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

FOURTH SECTION

CASE OF SOLOMONIDES v. TURKEY

(Application no. 16161/90)

JUDGMENT

STRASBOURG

20 January 2009

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 Solomonides v. Turkey,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Işıl Karakaş, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 16161/90) 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 Antonakis Solomonides ("the applicant"), on 26 January 1990.

2. The applicant was represented by Mr C. Clerides, a lawyer practising in Nicosia. The Turkish Government ("the Government") were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that the Turkish occupation of the northern part of Cyprus had prevented him from having access to his properties.

4. The applicant died on 15 February 1998. On 11 June 1998 the District Court of Nicosia appointed his wife, Mrs Paulina Solomonides, and a certain Mrs Rodothea Karaviotou as administrators of his estate. In his observations of September 1999, the applicant's lawyer declared that the application should continue on behalf of the estate in the name of the administrators. As Mrs Paulina Solomonides died on an unspecified date, Mrs Karaviotou became the sole administrator of the applicant's estate. She signed an authority, authorising the applicant's lawyer to continue the proceedings before the Court.

5. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

6. By a decision of 24 August 1999 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The respondent Government replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1934 and lived in Nicosia. He was the director of the private trading companies "A. Solomonidis Ltd", and "Solomonidis & Kozolidis Ltd".

9. The applicant stated that he was the owner of 99 plots of land in the Districts of Kyrenia, Famagusta and Nicosia, in northern Cyprus. In support of his claim of ownership, he produced copies of the relevant affirmations of ownership issued by the Republic of Cyprus.

10. The applicant claimed that from 1974 onwards he had been deprived of his property rights, his plots of land being located in the area which was under the occupation and the overall control of the Turkish military authorities. The latter had prevented him from having access to and use of his property.

11. In a letter of 17 June 2003 the applicant's lawyer observed that the private trading companies "A. Solomonidis Ltd", and "Solomonidis & Kozolidis Ltd" were not the owners of the properties claimed in the application, the original and only owner being the applicant, Mr Antonakis Solomonides.

THE LAW

I. PRELIMINARY ISSUE

12. The Court notes at the outset that the applicant died on 15 February 1998, after the lodging of his application, while the case was pending before the Court. The administrator of his estate, Mrs Rodothea Karaviotou, informed the Court that she wished to pursue the application lodged by him (see paragraph 4 above). Although the heirs of a deceased applicant cannot claim a general right in respect of the examination of the

application brought by the latter to be continued by the Court (see *Scherer v. Switzerland*, 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see *Deweer v. Belgium*, 27 February 1980, § 37, Series A no. 35, and *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A).

13. For the purposes of the instant case, the Court is prepared to accept that the administrator of the applicant's estate can pursue the application initially brought by Mr Antonakis Solomonides (see, *mutatis mutandis*, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 85, 9 June 2005, and *Nerva and Others v. the United Kingdom*, no. 42295/98, § 33, ECHR 2002-VIII).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The Government's objections

1. *Objection of inadmissibility* ratione loci

14. After having recalled in detail the facts which led to the creation of the "Turkish Republic of Northern Cyprus" (the "TRNC"), the Government objected that Turkey had no jurisdiction or control over the territory of the "TRNC", which was an independent and democratic *de facto* State, and not a "subordinate local administration" of Turkey. The applicant's immovable properties were situated in the "TRNC" and were under its exclusive control. They had been expropriated by administrative acts of the "TRNC" under the relevant laws and constitutional provisions. The Government challenged the principles affirmed by the Court in the case of *Loizidou v. Turkey* ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI).

2. *Objection of inadmissibility* ratione temporis

15. The Government recalled that the occupation of northern Cyprus had taken place in 1974, and therefore before the recognition, by Turkey, of the compulsory jurisdiction of the Court (22 January 1990). They argued that the application should be rejected as being incompatible *ratione temporis* with the provisions of the Convention. Furthermore, the situation complained of was not a continuing one and there was no causal link between the 1974 Turkish military intervention and the alleged violations of the applicant's property rights after 22 January 1990.

3. Objection of inadmissibility on the grounds of non-exhaustion of domestic remedies and lack of victim status

16. In their further observations of 23 October 2003, the Government raised a preliminary objection concerning non-exhaustion of domestic remedies in the light of the Law on Compensation for Immovable Properties Located within the boundaries of the "TRNC", which was adopted on 30 June 2003 (Law no. 49/2003). They also noted that since 23 April 2003, Greek Cypriots had free access to the north of the island by showing passports at specified crossing points. Administrative and judicial remedies in the "TRNC" were therefore accessible to them.

17. Law no. 49/2003 provided for the establishment of an independent Immovable Property Determination, Evaluation and Compensation Commission with jurisdiction to award compensation for Greek-Cypriot immovable properties in the "TRNC", on the basis of the market value on 20 July 1974, plus compensation for the loss of use, loss of income and increases in the value of property. The decisions of this Commission could be appealed to the High Administrative Court. Given the existence of this remedy, the applicant could no longer claim to be a victim of a violation of his rights under Article 1 of Protocol No. 1.

B. The applicant's arguments

18. Relying on the case-law developed by the Court in the case of *Loizidou* ((merits), cited above), the applicant alleged that the facts complained of were imputable to Turkey for the purposes of the Convention. He submitted that the starting point for the Court's jurisdiction *ratione temporis* should be fixed at 28 January 1987, when Turkey accepted the jurisdiction of the Commission. From that date onwards, there had been a continuing violation of his rights, as he had been constantly denied access to his properties.

19. The applicant alleged that Law no. 49/2003 was aimed at providing a false and illusory domestic remedy in order to avoid the property claims of Greek Cypriots being adjudicated by the European Court of Human Rights. Furthermore, the objection of non-exhaustion had been raised after the application had been declared admissible. Law no. 49/2003 had not existed at the time when the application was lodged, did not provide a sufficient and effective remedy, was discriminatory and took as its basis that the expropriation was lawful. Furthermore, the applicant could lose his victim status only if the violation of the Convention was expressly recognised and fully remedied by the respondent Government's authorities. This had not happened in the present case.

C. Third-party intervener's arguments

20. The Government of Cyprus recalled that in the case of *Loizidou* (cited above) the Court had found that Turkey had responsibility for securing human rights in the occupied area of Cyprus. They challenged the respondent Government's allegations that the "TRNC" was a State or an entity with effective authority, the creation of which had interrupted the chain of any Turkish responsibility for the events which had taken place in northern Cyprus. They further reiterated that the violations of the right of property which occurred in the "TRNC" territory constituted a continuing situation and not an instantaneous act of deprivation of ownership.

21. The third-party intervener further submitted that the compensation available under Law no. 49/2003 did not alter the fact that the Court did not recognise the acts of the "TRNC" as acts of expropriation. In any event, the said law did not provide any redress for breaches of Article 8 of the Convention and applied only to an extremely restricted category of violations of the right of property. It could not be considered an effective domestic remedy to be exhausted in relation to claims introduced or declared admissible before it was enacted or enforced. Finally, its provisions were incompatible with Articles 6, 13 and 14 of the Convention as well as with Article 1 of Protocol No. 1.

D. The Court's assessment

22. In its decision on the admissibility of the application, the Court noted:

> "the respondent Government have not provided any observations on the admissibility of the case, although they have been given ample opportunity to do so. It must, therefore, be assumed that they do not contest the admissibility of the complaint under Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention."

23. The Court does not see any reason to depart from this finding. On that account, the Government are in principle estopped from raising their objections to admissibility at this stage (Rule 55 of the Rules of Court; see, *inter alia*, *Amrollahi v. Denmark*, no. 56811/00, § 22, 11 July 2002, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

24. In any event, and in so far as certain of the respondent Government's objections could be considered to have been raised at the admissibility stage by implication, having regard to their pleadings in the *Loizidou* case ((preliminary objections), 23 March 1995, Series A no. 310, and (merits), cited above), the Court recalls that the objections of inadmissibility *ratione loci* and *ratione temporis* were duly examined and rejected in the *Loizidou* case (*op. cit.*) and in the case of *Cyprus v. Turkey* ([GC], no. 25781/94,

§§ 69-81, ECHR 2001-IV). It sees no reason to depart from its reasoning and conclusions on these two objections in the instant case.

25. Lastly, as regards the objections of non-exhaustion of domestic remedies and lack of victim status raised by the Government in their further observations of 23 October 2003 relating to the Law on Compensation for Immovable Properties Located within the Boundaries of the "TRNC", the Court notes that these objections were raised after the application was declared admissible. They cannot, therefore, be taken into account at this stage of the proceedings (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003).

26. It follows that the Government's preliminary objections should be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant complained that the Turkish occupation of northern Cyprus had prevented him from having access to his plots of land situated in Kyrenia, Famagusta and Nicosia.

He invoked Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

28. The Government disputed this claim.

A. The arguments of the parties

1. The Government

29. The Government submitted that they had no knowledge as to whether the applicant had been the shareholder of any company and/or had owned any plots of land in northern Cyprus. No proof had been provided of his allegations in this respect, which should be rejected as being unsubstantiated.

30. They further observed that under Article 159 of the "TRNC" Constitution, all immovable property abandoned from 1975 onwards belonged to the State. The Constitution and laws of the "TRNC" should be regarded as a valid legal basis for the expropriation of the applicant's

properties. The question of compensation for the loss of property or of the return of displaced persons to their former residences could not be settled by individual applications to the Court, but should be discussed and solved at the political level. In the current political situation on the island, it would be unrealistic to recognise to individual applicants the right to have access to their properties.

2. The applicant

31. The applicant considered that he had submitted all the necessary evidence of his ownership over the properties at issue. His titles of ownership had been registered in the District Lands Office. However, at the time of the Turkish military intervention the applicant had been forced to flee and had been unable to take with him the title deeds. From July 1974 onwards, the records of the District Lands Office had been in the hands of the respondent Government, which should have produced them before the Court. The authorities of the Republic of Cyprus had reconstructed the Land Books and had issued certificates of affirmation of title. These certificates were the best evidence available in the absence of the original records or documents.

32. The applicant recalled that in the case of *Loizidou* ((merits), cited above), the Court had found that Article 159 of the "TRNC" Constitution could not have the effect of depriving the owners of their properties. He alleged that the interference with his rights had lacked a valid legal basis, had not served a legitimate aim, and had in any event not been proportionate to the purported aim of finding housing for Turkish Cypriots.

B. The third-party intervener's arguments

33. The Government of Cyprus observed that their Department of Lands and Surveys had provided certificates confirming ownership to those persons who did not have title deeds in their possession but whose title was entered in District Lands Office registers in the Turkish-occupied area. These certificates were *prima facie* evidence of their right of property. The "TRNC" authorities were in possession of all the records of the Department of Lands and Surveys relating to the title to properties. It was therefore the duty of the respondent Government to produce them.

34. The Government of Cyprus further noted that the present case was similar to that of *Loizidou* ((merits), cited above), where the Court had found that the loss of control of property by displaced persons arose as a consequence of the occupation of the northern part of Cyprus by Turkish troops and the establishment of the "TRNC", and that the denial of access to property in occupied northern Cyprus constituted a continuing violation of Article 1 of Protocol No. 1.

C. The Court's assessment

35. The Court first notes that the documents submitted by the applicant (see paragraph 9 above) provide *prima facie* evidence that he had a title of ownership over the properties at issue. As the respondent Government failed to produce convincing evidence in rebuttal, the Court considers that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1.

36. The Court recalls that in the aforementioned *Loizidou* case ((merits), cited above, §§ 63-64), it reasoned as follows:

> "63. ... as a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment.
>
> 64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.
>
> It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.
>
> Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention. In such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1."

37. In the case of and *Cyprus v. Turkey* (cited above) the Court confirmed the above conclusions (§§ 187 and 189):

> "187. The Court is persuaded that both its reasoning and its conclusion in the Loizidou judgment (*merits*) apply with equal force to displaced Greek Cypriots who, like Mrs Loizidou, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the 'TRNC' authorities on their physical access to that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.
>
> ...

> 189. .. there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights."

38. The Court sees no reason in the instant case to depart from the conclusions which it reached in the *Loizidou* and *Cyprus v. Turkey* cases (*op. cit.*; see also *Demades* (merits), cited above, § 46).

39. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 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.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF THE CONVENTION AND OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

40. The applicant complained of a violation of the general obligation to respect human rights enshrined in Article 1 of the Convention. He also complained of a violation under Article 14 of the Convention on account of discriminatory treatment against him in the enjoyment of his rights under Article 1 of Protocol No. 1. He alleged that this discrimination had been based on his national origin and religious beliefs.

The relevant provisions read as follows:

Article 1 of the Convention

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 14 of the Convention

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

41. The Government disputed these claims. They noted that the differentiation of the Greek and Turkish-Cypriot communities had been a consequence of the political situation on the island which could not give rise to an issue of discrimination under Article 14 of the Convention.

42. The Government of Cyprus submitted that the policy of the Turkish authorities in the occupied area as far as Greek-Cypriot homes and properties were concerned had been based upon racial discrimination. This was incompatible with Article 14 of the Convention and illegal in terms of customary or general international law.

43. The Court has found the respondent Government to be in breach of Article 1 of Protocol No. 1. In so doing, it has reaffirmed Turkey's responsibility under the Convention for that breach under Article 1 of the Convention. The applicant's separate complaint under that Article adds nothing to the breaches established, it being recalled in any event that Article 1 is a framework provision that cannot be breached on its own (see *Ireland v. the United Kingdom*, 18 January 1978, § 238, Series A no. 25, and *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, § 42, 31 July 2003). It is therefore not necessary to examine this complaint.

44. The Court further recalls that in the above-mentioned *Cyprus v. Turkey* case, it found that, in the circumstances of that case, the Cypriot Government's complaints under Article 14 amounted in effect to the same complaints, albeit seen from a different angle, as those considered in relation to Article 1 of Protocol No. 1. Since it had found a violation of the latter provision, it considered that it was not necessary in that case to examine whether there had been a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to the peaceful enjoyment of their possessions (§ 199).

45. The Court sees no reason in this case to depart from that approach. Bearing in mind its conclusion on the complaint under Article 1 of Protocol No. 1, it finds that it is not necessary to carry out a separate examination of the complaint under Article 14 (see, *mutatis mutandis*, *Eugenia Michaelidou Ltd and Michael Tymvios*, cited above, §§ 37-38).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. In her just satisfaction claims of September 1999, the administrator of the applicant's estate requested 3,913,615 Cypriot pounds (CYP –

approximately 6,686,802 euros (EUR)) for pecuniary damage. She relied on an expert's report assessing the value of the applicant's losses which included the loss of annual rent collected or expected to be collected from renting out the plots of land, 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 administrator of the applicant's estate did not claim compensation for any purported expropriation since he was still the legal owner of the properties. The evaluation report contained a description of the Districts of Nicosia, Famagusta and Kyrenia, in which the applicant's plots were situated.

48. The valuation report referred to 44 plots of land. Its starting point was the annual rental value of each property in 1974, calculated on the basis of a percentage (between 5 and 7%) of the market value of the plots or assessed by comparing the rental value of similar lands at the relevant time. This sum was subsequently adjusted upwards according to an average annual rental increase of 12% for the plots with residential use and of 7% for agricultural lands. Compound interest for delayed payment was applied at a rate of 8% per annum, the total sum due for interest being CYP 1,245,652 (approximately EUR 2,128,321).

49. According to the expert, the total 1974 market value of the 44 plots of land owned by the applicant was CYP 350,610 (approximately EUR 599,052), while the total rental value was CYP 22,127.87 (approximately EUR 37,807).

50. In a letter of 28 January 2008 the administrator of the applicant's estate observed that a long lapse of time had passed since she had presented her 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).

51. In her just satisfaction claims of September 1999, the administrator of the applicant's estate claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. She stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), cited above), 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.

(b) The Government

52. Following a request from the Court, on 15 September 2008 the Government filed comments on the claims for just satisfaction. They observed that it had been originally stated in the application that the private trading companies "A. Solomonidis Ltd", and "Solomonidis & Kozolidis Ltd" were, together with the applicant, joint owners of 99 plots of land in

northern Cyprus. However, no evidence had been produced as to the legal status of these companies; the identity of their shareholders and directors was unknown and there was no document authorising the applicant to act on their behalf. Moreover, no title of ownership over the properties at issue had been produced.

53. The Government further noted that Mr Antonakis Solomonides had also been one of the applicants in the case of *Loizou and Others v. Turkey* (no. 16682/90, declared admissible on 18 May 1999), and that the just satisfaction claims submitted in that case were identical to the ones submitted in the context of the present application.

54. Finally, the Government did not comment on the applicant's submissions under the head of non-pecuniary damage.

2. The third-party intervener

55. The Government of Cyprus fully supported the claims for just satisfaction made by the administrator of the applicant's estate.

3. The Court's assessment

56. The Court first notes that on 17 June 2003 the applicant's lawyer declared that the private trading companies "A. Solomonidis Ltd", and "Solomonidis & Kozolidis Ltd" were not the owners of the properties claimed in the application (see paragraph 11 above). The question of the legal status of these companies and of the applicant's entitlement to act on their behalf is therefore irrelevant for assessing the issue of pecuniary damage. Moreover, the Government's submission that doubts might arise as to the applicant's title of ownership over the plots of land at issue is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. In this respect, the Court cannot but confirm its finding that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1 (see paragraph 35 above). As to the fact that Mr Antonakis Solomonides had also been one of the applicants in the case of *Loizou and Others v. Turkey*, the Court is of the opinion that this issue should be addressed in the context of the examination of the merits of that application.

57. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that both parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention. This failure renders it difficult for the Court to assess whether the estimate furnished by the administrator of the applicant's estate of the 1974 market value of the applicant's plots of land is reasonable. The question must accordingly be reserved and the subsequent procedure fixed

with due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

58. In her just satisfaction claims of September 1999, the administrator of the applicant's estate sought CYP 6,090.93 (approximately EUR 10,406) for the costs and expenses incurred before the Court. This sum included the cost of the expert report assessing the value of the properties.

59. The Government did not comment on this point.

60. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of costs and expenses is not ready for decision. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicant.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the administrator of the applicant's estate has standing to continue the present proceedings in his stead;

2. *Dismisses* by six votes to one the Government's preliminary objections;

3. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 1 of the Convention and of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

5. *Holds* unanimously that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Karakaş is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE KARAKAŞ

(Translation)

Unlike the majority, I consider that the objection of non-exhaustion of domestic remedies raised by the Government should not have been rejected. Consequently, I cannot agree with the finding of a violation of Article 1 of Protocol No. 1.

The rule of exhaustion of domestic remedies is intended to give Contracting States the opportunity to prevent or provide redress for violations alleged against them before such allegations are referred to the Court. That reflects the subsidiary nature of the Convention system.

Faced with the scale of the problem of deprivations of title to property alleged by Greek Cypriots (approximately 1,400 applications of this type lodged against Turkey), the Court, in the operative part of its *Xenides-Arestis v. Turkey*, no. 46347/99, § 37, 22 December 2005, required the respondent State to provide a remedy guaranteeing the effective protection of the rights set forth in Article 8 of the Convention and Article 1 of Protocol No. 1 in the context of all the similar cases pending before it. The State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41 of the Convention, but also to select the general or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The Government submitted that by enacting the Law on Compensation for Immovable Properties (Law no. 67/2005) and setting up a Commission to deal with compensation claims it had discharged that obligation (see also *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 37, 7 December 2006). It is that domestic remedy which, in their submission, the applicant failed to exercise in the present case.

The exhaustion of domestic remedies is **normally** assessed at the time when an application is lodged with the Court. However, there are exceptions to the rule which may be justified by **the particular circumstances of each case** (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001).

Examples of such exceptions are to be found in the cases against Italy which raised similar questions and in which the Court found that certain specific facts justified **departing from the general principle** (see *Brusco v. Italy* (dec.), no. 69789/01, 6 September 2001).

In other examples the Court also took the view, in the light of the specific facts of the cases concerned, and having regard to the subsidiary nature of the Convention mechanism, that new domestic remedies had not been exhausted (see the following decisions: *Nogolica v. Croatia*, no. 77784/01, 5 September 2002; *Slaviček v. Croatia*, no. 20862/02, 4 July 2002; *Andrášik and Others v. Slovakia*, nos. 57984/00, 60226/00, 60242/00, 60679/00,

60680/00 and 68563/01; and *Içyer v. Turkey*, no. 18888/02, 29 January 2002).

In situations where there is no effective remedy affording the opportunity to complain of alleged violations, individuals are systematically compelled to submit to the European Court of Human Rights applications which could have been investigated first of all within the domestic legal order. In that way, the functioning of the Convention system risks losing its effectiveness in the long term (the most pertinent example is the *Broniowski* case, no. 31443/96, 22 June 2004).

In my opinion the above examples provide an opportunity to review the conditions for admissibility in the event of a major change in the circumstances of the case. For the similar post-*Loizidou* cases, the Court can always reconsider its admissibility decision and examine the preliminary objection of failure to exhaust domestic remedies.

Since the Court may reject "**at any stage of the proceedings**" (Article 35 § 4 of the Convention) an application which it considers inadmissible, new facts brought to its attention may lead it, even when examining the case on the merits, to reconsider the decision in which the application was declared admissible and ultimately declare it inadmissible pursuant to Article 35 § 4 of the Convention, taking due account of the context (see, for example, *Medeanu v. Romania* (dec.), no. 29958/96, 8 April 2003, and *Azinas v. Cyprus* [GC], no. 56679/00, §§ 37-43, 28 April 2004).

The existence of a "**new fact**" which has come to light after the admissibility decision may prompt the Court to reconsider that decision.

I consider that the Law on Compensation for Immovable Properties (Law no. 67/2005) and the Commission set up to deal with compensation claims, which are based on the guiding principles laid down by the Court in the *Xenides-Arestis* case, are capable of providing an opportunity for the State authorities to provide redress for breaches of the Convention's provisions, including breaches alleged in applications already lodged with the Court before the Act's entry into force (see *Içyer v. Turkey*, cited above, § 72). That consideration also applies to applications already declared admissible by the Court (see *Azinas*, cited above).

In order to conclude whether there has or has not been a breach of the Convention, complainants must first exercise the new domestic remedy and then, if necessary, lodge an application with the European Court of Human Rights, the international court. Following that logic, I cannot in this case find any violation of the Convention's provisions.