, the applicant had not applied through the proper channels to visit his alleged property in northern Cyprus.

15. Finally, the alleged interference with the applicant's property rights could not be seen in isolation from the general political situation in Cyprus and had in any event been justified in the general interest.

2. *The applicant*

16. The applicant relied on the principles laid down by the Court in the case of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions*

1996-VI, 18 December 1996). He observed that an aggravating factor in his case was that his property had been used by unknown persons as a hotel under the control of the Turkish army.

B. The third-party intervener

17. The Government of Cyprus observed that its Department of Lands and Surveys had provided with certificates of affirmation persons who did not have title deeds in their possession but whose title had been entered in District Land Offices registers in the Turkish-occupied area. These certificates were *prima facie* evidence of their right of property. The “TRNC” authorities were in possession of all the records of the Department of Lands and Surveys relating to the title to properties. It was therefore the duty of the respondent Government to produce them. The applicant did not have any title deed because the registration of his title had not been completed at the time of the Turkish invasion; however, he was in peaceful possession of the property and had a lawful and legitimate expectation that the transfer of his title would be completed.

18. The Government of Cyprus further noted that the present case was similar to that of *Loizidou v. Turkey* ((merits), cited above), where the Court had found that the loss of control of property by displaced persons arose as a consequence of the occupation of the northern part of Cyprus by Turkish troops and the establishment of the “TRNC”, and that the denial of access to property in occupied northern Cyprus constituted a continuing violation of Article 1 of Protocol No. 1.

C. The Court's assessment

19. The Court first notes that the documents submitted by the applicant (see paragraph 9 above) provide *prima facie* evidence that he had concluded a sale agreement and paid the price for acquiring the ownership of the plot of land on which he was constructing a clinic. He had, therefore, a legitimate expectation that a title deed would be issued in his name, once the administrative formalities relating to the registration of his purchase had been completed. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1.

20. The Court recalls that in the aforementioned *Loizidou* case ((merits), cited above, §§ 63-64), 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."

21. 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."

22. 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).

23. 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 applicant was denied access to and control, use and enjoyment of his properties as well as any compensation for the interference with his property rights.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant submitted that in 1974 he had had his home in Famagusta. As he had been unable to return there, he had been the victim 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.”

25. The Government disputed this claim, observing that the applicant had not established his “home” or residence on his alleged properties.

26. The applicant submitted that part of the clinic which he was constructing contained his home. Furthermore, at the time of the Turkish invasion he was residing in the flat he had rented at 5 Iras Street in Famagusta (see paragraph 8 above). Because of the advancing Turkish troops, he had to abandon, overnight together with his wife and two daughters, both his temporary and future home.

27. The Government of Cyprus submitted that where the applicant's properties constituted the person's home, there was a violation of Article 8 of the Convention.

28. The Court notes that at the time of the Turkish invasion the applicant was not residing in the clinic which was being constructed on the plot of land described in paragraph 9 above. Moreover, he was not the owner of the flat located at 5 Iras Street, where he was allegedly living until August 1974. Under these circumstances, the Court is not convinced that a separate issue may arise under Article 8 of the Convention or that there had been a continuing violation of the applicant's rights guaranteed by this provision. It therefore considers that it is not necessary to examine the present complaint.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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 applicant

30. In his just satisfaction claims of November 1999, the applicant requested 790,528 Cypriot pounds (CYP – approximately 1,350,696 euros (EUR)) for pecuniary damage. He relied on an expert's report assessing the value of his losses which included the loss of annual rent collected or expected to be collected from renting out his clinic in Famagusta, plus interest from the date on which such rents were due until the day of payment. The rent claimed was for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until January 2000. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the property. The evaluation report contained a description of the Boghaz village, of its development perspectives and of the applicant's property.

31. The expert appointed by the applicant observed that in August 1974 the clinic was in the final stage of completion and that the building materials had been purchased by the owner and were *in situ*. Therefore, the valuation was based on the assumption that the building was completed. The report calculated the annual rent obtainable from the applicant's property in 1974. As the clinic was not yet operating, it used a comparative method based on the evidence available for an alternative use of the premises, namely as a three star hotel, taking into consideration the attractiveness of a chiropractic centre.

32. According to the expert, a hotel similar to the applicant's property could have obtained an average sum of CYP 45 (approximately EUR 76) per room per month. He then deducted 20% from this amount in order to take into account the expenses for furniture and equipment. As the applicant's clinic had 32 rooms, its total rental value in August 1974 was CYP 13,824 (approximately EUR 23,619). 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 in similar areas; (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. Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

33. On 24 January 2008, following a request from the Court for an update on the developments of the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the loss of the use of the property from 1 January 1987 to 31 December 2007. He produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was CYP 1,159,708.36 plus CYP 1,172,560.43 for interest. The total sum claimed under this head was thus CYP 2,332,269 (approximately EUR 3,984,914).

34. In his just satisfaction claims of November 1999, the applicant further claimed CYP 120,000 (approximately EUR 205,032) in respect of non-pecuniary damage. In particular, he claimed CYP 30,000 (approximately EUR 51,258) for the anguish and frustration he suffered on account of the continuing violation of his property rights. He stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), *Reports* 1998-IV, 28 July 1998), taking into account, however, that the period of time for which the damage was claimed in the instant case was longer. The applicant also claimed CYP 90,000 (approximately EUR 153,774) for the distress and suffering he had been subjected to due to the denial of his right to respect for his home.

35. Finally, in his updated claims for just satisfaction of 24 January 2008, the applicant requested the additional sum of EUR 50,000 for non-pecuniary damage.

(b) The Government

36. The Government filed comments on the applicant's 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.

37. 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 applicant had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

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

39. The report prepared by the Turkish-Cypriot authorities specified that the immovable properties referred to in the application were a forest land; they could not, therefore, form the object of restitution, but could give entitlement to financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the properties between 1974 and the date of payment. However, as a forest land was public property, it had not been possible to estimate the value of the properties at issue. Upon fulfilment of certain conditions, the Immovable Property Commission could have offered the applicant exchange of his properties with Turkish-Cypriot properties located in the south of the island.

40. Finally, the Government did not comment on the applicant's submissions under the head of non-pecuniary damage.

2. The third party intervener

41. The Government of Cyprus fully supported the applicant's updated claims for just satisfaction.

3. *The Court's assessment*

42. The Court first notes that the Government's submission that doubts might arise as to the applicant's title of ownership over the properties at issue (see paragraph 36 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 applicant had a "possession" over the properties in Boghaz within the meaning of Article 1 of Protocol No. 1 (see paragraph 19 above).

43. 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 applicant of the 1974 market value of his 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 applicant (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

44. In his just satisfaction claims of November 1999, relying on bills from his representative, the applicant sought CYP 2,376 (approximately EUR 4,059) for the costs and expenses incurred before the Court. This sum included CYP 600 (approximately EUR 1,025) for the costs of the expert report assessing the value of his properties. In his written observations of 15 January 2004, the applicant claimed additional legal fees for CYP 2,645 (approximately EUR 4,519). In his updated claims for just satisfaction of 24 January 2008, he submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.15 and EUR 2,955.5 respectively. The total sum sought for cost and expenses was thus approximately EUR 11,925.

45. The Government did not comment on this point.

46. 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 applicant.

FOR THESE REASONS, THE COURT

1. *Dismisses* by six votes to one the Government's preliminary objections;
2. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 8 of the Convention;
4. *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 applicant 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 a violation of Article 1 of Protocol No. 1 of the Convention, for the same reasons as those mentioned in my dissenting opinion in the case of *Alexandrou v. Turkey* (no. 16162/90, 20 January 2009).