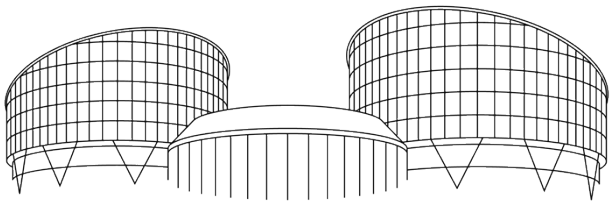

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 49247/08
Niazi KAZALI and Hakan KAZALI against Cyprus
and 8 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 6 March 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications lodged on 8 October 2008, 8 October 2008, 2 August 2005, 30 December 2005, 14 August 2006, 13 December 2006, 8 October 2005, 1 January 2005, and 13 January 2005;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the further information submitted by the respondent Government at the request of the Chamber and the applicants' observations in reply,

Having regard to the comments submitted by the Government of Turkey as intervenor,

Having deliberated, decides as follows:

THE FACTS

The applicants are:

49247/08 Niazi Kazali born 1922, resident in Kyrenia, in the "Turkish Republic of Northern Cyprus" ("TRNC"), British and Cypriot national;
Hakan Kazali born 1947, resident in Norfold, United Kingdom, British and Cypriot national;

49307/08 Esat Mustafa, born 1953, resident in Enfield, United Kingdom, British and Cypriot national;
Nafia Mustafa, born 1933, resident in Nicosia, "TRNC", Cypriot national;
Zeka Mustafa, born 1956, resident in London, United Kingdom, Cypriot national;
Kenan Mustafa, born 1951, resident in Nicosia, "TRNC", Cypriot national;
Enis Bolcocuk, born 1981, resident in Güzelyurt (Morphou), "TRNC", Cypriot national;
Sabiha Aslanturk, born 1960, resident in Güzelyurt (Morphou), "TRNC", Cypriot national;
Safiye Kansal, born 1962, resident in Famagusta, "TRNC", Cypriot national;
Gokcen Mustafa, born 1964, resident in Nicosia, "TRNC", Cypriot national;

30792/05 Alp Z. Nouri, born 1931, resident in Mesa, United States of America, US and Cypriot national;
Keray F. Nouri, born 1933, resident in Phoenix, United States of America, US national;

1760/05 Savash Kamil, born in 1948, resident in London, United Kingdom, British national;

represented before the Court by Mr Z. Necatigil and Mrs Sulen Karabacak, lawyers practising in Nicosia.

4080/06 Erdogan Durmus, born 1934, resident in Famagusta, "TRNC", Cypriot national;

34776/06 Mehmet Ali Osman, born 1937, resident in Nicosia, "TRNC", Cypriot national;

represented before the Court by Mr A. Yesilada, a lawyer practising in Nicosia.

1545/07 Hassan Houssein Chakarto, born in 1936, resident in Banstead, United Kingdom, British national;
Necla Cagis, born in 1950, resident in Güzelyurt (Morphou), "TRNC", Cypriot national;
Mumin Cakartas, born in 1941, resident in Güzelyurt (Morphou), "TRNC", Cypriot national;
Gokcen Bayar, born in 1939, resident in Güzelyurt (Morphou), "TRNC", Cypriot national;

represented before the Court by Mr A. Aksu, a lawyer practising in Ankara.

38902/05 Aiten Abni, born in 1934, resident in Nicosia, Cypriot national;

3240/05 Niyazi Salih, born in 1957, resident in Turnford, United Kingdom, British national;

represented before the Court by Mr M. Georgiou, a lawyer practising in Nicosia.

A. The circumstances of the case

1. Application nos. 49247/08 Kazali and 49307/08 Mustafa and others

1. Application no. 49247/08 concerns a plot of land (a house with a vineyard and fruit trees) in the village of Vroisha. The applicants moved to Larnaca in 1954 and rented out the property in Vroisha. The applicants continued to visit the village during the summer months until 1964, when the inhabitants of Vroisha left the village due to alleged acts of aggression by Greek Cypriots.

2. Niazi Kazali currently resides on Greek-Cypriot property; Hakan Kazali resides abroad.

3. Application no. 49307/08 relates to several plots of land (a house with vineyards and fruit trees), also in Vroisha, inherited by the applicants from a deceased relative in 1995. The applicants (with the exception of the fifth applicant) left the property in 1964 due to alleged acts of aggression by Greek Cypriots (the deceased mother of the fifth applicant also left Vroisha in 1964).

4. Esat Mustafa and Zeka Mustafa now reside abroad; Nafia Mustafa, Kenan Mustafa, Enis Bolcocuk, Sabiha Aslanturk and Safiye Kansal reside

on Greek-Cypriot property; Gokcen Mustafa resides on Turkish-Cypriot property.

5. The applicants allege that their properties were burnt down in or around 1964.

6. Together with other former villagers of Vroisha, the applicants formed the Vroisha (Yağmuralan) Association ("the Association"), which is based in England. On 30 March 2004 the Association made submissions to the Cypriot Minister of the Interior via the Cyprus High Commission in London demanding the return of the village to the legal owners and compensation. On 6 May 2004 the Cyprus High Commission in London replied indicating that the Ministry of the Interior was examining the request. The letter also advised that according to the Ministry of the Interior, under the Turkish-Cypriot Properties Management and Other Matters Law 139/91 (see paragraphs 40-48 below), all Turkish-Cypriot properties which had been abandoned in the free areas of the Republic of Cyprus came under the custodianship of the Custodian of Turkish-Cypriot properties and that since the "Cyprus Problem" was unresolved, the owners of those properties could not exercise their rights with regard to those properties.

7. On 12 January 2006, the Minister of the Interior replied to the Association's submissions. He indicated that:

> "... no damage was caused to the properties of the T/C inhabitants of Vroisha village or any loss of life by organs of the Republic.
>
> ...
>
> The village of Vroisha was voluntarily abandoned by its T/C inhabitants in early 1964 ... What survives from the buildings today are ruins. The destruction is basically due to abandonment and the lapse of time."

8. He noted that the land had remained unused and unexploited since the village was abandoned. He advised that the Department of Lands and Surveys would be able to furnish owners with information about the properties upon request. He concluded by reiterating that:

> "... all T/C properties in the area controlled by the Republic came under the custody of the Minister of the Interior acting as the Custodian of the T/C Properties in accordance with the provisions of the T/C Properties (Administration and Other Matters) (Temporary Provisions) Laws of 1991-2003. They will remain so until the end of the abnormal situation created as a result of the Turkish invasion and occupation of 1974."

9. The applicants in application no. 49247/08 subsequently obtained a search certificate and, on 4 August 2006, the first applicant transferred his interest in the property to his son, the second applicant.

2. Application no. 30792/05 Nouri

10. The complaints relate to property, including a mansion, in Larnaca transferred to the applicants in 1994 by way of a gift from their mother, who was a citizen of the United States from 1939. The mansion was destroyed through alleged acts of aggression by Greek Cypriots in 1964. A house, shop and restaurant/bar have since been constructed on the property without the applicants' consent.

11. Alp Nouri and Keray Nouri currently reside abroad. Alp Nouri stays in Greek-Cypriot property when he visits the "TRNC".

12. The applicants instructed a lawyer in Larnaca to have the title to the property transferred into their names. The new title deed was issued on 5 October 2007.

3. Application nos. 4080/06 Durmus and 34776/06 Osman

13. Application no. 4080/06 relates to property in Mari Village (vineyards and a well). In August 1974, the applicant was taken prisoner and released north of the Green Line. He was unable to return to his property.

14. The applicant resides in a house built on Greek-Cypriot property.

15. On 30 April 1992 a notice of expropriation was published in the Official Gazette of the Republic of Cyprus indicating that part of the applicant's property was to be compulsorily acquired by the Electricity Authority of Cyprus. On 11 September 1992 the expropriation order was published and on 18 February 1993 the Electricity Authority offered compensation in respect of the compulsory purchase. On 17 November 1993 the compensation offered was accepted by the Custodian on behalf of the applicant and the agreed amount was deposited by the Electricity Authority into a special fund on 22 July 1994.

16. A notice of expropriation regarding the remaining part of the applicant's property was published in the Official Gazette on 28 February 2003. On 4 July 2003 the expropriation order was published and on 23 September 2003 compensation was offered.

17. Application no. 34776/06 concerns property in Kellia in the district of Larnaca (three houses, one of which he occupied, and a plot of land with trees). The applicant left the property in mid-August 1974 due to alleged acts of aggression by Greek Cypriots.

18. The applicant resides in Turkish-Cypriot property.

19. On 22 November 2007 a requisition order by the Cypriot National Guard was issued in respect of part of the applicant's property. The offer for compensation by the Ministry of Defence is pending. The remainder of the property is being used by a Greek Cypriot for agricultural purposes.

20. On 9 August 2005 the applicants' lawyer wrote to the Service for the Management of Turkish-Cypriot Properties at the Ministry of the Interior,

enclosing the title deeds and seeking the return of the properties and compensation. On 31 August 2005 he received a reply from the Acting Director of the Service for the Management of Turkish-Cypriot Properties in the following terms:

> "... the Turkish Cypriot Properties, which have been abandoned as a result of Turkish invasion and occupation, have come under the management and custody of the Custodian of Turkish Cypriot Properties, according to the provisions of the Turkish Cypriot Properties (Management and Other Matters) (Temporary Provisions) Law No. 139/91.
>
> According to the above Law, the Minister of Interior has been appointed as the Custodian of all the Turkish Cypriot Properties and all abandoned properties came under his management with the aim of meeting the needs of the refugees.
>
> In view of the above, I regret to inform you that your application is not able to be considered at present. Any matter outstanding will be considered and settled upon the final solution of the Cyprus Problem."

21. The applicants did not commence an action in the District Court to seek payment of the compensation deposited in respect of the compulsory acquisitions.

4. Application no. 1545/07 Chakarto and others

22. The application relates to property comprised of a vineyard and business centre, containing 15 shops and three residences, in Limassol. The applicants allege that they were transferred north of the Green Line in Nicosia in 1974, as a result of the threat to their lives following the events of July 1974 and the kidnapping and disappearance of the fourth applicant's husband in August 1974. They were unable to return to their property.

23. Hassan Houssein Chakarto now resides abroad but rents a house in the "TRNC" built on Greek-Cypriot property; Necla Cagis, Mumin Cakartas and Gokcen Bayar reside on Greek-Cypriot property.

24. In April 2003 one of the applicants returned to Limassol. The property was within a fenced-off area and was in a poor state of repair. The applicants sought information regarding the property, with no success. They subsequently appointed a lawyer who, in June 2003, wrote to the Service for the Management of Turkish-Cypriot Properties at the Ministry of the Interior, enclosing the title deeds and seeking the return of the properties and compensation. On 19 July 2003, she received a reply in similar terms to those received by the applicants in applications 4080/06 and 34776/06 (see paragraph 20 above).

5. Application no. 38902/05 Abni

25. The application concerns two houses in Paphos inherited by the applicant from her parents. She let these houses for some time after moving to Nicosia. Following the events of summer 1974 she was not able to collect

rent as she was not able to visit the properties. In 2003 she visited the two houses as well as two plots of land she had bought with her husband. They had been rented to displaced Greek Cypriots by the Cypriot Government since 1974.

26. The applicant currently resides on Turkish-Cypriot property.

27. The applicant never applied to the Custodian to seek the return of her property. She considered that in light of the jurisprudence of the Supreme Court, any legal action would have been ineffective.

6. Application no. 1760/05 Kamil

28. The application concerns a plot of land (a house with fruit trees) in Mari Village which was partially transferred to the applicant's mother by the applicant's maternal grandfather in 1973, with the remainder inherited following his death on an unspecified date. The applicant's grandfather was forced to leave the property in 1974 due to alleged acts of aggression by Greek Cypriots. The applicant inherited the property following the death of his mother.

29. The applicant, who resides abroad, took no steps to seek to recover the property.

7. Application no. 3240/05 Salih

30. The application relates to property (including a house) in Limassol which belonged to the applicant's father. The applicant's father left the property in 1959 following an army posting to the United Kingdom and the house was left empty. There has been no access to the property since 1974.

31. The applicant resides abroad.

32. On 13 February 2001, following the death of his father, the applicant wrote to the Land Registry of Cyprus asking for information regarding the property. The Custodian consented to the transfer of the property into the applicant's name on 21 January 2005.

33. The applicant claimed that he instructed a solicitor to assist in the recovery of the properties, to no avail.

B. Relevant domestic law and practice

1. Constitution

34. Article 6 of the Constitution prohibits discrimination between Turkish Cypriots and Greek Cypriots.

35. Article 13 grants the right to citizens to move freely throughout the island and to reside in any part of it, subject to any restrictions imposed by law and necessary for the purposes of defence or public health or provided as punishment to be passed by a competent court.

36. Article 23 protects the right to property and provides that no deprivation, restriction or limitation of any such right shall be made except where it is imposed by law and is absolutely necessary in the interests of public safety, public health or public morals, town and country planning, the development and use of any property for the promotion of the public benefit or for the protection of the rights of others.

37. Article 28 guarantees the right to equal treatment and non-discrimination.

38. Article 144 enables a party to any judicial proceedings to raise the question of the constitutionality of any law or decision. However, the provisions of this Article were rendered inoperative following the inter-communal problems in 1963 and the procedure for reference under the above provision is no longer applicable. The Administration of Justice (Miscellaneous Provisions) Law 33/1964 was enacted in order to address a situation of emergency and to set up the necessary judicial machinery for the continued administration of justice. By virtue of this law, the two highest courts, that is, the Constitutional Court and the High Court, were merged into one, the Supreme Court of Cyprus, to which the jurisdiction and powers of the two pre-existing courts were transferred. The establishment and operation of the new Supreme Court was held to be in conformity with the Constitution on the basis of recognised principles of the Law of Necessity (*the Attorney-General of the Republic v. Mustafa Ibrahim and others*, (1964) C.L.R. 195). As the procedure for reference under Article 144 (1) is no longer applicable in cases other than those of the Family Courts, questions of alleged unconstitutionality are treated as issues of law in the proceedings, subject to revision on appeal in due course, in so far as the lower courts are concerned. All courts when dealing with a case are competent to examine questions of alleged unconstitutionality arising in the case which are material for the determination of any matter at issue.

39. Article 146 vests exclusive jurisdiction in the Supreme Court to adjudicate on complaints that administrative decisions are contrary to the Constitution or any law, including Convention law, or are made in excess of or in abuse of the powers vested in any organ, authority or person.

2. *The Turkish-Cypriot properties (Administration and Other Matters) (Temporary Provisions) Law of 1991 (as amended) ("Law 139/1991")*

(a) Law 139/1991 prior to 7 May 2010

40. Law 139/1991 ("the Law") was enacted according to its preamble to regulate the administration of Turkish-Cypriot properties in the Republic of Cyprus:

"Whereas, because of the massive removal of the Turkish-Cypriot population as a result of the Turkish invasion to the areas occupied by the Turkish invasion forces and the prohibition by such forces of the movement of such population within the areas of the Republic of Cyprus, properties which consist of movable and immovable property were abandoned,

And whereas it became essential for the protection of those properties to take immediate measures,

And whereas the measures taken included the administration of such properties by a special committee which was constituted through administrative arrangements,

And whereas the regulation by law of the question of the Turkish-Cypriot properties in the Republic became necessary ..."

41. Section 2 provides definitions of relevant terms used in the Law:

"'Abnormal situation' means the situation created as a result of the Turkish invasion which continues to exist until the Council of Ministers, by notification published in the Official Gazette of the Republic, appoints a date for the termination of such situation;

...

'Turkish-Cypriot' means a Turkish-Cypriot who does not have his usual residence in the areas controlled by the Republic and includes a company or other legal person which is controlled by a Turkish-Cypriot, as well as by the Evcaf;

'Turkish-Cypriot property' includes every property movable or immovable which belongs to a Turkish-Cypriot and is situated in the areas under the control of the Republic and includes Evcaf property."

42. Section 3 establishes the post of Custodian of Turkish-Cypriot properties who is to administer such property in accordance with the provisions of Law 139/1991 and exercise the functions conferred on him by that Law during the abnormal situation and until final settlement of this matter is reached.

43. Section 5 stipulates that:

"Subject to the provisions of this Law, the Custodian in administering Turkish-Cypriot properties and exercising the functions conferred on him by this Law, shall have all the rights and obligations which their Turkish-Cypriot owner would have:

Provided that, notwithstanding the amendment to the principal law made by this Law, all acts or decisions which have been done or taken by the Custodian, in accordance with the principal law, shall be regarded as having been done or taken lawfully."

44. Section 6 sets out some specific functions of the Custodian, without prejudice to the generality of section 5. These include:

"(a) to administer every Turkish-Cypriot property in accordance with the circumstances of each case and to this end–

(i) to collect every sum which is due to the beneficiary and to give the necessary receipts; ...

(ii) to collect and dispose of the produce of such property in the most beneficial manner for the owner;

(iii) to make the necessary payments for the fulfilment of obligations concerning the property under administration;

(iv) to arrange for the necessary repairs, improvements, cultivations, plantations or, where necessary, such changes to the property which would be beneficial to the owner;

(v) to make arrangements, to enter, terminate or cancel contracts or to undertake obligations or charges concerning each such property and more specifically to lease same at the most favourable terms for the owner; ...

(vi) to sell or otherwise dispose of every such movable property which is subject to deterioration or which because of its nature ought to be sold or disposed in the interest of the owner;

(vii) generally to do everything which is consequential to or necessary for the administration of Turkish-Cypriot properties.

...

(c) To accept service of actions, reference or other judicial process concerning Turkish-Cypriot property, to represent and bind the owner of any Turkish-Cypriot property before any judicial, administrative or other authority in the Republic or anywhere else outside the Republic, to give or receive notifications by virtue of the provisions of any Law applicable in connection with Turkish-Cypriot property and to be present at local enquiries and negotiations concerning such property.

(d) To administer the Fund of Turkish-Cypriot properties which is established by virtue of section 11 of this Law;

...

Provided that in the case of immovable property, the Custodian, in the exercise of his functions by virtue of this section, cannot take actions as a result of which after the termination of the operation of this Law–

(i) The owner would be other than the owner at the date of entry into force of the present Law, except in exceptional cases in which this would be beneficial for the owner or necessary in the public interest; or

(ii) the right of the owner concerning the property would be in any way restricted or charged more than what would be absolutely necessary or beneficial for the property or the owner or necessary in the public interest; ..."

45. Section 7 requires the Custodian, in administering the Turkish-Cypriot properties and in exercising his functions by virtue of Law

139/1991, to look after the needs of refugees and at the same time serve the interests of the owners of the said properties on the basis of "prescribed criteria".

46. Pursuant to section 9 of Law 139/1991:

> "The payment of any sum due to an owner of Turkish-Cypriot property in relation to such property is suspended during the abnormal situation which exists in the Republic of Cyprus by reason of the Turkish occupation."

47. Section 11 establishes a "Special Fund":

> "(1) A Special Fund under the name 'Fund of Turkish-Cypriot Properties' is constituted by this Law and for the purposes thereof, which is under the administration of the Custodian. In the Fund are deposited all receipts and all payments are made therefrom, in accordance with the provisions of this Law.
>
> ..."

48. Section 15 provides that every person who pays any debt due to a Turkish Cypriot to any person other than the Custodian; or assumes possession of or in any way uses a Turkish-Cypriot property in a manner other than that which is provided in Law 139/1991 is guilty of an offence and is liable to imprisonment not exceeding three months or to a fine not exceeding one thousand pounds or to both such penalties.

(b) Law 139/1991 after 7 May 2010

49. Law 139/1991 was amended by Law No. 39(1) of 2010, published in Official Gazette no. 4240 of 7 May 2010, by the insertion of additional provisions. The following was inserted at the end of section 3:

> "Provided that in the exercise of his above authority to administer Turkish-Cypriot properties during the abnormal situation the Minister also has the power as custodian, to lift by duly reasoned decision and under terms which are in his judgment appropriate the custodianship concerning particular Turkish-Cypriot property or part of it, after taking into account in connection with the administration the situation and circumstances of each case and weighing all factors relevant to this matter, including whether the Turkish-Cypriot owner of the property or his heirs or successors in title, as the case may be, occupy property belonging to a Greek-Cypriot in the areas not under the Republic's control:
>
> Provided further that inter alia the following factors weigh in favour of lifting the Custodianship of Turkish-Cypriot property–
>
> (a) that the matter concerns the administration of property which at the time it came under its regime of custodianship, its Turkish-Cypriot owner had ordinary residence abroad where he had gone at any time before or after the Turkish invasion of 1974, and the said owner continues to reside there or has returned or intends to return from abroad for permanent settlement in the Government controlled areas of the Republic,
>
> (b) that the matter concerns the administration of property which at any time after it came under its regime of custodianship by the Custodian the Turkish-Cypriot owner

of the property settled permanently in the Government controlled areas of the Republic and continues to be constantly settled there permanently ,

(c) that the property under administration concerns a house which its Turkish-Cypriot owner was living [in] and occupying before the Turkish invasion of 1974 and intends to live in it upon his coming from the occupied areas for permanent settlement in the Government controlled areas of the Republic."

50. A new section 6A was inserted into the Law:

"(1) Violation of a right guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms or the Protocols thereto ratified by Law, owing to the application of a provision of this Law, is actionable.

(2) A person alleging violation of any right guaranteed by the above Convention and or its Protocols owing to the application of a provision of this Law in his case, is entitled, in case of rejection of his relevant claim by the Minister, to have recourse to the district courts by way of action brought against the Republic and the Custodian for the alleged violation, and to claim for the violation the remedies provided for in this section:

Provided that where the remedies sought include a claim by the owner for an order of the court that his property under custodianship under the provisions of this law be restored to him, the action is also directed against the person lawfully in occupation of the property.

(3) In determining in an action under sub-section (2) whether the plaintiff's right was violated the court examines the circumstances of the case and takes into account the factors which the European Court of Human Rights takes into account as relevant to the issue to be determined as these transpire from its relevant case-law on the matter.

(4) Where in an action under this section the court determines that the plaintiff's right was violated, he is entitled in the action:

(a) to compensation for any pecuniary damage, loss, costs, and expenses actually incurred on account of the violation,

(b) to compensation for non-pecuniary damage or injury sustained on account of the violation,

(c) to legal costs actually incurred by him on account of the violation,

(d) to the issue of a binding order of recognition of right under the Courts of Justice Laws,

(e) to any other remedy that the court has power to grant in exercise of its civil jurisdiction under the Courts of Justice Laws or any other law for the time being in force, or the applicable general principles of law.

(5) For ascertaining the damage attributable to the violation as provided for in subsection (4) and assessing and awarding compensation under the said sub-section, the court takes into account the criteria and factors taken into account for this purpose

by the European Court of Human Rights as they transpire from its case-law in cases of violation of the right concerned which is guaranteed by the above Convention or its Protocols.

Where in an action under this section the court issues an order for the restoration to the plaintiff of property under custodianship, the Custodian and the property's lawful occupier are entitled in the action by relevant respective counterclaims against the plaintiff, to any amounts of costs that each has actually incurred for repairs, improvements, developments, building and conversions he has effected on the property under this Law:

Provided that the said right of the lawful occupier is only for costs of repairs, improvements, developments, building and conversions he has effected on the property with the Custodian's permission.

(7) Where the Custodian for purposes of compliance with a judgment by the court in an action under this section decides to lift the custodianship of Turkish-Cypriot property, he is entitled by action against the owner in whose favour the said judgment was issued, or against his heirs or successors in title, as the case may be, to any amount of costs he has actually incurred for repairs, improvements, developments, building and conversions he has effected on the property under this Law while it was under custodianship:

Provided that a person lawfully in occupation of the said property at the time of the judgment of the court or of the above decision of the Custodian and subsequently forced to abandon it as a result of the court judgment or the lifting of its custodianship, is entitled by action against the above owner, his heirs and successors in title, to any amount of costs he has actually incurred for repairs, improvements, developments, building and conversions he has effected on the property with the Custodian's permission whilst he was in occupation."

3. Relevant domestic court judgments

(a) *Attorney General of the Republic v. Muazzez Edhem Bahchecioglou and Isa Edhem* (1998) 1 AAD 426

51. The plaintiffs, Turkish Cypriots living in England since 1962, were owners of three plots of land and a house. In 1976 refugee housing was built on one of the plots; the other two plots and the house were granted to refugees for temporary use. The plaintiffs filed a civil action before the District Court of Limassol seeking eviction orders, rents as from the day of trespass and exemplary damages.

52. On 29 September 1995, the District Court found that the respondent had committed trespass. It held that Law 139/1991 was not applicable to the case as no evidence had been put before it establishing that the plaintiffs had abandoned their property as a result of the Turkish invasion of 1974. The court dismissed the plaintiffs' claim for exemplary damages and awarded them ordinary damages for trespass, noting that they had, during the

proceedings, withdrawn their application for return of the house. The Attorney-General appealed the judgment.

53. Handing down its judgment, the Supreme Court set aside the findings of the first-instance court concerning the non-applicability of Law 139/1991 to the case. Relying on the definition of "Turkish-Cypriot" in section 2 of the Law (see paragraph 41 above), the court concluded that the definition of "abandoned property" had been specified by the legislator as the property of a Turkish Cypriot who did not have his ordinary residence in the areas controlled by the Republic. The meaning of the term "abandoned properties" was therefore unambiguous and Law 139/1991 applied in the claimants' case.

54. The Supreme Court ordered that the case be sent back to the District Court for retrial to determine the amount of compensation from the date of trespass as ascertained by the first instance court until the date of entry into force of Law 139/1991 on 1 July 1991 and to determine whether the relevant provisions of Law 139/1991 were constitutional. It noted that if the answer to the latter question was positive then the claim for damages for the period after 1 July 1991 would have to be dismissed; if negative, then damages would have to be assessed for the period after 1 July 1991.

55. The case was eventually settled at the retrial stage and the constitutionality issue was therefore not determined.

(b) *Kitsis v. the Attorney-General*

56. On 20 July 2001, the Supreme Court rejected the argument that Law 139/1991 infringed Article 23 of the Constitution by requisitioning property indefinitely, noting that the law did not provide for requisition or acquisition but administration, and for a temporary period only.

(c) A.*Ch Solomonides Ltd and others v. the Attorney-General and the Minister of the Interior acting as the Custodian of Turkish-Cypriot properties*

57. The Custodian initiated a civil action for possession of certain properties in accordance with Law 139/1991. The defendants submitted that they were in possession of the relevant properties in accordance with their agreement with the Vakf (a public benefit foundation) and that Vakf properties were excluded from the application of the Law.

58. On 15 February 2002, in an interim judgment, the District Court decided that properties owned by the Vakf were not excluded from Law 139/1991. It considered that section 2 of the Law was contrary to Article 23 of the Constitution but that it could be justified on the basis of the doctrine of necessity for the administration and protection of the abandoned Turkish-Cypriot property. The defendants appealed.

59. On 29 September 2003 the Supreme Court dismissed the appeal. It held that following the Turkish invasion and occupation, the State was entitled to take measures which entailed limitation or even deprivation of

the rights and liberties set out in the Constitution. Law 139/1991 introduced measures to allow the State to meet the needs that arose due to the Turkish invasion and, the court concluded, the measures were both necessary and proportionate.

(d) *Arif Moustafa v. the Ministry of Interior* (case no. 125/2004)

60. The plaintiff, a Turkish Cypriot, was the owner of a property in the district of Limassol since 1963. Following the enactment of Law 139/1991, his property was vested in the Custodian and used by two Greek Cypriots. In September 2002, the plaintiff moved from the occupied area of Cyprus to the government-controlled area and requested that his house be returned to him. His request was dismissed on the ground that as a result of the Turkish invasion of 1974, all Turkish-Cypriot properties had been vested in the Custodian until final settlement of the Cypriot problem.

61. The plaintiff lodged a recourse against this decision with the Supreme Court under Article 146 of the Constitution (see paragraph 39 above). He contended, *inter alia,* that he was entitled to recover his property as he resided in the government-controlled area, relying on section 2 of the Law (see paragraph 41 above). The Attorney General argued that "residence" was determined on the day the Law entered into force and not at any subsequent time so that from the moment the Custodian took over the administration of Turkish-Cypriot property, such administration would continue as long as the Law was in force.

62. On 24 September 2004 the Supreme Court rejected the Government's interpretation of section 2, finding that such an interpretation would constitute an illogical, unjustifiable and excessive limitation of the fundamental constitutional right to property. It referred to the preamble of the Law (see paragraph 40 above) and held that:

> "... the Legislator also decided, as it appears from the definition of the term 'Turkish-Cypriot', as his criterion, that only in the case where the owners of the properties in question are not resident in the areas controlled by the Republic is their protection necessary, evidently as those Turkish properties whose owners live in the areas controlled by the Republic do not need such protection, thus establishing a criterion which does not apply generally to Turkish-Cypriots *en masse* but specifically to each owner. The ordinary residence of the specific owner in the areas controlled by the Republic, as the criterion of the same Legislator, puts the said specific properties on the same footing as all the other properties there and rules out the intervention or further intervention of the Custodian in their protection and administration. As things are, it does not matter whether the specific owner acquired his ordinary residence in the areas controlled by the Republic before or after 1.7.1991 and whether he returns to his ordinary residence there and seeks to live in his own house. In such a case, the criterion of the Law itself excludes the property from the administration of the Custodian. And, furthermore, it is certainly not only, to avoid referring to elementary human logic, the normal rules of interpretation which dictate this view but also the fundamental principles of interpretation which require the interpretation of the laws to be compatible with constitutional rights and to be analogously restrictive. If the Law

> were to be interpreted otherwise so as to cover the continuation of the administration of Turkish-Cypriot property after the reestablishment of the ordinary residence of the owner in the areas controlled by the Republic, in all probability it would constitute an unjustified and excessive, even as regards the necessity expressly stated in the Law as justifying this, restriction of the fundamental constitutional right to property. This approach also arises from the jurisprudence of the ECHR as regards the validity of the principle of proportionality, as an objective and reasonable criterion, concerning the restrictions which may be placed on the basis of discrimination in violation of Article 14 of the Convention (which is reflected in Article 28 of the Constitution). It is sufficient for me to refer to a very recent decision in the case of *Aziz v Cyprus*, 69949/01, 22.6.2004."

63. Accordingly, the Supreme Court upheld the recourse and annulled the decision in question.

64. The Attorney General filed an appeal against the judgment but withdrew this on 13 February 2005. The plaintiff's property was returned to him on 22 February 2006.

(e) *Ali Kiamil, as the heir of Kiamil Ali Riza v. the Minister of the Interior acting as the Custodian for protection of Turkish-Cypriot properties* (case no. 133/2005)

65. The plaintiff, a Turkish Cypriot, was appointed administrator of the estate of his deceased father, who owned a half share of a plot of land in the district of Limassol which had vested in the Custodian. Part of the property had been granted to refugees for temporary use and part was compulsorily purchased, with the Custodian's consent, for public interest purposes. An amount in respect of compensation for the compulsory acquisition had been deposited in the Special Fund of Turkish-Cypriot properties (see paragraph 47 above). However, payment of the sum to the plaintiff was suspended, in accordance with section 9 of Law 139/1991, for as long as the abnormal situation continued to exist (see paragraph 46 above).

66. The plaintiff sought the transfer of the property to the legal heirs and payment of the amount due as a consequence of the compulsory acquisition. Although the Custodian gave his consent to the issue of letters of administration, he noted that the Turkish-Cypriot owners and their heirs did not have the right to the use of their properties vested in the Custodian and were barred from exercising any property rights without the permission of the Custodian as long as the abnormal situation created by the Turkish occupation continued. He further noted that the request for payment of the compensation could not be satisfied because, in accordance with section 9 of Law 139/91, payment of any amount owed to an owner of Turkish-Cypriot property was suspended.

67. The plaintiff lodged a recourse requesting the recovery of his property and claiming that Law 139/1991 was contrary to Article 23 of the Constitution and the constitutional principle of equality, and that the compulsory acquisition had been unlawful.

68. On 19 January 2007 the Supreme Court dismissed the recourse. It found that, as the plaintiff had been living in the occupied areas, Law 139/1991 was applicable to the case. It further found that the plaintiff was not prevented from fulfilling his obligations as administrator of the deceased's estate and from distributing and transferring the property to the lawful heirs. He was only prevented temporarily from possessing and administering the property. This limitation did not affect his rights and interests, which would be granted to him when the abnormal situation ended.

69. The court also dismissed the plaintiff's claim as to the incompatibility of Law 139/1991 with Article 23 of the Constitution. In this respect it observed that the State, in 1974, had found itself faced with circumstances which necessitated the creation of a state of emergency. The State had, therefore, the duty to adopt measures even if these limited the fundamental rights and liberties protected by the Constitution. The mass movement of Turkish Cypriots and the abandonment by them of their properties in areas which were controlled by the Republic of Cyprus gave rise to a need to protect these properties for their owners' benefit, as stated in the preamble of the Law (see paragraph 40 above). The enactment and adoption of the Law was completely justified.

70. The plaintiff lodged an appeal. The judgment in the appeal was handed down on 15 September 2009. The court noted that the applicants did not request the Custodian to return the property. It further observed that issues arose as to the constitutionality of section 9 of Law 139/1991 and it encouraged applicants to go to the District Courts, which had jurisdiction to examine the matter.

(f) ***Ahmet Mulla Suleyman v. the Republic of Cyprus , through (i) the Minister of the Interior as the Custodian of Turkish-Cypriot properties; and (ii) the Director of Management of Turkish-Cypriot properties*** **(case no. 99/2005)**

71. The plaintiff was a Turkish Cypriot who had abandoned his property as a result of the events of 1974 and had since been living in the occupied part of Cyprus. Part of his property had been granted to refugees for temporary use and part of the property had been compulsorily acquired for public benefit purposes.

72. The plaintiff requested damages for the part of his property that had been compulsory acquired and the return of the remainder of his property. The requests were rejected and the plaintiff filed a recourse before the Supreme Court. He complained that Law 139/1991 infringed Articles 6, 13, 23 and 28 of the Constitution (see paragraphs 34-37 above) and Article 1 of Protocol No. 1 of the Convention. He further claimed that following the relaxation of restrictions on movement from the occupied areas to the areas controlled by the Republic, the abnormal situation on which the above-mentioned law was based had ceased to exist. He relied on the

Court's judgments in the case of *Loizidou v. Turkey*, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI and *Aziz v. Cyprus*, no. 69949/01, ECHR 2004-V.

73. On 21 May 2007 the Supreme Court dismissed the recourse. It reaffirmed the need to protect the abandoned properties of Turkish Cypriots and to help displaced Greek Cypriots who had lost their property that had been created following the Turkish occupation. The abnormal situation still existed and would only cease to exist following a decision of the Council of Ministers to that effect, in accordance with section 2 of the Law. Turkish Cypriots were not deprived of their property as they continued to be the owners, notwithstanding the fact that during the abnormal situation, the administration of the properties was vested in the Custodian. The court further considered that the fact that the abnormal situation had continued for so many years did not affect the temporary nature of the Law as it did not intend to impose permanent limitations or to deprive the lawful owners of their rights. The measures adopted were absolutely necessary and proportionate to the situation which had to be faced.

74. With regard to Article 1 of Protocol No. 1 the court noted:

> "Article 1 of the Convention's protocol, after recognising the right of every natural or legal person to peaceful enjoyment of his property, refers to the exceptions, to set aside the right for public interest purposes under conditions provided for by the law and by the general principles of public international law. The protection afforded by Article 1 does not take away the right of the state to enact such laws as it considers to be necessary for controlling the use of property in accordance with the general interest ...
>
> The exception of Article 1 exists in the present case. Law 139/91 was mandated for reasons of public interest which are obvious. On the contrary in Turkey's case the deprivation of the rights of Ms. Loizidou was made without any legal basis and of course without the existence of any law. Let us not forget that the occupied part of Cyprus does not constitute a state recognised by the international community. Moreover, in the case of Law 139/91 ownership remains with the Turkish-Cypriot owners and the Custodian simply has the responsibility and competence to administer the property until the end of the abnormal situation ..."

75. The plaintiff lodged an appeal before the Supreme Court but the appeal was withdrawn on 15 June 2010 in order for an action to be lodged with the District Court in accordance with the amended Law 139/1991 (see paragraph 50 above).

(g) Şermın Kemal Balci (appeal 62/2008)

76. On 18 May 2010 the Supreme Court, hearing an appeal from the District Court, handed down its judgment in a case where the plaintiff had argued that Law 139/1991 violated the Constitution and the Convention. It noted that the constitutionality of Law 139/1991 was well-established in Cypriot jurisprudence, referring to its judgment in Solomonides. It accordingly dismissed the appeal.

(h) *Zehra Kemal Ahmet and Nuray Kemal Ahmet v. the Republic of Cyprus, via the Minister of the Interior as Custodian of Turkish-Cypriot properties* (case no. 1011/2004)

77. The plaintiffs were Turkish Cypriots residing in the occupied part of Cyprus. They filed a recourse before the Supreme Court challenging the decision of the Custodian to refuse to return the property they owned in Larnaca, arguing that they had not abandoned their property following the Turkish invasion and that, accordingly, Law 139/1991 did not apply.

78. On 8 June 2007 the Supreme Court dismissed the recourse. It relied, *inter alia,* on the judgments of the Supreme Court in the cases of *Solomonides, Ali Kiamil* and *Suleyman* and (see paragraphs 57-59, 65-70 and 71-75 above).

79. On 14 February 2011 the Supreme Court sitting as an appellate court dismissed the plaintiffs' appeal. It noted the Court's decision in *Sofi v. Cyprus* (striking out dec.), no. 18163/04, 14 January 2010, and the Government's position as presented to this Court in that case. However, it did not consider that in making a proposal for friendly settlement the Government had accepted that Law 139/1991 violated the Convention. It further considered that their undertaking to amend the Law was irrelevant, as the amendment concerned merely the lifting of custodianship for Turkish-Cypriot property owners who permanently resided abroad before or after 1974.

80. In the case before, the court noted that the plaintiffs' claim was concerned with the applicability of Law 139/1991 and accordingly concluded that the only issue raised in the case was whether the Custodian was a trespasser. This was a matter of private law and there was therefore no jurisdiction in the case.

(i) Özgün Ahmet Mümtaz (Soyer) v. the Attorney-General

81. The plaintiff lodged an action for trespass and alleged a violation of his property rights as protected by Article 23 of the Constitution. On 17 February 2011 the District Court handed down its judgment.

82. The court considered whether the applicant's property fell within the scope of Law 139/1991. It noted that the Law applied to properties owned by Turkish-Cypriots who did not have their usual residence in the territories controlled by the Republic. It referred to the Supreme Court judgment in *Solomonides* and considered that this decision confirmed that Law 139/1991 could be justified on the basis of necessity. The judge emphasised that ownership of properties was not transferred under Law 139/1991: only the administration vested in the Custodian. Accordingly the measures did not restrict or deprive the owners of their rights and were absolutely necessary.

83. The plaintiff's claim was accordingly dismissed.

3. Information concerning the operation of the amended Law

(a) Applications for lifting of custodianship

84. Between the entry into force of the amendments to Law 139/1991 on 7 May 2010 and 17 August 2011, when the Government provided statistical information to the Court as to the operation of the amended Law, approximately 115 applications were made to the Custodian requesting the lifting of custodianship over Turkish-Cypriot property.

85. 102 of the applications lodged concerned sales of properties to Greek-Cypriot buyers. In these cases, the relevant sale agreement was lodged with the Land Registry for completion of the necessary procedures prior to referral to the Custodian for a decision on whether to lift the custodianship. Of these, 83 applications were still under examination by the Land Registry. The remaining 19 cases were referred by the Land Registry to the Custodian for decision.

86. Of the 19 sales cases referred to him, the Custodian decided to lift custodianship in 2, in both cases reversing prior negative decisions made before 7 May 2010. He declined to lift the custodianship in 8 cases. In the remaining 9 case, inquiries as to the facts and circumstances were ongoing.

87. Of the 13 applications lodged which did not concern sales, inquiries by the Custodian as to the facts and circumstances were ongoing in 12. These 12 outstanding cases concern the return of property (6 cases), the return of property for occupation by the owners (2 cases), requests for negotiations for the purchase of the property by the Government (3 cases) and a claim that the property does not fall within the scope of Law 139/1991 (1 case). In the only decided case, custodianship was lifted under an agreement with the Turkish-Cypriot owner following negotiations for the purchase of the property by the Government at an agreed price reflecting its present day value.

88. It can therefore be seen that of the 32 applications lodged between 7 May 2010 and 17 August 2011 and put before the Custodian for decision, inquiries were continuing in respect of 21. In the 11 concluded cases, he agreed to lift the custodianship in 3 and refused to do so in 8.

89. The Custodian also examined under the Law as amended a further 34 applications made prior to 7 May 2010. Examination of all 34 applications has been concluded.

90. A total of 29 of these applications concerned sales and the Custodian agreed to lift custodianship in 8 of them. He declined to do so in 21 cases.

91. He agreed to lift the custodianship in the 5 non-sales cases. 4 of these concerned agreements with the Turkish-Cypriot owners following negotiations for the purchase of the property by the Government at an agreed price reflecting its present day value. In the remaining case custodianship was lifted in respect of a transfer under a will.

92. In summary, of the 34 cases lodged prior to 7 May 2010, custodianship was lifted in 13 cases and was not lifted in 21 cases.

93. In total, the Custodian has decided 45 applications to date. In 16 cases he lifted custodianship and in 29 he refused to do so.

94. In 13 of the 16 cases in which custodianship was lifted, the owners had their ordinary residence abroad and did not occupy Greek-Cypriot property in the north of Cyprus. In 2 of them the owners were permanently settled in areas controlled by the Republic. In the remaining case the owner was permanently settled in the north of the island and custodianship was lifted in order to enable the administrator of the estate of a deceased Turkish-Cypriot owner to sell part of the property to cover administration costs and enable distribution of the property to the heirs. Aside from this case, all other cases in which custodianship was lifted concerned sales, either to Greek-Cypriot buyers or to the Government.

95. All 29 cases in which the Custodian refused to lift custodianship were sales cases. In 7 of them, the owners were permanently settled in the north of the island and occupied Greek-Cypriot property. In these cases the occupation of Greek-Cypriot property was a factor taken into account by the Custodian but was not, in most of these cases, the only factor. In 5 cases the owners alleged that they had their ordinary residence abroad but failed to substantiate the claim despite being requested to do so and in 5 cases the owners failed to provide any details about their place of residence despite being requested to do so. In these cases the failure to provide the information was a factor taken into account by the Custodian as it was possible that they occupied Greek-Cypriot property in the north of the island. It was not, however, the only factor. Other relevant factors included low sale prices indicating that buyers were seeking to take advantage of the abnormal situation in order to make a profit at the expense of the owner. In 3 cases the owners had their ordinary residence abroad but also occupied Greek-Cypriot property in the north of the island. In these cases the occupation of Greek-Cypriot property was the only reason for not lifting the custodianship. Finally, in 9 cases the owners had their ordinary residence abroad and did not occupy Greek-Cypriot property in the north of the island. In these cases the Custodian weighed all relevant factors; in most cases the sale price was significantly lower than the property's market value.

(b) Payment of compensation in decided cases

96. Only 3 of the 45 cases decided by the Custodian involved claims for compensation. In 2 cases, civil proceedings had previously been lodged in the District Courts for damages for trespass (loss of rents). These proceedings were withdrawn following the lifting of the custodianship. In the remaining case, the buyer filed civil proceedings in the District Court under the amended law on 16 November 2010 seeking damages for a violation of Article 1 of Protocol No. 1 as a result of the Custodian's

decision not to lift the custodianship of a property subject to a sale-agreement with the Turkish-Cypriot owners. The Custodian subsequently agreed to lift custodianship and the proceedings were withdrawn.

(c) Pending court cases

97. Following the entry into force of the amendments to Law 139/1991, 6 civil actions were filed with the District Court against the Republic of Cyprus and the Custodian alleging a violation of Article 1 of Protocol No. 1 and claiming compensation and other remedies.

98. Of these, 4 actions concerned refusals by the Custodian prior to 7 May 2010 to lift custodianship so that the property could be transferred under sale agreements. Of these, 1 (the District Court proceedings lodged by a buyer described in paragraph 96 above) was subsequently withdrawn. In another an application has been made to the Custodian for re-examination, which is pending. The plaintiffs in 3 of the cases claim compensation for damage and loss caused by the refusal to lift custodianship and thereby allow a property transfer to be effected pursuant to a sale agreement, as well as general damages for the alleged violation of the Convention as a result of the custodianship. They also seek declaratory judgments that they are entitled to exercise their ownership rights, and orders lifting the custodianship. In the case in which re-examination has been requested, no compensation is sought: the claim brought by the heir of a deceased Turkish-Cypriot owner was for a declaratory judgment recognising her right to the property and an order lifting the custodianship.

99. The remaining 2 actions concern a refusal of the Custodian before 7 May 2010 to lift custodianship and return the property to the owners free of occupation. Damages for loss of use and for an alleged violation of Article 1 of Protocol No. 1 are also claimed.

100. In conclusion, five cases are pending before the District Courts. At the time of submission of the information, the exchange of pleadings had not yet been completed in the cases.

COMPLAINTS

101. The applicants complained under Article 1 of Protocol No. 1 about the restrictions on their use of their property within the Republic of Cyprus.

102. With the exception of the applicants in application nos. 1545/07 and 3240/05, the applicants also complained of interference with their right to respect for their homes under Article 8.

103. With the exception of the applicants in application nos. 38902/05, 1760/05 and 3240/05, they further invoked Articles 6 and 14 of the Convention in this regard.

104. With the exception of the applicants in application nos. 4080/06, 34776/06, 1760/05 and 3240/05, the applicants also invoked Article 13 of the Convention in this regard.

105. The applicant in application no. 34776/06 further relied on Article 3 of Protocol No. 4 and argued that insofar as Law 139/1991 prevented him from living in his property and thus within the territory controlled by the Cypriot Government, he had effectively been expelled from his own country.

106. The applicant in application no. 1760/05 also complained about the eviction itself and the level of force used. He further complained about the death of his applicant's grandfather which he alleged occurred as a result of his becoming a refugee and having his land confiscated. His application was directed against Greece and the United Kingdom, in addition to Cyprus.

THE LAW

I. JOINDER

107. Given their similar factual and legal background, the Court decides that the nine applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

108. The applicants principally complained of an unjustified interference with their right to respect for property as a consequence of the actions of the Custodian pursuant to Law 139/1991. The majority of the applicants also complained of an unjustified interference with their right to respect for their homes and that they had been discriminated against (see paragraphs 102-103 above).

109. Article 8 of the Convention provides:

> "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."

110. Article 1 of Protocol No. 1 provides:

"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."

111. Article 14 provides:

"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."

A. The parties' submissions on exhaustion of domestic remedies as a result of the amended Law

1. The Government

112. The Government contended that the amendment of Law 139/1991 ensured that all the applicants could now access the courts and rely on alleged violations of their rights under the Convention. The available remedies were wide-reaching and reflected the approach of this Court. The Government therefore argued, on the basis of *Demopoulos and Others v. Turkey* (dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, ECHR 2010-..., that the applicants should be required to exhaust the remedy provided by the amendment to Law 139/1991. In particular, the remedy proposed offered guarantees of impartiality and independence as regards the judicial system. As the Court held in *Demopoulos*, cited above, § 87, the fact that the remedy did not exist at the time the applicants had lodged their applications was not an obstacle to the requirement that they now exhaust it. There was nothing in the amending Law to limit the new remedies to only those applications made after its entry into force. It was therefore clear that the amended Law applied prospectively and retrospectively, and was accordingly available to applicants who had already introduced an application to the Court.

113. Specifically as regards the provisions of the amended Law, the Government noted the following. First, while the Custodian had discretion to decide to lift custodianship, his discretion was subject to judicial control and could therefore not be exercised arbitrarily. Reasons would have to be

provided. Second, the remedies available to the domestic courts under the amending law were the same as those which could be awarded by the Court when finding a violation, including restoration of property in addition to compensation for pecuniary and non-pecuniary damage. In particular, domestic courts were required to take into account, when deciding on the appropriate redress, the criteria and factors taken into consideration by the Court. Third, the new remedy provided by the law was significantly different from an Article 146 recourse: challenging an administrative action as being illegal under Article 146 of the Constitution and challenging it as amounting to an interference under the Convention were different things. Fourth, as regards the applicants' contention that the law of necessity would prevent the courts from finding a violation, the case-law to which the applicants referred in support of their argument was developed in the context of Article 146 of the Constitution and not on the basis of the amended Law which offered remedies based on the Convention itself. If necessity was invoked by the District Court in the context of any future application, it could be that this Court would also be persuaded that the interference was justified on this basis. Fifth, the prior examination of a claim by an administrative authority was standard practice across Europe and could not be viewed as hindering access to court. In the event of a negative decision by the Custodian, the applicants would be entitled to go directly to the District Court to challenge the decision as being contrary to the Convention. They would not be required first to commence an Article 146 recourse. Sixth, the terms of the Custodian's discretion to award restitution were wide enough to enable him to award compensation for loss of use. In any event, if the Custodian refused such compensation, the applicants would be able to go to the District Court relying on the Convention. Seventh, while Article 9 of Law 139/1991 suspended payment of any sum due to a Turkish Cypriot, it did not suspend the right to compensation for a violation of Convention rights. Section 9 related to the Special Fund established under section 11, which in turn related to rents and other sums received from tenants of the properties. In respect of cases of compulsory acquisition, such as *Durmus*, the properties in question were no longer under custodianship and it was open to applicants to complain to the Supreme Court or to the District Court regarding any delays in payment of compensation. Finally, as regards the requirement to pay for improvements to the property, the applicants could raise any argument regarding the compatibility of the Law with the Convention before the domestic courts.

114. In conclusion, the Government emphasised that mere doubts as to the prospects of success of national proceedings did not absolve the applicants from the obligation to exhaust the remedy proposed.

2. The applicants

(a) The applicants in *Kazali*, *Mustafa*, *Nouri* and *Kamil*

115. The applicants contended that the amendments to Law 139/1991 could not be relied upon by the Government as a ground for arguing non-exhaustion in their cases. First, there was nothing in the amended Law to indicate that it had retrospective application and it could therefore only apply to those whose applications were introduced after its enactment. Second, the applicants emphasised that the assessment of whether domestic remedies had been exhausted was generally to be carried out by reference to the date on which the application was lodged. They contended that the present cases did not fall within the limited exceptions to that rule and distinguished their cases from that of *Demopoulos and Others*, where the remedy was introduced to provide redress for some 1,400 pending applications raising similar issues. However, far fewer cases were pending against Cyprus and the Court could easily deal with these cases without applying the exception to the general rule.

116. The applicants further contended that years after the filing of the applications and the exchange of pleadings, it would be unjust and unfair to make them resort to new remedies the effectiveness of which was in their view doubtful. There were no examples of how the amended Law would operate to offer redress to applicants. The applicants argued that in *Demopoulos and Others*, the activities of the Immovable Property Commission were under the Court's scrutiny for a sufficient period of time before the effectiveness of the Commission was decided by the Court. They also referred to a number of cases where the Court had refrained from requiring applicants to resort to domestic remedies at the just satisfaction stage (citing *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14; *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, § 17, Series A no. 285-C; and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 43, ECHR 2000-X), and noted that in the present cases the Court would consider just satisfaction claims together with the merits.

117. As to the specific provisions of the amended Law, the applicants made several comments. First, they submitted that the new power in section 3 of the law for the Custodian to lift custodianship allowed him unfettered discretion. As a result, the administrative remedy lacked clarity and transparency and was insufficient as a means of redress. Second, they argued that it was implicit that if restitution was granted by the Custodian, no compensation would be available for loss of use. There was nothing in the amended Law to grant the Custodian power to award such compensation. Third, the applicants emphasised that section 6A of the amended law provided that any redress was dependent on the domestic

courts finding a violation of the Convention. This did not modify the existing position, where it was open to the applicants to argue before the courts that the custodianship regime, and the refusal to return their properties, constituted a violation of the Convention, and in particular of Article 1 of Protocol No. 1. As the Supreme Court had found in *Kitsis* and *Solomonides* (see paragraphs 56 and 57-59 above) that the custodianship was necessary, the applicants seeking redress under the amended law would be in no better position. In *Suleyman*, the Supreme Court had expressly considered the terms of Article 1 of Protocol No. 1 and found the restrictions on Turkish-Cypriot property owners to be necessary (see paragraphs 71-75 above). The applicants noted in this regard that the respondent Government in their observations still refused to accept that any violation of the Convention had occurred. Fourth, the requirement that applicants make a request to the Custodian prior to any right arising to raise an action in the district courts hindered direct application to the courts. Further, under Article 146(6) of the Convention, an unfavourable administrative act would first require to be challenged for abuse or excess of power, illegality or unconstitutionality. Thus access to the District Court would only be secured after such a challenge, rendering the procedure excessively cumbersome. Fifth, the amended Law did not explain what would be the effect of section 9 of the Law, which stipulated that the payment of any sum due to a Turkish-Cypriot owner was suspended during the abnormal situation prevailing in Cyprus. The provision had not been amended and the policy of the Government to date had been not to pay any compensation due to a Turkish Cypriot, even where there had been a compulsory acquisition. Sixth, the Law required Turkish Cypriots to pay for buildings and conversions effected on their properties without their consent.

118. As to the information provided by the Government on the operation of the amended Law, the applicants considered it striking that not a single property had been returned unfettered to its Turkish-Cypriot owner. In practice, the decision to lift custodianship was conditional on the alienation of the owners' property rights and the foregoing of compensation, including for loss of use. The present applicants did not wish to sell: they sought the return of their properties and compensation for loss of use. They further agued that the criteria were applied by the Custodian in an arbitrary and non-transparent way. As to challenge in the courts pursuant to section 6A, the absence of any possibility in the amended Law for compensation for loss of use was borne out by the practice of the Custodian not to award compensation. As a consequence, the applicants argued that any cause of action in the courts was illusory. They referred to three recent judgments which post-dated the entry into force of the amendments (see paragraphs 76-83 above) to support their arguments.

(b) The applicants in *Durmus* and *Osman*

119. The applicants adopted the submissions of the applicants in *Kazali*, *Mustafa*, *Nouri* and *Kamil*. In particular, they disagreed that the amendments to Law 139/1991 had resolved the violation which lay at the root of their complaints and considered in any event that their case could be distinguished from the case of *Demopoulos and Others*, cited above. In particular, they emphasised that the *Demopoulos* decision was published following the judgment in *Xenides-Arestis v. Turkey*, no. 46347/99, 22 December 2005, where the Court decided to suspend consideration of all pending applications raising the same issues pending the implementation of relevant general measures adopted pursuant to the judgment. The passage of five years before the inadmissibility decision in *Demopoulos and Others* was adopted was critical to the Court's finding that the new remedy was effective, as was the fact that the Committee of Ministers had enjoyed the opportunity to supervise the execution of the previous judgment.

120. In their contention the respondent Government had failed to establish that the new remedy offered reasonable or realistic prospects of success. The Custodian's discretion to allow restitution in a particular case was unfettered and therefore did not comply with the requirement of lawfulness. The applicants further highlighted that the Supreme Court had ruled against the payment of compensation to Turkish Cypriots, despite the provisions of the Constitution, on the basis of necessity. In assessing whether the provisions of Law 139/1991 were compatible with the Convention, the District Courts would be required to follow the precedents of the Supreme Court. It was, in the applicants' view, irrelevant whether the courts were required to consider the provisions in the context of an Article 146 recourse or an application pursuant to section 6A of the amended Law. The applicants contended that it was for the Government to demonstrate that the courts were actually applying the amended Law in an effective way.

121. They emphasised that in their cases, their properties had been compulsorily purchased or requisitioned. It was not foreseeable whether the Custodian could restore to their owners properties which had been compulsorily acquired or requisitioned and were now in the hands of third parties. The applicants further referred to the Custodian's consistent practice pursuant to section 9 of the Law of refusing payment of compensation from the Special Fund to Turkish-Cypriot owners for as long as the abnormal situation continued. While the Government now contended that the non-payment was not due to the operation of section 9 of the Law, they had provided no explanation as to why compensation which was payable to certain of the applicants whose properties had been compulsorily purchased had not been paid.

122. As to the information submitted by the respondent Government on the practice since 7 May 2010, the applicants contended that this confirmed

their view that the amendments did not render the remedy upon which the Government relied effective. In particular, since the Government appeared to be arguing that the applicants' properties were no longer under custodianship as they had been compulsorily purchased or requisitioned, the new powers had no relevance to them. Their access to court depended, pursuant to section 6A, on a rejection by the Custodian of a request to lift custodianship. There could be no such rejection where, according to the Custodian, a situation of custodianship no longer existed. Further, the Government had failed to provide any information on whether compensation had been paid in cases involving compulsory purchases.

123. In their cases, sums had not been paid to them pursuant to section 9 of the Law, which had not been amended. The domestic courts would adhere to the view that the Law was justified on grounds of necessity. It was therefore not practical or effective in their cases.

(c) The applicants in *Chakarto and Others*

124. Like the other applicants, the applicants in *Chakarto and Others* argued that the existence of effective remedies was a question to be assessed by reference to the date on which the application was lodged. The recent amendments to the law were therefore irrelevant. They also expressed concerns that the amended Law was not retroactive and that accordingly any domestic claims they sought to lodge would be time-barred. In any event, they complained about the Custodian's unfettered discretion and the jurisprudence of the domestic courts' date as to the justification for Law 139/1991.

125. The applicants emphasised that the information provided by the respondent Government demonstrated the importance of residence to his decision whether to lift custodianship. He had consistently refused to return property to Turkish Cypriots living in the north of the island (except in one case where custodianship was lifted in an inheritance situation – see paragraph 91 above). There was no clear position where some of the owners lived abroad and some in the north, as in the present case. Another relevant factor was the occupation of Greek-Cypriot property, and there was no case where the Custodian had lifted custodianship if such occupation was present. It was clear from the information provided that only in sales cases did the Custodian lift custodianship. Further, as demonstrated by the information provided, the Custodian had no power to award compensation, and had in no case awarded compensation for loss of use. The courts had also rejected such applications and awarded costs in favour of the Government, further discouraging applications to them.

126. The applicants therefore concluded that even the amended Law did not constitute an effective remedy for the purposes of Article 35 § 1.

(d) The applicants in *Salih* and *Abni*

127. The applicants complained about the unclear nature of the legislation, and in particular about the fact that "Turkish-Cypriot" was not defined and that as a result they did not know whether their properties fell under the Law 139/1991.

128. As to the amendments to the legislation, the applicants emphasised that the District Courts had no power to rule on whether the very existence of the Custodian violated an individual's human rights. They further argued that section 5 of the Law prevented any retroactive redress for human rights violations as it provided that all prior decisions by the Custodian will be regarded as having been taken lawfully, notwithstanding the amendment to the law.

129. The applicants concluded that the Custodian applied rules which had no legal basis, were not transparent and were not published anywhere.

3. The Turkish Government

130. The Turkish Government were granted leave to intervene as a third party and submitted comments on the compliance of the custodianship regime with Article 1 of Protocol No. 1. However, they were not invited by the Court to comment on the amendments to Law 139/1991 and the implications for the respondent Government's argument of non-exhaustion, nor did they seek leave to do so.

B. The Court's assessment

1. Article 35 § 1 of the Convention

131. Article 35 § 1 provides:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

2. General principles of exhaustion

132. The Court reiterates that it is primordial that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It cannot, and must not, usurp the role of Contracting States whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is therefore an indispensable part of the functioning of this system of protection. States are dispensed

from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV). The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions.

133. The Court refers to its classic and comprehensive statement set out in the *Akdivar* judgment (cited above, §§ 66-69) concerning the application of the rule of exhaustion of domestic remedies as required by former Article 26, now Article 35 § 1 of the Convention (see also *Demopoulos and Others*, cited above, § 70):

> "66. Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, pp. 11-12, para. 27, and the *Johnston and Others v. Ireland* judgment of 18 December 1986, Series A no. 112, p. 22, para. 45).
>
> Article 26 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see the *Cardot v. France* judgment of 19 March 1991, Series A no. 200, p. 18, para. 34).
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> 67. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law" there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see the *Van Oosterwijck v. Belgium* judgment of 6 November 1980, Series A no. 40, pp. 18-19, paras. 36-40). The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 64, para. 159, and the report of the Commission in the same case, Series B no. 23-I, pp. 394-97).
>
> 68. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered

reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, inter alia, the Commission's decision on the admissibility of application no. 788/60, *Austria v. Italy*, 11 January 1961, Yearbook, vol. 4, pp. 166-168; application no. 5577-5583/72*, Donnelly and Others v. the United Kingdom* (first decision), 5 April 1973, Yearbook, vol. 16, p. 264; also the judgment of 26 June 1987 of the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case, Preliminary Objections, Series C no. 1, para. 88, and that Court's Advisory Opinion of 10 August 1990 on "Exceptions to the Exhaustion of Domestic Remedies" (Article 46 (1), 46 (2) (a) and 46 (2) (b) of the American Convention on Human Rights),Series A no. 11, p. 32, para. 41). One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of.

69. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism (see the above-mentioned *Cardot* judgment, p. 18, para. 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see the above-mentioned *Van Oosterwijck* judgment, p. 18, para. 35). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants."

3. Application of the general principles to the facts of the cases

134. The Court refers to its observations regarding the historical and political background of the cases set out in its judgment in *Demopoulos and Others*, cited above, §§ 83-85, which it considers apply with equal force to the present cases. Accordingly, as in the case of *Demopoulos and Others*, the Court's interpretation and application of the Convention will be informed by those considerations.

135. The applicants have argued that they should not be required to exhaust a remedy which came into being after they lodged their applications. They considered that the exception to the general rule, applied in *Demopoulos and Others*, cited above, §§ 87-88, did not apply here. However, the Court observes that, as in *Demopoulos and Others*, the remedy under consideration was enacted to redress at a domestic level the Convention grievances of persons whose applications were pending before the Court. Giving weight therefore to the subsidiary character of its role, the

Court considers that the exception applies here also. It will therefore examine the extent to which the new remedy can be considered practical and effective such as to satisfy the requirements of Article 35 § 1.

136. The applicants made a number of arguments impugning the effectiveness of the remedy proposed on several grounds, including the wide discretion of the Custodian and the importance of residence and occupation of Greek-Cypriot property to his decision; the inadequate definition of the property subject to the custodianship regime; the absence of a provision in the amended Law for compensation for loss of use; the need for a finding of a violation of the Convention before a right to redress in the courts arose pursuant to section 6A of the amended Law; the absence of direct access to the courts; the failure to amend section 9 of the Law regarding payments from the Special Fund and the consequence for cases of compulsory acquisition and requisition; the obligation to pay for building work and conversions to their properties; and the lack of evidence as to practice. The Court will examine each of these complaints in turn.

(a) The unfettered discretion of the Custodian and the importance of residence and occupation of Greek-Cypriot property to his decision

137. The applicants complained that the Custodian's discretion in deciding requests to lift custodianship was unfettered and that his manner of exercising was not transparent. It was clear from the information provided by the Government that he had done so in few cases since the amended Law entered into force, and only in cases where the property was to be sold to a Greek-Cypriot buyer or to the Government: there was no example of a case where a property has been returned to its Turkish-Cypriot owner. Further, as the information confirmed, residence abroad and/or non-occupation of Greek-Cypriot property were necessary elements for him to lift custodianship. He was therefore unlikely to lift custodianship in their cases. There was also uncertainty as to what would be his approach in cases involving joint owners, where some satisfied his criteria for lifting custodianship and some did not.

138. The Court recalls that the decision of the Custodian is merely the first step in the procedure envisaged under amended Law 139/1991 and that in the event of a refusal, his decision can be judicially reviewed by the lodging of an action in the District Court (see paragraph 50 above). The Court therefore does not consider that the fact that the Custodian may be unlikely to lift the custodianship in a particular case undermines the effectiveness of the overall remedy proposed.

139. Insofar as criticism is made of the allegedly overly-restrictive approach to restitution of possession of property to its Turkish-Cypriot owners by the Custodian, the Court reiterates that any decision of the Custodian can subsequently be reviewed by the courts. In any event, in *Demopoulos and Others*, cited above, § 111, the Court explained that many

decades after the loss of possession by the then owners, properties have in many cases changed hands, by gift, succession or otherwise. Those claiming title may have never seen, or ever used the property in question. Several of the present applicants appear to be in this position. The issue therefore arises to what extent the notion of legal title, and the expectation of enjoying the full benefits of that title, is realistic in practice. As the Court indicated in *Demopoulos and Others*, cited above, § 114, there has always been a strong legal and factual link between ownership and possession and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences. The Court's case-law indicates that if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. However, if it is not possible to restore the position, the Court, as a matter of constant practice, had imposed the alternative requirement on the Contracting State to pay compensation for the value of the property.

(b) The inadequate definition of the property subject to the custodianship regime

140. The Court accepts that the definition of what constitutes "Turkish-Cypriot property" for the purposes of Law 139/1991 may be open to some debate. However it does not consider that this ambiguity undermines the effectiveness of the remedy. It is open to the applicants to argue that their properties do not fall within the scope of the Law at all, in which case the custodianship regime would not apply to them. In the event that their argument is unsuccessful, the remedies offered by the amended Law as regards the possibility of having custodianship lifted will be available to them.

(c) The absence of a provision in the amended Law for compensation for loss of use

141. The applicants argued that there was no provision for compensation for loss of use in the legislation, and that the practice of the Custodian and the District Court indicated that no such compensation was available. The Government maintained that such an award was within the power of the Custodian (see paragraph 113 above).

142. The Court agrees that the amended Law does not expressly refer to the availability of compensation for loss of use. However, it would appear that, pursuant to section 6A(2) of the amended Law, an applicant who made a claim to the Custodian for compensation for loss of use and had that claim rejected would be able to lodge an action in the District Court claiming a violation of his rights under the Convention. Section 6A(3) requires the District Court to have regard to the factors considered relevant by this Court in determining whether a violation has occurred and under section 6A(4) and (5), in the event of a violation the court is able to award compensation

for pecuniary damage and must have regard to the criteria and factors taken into account for this purpose by this Court (see paragraph 50 above).

(d) The need for a finding of a violation of the Convention before a right to redress in the courts arises pursuant to section 6A of the amended Law

143. The applicants referred to the case-law of the courts, particularly of the Supreme Court in the context of cases lodged pursuant to Article 146, which had found Law 139/1991 to be justified on the ground of the law of necessity. They pointed out that some judgments post-dated the entry into force of the amended Law and were indicative that the approach of the courts had not changed since the amendments had been enacted. They therefore considered that the courts had already established in the domestic context that no violation of the Convention arose as a result of Law 139/1991.

144. The Court acknowledges that the case-law of the Cypriot courts cited by the parties which pre-dated the entry into force of the amended Law indicated, for the most part, a resistance to the argument that the provisions of Law 139/1991 violated the Convention, and in particular Article 1 of Protocol No. 1 (see paragraphs 51-75 above). It would seem that the few judgments provided to the Court which post-date the amended Law have followed this restrictive approach (see paragraphs 76-83 above). However, there appears to be no reference in the judgments to section 6A of Law 139/1991, and as a consequence the Court considers that it is not clear how the courts will approach their task of interpreting the provisions of the amended Law. The Court notes that in the event of an unsuccessful decision in the District Court, an appeal will be possible to the Supreme Court. In this connection, the Court observes that in the case of *Ahmet*, in which judgment was handed down by the Supreme Court on appeal in February 2011, the Supreme Court was not asked to assess the compliance of the acts of the Custodian or the provisions of Law 139/1991 with the Convention, and the case was ultimately dismissed on grounds of a lack of jurisdiction (see paragraphs 77 and 80 above). It therefore cannot be considered to provide any elucidation of what will be the Supreme Court's approach to these questions.

145. In conclusion, the Court is satisfied that in examining cases brought under the amended Law the Cypriot courts will have due regard to this Court's case-law concerning, in particular, Article 8 and Article 1 of Protocol No. 1 and that in handing down judgments they will examine the matter afresh, setting out in full their reasoning and explaining clearly whether and how the restrictions imposed on Turkish-Cypriots' property are justified under those Articles.

(e) The absence of direct access to the courts

146. Some of the applicants complained that the remedy proposed did not offer them direct access to court. However, Article 35 § 1 does not require direct access to court in order for a remedy to be considered effective. The Court reiterates that an adverse decision by the Custodian can subsequently be reviewed by the courts.

(f) The failure to amend section 9 of the Law regarding payments and the consequences for cases of compulsory acquisition and requisition

147. The applicants in *Osman* and *Durmus* referred to the Government's contention that their properties were no longer under custodianship as they had been compulsorily purchased or requisitioned. Accordingly, they argued, no remedy was available to them under amended Law 139/1991 as their properties were no longer subject to that Law and Article 9 regarding suspension of payments during the abnormal situation had not been amended.

148. The Court agrees that the extent to which the provisions contained in Law 139/1991 now apply to applicants whose properties have been compulsorily purchased or requisitioned is not entirely clear. While the Government argued that the properties were no longer subject to custodianship (see paragraph 113 above), this does not in itself preclude the application of Law 139/1991 or the new remedy contained in section 6A, as the Government pointed out. The applicants alleged that payment of compensation was being withheld pursuant to section 9 of the Law. The Court notes that section 6A refers to the rejection of a "claim" by the Custodian giving rise to a right to bring an action in the District Court and allege a violation of the Convention. Nothing presented to the Court by the Government or the applicants would appear to preclude an application being made to the Custodian for payment of compensation agreed by the Custodian and awarded by the authorities in respect of compulsory acquisition or requisition of Turkish-Cypriot property, followed by proceedings in the courts in the event of an unfavourable decision.

(g) The obligation to pay for building work and conversions to their properties

149. The Court acknowledges that pursuant to the amended Law, where the court orders restoration of a property to its Turkish-Cypriot owner, the Custodian and the lawful occupier are entitled to seek costs incurred for improvements and repairs to the property (see paragraph 50 above). However, any decision as to costs to be awarded would be made by the courts, bearing in mind the principles set out in the Court's case-law, and it would be open to the applicants to argue in the context of any legal proceedings that the award of costs in their cases would violate their rights under the Convention.

(h) The lack of evidence as to practice.

150. The applicants emphasised that unlike in *Demopoulos and Others*, where the Court had considered the position carefully in the context of its previous pilot judgment and subsequent just satisfaction judgment and where substantial evidence of the Immovable Property Commission's practice was available, in the present case the remedy was introduced at a late stage in the written procedure and there was insufficient evidence as to practice for the Court to conclude that the remedy offered reasonable prospects of success.

151. The Court accepts that to date there is limited evidence as to the practice of the Custodian, and even less evidence regarding the approach of the domestic courts. However, it is encouraged by the fact that the Custodian has agreed to lift custodianship in a number of cases with circumstances in some respects similar to those prevailing in the cases of several of the applicants (see paragraph 94 above). It is further encouraged to see that cases have been lodged in the District Courts (see paragraphs 97-100 above) where these cases should be progressed within a reasonable time pursuant to the respondent State's obligations under Article 6 § 1 of the Convention. It may be noted that the District Courts and the Supreme Court in Cyprus have an established record demonstrating their general compliance with the requirements of Article 6 of the Convention.

(i) Conclusion

152. In conclusion, the new provisions in Law 139/1991 are formulated in broad terms and by express reference to the guarantees of the Convention as interpreted by this Court. They allow the applicants to make a claim to the Custodian alleging a violation of their Convention rights and, in the absence of a favourable response, to lodge a case in the District Court. The remedies available include an order for restoration of the property and an order for payment of compensation to cover pecuniary and non-pecuniary damage as well as costs and expenses.

153. The Court therefore cannot exclude that Law 139/1991 as amended provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Turkish Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention must therefore be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

154. Some of the applicants made a number of other complaints, including complaints directed against Greece and the United Kingdom (see paragraphs 103-106 above).

155. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President

Appendix

List of other applicants

	Application No.	Case Name
1.	49307/08	MUSTAFA and Others v. Cyprus
2.	30792/05	NOURI v. Cyprus
3.	1760/05	KAMIL v. Cyprus
4.	4080/06	DURMUS v. Cyprus
5.	34776/06	OSMAN v. Cyprus
6.	1545/07	CHAKARTO and Others v. Cyprus
7.	38902/05	ABNI v. Cyprus
8.	3240/05	SALIH v. Cyprus