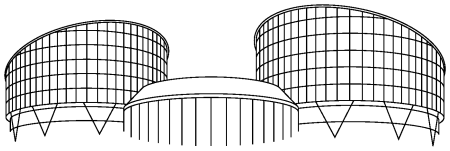

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF VROUNTOU v. CYPRUS

*(Application no. 33631/06)*

JUDGMENT

STRASBOURG

13 October 2015

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

**In the case of Vrountou v. Cyprus,**

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 29 September 2015,

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

# PROCEDURE

1. The case originated in an application (no. 33631/06) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Ms Maria Vrountou ("the applicant"), on 25 July 2006.

2. Ms Vrountou was born in 1980 and lives in Kokkinotrimithia. She was represented by Mr C. Christophi, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, the Attorney-General, Mr P. Clerides.

3. The applicant principally alleged that the failure to grant her a refugee card, and thus to deny her the range of benefits, including housing assistance, to which the holder of such card was entitled, amounted to discrimination on grounds of sex and was thus in violation of Article 14 of the Convention when taken in conjunction with Article 1 of Protocol No. 1.

4. On 10 January 2008 the application was communicated to the Government. They and the applicant filed written observations. Further observations were requested from the parties on 17 January 2013 and subsequently filed by them.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Introduction

5. On 19 September 1974 the Council of Ministers of the Republic of Cyprus approved the introduction of a scheme of aid for displaced persons and war victims. Under the scheme, displaced persons were entitled to refugee cards. The holders of such cards were (and still are) eligible for a range of benefits including housing assistance. For the purposes of the scheme the term "displaced" was determined as being any person whose permanent home was in the areas occupied by the Turkish armed forces, in an inaccessible area, or in an area which had been evacuated to meet the needs of the National Guard.

6. To implement the scheme, the Director of the Care and Rehabilitation of Displaced Persons Service ("SCRDP") issued a circular on 10 September 1975. The circular provided that non-displaced women whose husbands were displaced could be registered on the refugee card of their husbands. It also provided that children whose fathers were displaced could be registered on the refugee card of their fathers (see paragraph 20 below). No provision was made for the children of displaced women to be registered on the refugee cards of their mothers.

7. Although the term "displaced" was extended by the Council of Ministers on 19 April 1995 (see paragraphs 23 and 24 below), at the time of the facts giving rise to the present application it had not been extended to allow children whose mothers were displaced but whose fathers were not, to qualify for refugee cards.

### B. The applicant's application for a refugee card

8. The applicant's mother has been a refugee since 1974. Her mother is the holder of a refugee card.

9. In September 2002, the applicant married and began looking for a house for her family in Kokkynotrimithia. She wished to obtain housing assistance and so, on 27 February 2003, applied to the Civil Registry and Migration Department of the Ministry of the Interior for a refugee card with occupied Skylloura, the place from which her mother was displaced, as her place of displacement.

10. By letter dated 6 March 2003 the request was rejected on the basis that the applicant was not a displaced person because, while her mother was a displaced person, her father was not.

### C. First instance proceedings before the Supreme Court (revisional jurisdiction): recourse no. 436/03

11. The applicant filed a recourse before the Supreme Court challenging the above decision. She claimed, *inter alia*, that the decision was in violation of the principle of equality safeguarded by Article 28 of the Constitution and in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. She claimed that it also breached Article 13 of the Convention.

12. A single judge of the Supreme Court dismissed the recourse on 12 May 2004, finding that, on the basis of the relevant case-law, the extension of the applicable criteria so as to cover the children of displaced women was not possible. The question of extending the term "displaced" to cover the children whose mothers were displaced but whose fathers were not had been repeatedly discussed before the House of Representatives' Committee for Refugees. A proposal to change the law to that effect had been placed before the Committee but was never approved. Furthermore, because of the consequences which would ensue from such an extension of the term "displaced", the Minister of the Interior had referred the question to the Council of Ministers for its consideration and, on 19 April 1995, the Council of Ministers had decided not to extend the term in this manner (see the relevant domestic law and practice set out at paragraphs 23 and 24 below).

### D. Appeal proceedings before the Supreme Court: appeal no. 3830

13. On 23 June 2004 the applicant filed an appeal before the Supreme Court.

14. By judgment of 3 March 2006 a five-judge panel of the Supreme Court dismissed the appeal and upheld the findings of the first instance court.

15. The Supreme Court held as follows:

> "[In the present appeal] an attempt was made to demonstrate that we must depart from the above [first instance] decision, since the Supreme Court can, in the present case, proceed to the so-called "extended interpretation" and, by invoking the principle of equality, widen the application of the criterion to the children of displaced mothers as well.
>
> ...
>
> The proposed extension of the plan was placed before the Council of Ministers in Proposal no. 1852/92, which was submitted by the Ministry of the Interior to amend the criteria for providing assistance to displaced persons. However the decision taken refers only to amendments which do not concern the present case. Despite the fact that, on 19 April 1995, by decision no. 42.465 of the Council of Ministers, further amendments were made by which the term 'displaced' was extended and now

includes other categories of those entitled, the point which concerns us in this case remains unchanged.

...

In accordance with the case-law (*Dias United Publishing Co Ltd v. The Republic*, [1996] 3 A.A.D. 550), the non-existence of a legislative provision cannot be remedied by judicial decision because, in such a case, the constitutional control which the Supreme Court exercises would be turned into a means of reshaping or supplementing the legislation.

...

We have given this matter very serious consideration in view also of the position that, in the case of an arrangement favouring one sex only, the extended application of the provision also finds support in European Community Law ...

However this may be, we cannot depart from the prevailing case-law. *Dias United Publishing Co Ltd v. The Republic*, cited above, fixed the framework of the jurisdiction of the Supreme Court. The Supreme Court has, in accordance with Article 146(4) of the Constitution, the power to uphold in full or in part the decision appealed against or to declare the act or omission invalid. It does not have jurisdiction to legislate by extending legislative arrangements which did not meet with the approval of parliament. This would conflict with the principle of the separation of powers. We note that the House of Representatives cannot of its own accord enact legislation which would incur expenditure. If the House of Representatives, the constitutionally appointed legislative organ, does not have such a right, the Supreme Court has even less of a right.

In agreement with the principles set out above, we conclude that the Supreme Court does not have the competence to proceed to an extended application of a legislative arrangement."

16. The same issue of the non-extension of refugee cards to the children of displaced women was also considered by the Supreme Court in *Anna Giagkozi v. the Republic* (case no. 291/2001). That challenge was rejected at first instance on 30 April 2002 ((2002) 4 A.A.D. 405), the court finding that, while it was difficult to understand why there should not be uniform treatment between the children of displaced men and displaced women, on the basis of *Dias United*, cited above, it was unable to grant the relief sought. This was because Ms Giagkozi was, in effect, asking the court to extend the relevant legal framework so that the benefits provided to children of displaced fathers would be provided to children of displaced mothers. An appeal against that judgment was dismissed on 3 March 2006 by the same bench which dismissed the present applicant's appeal (the appeal judgment in *Giagkozi* is reported at (2006) 3 A.A.D. 85).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Constitution of Cyprus

17. The right to equality before the law, administration and justice is set out in Article 28 of the Constitution which provides as follows, in so far as relevant:

> "1. All persons are equal before the law, the administration and justice, and are entitled to equal protection thereof and treatment thereby.
>
> 2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.
>
> ..."

18. This provision has independent existence and therefore can be raised alone or in conjunction with another right protected by the Constitution.

### B. Relevant decisions, circulars and provisions concerning "displaced" persons and refugee cards

19. The scheme of aid for displaced and other affected persons referred to in paragraph 5 above was introduced by the Council of Ministers on 19 September 1974 by decision no. 13.503. For the purposes of the scheme the term "displaced person" was defined by the Council of Ministers as meaning any person whose permanent residence was in the occupied areas, or in an inaccessible area or in an area which had been evacuated to meet the needs of the National Guard.

20. The circular which was issued by the Director of Care and Rehabilitation of Displaced Persons Service ("SCRDP") on 10 September 1975 reads in relevant part:

> "(a) When a displaced woman marries a non-displaced man, the husband and children cannot be registered or considered as displaced persons;
>
> (b) When a displaced man marries a non-displaced woman, the non-displaced wife will be registered on the refugee card of the husband. The children will be considered as refugees and will be registered on the refugee card of their father."

21. On 3 May 1979, by decision no. 17.918, the Council of Ministers decided that families who had lost privately-owned residences in the occupied areas and did not own any other property in the free areas until the 16 August 1974, would be provided with a "special certification". Based on that special certification the family would be allowed a one-off payment of housing assistance (i.e. the payment would be made to the family but the

children of such families would not be entitled themselves to apply for such housing assistance).

22. On 3 May 1994, the Council of Ministers decided that families whose home or property was in the occupied areas but who, at the time of the invasion, were resident in the free areas for professional reasons would have the same treatment as persons with refugee cards. The same year, the Council of Ministers also decided that assistance for this category of families would be limited to original displaced persons and not their children. On the other hand, those who had only been given "special confirmation" that they owned a house in the occupied areas but had no other links with the area would continue to be treated in accordance with the Council of Minister's decision of 3 May 1979 (see paragraph 21 above). By contrast, those given such special confirmation who: (i) owned a house in the occupied areas and (ii) did in fact have other links with those areas would be given the same treatment as the holders of refugee cards, meaning the extension of refugee rights to their children.

23. On 19 April 1995, the Council of Ministers decided to extend the term "displaced" to those persons who, before the Turkish invasion, had their ordinary residence in the free areas and/or had been resident abroad because of their work or other obligations but whose principal residence and property were in the occupied areas (decision of the Council of Ministers, no. 42.465).

24. However, on the same date the Council of Ministers, decided that the term "displaced" should not be extended to children whose mother was displaced but whose father was not. The reasons given by the Council of Ministers were:

> "(a) The actual percentages of displaced persons will be altered.
>
> (b) According to a relevant estimate by the Statistical and Research Department, the percentage of displaced persons, in such a case, would gradually rise to 80% of the total population of Cyprus.
>
> (c) The number of electors in the occupied Electoral Districts would increase disproportionately, with a corresponding increase-decrease in parliamentary seats by Electoral District."

25. At the time of the applicant's request for a refugee card, section 119 of the Census Bureau Law (*Ο περί Αρχείου Πληθυσμού Νόμος του 2002* N. 141(I)/2002) provided that children whose father was displaced were considered to have their permanent residence in the occupied areas and thus, for the purposes of the law, were considered displaced from the same place as their father.

### C. The criteria for housing assistance for the holders of refugee cards at the time of the applicant's request for a refugee card

26. At the time of the present applicant's request for a refugee card (February 2003), there were four categories of housing assistance available to the holders of refugee cards: (i) being allocated housing in one of the settlements built by the State for refugees; (ii) a grant towards the cost of building a residence on State-owned land; (iii) a similar grant for building a residence on privately-owned land; and (iv) a grant for buying a flat or residence.

27. In 2003, persons seeking assistance under (iii) or (iv) were not subject to a means test based on their income (Council of Minister's decision 50.669 of 24 November 1999). They were, however, required not to have previously obtained a loan with subsidised interest by the State on the basis of other housing schemes (decision 16.296 of 27 October 1977).

28. According to information provided by the Government, in 2003 the basic amount of housing assistance that could be granted under (iii) or (iv) ranged from CYP 8,520 (EUR 14,557) to CYP 11,540 (EUR 19,717), with appropriate uplifts when larger accommodation was necessary for larger families. It is to be noted that, at the time of her application for a refugee card, the applicant had recently married and did not appear to have any children.

### D. Relevant changes to the law after the lodging of the present application

29. The Census Bureau (Amendment) (No. 2) Law of 2013 (N. 174(I)/2013) amended section 119 of the Census Bureau Law to include children whose mother was displaced within the definition of displaced persons. The relevant part of section 119 now reads:

> "Children whose father is a displaced person are considered to have their permanent residence in the occupied areas and consequently, for the purposes of the present Law, they are considered to be displaced persons from the same place from which their father comes.
>
> Children of only a displaced mother are considered to have their permanent residence in the occupied areas and are displaced persons from the same place from which their mother comes, exclusively for the purposes of any state aid or other benefit which is provided for displaced persons, without their place of origin being connected with any voting rights or electoral process."

30. Changes have also been made to eligibility criteria for housing assistance. Those criteria, which had previously been contained in decisions of the Council of Ministers (see for instance paragraph 27 above), were placed on a statutory footing by the Granting of Housing Assistance to Displaced Persons, Affected and Other Persons Law 2005 ("the 2005

Law"). Section 2 of the Law defined "displaced person" as the holder of a refugee card issued by the Civil Registry and Migration Department of the Ministry of Interior. Under section 7 displaced persons were eligible for housing assistance.

31. In 2011, the Granting of Housing Assistance to Displaced Persons, Affected and Other Persons (Amendment) Law 2011 amended sections 2 and 7 of the 2005 Law to allow the granting of housing assistance to persons whose mother was displaced. However, this was limited to the first two categories of housing assistance set out at paragraph 26 above (being allocated housing in one of the settlements built by the State for refugees or being given a grant towards the cost of building a residence on State-owned land).

32. The children of displaced women became eligible for the remaining two categories of housing assistance in 2013 when further amendments to the 2005 Law were made by the Granting of Housing Aid to Displaced Persons, Affected and Other Persons (Amendment) Law of 2013.

33. Since 2013, applicants wishing either to buy a flat or residence or to build a residence on privately-owned land have been subject to a means test based on their family's annual income. After allowing for deductions of EUR 1,500 for each dependent child, this should not exceed EUR 45,000 (EUR 20,000 for single persons). An applicant whose income falls above these thresholds is not entitled to housing assistance. If the applicant's income falls below these thresholds, the precise amount of housing assistance he or she is entitled to receive is calculated with reference to both the size of the person's family and the family's annual income.

### E. Relevant commentary on the refugee assistance scheme

34. On 18 May 2006, further to a series of complaints, the Commissioner for Administration (hereinafter "the Ombudsman") published a report on the inability of the children of displaced women to obtain refugee cards and thus access to the refugee assistance scheme. The Ombudsman considered that allowing children of male displaced persons to acquire the status of displaced persons, while excluding children of female displaced persons merely on grounds of gender, was both contrary to the principle of equality and discriminatory. The Ombudsman recommended that the relevant authorities should consider applying the same rules to both sexes.

35. The pre-2013 scheme also attracted critical comment from the Committee on the Elimination of Discrimination against Women (CEDAW: *Concluding Comments on Cyprus*, 30 May 2006, at paragraph 32); the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe ("*Europe's forgotten people: protecting the human rights of long-term displaced persons*", report of 8 June 2009, at

paragraph 70); and the United Nations High Commissioner for Human Rights (report to the United Nations Human Rights Council on the question of human rights in Cyprus, 2 March 2010, at paragraphs 19 and 20).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION WHEN TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

36. The applicant complained first that the refusal of the authorities to grant her a refugee card breached her property rights under Article 1 of Protocol No. 1. She maintained that having a refugee card provided the holder with a number of benefits such as financial aid, scholarships, free education, medical treatment, housing assistance, and help in the form of clothing and footwear. She had applied for a refugee card with a view to seeking housing assistance.

37. Second, she complained that denying her a refugee card on the basis that she was the child of a displaced woman rather than a displaced man was discriminatory on the grounds of sex and thus in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No.1.

38. These Articles provide:

**Article 14 (prohibition of discrimination)**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

**Article 1 of Protocol No. 1 (protection of property)**

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

39. The Government contested those arguments.

40. Since the alleged discriminatory treatment of the applicant lies at the heart of her application, the Court considers it appropriate to examine first the complaint made under Article 14 of the Convention taken in conjunction

with Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Ponomaryovi v. Bulgaria*, no. 5335/05, § 45, ECHR 2011 with further references therein).

## B. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## C. Merits

### *1. The parties' observations*

#### (a) The Government

##### *(i) The background to, and extension of, the scheme*

42. The Government submitted that the reasons for restricting the refugee assistance scheme to children whose fathers were displaced, were to be found in the socio-economic situation and social concepts of 1975 when the male was the family breadwinner. The economic effects of displacement were far more acute for the children of male displaced persons who would bear the responsibility for their children's upbringing and education, and for providing them with financial assistance in their adult lives. On the other hand, the children of female displaced persons would not be financially dependent on their mothers: when those women married, their children would be provided for by their non-displaced father who had not suffered the financial effects of displacement. Moreover, it had been necessary for the State to give priority to persons most in need, taking into account the availability of funds for catering for the variety of needs of those affected by the Turkish invasion.

43. The refugee assistance scheme had been reviewed and extended since its introduction. This had always been done subject to the availability of funds. In 1979, the Council of Ministers decided that refugee families would be eligible for housing aid (see paragraph 21 above). In 1994 it decided that families whose home or property was in the occupied areas but who, at the time of the invasion, were resident in the free areas for professional reasons would have the same treatment as persons with refugee cards (see paragraph 22 above). The same year, the Council of Ministers also decided that state assistance for this category of families would be limited to original displaced persons and not their children (ibid.). Those decisions had been the result of prior consultation with the relevant Ministry, the Pancyprian Committee of Refugees (Παγκύπρια Επιτροπή

Προσφύγων) and members of the House of Representatives representing all political parties.

44. There had been further, extensive debate on the issue in the House of Representatives, which culminated in two legislative proposals for amending the scheme. The first of the two proposals had two limbs: (i) extending the scheme to include those who, while living in the free areas, had the greater part of their immovable property in the occupied area; and (ii) extending it to children whose mother was displaced. The second of the two proposals was to extend the scheme to cover all persons from the occupied areas who had their permanent home in the free areas for professional reasons. At the time the Government considered that both of these proposals would have had considerable financial consequences. On a basis of estimates prepared in 1994, extending eligibility for refugee cards to children whose displaced parent was the mother would mean that the percentage of the population eligible would rise to 40.7% of the total population by the end of 1992, 51.2% by 2007 and 80% by 2047.

45. In light of the above, an agreement was reached between the Government and the relevant Committee of the House of Representatives to extend eligibility for refugee cards to those who had only been given "special confirmations" and not refugee cards in 1994 (see paragraph 22 above). This was enacted via the Council of Minister's decision of 19 April 1995 (see paragraph 23 above).

46. The scheme was again reviewed in 2007 in light of further proposals in the House of Representatives: one to extend eligibility for a refugee card to children whose mother was displaced, until such children reached eighteen years of age; another to extend the right to apply for housing assistance to children whose only displaced parent was their mother. On this occasion, the Government brought forward legislation which amended the Census Bureau Law of 2002 to allow children whose father or mother was a displaced person the right to apply and obtain a certificate recognising them as "displaced persons by descent". The holder of such certificate was not rendered eligible for any grant or other benefit.

47. At the time of the submission of the Government's initial observations (June 2008), the scheme was under further review, involving various ministries and also consultations with members of the House of Representatives and civil society. According to Government estimates prepared in 2008 in course of that review, there were approximately 51,000 people in the same category as the applicant: affording them the same housing assistance as persons whose father was displaced, would cost an extra EUR 30,000,000 a year.

*(ii) Article 14 of the Convention taken in conjunction with Article 1 of Protocol No.1*

48. The Government submitted that the applicant did not have an interest falling in the ambit of Article 1 of Protocol No. 1 because holders of refugee cards were not provided with housing assistance as of right. The granting of such assistance was subject to various criteria, for instance a requirement not to have property of a considerable value already and a means test based on the total gross income of the person's family. Consequently, the applicant could not assert a right to state assistance under domestic law. As such, there was no pecuniary interest, nor legitimate expectation of such an interest, for the purposes of Article 1 of Protocol No. 1.

49. When the Republic decided to provide assistance to those adversely affected by the invasion, it created a scheme which assisted those most in need of help. The scheme did not include people in the applicant's situation: her case was therefore distinguishable from those cases decided by the Court where the applicant belonged to a class of individuals who were covered by a social benefits scheme and complained that the scheme was applied in a discriminatory manner (*Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2005-X; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). To hold that the applicant in the present case had a pecuniary interest falling within the scope of Article 1 of Protocol No. 1 would be tantamount to holding that, when a State made a decision to assist disadvantaged sections of the population, it was not free to prioritise needs or choose the class of persons eligible for assistance.

50. There was, moreover, no difference in treatment: in 1975, owing to the socio-economic differences at the time, the children of displaced women were not in an analogous position to the children of displaced men. According to Ministry of Interior statistics, in 1973, 25% of women were in employment as against 75% of men; the equivalent percentages for 2001 were 42% of women and 58% of men.

51. Finally, even if there had been a difference in treatment, it had an objective and reasonable justification. It served the legitimate aim of affording state assistance to those most in need, taking into account social conditions, budgetary considerations and financial resources. As stated above (paragraphs 43 et seq. above), it had been progressively extended, subject to availability of financial resources. It was not the Government's contention that the socio-economic differences of 1975 had not gradually changed as more women entered the labour market, but rather that the difference in treatment remained objectively and reasonably justified until such a time as those changes removed the need for the difference in treatment entirely. Having regard to the fact that measures of economic and social strategy fell within the State's margin of appreciation, the State's decisions as to the precise timing and means for bringing to an end the

difference in treatment were not "manifestly without reasonable foundation": *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, §§ 52 and 64, ECHR 2006-VI.

*(iii) Further submissions on the amendments to the scheme enacted after the lodging of the present application*

52. The Government reiterated their initial submission that measures of economic and social strategy fell within the state's margin of appreciation, as did the precise timing and means of phasing out the distinction between the children of displaced men and displaced women introduced in 1975. As with the amendments made between 1975 and 1995, the timing and means of the subsequent amendments made between 2007 and 2013 were not so manifestly unreasonable as to exceed the state's wide margin of appreciation.

**(b) The applicant**

*(i) Initial submissions*

53. The applicant submitted that, notwithstanding the difficulties the Government faced in 1974 in providing assistance to displaced persons from the northern part of the Republic of Cyprus, the decisions taken had to be rational and lawful. They had not been: the decision to exclude the children of displaced women from receiving refugee cards had been arbitrary and unjustified.

54. Article 1 of Protocol No. 1 applied to the benefits to which holders of refugee cards were entitled. In particular, had the applicant possessed such a card she would have applied for, and had a legitimate expectation of being granted, housing assistance to the value of CYP 11,540 (EUR 19,717). She satisfied all of the other criteria for that assistance (see, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

55. There was a clear difference in treatment, a point which appeared to be accepted by the domestic authorities (see for instance the report of the Ombudsman at paragraph 34 above) and implicitly by the Government in their submissions.

56. There was no objective and reasonable justification for that difference in treatment. She relied on the Court's finding in *Wessels-Bergervoet v. the Netherlands*, no. 34462/97, § 51, ECHR 2002-IV, that the traditional role of men as breadwinners did not provide objective and reasonable justification for differences in treatment based on gender. In any case, women had played just as important a role in the rural economic life of the island before the invasion as men had. Nor was it correct to suggest, as the Government had done, that the economic effects of displacement would be more acute and longer-lasting for the children of

displaced men. On the contrary, the children of displaced women were in a much worse position given the historic absence of equal pay for men and women and the more limited opportunities for women to balance work and family commitments.

57. With reference to the Government's submission as to the economic consequences of broadening the class of refugees eligible for assistance, the applicant responded that there had been no such budgetary concerns in 1975. Therefore, these concerns could not be relied on as justification more than twenty years later.

58. Finally, the legislative changes introduced in 2007, whereby children of all refugees were granted a certificate of "displaced person by descent", changed nothing: the certificate did not confer any housing or other benefits on the holder.

*(ii) Further submissions on the amendments to the scheme enacted after the lodging of the present application*

59. The applicant submitted that the amendments were introduced after she had been refused a refugee card and after she had lodged the present application. As such, they did nothing to negate the sex discrimination she had suffered; if anything those amendments showed that the previous system was discriminatory. Whatever those changes, the original difference in treatment remained without reasonable and objective justification.

*2. The Court's assessment*

60. Before examining the merits of this complaint, the Court notes that the scheme under which the applicant was denied a refugee card was amended after she lodged her application such that, as of 2013, children of displaced women are now eligible for housing assistance on the same terms as the children of displaced men (see the summary of those changes set out at paragraphs 29–33 above). It was for this reason that the parties were asked to submit further observations on the admissibility and merits of the case in 2013 (see the summaries of those observations set out at paragraphs 52 and 59 above). However, in those observations neither party has sought to argue that the 2013 changes made any material difference to the applicant's case, or the decision to refuse her a refugee card in 2003. In particular, the Government have not argued that this in any way affected the applicant's victim status: their submission is instead that the changes were demonstrative of their earlier submission that Cyprus had not exceeded the margin of appreciation it enjoyed under the Convention. This is a submission on the merits of the case which the Court will consider in due course.

61. Turning therefore to the merits of this complaint, the Court begins by noting that, as in any case concerning a complaint based on Article 14 taken

in conjunction with a substantive article of the Convention or its Protocols, the four questions the Court must consider are:

(1) whether the facts of the case fall within the ambit of the substantive article (here, Article 1 of Protocol No. 1);

(2) whether there has been a difference in treatment between the applicant and others;

(3) whether that difference in treatment has been on the basis of one of the protected grounds set out in Article 14 of the Convention; and

(4) whether there was a reasonable and objective justification for that difference in treatment; if there was not, the difference in treatment will be discriminatory and in violation of Article 14.

**(a) Whether the facts of the case fall within the ambit Article 1 of Protocol No. 1**

62. The prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (*Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts) and *E.B. v. France* [GC], no. 43546/02, § 48, 22 January 2008).

63. These principles apply generally in cases under Article 1 of Protocol No. 1 and are equally relevant when it comes to welfare benefits. In particular, this Article does not create a right to acquire property. It places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011).

64. The relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question (*Stummer* at § 83 and *Fabris v. France* [GC], no. 16574/08, § 52, ECHR 2013 (extracts)).

65. In applying that test to the present case, the Court considers that, while a range of benefits appear to have been available to the holders of refugee cards, it is only necessary to consider the particular benefit of housing assistance: this, rather than the other benefits apparently available, was the reason the applicant applied for a refugee card in the first place.

66. That housing assistance was clearly a "benefit" for the purposes of Article 1 of Protocol No. 1. In 2003, the material date for the purposes of the present case, the primary condition of entitlement to housing assistance was that the person applying for it had to be the holder of a refugee card. At that time, there was no means test (see paragraph 27 above). Finally, the only other relevant condition for obtaining this assistance in 2003 was that the person applying for the assistance had not previously obtained a loan from the State: it has not been suggested that the present applicant did not meet that condition. Therefore, but for the need to have a refugee card, the applicant would have had a right, enforceable under Cypriot law, to receive housing assistance.

67. In seeking to persuade the Court that the facts of this case do not fall within the ambit of Article 1 of Protocol No. 1, the Government have sought, on the basis of three submissions, to distinguish the refugee assistance scheme from other similar benefit schemes which have been considered by the Court to fall within the ambit of Article 1 of Protocol No. 1. First, it is said that the scheme was designed to help those most in need. Second, they submit that this case is different from those cases where an applicant belongs to a class of individuals covered by a social benefits scheme but the scheme is applied in a discriminatory manner. This is because, in the present case, the refugee assistance scheme simply did not include people in the applicant's situation. Third, in the Government's submission, any contrary conclusion would be tantamount to holding that a State is not free to prioritise needs or choose the class of persons eligible for assistance.

68. These submissions are unpersuasive. The first and third submissions are, in essence, submissions as to whether difference in treatment in entitlement to a refugee card (and thus to the benefits which refugees are entitled) had an objective and reasonable justification rather than whether the benefits to which refugees are entitled fall within the ambit of Article 1 of Protocol No 1. As to the Government's second submission, there is no support in the Court's case-law for distinguishing between a scheme which applied in a discriminatory manner and a scheme from which a person has been excluded in a discriminatory manner: in both cases, the person has not received a benefit to which members of the scheme are entitled. In short, there is nothing in the Government's three submissions which could cast doubt on the correctness of the conclusion that the Court has reached in paragraph 66 above.

69. For these reasons, the Court finds that the facts of this case fall within the ambit of Article 1 of Protocol No. 1.

**(b) Whether there has been a difference in treatment**

70. There will be a difference in treatment if it can be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment (see *Konstantin Markin*, cited above, § 125).

71. Relying on the different proportions of women and men in the workplace when the scheme was first enacted, the Government have submitted that the applicant, as the daughter of a displaced woman, is not in an analogous position to the child of a displaced man. However, it is not clear to the Court why these proportions should have any bearing on whether the children of displaced women and the children of displaced men were in an analogous situation, either in 1975 when the scheme was enacted or in 2003 when the applicant applied for a refugee card. The fact that more men happened to be in the workplace (and by implication that more displaced men worked than displaced women) does not mean that the children of displaced men are in any different situation from the children of displaced women. The only difference between them is the sex of their displaced parent. The children of displaced men and the children of displaced women have similar needs and are therefore in an entirely analogous situation.

72. In being entitled to a refugee card (and thus housing assistance) the children of displaced men clearly enjoy preferential treatment over the children of displaced women. A difference in treatment has thus been established in this case.

**(c) Whether this difference in treatment has been on the basis of one of the protected grounds set out in Article 14 of the Convention**

73. It does not appear to be in dispute that this difference in treatment was on the basis of sex, one of the protected grounds set out in Article 14.

**(d) Whether there was a reasonable and objective justification for this difference in treatment**

74. A difference of treatment is discriminatory and thus in violation of Article 14, if it has no objective and reasonable justification; that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Fabris*, cited above, § 56; and *Konstantin Markin* at §125).

75. In cases where the difference in treatment is on grounds of sex, the general principles which apply in determining this question of justification, were restated by the Grand Chamber in *Konstantin Markin* at §§ 126 and 127. Where relevant to the present case, these provide as follows (internal references omitted):

- The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment. The scope of the margin of

appreciation will vary according to the circumstances, the subject matter and its background, but the final decision as to the observance of the Convention's requirements rests with the Court. Since the Convention is first and foremost a system for the protection of human rights, the Court must however have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved.

- The advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference in treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex. For example, States are prevented from imposing traditions that derive from the man's primordial role and the woman's secondary role in the family.

76. Applying these principles to the present case, the Court begins by observing that the principal justification the Government have advanced for the difference in treatment is the socio-economic differences which were said to exist in Cyprus in 1974, notably that men were the traditional breadwinners at that time (see their observations summarised at paragraph 42 above). However, this is precisely the kind of reference to "traditions, general assumptions or prevailing social attitudes" which provides insufficient justification for a difference in treatment on grounds of sex because it derives entirely from the man's primordial role and woman's secondary role in the family (see *Konstantin Markin* at paragraph 127, quoted at paragraph 74 above).

77. Moreover, even if that reflected the general nature of economic life in rural Cyprus in 1974 (a matter disputed by the parties: compare the Government's submissions at paragraph 42 above with those of the applicant at paragraph 56 above), it did not justify regarding all displaced men as breadwinners and all displaced women as incapable of fulfilling that role once displaced from the northern to the southern part of the Republic. Nor could it justify subsequently depriving the children of displaced women of the benefits to which the children of displaced men were entitled. This is particularly so when many of the benefits that the children of displaced men were entitled, including housing assistance, were without any reference to a means test. This would have meant, for instance, that the child of a displaced woman earning a lower income would not have been entitled to that assistance whereas the child of a displaced man earning a higher income would have been entitled to it. This difference in treatment towards the children of displaced persons cannot be justified simply by reference to the need to prioritise resources in the immediate aftermath of the 1974 invasion.

78. The Government, drawing firstly on the progressive expansion of the scheme since 1974 and secondly on the budgetary implications that ending the difference in treatment would have had, have submitted that, even if the difference in treatment could no longer be justified, the State should nonetheless enjoy a margin of appreciation in choosing the timing and means for extending the refugee assistance scheme to the children of displaced women.

79. Neither of these considerations suffices to remedy the otherwise discriminatory nature of the scheme. First, whatever the attempts to expand the scheme from 1974 to 2003, none of the changes introduced during that period cured the clear difference in treatment between the children of displaced men and the children of displaced women. Nor can it be said that these changes were introduced to reflect the gradual entry of women into the labour market (see the Government's submissions at paragraph 51 above). From 1974-2013 the scheme at all times excluded the children of displaced women. Budgetary considerations alone cannot serve to justify a clear difference in treatment based exclusively on gender, particularly when the successive expansions of the scheme between 1974 and 2013 would themselves have had financial consequences.

80. Finally, it is particularly striking that the scheme continued on the basis of this difference in treatment until 2013, nearly forty years after it was first introduced. The fact the scheme persisted for so long, and yet continued to be based solely on traditional family roles as understood in 1974, means that the State must be taken to have exceeded any margin of appreciation it enjoyed in this field. Very weighty reasons would have been required to justify such a long-lasting difference in treatment. None have been shown to exist. There is accordingly no objective and reasonable justification for this difference in treatment.

81. For these reasons, the Court concludes that the difference in treatment between the children of displaced women and the children of displaced men was discriminatory and thus finds a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

82. In view of that conclusion, the Court considers it unnecessary to examine separately the complaint under Article 1 of Protocol No. 1 taken alone (see *Ponomaryovi*, cited above, § 64).

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 12

83. In the alternative, the applicant complained that the refusal to grant her an identity card was in violation of Article 1 of Protocol No. 12, which provides:

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or

other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

84. The Government contested that argument.

85. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible. However, having regard to the finding relating to Article 14 taken in conjunction with Article 1 of Protocol No. 1 (see paragraph 81 above), the Court considers that it is not necessary to examine this complaint.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

86. The applicant further complained that there had been a violation of Article 13 as no authority in Cyprus, including the courts, had examined her complaint and, as a result, given her relief. Article 13 provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

87. The Government submitted that Article 13 does not guarantee a remedy allowing a Contracting State's primary legislation to be challenged on grounds that it is contrary to the Convention (*P.M. v. the United Kingdom*, no. 6638/03, § 34, 19 July 2005 and further references therein).

### A. Admissibility

88. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

89. The Court considers that the domestic proceedings which the applicant brought did not attempt to challenge primary legislation: at the time she was refused a refugee card all of the relevant provisions were contained in decisions of the Council of Ministers (see paragraphs 19–24 above). They were thus administrative-executive decisions, and the Government have not relied on any legislative act relevant to the scheme and in force at the time in question. Thus, contrary to the Government's submission, this is not a case where the impugned measure was contained in primary legislation and where, therefore, there was no need to have an

effective remedy in place. Accordingly, the ordinary rule on the need to provide an effective remedy applies.

90. In applying that rule, the Court recalls that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see, as a recent authority, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 131, ECHR 2014). Nonetheless, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Nada v. Switzerland* [GC], no. 10593/08, § 207, ECHR 2012; see also *Ališić and Others*, ibid.).

91. In the present case, the reason the Supreme Court was unable to consider whether the applicant was entitled to the remedy she sought (the quashing of the decision to refuse her a refugee card) was that it considered that it did not have jurisdiction to extend the refugee card scheme without infringing the constitutional principle of the separation of powers (see the final two paragraphs of the Supreme Court's judgment, quoted at paragraph 15 above). In other words, the Supreme Court, applying that principle, found itself unable to consider the merits of the applicant's discrimination claim and thus unable to grant her appropriate relief. The Court readily understands the Supreme Court's concern to ensure proper respect for the separation of powers under the Constitution of Cyprus and it is not the Court's place to question the Supreme Court's interpretation and application of that principle. However, the consequence of the Supreme Court's approach was that, in so far as the applicant's Convention complaints were concerned, recourse to the Supreme Court was not an effective remedy for her. Since the Government have not submitted that any other effective remedy existed in Cyprus at the material time to allow the applicant to challenge the discriminatory nature of the refugee card scheme, it follows that there has been a violation of Article 13 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Pecuniary damage

93. The applicant submitted that she is entitled to an amount of EUR 112,225 reflecting the loss in the value of the property she could have

acquired had she been granted a refugee card in 2003. In support of her claim, the applicant submitted a valuation report conducted on the basis of randomly selected properties in Kokkynotrimithia where she lived. The report compared the prices between properties there for the years 2003, when the applicant applied for a refugee card, and 2008, the date the applicant submitted her just satisfaction claims. According to the report, the average price of a building plot in 2003 was CYP 15,700 (approximately EUR 26,825) in contrast to EUR 153,774 in 2008. The applicant submitted that the housing assistance of CYP 11,540 which she could have received in 2003 amounted to 73% of the purchase price of a building plot in 2003. With this in mind the applicant submitted that, taking into account 2008 prices, she had suffered a loss of EUR 112,225 (EUR 153,774 x 73%). Alternatively, the applicant submitted that she was entitled to a sum equal to the housing assistance granted to displaced persons wishing to construct a three-bedroom residence in 2008 meaning EUR 68,350.

94. The Government contested both of the applicant's claims submitting that the sums claimed were speculative and not causally linked to the alleged violation of the Convention.

95. The Court reiterates that the indispensable condition for making an award in respect of pecuniary damage is the existence of a causal link between the damage alleged and the violation found (see, for instance, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999‑III). The Court cannot therefore accept the applicant's claim based on the 2008 value of property she could have bought in 2003, nor her claim for CYP 68,350 (the value of housing assistance in 2008): neither of these claims are causally linked to the violation found.

96. Nonetheless, the Court reiterates that on the basis of Article 41 the applicant should so far as possible be put in the position she would have enjoyed had the violation found by the Court not occurred: see *Wessels-Bergervoet*, cited above, § 60. It is therefore appropriate to award the applicant the grant of housing assistance she would have received but for the difference in treatment she suffered. However, since the applicant has not provided sufficient details as to why she claimed she would have been entitled to receive CYP 11,540, the Court considers it appropriate to basis its award on the minimum amount available in 2003, CYP 8,520 (see paragraph 28 above). Adjusting that sum to reflect interest and inflation since 2003, and ruling on an equitable basis, the Court awards the applicant EUR 21,500.

### B. Non-pecuniary damage

97. The applicant submitted that she is also entitled to non-pecuniary damages on the grounds that the discrimination was solely on the basis of

gender and that the Government continuously failed to take any corrective measures to alleviate the discriminatory treatment.

98. The Government submitted that, in the event the Court found a violation of the Convention, such finding should constitute sufficient just satisfaction.

99. The Court accepts that the applicant has suffered non-pecuniary damage resulting from the nature of the discrimination. Ruling on an equitable basis, the Court awards the applicant EUR 4,000 under this head.

### C. Costs and expenses

100. The applicant claimed CYP 4,086 (EUR 6,981) for the costs and expenses she had incurred before the Supreme Court, plus interest. She further claimed EUR 10,000 for the costs and expenses she had incurred in proceedings before the Court. Finally, the applicant claimed EUR 575 for the preparation of the valuation report on property prices in Kokkynotrimithia (see paragraph 93 above).

101. The Government accepted that the costs and expenses suffered by the applicant in the domestic proceedings and in proceedings before the Court were recoverable by way of just satisfaction provided that they had been actually and necessarily incurred.

102. For costs and expenses incurred by the applicant before the Supreme Court, the Court considers that these were necessarily and reasonably incurred in the applicant's attempt to seek redress for the violation of the Convention it has found. Thus, they are in principle recoverable (see, for instance, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 58, ECHR 2007 ...). The sums claimed are also reasonable as to quantum. The Court considers, therefore, that these claims should be met in full and accordingly awards the applicant EUR 6,981 under this head.

103. As regards the costs incurred in the proceedings before it, the Court notes that the applicant has not provided an itemised bill of costs sufficiently substantiating her claims (*Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, no. 55794/00, § 40, ECHR 2003-IX). For this reason, the Court finds that this part of the applicant's claim must be dismissed.

104. Finally, as regards the EUR 575 incurred for valuation report, given that pecuniary damage has been calculated on the basis of the amount of housing assistance available to the applicant in 2003 and not property prices in 2008, the Court finds that this expense was not necessarily incurred (*Michael Theodossiou Ltd. v. Cyprus* (just satisfaction), no. 31811/04, § 30, 14 April 2015). This part of the applicant's claim must also be dismissed.

### D. Default interest

105. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds* that there is no need to examine the merits of the complaint under Article 1 of Protocol No. 1 taken alone;

4. *Holds* that there is no need to examine the merits of the complaint under Article 1 of Protocol No. 12;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 21,500 (twenty-one thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 6,981 (six thousand, nine hundred and eighty-one euros), 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;

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

Done in English, and notified in writing on 13 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Françoise Elens-Passos | Guido Raimondi |
| Registrar | President |