

Press release issued by the Registrar

**CHAMBER JUDGMENT (JUST SATISFACTION)
XENIDES-ARESTIS v. TURKEY**

The European Court of Human Rights has today notified in writing a Chamber judgment^[1] dealing with the question of just satisfaction in the case of *Xenides-Arestis v. Turkey* (application no. 46347/99).

The case concerns a Cypriot national who has been prevented from living in her home and having access to, using and enjoying her property since August 1974 following the conduct of military operations in northern Cyprus by Turkey in July and August 1974.

Under Article 41 (just satisfaction) of the European Convention on Human Rights, the Court, unanimously, has awarded the applicant:

- 800,000 euros (EUR) in respect of pecuniary damage,
- EUR 50,000 in respect of non-pecuniary damage, and
- EUR 35,000 for costs and expenses.

(Today's judgment is available only in English.)

1. Principal facts

The applicant, Myra Xenides-Arestis, is a Cypriot national who was born in 1945 and lives in Nicosia.

The applicant owns half a share in a plot of land in the area of Ayios Memnon, in Famagusta (Northern Cyprus), which was given to her by her mother. There are a shop, a flat and three houses on the land. One of the houses was her home, where she lived with her husband and children, and the rest of the property was either used by members of the family or rented out. She also owns part of a plot of land with an orchard.

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicant has been prevented from living in her home and having access to, using and enjoying her property since August 1974 since the conduct of military operations in northern Cyprus by Turkey in July and August 1974.

On 30 June 2003 the “Parliament of the Turkish Republic of Northern Cyprus” (TRNC) enacted the “Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus” (Law no. 49/2003”). A commission was set up under that “law” with a mandate to deal with compensation claims.

On 22 December 2005 the “TRNC” authorities enacted the “Law for the Compensation, Exchange and Restitution of Immovable Properties” (Law no. 67/2005). The authorities subsequently enacted a “By-Law under Law no. 67/2005^[2], which entered into force on 20 March 2006.

A commission (the “Immovable Property Commission”) was set up under Law no. 67/2005 to examine applications under that law and decide on the restitution, exchange of properties or payment of compensation. It is composed of five to seven members, two of whom are foreign members, Hans-Christian Krüger^[3] and Daniel Tarschys^[4]. There is a right of appeal to the “TRNC” High Administrative Court.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 November 1998. A hearing on admissibility took place on 2 September 2004 and the application was declared admissible on 14 March 2005.

At its decision on admissibility the Court found that the remedy proposed under the preceding compensation law, “Law no. 49/2003” could not be regarded as an “effective” or “adequate” means for redressing the applicant’s complaints .

The Court delivered its principal judgment in the case on 22 December 2005.

The Government filed observations on 21 March 2006 and, subsequently, the applicant and the Government each filed observations on 21 June 2006. The applicant submitted updated claims in respect of just satisfaction.

The Government of Cyprus, who had made use of their right to intervene under Article 36 of the Convention, submitted observations on 16 August 2006.

The Government filed additional observations on 10 and 11 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

2. By-Law made under Sections 8 (2) (A) and 22 of the Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution.

3. Former Secretary to the European Commission of Human Rights and former Deputy Secretary General of the Council of Europe.

4. Former Secretary General of the Council of Europe.

Georg **Ress** (German), *President*,
Ireneu **Cabral Barreto** (Portuguese),
Lucius **Caflich** (Swiss)^[5],
Riza **Türmen** (Turkish),
John **Hedigan** (Irish),
Kristaq **Traja** (Albanian),
Alvina **Gyulumyan** (Armenian), *judges*,

and also Vincent **Berger**, *Section Registrar*.

3. Summary of the judgment

The Court welcomed the steps taken by the Turkish Government in an effort to provide redress for the violations of the applicant's Convention rights as well as in respect of all similar applications pending before it. The Court noted that the new compensation and restitution mechanism, in principle, had taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and its judgment of 22 December 2005.

The Court pointed out that the parties in the present case had failed to reach an agreement on the issue of just satisfaction, where it would have been possible for the Court to address all the relevant issues concerning the effectiveness of the remedy in detail. The Court considered that it could not accept the Government's argument that the applicant should now be required, when the Court had already decided on the merits, to apply to the new Commission in order to seek reparation for damages. It therefore proceeded to determine the compensation the applicant was entitled to in respect of losses emanating from the denial of access and loss of control, use, and enjoyment of her property and to grant her an award under Article 41 of the Convention.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

5. Judge elected in respect of Liechtenstein.