FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 43685/98)

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. 43685/98) 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 a Cypriot national, Mr [redacted] ("the applicant"), on 15 September 1998.

2. The applicant was represented by Mr A. Demetriades, a lawyer practising in Nicosia. The Turkish Government ("the Government") were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged that the Turkish occupation of the northern part of Cyprus had deprived him of his 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 25 June 2002 the Court declared the application admissible.

6. The applicant 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 applicant was born in 1923 and lives in Nicosia.

8. The applicant stated that he was born in Karavas, a village on the coast in the Kyrenia district of northern Cyprus. On the death of his father, he inherited the house, located at [redacted], in which he had lived throughout his childhood. It was situated on plots nos. 268 and 269, sheet/plan XI/16W1 and 8W2, and was registered in the name of the applicant by virtue of registration no. 5725 of 23 March 1956; it

consisted of three ground floor rooms, two basement rooms, one kitchen, two wells, one turbine water pump and one water storage tank. The applicant continued to make use of this house, where his sister lived, until July 1974.

9. However, when he married in 1963, the applicant moved to a house nearby which he had purchased. It was situated on plots nos. 20 and 21/3, sheet/plan XI/16W2.E1, and was registered in the name of the applicant by virtue of registration no. 5678 of 23 January 1970. This second house, located at [redacted] consisted of three ground floor rooms, one room upstairs, two wells, one electric water pump and one water storage pump.

10. The applicant also owned three plots of land in Karavas, some of which were lemon groves, with olive and carob trees growing on the others, and a share in a natural water spring. These properties were registered as follows:

(a) plot no. 273, sheet/plan XI/16W1, field with lemon groves of a total extent of 6,355 m², registered in the name of the applicant by virtue of registration no. 151 of 23 March 1956;

(b) plot no. 25, sheet/plan XII/18W1, field with carob and olive trees of a total extent of 11,372 m², registered in the name of the applicant by virtue of registration no. 4091 of 16 April 1957;

(c) plots nos. 76 and 79, sheet/plan XII/18W1, field with carob and olive trees of a total extent of 35,452 m², registered in the name of the applicant by virtue of registration no. 4269 of 23 January 1970;

(d) plot no. 140, sheet/plan XI/24W2, source of running water, registered for the 1/224 share in the name of the applicant.

11. In support of his claim to ownership the applicant produced the original Land Certificates concerning each of his alleged properties, with the exception of the house described under paragraph 9 above. He alleged that the relevant Land Certificate had been submitted to the Kyrenia Land Survey Office for amendment in June 1974 and had been lost due to the Turkish invasion. He therefore produced an extract from the registries of the Republic of Cyprus, dated 29 June 1993, and indicating that the property at issue was registered in his name.

12. Upon the 1974 Turkish intervention, the applicant left with his wife and two children for Limassol, southern Cyprus. He claimed that he had been deprived of his property rights, all his property being located in the area which was under the occupation and control of the Turkish military authorities. The latter had prevented him from having access to and from using and possessing his houses and fields.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

13. The Government 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

14. The applicant complained that since July 1974, Turkey had prevented him from exercising his right to the peaceful enjoyment of his possessions.

He 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."

15. The Government disputed this claim.

16. The applicant relied, essentially, on the principles laid down by the Court in the cases of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions* 1996-VI, 18 December 1996) and *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001–IV).

17. The Government of Cyprus observed that the respondent Government did not contest the applicant's claims to ownership. It further noted that the present case was similar to that of *Loizidou v. Turkey* ((merits), cited above), where the Court 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 "Turkish Republic of Northern Cyprus" (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.

18. The Court first notes that the documents submitted by the applicant (see paragraph 11 above) provide *prima facie* evidence that he 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 applicant had a "possession" within the meaning of Article 1 of Protocol No. 1.

19. 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.
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> 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."

20. 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."

21. 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).

22. 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 applicant was denied access to and control, use and enjoyment of his properties as well as any compensation for the interference with his property rights.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant submitted that in 1974 he had had his home in Karavas. As he had been unable to return there, he had been the victim 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."

24. The Government disputed this claim.

25. 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.

26. In its decision on the admissibility of the application, the Court found that the applicant's house described in paragraph 9 above constituted a "home" for the purposes of Article 8 § 1 of the Convention, and that impossibility for the applicant to return to this house constituted an interference with his Article 8 rights.

27. The Court observes that the present case differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the applicant actually had a home in northern Cyprus.

28. The Court notes that since 1974 the applicant had 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.
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> 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."

29. 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).

30. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention on account of the complete denial of the applicant's right to respect for his home.

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

31. In his further observations of 30 August 2002, the applicant complained of a violation under Article 14 of the Convention on account of discriminatory treatment against him in the enjoyment of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1. He alleged that this discrimination had been based on his 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."

32. The Court first notes that this complaint was not included in its decision on the admissibility of the application. In any event, and even assuming that it had been raised by implication in the applicant's previous pleadings, it 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).

V. 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 applicant

34. In his just satisfaction claims of 30 August 2002, the applicant requested 870,000 Cypriot pounds (CYP – approximately 1,486,482 euros (EUR)) for pecuniary damage. He relied on an expert's report assessing the value of his losses which included the loss of annual rent collected or expected to be collected from renting out his properties, 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 1 January 2003. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the properties. The evaluation report contained a description of the Karavas village and of the applicant's properties.

35. The starting point of the valuation report was the rental value of the applicant's properties in 1974, calculated as a percentage (varying from 4 to 6%) of their 1974 open market value. The houses the applicant owned (see paragraphs 8 and 9 above) were of about 120 and 100 m² respectively. According to the expert, in 1974 their market value, together with the land annexed to them, could be estimated at CYP 20,500 (approximately EUR 35,026) and CYP 29,000 (approximately EUR 49,549). The plots of land described under paragraph 10 (a), (b) and (c) above had a 1974 market value of CYP 50,000 (approximately EUR 85,430), 51,000 (approximately EUR 87,138) and 53,000 (approximately EUR 90,555) respectively. The market value of the applicant's share in the natural water spring (see paragraph 10 (d) above) was estimated at CYP 2,700 (approximately EUR 4,613).

36. The rents were subsequently adjusted upwards according to an annual increase of 5% and compound interest for delayed payment was applied at a rate of 8% per annum.

37. On 24 January 2008, following a request from the Court for an update on the developments of the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the loss of the use of the property from 1 January 1987 to 31

December 2007. He 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 694,827 plus CYP 879,339 for interest. The total sum claimed under this head was thus CYP 1,574,166 (approximately EUR 2,689,620).

38. In his just satisfaction claims of 30 August 2002, the applicant further claimed CYP 228,000 (approximately EUR 389,560) in respect of non-pecuniary damage. In particular, he claimed CYP 38,000 (approximately EUR 64,926) for the anguish and frustration he suffered on account of the continuing violation of his property rights. He 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 applicant also claimed CYP 114,000 (approximately EUR 194,780) for the distress and suffering he had been subjected to due to the denial of his right to respect for his home, and CYP 76,000 (approximately EUR 129,853) for the violation of his rights under Article 14 of the Convention.

39. Finally, in his updated claims for just satisfaction of 24 January 2008, the applicant requested the additional sum of EUR 50,000 for non-pecuniary damages.

(b) The Government

40. In reply to the applicant's just satisfaction claims of 30 August 2002, the Government submitted that Turkey had no access to lands records in the "TRNC" and could not therefore have sufficient knowledge about the applicant's alleged immovable properties' value.

41. The properties left by the applicant had been considered abandoned and had been expropriated under the laws of the "TRNC". It was impossible for Turkey to adopt any domestic provision regarding the expropriations made by another independent State. It should also be taken into account that during the last decades the landscape in northern Cyprus had considerably changed and that these changes had affected the applicant's properties. The issue of reciprocal compensation for Greek-Cypriot property left in the north of the island and Turkish-Cypriot property left in the south was very complex and should be settled through negotiations between the two sides rather than by adjudication by the European Court of Human Rights, acting as a first-instance tribunal and relying on the reports produced by the applicant side only.

42. Challenging the conclusions reached by the Court in the *Loizidou* case ((just satisfaction), cited above), the Government considered that in cases such as the present one, no award should be made by the Court under Article 41 of the Convention. They underlined that the applicant's inability to have access to his properties depended on the political situation in Cyprus and, in particular, on the existence of the UN recognised cease-fire lines. If Greek-Cypriots were allowed to go to the north and claim their properties, chaos would explode on the island; furthermore, any award made by the Court would undermine the negotiations between the two parties.

43. The Government filed comments on the applicant's 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.

44. The Government further noted that some applicants had shared properties and that it was not proved 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.

45. 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 applicant had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

46. 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 applicant the option to sell the property to the State, thereby relinquishing title to and claims in respect of it.

47. The report prepared by the Turkish-Cypriot authorities specified that the immovable properties referred to in the application were possessed by refugees; they could not, therefore, 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 properties between 1974 and the date of payment. Had the applicant applied to the Immovable Property Commission, the latter would have offered CYP 175,666.13 (approximately EUR 300,143) to compensate the loss of use and CYP 187,113.57 (approximately EUR 319,702) for the value of the properties. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the applicant's properties was the following:

- house described in paragraph 8 above: CYP 1,500 (approximately EUR 2,562);
- house described in paragraph 9 above: CYP 5,500 (approximately EUR 9,397);
- field described in paragraph 10 (a) above: CYP 7,125 (approximately EUR 12,173);

- field described in paragraph 10 (b) above: CYP 8,500 (approximately EUR 14,523);
- field described in paragraph 10 (c) above: CYP 7,950 (approximately EUR 13,583).

No estimate was given for the source of running water described in paragraph 10 (d) above.

48. Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicant exchange of his properties with Turkish-Cypriot properties located in the south of the island.

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

2. The third party intervener

50. The Government of Cyprus fully supported the applicant's 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 applicant's title of ownership over the properties at issue (see paragraphs 40 and 43 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 applicant had a "possession" over the properties in Karavas within the meaning of Article 1 of Protocol No. 1 (see paragraph 18 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 applicant of the 1974 market value of his 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 applicant (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

53. In his just satisfaction claims of 30 August 2002, relying on bills from his representative, the applicant sought CYP 4,621.6 (approximately EUR 7,896) for the costs and expenses incurred before the Court. This sum included CYP 2,000 (approximately EUR 3,417) for the costs of the expert report assessing the value of his properties. On 25 November 2002, the applicant submitted additional bills of costs from his lawyer, amounting to CYP 734.5 (approximately EUR 1,254). On 15 January 2004, he claimed additional expenses amounting to CYP 2,645 (approximately EUR 4,519). Finally, in his updated claims for just satisfaction of 24 January 2008, the applicant submitted additional bills of costs for the new valuation report and for legal fees amounting to CYP 2,000 (approximately EUR 3,417) plus V.A.T. and EUR 2,955.5

(including V.A.T.) respectively. The total sum claimed under this head was thus approximately EUR 20,041.

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 applicant.

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

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

5. *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 applicant 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).