FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 37395/97)

JUDGMENT
(merits)

STRASBOURG

22 September 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of v. Turkey,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Işıl Karakaş, *judges,*
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 37395/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Cypriot nationals, Mr , Mrs and Mrs (“the applicants”), on 22 July 1997.

2. The applicants were represented by Mr A. Demetriades and Mrs Vicky Loizides, two lawyers practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicants alleged that the Turkish occupation of the northern part of Cyprus had deprived them of their home and properties.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 8 June 1999 the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS

7. The first and second applicants, a married couple, were born in 1916 and 1928 respectively and live in Ayia Napa. The third applicant, their daughter, was born in 1959 and lives in Limassol.

8. The applicants were the owners of a plot of land and of a building located in Famagusta, in the central Franklin Roosevelt street. The building comprised an

underground parking space, eight shops, a cafeteria and six apartments. The shops were on the ground floor, while the apartments were on the first, mezzanine and second floor. Until 14 August 1974 one of these apartments was used by the three applicants as their home and another by the first applicant as his surgery. On 14 August 1974, as the Turkish army was advancing, the applicants had been forced to leave Famagusta. Since then, they had not been able to return to or to enjoy their properties.

9. In support to their claim to ownership, the applicants produced certificates of affirmation of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. These certificates stated that they were the legal owners of a plot of land with a building of a surface of 811 m^2 in Famagusta, Ayios Nicolaos Quarter, registered under plot no. 1222, sheet/plan 33/12.6.II, Block E.

10. On 9 July 2002 the applicants' representative informed the Court that the second applicant, Mrs , had passed away on 19 October 2000. As a result, her property was subject to an administration. Under the said administration, ¼ of the plot described under paragraph 9 above was transferred to the third applicant, Mrs . On 30 March 2001 the first applicant, Mr , donated ¼ of the same plot to the third applicant. The latter thus became the owner of ½ of the plot at issue.

THE LAW

I. PRELIMINARY ISSUE

11. The Court notes at the outset that the second applicant died on 19 October 2000, after the lodging of her application, while the case was pending before the Court. The two other applicants inherited her part of the properties referred to in the present application (see paragraph 10 above). Although the heirs of a deceased applicant cannot claim a general right for the examination of the application brought by the latter to be continued by the Court (see *Scherer v. Switzerland*, 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see *Deweer v. Belgium*, 27 February 1980, § 37, Series A no. 35, and *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A).

12. For the purposes of the instant case, the Court is prepared to accept that the first and third applicants can pursue the application initially brought by Mrs (see, *mutatis mutandis*, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 85, 9 June 2005, and *Nerva and Others v. the United Kingdom*, no. 42295/98, § 33, ECHR 2002-VIII).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

13. The Government raised preliminary objections of inadmissibility *ratione loci* and *ratione temporis*, non-exhaustion of domestic remedies and lack of victim status. The Court observes that these objections were identical to those raised in the case of

Alexandrou v. Turkey (no. 16162/90, §§ 11-22, 20 January 2009), and should be dismissed for the same reasons.

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

14. The applicants complained that since August 1974, Turkey had prevented them from exercising their right to the peaceful enjoyment of their possessions.

They invoked Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

15. The Government disputed this claim.

A. The arguments of the parties

1. The Government

16. The Government submitted that the applicants failed to produce reliable evidence showing that at the time of the Turkish intervention they were the owners of the properties at issue. Their claim under Article 1 of Protocol No. 1 was therefore unsubstantiated.

17. In any event, the alleged interference with the applicants' property rights could not be seen in isolation from the general political situation in Cyprus and had in any event been justified in the general interest.

2. The applicants

18. The applicants noted that they had produced documentary evidence issued by the Government of Cyprus certifying that they were the owners of the properties described in paragraphs 8 and 9 above. The original title deeds were left behind in Famagusta in 1974 and were since that date under the control of the respondent Government. Relying on the principles laid down by the Court in the case of *Loizidou v. Turkey* ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), the applicants alleged that the interference with their property rights lacked any legal justification.

3. The third-party intervener

19. The Government of Cyprus observed that its Department of Lands and Surveys had provided with certificates of affirmation the persons who did not have title deeds in their possession but whose title had been entered in the District Land Offices registers in the Turkish-occupied area. These certificates were *prima facie* evidence of their right of property. The authorities of the "Turkish Republic of Northern Cyprus" (the "TRNC") were in possession of all the records of the Department of Lands and Surveys relating to

the title to properties. It was therefore the duty of the respondent Government to produce them.

20. The Government of Cyprus further noted that the present case was similar to that of *Loizidou v. Turkey* ((merits), cited above), where the Court had found that the loss of control of property by displaced persons arose as a consequence of the occupation of the northern part of Cyprus by Turkish troops and the establishment of the "TRNC", and that the denial of access to property in occupied northern Cyprus constituted a continuing violation of Article 1 of Protocol No. 1.

B. The Court's assessment

21. The Court first notes that the documents submitted by the applicants (see paragraph 9 above) provide *prima facie* evidence that they had a title of ownership over the properties at issue. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicants had a "possession" within the meaning of Article 1 of Protocol No. 1.

22. The Court recalls that in the aforementioned *Loizidou* case ((merits), cited above, §§ 63-64), it reasoned as follows:

> "63. ... as a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment.
>
> 64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.
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> It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.
>
> Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention. In such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1."

23. In the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV) the Court confirmed the above conclusions (§§ 187 and 189):

> "187. The Court is persuaded that both its reasoning and its conclusion in the Loizidou judgment (*merits*) apply with equal force to displaced Greek Cypriots who, like Mrs Loizidou, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the 'TRNC' authorities on their physical access to that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.
>
> ...

189. .. there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights."

24. The Court sees no reason in the instant case to depart from the conclusions which it reached in the *Loizidou* and *Cyprus v. Turkey* cases (*op. cit.*; see also *Demades v. Turkey* (merits), no. 16219/90, § 46, 31 July 2003).

25. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicants were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicants submitted that in 1974 they had had their home in Famagusta. As they had been unable to return there, they were the victims of a violation of Article 8 of the Convention.

This provision reads as follows:

"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."

27. The Government disputed this claim.

28. The applicants submitted that they were the owners, *inter alia*, of an apartment in Famagusta and that until 1974 they were using these premises as their home. They claimed that any interference with their Article 8 rights had not been justified under the second paragraph of this provision.

29. The Government of Cyprus submitted that where the applicant's properties constituted the person's home, there was a violation of Article 8 of the Convention.

30. The Court notes that the Government failed to produce any evidence capable of casting doubt upon the applicants' statement that, at the time of the Turkish invasion, they were regularly residing in Famagusta and that this apartment was treated by the applicants as a home.

31. Accordingly, the Court considers that in the circumstances of the present case, the apartment of the applicants qualified as "home" within the meaning of Article 8 of the Convention at the time when the acts complained of took place.

32. The Court observes that the present case differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the applicants actually had a home in Famagusta.

33. The Court notes that since 1974 the applicants have been unable to gain access to and to use that home. In this connection the Court recalls that, in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 172-175), it concluded that the complete denial of the right of Greek-Cypriot displaced persons to respect for their homes in northern

Cyprus since 1974 constituted a continuing violation of Article 8 of the Convention. The Court reasoned as follows:

> "172. The Court observes that the official policy of the 'TRNC' authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.
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> 173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in 'legislation' and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General ...
>
> 174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.
>
> 175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus."

34. The Court sees no reason in the instant case to depart from the above reasoning and findings (see also *Demades* (merits), cited above, §§ 36-37).

35. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention by reason of the complete denial of the right of the applicants to respect for their home.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

36. The applicants complained of a violation under Article 14 of the Convention on account of discriminatory treatment against them in the enjoyment of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1. They alleged that this discrimination had been based on their national origin and religious beliefs.

Article 14 of the Convention reads as follows:

> "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."

37. The Court recalls that in the *Alexandrou* case (cited above, §§ 38-39) it has found that it was not necessary to carry out a separate examination of the complaint under Article 14 of the Convention. The Court does not see any reason to depart from that approach in the present case (see also, *mutatis mutandis*, *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 37-38, 31 July 2003).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary and non-pecuniary damage

1. *The parties' submissions*

(a) The applicants

39. In their just satisfaction claims of 19 September 1999, the applicants requested 569,879 Cypriot pounds (CYP – approximately 973,695 euros (EUR)) for pecuniary damage. They relied on an expert's report assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their building in Famagusta, plus interest from the date on which such rents were due until the day of payment. The rent claimed was for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until January 2000. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation report contained a description of Famagusta, of its development perspectives and of the applicants' properties.

40. The valuation report calculated the annual rent obtainable from the applicants' building on the basis of an affidavit of 4 June 1997, in which the first applicant had stated that the total of all rents without the family residence and the medical office was, in August 1974, of CYP 510 per month. With the residence and the office the rents would have come up to CYP 720 per month, for a yearly total rent of CYP 8,712 (approximately EUR 14,885). The expert considered these amounts to be reasonable; he further took into account the trends of rent increase on the basis of: (a) the nature of the area of property; (b) the trends for the period 1970-1974; (c) the trends in the unoccupied areas of Cyprus from 1974 onwards. This last trend was based on the Consumer Price Index for rents and houses issued by the Department of Statistics and Research of the Government of Cyprus, increased by a percentage of 25%. Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

41. On 24 January 2008, following a request from the Court for an update on the developments of the case, the applicants submitted updated claims for just satisfaction, which were meant to cover the period of loss of the use of the properties from 1 January 1987 to 31 December 2007. They produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was CYP 730,858 plus CYP 738,957 for interest. The total sum claimed under this head was thus CYP 1,469,815 (approximately EUR 2,511,326).

42. In their just satisfaction claims of September 1999, the applicants further claimed CYP 180,000 (approximately EUR 307,548) for each of them in respect of non-pecuniary damage. In particular, each applicant firstly claimed CYP 30,000 for the anguish and frustration he or she suffered on account of the continuing violation of his or her property rights. They stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), *Reports* 1998-IV, 28 July 1998), taking into account, however, that the period of time for which the damage was claimed in the

instant case was longer. The applicants also claimed CYP 90,000 each for the distress and suffering they had been subjected to due to the denial of their right to respect for their home and CYP 60,000 each for the violation of their rights under Article 14 of the Convention.

43. Finally, in their updated claims for just satisfaction of 24 January 2008, the applicants requested the additional sum of EUR 50,000 each for non-pecuniary damage.

(b) The Government

44. The Government filed comments on the applicants' updated claims for just satisfaction on 30 June 2008 and 15 October 2008. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and maintained that the claims for just satisfaction were not ready for examination. The Government had in fact encountered serious problems in identifying the properties and their present owners. The information provided by the applicants in this regard was not based on reliable evidence. Moreover, owing to the lapse of time since the lodging of the applications, new situations might have arisen: the properties could have been transferred, donated or inherited within the legal system of southern Cyprus. These facts would not have been known to the respondent Government and could be certified only by the Greek-Cypriot authorities, who, since 1974, had reconstructed the registers and records of all properties in northern Cyprus. Applicants should be required to provide search certificates issued by the Department of Lands and Surveys of the Republic of Cyprus. In cases where the original applicant had passed away or the property had changed hands, questions might arise as to whether the new owners had a legal interest in the property and whether they were entitled to pecuniary and/or non-pecuniary damages.

45. As concerns specifically the present application, the Government noted that the decision on the admissibility did not identify the applicants' properties, but confined itself in giving the address of a building in Famagusta.

46. The Government submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment, and that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data with which to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicants had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

47. The Government produced a valuation report prepared by the Turkish-Cypriot authorities, which they considered to be based on a "realistic assessment of the 1974 market values, having regard to the relevant land records and comparative sales in the areas where the properties [were] situated". This report contained two proposals, assessing, respectively, the sum due for the loss of use of the properties and their present value. The second proposal was made in order to give the applicants the option to sell the property to the State, thereby relinquishing title to and claims in respect of it.

48. The report prepared by the Turkish-Cypriot authorities specified that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem,

restitution of the properties described in paragraphs 8 and 9 above. In case the conditions for restitution were not fulfilled, the applicants could claim financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the property between 1974 and the date of payment. Had the applicants applied to the Immovable Property Commission, the latter would have offered CYP 574,558.06 (approximately EUR 981,689) to compensate the loss of use and CYP 611,982.25 (approximately EUR 1,045,632) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of the applicants' properties was CYP 100,000 (approximately EUR 170,860). Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicants exchange of their properties with Turkish-Cypriot properties located in the south of the island.

49. Finally, the Government did not comment on the applicants' submissions under the head of non-pecuniary damage.

2. The third party intervener

50. The Government of Cyprus fully supported the applicants' updated claims for just satisfaction.

3. The Court's assessment

51. The Court first notes that the Government's submission that doubts might arise as to the applicants' title of ownership over the properties at issue (see paragraphs 44 and 45 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. Such an objection should have been raised before the application was declared admissible or, at the latest, in the context of the parties' observations on the merits. In any event, the Court cannot but confirm its finding that the applicants had a "possession" over plot of land and the building in Famagusta within the meaning of Article 1 of Protocol No. 1 (see paragraph 21 above).

52. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that the parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention. This failure renders it difficult for the Court to assess whether the estimate furnished by the applicants of the 1974 market or rental values of their properties is reasonable. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

53. In their just satisfaction claims of September 1999, relying on bills from their representatives, the applicants sought CYP 2,026.42 (approximately EUR 3,462) for the costs and expenses incurred before the Court. This sum included CYP 800 (approximately EUR 1,366) for the costs of the expert report assessing the value of their properties. In their written observations of 15 January 2004, the applicants claimed additional legal fees for CYP 2,645 (approximately EUR 4,519). In their updated claims for just satisfaction of 24 January 2008, they submitted additional bills of costs for the

new valuation report and for legal fees amounting to EUR 392.15 and EUR 2,955.5 respectively. The total sum sought for cost and expenses was thus approximately EUR 11,328.

54. The Government did not comment on this point.

55. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of costs and expenses is not ready for decision. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the first and third applicants have standing to continue the present proceedings also in the second applicant's stead;

2. *Dismisses* by six votes to one the Government's preliminary objections;

3. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

5. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention;

6. *Holds* unanimously that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza
Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Karakaş is annexed to this judgment.

N.B.
F.A.

DISSENTING OPINION OF JUDGE KARAKAŞ

Unlike the majority, I consider that the objection of non-exhaustion of domestic remedies raised by the Government should not have been rejected. Consequently, I cannot agree with the finding of violations of Article 1 of Protocol No. 1 and Article 8 of the Convention, for the same reasons as those mentioned in my dissenting opinion in the case of *Gavriel v. Turkey* (no. 41355/98, 20 January 2009).

v. TURKEY JUDGMENT (MERITS)