FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 38179/97)

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. 38179/97) 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 two Cypriot and two British nationals, Mr , Mrs , Mrs and Mrs ("the applicants"), on 10 January 1997.

2. The applicants 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 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 applicants, who are siblings, were born in 1959, 1942, 1947 and 1944 respectively. The first applicant (who is a Cypriot and British citizen) lives in London; the second, third and fourth applicants all reside in Larnaca. The second applicant is a Cypriot citizen, while the third and fourth applicants are British citizens.

8. On 13 August 1974, as the Turkish troops were advancing, the applicants' father left the village of Ayios Avrosios in the District of Kyrenia, where he owned the following immovable properties:

(a) plot of land with trees in Kapsala (plot no. 12/7/5/1, sheet/plan 13/15, registration no. 14426, area: hectares (h.) 3, decares (d.) 9, square metres (m²) 818);

(b) plot of land with trees in Glifhonera (plot no. 12/7/3, sheet/plan 13/15, registration no. 13911, area: h. 5, d. 6, m² 105);

(c) plot of land with trees in Glifhonera (plot no. 12/7/4, sheet/plan 13/15, registration no. 13912, area: h. 5, d. 5, m² 27);

(d) plot of land with trees in Apati (plot nos. 13/4 and 15/3, sheet/plan 13/31, registration no. 10106, area: d. 2, m² 342);

(e) plot of land with trees in Spati (plot no. 250/3, sheet/plan 13/23, registration no. 7182, area: d. 3, m² 345);

(f) plot of land with trees in Apati (plot no. 11/6, sheet/plan 13/31, registration no. 10097, area: m² 437);

(g) plot of land with trees in Apati (plot no. 11, sheet/plan 13/31, registration no. 10087, area: d. 4, m² 14);

(h) plot of land in Trachonas (plot no. 579, sheet/plan 13/22, registration no. 5927; area: d. 1, m² 673).

9. In support to their claim that their father was the owner of the above-mentioned plots of land, the applicants submitted copies of the title deeds and of the relevant certificates of ownership.

10. On 17 August 1974 the applicants' father tried to visit his property but was arrested by Turkish soldiers. He was released on the same day, since he was a British citizen.

11. On 19 May 1991 the applicants' father died. According to his will, dated 18 May 1988, the plot described under paragraph 8 (a) above was to be inherited by the first applicant and the other plots were to be inherited by the four applicants in equal shares. On 30 July 1991, Mr was appointed as executor of the will of the applicants' father. The applicants registered their titles with the Department of Lands and Surveys of the Republic of Cyprus on 10 July 1995. The first applicant tried, via the British consular authorities, to visit the properties at issue, but did not obtain permission.

12. In a letter of 2 September 2003, the applicants informed the Court that Turkey was planning to construct a highway at the edge of their properties and that an area of m² 6,000 had been taken for this purpose. The applicants had not been consulted on the matter and no compensation had been offered to them.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

13. In a letter of 26 July 1999, the Government requested that their observations in application no. 35214/97 (*v. Turkey*) be considered the respondent Government's observations also in the present case. In the ambit of application no. 35214/97 the Government raised the following preliminary objections.

1. *Objection of incompatibility ratione loci, ratione temporis or ratione materiae*

(a) The Government's objection

14. The Government objected that Turkey had no jurisdiction or control over the territory of the Turkish Republic of Northern Cyprus (the "TRNC"), which was an independent and democratic *de facto* State, and not a "subordinate local administration" of Turkey. The applicants' immovable properties were situated in the "TRNC" and were under its exclusive control. They had been expropriated by administrative acts of the "TRNC" under the laws and constitutional provisions applicable in the "TRNC". The Government challenged the principles affirmed by the Court in the case of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions* 1996-VI, 18 December 1996).

15. The Government further submitted that, according to the records of the "Turkish-Cypriot Lands Office" in Girne/Kyrenia, the applicants were not the owners of any property in the northern part of Cyprus in 1974. Nor were the applicants, according to the same source, the owners of any property at the date of introduction of the application. The property referred to in the application was originally registered in the name of the Government of Cyprus as a forest, then in the name of the applicants' father and, finally, in the name of the "TRNC". Given that in 1974 the applicants had no right or interest in relation to the property at issue, there was no question of a continuing violation that could have subsisted until 28 January 1987 when Turkey recognised the right of individual petition. Assuming that the applicants had acquired the property in 1995, there was no question of Turkish involvement in their inability to have access to the plots of land at issue. Moreover, as they had acquired the property twenty-one years after the events of 1974 and eight years after Turkey's declaration concerning the right of individual petition, the applicants should have know that access to this property was practically impossible and that the Turkish-Cypriot authorities had expropriated it. As a result, they cannot invoke Turkish responsibility. In the light of the above, the application should be considered incompatible either *ratione materiae* or *ratione temporis* with the provisions of the Convention.

(b) The applicants' arguments

16. Relying on the case-law developed by the Court in the case of *Loizidou* ((merits), cited above), the applicants alleged that the facts complained of were imputable to Turkey for the purposes of the Convention.

17. They further observed that their father was the lawful owner of the properties in question in 1974 and that they had an expectation of becoming, in due course, the properties' registered owners. Subsequent acts of the "TRNC" could not deprive their father of his title. The applicants became the legal owners by virtue of their father's will and this was recorded by the official authorities of the Republic of Cyprus.

(c) The third-party intervener's arguments

18. The Government of Cyprus recalled that in the case of *Loizidou* ((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 interrupted the chain of any Turkish responsibility for the events which took place in

northern Cyprus. They moreover 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.

19. The third-party intervener further 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 was entered in District Land Offices registers in the Turkish-occupied area. These certificates were *prima facie* evidence of their right of property. The “TRNC” authorities 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.

(d) The Court's assessment

20. The Court observes that the Government did not contest the applicants' statement that their father was the owner of the plots of land described in paragraph 8 above. They argued, however, that the properties at issue had subsequently been expropriated by the “TRNC” authorities. The Court recalls that in the *Loizidou* case ((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 to the “TRNC” of the immovable properties considered to be 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, until his death on 19 May 1991, the applicants' father was still the legal owner the plots of land at issue. He was therefore capable of transmitting ownership to his children, according to his will, dated 18 May 1988.

21. The Court further notes that on 10 July 1995 the applicants registered their titles of ownership with the Department of Lands and Surveys of the Republic of Cyprus (see paragraph 10 above). Despite this, they were unable to make use of and have access to their properties. At the relevant time, Turkey had already recognised the right of individual petition. It is also to be recalled that the Court had 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 preliminary objections of incompatibility *ratione loci*, *ratione temporis* or *ratione materiae* should be rejected.

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 inadmissibility for 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.

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

24. 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 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."

25. The Government disputed this claim.

26. 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.
>
> 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."

27. 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.
>
> ...
>
> 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."

28. 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).

29. 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 since the date on which they acquired ownership (10 July 1995), 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.

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

30. 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 1 of Protocol No. 1. They alleged that this discrimination had been based on their national origin.

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."

31. The Government disputed this claim.

32. 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).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. In their just satisfaction claims of 29 September 1999, the applicants requested 4,489,931 Cypriot pounds (CYP – approximately 7,671,496 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 plots of land, plus interest from the date on which such rents were due until the day of payment. The rents claimed were 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 owner of the properties. The evaluation report contained a description of Ayios Amvrosios, of its development perspectives and of the applicants' properties.

35. The expert first observed that two of the applicants' properties were building sites situated in highly touristic locations. The annual rent obtainable from these plots of lands was calculated as a percentage (6%) of their market value in August 1974. A 12 percent annual increase was applied both to the rents and to the market value of the properties. According to the expert, these two building sites had a 1974 market value of CYP 450,000 (approximately EUR 768,870), while the annual rent obtainable from them in 1987 was CYP 109,200 (approximately EUR 186,579). The other applicants' properties were agricultural lands. In 1974 their total annual rental value was CYP 30.41 (approximately EUR 52), to which a 7% annual increase was applied. Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

36. On 25 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 for the agricultural lands was CYP 3,140.56 plus CYP 2,890.91 for interest. The total sum claimed under this head was thus CYP 6,301 (approximately EUR 10,765). As concerned the building sites, the total rent from 1 January 1987 to 31 December 2007 was CYP 5,596,692, while the interest amounted to CYP 4,428,347. The total sum claimed for these two properties was thus CYP 10,025,039 (approximately EUR 17,128,781), while the whole pecuniary damage suffered by the applicants was approximately EUR 17,139,546.

37. In their just satisfaction claims of 29 September 1999, the applicants further claimed non-pecuniary damages. They left up to the Court to determine their amount, noting, however, that they considered that the sum of CYP 100,000 (approximately EUR 170,860) for each of them would not be sufficient.

(b) The Government

38. 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.

39. 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.

40. 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.

41. 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 property described in paragraph 8 (d), (e), (f) and (g) above. 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 401,239.52 (approximately EUR 685,557) to compensate the loss of use from July 1995 onwards and CYP 597,356.91 (approximately EUR 1,020,644) 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 the following:

- plots of land described under paragraph 8 (a), (b) and (c) above (building sites): CYP 95,593.22 (approximately EUR 163,300);
- plot of land described under paragraph 8 (d) above: CYP 76.27 (approximately EUR 130);
- plot of land described under paragraph 8 (e) above: CYP 105.93 (approximately EUR 180);
- plot of land described under paragraph 8 (f) above: CYP 12,71 (approximately EUR 21);
- plot of land described under paragraph 8 (g) above: CYP 17.12 (approximately EUR 29);
- plot of land described under paragraph 8 (h) above: CYP 1,694.92 (approximately EUR 2,895).

42. 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.

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

2. The third party intervener

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

3. The Court's assessment

45. 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 38 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. Such an objection has already been examined and rejected by the Court for the reasons stated in paragraphs 20-22 above.

46. 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

47. In their just satisfaction claims of 29 September 1999, relying on bills from their representatives, the applicants sought CYP 11,265.62 (approximately EUR 19,248) for the costs and expenses incurred before the Court. This sum included CYP 5,400 (approximately EUR 9,226) for the costs of the expert report assessing the value of their properties. 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 1,955 and EUR 2,000 respectively. The total sum sought for cost and expenses was thus approximately EUR 23,203.

48. The Government did not comment on this point.

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

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

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

4. *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 a violation of Article 1 of Protocol No. 1 of the Convention, for the same reasons as those mentioned in my dissenting opinion in the case of *Alexandrou v. Turkey* (no. 16162/90, 20 January 2009).

v. TURKEY JUDGMENT (MERITS)