FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 16654/90)

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. 16654/90) 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 thirty-seven Cypriot nationals, whose names and dates of birth are indicated in the list annexed to the present judgment ("the applicants"), on 26 January 1990.

2. The applicants were represented by Mr A. Adamides, a lawyer practising in Limassol. The Turkish Government ("the Government") were represented by their Agent, Mr Z.M. Necatigil.

3. The applicants alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived them of their 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 applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

7. The applicants all live in Limassol. Their dates of birth are indicated in the list annexed to the present judgment.

8. All the applicants claimed to be permanent residents of Famagusta (northern Cyprus), where they had their homes as well as other immovable properties.

9. Upon the 1974 Turkish intervention, the applicants left for southern Cyprus. They claimed that they had been deprived of their property rights, all their property being

located in the area which was under the occupation and control of the Turkish military authorities. They had made several attempts to return to their homes and properties in Famagusta, the last occasion being on 23 December 1989, but they had not been allowed to do so by the Turkish military authorities. The latter had prevent them from having access to and from using their houses and properties.

10. In his memorial of 27 May 2003 the applicants' representative stated that applicants nos. 2 to 5, 7 to 14 and 17 to 36 had decided not to pursue their case any further and to withdraw their application. The case was thus to be continued only in the names of applicants nos. 1 (Mrs [redacted]), 6 (Mrs [redacted]), 15 (Mrs [redacted]), 16 (Mrs [redacted]) and 37 (Mrs [redacted]).

11. Applicant no. 1 (Mrs [redacted]) claimed to be the owner of the following immovable properties:

(a) Famagusta, Chrysospyliotissa, plot no. 513, sheet/plan 33/12.4.2, block A, registration no. AO-16/10/86; description: house; use: residence, share: whole;

(b) Famagusta, Ayios Ioannis, plot no. 320, sheet/plan 33/12.2.3, block A, registration no. AO-16/10/86; description: block of flats; use: commercial-rent; share: 1/5;

(c) Famagusta, Ayios Loucas, plot no. 827, sheet/plan 33/11.W.1, block B and plot no. 51, sheet/plan 33/11.W.1, block B, registration no. BO-16/10/86; description: orange grove; share: 3/8.

12. Applicant no. 6 (Mrs [redacted]) claimed to be the owner of the following immovable property:

Famagusta, Chrysospyliotissa, plot no. 1178, sheet/plan 33/12.6.3, block A; description: two houses; share: ½.

13. Applicant no. 15 (Mrs [redacted]) claimed to be the owner of the following immovable properties:

(a) Famagusta, Chrisi Akti, plot no. 691, sheet/plan 33/21.1.IV, block A; description: house; use: residence; share: whole;

(b) Famagusta, Chrisi Akti, plot no. 693, sheet/plan 33/21.1.IV, block A; description: house; use: rent; share: whole;

(c) Famagusta, Salamis, plot no. 1885, sheet/plan 33/3.E.1, block D; description: building site.

14. Applicant no. 16 (Mr [redacted]) claimed to be the owner of the following immovable property:

Famagusta, Stavros, plot no. 701, sheet/plan 33/13.4.3, registration no. SDD 626/85; description: plot of Land with two houses; use: residence; share: whole.

15. Applicant no. 37 (Mrs [redacted]) claimed to be the owner of the following immovable properties:

(a) Famagusta, Ayios Ioannis, plot no. 264, sheet/plan 33/12.3.4, block C; description: house; use: residence; share: whole;

(b) Famagusta, Komi Kepir, plots nos. 532 and 543, sheet/plan 7/46; description: plots of land; use: agriculture; share: whole.

16. In support of their claims to ownership applicant nos. 1, 6, 15, 16 and 37 submitted certificates of affirmation of ownership of Turkish-occupied immovable properties issued by the Republic of Cyprus. They also produced affidavits in verification of their personal status and immovable property rights.

THE LAW

I. WITHDRAWAL OF THE APPLICATION

17. The Court first notes that applicants nos. 2 to 5, 7 to 14 and 17 to 36 declared that they wished to withdraw their application (see paragraph 10 above). The Court considers that, in these circumstances, applicants nos. 2 to 5, 7 to 14 and 17 to 36 may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case with regard to the above-mentioned applicants.

18. In view of the above, it is appropriate to strike the application out of the list of cases as far as applicants nos. 2 to 5, 7 to 14 and 17 to 36 are concerned. The Court will accordingly examine only the complaints introduced by applicants nos. 1, 6, 15, 16 and 37 (hereinafter referred to as "the applicants").

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

19. 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.

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

20. The applicants complained that since 1974, Turkey had prevented them from exercising their right to the peaceful enjoyment of their possessions.

They 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."

21. The Government disputed this claim.

A. The arguments of the parties

1. The Government

22. The Government submitted that the applicants had not produced any title deed, certificate of registration or other documents substantiating their claims to ownership.

2. The applicants

23. The applicants maintained that the Government should have provided the Court with the records of title for the properties at issue. They underlined that they had no access to the relevant District Land registries in northern Cyprus.

B. The Court's assessment

24. The Court first notes that the documents submitted by the applicants (see paragraph 16 above) provide *prima facie* evidence that they had a title of ownership over the properties at issue. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicants had a "possession" within the meaning of Article 1 of Protocol No. 1.

25. The Court recalls that in the case of *Loizidou v. Turkey* ((merits), *Reports of Judgments and Decisions* 1996-VI, §§ 63-64, 18 December 1996), it reasoned as follows:

> "63. ... as a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment.
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> 64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.
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> It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.
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> 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."

26. 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."

27. 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).

28. 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 applicants were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicants submitted that in 1974 they had had their home in northern Cyprus. As they had been unable to return there, they were the victims 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."

30. In its decision on the admissibility of the application, the Court found that the properties involved constituted a "home" for the purposes of Article 8 § 1 of the Convention, and that the impossibility for the applicants to return to their home constituted an interference with their Article 8 rights.

31. The Court notes that since 1974 the applicants have been unable to gain access to and to use their 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 ...
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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.

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."

32. 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).

33. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention by reason of the complete denial of the right of the applicants to respect for their home.

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

34. The applicants complained of a violation under Article 14 of the Convention on account of discriminatory treatment against them in the enjoyment of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1. They alleged that this discrimination had been based on their national origin.

Article 14 of the Convention reads as follows:

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

35. 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).

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicants submitted that, contrary to Article 13 of the Convention, they did not have at their 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."

37. The Court notes that the applicants have submitted no pleadings on this point, including on the issue of the applicability of this Article. It considers therefore that it is not necessary to examine this complaint (see *Demades* (merits), cited above, § 48, and *Kyriacou v. Turkey* (merits), no. 18407/91, § 42, 27 January 2009).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary and non-pecuniary damage

1. The parties' submissions

(a) The applicants

39. In their just satisfaction claims of 27 May 2003, applicants nos. 1, 6, 15 and 37 requested sums for pecuniary damage. They relied on expert's reports assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their properties in northern Cyprus, 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 1990 until December 2003. Applicants nos. 1, 6, 15 and 37 did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation report contained a description of the town of Famagusta, of its development perspectives and of the applicants' properties.

40. The starting point of the expert's reports was the open market value of the properties in August 1974. The annual rent obtainable from the applicants' properties was then calculated as a percentage (varying from 4% to 5%) of their estimated value in 1974. The expert further took into account the trends of rent increase on the basis of: (a) the nature of the area of property; (b) the trends for the period 1970-1974; (c) the trends in the unoccupied areas of Cyprus from 1974 onwards. This last trend was based on the Consumer Price Index for rents and houses issued by the Department of Statistics and Research of the Government of Cyprus, increased by a percentage of 25%. For agricultural lands, the expert proceeded on the basis of a certain annual rental value per decare (generally between CYP 25 and CYP 35 in 1974). Moreover, compound interest for delayed payment was applied at a rate of 8% (6% from 2001 onwards) per annum.

41. For applicant no. 1, the figures given by the expert were the following:

- property described in paragraph 11 (a) above: market value in 1974: CYP 14,400 (approximately EUR 24,603); annual rent in 1974: CYP 576 (approximately EUR 984); estimated loss plus interest: CYP 51,676 (approximately EUR 88,293);

- property described in paragraph 11 (b) above: market value in 1974: CYP 95,000 (approximately EUR 162,317); annual rent in 1974: CYP 4,750 (CYP 950 – approximately EUR 1,623 – for the 1/5 share belonging to the applicant); estimated loss plus interest: CYP 85,229 (approximately EUR 145,622);

- property described in paragraph 11 (c) above: rent payable in 1974 calculated on the basis of CYP 35 per decare; rental value of the whole property in 1974: CYP 728 (CYP 273 – approximately EUR 466 – for the 3/8 shares belonging to the applicant); estimated loss plus interest: CYP 18,633 (approximately EUR 31,836).

Thus, the total sum claimed by applicant no. 1 for pecuniary damage was CYP 155,538 (approximately EUR 265,752).

42. For applicant no. 6, the expert considered that the 1974 market value of the property described in paragraph 12 above was CYP 29,400 (approximately EUR 50,232), the 1974 annual rent was CYP 1,176 (approximately EUR 2,009) and the estimated loss plus interest was CYP 105,504 (approximately EUR 180,264).

43. For applicant no. 15, the figures given by the expert were the following:

- properties described in paragraph 13 (a) and (b) above: market value in 1974: CYP 25,700 and CYP 13,500 respectively; 1974 total annual rent for both properties: CYP 1,568 (approximately EUR 2,679); estimated loss plus interest: CYP 140,672 (approximately EUR 240,352);

- property described in paragraph 13 (c) above: market value in 1974: CYP 3,000 (approximately EUR 5,125); estimated loss plus interest: CYP 22,632 (approximately EUR 38,669).

Thus, the total sum claimed by applicant no. 15 for pecuniary damage was CYP 163,304 (approximately EUR 279,021).

44. For applicant no. 37, the figures given by the expert were the following:

- property described in paragraph 15 (a) above: market value in 1974: CYP 40,000 (approximately EUR 68,344); annual rent in 1974: CYP 2,000 (approximately EUR 3,417); estimated loss plus interest: CYP 179,429 (approximately EUR 306,572);

- property described in paragraph 15 (b) above: rent payable in 1974 calculated on the basis of CYP 25 per decare; rental value in 1974: CYP 367.37 (approximately EUR 627); estimated loss plus interest: CYP 25,071 (approximately EUR 42,836).

Thus, the total sum claimed by applicant no. 37 for pecuniary damage was CYP 204,500 (approximately EUR 349,408).

45. On 24 January 2008, following a request from the Court for an update on the developments of the case, applicants nos. 1, 6, 15 and 37 submitted updated claims for just satisfaction, which were meant to cover the loss of the use of the properties from 1 January 1990 to 31 December 2007. They produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was: EUR 416,572 for applicant no. 1; EUR 282,213 for applicant no. 6; EUR 443,804 for applicant no. 15; EUR 545,201 for applicant no. 37.

46. In their just satisfaction claims of 27 May 2003, the applicants (including applicant no. 16) also claimed CYP 100,000 (approximately EUR 170,860) each in respect of non-pecuniary damage. In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1, 6, 15 and 37 increased their claim to CYP 140,000 (approximately EUR 239,204) each.

(b) The Government

47. In reply to the applicants' just satisfaction claims of 27 May 2003, the Government submitted that the property ownership in the Maraş area of Famagusta was in dispute because of the rights of a religious trust known as *Vakf*. Once the latter had acquired ownership, its real estate could not be alienated, transferred or inherited. According to the information obtained from the authorities of the "Turkish Republic of Northern Cyprus" (the "TRNC"), some of the properties described in paragraphs 11-15 above (and notably, the property of applicant no. 1 described in paragraph 11 (b) above, the property of applicant no. 6 described in paragraph 12 (a) above and the property of applicant no. 37 described in paragraph 15 (a) above) had been dedicated in perpetuity to the religious trust known as *Abdullah Paşa Vakf*. They could not, therefore, be transferred to any of the applicants. Any unlawful transfer of *Vakf* property would be null and void. As the Evkaf Administration of Cyprus had taken measures in respect of unlawfully

occupied *Vakf* properties, the Court should not deal with matters which fall within the competence of the domestic jurisdictions.

48. The Government also noted that during the last decades the landscape in northern Cyprus had considerably changed and that these changes had affected the applicants' 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.

49. Challenging the conclusions reached by the Court in the *Loizidou* case ((just satisfaction), *Reports* 1998-IV, 28 July 1998), 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 applicants' inability to have access to their properties depended on the political situation on the island and, in particular, on the existence of the UN recognized cease-fire lines. If Greek-Cypriots were allowed to go to the north and claim their properties, chaos would explode in Cyprus; furthermore, any award made by the Court would undermine the negotiations between the two parties. In any event, the legal situation had changed since the adoption of the *Loizidou* judgment: Greek-Cypriot were allowed to visit the northern part of the island and to have access to remedies existing in the "TRNC", and a new "Law on Compensation for Immovable Properties Located within the boundaries of the "TRNC"" had been adopted.

50. The Government filed comments on the applicants' updated claims for just satisfaction on 30 June 2008 and 15 October 2008. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and maintained that the claims for just satisfaction were not ready for examination. The Government had in fact encountered serious problems in identifying the properties and their present owners. The information provided by the applicants in this regard was not based on reliable evidence. Moreover, owing to the lapse of time since the lodging of the applications, new situations might have arisen: the properties could have been transferred, donated or inherited within the legal system of southern Cyprus. These facts would not have been known to the respondent Government and could be certified only by the Greek-Cypriot authorities, who, since 1974, had reconstructed the registers and records of all properties in northern Cyprus. Applicants should be required to provide search certificates issued by the Department of Lands and Surveys of the Republic of Cyprus. In cases where the original applicant had passed away or the property had changed hands, questions might arise as to whether the new owners had a legal interest in the property and whether they were entitled to pecuniary and/or non-pecuniary damages.

51. The Government further noted that some applicants had shared properties and that it was not proven 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.

52. The Government submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment, and that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real

data with which to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicants had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

53. The Government produced a valuation report prepared by the Turkish-Cypriot authorities, which they considered to be based on a "realistic assessment of the 1974 market values, having regard to the relevant land records and comparative sales in the areas where the properties [were] situated". This report contained two proposals, assessing, respectively, the sum due for the loss of use of the properties and their present value. The second proposal was made in order to give the applicants the option to sell the property to the State, thereby relinquishing title to and claims in respect of it.

54. 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 properties described in paragraphs 11 (b), 13 (a) and (b), 14 and 15 (a) above. The other immovable properties referred to in the application were possessed by refugees; they could not form the object of restitution but could give entitlement to financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the property between 1974 and the date of payment. Had the applicants applied to the Immovable Property Commission, the latter would have offered CYP 851,035.4 (approximately EUR 1,454,079) to compensate the loss of use and CYP 906,468.09 (approximately EUR 1,548,791) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of the applicants' properties was the following:

- property described in paragraph 11 (a) above: CYP 16,000 (approximately EUR 27,337);
- property described in paragraph 11 (b) above: CYP 1,000 (approximately EUR 1,708);
- property described in paragraph 11 (c) above: CYP 1,450 (approximately EUR 2,477);
- property described in paragraph 12 above: CYP 10,000 (approximately EUR 17,086);
- property described in paragraph 13 (a) above: CYP 35,000 (approximately EUR 59,801);
- property described in paragraph 13 (b) above: CYP 20,000 (approximately EUR 34,172);
- property described in paragraph 13 (c) above: CYP 4,000 (approximately EUR 6,834);
- property described in paragraph 14 above: CYP 30,000 (approximately EUR 51,258);
- property described in paragraph 15 (a) above: CYP 30,000 (approximately EUR 51,258);
- property described in paragraph 15 (b) above: CYP 670 (approximately EUR 1,144).

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

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

2. The Court's assessment

57. The Court first notes that applicant no. 16 has not submitted any claim with respect to pecuniary damage. Therefore, no award should be made in his favour under this head.

58. As to applicants nos. 1, 6, 15 and 37, the Court observes that the Government's submission that doubts might rise as to their title of ownership over the properties at issue (see paragraphs 47 and 50 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 applicants had a "possession" over the properties claimed in the present application within the meaning of Article 1 of Protocol No. 1 (see paragraph 24 above).

59. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that the parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention. This failure renders it difficult for the Court to assess whether the estimate furnished by the applicants of the 1974 market value of their properties is reasonable. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

60. In their just satisfaction claims of 27 May 2003, relying on bills from their representative, the applicants sought CYP 3,010.25 (approximately EUR 5,143) each for the costs and expenses incurred before the Court. Applicants nos. 1, 6, 15 and 37 also sought the reimbursement of the costs of the expert's report assessing the value of their properties (amounting to CYP 402.5, 345, 460 and 402.5 respectively). In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1, 6, 15 and 37 submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.98 and EUR 982.45 respectively for each of them.

61. The Government did not comment on this point.

62. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of costs and expenses is not ready for decision. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicants.

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to strike the application out of the list of cases as far as it concerns applicants nos. 2 to 5, 7 to 14 and 17 to 36 and to continue the examination of the case with regard to the remaining applicants;

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

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

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

5. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Articles 13 and 14 of the Convention;

6. *Holds* unanimously that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza
Deputy Registrar President

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

N.B.
F.A.

ANNEX – LIST OF APPLICANTS

The applicants of the present application, all permanent residents of Famagusta until July 1974 and since then residents of Limassol, are as follows:

1. [redacted], born in 1950 in Famagusta.
2. [redacted], born in 1932.
3. [redacted], born in 1944 in Famagusta.
4. [redacted], born in 1928 in Ayios Sergios, Famagusta.
5. [redacted], born in 1914 in Famagusta.
6. [redacted], born in 1936 in Larnaca.
7. [redacted], born in 1923 in Fiti.
8. [redacted], born in 1937 in Limassol.
9. [redacted], born in 1928 in Famagusta.
10. [redacted], born in 1933 in Ayia Triada.
11. [redacted], born in 1920 in Famagusta.
12. [redacted], born in 1928 in Famagusta.
13. [redacted], born in 1928 in Famagusta.
14. [redacted], born in 1953 in Famagusta.
15. [redacted], born in 1960 in Athens.
16. [redacted], born in 1927 in Alexandria (Egypt).
17. [redacted], born in 1933 in Famagusta.
18. [redacted], born in 1921 in Famagusta.
19. [redacted], born in 1931 in Famagusta.
20. [redacted] born in 1935.
21. [redacted], born in 1932 in Famagusta.
22. [redacted], born in 1935 in Famagusta.
23. [redacted], born in 1939 in Famagusta.
24. [redacted], born in 1939 in Famagusta.
25. [redacted], born in 1946 in Famagusta.
26. [redacted], born in 1945 in Trikomo.
27. [redacted], born in 1943 in Famagusta.
28. [redacted], born in 1946 in Jerusalem.
29. [redacted] born in 1935 in Kakopetria.
30. [redacted], born in 1940 in Lefkonico.
31. [redacted], born in 1941 in Famagusta.
32. [redacted], born in 1941 in Famagusta.
33. [redacted], born in 1950 in Famagusta.
34. [redacted], born in 1936 in Famagusta.
35. [redacted], born in 1951 in Famagusta.
36. [redacted] born in 1929 in Famagusta.
37. [redacted], born in 1933 in Famagusta.

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).