

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

SECOND SECTION

DECISION

Application no. 50646/15
Pavlos LOIZOU
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 October 2017 as a Chamber composed of:

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Işıl Karakaş,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 October 2015,

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

Having regard to a letter of 25 February 2016 by which the Cypriot Government indicated that they wished to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court, and their letter of 5 July 2016 by which they informed the Court that they had decided not to submit any written comments in the procedure.

THE FACTS

1. The applicant, Mr Pavlos Loizou, is a Cypriot national, who was born in 1961 and lives in Nicosia. He was represented before the Court by M. Sağiroğlu and F. Hansel, lawyers practising in Nicosia.

2. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

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

1. Background to the case

4. The complaints raised in this application arise out of the Turkish military intervention in northern Cyprus. The general context of the property issues arising in this context is set out in the cases of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 13-16 and 28-33, ECHR 2001 IV), and *Demopoulos and Others v. Turkey* (dec.) ([GC], nos. 46113/99 and 7 others, §§ 4-16, ECHR 2010).

5. Before the military intervention in northern Cyprus in 1974 the applicant's family lived in Kyrenia and owned property there. This included the family's home ("plot 146"), which was registered in the name of the applicant's mother, and two commercial properties, which were registered in the name of a limited company, Neocles Loizou Successors ("NLS"). The applicant's parents were the sole shareholders in NLS. According to NLS's articles of association, the two commercial properties were to be distributed between the applicant and his two brothers if their parents, the shareholders, so wished.

6. The first of the two commercial properties, plot 213, was a ground-floor dwelling which the applicant's father planned to turn into a supermarket. The second, plot 233, was a supermarket which was in operation until the military intervention began.

7. When his mother died in 1990, the applicant's father decided to transfer all three properties (that is to say, the dwelling house and the two commercial properties) to the applicant and his brothers.

8. On 6 August 1999 the NLS company, which had in the meantime ceased to be operational, was struck off the relevant register of companies.

9. On 28 January 2003 the applicant, his father and his two brothers lodged an application with the Court, alleging violations of Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 arising from their inability to access their three properties (application no. 4758/03). On 14 December 2010 a Single Judge of the Court declared their application inadmissible because it had been lodged before the domestic remedy available via the IPC had been exhausted and therefore had to be rejected for non-exhaustion of domestic remedies.

10. On 3 December 2010 the applicant's brothers transferred their shares in the properties to the applicant, making him the sole owner of all of them.

11. The transfer of the ownership of the properties in question is substantiated by certificates showing the history of ownership issued by the Department of Lands and Surveys of the Republic of Cyprus.

2. The proceedings before the IPC

12. On 23 September 2011 the applicant filed an application, supported by an affidavit, with the IPC under Law no. 67/2005 (see paragraphs 32-33 below) claiming compensation for all three properties in the amount of 4,700,000 pounds sterling (GBP) and GBP 7,100,000 for the loss of their use. In support of his claim the applicant provided certificates issued by the Land Registry and Surveys Department of the Republic of Cyprus attesting that he was the owner of the properties in question. In the affidavit, the applicant stated that his father had owned the properties in 1974 and that there was no mortgage, restriction or other liability on the properties.

13. The applicant's claim was communicated to the "TRNC" Attorney General as provided under Law no. 67/2005 and the relevant IPC Rules (see paragraphs 32-35 below).

14. In a letter dated 22 December 2011 the applicant contended that the "TRNC" Attorney General had failed to provide an opinion concerning his claim within the thirty-day time-limit set out in the relevant provisions on the functioning of the IPC. He argued that the IPC should adopt a default decision on the basis of his claim.

15. At a meeting before the IPC on 10 April 2012 the "TRNC" Attorney General's representative stated that he had still not received a report concerning the properties that were being claimed by the applicant and he was therefore not in a position to provide an opinion.

16. Further meetings before the IPC scheduled for 12 June and 16 October 2012 were adjourned for the same reason.

17. Meanwhile, the applicant instructed a law firm to represent him in the proceedings before the IPC.

18. On 7 October 2013 the "TRNC" Attorney General submitted his opinion concerning the applicant's claim. The opinion relied on an affidavit by the "TRNC" Director of the Land Registry and Surveys Department which stated that − according to their information − plots 213 and 233 had been owned by the NLS company in 1974, and plot 146 by Elli Kika Loizou (the applicant's mother). In the opinion the view was also expressed that the applicant's claim was excessive.

19. At a directions hearing on 6 November 2013 the applicant's representative undertook to provide photographs of the properties and asked the "TRNC" Attorney General to provide the relevant land registry search documents for the properties in question. The "TRNC" Attorney General's representative asked the applicant to provide birth certificates for him and his parents, certificates from the head of the local community (*mukhtar*) attesting that the persons who owned the properties in 1974 were the applicant's parents, and documents concerning the history of ownership of the properties after 1974 and attesting that there were no liabilities attaching to them.

20. The applicant's representative produced the requested documents on 24 December 2013.

21. At a preliminary hearing before the IPC on 20 November 2014, the "TRNC" Attorney General's representative and the Housing Undersecretary informed the applicant and the IPC that no offer would be made in respect of the family house (plot 146) unless the claims made in respect of the two commercial properties (plots 213 and 233) were withdrawn. The applicant's representatives stated that they were trying to find a solution with the "TRNC" authorities concerning issues relating to companies and mortgages. They therefore asked for a month's adjournment in order to monitor developments on the matter and stated that if a solution was not reached they would withdraw the request relating to the two commercial properties.

22. At a meeting before the IPC on 8 January 2015 the applicant's representative explained that they were working on the amendments of the relevant law with the "TRNC" authorities and asked for a further adjournment of the examination of the case.

23. A further meeting before the IPC was held on 19 February 2015 at which the applicant was also present. His representative asked for an adjournment, explaining that some additional documents needed to be provided and that there was no progress with the amendment of the relevant law. He also stated that the applicant would withdraw the claim with regard to the commercial properties.

24. On 20 February 2015 the applicant's representatives forwarded further necessary documents to the IPC.

25. On 23 February 2015 the applicant's representatives submitted a letter to the IPC stating that, without prejudice, they were withdrawing the applicant's claim in respect of the two commercial properties (plots nos. 213 and 233). They explained that before 1974 the two properties had been registered as the property of a company whose shareholders were the applicant's parents. Thereafter, the company had terminated its activities and its properties had been transferred to the shareholders' children (the applicant and his brothers). Later, the company had been liquidated and now no longer existed as a legal entity. The applicant's representatives also submitted that as the transfer of properties had occurred after 1974 and as the relationship between the applicant and the company was not defined as one of legal succession within the meaning of Law no. 67/2005, the legislation did not provide the applicant with the possibility of submitting a claim for compensation for that property before the IPC. They considered that this was the reason why the "TRNC's" representative had refused to make an offer for the compensation claim unless the two commercial properties were withdrawn. Lastly, they argued that their decision to withdraw the claim was in line with the "TRNC" High Administrative Court's practice in similar cases (see paragraphs 37-38 below), which

showed that the IPC could not be considered as a remedy in relation to a claim concerning the two commercial properties.

26. At a meeting before the IPC on 16 April 2015, at which the applicant was also present, his representatives asked for an adjournment of the proceedings in order to consider a settlement offer in the amount of GBP 190,000 made by the "TRNC" authorities.

27. On 17 April 2015 the applicant's representatives informed the IPC that he would accept the offer.

28. On the same day a meeting was held before the IPC at which the "TRNC" representatives noted that the applicant had withdrawn the claim in respect of the two commercial properties (plots nos. 213 and 233) and reiterated their offer to pay GBP 190,000 in respect of the applicant's claim concerning the family house (plot 146), which the applicant's representatives accepted. On the basis of the parties' settlement, the IPC adopted a decision ordering the "TRNC" authorities to pay the aforementioned amount to the applicant in respect of his claim concerning the family house.

29. On 24 March 2016 compensation in the amount of GBP 190,000 was paid to the applicant.

B. Relevant domestic law and practice

1. Relevant domestic law

(a) Constitution of the "TRNC" of 7 May 1985

30. Article 159 § 1 (b) and (c), in so far as relevant, provide as follows:

> "(b) All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and (c) ... shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly."

31. Article 159 § 4 reads as follows:

> "In the event of any person coming forward and claiming legitimate rights in connection with the immovable properties included in sub-paragraphs (b) and (c) of § 1 above [concerning, *inter alia*, all immovable properties, buildings and installations which were found abandoned on 13 February 1975], the necessary procedure and conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law."

(b) Law for the compensation, exchange and restitution of immovable properties which fall within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, as amended by Laws nos. 59/2006 and 85/2007 ("Law no. 67/2005")

32. The relevant provisions of Law no. 67/2005 (the English version available at http://www.tamk.gov.ct.tr), which came into effect on 22 December 2005, read as follows:

Interpretation

"2. In this Law, unless the context otherwise requires,

...

"Applicant" means the person applying to the Commission with a claim of right in respect of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, and in respect to movable property which is claimed to be owned by such person, such property having been abandoned in the North prior to 13 February 1975, being the date of the proclamation of the Turkish Federated State of Cyprus.

...

"Immovable property" means immovable property within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution."

Purpose

"3. The purpose of this Law is to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights regarding claims in respect to movable and immovable properties within the scope of this Law, as well as, the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem."

Application

"4. (1) All natural or legal persons claiming right to movable and immovable properties that are within the scope of this Law may bring a claim until December 21, 2017 by way of an application in person or through a representative, to the Immovable Property Commission constituted under section 11 of this Law, requesting restitution, exchange or compensation for such property. Applications made to the Commission shall be subject to the Rules made under the Civil Procedure Law and the Rules made under this Law, notwithstanding any other provision to the contrary in any law or legislative instrument, only a fee of 100 TL (one hundred Turkish Liras) shall be paid for each application."

Burden of Proof and Factors as Basis of Decision

"6. In proceedings before the Commission the burden of proof shall rest with the applicant who must satisfy the Commission beyond any reasonable doubt as to the following in order for a decision to be taken in his favour:

(1) That, the movable or immovable property in respect of which rights are claimed is the one claimed in the application.

(2) That, in case of immovable property in respect of which the applicant claims rights, the property was registered in his name before 20 July 1974 and/or he is the legal heir of the individual in whose name the immovable property was registered.[1]

..."

Hearing and Reaching a Decision

"8. The Commission, after having heard the arguments of the parties and witnesses, and having examined the documents submitted, shall, within the scope of the purposes of this Law, taking into consideration the below-mentioned matters, decide as to restitution of the immovable property to the person whose right in respect to the property has been established, or to offer exchange of the property to the said person, or decide as to payment of compensation. In cases where the applicant claims compensation for loss of use and/or non-pecuniary damages in addition to restitution, exchange or compensation in return for immovable property, the Commission shall also decide on these issues.

..."

Right to Apply to Court

"9. Parties have the right to apply to the High Administrative Court against the decisions of the Commission. If the applicant is not satisfied with the judgment of the High Administrative Court, he may apply to the European Court of Human Rights."

Composition of Immovable Property Commission

"11. (1) For the implementation of this Law, an Immovable Property Commission composed of a President, a Vice-President, and minimum 5, maximum 7 Members, whose qualifications are specified below, shall be established. At least 2 members of the Commission to be appointed shall not be nationals of the Turkish Republic of Northern Cyprus, United Kingdom, Greece, Greek Cypriot Administration or Republic of Turkey. The decisions regarding the appointment of the members shall be published in the Official Gazette.

(A) The President, Vice-President and the Members of the Commission shall be appointed by the Supreme Council of Judicature from among persons nominated by the President of the Republic. The President of the Republic shall nominate a number of candidates twice the number of members to be appointed.

(B) The President, Vice-President and Members of the Commission may be appointed from among lawyers or from among persons with experience in public administration and evaluation of property.

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[1] The Turkish text of Section 6(2) of Law no. 67/2005 reads as follows: "Üzerinde hak iddiasında bulunulan mal bir taşınmaz ise, bu malın 20 Temmuz 1974 tarihinde kendi adına kayıtlı olduğu ve/veya adına kayıtlı olan şahsın yasal mirasçısı olduğu."

Any persons directly or indirectly deriving any benefit from immovable properties on which rights are claimed by those who had to move from the north of Cyprus in 1974, abandoning their properties, cannot be appointed as members of the Commission.

...

(2) The Commission shall convene by minimum two-third majority of the total number of members and shall take decisions by absolute majority of the members attending the meeting, including the President.

(3) The term of office of a member not participating in the Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times, may be terminated by the Supreme Council of Judicature upon the request of the President of the Commission. The term of office of the President of the Commission not participating in the Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times, may be terminated by the Supreme Council of Judicature upon the request of the President of the Republic. In other cases, the conditions for the termination of the term of office of a member of the Commission shall be the same as those applied to a Supreme Court Judge.

(4) A secretariat shall be established in order to carry out the clerical and administrative work of the Commission. ...

(5) All employees of the Commission, including the President, Vice-President and Members, shall be employed as long as their services are required and subject to conditions determined by the Council of Ministers, notwithstanding any provision to the contrary in any other law relating to employment of service, duration of service, age limit, duration of contract, renewal of contract and condition of non-retirement.

(6) The President, Vice-President and Members of the Commission shall not hold any other office during their term of office.

..."

Duration of Term of Office of the President, Vice-President and Members of the Commission

"12. The President, Vice-President and Members of the Commission established in accordance with the provisions of this Law shall be appointed for a period of 5 years. At the end of this period the President, Vice-President and Members may be re-appointed in the same manner. The President, Vice-President and Members of the Commission shall carry out their duties objectively and independently during their term of office which may only be terminated before the end of term subject to the provisions of section 11, above. No person or authority can give any order or instruction to the President, Vice-President and Members of the Commission.

If the function of the Commission is completed before the period envisaged in the Law the terms of office of the Commission members shall be automatically terminated."

Duties and Powers of the Commission

"13. The Commission shall have the following duties and powers:

(1) To examine and reach a decision on applications made under this Law.

(2) To determine the amount and method of payment of compensation.

(3) To take necessary measures and decisions in order to conclude the proceedings concerning the amount of compensation to be paid to the applicants following the application of this Law.

(4) The Commission, in carrying out its duties and exercising its powers mentioned above, may, if it deems necessary, collect written or oral testimony or hear witnesses.

(5) The Commission may require written and oral testimony of any witness for the purpose of resolving any problems that may arise in the application of this Law, either under oath or by way of a declaration. Such evidence under oath, or by declaration shall be identical to that required for testimony before a Court of law.

(6) To summon any person residing in the Turkish Republic of Northern Cyprus to attend any meeting of the Commission in order to give testimony or produce any document in his possession and to be questioned as a witness.

(7) To compel any person to give evidence or to produce a document, when such person refuses to do so, following a request by the Commission, whether under oath or by way of declaration, if the person concerned does not offer any satisfactory excuse to the Commission for such refusal.

However, witnesses may not be compelled to answer any incriminating question and no legal proceedings may be commenced for refusal to do so.

(8) The Commission may decide that expenses shall be paid to any persons summoned to give evidence in virtue of the application of this Law."

Binding Effect of the Decisions of the Commission

"14. The decisions of the Commission have binding effect and are of an executory nature similar to judgments of the judiciary. Such decisions shall be implemented without delay upon service on the authorities concerned."

Procedure and Principles Applicable to Witnesses before the Commission

"16. The processes to be carried out in accordance with the provisions of this Law, summons to be issued to witnesses, the procedure for attendance before the Commission and that relating to the hearing shall be subject to the provisions of the Civil Procedure Law."

33. Further relevant provisions of Law no. 67/2005 are provided in *Demopoulos and Others v. Turkey* (cited above, §§ 35-37).

34. Section 22 of Law no. 67/2005 provides that Rules for the better implementation of the provisions of that Law may be prepared by the IPC, approved by the "TRNC" Council of Ministers and published in the Official Gazette.

35. In 2006 the IPC adopted its Rules (the English version available at http://www.tamk.gov.ct.tr) regulating details of the procedure before it.

2. Relevant practice

36. The relevant case-law of the "TRNC" Constitutional Court is summarised in *Demopoulos and Others* (cited above, §§ 38-39).

37. According to the available English translation of the judgment of the "TRNC" High Administrative Court in *Eleni Meleagrou v. the Immovable*

Property Commission (C.13/2011, HAC 124/2009) of 27 June 2011, that court was called upon to examine the complaint of a plaintiff whose restitution claim had been rejected by the IPC on the grounds that her status as shareholder in a company that owned certain property in 1974, was not covered by section 6(2) of Law no. 67/2005. The plaintiff argued that, since she owned the immovable property as a company shareholder, the IPC should have ruled in her favour.

38. The relevant part of the "TRNC" High Administrative Court's judgment reads:

> "... [T]he person who could apply to the IPC under Law no. 67/2005 is defined under sections 2 and 6(2) of the Law.
>
> The relevant part of section 2, which was drawn out as an interpretation section, is as follows:
>
> ''Applicant' means the person applying to the Commission with a claim of right in respect of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, and in respect to movable property which is claimed to be owned by such person, such property having been abandoned in the North prior to 13 February 1975, being the date of the proclamation of the Turkish Federated State of Cyprus.'
>
> Section 6(2) of the Law is as follows:
>
> '6(2) That, in case of immovable property in respect of which the applicant claims rights, that the property was registered in his name before 20 July 1974 and/or he is the legal heir of the individual in whose name the immovable property was registered.'
>
> As it can be seen from the definitions cited above, a person who could apply to the IPC for the remedies that are foreseen in the law is an individual in whose name the subject matter property was registered and/or the legal heir of the property owner in whose name the property was registered on the date of 20/7/1974. Viewing the undisputed facts and evidence before us, it can be seen that the owner of the immovable subject matter made up of 14 plots is AkinitaMeleagrous Ltd. The plaintiff has put forward that AkinitaMeleagrous is a family business, she is a shareholder of this company, the aforementioned properties were registered in her name due to this capacity, and these matters should have been taken into account by giving a ruling in favour of restitution.
>
> The registered owner of the aforementioned properties on 20/7/1974, AkinitaMeleagrous Ltd., is a company with a legal personality. The aforementioned company continues its legal entity despite having stopped its activities because it has not been struck off the register.
>
> The fact that the company transferred the properties it owned to other persons, even if these persons were its shareholders, does not affect the legal status in sections 2 and 6(2) of the law. For this reason it is not possible to give a legal value to the claims of the plaintiff that are outlined above.
>
> When considering section 6(2) of Law no 67/2005 as cited above, the finding and ruling of the IPC that the plaintiff does not have a right to apply is not flawed.
>
> As a result, the case is dismissed and cancelled. ..."

COMPLAINTS

39. The applicant complained that that the proceedings before the IPC had breached the "reasonable time" requirement in Article 6 § 1 of the Convention.

40. The applicant further complained of the shortcomings and ineffectiveness of the IPC mechanism with regard to his compensation claim for the two commercial properties (plots 213 and 233) located in the "TRNC". He relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Articles 13 and 14 of the Convention.

41. The applicant also complained of a delay in the payment of compensation for the breach of his rights in relation to his family house (plot 146). He relied on Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1.

THE LAW

A. Preliminary issue

42. The Court notes that the respondent Government did not raise an objection of incompatibility *ratione personae* of the present application with the provisions of the Convention or of its Protocols. However, in view of the fact that the matter calls for consideration by the Court of its own motion (see, for instance, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009), the Court finds it important to note that in the light of its findings in the cases of *Loizidou v. Turkey* ((merits), §§ 52-57, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), *Cyprus v. Turkey* (cited above, §§ 75-81) and *Demopoulos and Others* (cited above, §§ 89 and 103), the issues complained of fall within the jurisdiction of Turkey, which has, in the northern part of Cyprus, the obligation to secure to the applicants the rights and freedoms set out in the Convention.

43. The Court will therefore proceed on the assumption that Turkey is responsible for the facts complained of by the applicant. Having said that, the Court would stress that this does not in any way call into doubt either the view adopted by the international community regarding the establishment of the "TRNC" or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Cyprus v. Turkey*, cited above, § 90, and *Demopoulos and Others*, cited above, § 89).

B. Alleged violation of Article 6 § 1 of the Convention

44. Complaining of a length of proceedings before the IPC, the applicant relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

1. The parties' submissions

45. The Government did not challenge the applicability of Article 6 of the Convention in the present case. They submitted that the length of proceedings before the IPC had not been contrary to the requirement of trial within a reasonable time under Article 6 § 1 of the Convention. In this connection, the Government referred to the Court's decision in *Meleagrou and Others v. Turkey* ((dec.), no. 14434/09, § 18, 2 April 2013), where the Court did not consider that a period of four years and eight months before the IPC and on appeal to the "TRNC's" High Administrative Court had been unreasonable.

46. The applicant argued that Article 6 of the Convention was not fully applicable to the proceedings before the IPC in the same way as it was applicable to proceedings before a court of law. In this connection, he contended that the proceedings before the IPC had been lengthy and that, taken as a whole, they had fallen short of the requirements of a fair trial. He also argued that there had been a considerable burden placed upon him in the proceedings. The "TRNC" authorities, namely the Attorney General's representative and the Housing Authority official, had subjected him to duress and substantial stress during the proceedings. The applicant pointed out that he had started seeking compensation for his properties in 2003. However, in 2010 he had been instructed by the Court to institute proceedings before the IPC and had only belatedly had his case determined.

2. The Court's assessment

47. The Court finds it unnecessary to address all of the issues raised by the parties, as the applicant's complaints are in any event inadmissible for the following reasons.

48. The Court notes at the outset that the applicant's complaint that a "considerable burden" had been placed upon him in the proceedings is very vague and ambiguous. In so far as it relates to the pressure allegedly exerted upon him by the "TRNC" Attorney General's representative and the Housing Authority official, the Court notes that these complaints were raised before the Court for the first time in his observations of 10 May 2016 which were received in reply to the Court's communication of the application to the parties. The final decision in the proceedings before the

IPC was adopted on 17 April 2015 (see paragraph 28 above) – which was more than six months before the date of introduction of the applicant's complaint – and the Court therefore finds that this complaint is inadmissible as being lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

49. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

50. With regard to the applicant's complaint about the length of proceedings before the IPC, the Court notes that the proceedings before the IPC lasted for approximately three years and seven months in total (see paragraphs 12 and 28 above). The Court does not find this unreasonable in the circumstances of the present case. In particular, it notes that the proceedings incorporated a specific settlement procedure which necessitated several adjournments of the proceedings, the production of further documents and the consolidation of the applicant's position regarding the settlement offer suggested by the "TRNC" authorities. Moreover, the proceedings concerned complex technical issues related to the ascertaining of the nature and status of the applicant's compensation claim related to the two commercial properties. In these circumstances, the Court does not consider that the overall length of proceedings breached the reasonable time requirement under Article 6 § 1 of the Convention.

51. It follows that the applicant's complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

C. Alleged violation of Articles 13 and 14 of the Convention and Article 1 of Protocol No. 1 with regard to the applicant's commercial properties

52. Complaining of shortcomings and ineffectiveness of the IPC mechanism with regard to his compensation claim for the two commercial properties (plots 213 and 233) located in the "TRNC", the applicant relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Articles 13 and 14 of the Convention. The invoked provisions read as follows:

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14

"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."

Article 1 of Protocol No. 1

"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."

1. The parties' submissions

(a) The Government

53. Relying on the Court's findings in *Demopoulos and Others v. Turkey* (cited above) concerning the effectiveness of the IPC remedy, the Government argued that the applicant had failed to exhaust that remedy as he had knowingly and voluntarily withdrawn his compensation claim concerning the two commercial properties and thus prevented the IPC from ruling on the matter. In the Government's view, the applicant had been obliged to allow the IPC, and if necessary the "TRNC" High Administrative Court, to rule on his compensation claim, thereby distinguishing his case from *Eleni Meleagrou* (see paragraphs 37-38 above). However, although the IPC remedy offered a reasonable prospect of success, the applicant had failed to exhaust that remedy properly.

54. In this connection, the Government contended that in the case of *Eleni Meleagrou* before the "TRNC" High Administrative Court, that court had found, in reviewing the decision of the IPC, that the family company had not been struck off the companies register, even though it had discontinued its activities, and that it had therefore continued to exist as a legal entity. The "TRNC" High Administrative Court had also observed that even though the company in that case had transferred the company property to other persons who were company shareholders, that had not brought the case within the provisions of section 6(2) of Law no.67/2005). In contrast to *Eleni Meleagrou*, even though the applicant in the present case had not owned the two commercial properties in 1974, the Government considered that it could reasonably be argued that he was the legal heir of the persons (his mother and father) who owned the shares in the company, which was already liquidated at the time the application was lodged with the IPC. The

Government thus considered that this resulted in the company property becoming an individual property.

55. The Government also argued that there was no express provision in Law no. 67/2005 requiring that an applicant should in every case be a natural person, and not a legal person. In fact, section 4(1) enabled any natural or legal person to make an application to the IPC in respect of movable or immovable property. An issue could arise in respect of a claim for compensation for commercial properties if the legal entity had not been liquidated by having being struck off the register of companies. This was not so in the instant case, however. The Government pointed out that part of the commercial properties had devolved to the applicant from his brothers, and so no issue had arisen with regard to that part of the property. However, due to the erroneous assumption on the part of the applicant's representatives that the "TRNC" High Administrative Court's case-law in *Eleni Meleagrou* was applicable to the applicant's case, the applicant's representatives had withdrawn his compensation claim. The Government contended that, in contrast to *Eleni Meleagrou* − where the company that transferred the property continued to exist − in the applicant's case the company NLS had been liquidated and had thus lost the status of a legal person with an identity distinct from that of the shareholders.

56. Furthermore, the Government explained that the word "individual" in the English translation of the official Turkish text of section 6(2) of Law no. 67/2005 was an inappropriate translation of the Turkish word "*şahıs*", which in fact means "person", whether natural or legal. The Government contended that section 6(2) of Law no. 67/2005 therefore included a company which existed prior to 20 July 1974 and its successors to whom the ownership of the property had devolved after that date. In the Government's view, such an interpretation was consistent with the interpretation of other provisions of the "TRNC" law, including section 4(1) of Law no. 67/2005.

(b) The applicant

57. The applicant submitted that it was obvious from section 6(2) of Law no. 67/2005 that the emphasis was placed on an "individual". In his view, this Law provided for a remedy only for applicants who were owners of immovable property before 20 July 1974 and/or the legal heirs of the individuals who were the owners of the immovable property. However, if the immovable property had been registered in the name of a company before 20 July 1974, since a legal person could not have an heir, any individual acquiring company properties after 20 July 1974, regardless of whether the company still existed or not, could not succeed in obtaining a remedy under Law no. 67/2005. In the applicant's understanding, this had been the essence of the arguments of the "TRNC" High Administrative

court in the *Eleni Meleagrou* case. Accordingly, the remedy provided under Law no. 67/2005 had not been sufficiently certain.

58. The applicant further contended that it had not been his own choice to withdraw the compensation claim with regard to the two commercial properties but that, rather, he had been forced to do so. In this connection, he submitted that the "TRNC" representatives had been of the correct opinion that his case would have been decided in the same manner as *Eleni Meleagrou*. In that case, in the applicant's view, the "TRNC" High Administrative Court had placed emphasis on the question of who the owner of the property had been on 20 July 1974 and made the finding that it was the company − which, despite having stopped its activities, had not been struck off the register. The "TRNC" High Administrative Court at no point relied on the issue of the existence or non-existence of the company. It simply relied on section 6(2) of Law no. 67/2005 and ruled that the fact that the company had transferred the properties it owned to other persons − even if these persons were its shareholders − had not affected the requirements necessary for the application of sections 2 and 6(2) of Law no. 67/2005. This, in the applicant's view, clearly demonstrated that, in his case, Law no. 67/2005 had not provided for a remedy that had to be exhausted.

59. Moreover, the applicant contended that it followed from the above that Law no. 67/2005 had been unable to provide an effective remedy for his Convention grievances relating to his rights of ownership in respect of the two commercial properties.

2. The Court's assessment

(a) Preliminary points

60. The Court notes at the outset that in its judgment in *Demopoulos and Others* (cited above, §§ 127-128), following a careful examination of all the relevant institutional and procedural aspects of the IPC remedy, it found that remedy to be effective to redress property claims by Greek Cypriots.

61. Following the adoption of the *Demopoulos and Others* judgment, the Court declared inadmissible for non-exhaustion of domestic remedies all applications that had not already been declared admissible and where the applicants had not presented a claim to the IPC in accordance with Law no. 67/2005. Amongst these were also complaints lodged with regard to commercial properties (see, for instance, *Marios Eleftheriades and Others v. Turkey* (dec.), nos. 3882/02 et al., 5 October 2010, and *Akinita G. Ioannides Ltd and Others v. Turkey* (no. 54086/00) in the group of cases *Fieros and Others v. Turkey* (dec.), nos. 53432/99 et al., 5 October 2010). The same approach had been followed in an earlier case introduced before the Court by the applicant, his father and his two brothers (see paragraph 9 above).

62. As already noted above, the Court also examined the case of *Meleagrou and Others* (cited above), in which the applicants had presented claims to the IPC, and declared it inadmissible on two principal grounds. First, in respect of the applicants' complaints under Article 1 of Protocol No. 1, Article 8 and Article 14 as regards the complaint concerning certain plots of land owned by a registered company, the Court found these complaints failed as incompatible *ratione materiae* on the grounds that, as shareholders, the applicants could not claim property rights in the land owned by a company which was still in existence. As to the ongoing refusal to return certain of their plots of land to them, the Court found that, although the applicants had submitted their claims for restitution to the IPC, they had not submitted claims for either an exchange of land in the south of Cyprus or for pecuniary compensation, which would also have permitted the award of damages for loss of use or non-pecuniary compensation if restitution were not granted. That failure meant the applicants had not made proper use of the IPC remedy. Secondly, in respect of the applicants' complaints under Article 6 § 1, the Court found that there was no evidence that the proceedings had been unfair or that the IPC had been biased or lacking independence, nor was it demonstrated that the proceedings had been inordinately lengthy.

63. The dispute between the parties in the present case concerns the question of whether the IPC is an effective remedy for the applicant's compensation claim concerning two commercial properties, ownership of which devolved to the applicant from his parents' company, which owned the properties in question in 1974 and has in the meantime ceased to exist. In particular, having understood that the "TRNC" High Administrative Court's ruling in *Eleni Meleagrou v. the Immovable Property Commission* excluded any realistic possibility of his obtaining compensation before the IPC, the applicant withdraw his claim before the IPC and lodged an application with the Court. The respondent Government have argued that the applicant misunderstood the "TRNC" High Administrative Court's judgment in *Eleni Meleagrou* and that, by withdrawing his claim before the IPC, he had therefore failed to exhaust the effective and available remedy.

64. In view of the above, and having at present no reason to call into question its findings in the *Demopoulos and Others* case (cited above) concerning the effectiveness of the IPC remedy as such, the Court will deal below with the question of whether the applicant was required to exhaust that remedy before bringing his case before the Court.

(b) General principles of exhaustion

65. The general principles relating to the rule of exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ([GC], no. 17153/11, §§ 69-77, 25 March 2014; see also *Gherghina v. Romania* [GC] (dec.), no. 42219/07, §§ 83-89, 9 July 2015).

(c) Application of these principles in the present case

66. The Court notes that under section 4(1) of Law no. 67/2005 all natural or legal persons claiming a right to immovable properties of the kind referred to may bring an application before the IPC seeking restitution thereof, or exchange or compensation in respect of such property. Section 4(1) thereby defines the meaning of the term "applicant" referred to in section 2. At the same time, section 6 regulates the particular procedural issues in respect of the property claims made under section 4(1). According to the English translation of the original Turkish text of Law no. 67/2005, section 6(2) provides that an applicant claiming restitution, exchange or compensation in respect of a property, must prove beyond reasonable doubt that "the property was registered in his name before 20 July 1974 and/or he is the legal heir of the individual in whose name the immovable property was registered" (see paragraph 32 above).

67. For his part, the applicant interprets section 6(2) as implying that it does not cover property that has devolved from a legal person, and in support of his argument the applicant refers to the "TRNC" High Administrative Court's judgment in *Eleni Meleagrou v. the Immovable Property Commission*. For their part, the Government point to the allegedly incorrect translation of the original Turkish text of section 6(2) which, according to the Government, refers to a natural or a legal "person" (*şahıs*) rather than to an individual. They regard section 6(2) of Law no. 67/2005 as including a company which existed prior to 20 July 1974 and its successors to whom the ownership of property had devolved after that date (see paragraph 56 above). They also contend that the applicant has misinterpreted the "TRNC" High Administrative Court's judgment in *Eleni Meleagrou*.

68. The Court would firstly reiterate, as it has done many times in its case-law, that it is primarily for the national authorities to interpret and apply domestic law and it is not the Court's task to take the place of the domestic authorities in that respect (see, amongst many others, *Delfi AS v. Estonia* [GC], no. 64569/09, § 127, ECHR 2015). That being so, the Court finds it sufficient to note that Article 159 § 4 of the "TRNC" Constitution refers to "any person coming forward and claiming legitimate rights in connection with the immovable properties" (see paragraph 31 above) and that by virtue of section 4 of Law no. 67/2005 the right of application to the IPC is guaranteed to all natural and legal persons claiming rights to immovable properties. Moreover, it notes that the Government's submission with regard to linguistic imprecision in the English version of section 6(2) of Law no. 67/2005 is not misplaced.

69. Noting that in the context of its processing of cases following the adoption of the judgment in *Demopoulos and Others* (cited above) it did not consider that there were any deficiencies in the effectiveness of the IPC remedy with regard to property claims concerning commercial properties

(see paragraph 61 above), the Court cannot share the applicant's view that Law no. 67/2005 excluded the possibility of the applicant's obtaining compensation for his commercial properties. This is particularly true in the absence of any domestic precedents to the opposite effect adduced by the applicant (see, by contrast, *Gas and Dubois v. France* (dec.), no. 25951/07, 31 August 2010).

70. In this connection, with regard to the applicant's reliance on the "TRNC" High Administrative Court's judgment in *Eleni Meleagrou v. the Immovable Property Commission*, the Court notes that the issues raised in that case differed substantially from those raised in the applicant's case.

71. In particular, the applicant in *Eleni Meleagrou v. the Immovable Property Commission* approached the "TRNC" High Administrative Court with the argument that, since she owned the immovable property of an existing company as its shareholder, her restitution claim should have been granted by the IPC (see paragraph 37 above). The "TRNC" High Administrative Court found, however, that the owner of the immovable property at issue in 1974 had been a company that continued to be a legal entity as it had not been struck off the relevant register and the fact that the company had transferred the properties it owned to other persons, even if these persons were its shareholders, did not affect the legal position as defined in sections 2 and 6(2) of Law no. 67/2005 (see paragraph 38 above).

72. In this connection it is also noted that the same applicant who brought the "TRNC" High Administrative Court's case of *Eleni Meleagrou v. the Immovable Property Commission* had also approached the Court in the capacity of a shareholder of a company that continued to exist. However, the Court found that her complaint failed as incompatible *ratione materiae* on the grounds that, as a shareholder, she could not claim property rights in land owned by a company which was still in existence (see paragraph 62 above).

73. In the case at hand, as distinct from *Eleni Meleagrou*, the two commercial properties had been transferred to the applicant by NLS, a company that had ceased to exist and had been struck off the register of companies (see paragraph 8 above). The applicant was therefore not claiming compensation for the two commercial properties as a shareholder in a company that continued to exist but rather from the perspective of an owner to whom the ownership rights over the properties in question had devolved from a company that had ceased to exist.

74. Accordingly, the mere existence of doubts on the part of the applicant as to the prospects of success of his property claim before the IPC, given the "TRNC" High Administrative Court's findings in *Eleni Meleagrou*, cannot be considered a valid reason for his failure to exhaust that avenue of redress (see *Vučković and Others*, cited above, § 74). Moreover, with regard to the applicant's argument that he was forced to withdraw his property claim in respect of the two commercial properties, the

Court considers − in so far as this is relevant to the exhaustion issue − that the applicant's argument is misplaced. Even if he might have felt under pressure to settle the case, it is not evident to the Court that he would have been unable to submit his claims for decision by the IPC, if he had so wished (see *Demopoulos and Others*, cited above, § 126 *in fine*).

75. In view of the above considerations, the Court finds that by withdrawing his property claim in respect of the two commercial properties, the applicant did not properly exhaust the appropriate domestic remedy.

76. The Court therefore concludes that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

D. Alleged violation of Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 with regard to the applicant's family house

77. The applicant complained of a delay in the payment of compensation for the breach of his rights in relation to his family house (plot 146). He relied on Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1.

78. The Government contested that argument. They pointed out, in particular, that the payment had been effected in due time following completion of the necessary formalities. They therefore considered that the applicant had lost his victim status. Alternatively, they contended that the applicant had not properly exhausted the IPC remedy in respect of his Article 8 complaint and that, in any case, the family house had not been his home as he had left it when he was thirteen.

79. In reply to the Government's argument, the applicant acknowledged that his claims had been satisfied in respect of the family house by virtue of the friendly settlement reached before the IPC but reserved his rights concerning the length of proceedings and the delay. He also submitted that there was no longer a violation of Article 8 of the Convention.

80. The Court notes that the IPC made the compensation award in respect of the applicant's family house on 17 April 2015 following the parties' friendly settlement agreement, (see paragraph 28 above). The applicant received the compensation on 24 March 2016 (see paragraph 29 above), namely some eleven months later.

81. Given these circumstances, and irrespective of the applicant's ambiguous submissions regarding the nature of his complaints following the payment of the compensation, the Court does not consider that there was an excessive and unreasonable delay in the payment of the compensation awarded by the IPC (see, for instance, *Vlasov and Others v. Russia* (dec.), nos. 38127/07, 40954/07 and 16090/08, 26 August 2014, with further references). In so far as the applicant may be referring to the length of

proceedings before the IPC, the Court notes that this complaint has been addressed above under Article 6 of the Convention (see paragraph 51 above).

82. It follows that in any event this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 26 October 2017.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President