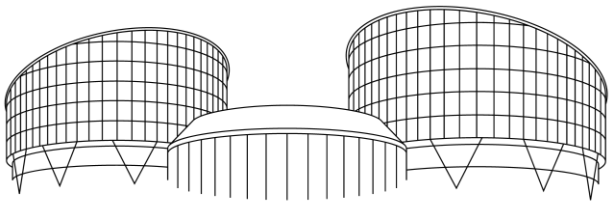

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KYRIAKOU v. TURKEY

(Application no. 18407/91)

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 Kyriakou 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. 18407/91) 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 Yiannis Kyriakou ("the applicant"), on 31 May 1991.

2. In a judgment delivered on 27 January 2009 ("the principal judgment"), the Court held that the applicant's heirs (his wife and sons) had standing to continue the present proceedings in his stead, 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 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 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 complaints under Articles 1, 13 and 14 of the Convention (*Kyriakou v. Turkey*, no. 18407/91, §§ 14, 15, 26, 36, 39 and 42 and points 1-5 of the operative provisions, 27 January 2009).

3. Under Article 41 of the Convention the applicant's heirs sought just satisfaction of 53,600 Cypriot pounds (CYP – approximately 91,580 euros (EUR)) for the deprivation of the applicant's properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and September 1999. A valuation report, setting out the basis of the applicant's loss, was appended to their observations. Furthermore, the applicant's heirs claimed CYP 80,000 (approximately EUR 136,688) in respect of non-pecuniary damage and

approximately EUR 4,476 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., §§ 57 and 60, and point 6 of the operative provisions).

5. On 13 July 2009 the Court invited the applicant's heirs 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 Government filed comments on this matter.

7. On 4 September 2009, the applicant's heirs were invited to submit, by 6 October 2009, written evidence that the properties at stake were still registered in their name or to indicate and substantiate any transfer of ownership which might have taken place. On 16 October 2009 the applicant's heirs' representative requested an extension until 30 October of the time allowed for submission of comments on just satisfaction and evidence of ownership. By a letter of 20 October 2009 he was informed that it would be for the President or for the Chamber to decide whether to admit any belated submissions to the file. The applicant's heirs' representative did not reply to this letter.

THE LAW

I. PRELIMINARY ISSUE

8. 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 heirs' 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's heirs should address their claims to the Immovable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005.

9. 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.

10. 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.

11. Furthermore, the Court considers that its previous finding in the present case that the applicant's heirs were 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 15 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.

12. It follows that the Government's request to stay the examination of the applicant's heirs' 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

13. 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

14. In their just satisfaction claims of September 1999, the applicant's heirs requested 53,600 Cypriot pounds (CYP – approximately 91,580 euros (EUR)) for pecuniary damage. They relied on an expert's report assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out the 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 September 1999. The applicant's heirs 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 Trypimeni village. The applicant's heirs requested that any sum awarded by the Court under Article 41 of the Convention be distributed equally amongst them.

15. The applicant's properties were registered as follows (see paragraph 9 of the principal judgment):

(a) registration no. 5147, plot no. 20, sheet/plan 13/40, house with two rooms and one kitchen, one veranda, oven, trees and yard; the applicant alleged that two extra rooms and one kitchen had been added later; area of the plot of land: 530 square metres (m²); area of the house: 230 m²;

(b) registration no. 2597, plot no. 442, sheet/plan 13/40, field with olive trees; area: 13,713 m².

16. In support of his claim of ownership, the applicant submitted copies of the original title deeds. It appears from these documents that the applicant owned five twelfths of the property described above under paragraph 15 (a) and half of the property described above under paragraph 15 (b). However, in his observations of September 1999, the applicant's heirs' representative alleged that Mr Yiannis Kyriakou had had full ownership of the whole of the two plots. He submitted that from 1921 onwards only the applicant, his wife and his two children had been living in the house built on plot no. 20. This house had been the marital home from the time of his wedding and the applicant had had the absolute and unrestricted use and occupation of it. Moreover, from August 1928 the applicant had been cultivating and taking care of the whole of plot no. 442. He had been a farmer who earned his income from the production of the olive trees. In support of these statements, the applicant's lawyer produced a certificate issued by the Trypimeni village committee on 25 September 1999. The reason why the applicant had not been registered as the owner of the whole share of the two plots was that the applicant's mother, Mrs Maria Yianni, had been the owner of two twelfths of plot no. 20. She had given one twelfth of the plot to the applicant and one twelfth to his brother, Mr Elias Kyriakou, in the form of an unregistered gift. The applicant's brother had also been the owner of the remaining five twelfths of plot no. 20 and of the remaining half of plot no. 442. In 1956 Mr Elias Kyriakou, who had emigrated to Australia and had no intention of coming back to Cyprus, had given all his shares to the applicant. However, no official transfer of ownership had been entered in the land register. In support of his version of the facts, the applicant's heirs' lawyer produced an affidavit from the applicant's son, Mr Andreas Ioannou (see paragraph 10 of the principal judgment).

17. The starting point of the valuation report was the rental value of the applicant's properties in 1974, calculated on the basis of the rent obtainable for comparable properties in the area and on a percentage of their market value. According to the expert, the annual rent which could have been

obtained in 1974 from the applicant's house (whose open-market value was CYP 5,260 – approximately EUR 8,987) and field were CYP 264 and CYP 685 respectively, thus the total sum of CYP 949 (approximately EUR 1,621). 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 1,789) and in 1999 (CYP 3,212). Compound interest for delayed payment was applied at a rate of 8% per annum.

18. On 28 January 2008, following a request from the Court for an update on developments in the case, the applicant's heirs submitted that the market and rental value of their properties had considerably increased and that it was necessary to upgrade their claims for just satisfaction. However, despite their lawyer's efforts, it had not been possible to produce a revised valuation report.

19. In their just satisfaction claims of September 1999, the applicant's heirs further claimed the total sum of CYP 80,000 (approximately EUR 136,688) in respect of non-pecuniary damage. They stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou v. Turkey* 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 Articles 8 and 14 of the Convention.

(b) The Government

20. The Government filed comments on the applicant's heirs' 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. They noted, in particular, that some applicants had shared properties and that it was not 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.

21. 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's heirs had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

22. 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's heirs the option to sell the property to the State, thereby relinquishing title to and claims in respect of it.

23. 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 property described in paragraph 15 (a) 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 value) and increase in value of the property between 1974 and the date of payment. Had the applicant's heirs applied to the IPC, the latter would have offered CYP 5,889.2 (approximately EUR 10,062) to compensate the loss of use and CYP 6,272.7 (approximately EUR 10,717) for the value of the properties. According to an expert appointed by the authorities of the "TRNC", the 1974 open-market value of the properties described in paragraph 15 above was CYP 1,025 (approximately EUR 1,751). Upon fulfilment of certain conditions, the IPC could also have offered the applicant's heirs exchange of their properties with Turkish-Cypriot properties located in the south of the island.

24. In their comments of 6 October 2009, the Government noted that the applicant's heirs' claims for just satisfaction were highly excessive and exorbitant, particularly as they related also to the period after the applicant's death. The applicant's heirs should submit information as to the present ownership of the properties and as to whether any of the properties had changed hands. This information would be material in deciding the period of entitlement.

25. 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.

26. 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.

27. After the delivery of the Court's principal judgment, the Turkish-Cypriot authorities had invited the applicant's heirs to apply to the IPC in order to reach an agreement on the matter of compensation. The applicant's heirs had not replied to this invitation. This attitude was due mainly 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.

28. Finally, the Government noted that the amount claimed for non-pecuniary damage was highly excessive and exorbitant.

2. The Court's assessment

29. 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 to the Convention by virtue of the complete denial of the applicant's rights with respect to his home and the peaceful enjoyment of his 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 his land and real estate, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his properties (see paragraph 24 of the principal judgment). His heirs are therefore entitled to a measure of compensation in respect of losses directly related to this violation of the applicant's 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 day of the applicant's death, namely 3 November 1994 (see paragraph 4 of the principal judgment; see also, *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).

30. In connection with this, the Court notes that the applicant's heirs have not introduced an autonomous claim concerning a potential violation of the property rights which they might have acquired in their quality of

successors of Mr Yiannis Kyriakou, but have merely successfully requested to pursue the application lodged by the deceased (see paragraphs 4, 13 and 14 of the principal judgment and point 1 of its operative provisions). Under these circumstances, no alleged pecuniary damage for loss of use can be awarded for the time which has elapsed after the applicant's demise. It is also to be noted that the applicant's heirs have failed to submit evidence showing that they are the current registered owners of the properties described in paragraph 15 above (see paragraph 7 above); however, as the Court will assess the pecuniary damage suffered by the applicant only until 3 November 1994, written proof of the current ownership of these properties is not strictly necessary.

31. In the opinion of the Court, the valuations furnished by the applicant's heirs 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* (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 his heirs (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).

32. 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 25-26 above), while the applicant's heirs have not responded to the Court's request (see paragraph 7 above).

33. The Court further notes that the applicant's heirs 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's heirs, it finds that the rates applied by them are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

34. The Court further observes that the applicant's heirs have calculated the loss of rents until September 1999, and not until 3 November 1994, the date of the applicant's death (see paragraphs 29 and 30 above) and that they have assumed that the applicant was the owner of the whole share of the

properties concerned by the principal judgment. However, the Court cannot overlook the fact that, according to the original title deeds, the applicant only owned five twelfths of the property described in paragraph 15 (a) above and half of the property described in paragraph 15 (b) above. In connection with this, the Court underlines that it cannot accept, as such, the alleged donation of the remaining shares made in 1956 by the applicant's brother, as no official transfer of ownership had been entered in the land register (see paragraph 10 of the principal judgment and paragraph 16 above).

35. Finally, the Court is of the opinion 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, until his death, to use his properties as he saw fit and enjoy his home (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

36. Having regard to the above considerations, the Court is of the opinion that the sums claimed by the applicant's heirs in respect of pecuniary and non-pecuniary damage (respectively EUR 91,580 and EUR 136,688 – see paragraphs 14 and 19 above) are excessive. At the same time, the amount which the "TRNC" authorities could have offered the applicant's heirs in respect of loss of use (approximately EUR 10,062 – see paragraph 23 above) does not seem to take due account of the number and nature of the properties owned by the applicant and listed in paragraph 15 above. Making its assessment on an equitable basis, the Court decides to award the applicant's heirs EUR 25,000.

B. Costs and expenses

37. In their just satisfaction claims of September 1999, relying on bills from their representative, the applicant's heirs sought CYP 2,620 (approximately EUR 4,476) for the costs and expenses incurred before the Court. This sum included CYP 800 (approximately EUR 1,366) for the cost of the expert report assessing the value of the properties.

38. The Government did not comment on this point.

39. 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).

40. 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 a valuation report 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).

41. In the light of the above, the Court considers the amount claimed for costs and expenses for the proceedings before it (EUR 4,476) reasonable and decides to award it to the applicant's heirs.

C. Default interest

42. 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 heirs' claims for just satisfaction;

2. *Holds*
   (a) that the respondent State is to pay the applicant's heirs, 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 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 4,476 (four thousand four hundred and seventy-six euros), plus any tax that may be chargeable to the applicant's heirs, 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 heirs' 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