FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 16160/90)

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. 16160/90) 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 26 January 1990.

2. The applicant was represented by Mr C. Clerides and Mr A. Demetriades, two lawyers practising in Nicosia. 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 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 26 September 2002 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

7. The applicant was born in 1938 and lives in Nicosia.

8. The applicant was born in Peristerona, a village in the District of Famagusta in northern Cyprus. He lived in Famagusta with his family in a four-bedroom apartment with an unobstructed view towards the sea, which he claimed that he owned. This apartment, located at no. 128 of the commercial and touristic main street named Kennedy Avenue, was indicated by no. 703 on a building erected upon a building site with plot

no. 937 of block C and sheet/plan 33/21.2.3. It was registered in the name of the applicant under registration no. 1057.

9. The applicant further claimed that at the time of the 1974 Turkish invasion he was the owner of land in Famagusta on which was located an Intercommunal Secondary Grammar school, known as the "Centre of Higher Studies". This land covered a total area of 6,299 m², on plot no. 900 of block D and sheet/plan 24/59W2. It was registered in the name of the applicant under registration no. D-4840. On this land the applicant had erected a three-storey building, which had a total area of 2,020 m², comprising a basement, ground floor and two vertical floors above it. The applicant submitted that he was the owner and headmaster of the above-mentioned school, the premises of which are now part of the "Eastern Mediterranean University".

10. In support of his claims to ownership, the applicant produced the following documents:

- an agreement reached on 1 September 1968 between a certain [redacted] and Mr [redacted] (a member of the applicant's family) for the sale of an apartment located on the seventh floor of a flat on the Famagusta coast;
- a certificate issued on 28 November 2002 by the Department of Lands and Surveys of the Republic of Cyprus stating that the applicant was the owner of a flat without parking space, located in Famagusta, Kennedy Avenue, registered under plot no. 937, sheet/plan 3/21.2.3;
- a certificate issued on 11 September 2001 by the Department of Lands and Surveys of the Republic of Cyprus stating that the applicant was the owner of a field with an unregistered building, located in Famagusta, Salaminas Avenue, registered under plot no. 900, sheet/plan 24/59;
- a building permit issued on 11 September 1963 concerning plot no. 900, sheet/plan 24/59

11. At the time of the 1974 Turkish invasion, the applicant and his family fled to southern Cyprus. He claimed that since then he had been deprived of his property rights, all his property being located in the area which is under the occupation and the control of the Turkish military authorities. The latter prevented him from having access to and from using and possessing his home and property in Famagusta as well as from practising his profession there.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

12. 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

13. 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 of Protocol No. 1, which reads as follows:

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

14. The Government disputed this claim.

A. The arguments of the parties

1. The Government

15. The Government submitted that the applicant had not produced any evidence supporting his claims to ownership. The plot of land within the campus of the "Eastern Mediterranean University", which the applicant alleged belonged to him in 1974, was in fact registered in the name of the Government of Cyprus. It subsequently devolved to the Turkish Federated State of Cyprus, and then to the "Turkish Republic of Northern Cyprus" (the "TRNC") by virtue of the mandatory provisions of Article 159 of the Constitution of the "TRNC". Consequently, the immovable property in question belonged to the "TRNC" and had been delivered to the use of the above-mentioned University.

2. The applicant

16. The applicant claimed that the original title deeds were held at his premises in Famagusta. He had been forced to leave these premises in great haste and had subsequently been unable to return there or otherwise retrieve the title deeds. He maintained, however, that the documents attached to his observations constituted evidence of his title to the land where the school was located and clearly showed that that land was not owned by the Government of Cyprus.

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

B. The Court's assessment

18. The Court first notes that the documents submitted by the applicant (see paragraph 10 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, and taking into account the circumstances in which the applicant had been compelled to leave northern Cyprus, the Court considers that he 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.

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."

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 Famagusta. As he had been unable to return there, he was 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 applicant submitted that, contrary to the applicant in the *Loizidou* case, he had been the owner of an apartment in Famagusta and that until 1974 he and his family had been using these premises as their home.

26. The Court notes that the Government failed to produce any evidence capable of casting doubt upon the applicant's statement that, at the time of the Turkish invasion, he was regularly residing in Famagusta and that this apartment was treated by the applicant and his family as a home.

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

28. 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 Famagusta.

29. The Court notes that since 1974 the applicant has 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.

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."

30. 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).

31. 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 1 OF THE CONVENTION AND OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

32. The applicant complained of a violation of the general obligation to respect human rights enshrined in Article 1 of the Convention. He also 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.

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."

33. The Government disputed these claims.

34. 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). Moreover, the Court has found the respondent Government to be in breach of Article 1 of Protocol No. 1 and of Article 8 of the Convention 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,* § 238, 18 January 1978, Series A no. 25, and *Eugenia Michaelidou Ltd and Michael Tymvios,* cited above*,* § 42).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. In his just satisfaction claims of 3 December 2002, the applicant requested 3,960,739 Cypriot pounds (CYP – approximately 6,767,318 euros (EUR)) for pecuniary

damage. He relied on an expert's report assessing the value of his loss which included the loss of annual rents collected or expected to be collected from the use of his school and from renting out his apartment, 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 31 December 2002. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the properties. He underlined that his family bought the apartment in Kennedy Avenue from a certain [redacted] in 1968 for CYP 6,300 (approximately EUR 10,764), as evidenced by the relevant sale agreement. Calculating a 12% annual increase, in 1987 this property was worth CYP 54,206 (approximately EUR 92,616) and an annual rent of CYP 3,527 (approximately EUR 6,026) could have been obtained from it. The total rent expected to be collected in the period 1987-2002 was CYP 70,779 (approximately EUR 120,932).

37. As far as the applicant's school was concerned, the valuation report took into account the following damages:

(a) the trade disturbance for not being allowed to conduct the established course of business and for being forced to relocate and restart the business in Nicosia in 1992 (amounting to CYP 2,155,519); in this respect, the expert noted that the profits which could have been expected from running the school were CYP 118,818 (approximately EUR 203,012) in 1987 and CYP 170,732 (approximately EUR 291,712) in 1992, while the profits obtained by the applicant from the business he restarted in Nicosia were, in 1992, only CYP 102,236 (approximately EUR 174,680);

(b) the rents expected to be collected from renting or leasing the school until 1991 (the annual rent in 1987 being estimated at CYP 23,054 – approximately EUR 39,390);

(c) the rent paid by the applicant from 1992 onwards for occupying the premises in Nicosia where he had restarted his business (amounting to CYP 220,757);

(d) the statutory interest on the above sums.

38. The calculations made in the valuation report were based on the Consumer Price and Rent and Housing Indices for the years 1960-2002 (issued by the Department of Statistics and Research of the Government of Cyprus), on the financial picture of Famagusta, on the expected growth of the applicant's business, on the location of the premises and on their expected increase in value.

39. The expert presumed that the price of the applicant's apartment would have risen constantly by 12 % each year for the period from 1968 to 1987. He then aggregated the rents that could have been collected from 22 January 1987 until 31 December 2002, calculated as 6.25% of the estimated market value of the property for each of the years in question, plus interest from the date on which such rent was due until the date of payment.

40. On 25 January 2008, following a request from the Court for an update on developments of the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the loss of use of the properties 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 4,272,291, plus CYP 1,909,355 for interest. The total sum claimed under this head was thus CYP 6,181,646 (approximately EUR 10,561,960).

41. In his just satisfaction claims of 3 December 2002, the applicant further claimed CYP 228,000 (approximately EUR 389,560) in respect of non-pecuniary damage. In particular, he first 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.

42. Finally, in his updated claims for just satisfaction of 25 January 2008, the applicant requested the additional sum of EUR 50,000 for non-pecuniary damage.

(b) The Government

43. In reply to the applicant's just satisfaction claims of 3 December 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. In any event, according to the information given by the "TRNC" authorities, the apartment in Kennedy Avenue was not registered in the name of the applicant, but in the name of a certain [redacted] Moreover, as the land on which the block of flats was constructed belonged to a Turkish religious trust known as *Vakif*, it could not have been alienated under the laws of Cyprus. It followed that the purported transfer of property in favour of the applicant was null and void.

44. 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.

45. 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 of the island 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.

46. 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. 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.

47. 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.

48. The Government also 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.

49. 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.

50. The report prepared by the Turkish-Cypriot authorities specified that the properties claimed by the applicant, currently possessed by refugees and by the Ministry of Education, 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 applicant applied to the Immovable Property Commission, the latter would have offered CYP 287,279.03 (approximately EUR 490,844) to compensate the loss of use and CYP 305,991.12 (approximately EUR 522,816) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of apartment claimed by the applicant was CYP 5,000 (approximately EUR 8,543), while the properties described in paragraph

9 above were worth CYP 45,000 (approximately EUR 76,887). 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.

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

2. The Court's assessment

52. 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 43 and 46 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 apartment, land and building in Famagusta within the meaning of Article 1 of Protocol No. 1 (see paragraph 18 above).

53. 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

54. In his just satisfaction claims of 3 December 2002, relying on bills from his representatives, the applicant sought CYP 5,932.14 (approximately EUR 10,135) plus V.A.T. (to be calculated at a rate of 15%) for the costs and expenses incurred before the Court. This sum included CYP 3,250 (approximately EUR 5,552) for the costs of the expert report assessing the value of his properties. On 14 July 2003, the applicant submitted additional bills of costs from his lawyers, amounting to a total of CYP 10,350 (approximately EUR 17,684) plus V.A.T. 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 25 January 2008, the applicant submitted additional estimated bills of costs amounting to EUR 39,297.83 and EUR 2,955.5.

55. The Government did not comment on this point.

56. 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 Articles 1 and 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).