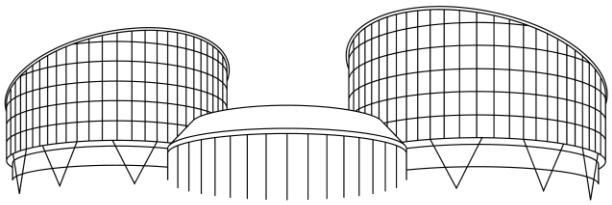

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MICHAEL v. TURKEY

(Application no. 18361/91)

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 Michael 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. 18361/91) 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 Michalis Michael ("the applicant"), on 7 June 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 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 property as well as any compensation for the interference with his property rights (*Michael v. Turkey*, no. 18361/91, §§ 12, 25 and 35 and points 1-3 of the operative provisions, 27 January 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 41,113 Cypriot pounds (CYP – approximately 70,245 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 31 December 2007. Two valuation reports, setting out the basis of the applicant's loss, were appended to his observations. Furthermore, the applicant claimed CYP 55,000 (approximately EUR 93,973) in respect of non-pecuniary damage and EUR 10,171.5 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., §§ 50 and 53, and point 4 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 property 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 property at stake were still registered in his name or to indicate and substantiate any transfer of ownership which might have taken place.

8. On 30 September 2009 the applicant produced a certificate of ownership of Turkish-occupied immovable property issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpires from this document that on 29 September 2009 the property described in paragraph 15 below was registered in the name of "Michael Andrea Michael".

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 12 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 his just satisfaction claims of 29 October 1999, the applicant requested CYP 14,804 (approximately EUR 25,294) 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 field in Ayios Epiktitos, 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 1999. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the property. The valuation report contained a description of Ayios Epiktitos village and of the applicant's field, which was a grove covered with olive and carob trees. It had mainly an agricultural use and was registered as follows: Kyrenia, Ayios Epiktitos, Mevlitoudi, field with

trees, sheet/plan 13/25, plot no. 120, surface: hectares 2, decares 2, sq. m. 663, share: ¼ .

16. According to the valuation report, the rent payable for agricultural lands depended on the nature of the use and on the productivity of the property. According to the information provided by the applicant, the trees in his field were in a very good condition and in full production. As olive and carob trees had an indefinite life span and there was a steady demand for their products, the rent payable in 1974 could be fixed at CYP 35 (approximately EUR 60) per decare per annum. As the applicant owned ¼ of a field of approximately 22 decares, the rent payable in 1974 was estimated at CYP 198 (approximately EUR 338). The expert further took into account the trends in rent increase (an average of 7% per annum for agricultural properties). Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

17. On 25 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. He 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 21,407 plus CYP 19,706 for interests (the interest applied from 2001 onwards was 6 percent per annum). The total sum claimed under this head was thus CYP 41,113 (approximately EUR 70,245).

18. On 30 September 2009 the applicant produced a revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and 31 December 2009. On the basis of the criteria used in the previous reports, the expert appointed by the applicant considered that the whole sum due to his client for pecuniary damage was EUR 74,234.

19. The applicant's expert pointed out that he had found, in the Kyrenia Land Registry Office, a sale of a plot of land similar to the one of his client: a field with carob and olive trees of a total extent of 41.472 decares had been sold for CYP 2,067 (approximately EUR 3,531). The sale file bore the no. 5273/72, but the sale contract had been stipulated in 1967. In the light of this sale, it could be said that the market price of a decare of agricultural land was, in 1974, of the order of CYP 66 (approximately EUR 112). In the expert's opinion, this confirmed that it had been appropriate and fair to assume that the 1974 annual rent for the applicant's field was CYP 35 (approximately EUR 60) per decare (see paragraph 16 above).

20. In his just satisfaction claims of 29 October 1999, the applicant further claimed CYP 55,000 (approximately EUR 93,973) in respect of non-pecuniary damage. 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 8 of the Convention.

(b) The Government

21. 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. For instance, some applicants had shared properties and 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.

22. 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.

23. 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 property to the State, thereby relinquishing title to and claims in respect of it.

24. The report prepared by the Turkish-Cypriot authorities specified that it would not be possible to envisage restitution of the applicant's property, which could only 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 plot of land between 1974 and the date of payment. Had the applicant applied to the IPC, the latter would have offered CYP 39,644.51 (approximately EUR 67,736) to compensate the loss of use and CYP 42,226.78 (approximately EUR 72,148) for the value of the property. According to an expert appointed by the authorities of the "TRNC", the 1974 open-market value of the applicant's plot of land was CYP 6,900 (approximately EUR 11,789).

Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of his property with Turkish-Cypriot properties located in the south of the island.

25. In their comments of 6 October 2009 the Government noted that the offer made by the IPC was close to the sums sought by the applicant and would constitute a "reasonable and realistic amount of just satisfaction".

26. 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.

27. 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.

28. 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.

29. 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.

30. Finally, the Government noted that the applicant's claim in respect of non-pecuniary damage was excessive and incompatible with the practice of the Court.

2. The Court's assessment

31. 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 field in Ayios Epiktitos (see paragraphs 35 and 25 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 field, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his property (see paragraph 23 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 on which he formally acquired ownership of the property, namely 27 June 1990 (see paragraph 10 of the principal judgment), until the present time (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). In connection with this, the Court notes that the document produced by the applicant (see paragraph 8 above) shows that on 29 September 2009 he was still the owner of a share of the field described in paragraph 15 above.

32. However, 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 property, 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).

33. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's field, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 24-26

above), while the applicant has referred to the sale, in 1967, of a comparable field. According to his expert's assessment, this would show that the 1974 market price of agricultural land in Cyprus was approximately CYP 66 per decare (see paragraph 19 above).

34. 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, the applicant's expert has calculated the loss of rents as from January 1987, when Turkey had recognised the right of individual petition, and not from 27 June 1990, when the applicant became the legal owner of the field in Ayios Epiktitos (see paragraph 10 of the principal judgment and paragraph 31 above).

35. 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 property 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 and to the fact that the parties submitted estimates which were, to a large extent, similar, the Court does not see any reason for significantly departing from the sum which the IPC could have offered the applicant in respect of loss of use (approximately EUR 67,736 – see paragraph 24 above). Making its assessment on an equitable basis, the Court decides to award EUR 68,000 under the head of pecuniary and non-pecuniary damage.

B. Costs and expenses

37. In his just satisfaction claims of 29 October 1999, relying on bills from his representative, the applicant sought CYP 3,400 (approximately EUR 5,809) for legal fees and CYP 1,080 (approximately EUR 1,845) for the cost of the expert report assessing the value of his property. In his updated claims for just satisfaction of 25 January 2008, he submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 517.5 and EUR 2,000 respectively. The total sum sought for cost and expenses was thus EUR 10,171.5.

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 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).

41. 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

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 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 68,000 (sixty-eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 8,000 (eight thousands 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