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

FOURTH SECTION

CASE OF SOPHIA ANDREOU v. TURKEY

(Application no. 18360/91)

JUDGMENT

STRASBOURG

27 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 Sophia Andreou 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 18360/91) 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, Mrs Sophia Andreou ("the applicant"), on 7 June 1991.

2. The applicant was represented by Mr K. Chrysostomides, 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 deprived her of her home and properties.

4. The applicant died on 15 December 1993. Her heirs are her husband, Mr Andreas Michael Ioannou, her son, Mr Michael Michael, and her daughter, Mrs Christina Michael. On 3 August 1993 the applicant's heirs informed the Court that they wished to pursue the application on behalf of the deceased.

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. On 11 May 1999, the applicant's heirs were granted legal aid.

7. By a decision of 15 June 1999 the Court declared the application partly admissible.

8. 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 FACTS

9. The applicant was born in 1930.

10. The applicant claimed that she was the owner of a house with a yard, as well as a garden and four plots of land with trees in the village of Ayios Amvrosios in northern Cyprus. She allegedly also owned half of a plot of land with trees and one sixth of another plot with trees and an olive grove in the same area. The applicant grew up and lived in Ayios Amvosios until 1973, when she claimed to have moved to Kyrenia. She lived there with her family, allegedly in a house owned by her husband. In July 1974, as the Turkish troops were advancing, the applicant and her family had to flee to the area still controlled by the Cypriot Government.

11. Before the Court, the applicant produced a certificate confirming ownership issued by the Department of Lands and Surveys of the Republic of Cyprus, a certificate for the same purpose signed by the chairman of the local committee of Ayios Amvrosios and a certificate signed by the rural guard of Ayios Amvrosios. It transpires from these documents that the applicant's properties could be described as follows:

(a) Kyrenia, Ayios Amvrosios, within the village, house with yard (ground level), sheet/plan 13/14X, plot nos. 189/1/2/1, 189/3, area: 350 sq. m, share: whole;

(b) Kyrenia, Ayios Amvrosios, Tzieheneu Teresi, field with trees, sheet/plan 13/14, plot nos. 189/1/2/1, 189/3, area: 350 sq. m, share: whole;

(c) Kyrenia, Ayios Amvrosios, Ayios Demetrianos, field with trees, sheet/plan 13/13, plot no. 193, area: 3.54 decares, share: whole;

(d) Kyrenia, Ayios Amvrosios, Moussas, field with trees, sheet/plan 13/21, plot no. 207, area: 1.229 decares, share: whole;

(e) Kyrenia, Ayios Amvrosios, Tsioppi, garden/cultivated field, sheet/plan 13/23, plot no. 115, area: 335 sq. m, share: whole;

(f) Kyrenia, Ayios Amvrosios, Bambatzera, field with trees, sheet/plan 13/27, plot no. 226, area: 1 hectare, 1.851 decares, share: whole;

(g) Kyrenia, Ayios Amvrosios, Vouno tis Mangous, field with trees, sheet/plan 13/31, plot no. 32/1, area: 1 hectare, 9.449 decares, share: whole;

(h) Kyrenia, Ayios Amvrosios, Vouno tis Mangous, field with trees, sheet/plan 13/31, plot no. 32/3, area: 1 hectare, 3.186 decares, share: ½;

(i) Kyrenia, Ayios Amvrosios, Tzieheneu Teresi, field with olive trees, sheet/plan 13/19, plot no. 171, share: 1/6.

12. Between 1974 and her death the applicant was unable to return to her home and property in the northern part of Cyprus. She was also unable to make use of her property there in any other manner.

13. After 1974 the applicant took part in a number of peaceful demonstrations and marches towards Ayios Amvrosios. She claimed that on all occasions she was prevented from “walking home” by Turkish troops. On 9 December 1990 the applicant took part once again in a car convoy

organised by persons from Kyrenia wishing to return to their homes in the north peacefully. The participants in the convoy had informed the Prime Minister of Turkey, the representative of the Secretary-General of the United Nations (UN) in Cyprus and the commander of the UN forces on the island of their intention to return home. They drove to the Mia Milia buffer-zone checkpoint on the main road linking Nicosia and Kyrenia. There they stopped and asked the UN forces officer on duty to be allowed to return to their homes, property and villages. They requested him to transmit their demand to the Turkish military authorities. Four hours later, the UN officer announced to the applicant and the other participants in the convoy that their request to drive through the checkpoint and enter the northern part of Cyprus had been refused. The applicant claimed that they had been told that their request had been refused by the Turkish military authorities. The respondent Government contended that the UN officer had consulted the Turkish-Cypriot authorities.

THE LAW

I. PRELIMINARY ISSUE

14. The Court notes at the outset that the applicant died on 15 December 1993, after the lodging of her application, while the case was pending before the Court. Her heirs (her husband and her two children) informed the Court that they wished to pursue the application lodged by her (see paragraph 4 above). Although the heirs of a deceased applicant cannot claim a general right for 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).

15. For the purposes of the instant case, the Court is prepared to accept that the applicant's husband and children can pursue the application initially brought by Mrs Sophia Andreou (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

16. In their further observations of 23 October 2003, the Government raised preliminary objections concerning non-exhaustion of domestic remedies and lack of victim status in the light of the Law on compensation for immovable properties located within the boundaries of the "Turkish Republic of Northern Cyprus" (the "TRNC"). The Court observes that these objections are identical to those raised in the case of *Alexandrou v. Turkey* (no. 16162/90, §§ 13-14 and 21, 20 January 2009), and should be dismissed for the same reasons, notably the fact that they had been raised after this part of the application was declared admissible (see also *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003).

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

17. The applicant complained of a violation of her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1.

This provision 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."

18. The Government disputed this claim.

A. The arguments of the parties

1. The Government

19. The Government observed that the applicant had not produced any evidence that in July 1974 she had been the owner of immovable property in Kyrenia or Ayios Amvrosios. The documents obtained by the applicant from the Lands Office of the Republic of Cyprus could not be relied on because they had been issued on the basis of information supplied by the applicant herself and did not show title to the properties concerned at the material time.

20. They further submitted that the aim of the demonstration of 9 December 1990 had been political propaganda. There had been no genuine intention to return to properties in the northern part of Cyprus. The

applicant had not applied through the proper channels and Mia Milia was not an approved crossing point. Moreover, she had been well aware of the agreement between the two communities about the voluntary relocation of populations, which was implemented under UN auspices.

21. In any event, given the political situation on the island, the complaints put forward by the applicant could only be settled within the framework of an overall settlement of the island's problems. Failing that, the extensive control of the use of property in the northern part of the island by the Turkish-Cypriot authorities was justified in the general interest in accordance with Article 1 of Protocol No. 1. The respondent Government pointed out in this connection that it would be paradoxical and unfair not to take the local laws into consideration and yet to hold Turkey responsible for the acts of the "TRNC" authorities. They also submitted that the measures in question were necessary to facilitate the rehabilitation of Turkish-Cypriot refugees and look after abandoned Greek-Cypriot property and put it to better use. There was a public interest in not undermining the inter-communal talks concerning freedom of movement and settlement and the right to property. The status of the UN buffer-zone also rendered it necessary to regulate the right of access to possessions until a settlement of the political problem was achieved.

2. The applicant

22. The applicant submitted that she had attempted to cross the buffer-zone and that she had indeed been the owner of the properties in question in 1974. The respondent Government could have verified the title deeds issued by the Lands Office of the Republic of Cyprus against the old records in Kerynia, which were in their possession.

23. The applicant had not left the northern part of Cyprus of her own will, but had been forced to flee. Between 1974 and her death, there had been continuous interference with her enjoyment of her right to property. Moreover, there had been a significant change in the treatment of Greek-Cypriot property in the northern part of the island with the enactment by the "TRNC" of Law No. 52 of 1995, which gave effect to Article 159 of the "TRNC" Constitution, a provision allowing expropriation.

24. The interference with the applicant's property rights could not be justified under Article 1 of Protocol No. 1. The policies of the "TRNC" could not furnish a legitimate aim since the establishment of the "TRNC" was an illegitimate act condemned by the UN Security Council. For the same reason, the interference could not be found to be in accordance with the law and the general principles of international law. Nor was it proportionate. The applicant relied essentially on the principles laid down by the Court in the case of *Loizidou v. Turkey* ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI).

B. The third-party intervener's arguments

25. 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 the District Land Offices 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.

26. 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

27. The Court first notes that the documents submitted by the applicant (see paragraph 11 above) provide *prima facie* evidence that she 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.

28. 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."

29. In the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001–IV) 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."

30. 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).

31. 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 her property as well as any compensation for the interference with her property rights.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant submitted that in 1974 she had had her home in Kyrenia. As she had been unable to return there until her death, she was the victim of a violation of Article 8 of the Convention.

This provision reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

33. The Government disputed this claim, alleging that there was no evidence that in 1974 the applicant had had her residence in Kyrenia.

34. The Government of Cyprus submitted that where the applicant's properties constituted the person's home, there was a violation of Article 8 of the Convention.

35. The Court notes that the Government failed to produce any evidence capable of casting doubt upon the applicant's statement that, at the time of the Turkish invasion, she was regularly residing in Kyrenia and that this house was treated by the applicant and her family as a home.

36. Accordingly, the Court considers that in the circumstances of the present case, the house where the applicant was living with her husband qualified as "home" within the meaning of Article 8 of the Convention at the time when the acts complained of took place.

37. The Court observes that the present case differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the applicant actually had a home in Kyrenia.

38. The Court notes that from 1974 until her death the applicant was unable to gain access to and to use that home. In this connection the Court recalls that, in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 172-175), it concluded that the complete denial of the right of Greek Cypriot displaced persons to respect for their homes in northern Cyprus since 1974 constituted a continuing violation of Article 8 of the Convention. The Court reasoned as follows:

"172. The Court observes that the official policy of the 'TRNC' authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.

173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in 'legislation' and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General ...

174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.

> 175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus."

39. The Court sees no reason in the instant case to depart from the above reasoning and findings (see also *Demades* (merits), cited above, §§ 36-37).

40. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention on account of the complete denial of the applicant's right to respect for her home.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In their just satisfaction claims of 29 September 1999, the applicant's heirs requested 196,962 Cypriot pounds (CYP – approximately 336,529 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 valuation report contained a description of Ayios Amvrosios village.

43. The starting point of the valuation report was the rental value of each property in 1974, subsequently adjusted upwards or downwards according to the annual increase or decrease, in order to arrive at the rent receivable in 1987. The expert took into account the nature of the area under study and the trends in rent increase (an average of 7% or 12% per annum) in the unoccupied areas on the basis of the Consumer Price Index for rents and housing of the Department of Statistics and Research of the Government of Cyprus. Compound interest for delayed payment was applied at a rate of 8%

per annum. Thus, the total annual rent which could have been obtained in 1974 was CYP 360 (approximately EUR 615) for the property referred to in paragraph 11 (a) and (b) above and CYP 99.2 (approximately EUR 169) for the properties referred to in paragraph 11 (c), (d), (e), (g) and (h) above; the properties referred to in paragraph 11 (f) and (i) above had a 1974 open-market value of CYP 17,565 (approximately EUR 30,011).

44. On 25 January 2008, following a request from the Court for an update on developments in the case, the applicant's heirs 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. They produced a revised valuation report which, on the basis of the criteria adopted in the previous report, concluded that the sums due for the loss of use were CYP 47,074 for the property referred to in paragraph 11 (a) and (b) above, CYP 20,557 for the property referred to in paragraph 11 (c), (d), (e), (g) and (h) above and CYP 597,290 for the property referred to in paragraph 11 (f) and (i) above. The total sum claimed by the applicant's heirs thus amounted to CYP 664,921 (approximately EUR 1,136,084).

45. In their just satisfaction claims of 29 September 1999, the applicant's heirs further claimed CYP 380,000 (approximately EUR 649,268) 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* case ((just satisfaction), 28 July 1998, *Reports* 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

46. The Government filed comments on the applicant's heirs' updated claims for just satisfaction on 30 June 2008 and 15 October 2008. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and maintained that the claims for just satisfaction were not ready for examination. The Government had in fact encountered serious problems in identifying the properties and their present owners. The information provided by the applicants in this regard was not based on reliable evidence. Moreover, owing to the lapse of time since the lodging of the applications, new situations might have arisen: the properties could have been transferred, donated or inherited within the legal system of southern Cyprus. These facts would not have been known to the respondent Government and could be certified only by the Greek-Cypriot authorities, who, since 1974, had reconstructed the registers and records of all properties in northern Cyprus. Applicants should be required to provide search certificates issued by the Department of Lands and Surveys of the Republic of Cyprus. Moreover, in cases where the original applicant had passed away or the property had changed hands, questions might arise as to

whether the new owners had a legal interest in the property and whether they were entitled to pecuniary and/or non-pecuniary damages.

47. The Government further noted that some applicants had shared properties and that 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.

48. 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.

49. 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 properties to the State, thereby relinquishing title to and claims in respect of them.

50. 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 properties described in paragraph 11 (d), (f), (g), (h) and (i) above. The other immovable properties referred to in the application were possessed by refugees; they 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 values) and increase in value of the properties between 1974 and the date of payment. Had the applicant's heirs applied to the Immovable Property Commission, the latter would have offered CYP 45,884.21 (approximately EUR 78,397) to compensate the loss of use and CYP 48,872.90 (approximately EUR 83,504) for the value of the properties. According to an expert appointed by the "TRNC" authorities, the 1974 open-market value of all the properties described in paragraph 11 above was CYP 7,986 (approximately EUR 13,644). Upon fulfilment of

certain conditions, the Immovable Property Commission could also have offered the applicant's heirs an exchange of their properties with Turkish-Cypriot properties located in the south of the island.

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

2. The third-party intervener

52. The Government of Cyprus fully supported the applicant's heirs' updated claims for just satisfaction.

3. The Court's assessment

53. The Court first notes that the Government's submission that doubts might arise as to the applicant's title of ownership over the properties at issue (see paragraph 46 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. Such an objection should have been raised before the application was declared admissible or, at the latest, in the context of the parties' observations on the merits. In any event, 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 27 above).

54. 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 the 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 invasion. This failure renders it difficult for the Court to assess whether the estimate furnished by the applicant's heirs of the 1974 market value of their properties 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's heirs (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

55. In their just satisfaction claims of 29 September 1999, relying on bills from their representative, the applicant's heirs sought CYP 10,160.62 (approximately EUR 17,360) for the costs and expenses incurred before the Court. This sum included CYP 2,160 (approximately EUR 3,690) for the cost of the expert report assessing the value of the properties. On 7 June 2000 the applicant's heirs' representative declared that his clients had received legal aid in the amount of 5,000 French francs (approximately EUR 762) and that this sum should have been deducted from his previous bill. In their updated claims for just satisfaction of 25 January 2008, the

applicant's heirs submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 1,955 and EUR 2,000 respectively.

56. The Government did not comment on this point.

57. 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's heirs.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the applicant's heirs have standing to continue the present proceedings in her 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* by six votes to one that there has been a violation of Article 8 of the Convention;

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's heirs 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 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	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.
F.A.

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 violations of Article 1 of Protocol No. 1 and of Article 8 of the Convention.

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* judgment of 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, ECHR 2001-V (extracts)).

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, ECHR 2001-IX).

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, ECHR 2002-VIII; *Slaviček v. Croatia*, no. 20862/02, ECHR 2002-VII;

Andrášik and Others v. Slovakia, nos. 57984/00, 60226/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Içyer v. Turkey*, no. 18888/02, ECHR 2006-I).

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 v. Poland* case ([GC], no. 31443/96, ECHR 2004-V).

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, ECHR 2004-III).

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*, 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.