

THIRD SECTION¹

CASE OF XENIDES-ARETIS v. TURKEY

(Application no. 46347/99)

JUDGMENT
(Just satisfaction)

STRASBOURG

7 December 2006

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 Xenides-Arestis v. Turkey,

The European Court of Human Rights (Third Section²), 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 20 November 2006,

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

PROCEDURE AND FACTS

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. In a judgment delivered on 22 December 2005 (“the principal judgment”), the Court dismissed the objection on the applicant’s victim status and found continuing violations of Article 8 of the Convention by reason of the complete denial of the applicant’s right to respect for her home and 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 and any compensation for the interference with her property rights. Furthermore, it found that it was not necessary to carry out a separate examination of the applicant’s complaint under Article 14 in conjunction with the above provisions (*Xenides-Arestis v. Turkey*, no. **46347/99**, §§ 22, 32 and 36 and points 1-4 of the operative provisions).

3. Under Article 41 of the Convention, the applicant sought just satisfaction of 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. Two valuation reports, setting out the basis for the calculation of the applicant’s loss, were appended to the applicant’s observations. Furthermore, the applicant claimed CYP 160,000 in respect of non-pecuniary damage and CYP 131,867.97 for 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 as regards pecuniary and non-pecuniary damage, the Court reserved it. However, it awarded the applicant 65,000 euros (EUR) in respect of costs and expenses.

5. The Court had examined the implementation of the preceding compensation law, the “Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus” (“Law no. 49/2003”)³, in the present case, at the admissibility stage and had ruled that the remedy proposed under the above law did not satisfy the requirements under Article 35 § 1 of the Convention in that it could not be regarded as an “effective” or “adequate” means for redressing the applicant’s complaints (see *Xenides-Arestis v. Turkey* (dec.) **KMG**, no. **46347/99**, decision of 14 March 2005, **KMG** § 50).

6. The Court, in the principal judgment, further held 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 it, in accordance with the principles for the protection of the rights laid down in Article 8 of the Convention and Article 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 is delivered and redress should be afforded three months thereafter” (§ 40). Furthermore, the parties were invited to submit, within three months, from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on the issue of pecuniary and non-pecuniary damage and, in particular, to notify the Court of any agreement they might reach (ibid., § 50, and point 6 of the operative provisions). Pending the implementation of the relevant general measures by the Government, the Court adjourned its consideration of all applications deriving from the same general cause (ibid., § 50).

7. The Government filed observations on 21 March 2006 and, subsequently, the applicant and the Government each filed observations on 21 June 2006. The applicant submitted updated claims in respect of just satisfaction.

8. The Government of Cyprus, who had made use of their right to intervene under Article 36 of the Convention, submitted observations on 16 August 2006.

9. The Government filed additional observations on 10 and 11 October 2006.

10. Subsequent to the adoption of the principal judgment in the instant case, the authorities of the “Turkish Republic of Northern Cyprus” (“TRNC”) enacted the new compensation law, the “Law for the Compensation, Exchange and Restitution of Immovable Properties” (“Law no. 67/2005”) which entered into force on 22 December 2005 and the “By-Law made under Sections 8 (2) (A) and 22 of the Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution” (“Law no. 67/2005”) which entered into force on 20 March 2006.

11. The “Immovable Property Commission” (hereinafter “the Commission”), which was established under “Law no. 67/2005” for the purpose of examining applications made in respect of properties within the scope of the aforementioned law, is composed of five to seven members, two of whom are foreign members, Mr Hans-Christian Krüger⁴ and Mr Daniel Tarschys⁵, and has the competence to decide on the restitution, exchange of properties or payment of compensation. A right of appeal lies to the “TRNC” High Administrative Court.

12. The Government submitted that a total of sixty applications had been lodged with the Commission and that the examination of nine of these had already been concluded. In six of these applications the applicants received a payment by way of compensation and, in the remaining applications, the Commission decided on the restitution of the properties in question.

THE LAW

13. 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 damage

1. The parties’ submissions

(a) The applicant

14. The applicant emphasised at the outset that she did not claim compensation for any purported expropriation of her property since she was still the legal owner of her 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 CYP 716,101 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 2006.

15. 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 capital value of the property. The market price of the property was calculated as it had 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. The market value of the applicant's share in the first property was estimated as being CYP 12,675 on 1 August 1974 and in the second property as CYP 25,000. It was emphasised that the area of Famagusta was, among other things, one of the most popular tourist resorts and could reasonably be expected to have enjoyed increases in rent higher than the average of the unoccupied areas had the invasion not taken place.

16. The total sum claimed by way of pecuniary damage represented the aggregate amount of ground rent that could have been collected from 22 January 1987 until 31 December 2006, calculated as 5% for the first property and 6% for the second of the estimated market value of the properties for each of the years in question, plus interest from the date on which such rent was due until the date of payment. For that period, therefore, the sum with regard to the first property amounted to CYP 229,250 (loss of rent for her home) and for the second CYP 486,851 (loss of use of her land). Both amounts claimed included interest on the rent at a rate of 8% from 1987 up to the end of 2000 and 6% from 2001 until the end of 2006. The examination of the trends in rent increases was made on the basis of the Consumer Price Index 1960-2005 in respect of Rents and Housing, issued by the Department of Statistics and Research of the Government of Cyprus.

17. In her observations the applicant made certain proposals to the Court for the assessment of just satisfaction.

18. With regard to the new remedy proposed by the Turkish Government, the applicant firstly emphasised that the question of domestic remedies was a question of admissibility that the Court had already ruled on in its admissibility decision of 14 March 2004. In any event, the applicant, referring to the Court's judgment in the case of *Scordino v. Italy (Scordino v. Italy (no. 1))* [GC], no. 36813/97, ECHR 2006-... argued that it was inappropriate to require an individual who had obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain just satisfaction. Therefore, in the applicant's opinion, any examination of the purported remedy which was introduced after the Court had found violations of the Convention fell outside the scope of the application.

19. The applicant further challenged the legal validity of "Law no. 67/2005" referring to the findings of the Court in its judgments in the cases of *Loizidou v. Turkey* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 44, 46-47), and *Cyprus v. Turkey* [GC], no. 25781/94, § 186, ECHR 2001-IV) with regard to Article 159 of the "TRNC" Constitution. The applicant stressed that, as decided by the Court in its above judgments, displaced Greek-Cypriots who owned property in northern Cyprus, such as the applicant, could not be deemed to have lost title to their property as a result of that provision for the purposes of Articles 8 of the Convention and 1 of Protocol No. 1 and remained legal owners of the land. However, under the mechanism set up by the new Law compensation was paid as if lawful expropriation had occurred.

20. In any event, the applicant contested the adequacy and effectiveness of the new remedy proposed by the respondent Government and raised a number of points in this respect. She argued that the respondent Government had failed to restore access, use and enjoyment to her of her home and property. The provisions of the Law fell short of the respondent

Government's obligations to cease its wrongdoing by putting an end to the violations found by restoring displaced persons' peaceful enjoyment of their homes and properties and to offer the victims full reparation for its wrongdoing so as to wipe out the consequences of its wrongful conduct.

21. The applicant also emphasised that the Law was vague and plagued with substantive and procedural deficiencies and imposed an inappropriate and unfair standard of proof on applicants. In this connection, she noted that no provision was made by the new Law or other "TRNC legislation" for any remedies which could be resorted to by individuals concerned, such as the applicant, to contest the exclusion from their properties and home; the legality of the interference with the applicant's property and home was unassailable before the "TRNC" authorities, including the "TRNC" courts and the Commission. Although in cases, such as hers, there were pre-existing findings of violations of Convention rights by the Court, in the vast majority of applications pending before the Court, no judgment on the merits had been yet delivered.

22. Furthermore, although the new Law purported to provide *restitutio in integrum* to property owners, in reality it would fail to do so in the vast majority of cases due to the many limitations imposed. The applicant provided detailed submissions in this respect. She emphasised, *inter alia*, the non-mandatory nature of the restitution even when an immovable property was categorised as "returnable" and the risks inherent in a claim for restitution of immovable property which was categorised as "non-returnable". She also pointed out that claims were determined with reference to political questions, in particular to "the comprehensive settlement of the Cyprus Problem" despite the fact that the Law was supposed to provide a legal remedy and regardless of the Court's jurisprudence on this matter. Furthermore, the fenced up area of Famagusta (Varosha), where the applicant's home and property were located, was an area under the direct control of the Turkish army to which no one was allowed access apart from military personnel. Consequently, as a military area, it fell within one of the excluded categories of properties in the Law. The applicant thus argued that the purported remedy was not applicable to her case since she was not eligible to apply. In addition, she noted that a recent judgment of the "TRNC Famagusta District Court" declared that the area of Famagusta belonged to the muslim religious trust (the Evkaf) and not to displaced Greek-Cypriot persons: (1) *Vaqf organisation and the Department for Religious Affairs, as the Trusted Advisor and Representative of the Abdullah Pasha Vaqf, Nicosia* (2) *Vaqf organisation and the Department for Religious Affairs, Nicosia v. the Attorney-General of the TRNC, Nicosia, dated 27 December 2005*.

23. As regards the issue of property exchange, the applicant considered that the "TRNC" authorities did not have the lawful authority to compromise Turkish Cypriots' rights by purporting to exchange their properties in southern Cyprus. Finally, the applicant maintained that no provision was made in the Law in respect of default interest or costs and expenses incurred in the process of seeking a remedy before the Commission and/or the "TRNC courts".

24. Finally, the applicant considered that in view, *inter alia*, of the prevailing legal and political context, the practical effectiveness and accessibility of the proposed remedy and the delay in the processing of such cases before the Court, Greek Cypriots, including the applicant, could not be required to apply to the Commission.

(b) The Government

25. The Government submitted that the new mechanism which had been set up via "Law no. 67/2005", subsequent to and on the basis of the principal judgment, constituted an effective domestic remedy in line with that judgment and was capable of providing sufficient redress to the present applicant and other persons who had similar applications pending before the Court. They explained that under the new Law it was open to the applicant to lodge an

application with the Commission in order to claim compensation for the damage she had allegedly sustained. In this regard, they noted that under the Law persons who had applied to the Court before the entry into force of the law, claiming that their right of ownership of movable and immovable properties were infringed, could apply to the Commission. The Law also provided for a right to appeal to “TRNC” High Administrative Court and, subsequently, to the Court.

26. In this connection, the Government noted that the applicant had rejected the Commission’s invitation to consider her claims. In view of this, the Commission had proceeded to examine *ex officio* the applicant’s claims. In its opinion the Commission concluded that, judging on an equitable basis, the pecuniary damages to be awarded to the applicant amounted to CYP 466,289. This amount included CYP 246,289 for loss of use and CYP 220,000 in respect of the value of the applicant’s share in the property. In reaching these amounts the Commission took into consideration the interest rates of the Central Bank of Cyprus between 1974 and 2005 and assessed the annual income that the properties would have yielded on the basis of the valuation method adopted by the applicant. The value of the share in the relevant properties was calculated by applying interest rates on the market value of the properties in 1974 for the period 1 January 1990 until 1 December 2005. The Commission estimated that in August 1974 the market value of the applicant’s share in the first property was CYP 8,872 and in the second property CYP 10,072. Furthermore a residents’ tax of 10% was added onto the interest. Moreover, in its opinion the Commission stated that, as regards compensation for loss of use, it had collected data from the Land Registry and Surveys Department on the 1973-74 purchase prices for comparable properties in Famagusta.

27. In the alternative, the Commission noted that it would be entitled to take a decision to restore the property in question which would take effect after the settlement of the Cyprus problem and that this implied that, as from the date of the announced decision of the Commission on restitution, no construction would be permitted on the immovable property that would be restored after the settlement of the Cyprus problem. Such property could not be improved, purchased or sold. As a last alternative, the Commission proposed to offer the applicant a Turkish-Cypriot property located in the south of the buffer zone of equal value to her property. The Government considered that the proposals made by the Commission concerning the applicant’s property claims constituted an effective redress in line with the principal judgment.

28. With regard to the new remedy, the Government also noted that the new Law provided for restitution of properties within the ambit of Article 159 (1) (b) of the “TRNC Constitution”, in addition to the means of redress provided by the previous law. The Law provided three alternative solutions, restitution of the immovable property being one of them. In particular, under the above section, restitution was possible where firstly, the ownership or use of the property has not been transferred to any real person or to any legal person other than the State; secondly, the restitution of such property, having regard to the location and the physical condition of the property, shall not endanger national security and public order; thirdly, such property is not taken for public interest reasons; and finally, that the immovable property is outside the military areas or military installations. In cases where restitution could not be provided, the decision for restitution could be implemented after the settlement of the Cyprus issue. The Law set out certain rules in this respect. Furthermore, should restitution not be possible under the terms of the Law, neither immediately nor after the settlement of the Cyprus issue, other forms of redress such as exchange or compensation may be offered to an applicant.

29. Furthermore, the Turkish Government submitted that under “Law no. 67/2005” compensation was available for non-pecuniary damages in respect of the loss of enjoyment of

the right to respect for home, for loss of use and further, in respect of movable properties which belonged to applicants before 13 February 1975 and had to be abandoned for reasons beyond their control.

30. Finally, in accordance with “Law no. 67/2005”, any person, directly or indirectly, deriving any benefit from the immovable properties on which rights were claimed by those who had to move from northern Cyprus in 1974, could not be appointed as members of the Commission. The Government submitted that the Commission had two “international” members and, further, that the Turkish-Cypriot members of the Commission had provided signed and sworn statements with regard to a possible conflict of interest.

(c) The Cypriot Government

31. The Cypriot Government made lengthy observations similar to those of the applicant, contesting the lawfulness of the proposed remedy in view of the Court’s jurisprudence and, in the alternative, the effectiveness and adequacy of the remedy. They raised certain additional points with regard to the latter. Amongst other things, they pointed out that the effect of Article 159 (1) (b) of the “TRNC” Constitution was to vest in the “TRNC” by amending entries in the Land Registry Records, the title to all immovable property referred to in that part of the article. And 159 (2) permitted the transfer of this property to “physical and legal” persons. Such purported transfers had been and were still being carried out by the illegal sale of Greek-Cypriot property by Turkish/“TRNC” citizens to tourists and other foreign nationals.

32. The Cypriot Government stressed that the Law permitted only a very limited range of claims to be brought before the applicant and restricted the scope of applicants that could have recourse to it; the criteria according to which compensation was to be awarded were unfairly and unduly limited and were not based on the principles set out by the Court in its judgments in the case of *Loizidou v. Turkey* (Article 50) (judgment of 29 July 1998, *Reports* 1998-I) nor on international valuation standards. In this connection, they argued that there were inadequacies and ambiguities in the calculation of compensation, the manner of valuation of properties and concerning the exchange of properties. The provisions of the Law ignored the practical reality of the position of Greek-Cypriot property owners who had to flee in 1974 and did not have the time or the chance to collect all their documents.

33. They noted that the Law expressly prohibited the pursuit of rights of ownership upon receipt of exchange/compensation under no condition and that it treated Greek-Cypriot owners less favourably than “TRNC” citizens on the basis of Article 36 of the “TRNC Constitution”, contrary to Article 14 of the Convention, whilst Greek Cypriots living in enclaves in the Karpas peninsula and the Kyrenia district who had to abandon their property after 13 February 1975, were excluded from lodging claims.

34. The Cypriot Government challenged the impartiality of the Commission. In this respect, they noted, *inter alia*, the restrictions on the appointment of the members of the Commission, its composition and the fact that close relatives of some of the members of the Commission lived in houses owned by or built on property owned by Greek Cypriots. In this connection, they also alleged that three members of the “High Administrative Court” of the “TRNC”, to which appeals could be lodged against decisions of the Commission were benefiting from Greek-Cypriot owned properties. The Cypriot Government provided documentation that included, *inter alia*, details from “TRNC” telephone directories, title deeds, maps and photographs in support of their arguments. Furthermore, they noted that any independent or impartial influence of the two foreign members of the Commission would be negated by the fact that the Commission reached its decision by a simple majority of a quorum of two-thirds of the total number of members.

35. Finally, they questioned the Turkish Government’s observations concerning the applications pending or dealt with by the Commission, in particular those in which it is claimed that restitution had been allegedly offered. The Cypriot Government claims that the

Commission failed to award the applicants in these applications any damages for loss of use of their properties.

2. *The Court's assessment*

36. The Court recalls that in its principal judgment it held that there had been a continuing violation of the applicant's rights guaranteed by Articles 8 of the Convention and Article 1 of Protocol No. 1 by reason of the complete denial of the rights of the applicant with respect to her home and the peaceful enjoyment of her property in northern Cyprus (§§ 22 and 32 of the principal judgment). It further held that the applicant was still the legal owner in part of two properties situated in the area of Famagusta (§ 28 of the principal judgment) and that 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, she had effectively lost control as well as the possibility to use and enjoy her property (§ 32 of the principal judgment).

37. The Court welcomes the steps taken by the Government in an effort to provide redress for the violations of the applicant's Convention rights as well in respect of all similar applications pending before it. The Court notes that the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005. The Court points out that the parties failed to reach an agreement on the issue of just satisfaction where, like in the case of *Broniowski v. Poland* (friendly settlement and just satisfaction) ([GC], no. 31443/96, ECHR 2005-...), it would have been possible for the Court to address all the relevant issues of the effectiveness of this remedy in detail. The Court cannot accept the Government's argument that the applicant should now be required at this stage of the proceedings where the Court has already decided on the merits to apply to the new Commission in order to seek reparation for her damages (*Dogan and Others v. Turkey* (just satisfaction), nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 50, 13 July 2006).

38. The Court will therefore proceed to determine the compensation the applicant is entitled to in respect of losses emanating from the denial of access and loss of control, use, and enjoyment of her property between 22 January 1990, the date of Turkey's acceptance of the compulsory jurisdiction of the Court, and the present time (*Loizidou* (Article 50), judgment of 29 July 1998, cited above, p. 1817, § 31).

39. It is true that the applicant's claim goes back to 28 January 1987. However, the Court notes that the relevant date for the determination of the Court's jurisdiction commenced on 22 January 1990 and refers to its findings on the jurisdiction and the temporal competence of the Commission and the Court in the case of *Loizidou* ((preliminary objections), judgment of 23 March 1995, Series A no. 310, p. 33, § 102, and (merits) judgment of 18 December 1996, cited above, p. 2227, § 32).

40. The Court observes that there is a considerable difference between the applicant's claims and the amount offered by the Government. Furthermore, it notes that the valuations furnished by the parties involve a significant degree of speculation due to the absence of real data with which to make a comparison and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (*Loizidou* (Article 50), cited above, p. 1817, § 31).

41. Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by the parties. Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou* (preliminary objections), judgment of 23 March 1995, cited above, p. 33, § 102, and (merits), judgment of 18 December 1996, cited above, p. 2227, § 32). It has also noted that the applicant has adopted lower percentage increases than Mrs Loizidou concerning the market value of the property and with regard to one of the properties concerning the rent but has made an additional claim in the form of annual

compound interest in respect of the loss because of the delay in the payment of the sums due. In addition, the Court has taken note of the estimates put forward by the Turkish Government and the fact that, in its opinion, the Commission adopted the valuation method used by the applicant in assessing the annual income the properties would have yielded.

42. Having regard to the above considerations, and in the absence of an agreement between the parties, the Court, making its assessment on an equitable basis and formally in accordance with the Commission's proposal, awards the applicant EUR 800,000 under this head.

B. Non-pecuniary damage

1. The parties' submissions

(a) The applicant

43. The applicant claimed CYP 180,000 in respect of non-pecuniary damage. In particular, she firstly claimed CYP 45,000 for the anguish and frustration she had suffered on account of the continuing violation of her property rights under Article 1 of Protocol No. 1 from January 1987 until the end of 2006. The applicant stated that this sum was calculated on the basis of the sum awarded by the Court in the *Loizidou* case (Article 50), judgment of 28 July 1998, cited above) by way of compensation for non-pecuniary damage, taking into account, however, that the period of time for which the award was claimed in the instant case, was longer than that claimed in the *Loizidou* case. Further, she claimed CYP 135,000 for the distress and suffering resulting from the denial of her home and in view of the deliberate policy of the Government, who through the use of, *inter alia*, their army were holding 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.

44. Lastly, the applicant considered that the Government should pay her the symbolic amount of CYP 1 per hour, that is, CYP 24 per day from 21 June 2006 until the restoration of her rights for the purpose of encouraging the respondent Government to abide by the Court's judgment and to ensure that the applicant would not be penalised for the lack of restoration of her rights. The applicant argued that she had come up with this amount on an equitable basis and taking into account the unnecessary continuation of the violation and the consequent detrimental effect on her as well as the benefit that the respondent Government was deriving from the adjournment of all similar cases.

(b) The Government

45. The Government noted that the Commission in its valuation report had found that in the absence of observations by the applicant it was not in a position to make an assessment in respect of non-pecuniary damage.

(c) The Cypriot Government

46. The Cypriot Government did not express an opinion on the matter.

2. The Court's assessment

47. The Court is of the opinion that an award should be made under this head in respect of the anguish and feelings of helplessness and frustration which the applicant must have experienced over the years in not being able to use her property as she saw fit and to enjoy her home. Making an equitable assessment, the Court awards the applicant EUR 50,000 under this head.

C. Costs and expenses

1. The parties' submissions

(a) The applicant

48. The applicant, who had submitted bills of costs containing an itemised breakdown of the work, claimed CYP 26,576.55, plus value-added tax, for costs and expenses incurred following the adoption of the “principal judgment”. Her claim was composed of the following items:

(a) CYP 7,250, for the fees of a Queen’s Counsel, Mr I. Brownlie, CBE, QC, which included instructions, comments and advice on matters of international law for the preparation of the applicant’s additional observations;

(b) CYP 17,200, plus value-added tax, for the fees of the applicant’s lawyer covering advice given on the question of referral to the Grand Chamber, the preparation of the observations on just satisfaction and meetings. The above amounts were claimed in respect of a total of 127 hours work on the part of her representative;

(c) CYP 2,126.55, plus value-added tax, for the fees of the updated valuation reports, which amounted to CYP 100, and out of pocket expenses incurred from December 2005 until May 2006. The latter included mainly communication costs (faxes, telephone bills, mail) as well as the air fare, accommodation and expenses for a trip by the applicant’s lawyer to Strasbourg from 5 until 6 December 2005.

(b) The Government

49. The Government did not express an opinion on the matter.

(c) The Cypriot Government

50. The Cypriot Government did not express an opinion on the matter.

2. The Court’s assessment

51. 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).

52. The Court notes that it is clear from the length and detail of the pleadings submitted by the applicant that a considerable amount of work was carried out on her behalf. These pleadings included the applicant’s comments concerning the new remedy proposed by the Government, a matter which did not form part of the parties’ previous submissions before the Chamber. The costs associated with the preparation of these pleadings and with producing updated valuation reports in view of the continuing nature of the violations at stake were essential for enabling the Court to reach its decision regarding the issue of just satisfaction.

53. Nonetheless, the Court considers that the sum total claimed in fees is excessive. In this connection, it notes that in view of the fact that the case was not referred to the Grand Chamber nothing should be accorded to the applicant in this respect. It further notes that the applicant has not shown that the costs associated with her representative’s journey to Strasbourg in December 2005 were incurred in connection with the case.

54. 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 35,000 to cover all the applicant’s costs and expenses.

C. Default interest

55. 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. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,

the following comprehensive sums, to be converted into Cypriot pounds at the rate applicable at the date of settlement:

- (i) EUR 800,000 (eight hundred thousand euros) in respect of pecuniary damage;
 - (ii) EUR 50,000 (fifty thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 35,000 (thirty-five thousand euros) 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;

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

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger Georg Ress

Registrar President

¹ In its composition before 1 November 2004.

² In its composition before 1 November 2004.

³ Law no. 49/2003 entered into force on 30 June 2003.

⁴ Former Secretary to the European Commission of Human Rights and former Deputy Secretary General of the Council of Europe.

⁵ Former Secretary General of the Council of Europe.

The Registrar's name is not to be lined up with the judges' names (no tab to be added).

If Grand Chamber case, add "[GC]" after "(dec.)".

If the decision is to be published but the volume number is not known add an ellipsis (e.g. ECHR 2002-...). If the decision is not being published or you do not know if it is to be published replace the ECHR reference by the date of the decision.

Option not applicable for Panel cases (judgment final by virtue of Article 5 § 4 of Protocol No. 11) and where right to request rehearing before the Grand Chamber has been waived (e.g. friendly settlement cases).

Check names. Adapt tabs.

XENIDES-ARESTIS v. TURKEY (JUST SATISFACTION) JUDGMENT

XENIDES-ARESTIS v. TURKEY (JUST SATISFACTION) JUDGMENT