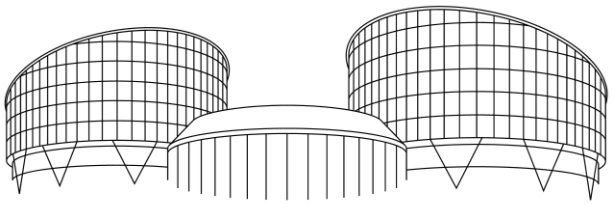

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF EVAGOROU CHRISTOU v. TURKEY

(Application no. 18403/91)

JUDGMENT
(*just satisfaction*)

STRASBOURG

22 June 2010

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 Evagorou Christou v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Işıl Karakaş, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,
Having deliberated in private on 1 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 18403/91) 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, Mrs Anna Evagorou Christou ("the applicant"), on 31 May 1991.

2. In a judgment delivered on 27 January 2009 ("the principal judgment"), the Court dismissed various preliminary objections raised by the Turkish Government and found continuing violations of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for her home and of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of her property as well as any compensation for the interference with her property rights. Furthermore, it found that it was not necessary to examine the applicant's complaints under Articles 1 and 14 of the Convention (*Evagorou Christou v. Turkey*, no. 18403/91, §§ 14, 26, 36 and 39, and points 1-4 of the operative provisions, 27 January 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 740,368 Cypriot pounds (CYP – approximately 1,264,993 euros (EUR)) for the deprivation of her properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 31 December 2007. Two valuation reports, setting out the basis of the applicant's loss, were appended to her observations. Furthermore, the applicant claimed CYP 230,000 (approximately EUR 392,978) in respect of non-pecuniary damage and approximately EUR 14,910 for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., §§ 54 and 57, and point 5 of the operative provisions).

5. On 13 July 2009 the Court invited the applicant and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment.

6. The applicant and the Government each filed comments on this matter.

7. On 4 September 2009 the applicant was invited to submit written evidence that the properties at stake were still registered in the name of her children or to indicate and substantiate any transfer of ownership which might have taken place.

8. On 5 October 2009 the applicant produced certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpired from these documents that on 6 April 2009 the properties described in paragraph 15 above were registered in the name of the applicant's children (Mrs Maria Papakosta, Mr Xristakis Christou and Mr Achilleas Christou). It was mentioned that the applicant had a "life interest" (usufruct) over the properties. According to an affidavit signed by the applicant, the life interest at issue, not declared to the Land Registration Office at the date of the transfer of the properties (7 September 1999), had been brought to the attention of the authorities and officially registered only on 17 February 2009.

THE LAW

I. PRELIMINARY ISSUE

9. In a letter of 22 April 2010 the Government requested the Court to decide that it was not necessary to continue the examination of the applicant's just satisfaction claims. They invoked the principles affirmed by the Grand Chamber in *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) and argued that the applicant should address her claims to the Immovable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005.

10. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of

the time-limit for filing comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in *Demopoulos*. It could therefore be held that the Government are estopped from raising the matter at this stage of the proceedings.

11. In any event, the Court cannot but reiterate its case-law according to which objections based on non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Alexandrou v. Turkey* (merits), no. 16162/90, § 21, 20 January 2009) or at a later stage. This approach has not been modified by the Grand Chamber, as the cases of *Demopoulos and Others* had not been declared admissible when Law 67/2005 entered into force and when Turkey objected that domestic remedies had not been exhausted.

12. Furthermore, the Court considers that its previous finding in the present case that the applicant was not required to exhaust the remedy introduced by Law 67/2005 constitutes *res judicata*. It recalls that after the compensation mechanism before the IPC was introduced, the Government raised an objection based on non-exhaustion of domestic remedies. This objection was rejected in the principal judgment (see paragraph 14 of the principal judgment and point 1 of its operative provisions). The Government also unsuccessfully requested the referral of the case to the Grand Chamber.

13. It follows that the Government's request to stay the examination of the applicant's claims for just satisfaction should be rejected. The Court will therefore continue to examine the case under Article 41 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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

15. In her just satisfaction claims of 19 November 1999, the applicant requested CYP 236,004 (approximately EUR 403,236) for pecuniary

damage. She relied on an expert's report assessing the value of her losses which included the loss of annual rent collected or expected to be collected from renting out her plots of lands and her two houses in Kalogrea (registered under plot no. 45; total area: 776 square metres (m²)) and Roukania (registered under plot number 119/6; area: m² 195), plus interest from the date on which such rents were due until the day of payment. The applicant's fields could be described as follows (see paragraph 10 of the principal judgment):

(a) plot no. 260; area: m² 4,683;
(b) plot no. 268; area: m² 7,358;
(c) plot no. 119/5; area: m² 1,431;
(d) plot no. 164.9; area: m² 8,450;
(e) plot no. 121/2/3; area: m² 1,338;
(f) plot no. 122/2/4; area: m² 2,472;
(g) plot no. 359/1; area: m² 5,017;
(h) plot no. 425; area: m² 13,713.

16. The rent claimed was for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until January 2000. The applicant did not claim compensation for any purported expropriation since she was still the legal owner of the properties. The valuation report contained a description of Kalogrea village and of the applicant's properties.

17. The valuation report calculated the annual rent obtainable from the applicant's properties as a percentage (ranging from 4 to 6 percent) of their market value in 1974. In particular, the house where the applicant had permanently resided had a value of CYP 7,928 (approximately EUR 13,545), while her summer place was worth CYP 6,924 (approximately EUR 11,830). In 1974, the annual rent was CYP 317 (approximately EUR 541) for the first house and CYP 277 (approximately EUR 473) for the second one. The total rent obtainable in 1974 from the applicant's fields was estimated at CYP 1,324 (approximately EUR 2,262). The expert further took into account the trends in rent increase (an average of 5% per annum). Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

18. On 24 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 property from 1 January 1987 to 31 December 2007. She produced a revised valuation report which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was CYP 394,254 plus CYP 346,113 for interest. The total sum claimed under this head was thus CYP 740,368 (approximately EUR 1,264,993).

19. On 5 October 2009 the applicant requested the additional sum of EUR 140,796.34 for the loss of use of her properties for the years 2008 and

2009. Her claim for pecuniary damage was thus risen up to approximately EUR 1,405,789.

20. The applicant further submitted that due to her age in 1999 she had transferred her properties to her children (see paragraph 9 of the principal judgment). While her intention and the intention of her children was to preserve a life interest in her favour, due to ignorance this had not been declared at the Land Registration Office. This failure was corrected on 17 February 2009 and the Land Registration Office issued new certificates in the name of her children containing a specific reference to Mrs Anna Evagorou Christou's life interest (see paragraph 8 above).

21. In her just satisfaction claims of 19 November 1999, the applicant claimed CYP 180,000 (approximately EUR 307,548) in respect of non-pecuniary damage. In particular, she claimed CYP 30,000 for the anguish and frustration suffered on account of the continuing violation of her property rights. She 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 of Judgments and Decisions* 1998-IV), taking into account, however, that the period of time for which the damage was claimed in the instant case was longer. Further the applicant claimed CYP 90,000 for the distress and suffering she had been subjected to due to the denial of her home. She considered this to be more serious than the violation of her property rights. She also requested CYP 60,000 for the violation of her rights under Article 14 of the Convention.

22. Finally, in her updated claims for just satisfaction of 24 January 2008, the applicant requested an additional EUR 50,000 for non-pecuniary damage.

(b) The Government

23. The Government filed comments on the applicant's updated claims for just satisfaction on 30 June 2008, 15 October 2008 and 6 October 2009. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and 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.

24. 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.

25. 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 pieces of lands registered under the plots no. 260, 268, 119/5, 119/6, 359/1 and 425 (see paragraph 15 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 properties between 1974 and 7 September 1999 (date on which the applicant transferred her properties to her children – see paragraphs 8 and 20 above and paragraph 9 of the principal judgment).

26. Had the applicant applied to the IPC, the latter would have offered CYP 98,377.12 (approximately EUR 168,087) to compensate the loss of use and CYP 238,849.23 (approximately EUR 408,097) for the value of the properties. According to an expert appointed by the authorities of the TRNC, the 1974 open-market value of all the applicant's properties was CYP 10,225 (approximately 17,470 EUR). Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of her properties with Turkish-Cypriot properties located in the south of the island.

27. In their comments of 6 October 2009 the Government noted that the applicant had claimed compensation also for the period after September 1999, when she was not anymore the owner of the properties and argued that the offer made by the IPC would constitute a fair and just compensation.

28. The Government further observed that in making its assessment as regarded compensation for the loss of use, the IPC had collected data from the Department of Lands and Surveys on the 1973-1974 purchase prices for comparable properties. It had also examined the development of interest rates of the Cyprus Central Bank. The loss of income was then calculated by assuming that the obtainable rent would have been 5% of the value of the properties; this last value had been modified every year on the basis of the land market value index. Cyprus Central Bank interest rates had been applied on the sums due since 1974.

29. It could therefore be said that the IPC had used the same criteria as the Greek-Cypriots applicants. However, being in possession of the land registers in which comparable sales had been recorded, it was better placed to assess the 1974 market values of the properties. Applicants had, in general, tended to exaggerate and inflate these values. Their calculations were highly presumptive; for instance, the percentage used for assessing the loss of income had frequently been the same for buildings, fields, orchards and plots of land, irrespective of their location, of the existence of electricity or water supplies and of an access to a minor or major road. On the contrary, the Turkish-Cypriot authorities had taken all these factors into consideration; they had applied a higher percentage for buildings in built-up areas than for vacant fields.

30. The Government also insisted that, as it could not be excluded that the properties at issue had been transferred within the legal system of southern Cyprus, applicants should be required to provide search certificates issued by the Greek-Cypriot Department of Lands and Surveys. Failure to substantiate title to the properties at the material time and at the time of the Court's judgment should be considered as a failure to cooperate with the Court. No just satisfaction should be awarded in respect to unsubstantiated or dubious claims.

31. After the delivery of the Court's principal judgment, the Turkish-Cypriot authorities had invited the applicant to apply to the IPC in order to reach an agreement on the matter of compensation. The applicant had not replied to this invitation. This attitude was mainly due to political reasons and to the pressures exerted by the Greek-Cypriot authorities in order to discourage their citizens from applying to the IPC. Misleading information had been given about its powers and the Greek-Cypriots who had applied to it had been questioned by the Office of the Attorney General. In 2006 the Greek-Cypriot media had even revealed a “shame list” and published the names of applicants to the IPC.

32. Finally, the Government noted that the amount claimed by the applicant for non-pecuniary damage was incompatible with the case-law and practice of the Court.

2. The Court's assessment

33. The Court recalls that in its principal judgment it has concluded that there had been a continuing violation of the applicant's rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 by virtue of the complete denial of the applicant's rights with respect to her home and the peaceful enjoyment of her properties in northern Cyprus (see paragraphs 36 and 26 of the principal judgment). Furthermore, its finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being continuously denied access to her land and real estate, the applicant had effectively lost all access and control as well as all possibilities to use

and enjoy her properties (see paragraph 24 of the principal judgment). She is therefore entitled to a measure of compensation in respect of losses directly related to this violation of her rights as from the date of the deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, namely 22 January 1987, until 7 September 1999, when she transferred her properties to her children (see, *mutatis mutandis*, *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and *Demades v. Turkey*, (just satisfaction), no. 16219/90, § 21, 22 April 2008).

34. In connection with this, the Court notes that the affirmations of ownership of Turkish-occupied immovable properties produced by the applicant (see paragraph 8 above) show that on 6 April 2009 her children were still the owners of the properties described in paragraph 15 above. A "life interest" in favour of the applicant was not mentioned in official documents until February 2009 (see paragraphs 8 and 20 above); under these circumstances, the Court considers that it cannot be taken into consideration in assessing the pecuniary damage suffered by Mrs Evagorou Christou.

35. In the opinion of the Court, the valuations furnished by the applicant involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou v. Turkey* (just satisfaction), cited above, § 31). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by her (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers as reasonable the approach to assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (*Loizidou* (just satisfaction), cited above, § 33, and *Demades* (just satisfaction), cited above, § 23). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey*, (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits), 18 December 1996, § 32, *Reports* 1996-VI).

36. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's properties, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 27-29 above), while the applicant has insisted on the valuation scales adopted by the expert appointed by her.

37. The Court further notes that the applicant submitted an additional claim in the form of annual compound interest in respect of the losses on account of the delay in the payment of the sums due. While the Court

considers that a certain amount of compensation in the form of statutory interest should be awarded to the applicant, it finds that the rates applied by her are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24). Moreover, the applicant has calculated the loss of rents until the end of 2009, and not until 7 September 1999, date on which she has transferred her properties to her children (see paragraphs 33 and 34 above).

38. Finally, the Court considers that an award should be made in respect of the anguish and feelings of helplessness and frustration which the applicant must have experienced over the years in not being able to use her properties as she saw fit and enjoy her home (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

39. Having regard to the above considerations, the Court is of the opinion that the sum which, according to the Government, the IPC could have offered the applicant in respect of loss of use (approximately EUR 168,087 – see paragraph 26 above) constitutes a fair basis for compensating the damage sustained by Mrs Evagorou Christou. Making its assessment on an equitable basis, the Court decides to award EUR 170,000 under the head of pecuniary and non-pecuniary damage.

B. Costs and expenses

40. In her just satisfaction claims of 19 November 1999, relying on bills from her representative, the applicant sought CYP 3,207 (approximately EUR 5,480) for the costs and expenses incurred in the proceedings before the Court. This sum included CYP 900 (approximately EUR 1,537) for the cost of the expert report assessing the value of her properties. In her written observations of 15 January 2004 the applicant claimed additional legal fees for CYP 2,645 (approximately EUR 4,519). In her updated claims for just satisfaction of 24 January 2008 she submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 1,955 and EUR 2,955.5 respectively. The total sum sought for cost and expenses was thus approximately EUR 14,910.

41. On 5 October 2009 the applicant requested the additional sum of EUR 3,317.42.

42. The Government did not comment on this point.

43. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

44. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and

preparation. In particular, the costs associated with producing valuation reports in view of the continuing nature of the violations at stake were essential to enable the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34).

45. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award a total sum of EUR 8,000.

C. Default interest

46. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request to stay the examination of the applicant's claims for just satisfaction;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 170,000 (one hundred and seventy thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President