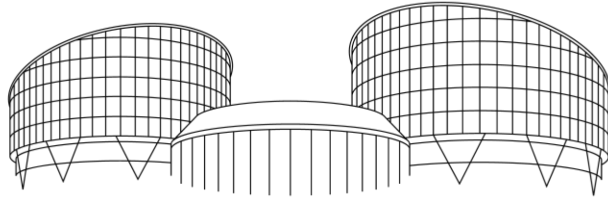

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SOPHIA ANDREOU v. TURKEY

(Application no. 18360/91)

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 Sophia Andreou 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. 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. In a judgment delivered on 27 January 2009 ("the principal judgment"), the Court held that the applicant's heirs (her husband, her son and her daughter) had standing to continue the present proceedings in her stead, dismissed various preliminary objections raised by the Turkish Government and found continuing violations of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for her home and of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of her property as well as any compensation for the interference with her property rights (*Sophia Andreou v. Turkey*, no. 18360/91, §§ 15, 16, 31 and 40 and points 1-4 of the operative provisions, 27 January 2009).

3. Under Article 41 of the Convention the applicant's heirs sought just satisfaction of 664,921 Cypriot pounds (CYP – approximately 1,136,084 euros (EUR)) for the deprivation of the applicant's properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 31 December 2007. Two valuation reports, setting out the basis of the applicant's loss, were appended to their observations. Furthermore, the applicant's heirs claimed CYP 380,000 (approximately EUR 649,268) in respect of non-pecuniary damage and approximately EUR 20,553 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., §§ 54 and 57, and point 5 of the operative provisions).

5. On 13 July 2009 the Court invited the applicant's heirs and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment.

6. The applicant's heirs and the Government each filed comments on this matter.

7. On 4 September 2009, the applicant's heirs were invited to submit written evidence that the properties at stake were still registered in their name or to indicate and substantiate any transfer of ownership which might have taken place.

8. On 30 September 2009 the applicant's heirs produced certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpires from these documents that on 29 September 2009 the properties described in paragraph 16 (a), (b), (c), (d), (e), (g) and (h) below were registered in the name of Ioannou Sofia. The file contains a certificate issued by the Republic of Cyprus on 24 July 1998 stating that "Sophia Andreou of Ayios Amvrosios, Kyrenia, Identity Card number 284342, is the same person as Sophia Ioannou and Sophia Andreou Ioannou". No fresh certificate of affirmation of ownership was provided for the property described in paragraph 16 (f) below.

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 heirs' just satisfaction claims. They invoked the principles affirmed by the Grand Chamber in *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) and argued that the applicant's heirs should address their claims to the Immovable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005.

10. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of

the time-limit for filing comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in *Demopoulos*. It could therefore be held that the Government are estopped from raising the matter at this stage of the proceedings.

11. In any event, the Court cannot but reiterate its case-law according to which objections based on non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Alexandrou v. Turkey* (merits), no. 16162/90, § 21, 20 January 2009) or at a later stage. This approach has not been modified by the Grand Chamber, as the cases of *Demopoulos and Others* had not been declared admissible when Law 67/2005 entered into force and when Turkey objected that domestic remedies had not been exhausted.

12. Furthermore, the Court considers that its previous finding in the present case that the applicant's heirs were not required to exhaust the remedy introduced by Law 67/2005 constitutes *res judicata*. It recalls that after the compensation mechanism before the IPC was introduced, the Government raised an objection based on non-exhaustion of domestic remedies. This objection was rejected in the principal judgment (see paragraph 16 of the principal judgment and point 2 of its operative provisions). The Government also unsuccessfully requested the referral of the case to the Grand Chamber.

13. It follows that the Government's request to stay the examination of the applicant's heirs' claims for just satisfaction should be rejected. The Court will therefore continue to examine the case under Article 41 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

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 their just satisfaction claims of 29 September 1999, the applicant's heirs requested CYP 196,962 (EUR 336,529) 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, where the applicant's properties were located.

16. 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 properties in respect of which pecuniary damages were claimed 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 square metres (m²), share: whole;

(b) Kyrenia, Ayios Amvrosios, Ayios Demetrianos, field with trees, sheet/plan 13/13, plot no. 193, area: 3,054 m², share: whole;

(c) Kyrenia, Ayios Amvrosios, Moussas, field with trees, sheet/plan 13/21, plot no. 207, area: 1,229 m², share: whole;

(d) Kyrenia, Ayios Amvrosios, Tsioppi, garden/cultivated field, sheet/plan 13/23, plot no. 115, area: 335 m², share: whole;

(e) Kyrenia, Ayios Amvrosios, Bambatzera, field with trees, sheet/plan 13/27, plot no. 226, area: 11,851 m², share: whole;

(f) Kyrenia, Ayios Amvrosios, Vouno tis Mangous, field with trees, sheet/plan 13/31, plot no. 32/1, area: 19,449 m², share: whole;

(g) Kyrenia, Ayios Amvrosios, Vouno tis Mangous, field with trees, sheet/plan 13/31, plot no. 32/3, area: 13,186 m², share: ½;

(h) Kyrenia, Ayios Amvrosios, Tzieheneu Teresi, field with olive trees, sheet/plan 13/19, plot no. 171, area: 9,121 m²; share: 1/6.

17. 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 16 (a) above and CYP 99.2 (approximately EUR 169) for the properties referred to in paragraph 16 (b), (c), (d), (f) and (g) above; the properties referred to in paragraph 16 (e) and (h) above had a 1974 open-market value of CYP 17,565 (approximately EUR 30,011).

18. 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 properties 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 16 (a) above, CYP 20,557 for the properties referred to in paragraph 16 (b), (c), (d), (f) and (g) above and CYP 597,290 for the properties referred to in paragraph 16 (e) and (h) above. The total sum claimed by the applicant's heirs thus amounted to CYP 664,921 (approximately EUR 1,136,084).

19. On 30 September 2009 the applicant's heirs produced a revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and 31 December 2009. On the basis of the criteria used in the previous reports, the expert appointed by the applicant's heirs considered that the whole sum due to his clients for pecuniary damage was EUR 1,311,889.

20. The expert annexed to his report a judgment of the Kyrenia District Court, given on 6 July 1973, concerning compensation in respect of land acquisitions which had taken place in February 1970. It transpired from this judgment 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. The expert also submitted a synoptic table indicating the prices of ten “comparable sales for properties in Kato Kyrenia and Ayios Amvrosios”. According to this table, the 1974 value of one square metre of building site was comprised between CYP 24.1 (approximately EUR 41) and CYP 28.7 (approximately EUR 49), while fields could be sold for a price comprised between CYP 0.969 (approximately EUR 1.65) and CYP 1.28 (approximately EUR 2.18) per square metre.

21. 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 of Judgments and Decisions* 1998-I), 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

22. The Government filed comments on the applicant's heirs' updated claims for just satisfaction on 30 June 2008, 15 October 2008 and 6 October 2009. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues. For instance, some

applicants had shared properties and it had not been proved that their co-owners had agreed to the partition of the possessions. Nor, when claiming damages based on the assumption that the properties had been rented after 1974, had the applicants shown that the rights of the said co-owners under domestic law had been respected.

23. 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.

24. 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.

25. 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 16 (c), (e), (f), (g) and (h) 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 IPC, 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 authorities of the "TRNC", the 1974 open-market value of all the properties described in paragraph 16 above was CYP 7,986 (approximately EUR 13,644). Upon fulfilment of certain conditions, the IPC could also have offered the applicant's heirs an exchange of the properties with Turkish-Cypriot properties located in the south of the island.

26. In their comments of 6 October 2009 the Government noted that the values of Greek-Cypriot properties in northern Cyprus had considerably decreased since the delivery of the *Loizidou* judgment and of the judgment of the European Court of Justice of 28 April 2009 in the case of *Apostolides v. Orams* (Case C-42-/07).

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 properties; this last value had been modified every year on the basis of the land market value index. Cyprus Central Bank interest rates had been applied on the sums due since 1974.

28. It could therefore be said that the IPC had used the same criteria as the Greek-Cypriots applicants. However, being in possession of the land registers in which comparable sales had been recorded, it was better placed to assess the 1974 market values of the properties. Applicants had, in general, tended to exaggerate and inflate these values. Their calculations were highly presumptive; for instance, the percentage used for assessing the loss of income had frequently been the same for buildings, fields, orchards and plots of land, irrespective of their location, of the existence of electricity or water supplies and of an access to a minor or major road. On the contrary, the Turkish-Cypriot authorities had taken all these factors into consideration; they had applied a higher percentage for buildings in built-up areas than for vacant fields.

29. The Government also insisted that, as it could not be excluded that the properties at issue had been transferred within the legal system of southern Cyprus, applicants should be required to provide search certificates issued by the Greek-Cypriot Department of Lands and Surveys. Failure to substantiate title to the properties at the material time and at the time of the Court's judgment should be considered as a failure to cooperate with the Court. No just satisfaction should be awarded in respect to unsubstantiated or dubious claims.

30. After the delivery of the Court's principal judgment, the Turkish-Cypriot authorities had invited the applicant to apply to the IPC in order to reach an agreement on the matter of compensation. The applicant had not replied to this invitation. This attitude was mainly due to political reasons and to the pressures exerted by the Greek-Cypriot authorities in order to discourage their citizens from applying to the IPC. Misleading information had been given about its powers and the Greek-Cypriots who had applied to it had been questioned by the Office of the Attorney General. In 2006 the Greek-Cypriot media had even revealed a “shame list” and published the names of applicants to the IPC.

31. Finally, the Government argued that the applicant's heirs' claim in respect of non-pecuniary damage was excessive; regard should be had to the Court's practice and to the fact that no damage could be claimed for the period after the applicant's death.

2. The Court's assessment

32. The Court recalls that in its principal judgment it has concluded that there had been a continuing violation of the applicant's rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 by virtue of the complete denial of the applicant's rights with respect to her home and the peaceful enjoyment of her properties in northern Cyprus (see paragraphs 40 and 31 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 her land and real estate, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy her properties (see paragraph 29 of the principal judgment). Her heirs are therefore entitled to a measure of compensation in respect of losses directly related to this violation of her rights as from the date of the deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, namely 22 January 1987, until the day of the applicant's death, namely 15 December 1993 (see paragraph 4 of the principal judgment; see also, *mutatis mutandis*, *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and *Demades v. Turkey* (just satisfaction), no. 16219/90, § 21, 22 April 2008).

33. In connection with this, the Court notes that the applicant's heirs have not introduced an autonomous claim concerning a potential violation of the property rights which they might have acquired in their quality of successors of Mrs Sophia Andreou, but have merely successfully requested to pursue the application lodged by the deceased (see paragraphs 14 and 15 of the principal judgment and point 1 of its operative provisions). Under these circumstances, no alleged pecuniary damage for loss of use can be awarded for the time which has elapsed after the applicant's demise. It is also to be noted that the documents produced by the applicant's heirs (see paragraph 8 above) show that on 29 September 2009 the properties described in paragraph 16 (a), (b), (c), (d), (e), (g) and (h) above were still registered in the applicant's name. It is true that the applicant's heirs have not submitted evidence showing the current registered owner of the property described in paragraph 16 (f) above; however, as the Court will assess the pecuniary damage suffered by the applicant only until 15 December 1993, written proof of the current ownership of this plot of land is not strictly necessary.

34. In the opinion of the Court, the valuations furnished by the applicant's heirs involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its

susceptibility to influences both domestic and international (see *Loizidou v. Turkey* (just satisfaction), cited above, § 31). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by her heirs (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers as reasonable the approach to assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (*Loizidou* (just satisfaction), cited above, § 33, and *Demades* (just satisfaction), cited above, § 23). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey*, (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits), 18 December 1996, § 32, *Reports* 1996-VI).

35. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's properties, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 27-28 above), while the applicant's heirs have referred to the sale, in 1970, of comparable land. According to their 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. Moreover, according to the synoptic table produced by the expert, in 1974 fields in the same location could be sold for a sum comprised between EUR 1.65 and 2.18 per square metre (see paragraph 20 above). The parties have failed to produce any data relevant to assessing the 1974 market price of buildings.

36. The Court further observes that the applicant's heirs have 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 her heirs are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24). Moreover, the applicant's heirs have calculated the loss of rents until the end of 2009, and not until 15 December 1993, date of the applicant's death (see paragraphs 32 and 33 above).

37. Finally, the Court considers that an award should be made in respect of the anguish and feelings of helplessness and frustration which, until her death, the applicant must have experienced over the years in not being able to use her properties as she saw fit and enjoy her home (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

38. Having regard to the above considerations, the Court is of the opinion that the sum which, according to the Government, the IPC could

have offered the applicant in respect of loss of use (approximately EUR 78,397 – see paragraph 25 above) constitutes a fair basis for compensating the damage sustained by Mrs Sophia Andreou. Making its assessment on an equitable basis, the Court decides to award EUR 80,000 under the head of pecuniary and non-pecuniary damage.

B. Costs and expenses

39. 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.

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 violations at stake were essential to enable the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34).

43. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive. Taking into account the sum received by the applicant's heirs by way of legal aid (approximately EUR 762), it decides to award EUR 7,238 under this head.

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 heirs' claims for just satisfaction;

2. *Holds*
   (a) that the respondent State is to pay the applicant's heirs, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 7,238 (seven thousand two hundred and thirty-eight euros), plus any tax that may be chargeable to the applicant's heirs, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's heirs' claim for just satisfaction.

Done in English, and notified in writing on 22 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President