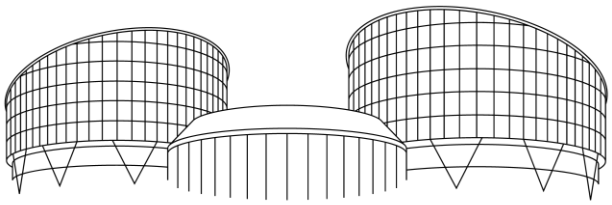

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NICOLAIDES v. TURKEY

(Application no. 18406/91)

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 Nicolaides 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. 18406/91) 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 Andreas Nicolaides ("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 a continuing violation 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. Furthermore, it found that it was not necessary to examine the applicant's complaints under Articles 1, 8, 13 and 14 of the Convention (*Nicolaides v. Turkey*, no. 18406/91, §§ 12, 24, 29, 32 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 7,500 Cypriot pounds (CYP – approximately 12,814 euros (EUR)) for the deprivation of his property 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 81,000 (approximately EUR 138,396) in respect of non-pecuniary damage and approximately EUR 4,826 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 was still registered in his name or to indicate and substantiate any transfer of ownership which might have taken place.

8. In a letter of 24 September 2009, the applicant's representative stated that "no further changes of ownership of the ... propert[y] have taken place up to now". In October 2009 he 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 document, on 22 October 2009 the property described in paragraph 15 below was registered in the name of Nikolaides Andreas.

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 had 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 20 October 1999, the applicant requested 3,000 Cypriot pounds (CYP – approximately 5,125 euros (EUR)) for pecuniary damage. He relied on an expert's report assessing the value of his losses which included the loss of annual rent collected or expected to be collected from renting out his property, plus interest from the date on which such rents were due until the day of payment. The rent claimed was for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until October 1999. The applicant

did not claim compensation for any purported expropriation since he was still the legal owner of the property. The evaluation report contained a description of Trypimeni village, where the applicant's property (a garden with twenty fruit-bearing apricot trees) was located. It had been registered on 25 January 1967 in the name of the applicant under the number 472 and had an area of 920 square metres. According to the researches conducted by an expert appointed by the applicant in the Famagusta land register, the property at issue bore the plot number 185 on sheet/plan 13/32 (see paragraph 9 of the principal judgment).

16. The starting point of the valuation report was the rental value of the applicant's property in 1974, calculated on the basis of the rent obtainable for comparable properties in the area. According to the expert, the rent which could have been obtained in 1974 was between CYP 45 and CYP 65 per decare. In view of the fact that the applicant's property was a young developing apricot grove, its 1974 annual rental value was fixed at CYP 53 (approximately EUR 90). 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 100) and in 1999 (CYP 180). Compound interest for delayed payment was applied at a rate of 8% per annum.

17. On 26 January 2008, following a request from the Court for an update on developments in the case, the applicant submitted updated claims for just satisfaction, which were meant to cover the period of loss of use of the property from 2000 to 31 December 2007. He produced a revised valuation report which, on the basis of the criteria adopted in the previous report, concluded that the sum due for the loss of use for this last period was CYP 4,500 (approximately 7,688 EUR), including statutory interest. The total sum claimed by the applicant for pecuniary damage thus amounted to CYP 7,500 (approximately EUR 12,814).

18. On 21 April 2009 the applicant produced two judgments of the Kyrenia District Court, given on 6 July and 30 November 1973, concerning compensation in respect of land acquisitions which had taken place in February 1970. It transpired from these judgments that the values of land located in Ayios Amvrosios at the relevant time were between CYP 560 (approximately EUR 956) and CYP 1,120 (approximately EUR 1,913) per decare and that the land values had had a 20% annual increase. Therefore, in the middle of 1974 the market price of a decare of land in Ayios Amvrosios could be calculated between CYP 1,070 (approximately EUR 1,828) and CYP 2,130 (approximately EUR 3,639).

19. On 24 September 2009 the applicant produced a revised valuation report, which was meant to cover the loss of use for the period between 1987 and October 2009. The expert appointed by the applicant considered that the 1974 annual rent of his client's field was EUR 91 and that the whole sum due for loss of use was EUR 15,400.

20. In his just satisfaction claims of 20 October 1999, the applicant further claimed CYP 50,000 (approximately EUR 85,430) in respect of non-pecuniary damage. He stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou 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 Article 14 of the Convention.

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

(b) The Government

22. 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 property 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 property and its 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 be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the applicant's property. Alternatively, the latter 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 property between 1974 and the date of payment. Had the applicant applied to the IPC, the latter would have

offered CYP 919.29 (approximately EUR 1,570) to compensate the loss of use and CYP 979.17 (approximately EUR 1,673) 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 property was CYP 160 (approximately EUR 273). 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 property claimed by the applicant was registered in the name of his father, who died in 1992. This fact had not been disclosed at an earlier stage because of the similarity between the applicant's name (Andreas Nicolaides) and the name of his father (Andreas Louca Nicolaides). The applicant had failed to supply information as to the administration of his father's estate and as to whether he was the only heir of the deceased. In the light of the above, the applicant should submit evidence of the ownership of the property at the date of the introduction of the application as well as of the present ownership. In case of omission to submit such evidence, the application should be struck off the list of cases.

26. In any event, the applicant's just satisfaction claims were highly excessive and incompatible with the case-law and practice of the Court.

27. 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 property; 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.

28. It could therefore be said that the IPC had used the same criteria as the Greek-Cypriot 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 property. 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.

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 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.

30. Finally, the Government noted that there was a lack of proportionality between the sum sought for pecuniary damage and the claim under the head of non-pecuniary damage. They argued that the applicant could not "duplicate non-pecuniary damages".

2. The Court's assessment

31. The Court recalls that in its principal judgment it has concluded that there was a continuing violation of the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention by virtue of the complete denial of his right to the peaceful enjoyment of his property in northern Cyprus (see paragraph 24 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 since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his property (see paragraph 22 of the principal judgment). The applicant 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).

32. In connection with this, the Court recalls that in its principal judgment it has rejected an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1 raised by the Government in their comments on the applicant's just satisfaction claims (see paragraph 49 of the principal judgment). In any event, the affirmation of ownership of Turkish-occupied immovable property produced by the applicant (see paragraph 8 above) show that on 22 October 2009 he was still the owner of the property described in paragraph 15 above.

33. 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* (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).

34. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's property, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 27-28 above), while the applicant has referred to the sale, in 1970, of comparable land. According to his expert's assessment, this sale showed that at the relevant time the market price of land located in Ayios Amvrosios was comprised between EUR 956 and EUR 1,913 per decare, which is between EUR 0.956 and EUR 1.913 per square metre (see paragraph 18 above).

35. 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).

36. 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 to use his property as he saw fit (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

37. Having regard to the above considerations, the Court is of the opinion that the amount which the “TRNC” authorities could have offered the applicant in respect of loss of use (approximately EUR 1,570 – see paragraph 24 above) does not seem to take due account of the need to compensate the applicant's moral suffering (see paragraph 36 above). Making its assessment on an equitable basis, the Court decides to award the applicant EUR 10,000 under the head of pecuniary and non-pecuniary damage.

B. Costs and expenses

38. In his just satisfaction claims of 20 October 1999, relying on bills from his representative, the applicant sought CYP 1,825 (approximately

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

39. In October 2009 the applicant's representative stated that his fees had increased up to EUR 6,640.

40. The Government did not comment on this point.

41. 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).

42. 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 violation 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).

43. In the light of the above, the Court considers the amount claimed for costs and expenses for the proceedings before it (EUR 6,640) reasonable and decides to award it to the applicant.

C. Default interest

44. 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 6,640 (six thousand six hundred and forty 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