COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF ECONOMOU v. TURKEY

(Application no. 18405/91)

JUDGMENT

STRASBOURG

27 January 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 Economou 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 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 18405/91) 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 Antonios Economou ("the applicant"), on 31 May 1991.

2. The applicant was represented by Mr L. 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 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 24 August 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 1943 and lives in Nicosia.

8. The applicant first stated that he was the owner of a fully furnished house in the District of Kyrenia. However, in his observations of 27 October 1999 he listed his properties as follows:

(a) Ayios Amvrosios, registration no. 13094, plot no. 33/2, sheet/plan XIII/31.E.1, field with various trees, area: 15,340 sq. m;

(b) Ayios Amvrosios, registration no. 8648, plot no. 512, sheet/plan XIII/27.E.1&E.2 and XIII/28.W.1&W.2, inaccessible hilly field, area: 19,735 sq. m;

(c) Ayios Amvrosios, registration no. 4923, plot no. 135, sheet/plan XIII/22.W.1, inaccessible field with olive trees, area: 3,345 sq. m;

(d) Ayios Amvrosios, registration no. 8277, plot no. 343, sheet/plan XII/27.E.1, field with small former farmhouse and stables, area: 370 sq. m;

(e) Ayios Amvrosios, registration no. 13131, plot nos. 400 and 401/1, sheet/plan XIII/27.E.1, inaccessible field with nine olive trees, area: 1,254 sq. m.

9. An expert appointed by the applicant conducted researches in the Famagusta lands registers and obtained the above registration numbers and references. In support of his claim of ownership, the applicant submitted a survey map on which his properties were marked in yellow.

10. Moreover, in an affidavit of 22 October 1999 the applicant stated that from the time he was born he had lived with his parents in their home in Ayios Amvrosios. When he got married in July 1973 he moved to his wife's house in Aglandja, a village which had never been occupied by Turkish military forces. After his marriage, the applicant used to spend weekends and holidays in Ayios Amvrosios.

11. As a result of the 1974 Turkish military intervention the applicant had been deprived of his property rights, his properties being located in the area which was under the occupation and overall control of the Turkish military authorities. The latter had prevented him from having access to and using his property and his parents' house located in Ayios Amvrosios. Moreover, the applicant stated that his house had been occupied by officers and/or other members of the Turkish military forces.

12. On 9 December 1990 the applicant made an attempt to return to his property in Ayios Amvrosios by participating in a convoy of cars of fellow refugees from the same district wishing to return home during a peaceful march towards their villages.

13. The applicant and his fellow refugees, who had informed the Commander of the United Nations (UN) forces in Cyprus of their intention, stopped at the checkpoint in the “buffer zone”, on the main road linking Nicosia with Ayios Amvrosios and Kyrenia. There, they asked the UN officer on duty to be allowed to return to their homes, property and villages. They requested the officer to transmit to the Turkish military authorities their demand to return to their homes. The officer announced to them that the Turkish military authorities had refused their request.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

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

15. The applicant complained that since 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."

16. The Government disputed this claim.

A. The arguments of the parties

1. The Government

17. The Government submitted that the property claimed by the applicant was situated outside the jurisdiction of Turkey and that the latter had no knowledge about it. In any event, the applicant had not produced any title deed supporting his claim to ownership and had not applied through the proper channels to visit his alleged properties. He had not attempted to enter the northern part of Cyprus at an approved crossing point, and had not been prevented from doing so by Turkish or/and Turkish-Cypriot forces.

18. Finally, the alleged interference with the applicant's property rights could not be seen in isolation from the general political situation on the island of Cyprus and had been in any event justified in the general interest.

2. The applicant

19. The applicant relied on the principles laid down by the Court in the *Loizidou v. Turkey* judgment ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), and recalled that on 9 December 1990 he had been prevented from returning to his property.

B. The third-party intervener

20. The Government of Cyprus observed that the "TRNC" authorities were in possession of all the records of the Department of Lands and Surveys relating to the title to properties in northern Cyprus. It was therefore the duty of the respondent Government to produce them.

21. 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.

C. The Court's assessment

22. The Court first notes that the documents submitted by the applicant (see paragraph 9 above) provide *prima facie* evidence that he had a title of ownership over the properties at issue. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1.

23. 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."

24. 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."

25. 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).

26. 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 property as well as any compensation for the interference with his property rights.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant submitted that in 1974 he had had his home in the District of Kyrenia. Being 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."

28. The Government disputed this claim, observing that the applicant had claimed ownership only of "plots of land", which could not constitute a "home". In any event, the applicant's inability to return to northern Cyprus had been an inevitable consequence of the political state of affairs on the island and of the existence of the UN buffer zone. The alleged interference with his rights under Article 8 had therefore been necessary in the interests of national security, public safety, for the prevention of disorder and for the protection of the rights and freedoms of others.

29. 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.

30. The Court notes that in his observations of 27 October 1999 the applicant has indicated that his claims for ownership only concerned plots of lands. In this respect, it is to be recalled that the notion of "home" in Article 8 does not comprise property on which it is planned to build a house and that that term cannot be interpreted to cover an area of a State where one has grown up and where the family has its roots but where one no longer lives (see *Loizidou* (merits), cited above, § 66). Moreover, the applicant has not insisted in his claims under Article 8 of the Convention in the observations deposited after the admissibility of the application.

31. Under these circumstances, the Court considers that it is not necessary to examine this complaint.

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

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

33. The Government disputed this claim.

34. The Court recalls that in the above-mentioned *Alexandrou* case (cited above, §§ 38-39) it has found that it was not necessary to carry out a separate examination of the complaint under Article 14 of the Convention. The Court does not see any reason to depart from that approach in the present case (see also, *mutatis mutandis*, *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 37-38, 31 July 2003).

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant submitted that he had not had at his disposal any effective remedy by which to obtain redress for the above-mentioned grievances.

He relied on Article 13 of the Convention, which 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."

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

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

VI. 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 applicant

39. In his just satisfaction claims of 27 October 1999, the applicant requested 84,000 Cypriot pounds (CYP – approximately 143,522 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 October 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 Ayios Amvrosios village.

40. The starting point of the valuation report was the rental value of each property in 1974, calculated as a percentage (between 1.75% and 6%) of the market value of each plot of land. The expert took into account the use and the building potentialities of each property. According to the expert, the 1974 market value of the properties described under paragraph 8 above was CYP 23,000 (approximately EUR 39,297), CYP 6,000 (approximately EUR 10,251), CYP 3,000 (approximately EUR 5,125), CYP 3,000 and CYP 300 (approximately EUR 512) respectively. The rent which could have been obtained in the same year was CYP 1,035, CYP 180, CYP 90, CYP 180 and CYP 5 respectively, thus an overall sum of CYP 1,490 (approximately EUR 2,545). This sum was subsequently adjusted upwards according to an annual rental increase of 5%, in order to arrive at the annual rent receivable in 1987 (CYP 2,810) and in 1999 (CYP 5,046). Compound interest for delayed payment was applied at a rate of 8% per annum.

41. On 26 January 2008, following a request from the Court for an update on developments in the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the period of loss of use of the properties from 2000 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 sum due for the loss of use for this last period was CYP 126,000 (approximately EUR 215,283) including statutory interest. The total sum claimed by the applicant for pecuniary damage thus amounted to CYP 210,000 (approximately EUR 358,806).

42. In his just satisfaction claims of 27 October 1999, the applicant further claimed CYP 50,000 (approximately EUR 85,430) 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),

28 July 1998, *Reports* 1998-IV), 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.

43. Finally, in his updated claims for just satisfaction of 26 January 2008, the applicant requested an additional CYP 31,000 (approximately EUR 52,966) in respect of non-pecuniary damage.

(b) The Government

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

45. The Government further noted that some applicants had shared properties and that it had not been 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.

46. The Government further 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.

47. 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 properties to the State, thereby relinquishing title to and claims in respect of them.

48. 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 paragraph 8 (a), (b), (d) and (e) above. The other immovable property referred to in the application was possessed by refugees; it 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 properties between 1974 and the date of payment. Had the applicant applied to the Immovable Property Commission, the latter would have offered CYP 24,838.15 (approximately EUR 42,438) to compensate the loss of use and CYP 26,455.99 (approximately EUR 45,201) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of the properties described in paragraph 8 above was CYP 4,323 (approximately EUR 7,386). Upon fulfilment of certain conditions, the Immovable Property Commission could also have offered the applicant an exchange of his properties with Turkish-Cypriot properties located in the south of the island.

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

2. The third-party intervener

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

3. The Court's assessment

51. The Court first notes that the Government's submission that doubts might arise as to the applicant's title of ownership over the properties at issue (see paragraph 44 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 fields in Ayios Amvrosios within the meaning of Article 1 of Protocol No. 1 (see paragraph 22 above).

52. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that the parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish invasion. 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

53. In his just satisfaction claims of 27 October 1999, relying on bills from his representative, the applicant sought CYP 1,825 (approximately EUR 3,118) for the costs and expenses incurred before the Court. This sum included CYP 500 (approximately 854 EUR) for the cost of the expert report assessing the value of his properties. In his updated claims for just satisfaction of 26 January 2008, the applicant submitted additional bills of costs for the new valuation report and for legal fees amounting to CYP 1,000 (approximately EUR 1,708). The total sum claimed for costs and expenses was thus EUR 4,826.

54. The Government did not comment on this point.

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

FOR THESE REASONS, THE COURT

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

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

3. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Articles 8, 13 and 14 of the Convention;

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

Done in English, and notified in writing on 27 January 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 dissenting opinion of Judge Karakaş is annexed to this judgment.

N.B.
F.A.

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 a violation of Article 1 of Protocol No. 1.

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, ECHR 2001-V (extracts)).

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, ECHR 2001-IX).

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, ECHR 2002-VIII; *Slaviček v. Croatia*, no. 20862/02, ECHR 2002-VII;

Andrášik and Others v. Slovakia, nos. 57984/00, 60226/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Içyer v. Turkey*, no. 18888/02, ECHR 2006-I).

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 v. Poland* case ([GC], no. 31443/96, ECHR 2004-V).

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, ECHR 2004-III).

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*, 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.