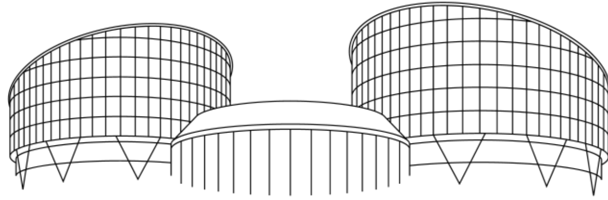

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

**CASE OF GAVRIEL v. TURKEY**

*(Application no. 41355/98)*

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 Gavriel 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. 41355/98) 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 Savvas Gavriel ("the applicant"), on 27 March 1998.

2. In a judgment delivered on 20 January 2009 ("the principal judgment"), the Court upheld the Turkish Government's objection of incompatibility *ratione materiae* with the provisions of the Convention as far as four of the properties claimed by the applicant were concerned and dismissed the remainder of the Government's preliminary objections. It found continuing violations of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for his 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 two of his properties as well as any compensation for the interference with his property rights. Furthermore, it found that it was not necessary to examine the applicant's complaint under Article 14 of the Convention (*Gavriel v. Turkey*, no. 41355/98, §§ 29, 30, 39, 49 and 54 and points 1-5 of the operative provisions, 20 January 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 337,281 Cypriot pounds (CYP – approximately 576,278 euros (EUR)) for the deprivation of his properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 2000. A valuation report, setting out the basis of the applicant's loss, was appended to his observations. Furthermore,

the applicant claimed CYP 60,000 (approximately EUR 102,516) in respect of non-pecuniary damage and approximately EUR 6,834 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., §§ 68 and 71, and point 6 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 his name or to indicate and substantiate any transfer of ownership which might have taken place.

8. On 29 September 2009 the applicant produced an "affirmation of ownership of Turkish-occupied immovable property" issued by the Department of Lands and Surveys of the Republic of Cyprus. According to this certificate, on 16 September 2009 the applicant was the registered owner of the property described in paragraph 16 (b) below. The applicant furthermore submitted a certificate of registration of the immovable property described in paragraph 16 (a) below issued on 15 January 1968. This document specified that the "assessed value" of this plot of land was, at the relevant time, CYP 12.81 (approximately EUR 22).

# 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 his 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 28 of the principal judgment and point 2 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 his just satisfaction claims of April 2000, the applicant requested CYP 337,281 (approximately EUR 576,278) for pecuniary damage. He

relied on an expert's report assessing the value of his losses which included the loss of annual rents 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 2000. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the properties.

16. The properties in respect of which in the principal judgment the Court found a violation of Article 1 of Protocol No. 1 can be described as follows:

(a) Nicosia/Kapouti, plot no. 576, sheet/plan 19/16, field, area: 5,017 square metres ($m^2$);

(b) Kyrenia/Livera, plot no. 39/1, sheet/plan 5/62W1, field, area: 112,149 $m^2$.

17. The starting point for the valuation report was the annual rental value of the applicant's properties in 1974, calculated on the basis of a percentage (from 4 to 6%) of the market value of the properties or assessed by comparing the rental value of similar land at the relevant time. This sum was subsequently adjusted upwards according to an average annual rental increase of 7% for agricultural land. Compound interest for delayed payment was applied at a rate of 8%, the total sum due for interest being CYP 117,105 (approximately EUR 200,085).

18. According to the expert, the 1974 rental value of the applicant's fields listed in paragraph 16 (a) and (b) above were the following (see paragraphs 9, 29 and 39 of the principal judgment):

- property listed under (a): rental value CYP 25 (approximately EUR 42.7);

- property listed under (b): rental value CYP 336 (approximately EUR 574).

19. The applicant's expert also established a 1974 rental value of CYP 409 (approximately EUR 699), CYP 515 (approximately EUR 880), CYP 60 (approximately EUR 102.5) and CYP 60 (approximately EUR 102.5) respectively for the other properties claimed by the applicant, in respect of which the Court upheld the Government's preliminary objection of incompatibility *ratione materiae* with the provisions of the Convention.

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

21. On 6 October 2009 the applicant 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 and for statutory interest for the properties described in paragraph 16 (a) and (b) above was EUR 135,550. He moreover alleged that the eviction from the house in Morphou, registered in his wife's name, had forced him to rent another house and that this fact had entailed an additional cost of EUR 95,449.

22. The applicant also produced a statement, dated 1 May 2009, by which the president of the Community Council of Kapouti village declared that in 1974 the plot of land described in paragraph 16 (a) above was a citrus grove generating an income of CYP 1,000 (approximately EUR 1,708). The expert appointed by the applicant declared that his "valuation [was] based on comparable plots where available in the occupied part of Cyprus and comparable areas in the unoccupied parts of Cyprus" and that according to his experience the "1974 prices used [were] fair, reasonable and accurate ... beyond dispute".

23. The applicant also submitted a statement made on 5 October 2009 by Mrs Efi Savvides, a District Land Officer in Nicosia, which reads as follows:

> "I ... hereby certify that for the preparation of the original valuation reports of the application ... [no.] 41335/1998, Gavriel v. Turkey ... the Department of Lands and Surveys has collaborated with the private practice valuers ... by giving any assistance required and providing all the necessary information, data and plans to the said valuers ...
>
> The valuation method and approach as well as the market values and rents derived are considered fair and reasonable and are consistent with the available comparable sales and existing conditions, in the economy and the property market in Cyprus as at July – August 1974."

24. In his just satisfaction claims of April 2000, the applicant claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. He stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), 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 and that there had also been a violation of Article 14 of the Convention. He furthermore claimed CYP 20,000 (approximately EUR 34,172) with respect to the moral damage suffered for the loss of his home.

25. On 6 October 2009 the applicant increased his claim for non-pecuniary damage up to EUR 70,000 for the violation of Article 1 of Protocol No. 1 and up to EUR 80,000 for the violation of Article 8 of the Convention.

#### (b) The Government

26. The Government filed comments on the applicant's claims for just satisfaction on 22 September 2008 and 6 October 2009. They observed that

the applicant's properties were "fields" and not "building plots" and that very little rent could be obtained from fields in Cyprus. 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. The Government further submitted that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987.

27. In their comments of 6 October 2009 the Government noted that in his first valuation report (see paragraphs 15 and 17 above) the applicant's expert had taken into account also a property in Morphou, which did not belong to the applicant, but to his wife. Such a claim was unacceptable and not in line with the practice of the Court. The annual rent increase and the compound interest rate claimed by the applicant were assumptive and highly excessive.

28. As indicated in a document annexed to the Government's observations of 6 October 2009, the Turkish-Cypriot authorities had offered the applicant CYP 113,963.59 (approximately EUR 194,718). It was also to be observed that "some of the properties" had not been registered in the applicant's name in 1974 (one was registered in the name of Savvas Michael Gavriel and another one in the name of Stehios Stavrou Filippou); moreover, one of the properties in Morphou could not be found in the Land Registries.

29. 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.

30. 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.

31. 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.

32. 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.

33. The Government finally noted that the applicant's claims under the head of non-pecuniary damage were also based on the assumption of the existence of a violation of Article 14 of the Convention; however, the Court did not make any findings in this respect. In any event, the claims at issue were excessive and incompatible with the practice of the Court. The applicant should not be allowed to duplicate the heads of non-pecuniary damages.

2. *The Court's assessment*

34. 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 his home and the peaceful enjoyment of his properties listed in paragraph 16 (a) and (b) above (see paragraphs 49 and 39 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 his land, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his properties (see paragraph 37 of the principal judgment). He is therefore entitled to a measure of compensation in respect of losses directly related to this violation of his 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 the present time (see *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).

35. In connection with this, the Court notes that the affirmation of ownership of Turkish-occupied immovable property produced by the applicant (see paragraph 8 above) shows that on 16 September 2009 he was still the owner of the property described in paragraph 16 (b) above. The applicant failed, however, to produce similar evidence in respect of the property described in paragraph 16 (a) above. The certificate of registration of this plot of land only proves that he owned it in 1968. The Court will take due account of the lack of evidence of continuous ownership when assessing the amount of pecuniary damage.

36. 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 him (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* (preliminary objections), 23 March 1995, Series A no. 310, § 102, and (merits), 18 December 1996, § 32, *Reports* 1996-VI).

37. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's fields, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 29-30 above), while the applicant has submitted a statement signed by a District Land Officer indicating that his valuation reports were based on a fair and reasonable assessment of the properties' values (see paragraph 23 above).

38. The Court further observes 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 him are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24). Moreover, in his first report the applicant's expert has calculated also the damages provoked by the loss of use of the properties in

respect of which the Court has upheld the Government's objection of incompatibility *ratione materiae* (see paragraph 19 above). The Court is of the opinion that no award should be made in respect of these properties, including the house in Morphou, which belonged to the applicant's wife (see paragraph 21 above).

39. 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 his properties as he saw fit and enjoy his home (see *Demades* (just satisfaction), cited above, § 29).

40. Having regard to the above considerations, the Court is of the opinion that the sum claimed by the applicant in the revised valuation report of 6 October 2009 in respect of the loss of use of the properties described in paragraph 16 (a) and (b) above (EUR 135,550 – see paragraph 21 above) constitutes a fair basis for compensating the pecuniary and non-pecuniary damage sustained by Mr Michael and decides to award it.

### B. Costs and expenses

41. In his just satisfaction claims of April 2000, the applicant sought CYP 4,000 (approximately EUR 6,834) for the costs and expenses incurred before the Court. This sum included the costs of the expert report assessing the value of his properties.

42. On 6 October 2009 the applicant increased his claim for costs and expenses up to EUR 19,796. He alleged that the new valuation report had a cost of EUR 402.5 and that his legal expenses for the period April 2000/October 2009 had amounted to EUR 12,460.

43. The Government did not comment on this point.

44. 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).

45. 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).

46. 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

47. 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 135,550 (one hundred and thirty-five thousand five hundred and fifty 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 | Nicolas Bratza |
|---|---|
| Deputy Registrar | President |