

FOURTH SECTION

CASE OF ██████████ v. TURKEY

(Application no. 21887/93)

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. 21887/93) 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 ██████████ (“the applicant”), on 30 December 1992.

2. The applicant, who is a lawyer, presented his own case before the Court. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived him of his 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 24 August 1999 the Court declared the application partly 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 1944 and lives in Athienou.

8. The applicant alleged to be the owner of 11 plots of land situated in the northern part of Cyprus. His properties were registered as follows:

(a) Nicosia/Piroi, plot no. 124, sheet/plan 31/26, registration no. 4475, share: ½, area: 25,753 square metres (m²);

(b) Larnaca/Athienou, plot no. 607, sheet/plan 31/46, registration no. 31803, share: whole; area: 2,342 m²;

(c) Larnaca/Athienou, plot no. 670, sheet/plan 31/46, registration no. 23140, share: whole; area: 1,673 m²;

(d) Larnaca/Athienou, plot no. 671, sheet/plan 31/46, registration no. 25893, share: whole; area: 1,673 m²;

(e) Larnaca/Athienou, plot no. 635, sheet/plan 31/46, registration no. 23158, share: whole; area: 2,676 m²;

(f) Larnaca/Athienou, plot no. 291, sheet/plan 31/54, registration no. 25885, share: whole; area: 11,706 m²;

(g) Larnaca/Athienou, plot no. 339, sheet/plan 31/43, registration no. 25887, share: whole; area: 6,680 m²;

(h) Larnaca/Athienou, plot no. 338, sheet/plan 31/43, registration no. 23126, share: whole; area: 6,666 m²;

(i) Larnaca/Athienou, plot no. 82, sheet/plan 31/43, registration no. 29092, share: whole; area: 5,017 m²;

(j) Larnaca/Athienou, plot no. 122, sheet/plan 31/36, registration no. 23392, share: 1/2; area: 12,041 m²;

(k) Larnaca/Arsos, plot no. 59, sheet/plan 32/25, registration no. 842, share: 1/2; area: 22,409 m².

9. In support of his claim to ownership, the applicant produced copies of the original title deeds and a cadastral plan on which his lands were marked in red. He specified that the plots of land described in paragraph 8 (a) and (k) above belonged to his father, who had transferred them to him on 10 April 1997 and 23 June 1995 respectively. Plot (a) was land which could be developed, located 150 metres from the road connecting Nicosia and Larnaca.

10. The applicant had been forced to leave his properties by reason of the 1974 Turkish invasion, his lands being located in the area which was under the occupation and overall control of the Turkish military authorities. The latter had prevented him from having access to and from using his lands. He had been continuously prevented from entering the northern part of Cyprus.

11. In December 1992 the applicant took part in a peaceful march to the Saint Epiphaniou church, which was located in the occupied part of Cyprus in the vicinity of the Athienou village.

12. On 8 December 1992 the Athienou Town Council invited the Ambassador of Turkey to the Council of Europe to request the Turkish Government to give the Turkish military forces in Cyprus instructions aimed at permitting the peaceful and free accomplishment of the said march. On 13 December 1992 the applicant and approximately 200 other persons left Athienou and reached the UN buffer zone, where they were stopped by the UN forces in Cyprus (UNFICYP). UNFICYP officials informed the applicant and the other demonstrators that in the absence of an authorisation from the Turkish-Cypriot authorities their security could not be guaranteed. The applicant and his fellow demonstrators had to abandon their plan to reach the Saint Epiphaniou church.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

13. The Government raised preliminary objections of inadmissibility *ratione loci* and *ratione temporis*, non-exhaustion of domestic remedies and lack of victim status. The Court observes that these objections 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.

A. The arguments of the parties

1. The Government

16. The Government submitted that the properties claimed by the applicant were situated outside the jurisdiction of Turkey and that the latter had no knowledge of them. In any event, the applicant had not indicated the locality where his alleged possession was situated and had confined himself to providing certain registration numbers. In these circumstances, it was not possible for the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”) to check the reality of the applicant's claims, which were unsubstantiated. Moreover, the applicant's “attempt” to enter the northern part of Cyprus had been a propaganda ploy. He and the other demonstrators were aware that the UN forces in Cyprus would not have allowed them to cross the UN buffer zone.

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

2. The applicant

18. The applicant noted that his claim to ownership was based on copies of the relevant title deeds. He relied on the principles laid down by the Court in the case of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions* 1996-VI, 18 December 1996).

B. The third-party intervener

19. 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 the title to properties in northern Cyprus. It was therefore the duty of the respondent Government to produce them.

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

C. The Court's assessment

21. The Court first notes that the documents submitted by the applicant (see paragraph 9 above) provide *prima facie* evidence that he has 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.

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

“63. ... as a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment.

64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.

It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.

Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention. In such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1.”

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

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

...

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

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

25. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the 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 ARTICLES 1 AND 18 OF THE CONVENTION AND OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

26. The applicant complained of a violation of the general obligation to respect human rights enshrined in Article 1 of the Convention. He also invoked Article 18 of the Convention, alleging that the restrictions on his rights had not been applied for the purposes for which they had been prescribed. He further 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 1 of Protocol No. 1. He alleged that this discrimination had been based on his national origin and religious beliefs.

The relevant provisions read as follows:

Article 1 of the Convention

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

Article 14 of the Convention

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 18

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

27. The Government disputed these claims.

28. 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). Similar considerations apply to the applicant's claim under Article 18 of the Convention. Moreover, the Court has found the respondent Government to be in breach of Article 1 of Protocol No. 1 and does not consider it necessary to examine the complaint under

Article 1, which is a framework provision that cannot be breached on its own (see *Ireland v. the United Kingdom*, Series A no. 25, § 238, 18 January 1978, and *Eugenia Michaelidou Ltd and Michael Tymvios*, cited above, § 42).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicant submitted that, contrary to Article 13 of the Convention, he did not have at his disposal any effective remedy to redress the above-mentioned grievances.

This provision reads as follows:

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

30. The Government disputed this claim, observing that the “effective remedy” mentioned in Article 13 of the Convention necessarily referred to a remedy in the domestic law of the “TRNC”. Turkey could neither interfere with the judicial system of the “TRNC” nor provide remedies to supplement those existing under domestic law. In the light of the above, the Government submitted that no issue under Article 13 could be raised by the present application.

31. The Court notes that the applicant has submitted no pleadings on this point, including on the issue of applicability. It considers therefore that it is not necessary to examine this complaint (see *Demades*, cited above, § 48).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. In his just satisfaction claims of 29 October 1999, the applicant requested 30,197 Cypriot pounds (CYP – approximately 51,594 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 plots of land, 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 October 1999. 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 applicant's plots of land in the Districts of Nicosia and Larnaca.

34. The starting point of the valuation report was the rental value of the applicant's 11 plots of land in 1974, calculated on the basis of a percentage (5%) of the market value of

the properties. According to the expert, the total annual rent which could have been obtained in 1974 was CYP 353 (approximately EUR 603). This sum was subsequently adjusted upwards according to an annual rental increase (varying from 5% to 7%), in order to arrive at the total annual rent receivable in 1987 (CYP 853) and in 1999 (CYP 3,111). For the plots described in paragraph 8 (a) and (k) above, the rent receivable was calculated only from the dates (1997 and 1995 respectively) on which the applicant acquired ownership of the fields (see paragraph 9 above). Compound interest for delayed payment was applied at a rate of 8% per annum.

35. The applicant further requested CYP 160,000 (approximately EUR 273,376) for the impossibility of developing the plot described in paragraph 8 (a) above, which was land which could be developed, located at approximately 12 kilometres from Nicosia. The total sum requested in 1999 for pecuniary damage was thus CYP 190,197 (approximately EUR 324,970).

36. On 11 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. He alleged that the time elapsed since 1999 had increased his losses and that the total sum due for pecuniary damage was at least CYP 1,550,000 (approximately EUR 2,648,330).

37. In his just satisfaction claims of 29 October 1999, the applicant moreover claimed CYP 140,000 (approximately EUR 239,204) in respect of non-pecuniary damage. In particular, he requested CYP 5,000 per year for the period 1987-1991, CYP 10,000 per year for the period 1992-1999 plus the additional sum of CYP 35,000.

(b) The Government

38. 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.

39. 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.

40. As concerns specifically the present application, the Government noted that the decision on admissibility only referred to registration numbers in respect of property at

the Ayios Epiphanios village and that the applicant's title deeds were forwarded to them only at a later stage of the proceedings. They further pointed out that it was not possible to identify the property claimed by the applicant where there was no "plot" or "sheet/plan" reference in addition to the locality.

41. 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.

42. 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.

43. 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 above. In case the conditions for restitution were not fulfilled, the applicant could claim financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the property between 1974 and the date of payment. Had the applicant applied to the Immovable Property Commission, the latter would have offered CYP 6,837.24 (approximately EUR 11,682) to compensate the loss of use and CYP 7,282.59 (approximately EUR 12,443) for the value of the property. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of the applicant's properties was the following:

- plot of land described in paragraph 8 (b) above: CYP 80 (approximately EUR 136);
- plot of land described in paragraph 8 (c) above: CYP 50 (approximately EUR 85);
- plot of land described in paragraph 8 (d) above: CYP 50 (approximately EUR 85);
- plot of land described in paragraph 8 (e) above: CYP 80 (approximately EUR 136);
- plot of land described in paragraph 8 (f) above: CYP 350 (approximately EUR 598);
- plot of land described in paragraph 8 (g) above: CYP 200 (approximately EUR 341);
- plot of land described in paragraph 8 (h) above: CYP 200 (approximately EUR 341);
- plot of land described in paragraph 8 (j) above: CYP 180 (approximately EUR 307).

No estimate was given for the plots described in paragraph 8 (a), (i) and (k) above.

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

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

2. *The third party intervener*

46. The Government of Cyprus fully supported the applicant's updated claims for just satisfaction.

3. *The Court's assessment*

47. 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 38 and 40 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 described in paragraph 8 above within the meaning of Article 1 of Protocol No. 1 (see paragraph 21 above).

48. 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

49. In his just satisfaction claims of 29 October 1999, the applicant, who presented his own case before the Court (see paragraph 2 above), sought CYP 5,296 (approximately EUR 9,048) for the costs and expenses incurred before the Court. This sum included CYP 1,296 (approximately EUR 2,214) for the costs of the expert report assessing the value of his properties.

50. The Government did not comment on this point.

51. 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* unanimously that it is not necessary to examine whether there has been a violation of Articles 1, 13, 14 and 18 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 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 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).

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