CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION[1]

CASE OF XENIDES-ARESTIS v. TURKEY

(Application no. 46347/99)

JUDGMENT

STRASBOURG

22 December 2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

1. In its composition before 1 November 2004.

In the case of Xenides-Arestis v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mr K. TRAJA,
Mrs A. GYULUMYAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 and 7 December 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 46347/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mrs Myra Xenides-Arestis ("the applicant"), on 4 November 1998.

2. The applicant was represented by Mr A. Demetriades, a lawyer practising in Nicosia. The Turkish Government ("the Government") were represented by their Agent, Prof. Dr Z. Necatigil.

3. The applicant alleged a continuing violation of Articles 8 of the Convention and 1 of Protocol No. 1, taken alone and in conjunction with Article 14. In particular, she maintained that the Turkish military forces prevent her from having access to, from using and enjoying her home and property in the area of Famagusta, in northern Cyprus. She submitted that this was due to the fact that she is Orthodox and of Greek-Cypriot origin.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. A hearing on the admissibility of the application took place in the Human Rights Building, Strasbourg, on 2 September 2004.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1) but this case remained with the Chamber constituted within former Section III.

7. By a decision of 14 March 2005 the Court declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1) and the Government sent comments on the applicant's claims for just satisfaction. The Government of Cyprus, who had made use of their right to intervene under Article 36 of the Convention, did not submit any comments on the parties' observations.

THE FACTS

9. The applicant, Mrs Myra Xenides-Arestis, is a Cypriot national of Greek-Cypriot origin, who was born in 1945 and lives in Nicosia.

10. The applicant owns property in the area of Ayios Memnon (Esperidon street), in the fenced-up area of Famagusta, that she acquired by way of gift from her mother. In particular, she owns half a share in a plot of land (plot no. 142, sheet/plan 33/29) with buildings thereon, which consist of one shop, one flat and three houses. One of the houses was her home where she lived with her husband and children whereas the rest of the property was used by members of the family and/or rented out to third parties. Furthermore, the applicant partly owns a plot of land (plot no. 158, sheet/plan 33/29) with an orchard (her share being equivalent to 5/48). This was registered in her name on 31 January 1984. The rest of the property is owned by other members of her family.

11. In August 1974 she was forced with her family by the Turkish military forces to leave Famagusta and abandon their home, property and possessions. Since then she has been prevented from having access to, from using and enjoying her home and property, which are under the occupation and the control of the Turkish military forces. According to the applicant, only the Turkish military forces have access to the fenced-up area of Famagusta.

12. On 23 April 2003 new measures were adopted by the authorities of the "Turkish Republic of Northern Cyprus" ("TRNC") regarding crossings from northern to southern Cyprus and *vice versa* through specified checkpoints. On 30 June 2003 the "Parliament of the TRNC" enacted the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus" ("TRNC") which entered into force on the same day ("Law no. 49/2003"). On 30 July 2003, under Article 11 of this "Law", an "Immovable Property Determination Evaluation and Compensation Commission" was established in the "TRNC". The rules of the commission were published in the "TRNC Official Gazette" on 15 August 2003 and the commission was constituted by a decision of the "TRNC Council of Ministers" published in the aforementioned gazette on 18 August 2003.

13. On 24 April 2004 two separate referendums were held simultaneously in Cyprus on the Foundation Agreement–Settlement Plan ("Annan Plan") which had been finalised on 31 March 2004. Since the plan was approved in the Turkish-Cypriot referendum but not in the Greek-Cypriot referendum, the Foundation Agreement did not enter into force.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

14. The Government in their submissions on the merits raised the same objection as at the admissibility stage concerning the victim status of the applicant. In particular, they maintained that the property allegedly owned by the applicant had been registered in the books of the Turkish Moslem religious trust (*vakf*) as having being dedicated to the religious trust in perpetuity in accordance with the relevant rules and principles and could not be transferred to individuals as private property. They noted that the applicant had not produced an authentic title deed showing registration of her name as recorded in the books of the Land Office but a document certifying that the properties in her name were "Turkish held properties". Turkey was not in possession or control of the Land Office records of the "TRNC" and therefore, the Government, wished to reserve their position to finalise the information about the history of the title of the properties in question.

15. The Court notes that the Government's objection was duly examined and dismissed in its admissibility decision of 14 March 2005 in which it found that the applicant constituted a "victim" within the meaning of Article 34 of the Convention. In its decision, among other things, the Court had pointed out that the respondent Government had not substantiated their arguments. The Government have not submitted any new information in this regard within the time-limit assigned to them. The Court therefore sees no reason to depart from its findings in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained of an unjustified interference with the right to respect for her home in violation of Article 8 of the Convention, which 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."

1. The parties' submissions

(a) The applicant

17. The applicant relied on the findings of the Court in its judgments in the cases of *Loizidou v. Turkey* ((preliminary objections), judgment of 23 March 1995, Series A no. 310, and (merits) judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV), *Demades v. Turkey* (no. 16219/90, § 46, 31 July 2003) and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (no. 16163/90, § 31, 31 July 2003). Furthermore, in her earlier observations on the admissibility of the application, she had distinguished her case from that of *Loizidou v. Turkey* (merits, cited above) in so far as Article 8 of the Convention was concerned, since her complaint related to an interference with her right to respect for the home in which she lived with her husband and children and of which she was the owner. This was irrespective of whether the area in which her home was situated was the same as that where she grew up and her family had its roots.

(b) The Government

18. The Government did not make any submissions under this head on their observations on the merits of the case. In their earlier observations on the admissibility of the application, however, the Government had made limited submissions under this head. In particular, they disputed the applicant's complaint under Article 8 of the Convention, on the basis that the notion of "home" in Article 8 could not be interpreted to cover an area of the State where one had grown up and where the family had its roots but where no longer lived (*Loizidou* (merits), cited above, § 66).

2. The Court's assessment

19. At the outset, the Court observes that the present case differs from the *Loizidou* case (merits, cited above) since, unlike Mrs Loizidou, the applicant actually had her home in Famagusta.

20. Further, the Court notes that since 1974 the applicant has been unable to gain access to, to use and enjoy her home. In connection with this 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 (see paragraph 16 above).

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."

21. In this connection the Court also reiterates its findings in the case of *Demades v. Turkey* (cited above, §§ 29-37).

22. The Court sees no reason in the instant case to depart from the above reasoning and findings. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for her home.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

23. The applicant contended that the continuous denial of access to her property in northern Cyprus and the ensuing loss of all control over it and all possibilities to use and enjoy it, constituted a violation of 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."

1. The parties' submissions

(a) The applicant

24. The applicant relied on the Court's judgments in the cases of *Loizidou v. Turkey* (preliminary objections and merits, cited above), *Cyprus v. Turkey* (cited above), *Demades v. Turkey* (cited above, § 46) and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (cited above, § 31).

(b) The Government

25. The Government limited their submissions under this head to contesting the applicant's ownership of the property in question (see paragraph 13 above) and the status of Famagusta (Varosha) where the properties in question were situated. With regard to the latter, the Government stated that the Greek-Cypriot authorities had been responsible for the evacuation of Varosha and for rejecting proposals for and attempts at resettlement of the area. In this connection, they referred to the inter-communal talks concerning this area, various proposals and excerpts of statements made in that context. They submitted that it was not possible for Turkey unilaterally to open this area for settlement on an individual basis without agreed administrative arrangements and the setting up of funds for development and infrastructural projects designed to assist in the process of readjustment subsequent to a settlement. The Government also considered that the Court at this stage in the proceedings and in the absence of a comprehensive and final settlement of the property issue should not proceed to determine the title over the properties in question.

26. In their earlier observations on the admissibility of the application, the Government had contended that the applicant's complaint under Article 1 of Protocol No. 1 related in essence to freedom of movement, guaranteed under Article 2 of Protocol No. 4 which Turkey had not ratified. They therefore argued that the right to peaceful enjoyment of property and possessions did not include, as a corollary, the right to freedom of movement.

2. The Court's assessment

27. At the outset, the Court recalls that in its admissibility decision in the present case, in line with the cases of *Loizidou v. Turkey* (preliminary objections and merits) and *Cyprus v. Turkey* (both cited above), it dismissed the Government's objections as to Turkey's alleged lack of jurisdiction and responsibility for the acts in respect of which complaint was made. It further rejected the Government's arguments regarding the effect which the Court's consideration of the applicant's claims could have on the inter-communal talks as well as on those concerning freedom of movement. It noted that no

change had occurred since the adoption of the judgments in the abovementioned cases by the Court which would justify a departure from its conclusions as to Turkey's jurisdiction. In this connection, the Court also pointed out, *inter alia*, that the Government continued to exercise overall military control over northern Cyprus and that the fact that the Greek-Cypriots had rejected the Annan Plan did not have the legal consequence of bringing to an end the continuing violation of the displaced persons' rights.

28. The Court further reiterates that in accordance with the Court's findings in the cases of *Loizidou v. Turkey* (preliminary objections and merits) and *Cyprus v. Turkey* (both cited above) the applicant must still be regarded as the legal owner of her land. In this connection it notes that it has dismissed the Government's arguments concerning the applicant's title to the relevant properties.

29. In the aforementioned *Loizidou v. Turkey* case (merits, cited above), the Court 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."

30. In the case of *Cyprus v. Turkey* (cited above) the Court confirmed the above conclusions:

> "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. It further notes that, as regards the purported expropriation, no compensation has been paid to the displaced persons in respect of the interferences which they have suffered and continue to suffer in respect of their property rights
>
> ...
>
> 189. For the above reasons, the Court concludes that 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."

31. The Court in this connection reiterates its findings in the cases of *Demades v. Turkey* (cited above, §§ 43-46) and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (cited above, §§ 28-31).

32. In the light of the above the Court sees no reason in the instant case to depart from the conclusions which it reached in the above cases. Accordingly, it concludes that there has been and continues to be a violation of Article 1 of Protocol No. 1 by virtue of the fact that the applicant is denied access to and control, use and enjoyment of her property and any compensation for the interference with her property rights.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 8 OF THE CONVENTION AND 1 OF PROTOCOL No. 1

33. The applicant maintained that she was the victim of discrimination in relation to the enjoyment of her rights in respect of her home and property, contrary to Article 14 of the Convention, which reads as follows:

> "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."

34. The Government did not make any submissions under this head.

35. The Court 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 Articles 8 of the Convention and 1 of Protocol No. 1. Since it found violations of the latter provisions, 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 Articles 8 of the Convention and 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 (cited above, § 199).

36. The Court sees no reason in this case to depart from that approach. Bearing in mind its conclusion on the complaints under Articles 8 of the Convention and 1 of Protocol No. 1, it finds that it is not necessary to carry out a separate examination of the complaint under Article 14 in conjunction with these provisions.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

37. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

38. It is inherent in the Court's findings that the violation of the applicant's rights guaranteed by Articles 8 of the Convention and 1 of Protocol No. 1 originates in a widespread problem affecting large numbers of people, i.e. the unjustified hindrance on the applicant's "respect for her home" and "peaceful enjoyment of her possessions" which is enforced as a matter of "TRNC" policy or practice (*Cyprus v. Turkey*, cited above, §§ 174 and 185). Moreover, the Court cannot ignore the fact that there are already approximately 1,400 property cases pending before the Court brought primarily by Greek-Cypriots against Turkey.

39. Before examining the applicant's individual claims for just satisfaction under Article 41 of the Convention and in view of the circumstances of the instant case, the Court wishes to consider what consequences may be drawn for the respondent State from Article 46 of the Convention. It reiterates that by virtue of Article 46 the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249,

ECHR 2000-VIII; *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

40. The Court considers that the respondent State must introduce a remedy, which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before the Court, in accordance with the principles for the protection of the rights laid down in Articles 8 of the Convention and 1 of Protocol No. 1 and in line with its admissibility decision of 14 March 2005. Such a remedy should be available within three months from the date on which the present judgment will be delivered and the redress should occur three months thereafter.

VI. 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. The applicant stressed that she did not claim compensation for any purported expropriation of her property since she was still the legal owner of the property and no issue of expropriation arose. Her claim was thus confined to the loss of use of the land and the consequent lost opportunity to lease or rent it. Relying on two valuation reports assessing the value of her property and the return that could be expected from it, she claimed 587,399 Cyprus pounds (CYP) by way of pecuniary damage concerning the period between 28 January 1987, the date of the acceptance by Turkey of the compulsory jurisdiction of the Court, and the end of 2005.

43. The method employed in the valuation reports was the comparison method of valuation in conjunction with the cost of construction method for the first property and the comparison method of valuation for the second: the estimation of the annual rent value was derived as a percentage of the amount of capital value of the property. The market price of the property was calculated as it stood in 1974 and increased by approximately 5.5% per year with regard to the first property and 10% per year with regard to the second, in order to calculate the value that the property would have had if Famagusta had not been occupied by the Turkish army. It was emphasised that the area of Famagusta was, among other things, one of the most popular

tourist resorts and would reasonably be expected to enjoy increases in rent higher than the average of the unoccupied areas had the invasion not taken place.

44. The total sum claimed by way of pecuniary damage represented the aggregate of ground rents that could have been collected from 22 January 1987 until 31 December 2005, calculated as 5% for the first property and 6% for second of the estimated market value of the properties for each of the years in question, plus interest from the date on which such rents were due until the date of payment. For that period therefore the sum with regard to the first property amounted to CYP 190,288 and for the second CYP 245,564. Both amounts claimed included interest on the rents at a rate of 8% from 1987 up to the end of 2000 and at 6% from 2001 until the end of 2005. The examination of the trends of rent increases was made on the basis of the Consumer Price Index 1960-2005 in respect of Rents and Housing, of the Department of Statistics and Research of the Government of Cyprus.

45. The applicant claimed CYP 160,000 in respect of non-pecuniary damage. In particular, she firstly claimed CYP 40,000 for the anguish and frustration she suffered due to the continuing violation of her property rights under Article 1 of Protocol No. 1 from January 1987 until the end of 2005. The applicant stated that this sum was calculated on the basis of the sum awarded by the Court in the *Loizidou* case (Article 50, cited above) by way of compensation for non-pecuniary damage, taking into account, however, that the period of time for which the damage was claimed in the instant case, was longer than that claimed in the *Loizidou* case. Further she claimed CYP 120,000 for the distress and suffering due to the denial of her home and in view of the deliberate policy of the Government which through the use of, *inter alia*, their army held the fenced up city of Famagusta hostage to their political wishes. She considered this to be more serious than the violation of her property rights under Article 1 of Protocol No. 1.

(b) The Government

46. The Government contested the applicant's claims under this head and maintained that they were based on evaluations that were absolutely speculative and imaginary, without reference to any real data with which to make comparison. They noted that inadequate allowance had been made in respect of the instability of the property market and its susceptibility to both domestic and international influences. The method of assessment adopted by the applicant presupposed that the property would increase in value, that it could fetch the rent that the applicant had actually sought, or that she would have leased her house in normal conditions. No examples of comparative sales and rents, in the area had been supplied. The calculations were based on the assumption that at the material time there was development potential in the area where the property is situated. The assumption that the property market would have continued to flourish

during the material time with sustained growth was highly questionable. In the Government's view the Court should not accept the percentage increases put forward by the applicant. To claim damages now for loss of uses on the basis of rent that the property could have fetched if it had been leased would have meant enrichment on an inequitable basis. Nor had allowance been made for tax and other expenses which would have accrued.

47. Further, the Government noted that in view of the fact that Turkey's declaration under former Article 46 of the Convention recognising the Court's jurisdiction was made on 21 January 1990, the applicant's claim for loss could not be calculated from 1 January 1987. In this respect, they averred that if compensation were to be awarded, any loss suffered by the applicant after March 2004 was due to the actions of the Greek-Cypriot Government.

48. The Government considered that the Court at this stage in the proceedings and in the absence of a comprehensive and final settlement of the property issue, should not proceed to determine the title over the properties or award compensation without, at least, allowing the "TRNC" authorities time and an opportunity to consider their Compensation Law in the light of the Court's decision on the admissibility of the instant case. Further, the award of compensation to individual applicants such as the present one would seriously hamper and prejudice negotiations for an overall political settlement, including the complex property issue which it is hoped will be solved by diplomatic means. There was also the question of what an appropriate remedy in cases of this nature would be where a significant period of time has elapsed and legitimate third party and community interests are involved. There was no entitlement to an award. If the Court nevertheless found that the applicant had title to the properties in question, contrary to the Government's submissions, the Court should exercise its margin of appreciation and discretion in view of the circumstances of the present application and such an award should not be made as being "necessary" at the present stage of the proceedings.

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

2. The Court's assessment

50. In the circumstances of the case, the Court finds that the question of compensation for pecuniary and non-pecuniary damage is not ready for consideration. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court) and in the light of such individual or general measures as may be taken by the respondent Government in execution of the present judgment. Pending the implementation of the relevant general measures, which should be adopted as provided for in

paragraph 40 above, the Court will adjourn its consideration of all applications deriving from the same general cause.

B. Costs and expenses

1. The parties' submissions

(a) The applicant

51. The applicant, who had submitted detailed bills of costs in connection with the different stages of the proceedings before the Court, claimed CYP 131,867.97 by way of costs and expenses. Her claim was composed of the following items:

(a) CYP 41,285, inclusive of value-added tax, concerning the fees of the applicant's Cypriot lawyers covering the preparation of the application, observations and correspondence;

(b) CYP 13,526.97, inclusive of value-added tax, as out of pocket expenses incurred from 1 November 2003 until April 2005. These included mainly communication costs (faxes, telephone bills, mail), fees for help given by EMS Economic Management Ltd, fees for the two valuation reports appended to the applicant's submissions for just satisfaction, expenses for research relating to articles published and the expenses incurred for the hearing of 2 September 2004;

(c) CYP 77,056 concerning the fees for the services of a Queen's Counsel, Mr I. Brownlie, which included preparation of the applicant's additional observations, written advice on matters of international law, meetings and, finally, travel expenses and preparation for the hearing.

52. The applicant also claimed interest at the rate of 8% per annum on the above amounts.

53. The applicant submitted that because of the designation of the case as a pilot case involving a hearing before the Court, and the important legal issues relating to international law most of which were novel, it was justified to have recourse to the services of a Queen's Counsel.

(b) The Government

54. The Government did not comment on the applicant's submissions under this head.

2. The Court's assessment

55. 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, *Stašaitis v. Lithuania*, no. 47679/99, §§ 102-103, 21 March 2002).

56. The Court notes that the present case raised complex issues of fundamental importance at the admissibility stage that involved the submission of extensive observations and an oral hearing.

57. Notwithstanding the above and although the Court does not doubt that the fees claimed were actually incurred, they appear to be excessive. In this regard it observes that the merits' stage involved no particular complexity and the applicant's observations under this head were brief and primarily focused on her just satisfaction claim. Furthermore, no reference is made in the bills of costs to the rates of the lawyers involved, including those of the Queen's Counsel, and no indication is given of the time spent. In addition, no details have been provided with regard to the help given by EMS Economic Management Ltd. Finally, the Court also considers excessive the applicant's claim for reimbursement of expenses relating to research of articles published.

58. Accordingly, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 65,000 for costs and expenses in respect of the proceedings before the Court.

C. Default interest

59. 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

1. *Dismisses* unanimously the Government's preliminary objection;

2. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

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

4. *Holds* unanimously that it is not necessary to examine the applicant's complaint under Article 14 of the Convention in conjunction with Articles 8 of the Convention and 1 of Protocol No. 1;

5. *Holds* unanimously that the respondent State must introduce a remedy, which secures the effective protection of the rights laid down in Articles 8 of the Convention and 1 of Protocol No. 1 in relation to the

present applicant as well as in respect of all similar applications pending before the Court. Such a remedy should be available within three months from the date on which the present judgment will be delivered and the redress should occur three months thereafter;

6. *Holds* unanimously that as far as any pecuniary and non-pecuniary damage is concerned, the question of the application of Article 41 of the Convention is not ready for decision;
and accordingly,
(a) *reserves* the said question;
(b) *invites* the parties 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) with reference to point 5 above, *invites* the Government to submit, within three months from the date on which the judgment will be delivered, details of the remedy and its availability and to submit information concerning the redress three months thereafter;
(d) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

7. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 65,000 (sixty five thousand euros) in respect of costs and expenses, to be converted into Cypriot pounds at the applicable rate at the date of settlement, plus any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER	Georg RESS
Registrar	President

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

G.R.
V.B.

DISSENTING OPINION OF JUDGE TÜRMEN

I disagree with the majority concerning the violations of Article 8 of the Convention and Article 1 of Protocol No. 1 for the reasons contained in the separate dissenting opinions of Judge Bernhardt joined by Judge Lopes Rocha and of Judges Baka, Jambrek, Pettiti and Gölcüklü in the *Loizidou v. Turkey* judgment of 18 December 1996.