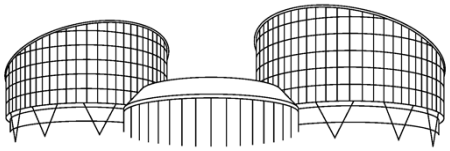

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF MOLLA SALI v. GREECE

(Application no. 20452/14)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Respondent State invited to guarantee applicant's ownership of property bequeathed to her in Greece, or else to compensate her for its value in proportion to the percentage of which she was deprived • Applicant required to repay any award of compensation if outcome of proceedings currently pending in Greece is consistent with the principal judgment • No jurisdiction for the Court to determine the applicant's claims concerning property in Turkey • No jurisdiction exercised by Greece in respect of the proceedings in Turkey • Property bequeathed in Turkey unable to form the basis of any just-satisfaction claim against Greece in the absence of a substantive position in the principal judgment on the applicant's alleged rights in relation to that property • Possibility for the applicant to bring an application against Turkey if Turkish courts do not have regard to the findings of the principal judgment or draw from it the necessary consequences flowing from Turkey's status as a Contracting State

STRASBOURG

18 June 2020

This judgment is final but it may be subject to editorial revision.

In the case of Molla Sali v. Greece,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Linos-Alexandre Sicilianos,
Paul Lemmens,
Ledi Bianku,
Ganna Yudkivska,
Kristina Pardalos,
Julia Laffranque,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Mārtiņš Mits,
Armen Harutyunyan,
Alena Poláčková,
Pauliine Koskelo,
Tim Eicke,
Raffaele Sabato, *judges,*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 13 February and 30 April 2020,

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

PROCEDURE

1. The case originated in an application (no. 20452/14) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Ms Chatitze Molla Sali ("the applicant"), on 5 March 2014.

2. The applicant was represented by Mr Y. Ktistakis and Mr K. Tsitselikis, lawyers practising in Athens and Thessaloniki respectively. The Greek Government ("the Government") were represented by their Agent's Delegates, Mr K. Georghiadis and Ms V. Pelekou, Advisers at the State Legal Council, Ms A. Magrippi, Legal Assistant at the State Legal Council, and Ms M. Telalian, Director of the Legal Department of the Ministry of Foreign Affairs.

3. The case concerned the application by the domestic courts of Islamic religious law (Sharia) to an inheritance dispute between Greek nationals belonging to the Muslim minority, despite the wishes of the testator (the applicant's late husband, a Greek belonging to the Muslim minority), who had bequeathed his entire estate to his wife under a will drawn up in accordance with Greek civil law. The courts considered the will devoid of

effect, finding that the law applicable to the case was Islamic inheritance law, which applied specifically to Greeks of Muslim faith in Greece. The applicant, who was deprived of three-quarters of her inheritance, submitted that she had suffered a difference in treatment on grounds of religion because had her husband not been of Muslim faith, she would have inherited the whole estate.

4. In a judgment delivered on 19 December 2018 ("the principal judgment"), the Court found a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. The Court held, in particular, that the difference of treatment suffered by the applicant, as a beneficiary of a will drawn up in accordance with the Civil Code by a Greek testator of Muslim faith, as compared with a beneficiary of a will drawn up in accordance with the Civil Code by a Greek non-Muslim testator, had no objective and reasonable justification.

5. Since the Greek Code of Civil Procedure does not provide for the reopening of proceedings in the domestic courts in the event of a finding by the Court of a violation of the Convention in a contentious case such as the present one, the applicant sought just satisfaction under Article 41 of the Convention in respect of the pecuniary and non-pecuniary damage she considered to have resulted from the violations found in the present case, as well as the reimbursement of costs and expenses incurred before the Court.

6. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within twelve months, their written observations on the matter and, in particular, to notify the Court of any agreement they might reach (see paragraph 166 and point 4 of the operative provisions of the principal judgment).

7. As the parties had failed to reach an agreement, the applicant submitted her observations on 19 April and 28 May 2019, and the Government submitted theirs on 18 April and 28 May 2019.

8. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

DEVELOPMENTS SINCE THE PRINCIPAL JUDGMENT

9. On 13 February 2019, at the request of the State Legal Council and for the purposes of the case pending before the Court, the Komotini Tax Office drew up a document establishing the value of the property bequeathed to the applicant by her late husband as follows:

(a) 50% of an apartment with a parking space and cellar (registered under numbers 420170469058/2/8, 420170469058/3/4 and 420170469058/2/22), valued at 34,067.08 euros (EUR);

(b) 25% of a plot of land (registered under number 420170460019/0/0) with a surface area of 24.45 sq. m occupied entirely by a shop, valued at EUR 15,337.41;

(c) 33.3% of a plot of farmland (registered under number 420173428146/0/0), valued at EUR 5,400; and

(d) 75% of a shop occupying the entirety of a 31.30 sq. m plot of land in Komotini (registered under number 420170494076), valued at EUR 12,777.45 (this property has since been expropriated).

10. Following the judgment delivered by the Court of Cassation on 6 April 2017, the sisters of the applicant's late husband applied to the Rodopi Court of First Instance on 19 April 2017. They sought rectification of the land register to recognise them as co-owners of the testator's property registered under numbers 420170469058/2/8, 420170469058/3/4, 420170469058/2/22, 420170460019/0/0 and 420173428146/0/0. By judgment no. 114/2018 of 20 November 2018 the Court of First Instance recognised the two sisters as the owners of 18.75% each of the property registered under numbers 420170469058/2/8, 420170469058/3/4 and 420170469058/2/22; of 9.375% each of the property registered under number 420170460019/0/0; and of 12.5% each of the property registered under number 420173428146/0/0. The court also ordered the amendment of the registration of the properties in question at the Land Registry, in accordance with the terms of the judgment. Lastly, the court ruled that the applicant remained the owner of one-quarter of the property bequeathed and was required to register this portion afresh at the Land Registry.

11. On 24 December 2018 the applicant appealed to the Thrace Court of Appeal against that judgment. First of all, relying on the Court's principal judgment, she submitted that it was no longer possible for her late husband's sisters to register their inheritance rights under Sharia law at the Land Registry. Secondly, she relied on Article 281 (abuse of rights) of the Civil Code, pointing out that her late husband's sisters had previously accepted their father's estate in accordance with the provisions of the Civil Code, thus creating a legitimate expectation for the applicant that they would not seek to apply Sharia law to their brother's estate to her detriment.

12. The Thrace Court of Appeal delivered its judgment (no. 281/2019) on 23 October 2019.

Referring to its previous final judgment no. 183/2015 of 15 December 2015, the Thrace Court of Appeal noted that that judgment had ruled, with the force of *res judicata*, by which it was bound, that the law applicable to the deceased's estate was Sharia law. Pursuant to that law, the shares in the estate for the heirs involved in the dispute were 6/24 for the applicant and 9/24 each in joint ownership for the two sisters. The Court of Appeal further noted that the entries in the land register to the effect that the applicant owned 100% of the property registered under numbers 420170469058/2/22, 420170469058/2/8 and 420170469058/3/4, 25% of the

property registered under number 420170460019/0/0 and 33.33% of the property registered under number 420173428146/0/0 were incorrect. The Court of Appeal held that those entries infringed the two sisters' property rights and should be rectified in the land register. It recognised the sisters as owners of 18.75% each of the property registered under numbers 420170469058/2/22, 420170469058/2/8 and 420170469058/3/4, 9.375% each of the property registered under number 420170460019/0/0, and 12.5% each of the property registered under number 420173428146/0/0.

On 20 December 2019 the applicant appealed on points of law against the above-mentioned judgment.

13. On the date of delivery of the present judgment, the proceedings were still pending.

14. The land register at the Komotini Land Registry has not yet been rectified following the judgments delivered by the Court of First Instance on 20 November 2018 and by the Court of Appeal on 23 October 2019 so as to recognise the sisters of the applicant's late husband as co-owners of the testator's property. The relevant entries can only be rectified if there is an irrevocable judgment in favour of the deceased's sisters. Only the action brought by the sisters of the applicant's late husband has been mentioned in the land register.

15. The plot of land registered under number 420170494076 was not referred to in the application lodged by the sisters of the applicant's late husband. The applicant's ownership of that land was therefore not contested. Moreover, as the applicant accepted, the property in question had been expropriated, and she was to be paid compensation on that account.

16. As regards the proceedings in Turkey the applicant brought an action in the Bakırköy Civil Court of First Instance seeking to have the will applied to the property located in Turkey. At the same time, the testator's sisters applied to have the will declared null and void on the grounds of its incompatibility with Turkish legislation. On 18 January 2018 the Bakırköy Civil Court of First Instance held that it was not required to consider the application by the sisters of the applicant's late husband for the latter's will to be declared null and void in accordance with the principles of private international law enshrined in the Turkish Civil Code (will contrary to Turkish public policy). The court held that the judgment delivered by the Greek Court of Cassation was final and that, pursuant to Turkish private international law, it was binding on the court, so that it was unnecessary to reconsider the case. Both the applicant and her husband's sisters appealed to the Istanbul Court of Appeal against that judgment, and their appeals are currently pending.

THE LAW

17. 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."

I. THE PARTIES' SUBMISSIONS

A. The applicant's observations of 19 April and 28 May 2019

1. Pecuniary damage

18. The applicant observed that in his will, her husband had bequeathed all his movable and real property to her. However, the will had had consequences in two States, Greece and Turkey, because at the material time the deceased's real estate had comprised four properties in Greece (now three, namely one-third of a plot of farmland with a surface area of 2,000 sq. m, half of an apartment measuring 127 sq. m with a parking space and a cellar, and one-quarter of a shop in Komotini with a surface area of 24 sq. m – see paragraph 9 above), as well as four properties in Turkey.

19. The applicant submitted that the Greek Civil Code did not provide for the reopening of proceedings in the domestic courts following a finding of a violation of the Convention in a judgment of the Court. Furthermore, she contended that she had no effective remedy in Turkey to contest the judgment of 18 January 2018 in which the Bakırköy Civil Court of First Instance had held that the judgments of the Greek Court of Cassation were final and binding on the Turkish courts, which were accordingly not required to reconsider the case. As a result, the judgments of the Greek Court of Cassation provided the sole legal basis for depriving the applicant of her property in Turkey.

20. In those circumstances, the applicant argued that restitution of the property in issue would be the only appropriate form of redress for the violation of the Convention. Such restitution could easily be secured if the Court ordered the rectification of the registration of the inherited properties at the Land Registry in the names of her late husband's sisters.

21. In the absence of *restitutio in integrum*, the applicant invited the Court to award her compensation of EUR 44,103, corresponding to three-quarters of the value of the three properties in issue in Greece (registered under numbers 420170469058/2/8, 420170469058/3/4, 420170469058/2/22, 420170460019/0/0 and 420173428146/0/0), and compensation of EUR 936,912.50 in respect of the four properties in Turkey (that amount being based on the expert reports produced by the applicant in Turkey).

2. Non-pecuniary damage

22. The applicant claimed EUR 30,000 in respect of non-pecuniary damage. She submitted that she had suffered excessive stress from the publicity surrounding the proceedings in her case before the Greek courts and the Court and from her public exposure as an elderly Muslim widow following her decision to fight against the application of Sharia law in Greece.

3. Costs and expenses

23. The applicant claimed EUR 5,828.33 in respect of costs and expenses incurred before the domestic courts and before the Court, broken down as follows: EUR 2,401.05 for legal fees before the domestic courts; EUR 1,364 for Mr Ktistakis's fees before the Court; EUR 1,100 for Mr Tsitselikis's fees before the Court; and EUR 963.28 for the costs associated with the hearing before the Grand Chamber.

B. The Government's observations of 18 April and 28 May 2019 (filed prior to the Court of Appeal's judgment no. 281/2019 of 23 October 2019)

1. Pecuniary damage

(a) Property located in Greece

24. At the time they submitted their observations, the Government argued first of all that the assessment of the pecuniary damage sustained by the applicant was premature, uncertain and hypothetical. The registration at the Land Registry of the property bequeathed to the applicant had not yet been rectified, as requested by her late husband's sisters, because the applicant's appeal against the judgment of the first-instance court finding for the testator's sisters was still pending before the Thrace Court of Appeal. In fact, the registration of the relevant property in the applicant's name (in respect of the share inherited from her husband) could only be changed by an irrevocable judgment pursuant to the provisions of section 7 of Law no. 2664/1998. According to the land register, therefore, the applicant was currently the sole owner of that inherited share.

25. Furthermore, the Government emphasised that the Court's principal judgment had been brought to the Court of Appeal's attention. It was clearly impossible to anticipate that court's decision, but were the latter to allow the applicant's appeal, the registration would not be rectified and the applicant's legal status as the beneficiary of her husband's will would remain unchanged. If, on the other hand, the Court of Appeal were to dismiss the applicant's appeal, she could lodge an appeal on points of law. Furthermore, the applicant could also bring an action for damages against her husband's sisters under Article 904 (unjust enrichment) of the Civil Code or an action

for damages against the State under section 105 of the Introductory Law to the Civil Code (duty of the State to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority).

26. The Government explained that in accepting her husband's estate by notarised deed and registering the inherited property at the Komotini Land Registry, the applicant had accepted the properties bequeathed by her husband, which he had previously declared to the tax authorities. Those properties were as follows:

(a) a 50% share of a jointly owned apartment (registered under numbers 420170469058/2/8, 420170469058/3/4 and 420170469058/2/22), valued at EUR 34,067.08, the other 50% of which already belonged to the applicant following purchase;

(b) a 25% share of a jointly owned plot of land (registered under number 420170460019/0/0) occupied by a shop with a surface area of 24.45 sq. m, valued at EUR 15,337.41;

(c) a 33.3% share of a plot of farmland (registered under number 420173428146/0/0), valued at EUR 5,400, the remainder of which already belonged to the testator's sisters; and

(d) a 75% share of a jointly owned plot of land (registered under number 420170494076), valued at EUR 12,777.45, the remaining 25% of which belonged to the applicant's mother and sister. The Government pointed out that this property had not been among those whose ownership had been contested by the testator's sisters in the application they had lodged on 19 April 2017.

27. Lastly, the Government pointed out that the applicant had not submitted a tax declaration concerning the 25% share of the property which she had inherited, and had therefore not paid any property tax on it.

(b) Property located in Turkey

28. The Government contended that any claim submitted by the applicant relating to the property in Turkey was inadmissible, ill-founded, vague and impossible to assess. They emphasised that that property fell outside the jurisdiction of the Greek courts. It had at no stage been the subject of proceedings in those courts and did not form part of the case before the Court; it was the subject of proceedings still pending before the Turkish courts, and consequently the question of the applicant's inheritance rights in Turkey was premature as matters stood. Moreover, the applicant had not established the ownership of that property or its legal status with effect from her husband's death up to the present day.

29. The Government further argued that the applicant had failed to take the requisite steps to ensure the recognition and execution of her husband's will in Turkey before it had been invalidated by the Greek Court of Cassation, and had not established that, even assuming that the will had been valid in Greece, it would also have been valid in Turkey for the

purposes of its execution, particularly in view of the fact that the applicable law had been Turkish law. If the Greek Court of Cassation had not invalidated the will, the Turkish courts would have considered whether the will was contrary to Turkish public policy on other grounds.

2. Non-pecuniary damage

30. The Government submitted that the applicant's claim under this head was vague, excessive and unfounded in view of the circumstances of the case, that is to say, its complexity, the applicant's age and social and economic status, and the financial situation in Greece.

3. Costs and expenses

31. The Government submitted that the applicant had not justified her claim or provided any evidence in support of it. She had submitted four invoices for legal fees, but these had been drawn up in the name of a lawyer who had not represented her before the Court. Furthermore, two of the four invoices related to her appeal on points of law of 8 February 2016 and the hearing in the Court of Cassation, that is to say, acts and events which had taken place after the application had been lodged and which fell outside its subject matter. Lastly, the Government submitted that the sum claimed was excessive.

II. THE COURT'S ASSESSMENT

A. General principles

32. The Court reiterates its case-law to the effect that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 79, ECHR 2014). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I, and *Guiso-Gallisay*

v. Italy (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV). To that end, it may have recourse to equitable considerations (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 36, ECHR 2014; *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 79, 28 November 2002; *S.C. Granitul S.A. v. Romania* (just satisfaction), no. 22022/03, § 15, 24 April 2012; and *Kryvenkyy v. Ukraine*, no. 43768/07, § 52, 16 February 2017).

33. The Court further reiterates that there is no express provision for non-pecuniary or moral damage. In it *Varnava and Others v. Turkey* ([GC], nos. 16064/90 and 8 others, § 224, ECHR 2009) and *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 56, ECHR 2014), the Court confirmed the following principles, which it has gradually developed in its case-law. Situations where the applicant has suffered evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity can be distinguished from those situations where the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is an appropriate form of redress in itself. In some situations, where a law, procedure or practice has been found to fall short of Convention standards this is enough to put matters right. In other situations, however, the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant as to require something further. Such elements do not lend themselves to a process of calculation or precise quantification. Nor is it the Court's role to function akin to a domestic tort mechanism court in apportioning fault and compensatory damages between civil parties. Its guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage (see *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, § 39, 12 December 2017).

B. Application of those principles in the present case

1. Pecuniary damage

34. The Court reiterates that in its principal judgment it found a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 on the following grounds: whereas the applicant's husband

had decided, in a will drawn up in accordance with Greek civil law before a Greek notary, to bequeath all his property to her, the Greek Court of Cassation considered that the Islamic law of succession should be applied to her case. This had the consequence of depriving the applicant of the benefit of the will made by her husband, and specifically of three-quarters of the property bequeathed by him.

35. The Court also notes that in her claims under Article 41 of the Convention, the applicant sought compensation for the damage sustained in respect of her husband's property in both Greece and Turkey.

(a) Property located in Greece

36. The Court notes that the following properties are covered by the applicant's husband's will, according to Land Registry documents:

(a) an apartment, a parking space and a cellar (registered under numbers 420170469058/2/8, 420170469058/3/4 and 420170469058/2/22), with a value of EUR 34,067.08, 50% belonging to the applicant's husband and 50% belonging to the applicant;

(b) a plot of land (registered under number 420170460019/0/0) and a shop located on it, occupying a surface area of 24.45 sq. m, with a value of EUR 15,337.41, 25% belonging to the applicant's husband, 18.75% to one of the latter's sisters, 18.75% to the other sister and 25% to another, unidentified person;

(c) a plot of farmland (registered under number 420173428146/0/0), with a value of EUR 5,400, 33.33% belonging to the applicant's husband, 33.33% to one of the latter's sisters and 33.33% to the other sister; and

(d) 75% of a plot of land (registered under number 420170494076), with a value of EUR 12,777.45, the remaining 25% of which belonged to the applicant's mother and sister; the land has in the meantime been expropriated and its ownership was not contested by the testator's sisters in the application they lodged on 19 April 2017.

37. The Court also notes that after the Court of Cassation had delivered its judgment on 6 April 2017, the sisters of the applicant's late husband applied to the Rodopi Court of First Instance on 19 April 2017 for rectification of the land register in order to be recognised as co-owners of the testator's property. In a judgment of 20 November 2018 the Court of First Instance recognised the two sisters as co-owners and ordered the amendment of the registration of the property at the Land Registry, in accordance with the terms of the judgment. Lastly, the court ruled that the applicant remained the owner of one-quarter of the property bequeathed and was required to register this portion afresh at the Land Registry. On 24 December 2018 the applicant appealed to the Thrace Court of Appeal against that judgment. On 23 October 2019 the Court of Appeal upheld the judgment of the Court of First Instance. It referred to its previous final judgment no. 183/2015 and noted that that judgment had ruled with the

force of *res judicata*, by which it was bound, that the law applicable to the deceased's estate was Sharia law. On 20 December 2019 the applicant appealed on points of law against the Court of Appeal's judgment.

38. The Court considers that although the proceedings in the Court of Cassation are still pending, it is not required to await the outcome of those proceedings before giving its decision. In this connection, it reiterates its case-law to the effect that under Article 41, it may proceed to apply that Article if the internal law of the respondent State "allows only partial reparation to be made" for the consequences of the violation found. If the victim, after exhausting in vain the domestic remedies before complaining in Strasbourg of a violation of his or her rights, were obliged to do so a second time before being able to obtain just satisfaction from the Court, the total length of the procedure instituted by the Convention would scarcely be in keeping with the idea of the effective protection of human rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14, and *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 July 1994, § 17, Series A no. 285-C).

39. In the applicant's view, the best means of redress for the violation of the Convention and of Protocol No. 1 would be for the Court to order *restitutio in integrum*, which in the instant case would entail rectifying in her favour the registration of the bequeathed property at the Land Registry.

40. According to the information supplied by the parties, the land register has not yet been rectified following the Court of First Instance's judgment of 20 November 2018 and the Court of Appeal's judgment of 23 October 2019 so as to recognise the sisters of the applicant's late husband as co-owners of the testator's property. The relevant entries cannot be rectified unless an irrevocable judgment is delivered in favour of the deceased's sisters. Only in that event could the sisters of the applicant's late husband be recognised as co-owners of the testator's property.

41. Accordingly, the Court notes firstly that the effect of the violation of the Convention which it found in its principal judgment has not yet become tangible. Secondly, it reiterates that, in principle, it is not its task to prescribe exactly how a State should put an end to a breach of the Convention and make reparation for its consequences.

42. Nevertheless, it is clear that restoration of "the closest possible situation to that which would have existed if the breach in question had not occurred" (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 38, Series A no. 330-B; *Vistiņš and Perepjolkins*, cited above, § 33; and *Chiragov and Others v. Armenia* (just satisfaction) [GC], no. 13216/05, § 59, ECHR 2017) would consist in taking measures to ensure that the applicant retains her ownership of the property in Greece bequeathed by her husband or, in the event of an amendment to the land register, that her property rights are restored.

43. The Court holds that unless the respondent State takes the above-mentioned measures within one year of the delivery of this judgment, it must pay an amount of compensation to the applicant that takes account of the value of the property bequeathed to her in proportion to the percentage of which she was deprived pursuant to the rules of Sharia law.

44. The value of that property, amounting to a total of EUR 54,804.49, was supplied to the Government by the Komotini Tax Office, and the applicant indicated her agreement with that amount in her observations.

45. Given that as a result of the Court of Cassation's decision that the disputed estate should be governed by Sharia law, the applicant was deprived of three-quarters of the property in question (while remaining the owner of one-quarter), she is entitled, unless the respondent State takes the above-mentioned measures within the prescribed time-limit, to compensation corresponding to three-quarters of the value of that property, that is to say, a sum of EUR 41,103.36.

46. However, the applicant cannot derive any right to double compensation or to unjust enrichment from the Court's judgment. Consequently, if the outcome of the proceedings currently pending in Greece is consistent with the principal judgment, she should repay that sum to the respondent State in the event of its payment in the meantime.

(b) Property located in Turkey

47. The Court notes that the application giving rise to the principal judgment was brought solely against Greece. The question of the effects of the deceased's will, in so far as it relates to the property in Turkey, is the subject of proceedings still pending in the Turkish courts. The intervention of the Turkish courts in the inheritance dispute between the applicant and the testator's sisters was triggered both by the action brought by the applicant in the Bakırköy Civil Court of First Instance seeking to have the will applied to the property located in Turkey, and also by the testator's sisters, who for their part had applied to have the will declared null and void on the grounds of its incompatibility with Turkish legislation (see paragraphs 16 above and 88 of the principal judgment). On 18 January 2018 the Court of First Instance ruled that following the judgments delivered by the Greek courts, the Turkish courts were not required to reconsider the case. The appeals lodged by both the applicant and the testator's sisters against that judgment are currently pending before the Istanbul Court of Appeal.

48. That being so, the Court cannot discern any particular circumstances that could be said to amount to the exercise by Greece of its jurisdiction in respect of the proceedings taking place in Turkey.

49. It should also be noted that although the applicant's late husband drew up his will in general terms, without specifically distinguishing between the properties located in Turkey and in Greece, the applicant's

notarised deed accepting the will refers to and describes the deceased's property in Greece alone (see paragraph 10 of the principal judgment).

50. At any rate, even if, as the Court notes, the applicant has considered the property located in Turkey as part of the "inheritance" of which she has been deprived, the Court, when finding Article 1 of Protocol No. 1 applicable, in paragraph 130 of its principal judgment, explicitly referred to the fact that "[the] applicant [had] registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees." This only applied to the Greek properties. Only on that basis did the Court go on to examine, in the principal judgment, whether Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 was violated. Thus, the Court took no substantive position in the principal judgment on the applicant's alleged rights under Article 1 of Protocol No. 1 in relation to the property located in Turkey. Consequently, this property cannot form the basis of any just satisfaction claims against the respondent State in the present reserved Article 41 proceedings.

51. Furthermore, the Court reiterates that under Article 46 of the Convention, any judgment of the Court is binding only on the States that were parties to the proceedings giving rise to it, which was not the case for Turkey as regards the principal judgment in this instance. Nevertheless, there is nothing to prevent the Turkish courts from taking the principal judgment into account when giving their decision.

52. The Court would further point out that the applicant will, if appropriate, have the opportunity to bring an application against Turkey in respect of the final decision delivered by the Turkish courts on the effects of her husband's will on the property in Turkey, should that decision not have regard to the Court's principal judgment holding Greece liable of violating Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1, and should it not draw from it the necessary consequences flowing from Turkey's status as Contracting Party to the Convention.

53. The Court therefore considers that in these circumstances it does not have jurisdiction, in the context of the present case, to determine the applicant's claims concerning her husband's property in Turkey.

2. Non-pecuniary damage

54. The Court acknowledges that the applicant undeniably sustained damage on account of the discrimination she suffered. Ruling on an equitable basis, as required by Article 41 of the Convention, it decides to award her EUR 10,000.

3. Costs and expenses

55. The Court reiterates that to be entitled to an award for costs and expenses under Article 41 of the Convention, the injured party must have

actually and necessarily incurred them. In particular, Rule 60 § 2 states that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Vistiņš and Perepjolkins*, cited above, § 50).

56. In the present case, the Court has found a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. It must be acknowledged that even if there had been no violation of those provisions, the applicant would have incurred expenses for the domestic proceedings. Therefore, having regard to the documents she submitted in support of her claim, the Court considers that she should be reimbursed the sum claimed in respect of the proceedings before the domestic courts**,** that is, EUR 2,401.05 in legal fees. Furthermore, having regard to the documents available to it and to its case-law, the Court considers it reasonable to award the applicant the full amounts claimed in respect of the proceedings before it, that is, EUR 3,427.28 in respect of lawyers' fees and the costs associated with the Grand Chamber hearing.

4. Default interest

57. The Court considers it appropriate that the default interest rate 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. *Holds*, unanimously,

(a) that the taking of measures by the respondent State to ensure that the applicant retains her ownership of the property bequeathed to her in Greece, or, in the event of an amendment to the land register, that her property rights are restored, would constitute appropriate redress for the violation of her rights;

(b) that in the event that such measures are not taken within one year, the respondent State must pay the applicant the sum of EUR 41,103.36 (forty-one thousand one hundred and three euros and thirty-six cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(c) that from the expiry of the above-mentioned one year 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;

2. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,828.33 (five thousand eight hundred and twenty-eight euros and thirty-three cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses*, by fourteen votes to three, the remainder of the applicant's claim for just satisfaction.

Done in English and French, and notified in writing on 18 June 2020, pursuant to Rules 71 § 1 and 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert	Robert Spano
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lemmens, Koskelo and Eicke is annexed to this judgment.

R.S.O.
J.C.

JOINT PARTLY DISSENTING OPINION OF JUDGES LEMMENS, KOSKELO AND EICKE

Introduction

1. We agree with the majority in relation to the statement of the general principles applicable in relation to an assessment of just satisfaction under Article 41 (as far as they go) set out in paragraphs 32 to 33 of the judgment and have voted for paragraphs 1 and 2 of the operative part of this judgment.

2 Unfortunately, we find ourselves unable to agree with the majority in relation to its application of those principles to the applicant's head of claim for just satisfaction in concerning the properties located in Turkey, and its conclusion in relation to that head of claim.

3. In our respectful view, for the reasons set out in more detail below, the judgment not only reaches the wrong conclusion in relation to this head of claim but, more importantly, bases itself on an unjustifiably narrow reading of the principal judgment (*Molla Sali v. Greece* [GC], no. 20452/14, 19 December 2018) and methodologically and procedurally confuses and conflates two separate and distinct stages of the assessment of the applicant's complaint under the Convention.

4. In doing so, the majority has avoided having to grapple with some of the more difficult issues arising in the context of an assessment of pecuniary damages under Article 41 of the Convention. Furthermore, it has failed to take this opportunity to provide some clarity in relation to the Court's rather under-developed case-law in this area. After all, in the context of judgments of the Court in which admissibility, merits and just satisfaction are almost invariably considered together, the just satisfaction aspect of a complaint frequently receives only the most cursory attention, almost as an afterthought, without detailed exposition of or reference to applicable legal principles. Furthermore, as in the present case, this cursory approach is frequently to the detriment of the applicant for whom the just satisfaction award (and any other individual measures) under Article 41 of the Convention, arising from the judgment of this Court, may well be the only tangible (and desired) result of having initiated proceedings before this Court (in relation to the inverse risk of over-compensation: see the separate opinions of Judges Koskelo and Eicke in *Čapský and Jeschkeová v. the Czech Republic*, nos. 25784/09 and 36002/09, 9 February 2017). This is particularly so in cases where an applicant has had to wait a significant period of time before judgment is handed and the passage of time has made *restitutio in integrum* materially impossible.

5. It is a further consequence of the Court's current practice that opportunities such as the present, where the Court is required to engage separately (and only) with the question of just satisfaction arising from an

already established breach of the Convention are increasingly rare. It is, therefore, unfortunate that the majority has chosen not to engage with the difficult issues – legal as well as factual and evidential - relating to the relationship between *restitutio in integrum* and compensation as well as questions such as causation and quantum. This judgment is clearly a missed opportunity and any guidance by the Grand Chamber, in a case such as the present, would have been helpful not only to the different formations of the Court in informing their daily diet of cases involving the question of just satisfaction under Article 41 but also to the parties before the Court. After all, it could have provided the parties with clearer guidance than is currently available as to the approach that will be taken by the Court and the evidence (and pleadings) that might be necessary (or helpful) to persuade the Court to award or not to award just satisfaction in relation to the heads of claim identified and/or the amount sought.

Background

6. On 18 December 2018, the Court handed down the principal judgment in the present case. In that judgment, the Court concluded that "there has been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1" (operative part, paragraph 3). In exercise of its jurisdiction under Article 19 of the Convention, the Court therefore necessarily established that, by failing to observe "the engagements it has undertaken in the Convention and the Protocols thereto", Greece has breached its primary obligation under the Convention to secure the rights and freedoms guaranteed (Article 1 of the Convention) and has committed an internationally wrongful act triggering its (state) responsibility as a matter of international and Convention law.

7. In relation to the question of just satisfaction under Article 41 of the Convention, the Court recorded that:

> "The applicant claimed 967,686.75 euros (EUR) in respect of pecuniary damage resulting from the violation of Article 1 of Protocol No. 1. In support of her claim she produced documents from the Greek tax authorities for the property located in Greece and expert reports drawn up in Turkey for the relevant property there. She also claimed EUR 30,000 in respect of non-pecuniary damage resulting from the violation of Articles 6 and 14 of the Convention. She claimed EUR 8,500 in respect of costs and expenses." (§164)

8. However, it concluded that the question of the application of Article 41 of the Convention was not (yet) ready for decision and reserved that question to be determined at a later stage, providing for an initial period of three months for an agreement to be reached, if possible, between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court).

The meaning of the principal judgment

9. In light of the terms of the present judgment, and in particular paragraphs 49 and 50 thereof, it is important to set out what we understand to have been the context and content of the conclusions reached in the principal judgment. Unfortunately, the narrow interpretation of that judgment set out in these paragraphs is not one we recognise. In paragraph 50, the present judgment asserts that:

> "... even if [...] the applicant has considered the property located in Turkey as part of the "inheritance" of which she has been deprived, the Court, when finding Article 1 of Protocol No. 1 applicable, in paragraph 130 of its principal judgment, explicitly referred to the fact that "[the] applicant [had] registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees." This only applied to the Greek properties. Only on that basis did the Court go on to examine, in the principal judgment, whether Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 was violated. Thus, the Court took no substantive position in the principal judgment on the applicant's alleged rights under Article 1 of Protocol No. 1 in relation to the property located in Turkey. Consequently, this property cannot form the basis of any just satisfaction claims against the respondent State in the present reserved Article 41 proceedings."

10. We accept that it is correct to say that no substantive position was taken on the properties in Turkey left to the applicant under her husband's civil law will. However, the same is true in relation to the properties in Greece left to the applicant under the same will and the reason is that the question of the respective properties covered by the will made by the applicant's husband was not, in fact, a relevant or necessary consideration for the resolution of the issues arising under Article 14 of the Convention read with Article 1 of Protocol No. 1. The inverse, however, is also true and that is that the Court at no point – whether in the principal judgment or otherwise - gave any indication to the applicant that the properties located in Turkey did not form part of the relevant "inheritance" by reference to which the principal judgment found a violation of Article 14 read in conjunction with Article 1 of Protocol No. 1. If confirmation of this were needed, this can be found in the fact that this formed a significant part of the applicant's pleaded case on Article 41 as summarised in paragraphs 18 to 21 of the present judgment.

11. There can also be no suggestion that the nature of her claim (including in relation to the Turkish properties left to her under her husband's will) has not been clear throughout the substantive proceedings. After all, as the principal judgment records, the inheritance sought to be conveyed to the applicant by the notarised wills drawn up by her Greek national husband (who happened to be of Muslim faith) – and therefore in issue before the Court - included "his whole estate ... namely: one-third of a 2,000 sq. m plot of farmland near Komotini; one-half of a 127 sq. m apartment, a parking space and a basement in a block of flats in Komotini; one-quarter of a shop in Komotini with a surface area of 24 sq. m, and

another shop measuring 31 sq. m in Komotini, which was subsequently expropriated in return for compensation that has already been paid to the applicant; and four properties in Istanbul" (see paragraph 9 of that judgment, emphasis added).

12. This reflects the fact that, in her observations of 29 January 2017, submitted in the substantive proceedings and replying to the Government's observations on admissibility and merits, the applicant expressly asserted *inter alia* that the "testator had in Turkey (Istanbul) the following immovables" and identified, both in her observations and by supporting evidence, one property in the Fatih neighbourhood of Istanbul and three further properties in the Bakırköy neighbourhood of Istanbul (see *inter alia* paragraphs 8 and 44). Attached to those observations, the applicant also provided expert valuations of these properties drawn up by Turkish experts.

13. Now, the majority seek to overcome this difficulty by (a) asserting that "although the applicant's late husband drew up his will in general terms, without specifically distinguishing between the properties located in Turkey and in Greece, the applicant's notarised deed accepting the will refers to and describes the deceased's property in Greece alone (see paragraph 10 of the principal judgment)" (see paragraph 49 of the present judgment) and (b) referring to the fact that it had, "in paragraph 130 of its principal judgment, explicitly referred to the fact that '[the] applicant [had] registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees.'" (see paragraph 50 of the present judgment). However, neither provides the clear (if any) indication that is suggested that the Court was excluding the Turkish properties bequeathed to her under her husband's will from its consideration.

14. Paragraph 10 of the principal judgment is not, in fact, expressed in the clear and unequivocal terms suggested by the majority. It merely records that "[b]y decision no. 12.785/2003 of 10 June 2008 the Komotini Court of First Instance, on the basis of a next-of-kin certificate submitted by the applicant, approved the will presented before it. On 6 April 2010 the applicant accepted her husband's estate by notarised deed. The Treasury was notified and the applicant registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees. It does not appear from the case file that the applicant had to pay any inheritance tax on the property transferred to her". There is no indication (and no evidence) at all that the applicant's notarised acceptance deed only referred to the properties located in Greece. Quite the contrary, it suggests that the applicant's acceptance, just as the approved will itself, referred to the whole of her husband's estate, i.e. including the properties located in Turkey. Furthermore, in relation to the registration with the land registry, it may be assumed that the land registry in Greece can only register property located in Greece. Consequently, the mere fact that the applicant registered

Greek properties with a Greek land registry cannot be an argument for excluding the Turkish properties from her claim before this Court.

15. In the same vein, the reference to paragraph 130 of the principal judgment also does not provide sufficient (or any) support for the conclusion that these properties could not form the basis for the applicant's just satisfaction claim in this case. Yes, paragraph 130 does recite, as a fact, that the applicant "registered the property transferred to her" but does so, again, without any indication as to whether this included or excluded those properties included in the will (and accepted by the applicant by deed) which are located in Turkey. However, any support this statement of fact might be said to provide to the approach adopted by the majority is further undermined by the fact that the remainder of that paragraph immediately reverts to discussing the will and the totality of the estate (rather than focussing on any particular properties that might form part of that estate):

> "The Rodopi Court of First Instance and the Thrace Court of Appeal adjudicated the challenge brought by the deceased's sisters by validating the will, which the testator had freely chosen to draw up in accordance with the relevant provisions of the Civil Code. The only reason why the applicant did not have the inheritance certificate provided for in Article 1956 of the Civil Code was that the deceased's sisters had challenged the validity of the will as soon as it had been approved by the Komotini Court of First Instance (see paragraph 11 above). Thus, the applicant would have inherited her husband's whole estate had the testator not been of the Muslim faith."

16. No other pointer has been identified in the principal judgment which should have alerted the applicant to the fact that her Article 41 claim was, in the Court's view, as narrowly focussed as the present judgment now suggests. In fact, if anything the remainder of the principal judgment further reaffirms the impression that the Court was concerned throughout with the totality of the husband's will or estate without ever excluding from its assessment the properties in Turkey. See *inter alia*:

a) The summary of the applicant's complaint as being that "by applying Sharia law to her husband's will instead of Greek civil law, the Court of Cassation had deprived her of three-quarters of her inheritance" (paragraph 84); as well as
b) The following:

> "... the Court considers that the applicant's proprietary interest in inheriting from her husband was of a sufficient nature and sufficiently recognised to constitute a "possession" within the meaning of the rule laid down in the first sentence of the first paragraph of Article 1 of Protocol No. 1 ..." (paragraph 131)
>
> It is beyond doubt that she expected, as any other Greek citizen would have done, that on her husband's death his estate would be settled in accordance with the will thus drawn up. (paragraph 139)
>
> In conclusion, the applicant, as the beneficiary of a will made in accordance with the Civil Code by a testator of Muslim faith, was in a relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim

> testator, and was treated differently on the basis of "other status", namely the testator's religion. (paragraph 141)
>
> The Court notes first of all that the application of Sharia law to the estate in issue had serious consequences for the applicant, depriving her of three-quarters of the inheritance. (paragraph 145)
>
> The main consequence of the approach adopted by the Court of Cassation in inheritance cases since 1960 and followed by certain lower courts, to the effect that inheritance matters involving members of the Muslim minority should be governed by Sharia law, is that notarised wills drawn up by Greek nationals of Muslim faith are devoid of legal effect because Sharia law only recognises intestate succession, except in the case of Islamic wills. (paragraph 148)
>
> In conclusion, having regard to the foregoing considerations, the Court finds that the difference of treatment suffered by the applicant, as a beneficiary of a will drawn up in accordance with the Civil Code by a testator of Muslim faith, as compared to a beneficiary of a will drawn up in accordance with the Civil Code by a non-Muslim testator, had no objective and reasonable justification."(paragraph 161)

17. Surely, in particular if one considers the reasons on which the majority in the present judgment based their conclusions, it would have been possible and necessary to make clear to the applicant, in the principal judgment, that these properties could not "form the basis of any just satisfaction claim" in these proceedings. If not before, paragraph 164 of the principal judgment (quoted above) would have been the last opportunity to do so and fairness to the parties would have required that this be done in the clearest possible language. This is particularly so where, as here, it is clear from the evidence, that this approach would deny the applicant any chance to arguing for or obtaining compensation for what is by far the more valuable part of the applicant's inheritance, having been valued by experts at EUR 936,912.50 (see paragraph 21 of the present judgment; by contrast with the value of the properties located in Greece with an agreed value of EUR 41,103.36 (see paragraphs 9, 21, 26 and 36 of the present judgment)).

18. Finally, as a matter of law, the position now taken by the majority in seeking to narrow the reading of the principal judgment, is also not without its difficulties.

19. After all, paragraph 127 of the principal judgment makes clear that the Court, in identifying the relevant "possession" for the purposes of bringing the applicant's complaint within the ambit of Article 1 of Protocol No. 1 expressly relied on the judgment in *Fabris v. France* ([GC], no. 16574/08, § 52, ECHR 2013) to the effect that "in cases concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular asset on a discriminatory ground covered by Article 14, the relevant test is whether, but for the alleged discrimination, the applicant would have had a right, enforceable under domestic law, in respect of the asset in question" (see also, *mutatis mutandis*, *Stec and Others v. the United Kingdom (dec.)* [GC],

nos. 65731/01 and 65900/01, § 55, ECHR 2005-X and *Andrejeva v. Latvia* [GC], no. 55707/00, § 79, ECHR 2009).

20. Furthermore, paragraphs 131 and 140 of the principal judgment go on to state that (a), applying this principle, "the Court consider[ed] that the applicant's proprietary interest in inheriting from her husband was of a sufficient nature and sufficiently recognised to constitute a "possession" within the meaning of the rule laid down in the first sentence of the first paragraph of Article 1 of Protocol No. 1" and (b) the discrimination at issue in the present case flows from the fact that in its "judgment of 7 October 2013 the Court of Cassation ... held that the estate in question belonged to the *mulkia* category, as a result of which the public will in issue was voided of all legal effect". As the Court went on to confirm, it was the Court of Cassation which, "[i]n so ruling ... placed the applicant in a different position from that of a married female beneficiary of the will of a non-Muslim husband".

21. By contrast, if the focus had been, as the majority now suggest, only on the (registered) Greek properties, it is apparent that crucial (and possibly decisive) questions of admissibility and merits were left unaddressed. After all, on the merits, the Court, having conducted a direct discrimination analysis, did not find any differential treatment (and even less, discrimination) in relation to the registered properties or the fact or process of their registration. Furthermore, in relation to admissibility, it is clear from the present judgment that, in fact, it is accepted by the majority that the enforceability of her rights to those (Greek) properties is still very much at issue before the domestic courts and no final decision (including for the purposes of Article 35 § 1 of the Convention) has yet been rendered.

22. As a result of the above, it seems clear to us that the relevant "possession" in the principal judgment can only have been the totality of the "estate" or "inheritance" bequeathed on the applicant by her late husband which, by necessity, included the properties located in Turkey. The just satisfaction claim identified and adjourned in paragraph 164 of the principal judgment consequently also encompassed the head of claim relating to the Turkish properties which are part of the "estate' or "inheritance". Unless it were to be suggested that this was merely an oversight, the above conclusion is further supported by the fact that, in the operative part of the principal judgment, no aspect of the applicant's claim was either declared inadmissible or dismissed.

The situation in relation to the Turkish properties

23. Both the principal judgment (at paragraph 31) and the present judgment (at paragraph 16) record that the execution of the husband's will in relation to the Turkish properties is currently the subject of (separate) legal proceedings before the Turkish courts. As the present judgment records at paragraph 16, these proceedings were initiated by the applicant

bringing an action in the Bakırköy Civil Court of First Instance seeking to have the will applied to the property located in Turkey as well as by the husband's sisters who applied to have the will declared null and void on the grounds of its incompatibility with Turkish legislation. Having previously adjourned consideration of this case pending the outcome of the proceedings before the Greek courts:

> "... on 18 January 2018 the Bakırköy Civil Court of First Instance held that it was not required to consider the application by the sisters of the applicant's late husband for the latter's will to be declared null and void in accordance with the principles of private international law enshrined in the Turkish Civil Code (will contrary to Turkish public policy). The court held that the judgment delivered by the Greek Court of Cassation was final and that, pursuant to Turkish private international law, it was binding on the court, so that it was unnecessary to reconsider the case."

24. That judgment is not yet final and, at the time of the Grand Chamber's deliberations, an appeal was pending before the Istanbul Court of Appeal.

Methodology once a violation has been established

25. Before considering the approach which the Court should, in our view, have adopted in relation to the pecuniary damages claim in the present case and, in particular, in relation to the Turkish properties, it is important to make two preliminary remarks.

26. Firstly, the focus of the principal judgment having been, in our view, on the "inheritance" or "estate" left to the applicant by her husband under his will, for the purposes of Article 41 of the Convention, the principles to be applied to that part of the inheritance consisting of the properties located in Greece are the same as those applicable to that part of the inheritance consisting of the properties located in Turkey. That said, the outcome of the application of those principles (and any remedial order made as a result) may well be different.

27. Secondly, as indicated above, the Court's case-law in relation to the principles to be applied in the context of Article 41 is somewhat under-developed. As a consequence, it seems to us that the starting point for any analysis should be the principles on reparation applicable under general public international law, and most conveniently summarised in the International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts* ("ARSIWA") and the commentary thereto; at least unless and until the Court itself has clearly identified different principles and explained not only their rationale but also the justification for a divergent approach.

28. Article 31 § 1 ARSIWA, which "aims precisely to codify the current state of general international law" (see the CJEU judgment of 6 May 2010 in Case C-63/09, *Axel Walz v Clickair SA*, ECLI:EU:C:2010:251, § 28), provides, drawing on *inter alia* the judgment of the Permanent Court of

International Justice in *Factory at Chorzów, Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21, that:

> "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."

29. This amounts to an obligation that "reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed (see Factory at Chorzów, p. 47, and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p.43 at § 460).

30. The next question that falls to be asked by the Court, in this context, is what "injury" or "damage" has the applicant suffered as a result of the violations found. As Article 31 § 2 of ARSIWA makes clear, as a matter of international law, in this context:

> "Injury includes <u>any</u> damage, whether material or moral, <u>caused</u> by the internationally wrongful act of a State (emphasis added)."

31. The emphasis therefore is on "full" reparation and the need to wipe out "any" and "all" consequences "caused by" the illegal act, in this case any and all consequences caused by denying the applicant her inheritance by reason of placing "the applicant in a different position from that of a married female beneficiary of the will of a non-Muslim husband" contrary to the prohibition of discrimination on grounds of religion contained in Article 14 of the Convention (see principal judgment at paragraph 141).

32. It is this question of causation which, while not without its difficulties (both legally and factually), is at the heart of this dissent and which will be considered further below.

33. Once causation has been established (or assumed), as the present judgment (at paragraphs 32-33) explains, under Article 41 of the Convention (just as in the context of general public international law) the reparation owed can take different forms and, as the Court's case-law confirms:

(a) If the nature of the breach allows for *restitutio in integrum*, it is for the respondent State to effect such *restitutio in integrum*; but

(b) On the other hand, if or to the extent that *restitutio in integrum* is materially impossible or out of all proportion, whether by reason of national law or for any other reason, any financially assessable damage (whether pecuniary or non-pecuniary) is required to be compensated (see ARSIWA, Article 36) and, to that effect, Article 41 of the Convention empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate.

34. Article 36 ARSIWA (entitled "Compensation") confirms that:

> "1.The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
>
> 2.The compensation shall cover any financially assessable damage including loss of profits insofar as it is established."

35. In this context, we also agree with the statement of principle set out in paragraph 46 of the present judgment that the applicant "cannot derive any right to double compensation ... from the Court's judgment". This, again, reflects the position in general public international law that the victim of an internationally wrongful act "is entitled to full compensation of the loss directly caused by [the responsible State's] unlawful conduct; it is not, however, entitled to be put in a better position than that in which it would have been absent such unlawful conduct" (see e.g. *The Arctic Sunrise Arbitration (Netherlands v Russia), Award on Compensation,* 10 July 2017, § 49, PCA Case Nº 2014-02).

The Greek properties

36. It is, of course, as a consequence of the application of these principles, that the present judgment assumes, without any detailed analysis, the necessary causal link between the "illegal act", i.e. the discriminatory invalidation by the Court of Cassation of the will made by the applicant's husband, and the (potential) change of her proprietorial title in relation to those properties, as registered in the land registry. Furthermore, rightly in our view, it makes the award of pecuniary damages in relation to the applicant's head of claim based on the Greek properties subject to *restitutio in integrum* (in the form of confirmation or restitution of her ownership of those properties) proving impossible within one year from the date of the present judgment.

The Turkish properties

37. By contrast, the present judgment fails to engage at all with the question of whether there is the necessary causal link between the "illegal act", i.e. the discriminatory invalidation by the Court of Cassation of the will made by the applicant's husband, and the losses claimed in relation to the Turkish properties which were left to the applicant under her husband's will.

38. Not only did the majority seek to side-step this issue by asserting, in paragraph 50, that the Court not having taken a "substantive position" in the principal judgment in relation to these properties they now "cannot form the basis of any just satisfaction claims against the respondent State in the present reserved Article 41 proceedings", they also, in our view erroneously, in paragraphs 48 and 51, appear to suggest (without saying so) that there could never be a causal link between a violation of the

Convention by a respondent State and losses suffered by the applicant outside the territory of that respondent State.

39. The majority thus appear to suggest that the applicant's head of claim in relation to the losses suffered in relation to the Turkish properties could only ever be realised if she had made a complaint under the Convention against Turkey. In doing so they use language reminiscent of the language of attribution when considering whether Greece, as the (only) respondent State to this action, was in any way exercising "its jurisdiction in respect of the proceedings taking place in Turkey" (see paragraph 48 of the judgment). This approach is also reflected in its reliance on the fact that, under Article 46 of the Convention, a judgment is only binding on the States that were parties to the proceedings giving rise to it (see paragraph 51 of the judgment) and the suggestion that it is always open to the applicant to "bring an application against Turkey in relation to the final decision delivered by the Turkish courts" (*ibid.*).

40. However, for the reasons set out above, this is fundamentally to misunderstand the question the Court is confronted with at this (final) stage of the proceedings brought by the applicant against Greece. The application (as well as the principal judgment) against Greece having focussed on the invalidation by the Greek Court of Cassation of the civil will drawn up by the applicant's husband and, thereby, denying her the inheritance he had intended for her, the Court – under Article 41 of the Convention – is now not at all concerned with the legality of the acts of the Turkish courts or any other actions of the Turkish authorities. On the contrary, the only question arising at this stage is what is the "injury" "caused" by the "illegal act" committed by the respondent State, and established in the principal judgment, in relation to which an order for "reparation"/"just satisfaction" falls to be made.

41. It may, of course, be the case that, with these properties being located outside the jurisdiction of Greece, there can be no question of *restitutio in integrum*. Subject to the applicant's argument that, in fact, a final finding of the Greek courts in her favour would equally be enforced in Turkey and confirm her ownership of these properties, we would accept that restitution of these properties is not (and could not be) in the gift of the respondent State and is, therefore, materially impossible.

42. As a result, the Court should have asked itself whether there is a sufficient causal link between the decision of the Greek Court of Cassation to invalidate the civil will drawn up by the applicant's late husband (which the Court has found to have amounted to a breach of her Convention rights) and the refusal (so far) of the Turkish courts to give effect to her husband's civil will, so as to render these parts of her lost inheritance compensable "injury" for the purposes of Article 41.

43. When considering this question, it is, of course, right to say, as the ILC said in paragraph (10) of its Commentary to Article 31 of ARSIWA, that:

> "In international as in national law, the question of remoteness of damage "is not a part of the law which can be satisfactorily solved by search for a single verbal formula". The notion of a sufficient causal link which is not too remote is embodied in the general requirement in article 31 that the injury should be in consequence of the wrongful act, but without the addition of any particular qualifying phrase."

44. That said, in the absence of any engagement by the Court with this question and the appropriate test, some guidance can be derived from the expression of the causation test adopted by the ICJ in its recent *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation*, Judgment, I.C.J. Reports 2018 (though in the different context of environmental damage):

> "In order to award compensation, the Court will ascertain whether, and to what extent, each of the various heads of damage claimed by the Applicant can be established and whether they are the consequence of wrongful conduct by the Respondent, by determining "whether there is a sufficiently direct and certain causal nexus between the wrongful act ... and the injury suffered by the applicant"." (p. 15, § 32)

45. Again, without any detailed consideration of this question by the majority in this case, it appears to us that this test may well be satisfied in circumstances where, as here, the Turkish courts did not apply any separate rule of Turkish public policy to refuse to give effect to the husband's civil will (so as potentially to break the chain of causation). As the present judgment records, the Turkish courts, so far, have based their decision(s) only and expressly on a finding that they were simply "bound" by the decision of the Greek Court of Cassation; the very decision which has been found to have been in breach of the applicant's Convention rights by the principal judgment.

46. In any event, it seems to us insufficient to base the decision to deny the applicant any remedy in relation to the loss of the (by far) largest part of her inheritance, without any consideration (let alone any detailed consideration) of the question of causation and remoteness, only because the ultimate decisions, giving effect to the offending judgment of the Greek Court of Cassation, were those of another state not party to the proceedings.

47. The fact that two different states or actors may have contributed to the damage suffered by the applicant also does not, *per se*, provide an answer to the question before the Court at this stage. This Court has, of course, already had cause to consider and recognise the fact that the conduct amounting to an international wrong may be attributable to more than one actor: see *inter alia Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 80, ECHR 2011 and, by necessary implication, *Stephens v. Malta (no. 1)*, no. 11956/07, §§ 50-54, 21 April 2009 and *Vasiliciuc v. the Republic of*

Moldova, no. 15944/11, §§21-25, 2 May 2017. Article 47 § 1 of the ARSIWA confirms this approach:

> "Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act."

48. Furthermore, as the ILC has made clear in paragraphs 12 and 13 of the commentary to Article 31 of the ARSIWA (footnotes omitted):

> "(12) Often two separate factors combine to cause damage. In the United States Diplomatic and Consular Staff in Tehran case, the initial seizure of the hostages by militant students (not at that time acting as organs or agents of the State) was attributable to the combination of the students' own independent action and the failure of the Iranian authorities to take necessary steps to protect the embassy. In the Corfu Channel case, the damage to the British ships was caused both by the action of a third State in laying the mines and the action of Albania in failing to warn of their presence. Although, in such cases, the injury in question was effectively caused by a combination of factors, only one of which is to be ascribed to the responsible State, international practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault. In the Corfu Channel case, for example, the United Kingdom recovered the full amount of its claim against Albania based on the latter's wrongful failure to warn of the mines even though Albania had not itself laid the mines....
>
> (13) It is true that cases can occur where an identifiable element of injury can properly be allocated to one of several concurrently operating causes alone. But unless some part of the injury can be shown to be severable in causal terms from that attributed to the responsible State, the latter is held responsible for all the consequences, not being too remote, of its wrongful conduct..."

49. In *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, Final Award 18 July 2014, § 1775, PCA Case No. AA 226 (cf. the judgment of this Court in *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 524, 20 September 2011) the Arbitral Tribunal interpreted these passages as confirming that:

> "... the mere fact that damage was caused not only by a breach, but also by a concurrent action that is not a breach does not, as such, interrupt the relationship of causation that otherwise exists between the breach and the damage. Rather, it falls to the Respondent to establish that a particular consequence of its actions is severable in causal terms (due to the intervening actions of Claimants or a third party) or too remote to give rise to Respondent's duty to compensate."

Again, no argument or evidence was advanced by the respondent Government (or considered by the Court) which could establish that the losses suffered in Turkey are severable in causal terms or otherwise too remote.

50. An objection to our approach could perhaps be that, by deciding whether the losses suffered by the applicant in relation to the part of her inheritance located in Turkey had been caused by the violation by Greece of the applicant's rights under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1, the Court would impermissibly be

exercising its merits jurisdiction (under Article 19 of the Convention) over the acts or omissions of the Turkish courts by reference to Turkey's obligations under (Article 1 of) the Convention (applying what it sometimes referred to as the *Monetary Gold* or "indispensable party" principle). However, for the reasons set out above, this is plainly not what the Court is concerned with at this stage of the proceedings. The question of jurisdiction is a necessary precondition for the Court entertaining the applicant's Convention complaint in the first place. By accepting and adjudicating on the merits of the applicant's complaint – which, as identified above, always included a claim in relation to the Turkish properties which formed part of her inheritance under her late husband's civil will – in its principal judgment (without declaring any aspect of it inadmissible), the Grand Chamber necessarily accepted that it had jurisdiction over the totality of the applicant's complaint. It is not clear on what basis such a decision could or should now be revisited.

51. In any event, even if the question of the Court's jurisdiction still were the appropriate question at this stage of the proceedings, regard must be had to the context of judicial cooperation between states. In this context, the Court would not be prevented from exercising jurisdiction in relation to the judgment of the Greek Court of Cassation even if (or to the extent that) its execution had been given effect to by the courts of another State.

52. In this respect, we also refer to *The M/V "Norstar" Case (Panama v. Italy) Preliminary Objections judgment* of the International Tribunal for the Law of the Sea of 4 November 2016. In that case, the Spanish authorities had arrested and detained a Panama registered vessel in execution of a decree of seizure issued by the Italian courts following a request for judicial assistance by the Prosecutor at the Court of Savona pursuant to article 15 of the 1959 European Convention on Mutual Assistance in Criminal Matters and article 53 of the Schengen Agreement of 14 June 1985. Italy, as the respondent before the Tribunal, argued that it was the arrest and detention which were the focus of Panama's claim and thus constituted the very subject matter of the judgment that Panama asked the Tribunal to render. Accordingly, if the Tribunal did entertain its jurisdiction over the application, this would necessarily involve the ascertainment of the legality of the conduct of another State not a party to the proceedings. The Tribunal rejected this objection forcefully for reasons which would apply with equal force in the present case:

> "172. The Tribunal acknowledges that the notion of indispensable party is a well-established procedural rule in international judicial proceedings developed mainly through the decisions of the ICJ. Pursuant to this notion, where "the vital issue to be settled concerns the international responsibility of a third State" or where the legal interests of a third State would form "the very subject-matter" of the dispute, a court or tribunal cannot, without the consent of that third State, exercise jurisdiction over the dispute (Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America), Judgment, I.C.J. Reports 1954, p. 19, at

pp. 32-33; East Timor (Portugal v. Australia), Judgment, I.C.J. Reports1995, p. 90, at p. 92, para. 29; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392, at p. 431, para. 88; Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240, at pp. 259-262, paras. 50-55; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168, at pp. 237-238, paras. 203-204).

173. The Tribunal does not consider that Spain is an indispensable party in the present case. As noted in paragraph 167, the dispute before the Tribunal concerns the rights and obligations of Italy. The involvement of Spain in this dispute is limited to the execution of Italy's request for the seizure of the M/V "Norstar" in accordance with the 1959 Strasbourg Convention. Accordingly, it is the legal interests of Italy, not those of Spain, that form the subject matter of the decision to be rendered by the Tribunal on the merits of Panama's Application. The decision of the Tribunal on jurisdiction and admissibility does not require the prior determination of Spain's rights and obligations. Thus, it is not necessary, let alone indispensable, for Spain to be a party to the present proceedings for the Tribunal to determine whether Italy violated the provisions of the Convention."

53. A similar situation arose before this Court in *Vasiliciuc v. the Republic of Moldova* (no. 15944/11, § 23, 2 May 2017). In its judgment in that case, the Court accepted that the applicant's detention in Greece (on the basis of an international arrest warrant issued by Interpol at the request of the Moldovan authorities for the purpose of enforcing a detention order) engaged the responsibility of Moldova under Article 5 of the Convention:

"... in the context of an extradition procedure, a requested State should be able to presume the validity of the legal documents issued by the requesting State and on the basis of which a deprivation of liberty is requested. .... Accordingly, the act complained of by the applicant, having been instigated by Moldova on the basis of its own domestic law and followed-up by Greece in response to its international obligations, must be attributed to Moldova notwithstanding that the act was executed in Greece (see Stephens v. Malta (no. 1), no. 11956/07, §§ 50-54, 21 April 2009)."

54. Another relevant case in this context is *Avotiņš v. Latvia* ([GC], no. 17502/07, 23 May 2016). In that case the complaint was directed against the executing state (Latvia) for issuing a declaration of enforceability in respect of a (prior) Cypriot judgment which in the applicant's view had been clearly defective and given in breach of his defence rights, thereby infringing his right to a fair hearing under Article 6 of the Convention. It might be that such enforcement proceedings are what the majority have in mind when they suggest in paragraph 52 of the present judgment that the applicant is able to bring before the Court an application against Turkey in relation to a final decision of the Turkish courts giving effect to the judgment of the Greek Court of Cassation.

55. While this is not the place to speculate about the prospects of success of any such (future) application if it were brought before this Court, we would just note the following. In *Avotiņš* the complaint about the originating (Cypriot) proceedings had been based on a failure to comply

with the procedural requirements under Article 6, which not only applied equally in both states but also specifically applied to proceedings relating to the execution of foreign judgments (see *Avotiņš,* § 96). As a consequence, the failures in the originating proceedings were, in effect, perpetuated by the enforcement of the consequent judgment. By contrast, the present case concerns a breach of a substantive (rather than procedural) obligation under the Convention (Article 14 read in conjunction with Article 1 of Protocol No. 1) in the (very specific) context of Greece's obligations (as interpreted by its Court of Cassation) towards its Muslim minority under a series of League of Nations Treaties.

Conclusion

56. For the reasons set out above, we believe that it was necessary for the Court to consider the question of causation before dismissing the applicant's head of claim in relation to the Turkish properties which formed part of the inheritance left to her by her late husband under his civil will. Unfortunately, the present judgment does not do so and thereby renders her success in the principal judgment rather a Pyrrhic victory.

57. Had that approach been adopted, on the evidence currently available to us we would have concluded that there was a sufficient causal link between, on the one hand, the decisions of the Turkish courts denying the applicant the inheritance under her late husband's civil will, if the decision of the first-instance court were confirmed in those terms by the final decision in Turkey, and, on the other hand, the judgment of the Greek Court of Cassation which invalidated the husband's civil will, a decision which this Court has found to have constituted a violation of her rights under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. As such the denial of the inheritance by the Turkish courts would fall to be treated as part of the "injury" for which the applicant is entitled to just satisfaction in the form of pecuniary damages.

58. Once causation had been established, it would then, of course, still have been necessary to consider questions such as the quantum of any such claim and the adequacy of the essentially unchallenged evidence in support of the applicant's claim. There is no basis on which the respondent State could legitimately argue that, the relevant properties being located on the territory of another State (or the decisions being made by the courts of another State), it was unable to engage with or in any way unfairly disadvantaged in engaging with the evidence relevant to both causation and quantum. In fact, there is no reason at all (or at least none was advanced), why the respondent State could not itself produce the necessary evidence, whether obtained through bi-lateral governmental connections, diplomatic or consular channels or by just instructing their own experts (or a combination of two or more of these) in order to meet the applicant's claim on causation and/or quantum. After all, for the reasons set out above we are

here not concerned with a question of the exercise of power, sovereignty or jurisdiction by the respondent State but primarily with a question of (factual) evidence (which would include evidence in relation to foreign law).

59. A question might also arise whether the applicant could be said to have failed to mitigate any losses suffered (see e.g. *Baggetta v. Italy,* 25 June 1987, § 20, Series A no. 119; see also § 11 of the Commentary to Article 31 of ARSIWA to the effect that "Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a 'duty to mitigate', this is not a legal obligation which itself gives rise to responsibility"). On this latter point, absent any detailed enquiry by the Court (or the parties) and on the evidence currently available to us we would have concluded that there is no evidence to suggest that the applicant has in any way failed in her "duty to mitigate" so as to warrant a reduction in the quantum of the pecuniary damages/compensation due to her. After all, it appears *inter alia* from paragraph 47 of the present judgment that the applicant herself initiated proceedings in the Turkish courts to have the will as it relates to the properties located in Turkey recognised there. This suggests that she has taken reasonable steps to obtain recognition of the will in Turkey and, while the proceedings are currently pending, continues to seek to obtain ownership of those properties by virtue of the will and thus to avoid the related pecuniary loss.

60. In order to give effect to the different conclusions set out above, we would therefore have made an award of pecuniary damages against the Greek government (to the amount established by the evidence) in relation to the consequential losses she might suffer in respect of the Turkish properties bequeathed to her under her late husband's will, subject to (or conditional on) any final judgment by the Turkish courts confirming the position taken by the Bakırköy Civil Court of First Instance. While such an order might be an unusual one for this Court to make there is no reason of principle why it could not be made.