



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ANTHOUSA IORDANOU v. TURKEY

(Application no. 46755/99)

JUDGMENT
(merits)

STRASBOURG

24 November 2009

FINAL

10/05/2010

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 Anthousa Iordanou 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 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 46755/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mrs Anthousa P. P. Iordanou (“the applicant”), on 17 December 1998.

2. The applicant, who had been granted legal aid, was represented by Mr P. Erotocritou, a lawyer practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived her of her 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 25 June 2002 the Court declared the application partly 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 1934 and lives in Nicosia.

8. The applicant lived in her family home in Lapithos (the biggest village in the Kyrenia district of northern Cyprus) until 1963, when she married and moved to her husband's house in a neighbouring village. Her mother came from Sysklipos, another village near Lapithos, where she owned land. The applicant claimed to have acquired the ownership of the family property in the two villages, as well as a right to draw a certain amount of water from a spring in Sysklipos.

9. The Government challenged the applicant's property claims, particularly as regarded the properties in Sysklipos, as they had evidence that it had belonged to other persons. The applicant replied that those other persons were her parents who had donated these properties to her.

10. On 27 November 1973 the applicant applied to the Kyrenia Land Registry Office for a permit to divide one of her plots of land in Lapithos into sixteen building sites. She alleged that the issuing of the permit would have significantly increased the value of her land.

11. However, this planning procedure was not completed because, due to the 1974 Turkish intervention, the applicant and her family had been forced to leave all their property and possessions and move to Limassol in southern Cyprus. The applicant was thereby deprived of her property rights, all her property being located in the area which was under the occupation and control of the Turkish military authorities. The latter had prevented her from having access to and using her property.

12. Attached to her observations of 4 September 2002, the applicant produced a certificate of affirmation of ownership of Turkish-occupied immovable properties, issued on 12 August 2002 by the Departments of Lands and Surveys of the Republic of Cyprus, and an affidavit, signed by herself, in which she declared that she owned 8 pieces of land in Lapithos "all on the mountain slope, very suitable for building purposes". According to the above mentioned certificate of affirmation of ownership, the following properties were owned by Mrs Iordanou Iordani Anthousa, daughter of Mr Polykerpos Panagiotou:

Lapithos village – Agia Paraskevi and Agia Anastasia:

(a) Land certificate no. 1613 of 22 April 1971, plot no. 199 of sheet/plan XI/22 (Mantres tou Kazeli), with a total extent of 4,683m²; share: whole; on this plot of land there was a small house for shepherds and two shelters for the animals;

(b) Land certificate no. 1459 of 27 April 1971, plot no. 331 of sheet/plan XI/23 (Persterkonas), with a total extent of 25,753 m²; share: whole; use: field with trees;

(c) Land certificate no. 2312 of 27 April 1971, plot no. 51 of sheet/plan XI/31 (Kaminia), with a total extent of 3,679 m²; share: whole; use: field with trees;

(d) Land certificate no. 1623 of 27 April 1971, plot no. 201 of sheet/plan XI/22 (Syrtaros), with a total extent of 16,723 m²; share: whole; use: field with trees;

(e) Sheet/plan 11/23W.1.E.2, plot no. 53; this plot comprised running water and was registered in the name of the applicant for the 1/120 share (equivalent to 3 hours continuous flow fortnightly every 15 days);

(f) Land certificate no. 2774 of 27 April 1971, plot no. 2 of sheet/plan XI/31 (Livadi tou Kolymbou), with a total extent of 89,457 m² (registered for 1/24 share in the name of the applicant); use: field;

(g) Land certificate no. 2744 of 27 April 1971, plot no. 133 of sheet/plan XI/30 (Kolymbes Livadiou), with a total extent of 110,704 m² (registered for 1/96 share in the name of the applicant); use: field;

(h) Land certificate no. 2760 of 27 April 1971, plot no. 1 of sheet/plan XI/31 (Livadi), with a total extent of 227,427 m² (registered for 1/96 share in the name of the applicant); use: field with trees;

Sysklipos village (according to a report attached to the applicant's observations, these properties were registered in the name of the applicant by declaration of gift from her mother Anastasia Polycarpou Panayiotou):

(i) Land certificate of 24 July 1985, plot no. 341 of sheet/plan XI/47 (Pappares), with a total extent of 21,424 m²; share: whole; use: field;

(l) Land certificate of 24 July 1985, plot no. 357 (united with plot no. 368) of sheet/plan XI/47 (Diplopotama), with a total extent of 9,031 m²; share: whole; use: field with trees;

(j) Land certificate of 24 July 1985, plot no. 370 of sheet/plan XI/47 (Diplopotama), with a total extent of 8,362 m²; share: whole; use: field.

13. Following a request from the Court, in a sworn affidavit of 24 September 2009 the applicant declared that she was the daughter of Polykarpos Panayioti, who had died on 27 December 1975, and of Anastasia Panayiotou, who had died on 12 January 1989. Her mother's father name was Chistodoulos. As it was customary in Cyprus to call people by their first name, followed by their surname and by their father's or husband's name, her mother was also called Anastasia Christodoulou Panayiotou or Anastasia Polykarpou Panayiotou. Therefore, Anastasia Panayiotou and Anastasia Christodoulou were the same person. In support to her affidavit, the applicant produced a copy of her parents' death certificates and identity cards.

14. She further produced the following documents:

- three certificates of affirmation of ownership of Turkish-occupied immovable properties issued on 15 September 2009 by the Republic of Cyprus, in which it was stated that the applicant was the owner of the properties described in paragraph 12 (i), (l) and (j) above;

- three search certificates concerning Turkish-occupied immovable properties issued on 15 September 2009 by the Republic of Cyprus, in which it was stated that the properties described in paragraph 12 (i), (l) and

(j) above were transferred to the applicant on 24 July 1985 by Mrs Anastasia Panayiotou.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

15. 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.

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

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

She 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.”

17. The Government disputed this claim, submitting that there was no evidence whatsoever of the applicant's ownership of property, particularly regarding the land in Sysklipos. Those plots of lands belonged to another person, Mrs Anastassia Christodoulou, with the exception of plot no. 368 (sheet/plan XI/47), which belonged to a certain Irini Hj. Christofi. In any event, the situation regarding the applicant's present inability to have access to property in northern Cyprus was the inevitable consequence of the political state of affairs on the island and of the existence of the inviolable United Nations Buffer Zone; until an overall settlement of the Cyprus problem, Convention rights were, of necessity, restricted in the general interest envisaged by Article 1 of Protocol No. 1.

18. The applicant reiterated that Mrs Anastassia Christodoulou was her mother (see paragraph 13 above) and alleged that no information was available about Irini Hj. Christofi.

19. The Government of Cyprus observed that, in the appendices to her application, the applicant had given details of the relevant properties. The land registration certificates produced by the applicant confirmed her right of property. The respondent Government failed to provide any legal system by which the applicant's ownership could be recognised. The applicant's name had been removed from the property register and replaced by that of the "Turkish Republic of Northern Cyprus" (the "TRNC").

20. The Government of Cyprus further noted that the present case was similar to that of *Loizidou* ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), 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.

21. The Court first notes that the documents submitted by the applicant (see paragraphs 12-14 above) provide *prima facie* evidence that she had a title of ownership over the properties at issue. In particular, the respondent Government failed to produce convincing evidence in rebuttal, and/or to challenge the applicant's statement that Ms Anastasia Polycarpou Panayiotou was her mother; moreover, the Government's statement that plot no. 368 (see paragraph 12 (l) above) belonged to a certain Irini Hj. Christofi is contradicted by the certificates of affirmation of ownership and by the search certificates issued on 15 September 2009 by the Republic of Cyprus (see paragraph 14 above). Under these circumstances, the Court considers that the applicant had a "possession" over the properties claimed in the present application within the meaning of Article 1 of Protocol No. 1.

22. 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.”

23. 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.”

24. 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).

25. 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 her properties as well as any compensation for the interference with her property rights.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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. Damage

1. *The parties' submissions*

(a) **The applicant**

27. In her just satisfaction claims of 4 September 2002, the applicant requested 207,000 Cypriot pounds (CYP – approximately 353,680 euros (EUR) for pecuniary damage. She relied on an expert's report assessing the value of her loss which included the loss of annual rent collected or expected to be collected from renting out her 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 1987, when the respondent Government accepted the right of individual petition, until 2002. The applicant did not claim compensation for any purported expropriation since she was still the legal owner of the properties.

28. The starting point of the valuation report was the market value of each property in 1974. Depending on their use and building potentialities, the rent which could have obtained from the applicant's plots of land were fluctuating from 3 to 6 percent of their market value. Thus, the total annual rent which could have been obtained in 1974 was CYP 2,458 (approximately EUR 4,200). The expert took into account also the fact that the applicant was entitled to the revision of the rent at a compound interest of 5 percent per annum and to compound interest for delayed payment of 8 percent per annum.

29. On 22 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 use of the properties from 1 January 1987 to 31 December 2007. She 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 375,000 (approximately EUR 640,725).

30. The applicant did not make any request for non-pecuniary damage.

(b) The Government

31. In reply to the applicant's just satisfaction claims of 4 September 2002, the Government submitted that Turkey had no access to lands records in the "TRNC" and could not therefore have sufficient knowledge about the applicant's alleged immovable properties' value.

32. The properties left by the applicant had been considered abandoned and had been expropriated under the laws of the "TRNC". It was impossible for Turkey to adopt any domestic provision regarding the expropriations made by another independent State. It should also be taken into account that during the last decades the landscape in northern Cyprus had considerably changed and that these changes had affected the applicant's properties. 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.

33. Challenging the conclusions reached by the Court in the *Loizidou* case (see judgment (just satisfaction) of 28 July 1998, *Reports* 1998-IV), 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 applicant's inability to have access to her properties depended on the political situation of the island and, in particular, on the existence of the UN recognised 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.

34. 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. 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. Moreover, 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.

35. The Government further noted that the applicant had shared properties and that it was not proven that her 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 applicant shown that the rights of the said co-owners under domestic law had been respected.

36. The Government also 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.

37. 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.

38. 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 plots nos. 199, 331, 51, 201, 53 and 133 (see paragraph 12 (a), (b), (c), (d), (e) and (g) above). The other immovable property referred to in the application was possessed by refugees; it 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 applicant applied to the Immovable Property Commission, the latter would have offered CYP 68,539.26 (approximately EUR 117,106) to compensate the loss of use and CYP 72,992.96 (approximately EUR 124,715) for the value of the properties. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the properties described in paragraph 12 above was:

- for the property under (a): CYP 525 (approximately EUR 897);
- for the property under (b): CYP 7,700 (approximately EUR 13,156);
- for the property under (c): CYP 550 (approximately EUR 939);
- for the property under (d): CYP 1,250 (approximately EUR 2,135);
- for the property under (f): CYP 223 (approximately EUR 381);
- for the property under (g): CYP 89.3 (approximately EUR 152);
- for the property under (i): CYP 800 (approximately EUR 1,366);
- for the property under (l): CYP 415 (approximately EUR 709);
- for the property under (j): CYP 375 (approximately EUR 640).

No estimate was given for the property under (e) and (h).

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

2. The third party intervener

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

3. The Court's assessment

41. 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 paragraphs 31 and 34 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. In any event, the Court cannot but confirm its finding that the applicant had a "possession" over the properties in Lapithos and Sysklipos within the meaning of Article 1 of Protocol No. 1 (see paragraph 21 above).

42. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of 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 her 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

43. Relying on a bill from her representative, the applicant sought EUR 38,047.5 for the costs and expenses incurred before the Court and

CYP 2,000 (approximately EUR 3,417) for the costs of the expert reports assessing the value of her properties.

44. The Government did not comment on this point.

45. 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 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 24 November 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).