



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF DIOGENOUS AND TSERLOTIS v. TURKEY

(Application no. 16259/90)

JUDGMENT
(merits)

STRASBOURG

22 September 2009

FINAL

01/03/2010

This judgment may be subject to editorial revision.

In the case of Diogenous and Tseriotis 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. 16259/90) 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 two Cypriot nationals, Mrs Anna Diogenous and Mrs Pandora Tseriotis (“the applicants”), on 23 February 1990.

2. The applicants were 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 applicants alleged 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 8 June 1999 the Court declared the application admissible.

6. The applicants 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 applicants, who are sisters, were born in 1947 and 1952 respectively and live in Nicosia.

8. The applicants alleged that their mother, Mrs Lia Lellou Tserioti, had acquired the ownership of the plot of land no. 119 (registration no. 1204, sheet/plan XII/20.E.1, Block D, area: 725 square metres) in the District of Kyrenia in northern Cyprus. Before 20 July 1974 the applicants' family constructed on this plot, which was located on the beach of Akti Kimonos, a fully furnished three storey house which they used as a secondary residence. This house consisted of 2 garages/playroom/beach facilities on the sea level, a living-dining area with a fire-place, one bedroom, a shower, a kitchen and a large covered veranda on the upper ground floor, four bedrooms with a bathroom on the first floor. In February 1985, the applicants' mother donated the property to her two daughters in equal shares.

9. In support of their claim to ownership, the applicants produced affirmation certificates issued by the Government of Cyprus.

10. Since 1974 the applicants had been prevented from having access to and using their house. In particular, they had been prevented from living in it with their family. The applicants alleged that the house had been subsequently occupied by officers and/or other members of the Turkish military forces.

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 were 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 applicants complained that since July 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.”

13. The Government disputed this claim.

A. The arguments of the parties

1. The Government

14. The Government submitted that the properties claimed by the applicants were situated outside the jurisdiction of Turkey and that the latter had no knowledge about it. In any event, the applicants had not produced any title deed supporting their claim to ownership. According to the Department of Lands and Surveys of the “Turkish Republic of Northern Cyprus” (the “TRNC”) – which was in possession and control of the relevant land registers – the property described in the present application had not been registered in the names of the applicants. No such registration had been effected before 1974, or any time thereafter. The applicants' properties had not been occupied or used by officers and/or members of the Turkish army.

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

2. The applicants

16. The applicants relied on the principles laid down by the Court in the *Loizidou v. Turkey* judgment ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI).

B. The third-party intervener

17. The Government of Cyprus observed that its department of Lands and Surveys had provided with certificates of affirmation the 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.

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 applicants (see paragraph 9 above) provide *prima facie* evidence that they had a title of ownership over the property 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.

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 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.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicants submitted that in 1974 they had had their home in Kyrenia. 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.”

25. The Government disputed this claim, observing that the applicants claimed ownership only to a “holiday house”, which could not constitute a “home”. In any event, the applicants' inability to return to northern Cyprus had been an inevitable consequence of the political state of affairs on the island and of the existence of the UN buffer zone. The alleged interference with their rights under Article 8 had therefore been necessary in the interests of national security, public safety, for the prevention of disorder and for the protection of the rights and freedoms of others.

26. 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.

27. The applicants alleged that one of them was planning to permanently reside in the house at issue. At the time of the Turkish invasion, both applicants used to spend school holidays and weekends there.

28. The Court notes that the Government failed to produce any evidence capable of casting doubt upon the applicants' statement that, at the time of the Turkish invasion, they used to spend holidays and weekends in their family house located on the beach of Akti Kimonos.

29. The Court recalls that in the case of *Demandes v. Turkey* ((merits), cited above, §§ 31-34), it has considered that a house of which the applicant and his family were making regular use for substantial periods of time over the year, and that served *inter alia* as a holiday home, qualified as "home" within the meaning of Article 8 of the Convention. The Court does not see any reason to depart from these conclusions in the present case, which differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the applicants actually had a home in the district of Kyrenia.

30. The Court notes that since 1974 the applicants have been unable to gain access to and to use that 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."

31. 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).

32. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention on account of the complete denial of the applicants' right to respect for their home.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF THE CONVENTION

33. The applicants complained of a violation of the general obligation to respect human rights enshrined in Article 1 of the Convention.

This provision reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

34. The Court has found the respondent Government to be in breach of Article 1 of Protocol No. 1 and of Article 8 of the Convention and does not consider it necessary to examine the complaint under Article 1, which is a framework provision that cannot be breached on its own (see *Ireland v. the United Kingdom*, § 238, 18 January 1978, Series A no. 25, and *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, § 42, 31 July 2003).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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**

36. In their just satisfaction claims of September 1999, the applicants requested 245,299 Cypriot pounds (CYP – approximately 419,117 euros (EUR)) for pecuniary damage. They relied on an expert's report assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their house in the District of Kyrenia, 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 applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation report contained a description of the town of Kyrenia, of its development perspectives and of the applicants' property.

37. The starting point of the valuation report was the rental value of the applicants' property in 1974, calculated as a percentage (5%) of its estimated value (CYP 75,000 – approximately EUR 128,145; the total annual rent in 1974 was thus CYP 3,750 – approximately EUR 6,407). The expert took into account the fact that the applicants' property was somehow unique and that there had been no sales of really comparable plots. The expert considered it reasonable to fix the market value of the land at CYP 60 per square metre, while the cost of construction of the building was approximately CYP 55 per square metre for the upper ground and first floors and CYP 30 per square metre for the lower ground floor. He 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%. Moreover, compound interests for delayed payment was applied at a rate of 8% per annum.

38. On 23 January 2008, following a request from the Court for an update on the developments of the case, the applicants submitted updated claims for just satisfaction, which were meant to cover the loss of the use of property from 1 January 1987 to 31 December 2007. They produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the sum due was CYP 314,591 plus CYP 318,077 for interest. The total sum claimed under this head was thus CYP 632,668 (approximately EUR 1,080,976). Taking into account the fact that their home was freely occupied by the Turkish army, the applicants further claimed the additional sum of EUR 3,500 per month, to be paid on a yearly basis and to be adjusted in accordance with inflation for a period of 18 years or until the Turkish army vacated the premises.

39. In their just satisfaction claims of September 1999, the applicants further claimed CYP 120,000 (approximately EUR 205,032) each in respect of non-pecuniary damage. In particular, each of the applicants claimed CYP 30,000 for the anguish and frustration she suffered on account of the continuing violation of her property rights. They 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 applicants also claimed

CYP 90,000 each for the distress and suffering they had been subjected to due to the denial of their right to respect for their home.

40. Finally, in their updated claims for just satisfaction of 23 January 2008, the applicants requested the additional sum of EUR 50,000 each for non-pecuniary damage.

(b) The Government

41. 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.

42. The Government further noted that some applicants had shared properties and that it was not proved that their co-owners had agreed to the partition of the possessions. Nor, when claiming damages based on the assumption that the properties had been rented after 1974, had the applicants shown that the rights of the said co-owners under domestic law had been respected.

43. The Government further 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.

44. 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.

45. 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 property described in paragraph 8 above. This property could also 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 51,710.23 (approximately EUR 88,352) to compensate the loss of use and CYP 55,078.40 (approximately EUR 94,106) for the value of the property. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the properties described in paragraph 8 above was CYP 9,000 (approximately EUR 15,377). Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicants exchange of their property with Turkish-Cypriot properties located in the south of the island.

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

2. The third party intervener

47. The Government of Cyprus fully supported the applicants' updated claims for just satisfaction.

3. The Court's assessment

48. The Court first notes that the Government's submission that doubts might arise as to the applicants' title of ownership over the properties at issue (see paragraph 41 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 plot of land and the house located on the beach of Akti Kimonos within the meaning of Article 1 of Protocol No. 1 (see paragraph 19 above).

49. 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

50. In their just satisfaction claims of September 1999 relying on bills from their representative, the applicants sought CYP 2,002.32 (approximately EUR 3,421) for the costs and expenses incurred before the Court. This sum included CYP 800 (approximately EUR 1,366) for the cost of the expert report assessing the value of their properties. In their written observations of 15 January 2004, the applicants claimed additional legal fees for CYP 2,645 (approximately EUR 4,519). Finally, in their updated claims for just satisfaction of 23 January 2008, they 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 costs and expenses was thus approximately EUR 11,287.65.

51. The Government did not comment on this point.

52. 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. *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* by six votes to one that there has been a violation of Article 8 of the Convention;

4. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 1 of the Convention;
5. *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).