**Claims — Waiver — Undue delay as acquiescence to lapse of claim — Extent of delay required to render claim inadmissible — European Convention on Human Rights, 1950, Articles 33, 41 and 46 — Applicability of Article 41 just satisfaction in inter-State cases — Monetary compensation — Meaning of "injured party" — Capacity of State to seek just satisfaction on behalf of injured nationals — Diplomatic protection — Declaratory judgment as just satisfaction**

**Human rights — European Convention on Human Rights, 1950, Articles 33, 41 and 46 — Claims for just satisfaction for breach of human rights**

**International organizations — Council of Europe Committee of Ministers — Relationship between, and differing responsibilities of, the European Court of Human Rights and Committee of Ministers under European Convention on Human Rights, 1950**

**Treaties — Interpretation — European Convention on Human Rights, 1950 — Protocol No 1 to the European Convention, 1952 — Vienna Convention on the Law of Treaties, 1969**

**State responsibility — Obligation on State responsible for internationally wrongful act to make reparations — Obligation on State to abide by decision of European Court of Human Rights**

# CYPRUS *v.* TURKEY

## (JUST SATISFACTION)

(Application No 25781/94)

*European Court of Human Rights (Grand Chamber).* 12 *May* 2014

(Casadevall, *President*; Tulkens, Raimondi, Vajić, Villiger, Bîrsan, Zupančič, Gyulumyan, Björgvinsson, Nicolaou, Sajó, Lazarova Trajkovska, Bianku, Power-Forde, Karakaş, Vučinić and Pinto de Albuquerque, *Judges*)

SUMMARY:[1] *The facts*:—In November 1994, the Republic of Cyprus ("the applicant") lodged an application with the European Commission of

[1] Prepared by Ms E. Fogarty.

Human Rights concerning alleged violations of the European Convention on Human Rights, 1950 ("the Convention") committed by Turkey ("the respondent"). These alleged violations related to the Turkish military operations in northern Cyprus in July and August 1974, the activities of the Turkish Republic of Northern Cyprus ("TRNC") and the continuing division of the territory of Cyprus. The case was referred to the European Court of Human Rights in 1999 to be considered by the Grand Chamber.

By a letter of 29 November 1999, the Court instructed the parties that the applicant was not required at that stage to submit any claim for just satisfaction under Article 41 of the Convention,[2] and that a further procedure on that issue would be organized at a later date depending on the Court's conclusions on the merits.

On 10 May 2001, the Grand Chamber delivered its judgment on the merits ("the principal judgment"),[3] finding fourteen violations of the Convention by the respondent. Consideration of just satisfaction was adjourned. In accordance with Article 46(2) of the Convention, the Committee of Ministers for the Council of Europe ("the Committee of Ministers") was responsible for overseeing the execution of the principal judgment; as at 12 May 2014, the respondent had still not complied with many aspects of the judgment.

On 31 August 2007, the applicant advised the Court and the respondent that it intended to submit an application to resume consideration of the application of Article 41 of the Convention. A final version of its claim was submitted on 18 June 2012, in which the applicant sought monetary compensation (of an amount deemed appropriate by the Court) for violations of the Convention in relation to 1,456 missing persons,[4] and in relation to enclaved Greek Cypriots on the Karpas peninsular at £50,000 per person.[5] It also sought a declaratory judgment stating that the respondent was to comply with the principal judgment, was to refrain from tolerating or otherwise being complicit in the usurpation and illegal exploitation of Greek Cypriot properties in occupied areas, and that the Court's admissibility ruling in *Demopoulos*[6] did not constitute recognition that the respondent had satisfied its obligations in respect to the principal judgment.

The respondent submitted that Article 41 of the Convention was not applicable to inter-State claims and that, in any event, the claim was inadmissible for having been unduly delayed, contrary to Rule 60 of the Rules of Court, and for being insufficiently precise.

[2] For the text of Article 41 of the Convention ("Just satisfaction"), see para. 10 of the judgment of the Court.

[3] *Cyprus* v. *Turkey*, 120 ILR 10.

[4] In its principal judgment, the Court found that the respondent had violated Articles 2, 3 and 5 of the Convention in relation to missing persons.

[5] In its principal judgment, the Court had found that the respondent's arbitrary removal of homes and property of the enclaved Greek Cypriots was in violation of Articles 3, 8, 9, 10 and 13 of the Convention and Article 2 of Protocol No 1.

[6] *Demopoulos and Others* v. *Turkey*, 158 ILR 88.

*Held* (Judge Casadevall partially dissenting, Judge Karakaş dissenting):—The claim was admissible, and just satisfaction in the form of compensation was awarded for the missing persons and enclaved Greek Cypriots.

(1) The provisions of the Convention could not be interpreted in a vacuum. Although it had specific character as a human rights instrument, the Convention was an international treaty which was to be interpreted in accordance with relevant norms and principles of public international law, in particular the Vienna Convention on the Law of Treaties, 1969 (para. 23).

(2) General international law recognized that in the enforcement of a judgment in an inter-State case, in principle applicant States were obliged to act without undue delay in order to uphold legal certainty and avoid disproportionate harm to the legitimate interests of respondent States. International law did not lay down any specific time limit in that regard, however, and it was for the relevant judicial body to determine whether the passage of time rendered a claim inadmissible on a case-by-case basis (para. 24).

(3) The applicant had filed its claim for just satisfaction some nine years after the principal judgment was issued. However, the original application had been made in 1994 to the former European Commission of Human Rights, and before Protocol No 11 had entered into force. Under the Commission's Rules of Procedure then in force, neither a State nor an individual applicant was obliged to make a general indication of its just satisfaction claim in its original application. Further, in November 1999, the Court explicitly instructed the parties that the applicant was not to submit a claim for just satisfaction at that stage, and later stated in the principal judgment that the issue of the possible application of Article 41 was not ready for consideration and was adjourned. The Court had not, therefore, excluded the possibility of resuming examination of that issue at a later date. No time limit was set for when any claim had to be submitted, and no indication was given as to when the issue would be reopened (para. 25).

(4) The delay had occurred between the delivery of the principal judgment and its full execution, the enforcement of which continued to be supervised by the Committee of Ministers. During that phase, both Parties were entitled to regard the issue of the possible award of just satisfaction as in abeyance pending further developments. Neither Party could reasonably expect that the matter would be left unaddressed or would be extinguished or nullified by the passage of time. Further, the applicant had never renounced or waived its right to claim just satisfaction, and the respondent was not justified in claiming that the resumption of the examination of the applicant's claim would be prejudicial to its legitimate interests. There was no valid reason to consider the just satisfaction claim to have been unduly delayed and therefore inadmissible (paras. 26 and 29).

(5) Findings by the Court of violations of the Convention were essentially declaratory. Under Article 46 of the Convention, the Contracting Parties undertook to abide by final judgments in cases to which they were party, with the execution of those judgments supervised by the Committee of Ministers. Under Article 46, in order to put affected parties as far as possible

in the position they would have been in had the Convention's requirements been met, Contracting Parties were obliged to pay victims sums as awarded by the Court in compensation for violations of the Convention, as well as to take appropriate measures in their domestic legal orders to end identified violations and to redress their effects. These were two distinct forms of redress; one did not preclude the other. The fact that some measures had been taken by the respondent government since the issue of the principal judgment did not preclude the Court from considering the just satisfaction claim (paras. 27-8).

(6) The general logic of the just satisfaction rule in Article 41 of the Convention was directly derived from the principles of public international law relating to State liability and had to be construed in that context. The breach of a treaty obligation involved a corresponding obligation to make reparations. An international court or tribunal with jurisdiction with respect to claims of State responsibility for internationally wrongful acts had, as an aspect of that jurisdiction, the power to award compensation for the damage suffered. Article 41 provided for the award of just satisfaction to an "injured party"; that had to be understood as a party to proceedings before the Court. The provision could not be interpreted in such a restrictive fashion as to exclude State parties in inter-State applications from its scope. Nevertheless, the question whether a grant of just satisfaction to a State party was justified in a particular case had to be assessed and decided by taking into account the type of complaint made, what the purpose of the proceedings was, and whether victims of any violation could be identified (paras. 39-43).

(7) Inter-State claims where the applicant State denounced the violations of its nationals' human rights by another Contracting Party were substantially similar to claims made in individual applications under Article 34 of the Convention, and also to claims filed in the context of diplomatic protection. If the Court upheld such claims, and found a violation of the Convention, an award of just satisfaction could be appropriate. Nevertheless, by the very nature of the Convention, it was the individual and not the State that was directly or indirectly injured by a violation of the Convention; if just satisfaction was to be awarded, it was always to be done for the benefit of individual victims (paras. 45-6).

(8) The applicant had submitted its claim for just satisfaction in relation to the violation of the Convention rights of individuals in two sufficiently precise and objectively identifiable groups: 1,456 missing persons, and the enclaved Greek Cypriot residents of the Karpas peninsula. Just satisfaction was not sought with a view to compensating the State, but rather for the benefit of the individual victims. The applicant was entitled to make a claim under Article 41 of the Convention on their behalf, and the granting of just satisfaction would be justified (para. 47).

(9) There was no express provision for pecuniary or moral damages within the Convention.[7] The guiding principle was equity, involving a flexible and

[7] *Varnava and Others* v. *Turkey* (European Court of Human Rights Grand Chamber judgment of 18 September 2009).

objective consideration of what was just, fair and reasonable in all the circumstances. In some cases, the public vindication of a wrong suffered by an applicant in a judgment of the Court was a sufficiently powerful form of redress in itself. In others, particularly where an individual had suffered physical or psychological trauma, the award of non-pecuniary damages constituted recognition that moral damage had occurred as the result of a breach of a fundamental human right. Non-pecuniary damages were not intended to give financial comfort or sympathetic enrichment at the expense of the Contracting Party concerned (para. 56).

(10) In view of all the relevant circumstances, and making an assessment on an equitable basis, the respondent was to pay the applicant, within three months of the judgment, EUR 30 million for non-pecuniary damage suffered by the surviving relatives of the missing persons, and EUR 60 million for non-pecuniary damage suffered by the enclaved residents of the Karpas peninsula, plus any tax chargeable on those amounts. From the expiry of the three months to settlement simple interest was payable at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points. The applicant was to establish an effective mechanism to allow the sums awarded to be distributed to the individual victims within eighteen months of the date of the just satisfaction payment. The Committee of Ministers was to supervise the execution of the just satisfaction and principal judgments (paras. 58-60).

(11) As the respondent was already bound under Article 46 of the Convention[8] to abide by the terms of the principal judgment, it was not necessary to examine whether the Court had competence to make a "declaratory judgment" as requested by the applicant. The decision in *Demopoulos*, to the effect that complaints from individuals were to be rejected where domestic remedies had not been exhausted, could not be considered, on its own, to dispose of the question of the respondent's compliance with Section III of the operative provisions of the principal judgment (paras. 62-3).

*Joint Concurring Opinion of Judges Zupančič, Gyulumyan, Björgvinsson, Nicolaou, Sajó, Lazarova Trajkovska, Power-Forde, Vučinić and Pinto de Albuquerque*: (1) This judgment marked a new era in the enforcement of human rights upheld by the Court, and an important step in ensuring respect for the rule of law in Europe. It was the first time in the Court's history that it had made a specific judicial statement as to the import and effect of one of its judgments in the context of execution (p. 32).

(2) The decision was directed to a particular aspect of the execution process still pending before the Committee of Ministers. The decision itself

[8] For the text of the relevant parts of Article 46 of the Convention, see para. 11 of the judgment of the Court.

obviated the need to examine whether a formal declaratory judgment for the purposes of Article 46 of the Convention might be issued under Article 41 (p. 32).

*Concurring Opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić*: (1) This judgment was the most important contribution to peace in Europe in the Court's history. Not only did it acknowledge that Article 41 of the Convention applied to inter-State applications and established criteria for assessment of the time limit for making just satisfaction claims, but it also awarded punitive damages, signalling that Contracting States that violated the Convention had to pay for their unlawful actions and their consequences. Victims, families of victims and the States of which victims were nationals had a vested and enforceable right to be duly and fully compensated for violations by responsible States (para. 1).

(2) Article 41 of the Convention did not preclude just satisfaction in inter-State claims and, moreover, Rule 46 of the Rules of Court established the possibility of claiming damages in inter-State cases in clear terms. This had been affirmed by the Court which, were it otherwise, would be deprived of a crucial instrument in the attainment of its human rights protection mission (paras. 3-5).

(3) Any State could assume the position of a claimant in respect of damage suffered by its nationals. The fact that individuals could also make individual applications without having to solicit their State's diplomatic protection did not mean that diplomatic protection was no longer available or had lost its importance. One legal avenue did not exclude the other (para. 4).

(4) As a general principle, a State's right to invoke the responsibility of another State could be forfeited in two cases: waiver or acquiescence (including a lapse of claim due to delay). Neither waiver nor acquiescence applied in this case. When the claim was first lodged in 1994, neither the Convention nor the Rules of the Court established an obligation to present a just satisfaction claim, and at no relevant time in the proceedings did general international law set a specific time limit for lodging just satisfaction claims. The delay experienced was not excessive, and was due to the applicant waiting for the Committee of Ministers to enforce the judgment, which it failed to do. The applicant was not late in seeking compensation, but rather the respondent was late in complying with the principal judgment. Condoning the respondent's conduct would deprive the Court's authority of any practical meaning, in this instance for the missing persons' families and the enclaved Greek Cypriots (paras. 6-9).

(5) The applicant had relentlessly sought redress for the human rights violations experienced by its citizens, and had never expressed any intention of abandoning that quest. Neither could the applicant waive the rights of the individual victims it represented without their consent. Neither the victims nor their families had ever expressed acceptance of the failure to afford redress

for the human rights violations they had suffered. There was no alternative domestic remedy available and the requirement that domestic remedies be exhausted was not applicable (paras. 10-11).

(6) The Court had punished the respondent for its unlawful acts and omissions, and their harmful consequences. There was nothing new in that; wherever the Court awarded compensation higher than the alleged damage, or even independent of any allegation of damage, the nature of just satisfaction was no longer compensatory but punitive, punishing the wrongdoing and preventing repetition. Although Article 41 of the Convention excluded compensation exceeding "full" reparation, satisfaction would only be "just" if the need for prevention and punishment were also addressed (paras. 13-14).

(7) The Court had been at the forefront of an international trend towards using just satisfaction to prevent further human rights violations and to punish wrongdoing respondent States. Just satisfaction by means of punitive damages was not a sanction applied by one State against another but an authoritative and indispensable response by an international court, on behalf of all Contracting States, to the wrongdoing of a particular State. Punitive damages were an appropriate and necessary instrument for fulfilling the Court's mission to uphold human rights in Europe and to ensure that Contracting States observed their obligations under the Convention and its Protocols (paras. 18-19).

(8) Any State entitled to invoke responsibility could claim from the responsible State the cessation of the internationally wrongful act at issue. An applicant State could therefore request a declaratory judgment under Article 41 of the Convention that the respondent State must cease an ongoing violation. Just satisfaction was thereby provided by way of declaratory relief to clarify the effects of the Court's original judgment in light of the continued unlawful practice (para. 21).

(9) The Court did not decide in *Demopoulos* that the respondent's obligations under Article 46 of the Convention in relation to the principal judgment had been fulfilled, nor that the violations identified in that judgment had come to an end with the respondent's enactment of Law 67/2005 (para. 23).

(10) The respondent was responsible for the protracted search for the missing persons and the prolonged suffering and humiliation of the enclaved Greek Cypriots. It had ignored the Committee of Ministers' calls for full implementation of the principal judgment. Punitive damages were most needed in such cases as this, where creators of grave nuisance did not remove that nuisance after an initial verdict against them (para. 24).

*Partly Concurring Opinion of Judges Tulkens, Vajić, Raimondi and Bianku, joined by Judge Karakaş*: (1) The final sentence of paragraph 63 of the judgment could not be endorsed. That sentence sought to extend the powers of the Court and ran counter to Article 46(2) of the Convention by encroaching on the

powers of the Committee of Ministers, to which the Convention had entrusted the task of supervising the execution of the Court's judgments (paras. 2-6 and 11).

(2) The Court did not have jurisdiction to verify whether a Contracting Party had complied with a judgment other than by referral by the Committee of Ministers under Article 46 of the Convention. A referral could only be made where there was a problem interpreting the judgment which was hindering its execution or where a Contracting Party was not abiding by a judgment. Contracting Parties could not make a referral. Allowing that possibility risked an imbalance of the distribution of powers between the two institutions that was envisaged by the Convention's authors (paras. 7-9).

*Partly Concurring and Partly Dissenting Opinion of Judge Casadevall*: (1) In principle, the just satisfaction rule should not apply to inter-State cases; to date the Court had never expressly stated that it did apply in such cases, although it had also never stated that it did not (para. 1).

(2) In an inter-State case, a distinction had to be drawn between situations in which the applicant State complained of a violation of certain fundamental human rights of one or more of its named and identified nationals, and those in which it complained in general terms about systemic problems, shortcomings or administrative practices without identifying individual victims. Only in the first situation would it be appropriate to apply Article 41 of the Convention (paras. 2-4).

(3) Article 41 of the Convention could apply to the missing persons, who had been identified. However, it could not apply to the unidentified enclaved Greek Cypriots. Further, it would have been more appropriate if individual sums had been paid on a per capita basis to each of the identified victims, rather than awarding a lump sum to the applicant without any criteria for its distribution, reflecting the fact that all previous awards by the Court had been made to individual applicants (paras. 2 and 5).

(4) The last sentence of paragraph 63 was not endorsed for the reasons stated in the partly concurring opinion of Judges Tulkens, Vajić, Raimondi and Bianku, joined by Judge Karakaş (para. 7).

*Dissenting Opinion of Judge Karakaş*: (1) In all cases, the Court may reserve or adjourn the issue of just satisfaction if, and only if, the parties had made such a request within the time period allowed. The applicant did not lodge a claim for just satisfaction within the time period set out in Rule 60(1) of the Rules of Court, which required that the claim be set out in the written observations on the merits, or in a special document filed no later than two months after a decision declaring the application to be admissible. It was not until August 2007 that the applicant indicated an intention to make a claim, which was not in fact made for another two and a half years. Moreover, the

original claim was only made with respect to the missing persons, with no mention of the enclaved Greek Cypriots (pp. 56-7).

(2) In *Nauru* v. *Australia*,[9] the International Court of Justice clearly recognized that applicant States were obliged to act within a reasonable time period. Although no specific time period was stated, international courts addressing that issue had to assess all the relevant circumstances, including the rights and legitimate interests of the respondent State, to determine whether the passage of time had rendered a claim inadmissible. In this case, the applicant had provided no convincing reasons for failing to make a claim for just satisfaction until ten years after the issue of the principal judgment. That lapse of time rendered the claim inadmissible (pp. 58-9 and 61).

(3) The *travaux préparatoires* of the Convention and general principles of international law concerning diplomatic protection and reparations indicated that just satisfaction as enshrined in Article 41 of the Convention was, as a matter of principle, applicable in inter-State claims brought under Article 33 of the Convention.[10] Article 33 drew on the notion of diplomatic protection with the effect that, in such cases, the Court could award just satisfaction to the applicant State for the benefit of identified individuals. This was not, however, the case in the present proceedings. It was not until the hearings on admissibility in September 2000 that the applicant stated the number of missing Greek Cypriots, none of whom were, at that time, identifiable. The concept of diplomatic protection did not come into play because the case concerned only the presumed situation of a group of unidentified persons (pp. 61-2).

(4) Article 41 of the Convention provided that the sole beneficiary of any just satisfaction awarded was "the injured party", being the party that had suffered actual damage. A group of unidentified persons who were not party to the case could not constitute an "injured party" for the purposes of that Article. Just satisfaction could therefore only be awarded in relation to injuries sustained by the applicant, and then only in relation to the violation found at point II.2[11] of the operative part of the principal judgment (pp. 62-3).

(5) According to the principles of public international law, a finding that a violation had occurred constituted sufficient just satisfaction. It was not

[9] 97 ILR 1.

[10] Article 33 ("Inter-State cases") of the Convention provided: "Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party."

[11] Point II.2 of the operative part of the principal judgment stated: "Holds by sixteen votes to one that there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances (paragraph 136)."

necessary to award aggregate, speculative sums on behalf of a vague, unidentifiable number of persons purported still to be alive. All monetary claims in respect of non-pecuniary damages should be dismissed. To award an aggregate sum to the applicant to distribute, as it saw fit, to individuals whose existence and number were only first alleged at the hearing, would be contrary to the spirit of Article 41 of the Convention (pp. 62-4).

(6) The true number of missing persons could not be known; the award of a lump sum for their and their families' benefit had been made based on a mistaken application of the theory of diplomatic protection and in ignorance of the actual number of missing persons. Neither did the judgment explain on what factual basis the aggregate sum had been awarded to the enclaved Greek Cypriots, whose identities and numbers were unknown. That award was therefore completely arbitrary. Finally, the manner in which the aggregate sums would be distributed with such uncertainty around appropriate recipients was insufficiently clear, and would hamper the execution of the judgment (pp. 64-7).

The following is the text of the judgment of the Court:

## PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the Government of the Republic of Cyprus ("the applicant Government") on 30 August 1999 and by the European Commission of Human Rights on 11 September 1999 (Article 5 § 4 of Protocol No 11 and former Articles 47 and 48 of the Convention).

2. In the course of the proceedings on the merits of the case, on 27 October 1999, the President of the Court met the Agent of the applicant Government and the Agent of the Government of the Republic of Turkey ("the respondent Government") with a view to discussing some preliminary procedural issues in the case. The Agents accepted that, if the Court were to find a violation, a separate procedure would be required for dealing with claims under Article 41 of the Convention.

3. By a letter of 29 November 1999, the Court instructed both parties as follows:

The applicant Government are not required to submit any claim for just satisfaction under Article 41 of the Convention at this stage of the proceedings.