



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

CASE OF SELÇUK AND ASKER v. TURKEY

(12/1997/796/998-999)

JUDGMENT

STRASBOURG

24 April 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions 1998*. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
B - 1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher
(place de Paris), B.P. 1142, L - 1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat
A. Jongbloed & Zoon (Noordeinde 39, NL - 2514 GC 's-Gravenhage)

SUMMARY¹

Judgment delivered by a Chamber

Turkey – alleged burning of houses by security forces in south-east Turkey

I. ESTABLISHMENT OF THE FACTS

Court, in line with constant case-law, accepts facts as found by Commission – established that security forces responsible for burning of applicants' property.

II. GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-validity of applications

No cause to doubt applications to Commission were valid and genuine.

Conclusion: objection dismissed (unanimously).

B. Non-exhaustion of domestic remedies

Existence of effective and accessible domestic remedies for complaints such as applicants' not demonstrated with sufficient certainty – although second applicant presented petition of complaint to District Governor, no investigation opened until communication of applications by Commission to Government – special circumstances existed which dispensed applicants from obligation to exhaust domestic remedies.

Conclusion: objection dismissed (eight votes to one).

III. MERITS

A. Article 3 of the Convention

In view of manner in which applicants' homes destroyed and their personal circumstances, they must have been caused suffering of sufficient severity for acts of security forces to be categorised as inhuman treatment.

Conclusion: violation (eight votes to one).

B. Articles 2 and 5 § 1 of the Convention

Claims not pursued.

Conclusion: not necessary to examine (unanimously).

1. This summary by the registry does not bind the Court.

C. Article 8 of the Convention and Article 1 of Protocol No. 1

No doubt that burning of property constituted grave and unjustified interference with rights under these provisions.

Conclusion: violation (eight votes to one).

D. Articles 6 § 1 and 13 of the Convention

Given nature of complaint, and in line with case-law, not necessary to determine whether there has been violation of Article 6 § 1.

Respondent State had not carried out thorough and effective investigation into applicants' allegations, as required by Article 13.

Conclusion: not necessary to examine complaint under Article 6 § 1 (unanimously); violation of Article 13 (eight votes to one).

E. Articles 14 and 18 of the Convention

Acceptance of Commission's findings that allegations unsubstantiated.

Conclusion: no violation (unanimously).

IV. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary damage: claim allowed in part.

Non-pecuniary damage: claim allowed in part.

B. Costs and expenses

Claim allowed in full.

Conclusion: respondent State to pay specified sums to applicants (eight votes to one).

COURT'S CASE-LAW REFERRED TO

7.7.1989, *Soering v. the United Kingdom*; 16.9.1996, *Akdivar and Others v. Turkey*; 18.12.1996, *Aksoy v. Turkey*; 26.11.1997, *Sakık and Others v. Turkey*; 28.11.1997, *Menteş and Others v. Turkey*; 1.4.1998, *Akdivar and Others v. Turkey (Article 50)*

In the case of Selçuk and Asker v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr G. MIFSUD BONNICI,

Mr J. MAKARCZYK,

Mr P. JAMBREK,

Mr U. LÖHMUS,

Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 February and 28 March 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 22 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in two applications (nos. 23184/94 and 23185/94) against the Republic of Turkey lodged with the Commission under Article 25 on 15 December 1993 by two Turkish citizens, Mrs Keje Selçuk and Mr İsmet Asker.

Notes by the Registrar

1. The case is numbered 12/1997/796/998–999. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case’s position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr A.N. Loizou, Mr G. Mifsud Bonnici, Mr J. Makarczyk, Mr P. Jambrek, Mr U. Löhmus and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government of Turkey ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence and to the Government's request for a postponement of the hearing and the Government's and applicants' requests for extensions of the time-limit for the filing of memorials, the Registrar received the Government's and the applicants' memorials on 28 October 1997.

On 13 November 1997 the Commission produced certain documents from the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. Subsequently Mr R. Bernhardt replaced as President of the Chamber Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 §§ 4 (b) and 6).

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 January 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- (a) *for the Government*
 Mr M. Özmen, *co-Agent,*
 Mr A. Kaya,
 Mr K. Alataş,
 Miss A. Emüler,
 Mr F. Polat,
 Miss M. Anayaroğlu, *Advisers;*
- (b) *for the Commission*
 Mr N. Bratza, *Delegate;*
- (c) *for the applicants*
 Ms F. Hampson, Barrister-at-Law,
 Ms A. Reidy, Barrister-at-Law, *Counsel,*
 Mr O. Baydemir, Lawyer,
 Mr K. Yıldız, Kurdish Human Rights Project, *Advisers.*
 The Court heard addresses by Mr Bratza, Ms Reidy and Mr Özmen.

7. Subsequently Sir John Freeland, substitute judge, replaced as a full member of the Chamber Mr Macdonald, who was unable to take part in the further consideration of the case (Rule 22 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

8. The first applicant, Mrs Keje Selçuk, was born in 1939. She is a widow and the mother of five children. The second applicant, Mr İsmet Asker, was born in 1933. He is married to Mrs Fatma Asker and has seven children.

Until June 1993 both applicants, who are Turkish citizens of Kurdish origin, lived in the village of İslamköy, but they have since moved to Diyarbakır.

9. Since approximately 1985, serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has so far, according to the most recent figures provided by the Government, claimed the lives of 4,036 civilians and 3,884 members of the security forces.

At the time of the Court's consideration of the case, ten of the eleven provinces of south-eastern Turkey had since 1987 been subjected to emergency rule.

10. İslamköy, a scattered community of about 150 households, is situated in a mountainous region in the Kulp district, in the province of Diyarbakır in south-east Turkey, within the state of emergency region and near to a road that was used by members of the PKK.

The facts in this case are disputed.

B. The applicants' version of the facts

11. The applicants complain that soldiers from Kulp, under the command of Recep Cömert, the Commanding Officer of the Kulp gendarmerie ("CO"), deliberately burned their homes in İslamköy on 16 June 1993 and, ten days later, returned to burn the mill partly owned by Mrs Selçuk.

12. They state that, some months earlier, the villagers had been warned by security forces that certain of their houses would be destroyed, on the grounds that they were allegedly used by the PKK, if the villagers did not leave İslamköy, although they subsequently came to believe that this threat had been retracted.

13. Nonetheless, according to the applicants, on the morning of 16 June 1993 a large number of soldiers came to İslamköy, under the command of CO Cömert, whom they knew as "Recep" because he had come to the village on a number of previous occasions.

The soldiers went first to the house of Mr and Mrs Asker, which they forcibly entered and searched, telling the Askers to remove their possessions. However, while the latter were inside, trying to save their furniture and belongings, they realised that the soldiers had set fire to the house. Mr Asker told the Commission's delegates (see paragraph 26 below) that, had he and his wife not been able to escape through a door to the barn at the back of the house, they would have been asphyxiated. Villagers who attempted to extinguish the fire were prevented from doing so by the soldiers. The house, barn and all of Mr Asker's property, including his food stocks and poplar trees, were destroyed.

14. The security forces then went to Mrs Selçuk's house. They ejected her and some neighbours' children who were staying with her, poured petrol on the house and set fire to it. Villagers were again prevented from assisting and CO Cömert pushed Mrs Selçuk, leading her to understand that she should leave the village. She stayed that night in a neighbour's house in İslamköy and the following day went to live with her daughter in Diyarbakır.

15. Approximately ten days later, on or about 25 June 1993, the soldiers returned to the village and burned down the mill co-owned by Mrs Selçuk and three others. Three other houses were set on fire in the village, two of them destroyed. Mrs Selçuk's brother-in-law, Mr Nesih Selçuk, telephoned her in Diyarbakır with the news.

16. Mr and Mrs Asker left İslamköy on or about 25 June 1993; they saw the smoke from the fires as they were leaving. They went initially to Kulp, where Mr Asker lodged a petition with the District Governor, setting out the losses caused by the security forces and naming "Recep" as the commanding officer. The District Governor apparently accepted the petition and referred it to the police, but Mr Asker never received a response to it.

The headman (*muhtar*) of İslamköy at the time, Mr Sait Memiş, also allegedly informed the District Governor approximately ten days after the incident that the houses had been burnt, although he attributed the burning to the PKK.

C. The Government's version of the facts

17. In his evidence to the Commission's delegates (see paragraph 26 below), CO Cömert explained that he had been stationed as commander of the Central Kulp gendarmerie between 15 July 1991 and 3 August 1993. He had visited İslamköy on three occasions and knew Mr Asker and most of the other inhabitants. He did not, however, visit the village during the month of June 1993 and he had received no reports of any houses being burnt there at that time. When asked why he thought the applicants had named him, he told the delegates that untrue allegations of this type had been made against him in the past in newspapers and a book.

18. The Government contended that the applicants' complaints were concocted by others and that they were acting under the influence of the PKK and/or with a view to obtaining money.

They submitted that the applicants' homes and possessions were destroyed by the PKK, which purported to replace the State in the region, as a punishment and a warning, since the villagers generally had good relations with the security forces. The two applicants in particular were law-abiding citizens with no history of anti-governmental activity. At the time of the events in question, Mr Asker's son was doing his military service, an activity which the PKK urged the people in the region to avoid, and Mrs Selçuk had one son in the army and another in the civil service.

19. The Government questioned whether Mrs Selçuk's mill was burned at all, but if it was, denied that this was done by security forces.

20. They further disputed that Mr Asker lodged any petition with the Kulp District Governor, since he could not produce any acknowledgment of receipt and no such petition was registered in the records.

D. Proceedings before the domestic authorities

21. Following the communication of the applications by the Commission to the Government on 15 April 1994, it appears that the Ministry of Justice (International Law and External Relations General Directorate) contacted the Principal Public Prosecutor's office in Diyarbakır, which in turn wrote to the Public Prosecutor's office in Kulp on 4 May 1994, enquiring whether the applicants had made any complaint and requesting that an investigation be initiated if they had not.

22. Since no petitions from the applicants could be traced, the Kulp public prosecutor opened investigation file 1994/57. On 11 May 1994, he requested the Kulp gendarmerie to ascertain the applicants' whereabouts and to invite them to come and see him as soon as possible and on 18 May 1994 he wrote to the District Governor asking whether any petition had been filed by Mr Asker. By letter dated 26 May 1994, Gendarme Captain Ali Ergulmez replied, on behalf of the District Governor, that an examination of the records disclosed that no complaint had been filed by Mr Asker.

23. Mr Asker made a statement to the public prosecutor on 20 June 1994 and Mrs Selçuk made one on 21 June 1994.

24. On 18 August 1994, the public prosecutor sent a request to the district gendarmerie commander for information to be given promptly as to whether an operation led by CO Cömert had been carried out at İslamköy on 16 June 1993 and whether the applicants' houses had been burned by those units.

No reply to this enquiry was included with the documents from the investigation file provided to the Commission. Similarly, it appeared from that file that no statements were taken from the alleged perpetrators of the burning or from other villagers who might have witnessed events.

25. On 30 November 1994, the public prosecutor, Mr Erdal Yatmis, issued a decision of non-jurisdiction, stating that the matter concerned allegations of damage to property occurring in the winter months of 1993 during an intensive clash between the security forces and the PKK, and that since the security forces were involved in the course of their administrative duties, jurisdiction lay with the Administrative Council (see paragraph 44 below). Pursuant to this decision, the file was transferred to the Kulp District Governor on 30 November 1995.

E. The Commission's findings of fact

26. The Commission conducted an investigation with the assistance of the parties and accepted documentary evidence, including written witness statements and copies of the duty log of Kulp gendarmerie for the periods in question. Three delegates of the Commission heard the oral evidence of ten witnesses, including the applicants, Mr Asker's wife and Mrs Selçuk's brother-in-law, and five other former inhabitants of İslamköy or its neighbouring hamlets (Necmettin Korkmaz, Tevfik Karaaslan, Sait Memiş, Celal Şeker and Şah Şimşek), and CO Cömert, in Ankara in February 1996. Four of the witnesses whose presence had been requested failed to attend the hearings, including the public prosecutors from Lice and Kulp (see paragraph 25 above). In addition, despite repeated requests from the Commission's secretariat and delegates, the Government failed to provide the complete set of records relating to the activities of the security forces in the Kulp district in June 1993.

In relation to the oral evidence, the Commission was aware of the difficulties attached to assessing evidence obtained orally through interpreters (in some cases via Kurdish and Turkish into English). It therefore paid careful attention to the meaning and significance which should be attributed to the statements of witnesses appearing before its delegates. In respect of both written and oral evidence, the Commission was aware that the cultural context of the applicants and the witnesses made it inevitable that dates and other details (in particular, numerical details) lacked precision and did not consider that this by itself impinged upon the credibility of the testimony.

The Commission's findings of fact can be summarised as follows.

27. Early in the morning of 16 June 1993, a large force of gendarmes arrived in the village of İslamköy. A number of them, under the apparent command of CO Cömert, went to Mr Asker's house. The house was set on fire, causing the destruction of the property and most of its contents. Mr and Mrs Asker ran inside the house in an attempt to save their possessions: this occurred either while the gendarmes were setting fire to the house by pouring petrol onto it, or just before; it was not established that the house was set on fire while the Askers were inside. Villagers came to see what was happening and were prevented from trying to put out the fire.

28. A number of gendarmes, including CO Cömert, then proceeded to Mrs Selçuk's house. Despite her protests, petrol was poured on her house, which was set on fire, by, or under the orders of, CO Cömert. Villagers, including two of those who gave evidence to the Commission's delegates, were prevented from putting out the fire. Mrs Selçuk's house and its contents were completely destroyed.

29. Mr and Mrs Asker left the village briefly and returned about ten days later. Mrs Selçuk spent the night or several nights in the village and then left to stay in Diyarbakır with her daughter.

30. On or about 26 June 1993, a force of gendarmes arrived in İslamköy; they were seen on the road nearby and in the village itself. The mill belonging to Mrs Selçuk and others, which stood on a creek in İslamköy, was set on fire and destroyed. CO Cömert was seen with the gendarmes at the mill when this occurred.

31. Mr Asker complained about the destruction of his home to the District Governor in Kulp, presenting a petition. No steps were taken in response to this.

32. Following these events, Mrs Selçuk and Mr and Mrs Asker moved to live permanently in Diyarbakır. İslamköy was abandoned completely by the end of 1994 due to increased PKK activity.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Administrative liability

33. Article 125 of the Turkish Constitution provides as follows:

"All acts or decisions of the administration are subject to judicial review..."

The administration shall be liable to indemnify any damage caused by its own acts and measures.”

34. The above provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the administration, whose responsibility is of an absolute, objective nature, based on a concept of collective liability and referred to as the theory of “social risk”. Thus the administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

35. The principle of administrative liability is reflected in the additional section 1 of Law no. 2935 of 25 October 1983 on the State of Emergency, which provides:

“... actions for compensation in relation to the exercise of the powers conferred by this Law are to be brought against the administration before the administrative courts.”

B. Criminal responsibility

36. The Turkish Criminal Code makes it a criminal offence:

- to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),
- to oblige an individual through force or threats to commit or not to commit an act (Article 188),
- to issue threats (Article 191),
- to make an unlawful search of an individual’s home (Articles 193 and 194),
- to commit arson (Articles 369, 370, 371, 372), or aggravated arson if human life is endangered (Article 382),
- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383), or
- to damage another’s property intentionally (Articles 526 et seq.).

37. For all these offences complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

38. If the suspected authors of the contested acts are military personnel, they may also be prosecuted for causing extensive damage, endangering human lives or damaging property, if they have not followed orders in conformity with Articles 86 and 87 of the Military Code. Proceedings in these circumstances may be initiated by the persons concerned (non-military) before the competent authority under the Code of Criminal Procedure, or before the suspected persons' hierarchical superior (sections 93 and 95 of Law no. 353 on the Constitution and Procedure of Military Courts).

39. If the alleged author of a crime is an agent of the State, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the Supreme Administrative Court; a refusal to prosecute is subject to an automatic appeal of this kind.

C. Provisions on compensation

40. Any illegal act by civil servants, be it a crime or a tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts.

41. Proceedings against the administration may be brought before the administrative courts, whose proceedings are in writing.

42. Damage caused by terrorist violence may be compensated out of the Aid and Social Solidarity Fund.

D. Provisions on emergency measures

43. Extensive powers have been granted to the regional governor of the state of emergency by decrees enacted under Law no. 2935 on the State of Emergency (25 October 1983), especially Decree no. 285, as amended by Decrees nos. 424 and 425, and Decree no. 430.

44. Decree no. 285 modifies the application of Law no. 3713 of 1981 on the prevention of terrorism, in those areas which are subject to the state of emergency, with the effect that the decision to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. According to the Commission, these councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the regional governor or provincial governors who also head the security forces.

45. Article 8 of Decree no. 430 of 16 December 1990 provides as follows:

“No criminal, financial or legal responsibility may be claimed against the state of emergency regional governor or a provincial governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without justification.”

According to the applicants, this Article grants impunity to the governors and reinforces the powers of the regional governor to order the permanent or temporary evacuation of villages, to impose residence restrictions and to enforce the transfer of people to other areas. Damage caused in the context of the fight against terrorism would be “with justification” and therefore immune from suit.

PROCEEDINGS BEFORE THE COMMISSION

46. In their applications (nos. 23184/94 and 23185/94) to the Commission introduced on 15 December 1993, the applicants, relying on Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1, complained that their homes had been burnt by State security forces on or about 16 June 1993 and that they had therefore been forced to leave their village. The first applicant also complained that a mill partly owned by her was destroyed by security forces on or about 26 June 1993. The second applicant claimed in addition that his life had been endangered during the attack on his house, in violation of Article 2 of the Convention.

47. The Commission declared Mrs Selçuk’s application admissible on 3 April 1995 and that of Mr Asker admissible on 28 November 1994. It joined the two applications on 8 March 1996. In its report of 28 November 1996 (Article 31), it expressed the following opinion:

- (a) that there had been a violation of Article 8 of the Convention (unanimously);
- (b) that there had been a violation of Article 1 of Protocol No. 1 (unanimously);
- (c) that there had been a violation of Article 3 of the Convention (by twenty-seven votes to one);
- (d) that there had been no violation of Article 2 in respect of the second applicant (unanimously);

- (e) that there had been no violation of Article 5 § 1 (unanimously);
 - (f) that there had been a violation of Article 6 § 1 (by twenty-six votes to two);
 - (g) that there had been a violation of Article 13 (by twenty-six votes to two);
 - (h) that there had been no violation of Article 14 (unanimously);
 - (i) that there had been no violation of Article 18 (unanimously).
- The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

48. The Government, in their memorial, and at the hearing, asked the Court to find that the applications should have been declared inadmissible on the grounds that they were not validly brought and that domestic remedies had not been exhausted, or, in the alternative, that there had been no violation of the Convention in the present case since the evidence heard by the delegation of the Commission had not substantiated the applicants' allegations.

49. The applicants, for their part, asked the Court to find violations of Articles 3, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1, and to award them just satisfaction under Article 50 of the Convention.

AS TO THE LAW

I. ESTABLISHMENT OF THE FACTS

50. The Government challenged the Commission's findings of fact, particularly its assessment of the evidence heard by its delegates in Ankara (see paragraph 26 above). In their submission, since Mr Asker and his wife and Mrs Selçuk and her brother-in-law not only stood to profit from any compensation awarded by the Court but also feared reprisals from the PKK, their testimony should be treated with great scepticism. They pointed out that the only witnesses who had no material interest in the case were Mr Korkmaz, Mr Karaaslan, Mr Memiş, Mr Şeker and Mr Şimşek. All of these, except Mr Korkmaz, whose testimony was full of contradictions and

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

appeared unreliable, told the delegates that the applicants' houses had been destroyed by the PKK and not by the State as claimed by the applicants. The Government further pointed out that the duty log of the Kulp gendarmerie for the dates in question, which they had given to the Commission, did not indicate any visits by gendarmes to the village.

51. The applicants submitted that the Government had been highly selective in the manner in which they had identified inconsistencies in the evidence given by the applicants and their witnesses. They reminded the Court that none of the four villagers who gave evidence that the PKK had burned down the houses had actually been in the village at the time of the events in question. Moreover, their testimony was inconsistent in other respects with that of the Government's fifth witness, CO Cömert.

52. At the hearing, the Delegate emphasised that the Commission had addressed in its report all the evidential issues raised by the Government and, after a careful and detailed assessment, had come to the conclusion that the various facts found by it had been proved beyond reasonable doubt.

53. The Court reiterates that under its case-law the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it, it is only in exceptional circumstances that it will exercise its powers in this area. Such exceptional circumstances may arise in particular if the Court, following a careful examination of the evidence on which the Commission has based its conclusions, finds that the facts have not been proved beyond reasonable doubt (see the *Menteş and Others v. Turkey* judgment of 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2709–10, § 66).

54. The Court has examined the findings in the Commission's report and the evidence on which the latter based its conclusions, principally the transcripts of the hearings in Ankara (see paragraph 26 above), with a view to determining whether any such exceptional circumstances arise in the present case.

55. In this connection, it considers it to be of particular significance that the Commission's delegates had the opportunity to see and hear the applicants and other witnesses give their testimony and answer questions put by the delegates themselves and by lawyers for the Government and the applicants. It notes that the Commission found the applicants' demeanour and comportment to be convincing and sincere (see the report of the Commission, paragraph 149).

The Court is, moreover, satisfied that the Commission, in assessing the evidence, took due account of the difficulties inherent in its task, such as the barriers created by differences in language and culture and the absence of possibly important testimony and evidence (see paragraph 26 above).

56. The Court has had regard to the Government's allegations of inconsistencies and contradictions in the testimonies of the applicants and their witnesses. It notes that the Commission in its report addressed in turn each of the Government's concerns (see paragraphs 150–66 of the Commission's report). Having itself examined the evidence in the case, it finds the Commission's assessment and conclusions to be reasonable and credible, particularly bearing in mind that, as mentioned above, the delegates had the advantage of hearing the oral testimony first-hand.

57. In the light of all the foregoing, the Court accepts the facts established by the Commission (see paragraphs 27–32 above), which it finds to have been proved beyond reasonable doubt.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-validity of the applications

58. The Government contended that the applications to the Commission had not been brought freely and genuinely by Mrs Selçuk and Mr Asker, but instead by others for political motives. In support, they referred to the facts, *inter alia*, that Mrs Selçuk had told the Commission's delegates that she did not go to the Human Rights Association in Diyarbakır ("HRA") to file a complaint, but only to get help, and that she did not recognise the name of the lawyer there who had supposedly taken her statement. Similar problems arose in relation to Mr Asker's statement for the HRA.

59. The applicants' representative observed that both of her clients had signed valid powers of attorney and had fully participated in the Strasbourg proceedings, including appearing before the Commission's delegates to be cross-examined on their complaints.

60. The Commission found that the applications were valid and genuine, notwithstanding the discrepancies and apparent inaccuracies in the written petitions submitted by the HRA, in view of the fact that the applicants maintained the substance of their complaints before the delegates and showed no unwillingness or reluctance in participating in the proceedings before it.

61. The Court notes the above finding of the Commission and observes, furthermore, that both applicants signed forms indicating that they wished to take part in the proceedings before the Court and appointing the lawyers who would represent them. In these circumstances, it finds no cause to doubt that the applications to the Commission were valid and genuine expressions of the right of individual petition under Article 25 of the Convention. It therefore dismisses this preliminary objection.

B. Non-exhaustion of domestic remedies

62. The Government contended that, despite Mr Asker's claims, he could not have made any petition to the District Governor because, had he done so, his petition would have been recorded and he would have been provided with a registry number and an acknowledgment of receipt, neither of which he had been able to produce. In truth, neither of the applicants had made any attempt to raise their Convention grievances before a domestic authority, despite the fact that both civil and criminal-law remedies were available.

There were numerous decided cases to the effect that the State would be held liable for compensation where its agents had destroyed property. The Government cited by way of example the case of Nizamettin Ağirtmış, who was awarded compensation by the Van Administrative Court following the burning of his abandoned house by soldiers (decision no. 1996/771 on file no. 1993/427, 27 December 1996).

It followed that the applicants had not done all that could be expected of them to exhaust domestic remedies as required by Article 26 of the Convention.

63. The applicants contended that both Mr Asker and Mr Memiş had informed the District Governor approximately ten days after the houses had been burned down (see paragraph 16 above). Since Mr Asker's petition received no response, Mrs Selçuk did not think it worthwhile to submit a petition herself. Furthermore, they maintained that domestic remedies were generally ineffective in relation to complaints such as their own.

64. The Commission, in its decisions on admissibility (see paragraph 47 above) noted that the Government had not submitted any observations as to the admissibility of Mr Asker's application. According to its usual practice in these circumstances, the application could not therefore be declared inadmissible for non-exhaustion of domestic remedies.

In the case of Mrs Selçuk, the Commission determined that there were no effective remedies which she should be required to exhaust, on the basis that, while the Government had outlined a general scheme of remedies, they had produced no concrete examples of their working in cases comparable to those of the applicants.

65. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 26 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. However, there is no obligation under Article 26 to have recourse to remedies which are inadequate or ineffective. In addition, according to the “generally recognised rules of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal; one such reason being the failure of the national authorities to undertake an investigation or offer assistance in response to serious allegations of misconduct or infliction of harm by State agents (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, pp. 1210–11, §§ 65–69, and the *Menteş and Others* judgment cited at paragraph 53 above, p. 2706, § 57).

66. The application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant or applicants (see the above-mentioned *Menteş and Others* judgment, p. 2707, § 58).

67. In this case, the Court is therefore required to have regard to the situation which existed in south-east Turkey at the time of the events complained of by the applicants characterised by violent confrontations between the security forces and members of the PKK (*ibid.*). In such a situation, as the Court has previously recognised, there may be obstacles to the proper functioning of the system of the administration of justice (see the above-mentioned *Akdivar and Others* judgment, pp. 1211–12, § 70).

68. The Court recalls its observation in the above-mentioned *Menteş and Others* judgment (p. 2707, § 59) that, despite the extent of the problem of village destruction, there appeared to be no example of compensation being awarded in respect of allegations that property had purposely been destroyed by members of the security forces or of prosecutions having been brought against them in respect of such allegations, and that there seemed to be a general reluctance on the part of the authorities to admit that this type of practice by members of the security forces had occurred.

In their pleadings in the present case, the Government have referred to the case of Nizamettin Ağırtnış (see paragraph 62 above). In this connection, the Court observes that it has been provided with only a brief summary of the case, from which it appears that Mr Ağırtnış received compensation in respect of the burning of his house by security forces after the house had been abandoned and the village evacuated. These facts would appear to distinguish the case from the instant complaints and, moreover, from the information available to the Court, it is not clear whether Mr Ağırtnış's case concerned an intentional act on the part of the security forces, such as that alleged by the applicants, or one of negligence.

In the light of the foregoing, the Court does not consider that this single case demonstrates with sufficient certainty the existence of effective and accessible domestic remedies for complaints such as the applicants' (see, *mutatis mutandis*, the Sakık and Others v. Turkey judgment of 26 November 1997, *Reports* 1997-VII, p. 2626, § 53).

69. Turning to the facts of the instant case which the Court finds to have been established (see paragraph 57 above), it recalls that Mr Asker presented a petition complaining about the destruction of his home to the District Governor in Kulp (see paragraph 31 above). Despite this, no investigation file was opened by the State authorities until May 1994, after the Commission had communicated the applications to the Government (see paragraphs 21–22 above). Furthermore, it would appear from the information available to the Court that the ensuing investigation has been extremely limited (see paragraphs 22–24 above) and has not yet been concluded.

70. The Court considers that it is understandable if the applicants formed the belief that, the petition to the District Governor having elicited no response, it was pointless for them to attempt to secure satisfaction through national legal channels (see, *mutatis mutandis*, the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-VI, p. 2277, § 56). Their feelings of upheaval and insecurity following the destruction of their homes are also of some relevance in this connection (see the above-mentioned *Menteş and Others* judgment, p. 2707, § 59).

71. The Court therefore concludes that there existed special circumstances which dispensed the applicants from the obligation to exhaust domestic remedies (see the above-mentioned *Akdivar and Others* judgment, pp. 1213–14, §§ 76–77). It follows that the Government's preliminary objection on non-exhaustion must be dismissed.

As with the above-mentioned Akdivar judgment, this ruling is confined to the particular circumstances of the present case and is not to be interpreted as a general statement that remedies are ineffective in this area of Turkey or that applicants are absolved from the obligation under Article 26 to have normal recourse to the system of remedies which are available and functioning.

III. MERITS

A. Alleged violation of Article 3 of the Convention

72. The applicants, referring to the circumstances of the destruction of their homes and their eviction from their village, maintained that there had been a breach of Article 3 of the Convention, which reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

73. The Government denied that there had been any security operation in the village on the dates in question and submitted that the houses had been burned by PKK terrorists (see paragraphs 18 and 19 above). There had therefore been no violation of Article 3 imputable to the State.

74. The Commission found the burning of the applicants' homes in their presence to be acts of violence and deliberate destruction in utter disregard for their safety and welfare, depriving them of most of their personal belongings and leaving them without shelter and assistance. It noted in particular Mr Asker's age and infirmity and the traumatic circumstances surrounding the burning of his house, which put him and his wife in danger from smoke and flames as they tried to save their belongings, and the fact that Mrs Selçuk had been induced to plead with CO Cömert who had insulted and pushed her. It accordingly found that the applicants had been subjected to inhuman and degrading treatment.

75. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see, *inter alia*, the above-mentioned Aksoy judgment, p. 2278, § 62).

76. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, p. 39, § 100, and p. 43, §§ 108–09).

77. The Court refers to the facts which it finds to be established in the present case (see paragraphs 27, 28, 30 and 57 above). It recalls that Mrs Selçuk and Mr Asker were aged respectively 54 and 60 at the time and had lived in the village of İslamköy all their lives (see paragraph 8 above). Their homes and most of their property were destroyed by the security forces, depriving the applicants of their livelihoods and forcing them to leave their village. It would appear that the exercise was premeditated and carried out contemptuously and without respect for the feelings of the applicants. They were taken unprepared; they had to stand by and watch the burning of their homes; inadequate precautions were taken to secure the safety of Mr and Mrs Asker; Mrs Selçuk's protests were ignored, and no assistance was provided to them afterwards.

78. Bearing in mind in particular the manner in which the applicants' homes were destroyed (see the above-mentioned *Akdivar and Others* judgment, p. 1216, § 91) and their personal circumstances, it is clear that they must have been caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3.

79. The Court recalls that the Commission made no finding as regards the underlying motive for the destruction of the applicants' property. However, even if it were the case that the acts in question were carried out without any intention of punishing the applicants, but instead to prevent their homes being used by terrorists or as a discouragement to others, this would not provide a justification for the ill-treatment.

80. In conclusion, the Court finds that the particular circumstances of this case disclose a violation of Article 3.

B. Alleged violations of Articles 2 and 5 § 1 of the Convention

81. Before the Court the applicants did not pursue their claims under Articles 2 and 5 § 1 of the Convention.

82. In these circumstances, the Court does not find it necessary to consider these complaints.

C. Alleged violations of Article 8 of the Convention and Article 1 of Protocol No. 1

83. The applicants maintained that the destruction of their homes and of Mrs Selçuk's mill by the security forces, and their expulsion from the village, constituted violations both of Article 8 of the Convention, which reads:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

and of Article 1 of Protocol No. 1, which provides:

“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.”

84. The Government denied that there had been any violation of these provisions, on the same grounds as those advanced in connection with Article 3 (see paragraph 73 above).

85. The Commission found that there had been a breach of these Articles.

86. The Court recalls that it finds it established that security forces deliberately destroyed the applicants' homes and household property, and the mill partly owned by Mrs Selçuk, obliging them to leave İslamköy (see paragraph 77 above). There can be no doubt that these acts, in addition to giving rise to violations of Article 3, constituted particularly grave and unjustified interferences with the applicants' rights to respect for their private and family lives and homes, and to the peaceful enjoyment of their possessions.

87. It follows that the Court finds violations of Article 8 of the Convention and Article 1 of Protocol No. 1.

D. Alleged violations of Articles 6 § 1 and 13 of the Convention

88. The applicants complained that they had been denied any effective remedy by which to challenge the destruction of their homes and possessions by the security forces and to seek compensation. This, they argued, gave rise to violations both of their rights of access to a court under Article 6 § 1 of the Convention which, in so far as is relevant, provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

and their rights to an effective remedy under Article 13 of the Convention, which reads:

“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.”

1. Article 6 § 1 of the Convention

89. The Government accepted that the criminal investigation into the applicants' complaints had met with some setbacks, which might, however, have been avoided had the applicants contacted the public prosecutor immediately, when the evidence was clear and free of any doubt. Nonetheless, they maintained that, had the applicants commenced civil proceedings, they would have enjoyed effective access to a court; in this connection they referred once more to the Ağirtmış case (see paragraph 62 above).

90. The applicants contended that the failure of the authorities to conduct any thorough investigation into the burnings in İslamköy operated to deny them effective access to a court, since without such an investigation there was no chance of success in civil proceedings.

91. The Commission considered that the applicants did not have effective access to a tribunal that could have determined their civil rights, since it was unrealistic to expect villagers to pursue theoretical civil or administrative remedies in respect of allegations against security forces in the emergency region in the absence of any positive findings of fact by the State investigatory mechanism.

92. The Court notes that, for the reasons set out above (see paragraph 70), the applicants did not attempt to make any application to the national courts. It is therefore impossible to determine whether the Turkish courts would have been able to adjudicate on the applicants' claims had they initiated proceedings.

In any event, the Court observes that the applicants complained essentially of the lack of a proper investigation into their allegation that the security forces had purposely destroyed their houses and possessions. It therefore finds it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of alleged violations of the Convention (see, *mutatis mutandis*, the above-mentioned Menteş and Others judgment, pp. 2714–15, §§ 86–88). It therefore does not find it necessary to determine whether there has been a violation of Article 6 § 1.

2. Article 13 of the Convention

93. In their pleadings to the Court, the Government addressed the complaints under Articles 6 § 1 and 13 together: their arguments are summarised in paragraph 89 above.

94. The applicants submitted that the obligation of the State under Article 13 to grant an effective remedy, where the acts in violation of the Convention are of a serious criminal nature, must entail the provision of an independent and effective investigative mechanism which could lead to the prosecution and punishment of those responsible. This had clearly not been provided in their case: although they had been able to identify CO Cömert as the perpetrator, the latter told the Commission's delegates that he had not hitherto been asked any questions about the events in İslamköy.

95. The Commission reported that, despite repeated requests to see the investigation file, only a few documents had been provided to it, from which it appeared that the investigation commenced in May 1994 (see paragraphs 21–25 above) had been limited and inconclusive. Inquiries had been confined to taking statements from the applicants and asking the gendarmerie if an operation had taken place in the village on 16 June 1993, and no steps had been taken to question the alleged perpetrators of the burnings or other villagers who might have witnessed events. The investigation had concluded on 30 November 1994 with a decision of lack of jurisdiction, the text of which the Commission found to be "remarkable" since its description of the case as concerning allegations of damage to property occurring in the winter months of 1993 during a clash between security forces and PKK terrorists bore little relation to the applicants' complaints. The Commission had not been informed of any outcome of the proceedings before the Administrative Council following this transfer of jurisdiction.

96. The Court considers that the nature and gravity of the violations complained of in the instant case under Articles 3 and 8 of the Convention and Article 1 of the Protocol No. 1 have implications for Article 13. It recalls that where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate and without prejudice to any other remedy available in the domestic system, an obligation on the respondent State to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigative procedure (see the above-mentioned *Menteş and Others* judgment, p. 2715, § 89).

97. As already stated, the Court accepts that Mr Asker presented a petition of complaint to the District Governor shortly after the destruction of his house (see paragraphs 31 and 57 above). However, it was not until the Commission’s communication of the applications to the respondent Government that the Kulp public prosecutor instigated a criminal investigation at the request of the Ministry of Justice (see paragraphs 21–22 above). The Court finds it striking that CO Cömert was not interviewed during the course of this investigation, despite the fact that the applicants had clearly named him as the officer in charge of the impugned operation in İslamköy. Furthermore, apart from the statements taken from the applicants, it does not appear that any attempt was made to establish the truth through questioning other villagers who might have witnessed the events under consideration. In November 1994 jurisdiction over the investigation was transferred to the Kulp Administrative Council (see paragraph 25 above). Over three years later, the Court has not been provided with any evidence to suggest that the latter body has taken any action in connection with it.

98. In these circumstances, it cannot be said that the respondent State has carried out a thorough and effective investigation as required by Article 13.

The Court therefore finds this provision to have been violated.

E. Alleged violations of Article 14 of the Convention in conjunction with Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 and of Article 18 of the Convention

99. The applicants maintained that, because of their Kurdish origin, they had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1. Article 14 reads:

“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.”

Furthermore, in the light of the evidence adduced by the applicants of a systematic, cruel and ruthless policy of population displacement, they requested the Court also to find a breach of Article 18 of the Convention, which provides:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

100. The Government did not address these allegations beyond denying the factual basis of the substantive complaints.

101. The Commission found the applicants’ above allegations unsubstantiated.

102. For its part, the Court, on the basis of the facts as established by the Commission (see paragraphs 27–32 above), finds no violation of these provisions.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION

103. The applicants claimed just satisfaction under Article 50 of the Convention, which provides:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

104. The applicants claimed pecuniary damage in respect of the loss of their houses, cultivated land, household property, livestock and, in the case of Mrs Selçuk, her mill. They also claimed that an award should be made in respect of the cost of alternative accommodation.

105. The Government argued that the applicants’ allegations that their property had been destroyed by security forces had not been proved, and that there was therefore no requirement to award any compensation.

In the alternative, in the event that the Court did find it appropriate to award some compensation, they submitted that the assessment thereof should not be such as to cause any unjust enrichment. The amounts claimed

as pecuniary damage were excessive and had not been substantiated, as they would have to be before a Turkish court. The Court should take into account the economic conditions in Turkey, where the minimum monthly wage amounted to 700 French francs (FRF) and the net maximum monthly allowance of a senior judge amounted to FRF 7,250.

106. The Court recalls its findings that the applicants' homes and household property, and Mrs Selçuk's mill, were destroyed by security forces (see paragraph 57 above). In view of this finding it is undoubtedly necessary to award compensation for pecuniary damage. However, since the applicants have not substantiated their claims as to the quantity and value of their lost property with any documentary or other evidence, the Government have not provided any detailed comments, and the Commission has made no findings of fact in this respect, the Court's assessment of the amounts to be awarded must, by necessity, be speculative and based on principles of equity.

1. Houses and other buildings

107. Mrs Selçuk claimed damages in respect of a two-storey cement and stone house covering 250 square metres, which she valued at 1,250,000,000 Turkish liras (TRL), a one-storey, 300 square metres, cement and stone stable, valued at TRL 1,500,000,000 and the three-storey, 80 square metres, water mill, valued at TRL 580,000,000, which she co-owned with three others.

Mr Asker claimed damages in respect of a two-storey, 300 square metres, cement and stone house, valued at TRL 1,500,000,000, and a one-storey, 400 square metres, cement and stone stable, valued at TRL 2,000,000,000.

108. As it did in its *Akdivar and Others v. Turkey (Article 50)* judgment (1 April 1998, *Reports* 1998-II, p. 718, § 18), the Court observes that it has not been provided with decisive proof of the size of the properties destroyed. Against this background, and with reference to equitable considerations and the approach adopted in the above-mentioned *Akdivar (Article 50)* judgment, it awards, in respect of destroyed buildings, TRL 1,000,000,000 to each of the applicants.

2. Other property

109. The applicants submitted claims in respect of household goods, such as bedding, kilims, electrical goods and food and fuel stores, amounting to TRL 1,451,650,000 for Mrs Selçuk and TRL 2,415,000,000 for Mr Asker. In addition, they claimed to have lost livestock worth in total

TRL 2,040,000,000 (Mrs Selçuk) and TRL 4,180,000,000 (Mr Asker). They also submitted claims in respect of fruit, poplar and other trees in their gardens, amounting to TRL 2,555,000,000 for Mrs Selçuk and TRL 1,035,000,000 for Mr Asker. In total, therefore, these claims amounted to TRL 6,046,650,000 (Mrs Selçuk) and TRL 7,630,000,000 (Mr Asker).

110. The Court notes in particular that the Commission found that the contents of the applicants' houses had been destroyed by fire, and that the applicants had been obliged to leave their village, which must have entailed some consequential loss.

In the absence of any independent evidence, and making its assessment on an equitable basis, it awards TRL 4,000,000,000 to Mrs Selçuk and TRL 5,000,000,000 to Mr Asker.

3. Loss of income

111. The applicants claimed compensation in respect of the loss of their income from farming and, as regards Mrs Selçuk, from the mill which she co-owned with three others. They claimed for the period 16 June 1993 to 16 January 1999.

Mrs Selçuk stated her annual income to have been: TRL 90,000,000 from 30 acres of arable land, TRL 40,500,000 from 3 acres of oak groves, TRL 35,000,000 from 5 acres of orchards and TRL 80,000,000 from her quarter share of the mill.

Mr Asker stated his annual income to have been: TRL 15,000,000 from 5 acres of arable land and TRL 280,000,000 from 40 acres of orchards.

112. In the absence of independent evidence concerning the size of the applicants' landholdings and income, and having regard to equitable considerations and the approach adopted in the above-mentioned Akdivar (*Article 50*) judgment, the Court awards under this head TRL 889,000,000 to Mrs Selçuk and TRL 1,475,000,000 to Mr Asker.

4. Alternative accommodation

113. Each of the applicants claimed the reimbursement of the rent averaging TRL 3,000,000 per month they paid in Diyarbakır.

114. The Court awards in respect of rent between July 1993 and March 1998, TRL 171,000,000 to each of the applicants.

5. Summary

115. Thus, in respect of pecuniary damages the Court awards in total TRL 6,060,000,000 (six thousand and sixty million Turkish liras) to Mrs Selçuk and TRL 7,646,000,000 (seven thousand six hundred and forty-six million Turkish liras) to Mr Asker.

Having regard to the high rate of inflation in Turkey these amounts have been converted into pounds sterling in order to preserve their value, at the rate applicable on the date the applicants filed their claims under Article 50, namely 5 January 1998. At that date one pound sterling (GBP) was worth TRL 341,210. Consequently, Mrs Selçuk is to receive GBP 17,760.32 (seventeen thousand, seven hundred and sixty pounds sterling and thirty-two pence) and Mr Asker, GBP 22,408.48 (twenty-two thousand four hundred and eight pounds sterling and forty-eight pence), these sums to be converted into Turkish liras at the rate applicable on the date of settlement.

B. Non-pecuniary damage

116. The applicants submitted that they should each be awarded GBP 20,000 in respect of non-pecuniary damage. They also claimed GBP 10,000 each for punitive damages and GBP 10,000 each for aggravated damages in respect of the violation of their Convention rights.

117. The Government contended that, in the event that the Court found a violation, this would be sufficient to offset any non-pecuniary damage suffered by the applicants. They strongly objected to the award of punitive or aggravated damages.

118. The Court considers that an award should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations which it has found in respect of Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 80, 87 and 98 above).

It awards the applicants GBP 10,000 (ten thousand pounds sterling) each.

119. The Court rejects the claims for punitive and aggravated damages.

C. Costs and expenses

120. The applicants claimed a total of GBP 18,011.64 by way of costs and expenses. They requested the Court to order this award to be paid in sterling directly to their legal representatives in the United Kingdom.

121. The Government submitted that the Court should require every item under this head to be documented, and stated that “the amounts claimed in respect of legal work carried out in Turkey were irrelevant”.

122. The Court is satisfied that the amounts claimed were necessarily incurred and reasonable as to quantum, and therefore awards them in full, less the amounts received by way of legal aid from the Council of Europe which have not already been taken into account in the claim, together with any value-added tax which may be payable.

D. Request for restoration of rights

123. The applicants further submitted that they were entitled to be re-established in their village or, if this were not possible, to an equivalent monetary award.

124. The Government maintained that the restoration of the applicants' rights was not feasible due to the emergency conditions prevailing in the region.

125. The Court recalls 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 (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible, the respondent States are free to choose the means whereby they comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers of the Council of Europe, acting under Article 54 of the Convention, to supervise compliance in this respect (see the above-mentioned Akdivar and Others (*Article 50*) judgment, pp. 723-24, § 47).

E. Default interest

126. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the preliminary objection concerning the non-validity of the applications;
2. *Dismisses* by eight votes to one the preliminary objection concerning non-exhaustion of domestic remedies;
3. *Holds* by eight votes to one that there has been a violation of Article 3 of the Convention;
4. *Holds* unanimously that it is not necessary to consider the complaints under Articles 2 and 5 § 1 of the Convention;
5. *Holds* by eight votes to one that there has been a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1;

6. *Holds* unanimously that it is not necessary to consider the complaint under Article 6 § 1 of the Convention;
7. *Holds* by eight votes to one that there has been a violation of Article 13 of the Convention;
8. *Holds* unanimously that there has been no violation of Articles 14 or 18 of the Convention;
9. *Holds* by eight votes to one that the respondent State is to pay the applicants, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (a) in respect of pecuniary damage, GBP 17,760.32 (seventeen thousand seven hundred and sixty pounds sterling and thirty-two pence) to Mrs Selçuk and GBP 22,408.48 (twenty-two thousand four hundred and eight pounds sterling and forty-eight pence) to Mr Asker;
 - (b) in respect of non-pecuniary damage, GBP 10,000 (ten thousand pounds sterling) each;
10. *Holds* by eight votes to one that the respondent State is to pay the applicants, within three months, in respect of costs and expenses, GBP 18,011.64 (eighteen thousand and eleven pounds sterling and sixty-four pence), together with any value-added tax which may be payable, less FRF 16,093 (sixteen thousand and ninety-three French francs) to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of the present judgment;
11. *Holds* by eight votes to one that simple interest at an annual rate of 8% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;
12. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 April 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the dissenting opinion of Mr Gölcüklü is annexed to this judgment.

Initialed: R. B.

Initialed: H. P.

DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

I consider that in this case as in other similar cases concerning Turkey – like the Akdivar and Others case – the applicants have not exhausted existing domestic remedies and that those remedies are effective and sufficient. In that connection, I refer to my dissenting opinion in the principal judgment in the Akdivar and Others v. Turkey case. I wish to add another recent administrative court judgment as one more example of the existence of domestic remedies: the Van Administrative Court awarded compensation to Mr Nizamettin Ağırtmış, whose house was burned by the military when it was abandoned during the evacuation of the village of Konalga, in the district of Bitlis in south-east Turkey, on 8 November 1991. The judgment in question makes it clear that the complainant's house was burned by soldiers after the evacuation of the village (Van Administrative Court, file no. 1993/427, decision no. 1996/771 of 27 December 1996).

The above considerations make it unnecessary for me to consider this case from the standpoint of the Convention's other provisions.