

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

FOURTH SECTION

DECISION

Application no. 40997/02
Eleni EFTHYMIOU and 3 others against Turkey
and 12 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 7 May 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
Işıl Karakaş,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above applications lodged on 19 November 2002 and subsequent dates,

Having regard to the information provided by the parties,

Having deliberated, decides as follows:

THE FACTS

A list of the applicants and their representatives is set out in the appendix.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

The circumstances of the cases

The facts of the cases, as submitted by the parties, may be summarised as follows.

The applicants are relatives of Greek-Cypriot men, reservists or serving in the army, who went missing in July-August 1974 following the invasion of northern Cyprus by Turkish armed forces. These men were listed as missing persons, the information being given to the Red Cross and the United Nations.

The remains of the missing men have been found during exhumations carried out by the United Nations Committee for Missing Persons ("CMP") and identified from 2010 onwards after DNA and other analyses.

According to the information submitted by the Government, in November 2010, a special unit in the police had been established, under instructions by the Attorney-General of the "TRNC" (the "Turkish Republic of Northern Cyprus") to initiate investigations into the deaths of the persons whose remains were found. This unit currently consists of 15 persons, including four interpreters and received technical assistance from experts. Files were opened and investigations commenced in a number of cases (including those considered in the *Charalambous and others v. Turkey* (dec.), no. 46744/07, 3 April 2012).

On 10 January 2012, police headquarters gave instructions to local police stations to send information about the missing persons identified in their districts and how they met their deaths. On 15 August 2012, the special unit contacted the CMP to request files of all the missing persons who had been identified, as well as maps and photographs.

In the present cases, the police attempted to contact the applicants and invited those whom they located to attend to give their statements. The applicants' legal representatives were informed of these contacts. Some legal representatives refused to accept the competence of the "TRNC" police to investigate and declined co-operation. A number of applicants attended the police station but were only prepared to submit a pre-prepared brief statement or copy of their application form. An announcement with contact details was prepared with a view to inviting members of the public to come forward with information about the deceased but was still awaiting publication in the Greek Cypriot press. The investigations were ongoing.

The applicants variously submitted that they had co-operated with the police, attending to give statements and offering information or that the summons to attend the police station had served no point in light of the statements submitted to the Court and thus disclosed unjustifiable harassment. Some applicants had declined to sign new statements when the police refused to allow them to keep copies. The applicants and their representatives doubted the efficiency or good faith of the "TRNC" police, or the genuineness of their investigative efforts.

COMPLAINTS

All applicants complained under Article 2 about the disappearance and death of their relative and the lack of effective investigation into those matters, as well as invoking Articles 3, 5, 8, 13 and 14 of the Convention, on their own behalf and in some cases on behalf of their missing relative.

In application no. 40997/02, the first applicant complained about the loss of property due to the 1974 conflict, both on her own behalf and her missing brother and also that she and her two children had lost their family home, invoking Article 1 of Protocol No. 1 and Article 8.

In application no. 55631/10, the applicants complained under Article 1 of Protocol No. 1 of loss of income to the family due to the disappearance of their relative.

THE LAW

A. Complaints brought in the name of the applicants' missing relatives

Insofar as the applicants complain on behalf of their missing relatives, naming them as applicants and invoking variously Articles 2, 3, 5, 8, 13 and 14 as well as Article 1 of Protocol No. 1, the Court notes that, according to to its practice and consonant with Article 34 of the Convention, applications can only be introduced by, or in the name of, individuals who are alive (*Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 111-113, ECHR 2009-...). In the circumstances, the Court will continue to examine the applications on the basis that the relatives of the missing person are the applicants for the purposes of Article 34 of the Convention.

B. Complaints concerning events in 1974 or shortly after

Some applicants have made complaint of alleged violations of the rights of their relatives which occurred in 1974 or shortly thereafter, the Court observes that Turkey recognised the right of individual petition on 28 January 1987. Insofar therefore as the applicants' complaints, including those raised under Articles 2, 3, 5, 8 and 13 of the Convention, and those raised in application no. 55631/10 under Article 1 of Protocol No. 1, are based on the event of disappearance and alleged deprivation of liberty before that date, the Court lacks temporal jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III; *Varnava and Others v. Turkey*

[GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 134, ECHR 2009-...). This part of the application must therefore be rejected as incompatible *ratione temporis* pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Complaints concerning lack of investigation into the disappearance in 1974

Some applicants have also complained under Articles 2 and 5 of a lack of effective investigation into the disappearances of their relatives. They also invoke Article 3 in this respect.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter "within a period of six months from the date on which the final decision was taken".

In *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, ECHR 2009-...), the Court had occasion to consider the application of the six-month rule in cases concerning missing persons from the 1974 conflict. It noted as follows:

> "In a complex disappearance situation such as the present, arising in a situation of international conflict, where it is alleged that there is a complete absence of any investigation or meaningful contact with the authorities, it may be expected that the relatives bring the case within, at most, several years of the incident. If there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated. Where more than ten years has elapsed, the applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg."

It concluded (at § 170):

> "The Court considers that the applicants, who were amongst a large group of persons affected by the disappearances, could, in the exceptional situation of international conflict where no normal investigative procedures were available, reasonably await the outcome of the initiatives taken by their Government and the United Nations. These procedures could have resulted in steps being taken to investigate known sites of mass graves and provided the basis for further measures. The Court is satisfied, however, that by the end of 1990 it must have become apparent that the problematic, non-binding, confidential nature of these processes no longer offered any realistic hope of progress in either finding bodies or accounting for the fate of their relatives in the near future."

The applicants in *Varnava* having applied to the Court in January 1990, they were found to have acted with reasonable expedition for the purposes of Article 35 § 1 and the Government's preliminary objection to the contrary was rejected.

In the present cases, which also concerned disappearances during the conflict in 1974, the applicants applied to the Court between 19 November

2002 and 10 November 2010. In light of the Court's conclusion in *Varnava*, it should have been apparent by the end of 1990 that the CMP procedure had failed to make any concrete advance in uncovering the fate of the applicants' relatives (see *Varnava*, cited above, §§ 165 to 166). Nor is there any evidence in the present applications of any other form of investigative activity post-1990 which could have provided to the applicants some indication, or realistic possibility, of progress in relation to their relatives' disappearances and which could have justified a further lapse of over twelve years or more in coming to Strasbourg.

It follows that the applicants' complaints relating to the lack of effective investigation into the disappearances of their relatives in 1974 were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

D. Complaints concerning the alleged lack of effective investigation following the identification of the remains of the applicants' relatives

The Court notes that the complaints raised by the applicants about the lack of an effective investigation into the circumstances of the deaths of their recently-exhumed relatives are identical to those raised in the *Charalambous and Others* case. It refers to its findings in that case concerning the investigations launched by the authorities in the "TRNC":

> "65. In conclusion, the Court finds that the investigations have been underway since late 2010 and although some investigative steps have been taken, no, or little, concrete progress appears to have been made. This does not in itself disclose any lack of good faith or will on the part of the authorities. In the circumstances, it is premature to impugn the response of the authorities as ineffective. The Court would not underestimate the difficulties of finding witnesses who are still alive after this lapse of time and who are able to recall, and willing to give evidence about, past events. However, it would emphasise that the authorities must take reasonable steps to find the available evidence and pursue the practicable leads open to them at this time to discover the perpetrators of any unlawful violence; that in due course an assessment will have to be made as to whether the evidence gathered is sufficient to justify a prosecution; and that the families should be kept informed of any key factual conclusions and procedural developments and any reasoned decisions in this regard. But it is too early for the Court as a supervisory international jurisdiction to reach any findings that the authorities' actions are a mere sham or that there is bad faith, wilful footdragging and calculated prevarication involved. Prolonged inactivity and silence by the authorities over a more significant period of time might eventually render such a conclusion possible, but not yet."

The Court observes that there are no distinguishing features in the present applications which would lead it to differ from its reasoning above.

It follows that at the present stage the applicants' complaints under the procedural aspect of Article 2 are premature and must be rejected as

manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Insofar as the applicants invoked other provisions of the Convention in this respect, the Court finds that these disclose no appearance of a violation of the Convention and must be rejected as manifestly ill-founded as a whole pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

E. Complaints raised about loss of property and home in no. 40997/02

Insofar as the first applicant complains about the loss of property belonging to herself and her deceased brother, the Court will assume for the purposes of this application that she makes claim as administrator or heir of her brother's estate.

As regards the complaints raised of interference with their property rights guaranteed under Article 1 of Protocol No. 1, the Court recalls that applicants are required by Article 35 § 1 of the Convention to exhaust available, effective domestic remedies. It also recalls that in *Demopoulos and Others v. Turkey* [GC] (no. 46113/99 et al, decision of 1 March 2010, ECHR 2010-...) the Grand Chamber examined the issue of whether Greek-Cypriot applicant property-owners had available to them a remedy in respect of their complaints concerning property in the northern part of Cyprus. It found that for the purposes of Article 35 § 1 of the Convention, the procedure before the Immovable Property Commission ("IPC"), and further appeal to the "TRNC" High Administrative Court, provided for in Law 67/2005 were to be regarded as "domestic remedies" of the respondent State and that no ground of exemption from the application of Article 35 § 1 of the Convention has been established in that respect. As to the efficacy of the framework of redress provided, it held:

> "127. The Court finds that Law 67/2005 provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Article 1 of Protocol No. 1 to the Convention must therefore be rejected for non-exhaustion of domestic remedies. It is satisfied that Law 67/2005 makes realistic provision for redress in the current situation of occupation that is beyond this Court's competence to resolve.
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> 128. Lastly, it would stress that this decision is not be interpreted as requiring that applicants make use of the IPC. They may choose not to do so and await a political solution. If, however at this point in time, any applicant wishes to invoke his or her rights under the Convention, the admissibility of those claims will be decided in line with the principles and approach above. The Court's ultimate supervisory jurisdiction remains in respect of any complaints lodged by applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress."

The Court notes that the first applicant has not made use of this mechanism. Her complaints under 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.

Insofar as the first, second and third applicants also complained that they had been prevented from returning to the homes which they owned, the Court notes that claimants who own property may make claims to the IPC in respect of non-pecuniary damages, which provision in Law 67/2005 is broad enough to encompass aspects of any loss of enjoyment of home (see *Demopoulos*, cited above, §§ 37 and 133). It accordingly finds that the first applicant's complaint under Article 8 also fails for non-exhaustion of domestic remedies as she have not brought such claims before the IPC.

Insofar as the second and third applicants who had no property right in the claimed home complained of a continuing inability to return to that home the Court recalls that they would be unable to take any claim based on Article 8 alone before the IPC (see *Demopoulos*, cited above, § 135).

However, the Court also found in *Demopoulos* (cited above, § 136) that:

> "...it is not enough for an applicant to claim that a particular place or property is a "home"; he or she must show that they enjoy concrete and persisting links with the property concerned (see *e.g. Gillow v. the United Kingdom*, 24 November 1986, § 46, Series A no. 109). The nature of the ongoing or recent occupation of a particular property is usually the most significant element in the determination of the existence of a "home" in cases before the Court. However, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any, or any separate, issue under Article 8 (see, for example, *Andreou Papi v. Turkey*, no. 16094/90, § 54, 22 September 2009). Furthermore, while an applicant does not necessarily have to be the owner of the "home" for the purposes of Article 8, it may nonetheless be relevant in such cases of claims to "homes" from the past that he or she can make no claim to any legal rights of occupation or that such time has elapsed that there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights (see, *mutatis mutandis*, *Vrahimi v. Turkey*, no. 16078/90, § 60, 22 September 2009, where the applicant had never had any "possession" in the property which had been owned by a company). Nor can the term "home" be interpreted as synonymous with the notion of "family roots", which is a vague and emotive concept (*e.g. Loizidou*, judgment on the merits cited above, § 66).

The Court notes that the second and third applicant were born in 1970 and 1972. They were thus were very young at the time they ceased to live in the then family home in 1974, which was some thirteen years before the Court's temporal jurisdiction commenced and some twenty-eight years before the date of introduction of their application. For most of their lives, these applicants have been living with their families elsewhere The Court perceives no concrete ties in existence at this moment in time, and accordingly does not find that the facts of the case are such as to disclose any present interference with the applicants' right to respect for home.

This part of the application must therefore be rejected pursuant to Article 35 §§ 1, 3(a) and 4 of the Convention.

For these reasons, the Court by a majority

Decides to join the applications;

Declares the applications inadmissible.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	40997/02	19/11/2002	**Eleni EFTHYMIOU** 05/12/1946 Kyrenia **Stella EFTHYMIOU** 27/09/1970 Nicosia **Charia EFTHYMIOU** 22/03/1972 Nicosia **Panayiotis TSIAKKAS HADJI MICHAIL** 02/02/1948 Kyrenia	Achilleas DEMETRIADES
2.	48663/10	13/08/2010	**Costas PANTELIDES** 17/03/1950 Limasol **Irene NICOLAOU PANTELI** 18/10/1948 Nicosia	Andreas PAPACHARALAMBOUS
3.	55570/10	01/09/2010	**Nicos MICHAELIDES** 10/03/1922 Nicosia **Kallistheni MICHAELIDES** 30/04/1922 Nicosia **Lucia NICOLAOU** 12/03/1952 Nicosia **Penelope FEDONOS** 19/01/1949 Nicosia **Michael MICHAELIDES** 23/04/1953 Limassol **Maria PAPADOPOULOU**	Achilleas DEMETRIADES

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
			20/09/1955 Nicosia **Eugenia NIKODEMOU** 28/03/1959 Nicosia	
4.	55631/10	06/09/2010	**Adamos ANASTASI** 05/02/1963 Famagusta **Anastasis ANASTASI** 23/03/1960 Famagusta **Androulla ANASTASI** 05/05/1957 Famagusta **Fanoulla ANASTASI** 09/03/1953 Famagusta **Anastasia ANASTASI** 17/02/1951 Famagusta **Stavrini ANASTASI** 30/11/1930 Famagusta **Panayotis ANASTASI** 15/07/1928 Famagusta	Andreas ANGELIDES
5.	64207/10	18/10/2010	**Eleni MICHAEL HATJIMICHALAKI** 19/03/1934 Pentakomo **Aggelos DRAKOS** 28/03/1958 Pentakomo **Stavroulla KALATHA** 11/03/1957 Aglantzia	Loukis G. LOUCAIDES

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
6.	67723/10	05/11/2010	**Paraskevi Nikou LAMBROU** 01/04/1950 Nicosia **Nicos LAMBROU CHRISTODOULOU** 07/11/1941 Mia Milia **Lambros LAMBROU** 22/03/1970 Nikosia **Georghios LAMBROU** 04/05/1972 Nicosia **Andreas LAMBROU** 16/01/1975 Nicosia **Christakis LAMBROU** 03/12/1939 Pera Chorio **Kostas CHRISTODOULOU** 24/02/1944 Nicosia **Anastasis LAMBROU** 10/10/1945 Pera Chorio **Antonis CHRISTODOULOU** 16/12/1947 Nicosia **Maroulla IACOVOU** 02/06/1949 Nicosia **Michalakis CHRISTODOULOU** 20/10/1951 Nicosia	K. CHRYSOSTOMIDES

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
7.	71001/10	24/11/2010	**Androulla VERESIE** Limassol **Maria CHRISTOU** Limassol **Zacharias TSOUNTAROU** Athènes **Loukia TSOUNTAROU** Limassol	Loizos PAPACHARALAMBOUS
8.	71024/10	05/11/2010	**Androulla Soteriou YIATROU** 17/11/1948 Sha **Soteris Georghios YIATROU** 03/08/1951 Nikosia **Georghios YIATROU** 01/08/1974 Geri **Petroulla Demou THEMISTOKLEOUS** 20/05/1949 Nicosia **Andreas Georghiou YIATROU** 30/08/1944 Larnaca **Nicos Georghiou YIATROU** 05/12/1946 Nicosia	K. CHRYSOSTOMIDES
9.	73754/10	10/11/2010	**Maria MINA** 20/10/1951 Pera Orinis **Eleni MINA** 19/01/1974 Pera Orinis	Achilleas DEMETRIADES

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
10.	4212/11	06/12/2010	**Pezouna STYLIANOU NICOLAOU** 16/12/1930 Nicosia **Christakis STYLIANOU NICOLAOU** 18/03/1955 Myrtou **Maria COPTIDES** 12/05/1968 Nicosia **Katerina GEORGIOU** 08/10/1958 Nicosia **Eleni DESPOTOPOULOU** 03/03/1950 Thessalonique	Lakis CHRISTODOULOU
11.	4224/11	12/01/2011	**Michalis YIANNIKOU** 21/09/1924 Larnaca **Eleni YIANNIKOU HARPA** 29/04/1962 Larnaca **Christos YIANNIKOU** 14/09/1956 Larnaca **Androulla YIANNIKOU KOKKALI** 26/06/1959 Nicosia	Loizos PAPACHARALAMBOUS
12.	10266/11	04/02/2011	**Antonis ANTONA** 02/04/1949 Athènes **Katerina ANTONA** 11/09/1956 Larnaca	Achilleas DEMETRIADES

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
13.	13669/11	25/02/2011	**Pantelitsa ZARTILA** 15/05/1963 Famagusta **Yiannoula THEODOULOU** 12/04/1949 Larnaca **Marina THEODOULOU** 17/07/1961 Famagusta **Despo WATKINS** 07/08/1944 London **Eustathios THEODOULOU** 15/07/1959 London **Christina ROGERS** 29/04/1947 London **Theodoulos THEODOULOU** 18/10/1952 Limassol	Loizos PAPACHARALAMBOUS