FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 36705/97)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

06/07/2009

This judgment 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 December 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36705/97) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mr [redacted] ("the applicant"), on 9 June 1997.

2. The applicant was represented by Mr C. Clerides, 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 prevented him from having access to 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 8 June 1999 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 1955 and lives in Nicosia.

8. The applicant claimed that until July 1974 he used to live with his family in a house belonging to his parents in Lapithos, a village in the District of Kyrenia. In July 1974, as the Turkish army was advancing, the applicant and his family had been forced to leave Lapithos. Ever since, they have not been able to return to the applicant's parents' house.

9. On 20 April 1990 the applicant's parents donated half of their house to the applicant. They also donated to him half of three other houses, two shops and a number of plots of land and water installations in Lapithos. The remaining half of the properties mentioned above was transferred to the applicant's sister. The transfers at issue were recorded in the Land Registry of the Republic of Cyprus.

10. The applicant produced the relevant affirmations of ownership issued by the Republic of Cyprus. According to these documents, the applicant's properties could be described as follows:

(a) plot no. 288/3, sheet/plan 11/14 E.1, plot of land – olive grove, area 2,282 sq. m;

(b) plots nos. 511 and 513, sheet/plan 11/14E.2, plots of land, area: 3,862 sq. m and 3,405 sq. m respectively;

(c) plots nos. 19, 20, 28 and 29, sheet/plan 11/15W.1, plots of land, area: 1,053 sq. m, 1,024 sq. m, 1,769 sq. m and 1,405 sq. m respectively;

(d) plots nos. 98 and 128/1, sheet/plan 11/15W.2, lemon plantations, area: 5,219 sq. m and 1,469 sq. m respectively;

(e) plot no. 296, sheet/plan 11/15W.2, lemon plantation with bore hole, area: 4,877 sq. m;

(f) plots nos. 22, 22/1, 22/2, 22/3 and 22/4, sheet/plan 11/15W.2 and E.2, lemon plantation with two wells and one ground storey residence, area: 7,032 sq. m;

(g) plot no. 42, sheet/plan 11/15W.2.E (no. 2), lemon plantation, area: 1,018 sq. m;

(h) plot no. 104, sheet/plan 11/15W.2.E (no. 2), tank of an area of 37 sq. m with a freshwater spring;

(i) plots nos. 60/1/2, 63/1 and 63/3, sheet/plan 11.23E.1,W (no. 1), lemon plantation (area: 2,358 sq. m) with a bore hole and one tank (area: 84 sq. m); on this property had been constructed: a ground storey residence of an area of 152.25 sq. m; two shops of an area of 56 sq. m; two semidetached ground storey residences (areas: 152.25 sq. m and 63 sq. m respectively); one residence of an area of 219.41 sq. m;

(j) plots nos. 53, 773, 774, 775 and 776, sheet/plan 11/23W.2,E.1 and 11/23W1E (no. 2), right to use a freshwater spring.

11. The applicant alleged that the Turkish occupation of northern Cyprus had prevented him from using and/or enjoying his properties.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The Government's objections

1. Objection of inadmissibility ratione materiae and ratione temporis

12. The Government submitted that, according to the records of the "Turkish-Cypriot Lands Office" in Girne/Kyrenia, in 1974 the applicant had not been the owner of any property located in northern Cyprus. Nor was he, according to the same source, the owner of any property at the present time. Given that in 1974 the applicant had had no right or interest in relation to the properties at issue, no question of a continuing violation of

Article 1 of Protocol No. 1 could arise. Even assuming that the applicant had acquired the properties in question in 1990, this would have happened sixteen years after the events of 1974 and three years after the deposit of Turkey's declaration recognising the right of individual petition. Therefore, he should have known that access to the properties was practically impossible and that the Turkish-Cypriot authorities had expropriated it.

13. In the light of the above, the Government argued that the application was incompatible either *ratione materiae* or *ratione temporis* with the provisions of the Convention.

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

14. In their further observations of 23 October 2003, the Government raised a preliminary objection concerning non-exhaustion of domestic remedies in the light of the law on compensation for immovable properties located within the boundaries of the "Turkish Republic of Northern Cyprus (the "TRNC"), which was adopted on 30 June 2003 (Law no. 49/2003). They also noted that since 23 April 2003, Greek Cypriots had free access to the north of the island by showing passports at specified crossing points. Administrative and judicial remedies in the "TRNC" were therefore accessible to them.

15. Law no. 49/2003 provided for the establishment of an independent Immovable Property Determination, Evaluation and Compensation Commission with jurisdiction to award compensation for Greek-Cypriot immovable properties in the "TRNC", on the basis of the market value on 20 July 1974, plus compensation for the loss of use, loss of income and increases in the value of property. The decisions of this Commission could be appealed to the High Administrative Court. Given the existence of this remedy, the applicant could no longer claim to be a victim of a violation of his rights under Article 1 of Protocol No. 1.

B. The applicant's arguments

16. The applicant observed that his parents had been the lawful owners of the properties in question in 1974. The Government could have ascertained this by consulting the "Turkish Cypriot Lands Office". There had been the expectation that the applicant and his sister would, in due course, become the registered owners. Subsequent acts of the "TRNC" could not deprive the applicant's parents of their title (see *Loizidou v. Turkey*, (merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI). The applicant had become the legal owner of the properties on 20 April 1990 and this fact had been recorded by the official authorities of the Republic of Cyprus. The donation could not have been recorded by the "Turkish Cypriot Lands Office" because the authorities of the "TRNC" considered that the properties had already been expropriated. The Government could not rely on the records of the "Turkish Cypriot Lands Office" to contest the applicant's title.

17. Even assuming that the applicant had had no property rights until 20 April 1990, that would only mean that there had not been a continuing violation of his rights under Article 1 Protocol No. 1 between 1974 and that date. In order to establish that there had been a violation of these rights after 20 April 1990, it was sufficient to show that the applicant had not been allowed to enjoy his properties from that date onwards. In any event, the applicant had a proprietary interest in the properties in 1974 and the house

were he had been living had been his home. The fact that in 1990 the applicant might have known that he would not have enjoyed his property was irrelevant.

18. The applicant alleged that Law no. 49/2003 was aimed at providing a false and illusory domestic remedy in order to avoid the property claims of Greek Cypriots being adjudicated by the European Court of Human Rights. Furthermore, the objection of non-exhaustion had been raised after the application had been declared admissible. Law no. 49/2003 had not existed at the time when the application was lodged, did not provide a sufficient and effective remedy, was discriminatory and took as its basis that the expropriation was lawful. Furthermore, the applicant could lose his victim status only if the violation of the Convention was expressly recognised and fully remedied by the respondent Government's authorities. This had not happened in the present case.

C. Third-party intervener's arguments

19. The Government of Cyprus submitted that the applicant had acquired his rights as owner in 1990, after the deposit of Turkey's declaration recognising the right of individual petition. He was therefore entitled to complain about any violation which had occurred after that date. The appropriate claimant in respect of earlier violations would have been the previous owner (the applicant's parents).

20. The third-party intervener further submitted that the compensation available under Law no. 49/2003 did not alter the fact that the Court did not recognise the acts of the "TRNC" as expropriation. In any event, the said law did not provide any redress for breaches of Article 8 of the Convention and applied only to an extremely restricted category of violations of the right of property. It could not be considered an effective domestic remedy to be exhausted in relation to claims introduced or declared admissible before it was enacted or enforced. Finally, its provisions were incompatible with Articles 6, 13 and 14 of the Convention as well as with 1 of Protocol No. 1.

D. The Court's assessment

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

22. In their observations on the admissibility and merits of the application, the Government did not contest the applicant's statement that his parents had been the owners of properties in the District of Kyrenia. They argued, however, that the properties at issue had subsequently been expropriated by the "TRNC" authorities. The Court recalls that in the case of *Loizidou* ((merits), cited above, §§ 44 and 46) it held that it could not attribute legal validity for the purposes of the Convention to the provisions of Article 159 of the "TRNC" fundamental law, concerning the acquisition by the "TRNC" of the immovable properties considered to be abandoned on 13 February 1975. It furthermore considered that Greek Cypriots who, like Mrs Loizidou, had left their properties in the northern part of the island in 1974 could not be deemed to have lost title to their property. It follows that until 20 April 1990 the applicant's parents had still been the owners of the properties described in paragraph 10 above. They were therefore capable of transmitting ownership to their descendants.

23. The Court further notes that on 20 April 1990 the applicant's parents donated half of their properties to the applicant and that the latter registered his titles in the Land Registry of the Republic of Cyprus (see paragraph 9 above). In spite of this, he has been unable to make use of and have access to his properties. At the relevant time, Turkey had already recognised the right of individual petition. It is also to be recalled that the Court had duly examined and rejected the objection of inadmissibility by reason of lack of effective control over northern Cyprus raised by the Turkish Government in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 69-81, ECHR 2001-IV). It sees no reason to depart from its reasoning and conclusions in the instant case.

24. Lastly, as regards the objections of non-exhaustion of domestic remedies and lack of victim status raised by the Government in their further observations of 23 October 2003 relating to the Law on compensation for immovable properties located within the boundaries of the "TRNC", the Court notes that these objections were raised after the application was declared admissible. They cannot, therefore, be taken into account at this stage of the proceedings (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003).

25. It follows that the Government's preliminary objections should be dismissed.

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

26. The applicant complained that the Turkish occupation of northern Cyprus had prevented him from having access to his properties situated in that part of the island.

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."

A. The arguments of the parties

1. The Government

27. The Government submitted that, due to the relocation of the populations, it was necessary to facilitate the rehabilitation of Turkish-Cypriot refugees. The Greek-Cypriot side had taken similar measures in respect of abandoned Turkish-Cypriot properties in the southern part of the island.

28. It would be unrealistic and highly dangerous to recognise the right of the applicant to violate the United Nations "buffer zone" and have access to his alleged properties. Property rights and the question of reciprocal compensation had to be dealt with through negotiations, within the context of inter-communal talks. There was a public interest in not undermining these talks. The applicant's complaints had been the consequence of the political situation in Cyprus and not of the 1974 Turkish intervention.

2. The applicant

29. The applicant argued that the interference with his property rights could not be justified under Article 1 of Protocol No. 1. The policies of the "TRNC" could not furnish a legitimate aim since the establishment of the "TRNC" was an illegitimate act. In any event, the need to re-house displaced Turkish Cypriots could not justify the complete negation of the applicant's property rights. This conclusion was reinforced by the fact that much of the property taken from Greek Cypriots had been used to house settlers from mainland Turkey. The fact that property rights had been one of the subjects under discussion in the inter-communal talks could not justify the taking of property without compensation.

B. The third-party intervener's arguments

30. The Government of Cyprus observed that their Department of Lands and Surveys had provided certificates of affirmation to those persons who did not have title deeds in their possession but whose title was entered in District Land Offices registers in the Turkish-occupied area. These certificates were *prima facie* evidence of their right of property. The "TRNC" authorities were in possession of all the records of the Department of Lands and Surveys relating to the title to properties. It was therefore the duty of the respondent Government to produce them.

31. The Government of Cyprus 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.

D. The Court's assessment

32. 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.
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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."

33. 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."

34. 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* (merits), cited above, § 46).

35. Accordingly, it concludes that there has been and continues to be a violation of Article 1 of Protocol No. 1 by virtue of the fact that the applicant is 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

The applicant submitted that in 1974 he had had his home in Lapithos. 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."

36. The Government disputed this claim.

37. The applicant submitted that, contrary to the applicant in the *Loizidou* case, he had had his principal residence in Lapithos. He claimed that any interference with his Article 8 rights had not been justified under the second paragraph of this provision.

38. 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.

39. 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 Lapithos and that this house was treated by him and his family as a home.

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

41. 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.

42. 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 ...
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> 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."

43. The Court sees no reason in the instant case to depart from the above reasoning and findings in the case of *Cyprus v. Turkey* (*op. cit.*; see also *Demades v. Turkey* (merits), cited above, §§ 36-37).

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

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

45. The applicant complained of a violation under Article 14 of the Convention on account of discriminatory treatment against him in the enjoyment of him 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."

46. The Government disputed these claims. They noted that the differentiation of the Greek and Turkish-Cypriot communities had been a consequence of the political situation on the island which could not be an issue of discrimination under Article 14 of the Convention.

47. The Government of Cyprus submitted that the policy of the Turkish authorities in the occupied area as far as Greek-Cypriot homes and properties were concerned had been based upon racial discrimination. This was incompatible with Article 14 of the Convention and illegal in terms of customary or general international law.

48. The Court recalls that in the above-mentioned *Cyprus v. Turkey* case, it found that, in the circumstances of that case, the Cypriot Government's complaints under Article 14 amounted in effect to the same complaints, albeit seen from a different angle, as those considered in relation to Article 8 of the Convention and Article 1 of Protocol No. 1. Since it had found a violation of the latter provisions, it considered that it was not necessary in that case to examine whether there had been a violation of Article 14 taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for family life and home and to the peaceful enjoyment of their possessions (§ 199).

49. The Court sees no reason in this case to depart from that approach. Bearing in mind its conclusion on the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1, it finds that it is not necessary to carry out a separate examination of the complaint under Article 14 (see, *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

50. 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

51. In his just satisfaction claims of 29 September 1999, the applicant requested 695,625 Cypriot pounds (CYP – approximately 1,188,544 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 1999. The applicant did not claim compensation for any purported expropriation since he was still

the legal owner of the properties. The valuation report contained a description of Lapithos village.

52. The starting point of the valuation report was the annual rental value of the applicant's properties in 1974, calculated on the basis of a percentage (5 or 6%) of the market value of the properties or assessed by comparing the rental value of similar land at the relevant time. This sum was subsequently adjusted upwards according to an average annual rental increase of 12% or 5%. Compound interest for delayed payment was applied at a rate of 8% per annum, the total sum due for interest being CYP 226,344 (approximately EUR 386,731).

53. According to the expert, the 1974 market and rental values of the applicant's properties listed above in paragraph 9 (a) – (j) were the following:

Property listed under (a): market value CYP 2,510 (approximately EUR 4,288); rental value CYP 150.61 (approximately EUR 257);

Property listed under (b): market value CYP 4,059.13 (approximately EUR 6,935); rental value CYP 243.55 (approximately EUR 416);

Property listed under (c): market value CYP 14,600.3 (approximately EUR 24,946); rental value CYP 876.03 (approximately EUR 1,496);

Property listed under (d): market value CYP 11,133.75 (approximately EUR 19,023); rental value CYP 668.03 (approximately EUR 1,141);

Property listed under (e): market value CYP 14,631 (approximately EUR 24,998); rental value CYP 877.86 (approximately EUR 1,500);

Property listed under (f): market value CYP 15,554 (approximately EUR 26,575); rental value CYP 778 (approximately EUR 1,329);

Property listed under (g): market value CYP 1,781.5 (approximately EUR 3,043); rental value CYP 106.89 (approximately EUR 182);

Property listed under (h): market value CYP 5 (approximately EUR 8.5); rental value CYP 0.3 (approximately EUR 0.5);

Property listed under (i): market value CYP 28,294 (approximately EUR 48,343); rental value CYP 1,414.7 (approximately EUR 2,417);

Property listed under (j): market value CYP 5,250 (approximately EUR 8,970); rental value CYP 315 (approximately EUR 538).

54. In a letter of 28 January 2008 the applicant observed that a long lapse of time had passed since he had presented his claims for just satisfaction and that the claim for pecuniary losses needed to be updated according to the increase of the market value of land in Cyprus (between 10 and 15% per annum).

55. In his just satisfaction claims of 29 September 1999, the applicant claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. He stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), cited above), taking into account, however, that the period of time for which the damage was claimed in the instant case was longer and that there had also been a violation of Article 14 of the Convention. He further claimed CYP 70,000 (approximately EUR 119,602) in respect of the moral damage suffered for the loss of his home.

(b) The Government

56. Following a request from the Court, on 22 September 2008 the Government filed comments on the applicant's claims for just satisfaction. They observed that the Turkish Cypriot authorities had primary evidence as to the ownership of real estate in northern Cyprus, while the Greek Cypriot authorities only had secondary evidence. Under these circumstances, it could not be ruled out that the affirmations of ownership issued by the Republic of Cyprus had been based on *bona fide* errors which might have occurred in the reconstruction of the files in southern Cyprus. According to the searches made by the "TRNC" authorities, in 1974 the properties listed in paragraph 10 (d), (e), (i) and (j) above had not been owned by the applicant's father (Mr [redacted]). It followed that Mr [redacted] could not have transferred to the applicant properties over which he had had no title of ownership.

57. Furthermore, the applicant was only a co-owner of the properties which he had acquired in 1990. Before claiming an unfettered right to develop or lease such properties, he should satisfy the Court that at the domestic level the rights of the other co-owners had been respected. In particular, development or lease of co-owned properties depended on the other shareholders' consent. Without the latter, there could be no development and the property could not bring any profit.

58. The applicant's father was not a party to the proceedings and the applicant was not entitled to claim damages on his behalf for the period before the date on which he had acquired ownership. As an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment. 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.

59. The Government further submitted that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987, and that the question of compensation should be referred to the Immovable Property Determination, Evaluation and Compensation Commission, an organ which was in a better position to deal with complicated property issues.

60. The applicant had been unable to establish a title of ownership over any source of water and in any event the freshwater spring referred to in the application had dried up. As water was very scarce in Cyprus, it could be assumed that any freshwater spring which had existed many years ago would have been compulsorily acquired by the Government of Cyprus.

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

2. The third-party intervener

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

3. The Court's assessment

63. The Court first notes that the Government's submission that the records produced by the "TRNC" authorities showed that in 1974 the properties listed in paragraph 10 (d), (e), (i) and (j) above had not been owned by the applicant's father (see paragraph 56 above) is, in substance, a further 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 until 20 April 1990 the applicant's parents had been the owners of the properties described in paragraph 10 above (see paragraph 22 above).

64. The Court further notes that the Government's submission that the damage suffered by the applicant should be determined by the Immovable Property Determination, Evaluation and Compensation Commission and not by the Strasbourg organs is, in substance, a repetition of the objection of non-exhaustion of domestic remedies. Such an objection has been rejected by the Court for the reasons indicated in paragraph 24 of the present judgment. The Court does not see any reason to depart from its conclusions on this issue.

65. 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 plots of land 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

66. In his just satisfaction claims of 29 September 1999, the applicant sought CYP 5,480 (approximately EUR 9,363) and 1,410.93 British pounds (£) (approximately EUR 1,780) for the costs and expenses incurred before the Court. These sums (totalling EUR 11,143) included the cost of the expert report assessing the value of his properties.

67. The Government did not comment on this point.

68. 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 taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1;

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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Karakaş is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE KARAKAŞ

(Translation)

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 of Article 8 of the Convention.

The rule of exhaustion of domestic remedies is intended to give Contracting States the opportunity to prevent or provide redress for violations alleged against them before such allegations are referred to the Court. That reflects the subsidiary nature of the Convention system.

Faced with the scale of the problem of deprivations of title to property alleged by Greek Cypriots (approximately 1,400 applications of this type lodged against Turkey), the Court, in the operative part of its *Xenides-Arestis v. Turkey* judgment of 22 December 2005, required the respondent State to provide a remedy guaranteeing the effective protection of the rights set forth in Article 8 of the Convention and Article 1 of Protocol No. 1 in the context of all the similar cases pending before it. The State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41 of the Convention, but also to select the general or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The Government submitted that by enacting the Law on Compensation for Immovable Properties (Law no. 67/2005) and setting up a Commission to deal with compensation claims it had discharged that obligation (see also *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 37, 7 December 2006). It is that domestic remedy which, in their submission, the applicant failed to exercise in the present case.

The exhaustion of domestic remedies is **normally** assessed at the time when an application is lodged with the Court. However, there are exceptions to the rule which may be justified by **the particular circumstances of each case** (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001).

Examples of such exceptions are to be found in the cases against Italy which raised similar questions and in which the Court found that certain specific facts justified **departing from the general principle** (see *Brusco v. Italy* (dec.), no. 69789/01, 6 September 2001).

In other examples the Court also took the view, in the light of the specific facts of the cases concerned, and having regard to the subsidiary nature of the Convention mechanism, that new domestic remedies had not been exhausted (see the following decisions: *Nogolica v. Croatia*, no. 77784/01, 5 September 2002; *Slaviček v. Croatia*, no. 20862/02, 4 July 2002; *Andrášik and Others v. Slovakia*, nos. 57984/00, 60226/00, 60242/00, 60679/00, 60680/00 and 68563/01; and *Içyer v. Turkey*, no. 18888/02, 29 January 2002).

In situations where there is no effective remedy affording the opportunity to complain of alleged violations, individuals are systematically compelled to submit to the European Court of Human Rights applications which could have been investigated first of all within the domestic legal order. In that way, the functioning of the Convention system risks losing its effectiveness in the long term (the most pertinent example is the *Broniowski* case, no. 31443/96, 22 June 2004).

In my opinion the above examples provide an opportunity to review the conditions for admissibility in the event of a major change in the circumstances of the case. For the similar post-*Loizidou* cases, the Court can always reconsider its admissibility decision and examine the preliminary objection of failure to exhaust domestic remedies.

Since the Court may reject "**at any stage of the proceedings**" (Article 35 § 4 of the Convention) an application which it considers inadmissible, new facts brought to its attention may lead it, even when examining the case on the merits, to reconsider the decision in which the application was declared admissible and ultimately declare it inadmissible pursuant to Article 35 § 4 of the Convention, taking due account of the context (see, for example, *Medeanu v. Romania* (dec.), no. 29958/96, 8 April 2003, and *Azinas v. Cyprus* [GC], no. 56679/00, §§ 37-43, 28 April 2004).

The existence of a "**new fact**" which has come to light after the admissibility decision may prompt the Court to reconsider that decision.

I consider that the Law on Compensation for Immovable Properties (Law no. 67/2005) and the Commission set up to deal with compensation claims, which are based on the guiding principles laid down by the Court in the *Xenides-Arestis* case, are capable of providing an opportunity for the State authorities to provide redress for breaches of the Convention's provisions, including breaches alleged in applications already lodged with the Court before the Act's entry into force (see *Içyer v. Turkey*, cited above, § 72). That consideration also applies to applications already declared admissible by the Court (see *Azinas*, cited above).

In order to conclude whether there has or has not been a breach of the Convention, complainants must first exercise the new domestic remedy and then, if necessary, lodge an application with the European Court of Human Rights, the international court. Following that logic, I cannot in this case find any violation of the Convention's provisions.