FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 39970/98)

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 [redacted] 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. 39970/98) 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 nine Cypriot nationals, Mr [redacted], Mrs [redacted], Mrs [redacted], Mr [redacted], Mrs [redacted], Mr [redacted], Mr [redacted], Mr [redacted] and [redacted] ("the applicants"), on 2 February 1998.

2. The applicants, who had been granted legal aid, were represented by Mr K. Chrysostomides, a lawyer 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 11 January 2000 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)).

7. On an unspecified date, the first applicant, Mr [redacted], died. In a fax of 23 February 2003 the other applicants confirmed their wish to continue the application on his behalf in their capacity as his heirs.

THE FACTS

8. The applicants were born in 1930, 1936, 1958, 1961, 1959, 1983, 1985, 1987 and 1990 respectively. Their place of residence is not known. In a fax of 22 March 2002 the applicants' representative indicated that "the [redacted] family had [had] to ... emigrate abroad".

9. The first and second applicants (Mr [redacted] and Mrs [redacted]) were a married couple. The third and fourth applicants (Mrs [redacted] and Mr [redacted]) are their children. The fifth applicant (Mrs [redacted]) is the widow of the elder son of the family, X, whom she married in 1983. The remaining applicants are the children of X and the fifth applicant.

10. The first and second applicants alleged that they had lived with their children in Ayios Amvrosios, a village in the District of Kyrenia (northern Cyprus), where the first applicant owned several properties, including the family house. On 13 August 1974, as the Turkish troops were advancing, the applicants left Ayios Amvrosios and fled to the unoccupied part of Cyprus.

11. On 12 January 1996 the first applicant transferred the ownership of most of his properties, including the family house, to his three children: the third and fourth applicants and X. In November 1996 X died. His estate was inherited by the fifth applicant and their children (the sixth, seventh, eighth and ninth applicants). Detailed information about the properties at issue is contained in the file. In particular, in 1974 the first applicant was the owner of 33 plots of land, including woodlands; the family house (registered under no. 10920, plot no. 40-41-476/2); a garden; a non-descript "site"; a "ruined room"; a "ruined mill with one room"; and an orchard with 12 mulberry trees. These properties were located in the villages of Ayios Amvrosios, Klepini and Chartzia.

12. The applicants produced an affidavit from Mr [redacted], the Kyrenia Deputy District Officer of the Department of Lands and Surveys of the Republic of Cyprus, stating that:

(a) for 18 of the properties (including the house) there existed original title deeds;

(b) for 6 other properties there existed the title deeds and "certificates of ownership of Turkish-occupied immovable properties" issued by the Republic of Cyprus; and

(c) for 15 other properties the original title deeds were lost in 1974 and only certificates of ownership were available.

All the above-mentioned documents have been produced by the applicants.

13. The applicants claimed that they had been informed that their house in Ayios Amvrosios had been destroyed by the Turkish army. This fact was denied by the respondent Government.

THE LAW

I. PRELIMINARY ISSUE

14. The Court notes at the outset that the first applicant died on an unspecified date after his application was lodged while the case was still pending before the Court. His heirs (the other applicants) informed the Court that they wished to pursue the application in his name also (see paragraph 7 above). Although the heirs of a deceased applicant

cannot claim a general right to the continued examination of the deceased's application (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).

15. For the purposes of the instant case, the Court is prepared to accept that the remaining applicants (the first applicant's wife, children, daughter-in-law and grandchildren) can pursue the application initially brought by Mr [redacted] (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

1. Objection of inadmissibility ratione temporis or ratione materiae

(a) The Government's objection

16. The Government submitted that the first applicant had lost his title to the properties in question after 1974 under Article 159 of the Constitution of the "Turkish Republic of Northern Cyprus" (the "TRNC"). The remaining applicants did not claim to own any property in the northern part of Cyprus in 1974. The properties in question had purportedly been transferred to or inherited by them long after 1974. At no time after 1974 had the applicants been prevented by the Turkish authorities from returning to or using their properties. As a result, the application was incompatible either *ratione materiae* or *ratione temporis* with the provisions of the Convention.

(b) The applicants' arguments

17. The applicants observed that the Government did not deny that the first applicant had been the lawful owner of the properties in question in 1974. Subsequent acts of the "TRNC" could not deprive him of his title, as held by the Court in the *Loizidou v. Turkey* judgment ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI). As she was the first applicant's wife, the second applicant had a proprietary interest in the properties. The remaining applicants had lawfully acquired their title directly or indirectly from the first applicant.

(c) The third party intervener's arguments

18. The Government of Cyprus recalled that in the case of *Loizidou v. Turkey* ((merits), cited above) the Court had found that Turkey had responsibility for securing human rights in the occupied area of Cyprus. They challenged the respondent Government's allegations that the "TRNC" was a State or an entity with effective authority, whose creation had interrupted the chain of any Turkish responsibility for the events in northern Cyprus. They also reiterated that the violations of the right of property which had occurred in the "TRNC" territory constituted a continuing situation and not an instantaneous act of deprivation of ownership.

(d) The Court's assessment

19. In its decision on the admissibility of the application, the Court considered that the Government's objection that the application was incompatible *ratione materiae* and *ratione temporis* were closely linked to the substance of the applicants' complaints and that they should be examined together with the merits of the application.

20. The Court observes that the Government did not contest the applicants' statement that in 1974 the first applicant was the owner of properties in Ayios Amvrosios. They argued, however, that the properties had subsequently been expropriated by the "TRNC" authorities. The Court notes that in the *Loizidou* judgment ((merits), cited above, §§ 44 and 46) it held that it could not attribute legal validity for the purposes of the Convention to the provisions of Article 159 of the "TRNC" fundamental law concerning the acquisition by the "TRNC" of the immovable properties considered to have been abandoned on 13 February 1975. It furthermore considered that Greek-Cypriots who, like Mrs Loizidou, had left their properties in the northern part of the island in 1974 could not be deemed to have lost title to their property. It follows that the first applicant had property rights since 1974. He was therefore capable of transmitting these rights to his children (X and the third and fourth applicants), which he did on 12 January 1996 (see paragraph 11 above). The fifth applicant and her children (the sixth, seventh, eighth and ninth applicants) inherited part of these properties from X on his death in November 1996 (see paragraph 11 above). Moreover, all the other applicants inherited the properties that the first applicant had not transferred to his children.

21. In view of the above, the Court considers that since 1996 and/or since the first applicant's death, the other applicants had a right of property in the real estate which forms the object of the present application. At the relevant time, Turkey had already recognised the right of individual petition. It is also to be recalled that the Court duly examined and rejected the objection of inadmissibility by reason of lack of effective control over northern Cyprus raised by the Turkish Government in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 69-81, ECHR 2001-IV). It sees no reason to depart from its reasoning and conclusions in the instant case.

22. It follows that the Government's objection of incompatibility *ratione materiae* or *ratione temporis* should be dismissed.

2. Objection of inadmissibility on the grounds of non-exhaustion of domestic remedies and lack of victim status

23. The Government also raised preliminary objections of non-exhaustion of domestic remedies and lack of victim status. The Court observes that these objections are 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

24. The applicants complained that since 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:

"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."

25. The Government disputed this claim.

A. The arguments of the parties

1. The Government

26. The Government argued that any interference with the applicants' property rights had been justified. The properties claimed by the applicants had been expropriated in accordance with the laws of the "TRNC". Owing to the relocation of the populations, it had been necessary to facilitate the rehabilitation of Turkish-Cypriot refugees and to renovate and put to better use abandoned Greek-Cypriot property. The Greek-Cypriot side had taken similar measures in respect of abandoned Turkish-Cypriot properties in the southern part of the island. There was a public interest in not undermining the inter-communal talks concerning freedom of movement and right of property. The status of the UN buffer zone had also rendered it necessary to regulate the right of access to possessions until a settlement of the political problem could be achieved. In the light of all the above, it would have been unrealistic to grant individual applicants a right of access to property in isolation from the political situation.

2. The applicants

27. The applicants argued that the policies of the "TRNC" could not furnish a legitimate aim since the establishment of the "TRNC" was an illegitimate act that had been condemned by the UN Security Council. For the same reason, the interference could not be found to have been in accordance with the law and the general principles of international law. Nor had it been proportionate. The need to rehouse displaced Turkish-Cypriots could not justify the complete negation of their property rights.

3. The third-party intervener

28. The Government of Cyprus observed that the "TRNC" authorities were in possession of all the records of the Department of Lands and Surveys relating to title to properties in northern Cyprus. It was therefore their duty to produce them.

29. They further noted that the present case was similar to that of *Loizidou* (cited above), where the Court had found that the loss of control of property by displaced persons had arisen 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

30. The Court notes, firstly, that the documents submitted by the applicants (see paragraph 12 above) provide prima facie evidence that the first applicant had title to the

properties at issue. As the respondent Government have failed to produce convincing evidence to rebut this, the Court considers that these properties were "possessions" within the meaning of Article 1 of Protocol No. 1. It reiterates its conclusion that the other applicants received or inherited the properties described in paragraph 11 above from the first applicant (see paragraphs 20-21 above).

31. The Court observes 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.
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> 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."

32. In the case of *Cyprus v. Turkey* (cited above) 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.
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> ...
>
> 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."

33. 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).

34. 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 the 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

35. The applicants submitted that in 1974 their home had been in Ayios Amvrosios. As they had been unable to return there, they had been 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."

36. The Government disputed this claim.

37. The applicants submitted that, contrary to the applicant in the *Loizidou* case, they had had their principal residence in Ayios Amvrosios. They claimed that any interference with their Article 8 rights had not been justified under the second paragraph of this provision.

38. The Government of Cyprus submitted that where the applicants' properties constituted their home, there was a violation of Article 8 of the Convention.

39. The Court first observes that the sixth, seventh, eighth and ninth applicants were born in 1983, 1985, 1987 and 1990 respectively (see paragraph 8 above). They could not, therefore, have resided in Ayios Amvrosios before 1974. It follows that there has been no interference with their right to respect for their home. The same applies to the fifth applicant, who married the elder son of the [redacted] family in 1983, after the Turkish invasion. In this connection, the Court notes that the sole fact of being the heir of someone who had a "home" in a particular location cannot, in itself, entitle the person concerned to a right under Article 8 of the Convention.

40. As to the remaining applicants, the Court notes that the Government failed to produce any evidence capable of casting doubt upon their statement that, at the time of the Turkish invasion, they were regularly residing in Ayios Amvrosios and that this house was treated by them and their family as a home (see paragraph 10 above).

41. Accordingly, the Court considers that in the circumstances of the present case, the house of the first, second, third and fourth applicants qualified as "home" within the meaning of Article 8 of the Convention at the time when the acts complained of took place.

42. The Court observes that the present case differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the first, second, third and fourth applicants actually had a home in Ayios Amvrosios. In this connection, it points out 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.

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."

43. 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).

44. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention on account of the complete denial of the first, second, third and fourth applicants' right to respect for their home and that there has been no violation of this provision with respect to the fifth, sixth, seventh, eighth and ninth applicants.

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

45. 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.

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."

46. 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

47. 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

48. In their just satisfaction claims of 21 April 2000, the applicants requested 820,719 Cypriot pounds (CYP – approximately 1,402,280 euros (EUR)) in respect of 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 properties, plus interest from the date on which such rents were due until the date 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 September 1999. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The valuation report contained a description of the villages of Ayios Amvrosios, Klepini and Chartzia, of their development perspectives and of the applicants' properties.

49. The expert classified the properties into two broad categories: those with prospects and potential for immediate development and those whose immediate or foreseeable prospects were limited to agricultural use. For the first category of properties, the ground rent was calculated as a percentage (varying from 4% to 6%) of their market value; for the second category the rent obtainable in 1974 was calculated on the basis of the rent payable for similar agricultural lands (between CYP 2 and 5 per decare per annum for standard plots and between CYP 25 and 35 per decare per annum for groves). According to the expert, the 1974 market value of the applicants' house was CYP 19,000 (approximately EUR 32,463) and the annual rent obtainable from it was CYP 760 (approximately EUR 1,298). Other properties had a market value ranging from CYP 19,991 to CYP 940. Their total 1974 rental value was estimated at CYP 5,028.55 (approximately EUR 8,591). The following annual increases were applied: 12% for ground rents, 7% for agricultural properties and 5% for groves and houses. Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

50. On 25 January 2008, following a request from the Court for an update on developments in the case, the applicants submitted updated claims for just satisfaction, which were meant to cover the period of loss of use of property 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 1,135,126 plus CYP 921,023 for interest. The total sum claimed under this head was thus CYP 2,056,149 (approximately EUR 3,513,136).

51. In their just satisfaction claims of 21 April 2000, the applicants further claimed compensation in respect of non-pecuniary damage. They left it to the Court's discretion to determine the amount, noting, however, that they considered the sum of CYP 100,000 (approximately EUR 170,860) for each of them hardly sufficient.

(b) The Government

52. 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. They said they 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. Moreover, 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.

53. The Government further noted that some applicants had shared properties and that it was not proven that their co-owners had agreed to the partition of the possessions. Nor, when claiming damages based on the assumption that the properties had been rented after 1974, had the applicants shown that the rights of the said co-owners under domestic law had been respected.

54. The Government further 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 a comparison could be drawn 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.

55. 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.

56. 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 most of the properties described in paragraph 11 above, including the applicants' house. The other immovable property referred to in the application was possessed by refugees; it could not form the object of restitution but could give entitlement to 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 191,757.61 (approximately EUR 327,637) to compensate for the loss of use from January 1996 onwards and CYP

310,872.77 (approximately EUR 531,157) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of the applicants' house described in paragraph 11 above was CYP 4,661.02 (approximately EUR 7,963). Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicants an exchange of their properties with Turkish-Cypriot properties located in the south of the island.

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

(c) The third party intervener

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

2. The Court's assessment

59. 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 paragraph 52 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 properties described in paragraph 11 above constituted the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1 (see paragraph 30 above).

60. 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 value 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

61. In their just satisfaction claims of 21 April 2000, relying on bills from their representative, the applicants sought CYP 4,250 (approximately EUR 7,261) and 1,750 pounds sterling (approximately EUR 2,200) for the costs and expenses incurred before the Court. They further claimed CYP 3,000 (approximately EUR 5,125) for the expenses pertaining to the valuation report. They stated that they had received legal aid in the amount of 4,100 French Francs (approximately EUR 625). In their updated claims for just satisfaction of 25 January 2008, the applicants submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 690 and EUR 2,000 respectively. The total sum sought for cost and expenses was thus approximately EUR 17,276.

62. The Government did not comment on this point.

63. 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 second, third, fourth, fifth, sixth, seventh, eighth and ninth applicants have standing to continue the present proceedings also in the first 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 with respect to the first, second, third and fourth applicants;

5. *Holds* unanimously that there has been no violation of Article 8 of the Convention with respect to the other applicants;

6. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1;

7. *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).