



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

FIRST SECTION

**CASE OF DULAŞ v. TURKEY**

(Application no. 25801/94)

JUDGMENT

STRASBOURG

30 January 2001

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**In the case of Dulaş v. Turkey,**

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr L. FERRARI BRAVO,

Mr B. ZUPANČIČ,

Mr T. PANȚÎRU,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 September 2000 and 9 January 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 25801/94) against Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mrs Zubeyde Dulaş ("the applicant"), on 2 May 1994.

2. The applicant, who had been granted legal aid, was represented by Mr Kevin Boyle and Ms Françoise Hampson, lawyers practising in the United Kingdom. The Turkish Government ("the Government") were represented by their Agents, Mr D. Tezcan and Mr A. Kurudal. Having originally been designated before the Commission by the initials Z.D., the applicant subsequently agreed to the disclosure of her name.

3. The applicant alleged principally that her home and property had been destroyed during an operation by gendarmes carried out in her village in south-east Turkey. Before the Commission, she invoked Articles 2, 3, 5, 6, 8, 13, 14, 18 and former Article 25 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. The application was declared admissible by the Commission on 23 May 1996. In its report of 6 September 1999 (former Article 31 of the Convention), it expressed the opinion unanimously that there had been a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, that there had been no violations of Articles 2, 3, 5, 14 and 18 of the Convention and that the Turkish Government had failed to comply with their obligations under former Article 25 of the Convention. The case was referred by the Commission to the Court on 23 October 1999. Before

the Court, the applicant withdrew her complaints under Articles 2, 5 and 14 of the Convention.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The applicant and the Government each filed observations on the merits on 20 April and 11 May 2000, respectively (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The facts of the case, particularly concerning events on or about 8 November 1993 when the gendarmes carried out an operation at Çitlibahçe, were disputed by the parties. The Commission, pursuant to former Article 28 § 1 (a) of the Convention, conducted an investigation with the assistance of the parties.

The Commission heard witnesses in Ankara on 7 February 1997. These included the applicant; Avni Dulaş her son; and Emin Bulen, a villager. The Commission also had regard to the oral evidence given by witnesses on 3 and 4 July 1996 in the case of Çakıcı (see *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV), which concerned the same operation. This included the testimony of İzzet Çakıcı, whose brother had disappeared after being taken into custody by the gendarmes; Remziye Çakıcı, a villager and spouse of the disappeared person; Fevzi Okatan, previously muhtar of the village; Ertan Altınoluk the gendarme commander of the operation; and Mehmet Bitgin, a villager.

8. The Commission's findings of fact are set out in its report of 6 September 1999 and summarised below (Section A). The applicant accepts the Commission's findings of fact. The Government's submissions concerning the facts are summarised below (Section B).

### A. The Commission's findings of fact

9. Çitlibahçe was in a district in which terrorist activity was intense in 1993. The PKK used to come to the village, holding meetings and taking food by force. The security forces made regular visits and operations were not uncommon. They told the villagers not to give food to the PKK.

10. The applicant, Avni Dulaş and Remziye Çakıcı all recalled an incident in July 1993 when villagers were forced by the security forces to pull up their tobacco crops. Although there was some disparity amongst the witnesses as to how this was done, the witnesses' accounts were similar in stating that the tobacco crops were destroyed by order of the security forces. The gendarme commander who gave evidence before the Delegates denied that this occurred but recalled that he had destroyed hemp crops. The Commission did not make any finding in regard of this aspect as it was not the subject-matter of any specific complaint.

11. Shortly before 8 November 1993, PKK terrorists went to the village of Dadaş in the Hazro district and took away five teachers, the imam and the imam's brother. All, save one of the teachers, were shot. The imam's brother, though wounded, survived.

12. Following the discovery of the bodies of the teachers, the gendarmes at Hazro gathered information from their contacts and sources as to what had happened and who had been involved. They had descriptions of the villagers in the area who had been assisting the PKK in holding the group of teachers. On 8 November 1993, an operation, under the command of Lieutenant Altınoluk, was carried out by the Hazro gendarmes in Çitlibahçe, while gendarmes from Lice went to Bağlan nearby.

13. Concerning what happened during the operation at Çitlibahçe, the Commission's Delegates had earlier found Lieutenant Altınoluk to be an evasive witness, with a volubly unhelpful response to questioning. They found a lack of sincerity in the way in which he drowned simple questions in long and complicated explanations, which were often contradictory and inconsistent. On the other hand, the Delegates had found that the villagers, Remziye Çakıcı, Fevzi Okatan and Mehmet Bitgin, who gave eyewitness accounts, were on the whole consistent and credible and that they were convincing in their demeanour and their response to questions. Their evidence was found to support the testimony of the witnesses heard in this case. In this regard, the Commission's Delegates found the applicant to be a convincing witness, an elderly, simple and unsophisticated lady who was on the whole credible. Her oral testimony was largely consistent with the statement given by her to the Human Rights Association shortly after the incident. While there were some inconsistencies in her accounts, the Commission considered that they could be attributed to the applicant's advanced years and the passage of time since the events in question. Her

evidence accorded in essentials with that of her son Avni Dulaş and the villager Emin Bilen.

14. The Commission found that the Hazro gendarmes included Çitlibahçe in the operation since they intended to look for and take into custody Ahmet Çakıcı, who, as a person already under suspicion of involvement in PKK activities, would be likely to have information about the kidnap group that passed through the village.

15. When the gendarmes arrived at the village, early in the morning, they left their vehicles outside and entered. They gathered the men together in one place and the women in another. Ahmet Çakıcı had hidden. A search was carried out by the gendarmes, who also started setting fire to houses. Ahmet Çakıcı was found and taken into custody. He was last seen by the witnesses being taken by village guards and soldiers to the vehicles.

16. The applicant had gone into her house when she saw all the soldiers but had been forced to leave by the soldiers. They set fire to her house, which had seven rooms and was made of timber. The family stored provisions, crops and wheat inside and these, along with the furniture and other household goods, were destroyed. About fifty houses in the village were burned down. She stated that once they had caught Ahmet Çakıcı the gendarmes left. After the departure of the gendarmes, the village was left in ruins and villagers were forced to leave.

17. Having regard to the evidence as a whole, the Commission accepted the evidence of the applicant as regards its principal elements. It did not find the matters referred to by the Government as being indicative of bad faith or as materially undermining the credibility and reliability of the applicant and her witnesses, which its Delegates assessed in generally positive terms. While the Commission took note of the applicant's age, its Delegates had not found any indication of mental infirmity that would cast doubt on her ability to give evidence.

18. The Commission found in conclusion that the applicant's property, furniture and possessions were deliberately burnt and destroyed during an operation by security forces in the village of Çitlibahçe on 8 November 1993. This led to the evacuation of the village. The possessions burned included a fridge, television, kitchen utensils, household goods, and produce (including tobacco, wheat, barley, lentils, and winter provisions).

19. The applicant and other villagers went to Diyarbakır after the operation. Accompanied by her son and three or four other villagers, the applicant went to the Human Rights Association. She made a statement and thumbprinted it.

20. Sometime later, the applicant was summoned to a police station. In his evidence to the Delegates, her son, Avni Dulaş remembered that she had been summoned to the public prosecutor's office in about the summer of 1995. He accompanied her there. She had been asked to make a statement. The public prosecutor read out of a file, stating that she had complained to

Europe about Turkey. He told the Delegates that he thought the prosecutor was trying to put pressure on his mother.

### **B. The Government's submissions on the facts**

21. The Government emphasised the terrorism which was prevalent in this region from the early 1990's and created a public danger threatening the life of the nation. The PKK had killed thousands of innocent victims and exerted intolerable pressure on the local population. The operation in this case concerned an investigation into the kidnapping and killing of teachers and an imam.

22. The applicant had made no complaint to the public prosecutor about the alleged burning of her house and property by the gendarmes during the operation on 8 February 1993. She only made a statement to the public prosecutor when he summoned her after the case was communicated to the Government by the Commission. He issued a decision of non-jurisdiction, transferring the file to the Hazro governor. The Hazro Administrative Council began an investigation and found that her claims were unsubstantiated.

23. The Government submitted that the applicant's various accounts, oral and written, were inconsistent and implausible, in particular the details purportedly noted down by the Human Rights Association in her application to the Commission.

### **C. New material**

24. On 11 May 2000, the Government submitted a copy of the statement taken by the Diyarbakır public prosecutor from the applicant via an interpreter on 10 October 1995. This had not been provided to the Commission.

25. According to the statement, thumbprinted by the applicant, the letter from the Ministry of Justice, the appended documents and the application to the Commission were read out to her through an interpreter and she was asked about them. She acknowledged that the thumbprint on the document was hers and that she did not remember who took the statement. As regarded the events, she could not remember the exact date but about two years before 20 or more army vehicles had come to Çitlibahçe, with soldiers and village guards. They rounded up the villagers and set fire to the houses. After the village burned down, she went to Diyarbakır.

26. The statement recorded that she was shown the application and letter of authority and asked about them. She stated the thumbprints were hers. She said that she thought her application was going to Ankara to claim her rights. She was illiterate and ignorant and did not know anything about European human rights. She made her statement to them as she thought this

would get something done about the damage which she had suffered. She wanted the State to vindicate her rights. She did not want to start a case in Europe in the way that he <the public prosecutor> had explained and did not agree to foreign lawyers starting such a case. It was for the State to look after her rights. When she made a statement to the HRA, there had been a lot of people with her and they described the events also. The application which had been read out was accurate though and she had no complaints to make about the person who wrote it down. She had not started any court case in Hazro or Diyarbakır as she was poor and ignorant and did not know what to do.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Administrative liability

27. 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.”

28. 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.

29. The principle of administrative liability is reflected in the additional Article 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

30. 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.).

31. 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.

32. 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).

33. 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 Council of State; a refusal to prosecute is subject to an automatic appeal of this kind.

### **C. Provisions on compensation**

34. 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.

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

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

### **D. Provisions on emergency measures**

37. 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.

38. Decree no. 285 modifies the application of Law no. 3713, the Anti-Terror Law (1981), 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. These councils are made up of civil servants and are under the authority of the provincial governors who also head the security forces.

39. 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 applicant, 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.

## THE LAW

### I. THE COURT’S ASSESSMENT OF THE FACTS

40. The Court reiterates its settled case-law that under the Convention system prior to 1 November 1998 the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). While the Court is not bound by the Commission’s findings of fact and remains free to make its own assessment in the light of all the material before it, it is however only in exceptional circumstances that it will exercise its powers in this area (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1214, § 78).

41. The Government argued that the Commission gave undue weight to the evidence of the applicant and the other villager witnesses whose evidence was in their view unreliable and inconsistent. The Court observes that the Government’s points concerning these witnesses were taken into

consideration by the Commission in its report, which approached its task of assessing the evidence with the requisite caution, giving detailed consideration to the elements which supported the applicant's claims and those which cast doubt on their credibility. It does not find that the criticisms made by the Government raise any matter of substance which might warrant the exercise of its own powers of verifying the facts. In these circumstances, the Court accepts the facts as established by the Commission (see paragraphs 9-20 above).

## II. THE GOVERNMENT'S PRELIMINARY OBJECTION

42. The Government submitted that the applicant had not used any domestic remedy, not even lodging a criminal complaint, in respect of her allegations. Her only excuse for this was an alleged fear of reprisals. The applicant had available to her an administrative remedy regarding the strict liability of the State for protecting the citizen from damage, as well as the possibility pursuing a civil action for damages.

43. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

44. The Court emphasises that the application of the rule of exhaustion of domestic remedies 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 States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which remedies operate, as well as the personal circumstances of the applicant (see the *Akdivar and Others v. Turkey* judgment, cited above,

p. 1211, § 69, and the *Selçuk and Asker v. Turkey* judgment of 24 April 1998, *Reports* 1998-I, p. 907, §§ 65-66).

45. Regard must therefore be had in this case to the situation which existed in south-east Turkey at the time of the events complained of by the applicant, which was characterised by violent confrontations between the security forces and members of the PKK (see the *Mentes and Others v. Turkey* judgment of 28 November 1997, *Reports* 1997-VIII, p. 2707, § 58). In such a situation, as the Court has recognised in previous cases, there may be obstacles to the proper functioning of the system of the administration of justice (see the *Akdivar and Others v. Turkey* judgment, cited above, pp. 1211, § 70).

46. The Court recalls that, despite the extent of the problem of village destruction, there appeared in these previous cases 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. Furthermore, there had consistently been a general reluctance on the part of the authorities to admit that this type of practice by members of the security forces had occurred. The Government have provided no information since that would lead the Court to reach any different conclusion (see the *Selçuk and Asker v. Turkey* judgment, cited above, p. 908, § 68).

47. Accordingly, the Court finds that it has not been demonstrated by the Government with sufficient certainty that effective and accessible domestic remedies existed for complaints such as the applicant's. Having regard to the circumstances in which her house and property, along with others in her village, were destroyed, the Court considers it understandable if the applicant considered it pointless to attempt to secure satisfaction through national legal channels. The insecurity and vulnerability of the applicant following the destruction of her home is also of some relevance in this context (see the *Selçuk and Asker* judgment, cited above, p. 908, §§ 70-71).

48. The Court concludes that there existed special circumstances which dispensed the applicant from the obligation to exhaust domestic remedies. It follows that the Government's preliminary objection on non-exhaustion must be dismissed.

### III ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant invoked Article 3 of the Convention, which provides:

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

50. The applicant submitted that the circumstances in which she had been forced from her house, which was burned in front of her eyes, and

forcibly evicted so that she was left destitute and without security amounted as a minimum to inhuman and degrading treatment.

51. The Government rejected this complaint as being without any basis.

52. Article 3, as the Court has frequently underlined, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. No provision is made, as in other substantive clauses of the Convention and its Protocols, for exceptions and no derogation from it is possible under Article 15 (see, *inter alia*, the Aksoy v. Turkey judgment, p. 2278, § 62).

53. 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, amongst other authorities, the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, § 52).

54. The applicant in the present case was aged over 70 at the time of the events. Her home and property were destroyed before her eyes, depriving her of means of shelter and support, and obliging her to leave the village and community, where she had lived all her life. No steps were taken by the authorities to give assistance to her in her plight.

55. Having regard to the manner in which her home was destroyed and her personal circumstances therefore, the Court finds that the applicant 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 (see also the Selçuk and Asker v. Turkey judgment, cited above, p. 910, §§ 77-78).

56. The Court concludes that there has been a violation of Article 3 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

57. The applicant complained of the destruction of her home and property, invoking Article 8 of the Convention and Article 1 of Protocol No. 1, which provide:

Article 8:

“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.”

Article 1 of Protocol No. 1:

“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.”

58. The applicant submitted that the destruction of her home, property and possessions represented a serious violation of her right to respect for private and family life, her right to respect for home and her right to peaceful enjoyment of property. Further, the expulsion from her home and the fact that she cannot return to her village represented a serious interference with her lifestyle and a continuing violation of her right to peaceful enjoyment of her possessions. She contended that the expulsion from her village constituted separate and additional violations of both Articles above.

59. The Government submitted the applicant’s allegations had no factual foundation and that there was no substantiation of her claims that the security forces had burned and destroyed her house and goods.

60. The Court has found it established that the applicant’s house and property were deliberately destroyed by the security forces, obliging her to leave her village. There is no doubt that these acts, in addition to giving rise to a violation of Article 3, constituted particularly grave and unjustified interferences with the applicant’s right to respect for her private life, family life and home and with her peaceful enjoyment of her possessions (see also the *Mentes and Others v. Turkey* judgment, cited above, p. 2711, § 73; the *Selçuk and Asker v. Turkey* judgment, cited above, p. 911, § 86).

61. The Court, accordingly, finds violations of Article 8 of the Convention and Article 1 of Protocol No. 1.

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

62. The applicant complained that she has not had an effective remedy within the meaning of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in this 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.”

63. The applicant, referring to the previous village destruction cases, submitted that she had no effective remedy available to her in respect of her complaints. There were undoubted practical difficulties and inhibitions barring villagers like the applicant from obtaining redress in south-east Turkey, where broad emergency powers had been conferred on the Emergency Governors and their subordinates. Public prosecutors had never brought any prosecutions concerning the village destructions and in this case conducted no investigation, referring the matter to an Administrative Council, which was a non-judicial body lacking in independence.

64. The Government argued that the applicant could have taken administrative or civil proceedings seeking damages or made a criminal complaint to the public prosecutor, which constituted effective remedies within the meaning of Article 13 of the Convention.

65. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the *Aksoy v. Turkey* judgment, cited above, p. 2286, § 95; the *Aydın v. Turkey* judgment of 25 September 1997, pp. 1895-96, § 103; and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

66. Where an individual has an arguable claim that her home and possessions have been purposely destroyed by agents of the State, Article 13 requires, in addition to the payment of compensation where appropriate, 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 investigation procedure (see the *Mentes and Others v. Turkey* judgment, cited above, p. 2715, § 89).

67. On the basis of the evidence adduced in the present case, the Court has found that the applicant’s home and property were destroyed, disclosing violations of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1. The applicant’s complaints in this regard are therefore “arguable” for the purposes of Article 13 (see the *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 23, § 52;

the Kaya judgment, cited above, § 107, and the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, p. 2442, § 113).

68. The Court refers to its findings above that it has not been established with sufficient certainty that the remedies referred to by the Government provided in the circumstances of this case any effective prospect of obtaining redress (see paragraph 47 above). Furthermore, while the applicant did not approach any domestic authority with her complaints before introducing her application to the Commission, it appears that, following communication of this application to the Government on 27 February 1995, the public prosecutor summoned the applicant (see paragraphs 20 and 22). A statement taken by him dated 10 October 1995 has been provided, thumbprinted by the applicant, in which she maintained her claim that soldiers had burned her home. It is not apparent however that the public prosecutor took any other investigative step, before issuing a decision of non-competence and referring it to the Administrative Council. The Court has already found in a number of cases that this body made up of civil servants, hierarchically dependent on the governor, an executive officer linked to the security forces under investigation, cannot be regarded as independent (see the Güleç v. Turkey judgment of 27 July 1998, *Reports* 1998-IV, pp. 1731-33, §§ 77-82, and the *Oğur v. Turkey* [GC] no. 21594/93, §§ 85-93, ECHR 1999-III). No thorough or effective investigation was therefore conducted into the applicant's allegations.

69. The Court concludes therefore that there has been a breach of Article 13 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

70. The applicant invoked Article 18 of the Convention which provides:

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

71. The applicant argued that the enforced evacuation of 2-3 million people from villages in the south-east of Turkey, allegedly for security reasons, disclosed an arbitrary exercise of power, outside the framework of domestic legal safeguards and in deliberate subversion of the rule of law and the rights guaranteed under the Convention.

72. The Government denied this assertion.

73. Having regard to its findings above, the Court does not consider it necessary to examine this complaint separately.

## VII. ALLEGED PRACTICES BY THE AUTHORITIES IN VIOLATION OF THE CONVENTION

74. The applicant maintained that there existed in Turkey an officially tolerated practice of destroying villages and failing to provide effective remedies, which aggravated the breach of which she had been victim. Referring to other cases concerning events in south-east Turkey in which the Commission and the Court had also found breaches in similar cases, the applicant submitted that they revealed a pattern of denial by the authorities of allegations of serious human-rights violations as well as a denial of remedies.

75. Having regard to its findings under Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1 above, the Court does not find it necessary to determine whether the failings identified in this case are part of a practice adopted by the authorities.

## VIII. ALLEGED VIOLATION OF FORMER ARTICLE 25 OF THE CONVENTION

76. Finally, the applicant complained that she had been subject to serious interference with the exercise of her right of individual petition, in breach of former Article 25 § 1 of the Convention (now replaced by Article 34), which provided:

“The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.”

77. The applicant submitted that she had been summoned by the public prosecutor, who asked her about her application to the Commission and put pressure on her.

78. The Government argued that the public prosecutor was justified in summoning the applicant in order to pursue his own investigation into her complaints. He had to question her about her application as it was the basis for opening his own file.

79. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by former Article 25 (now replaced by Article 34) that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see the *Akdivar and Others*

v. Turkey judgment, cited above, p. 1219, § 105; the Aksoy v. Turkey judgment cited above, p. 2288, § 105; the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 159; and Ergi v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, p. 1784, § 105). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see the above mentioned Kurt v. Turkey judgment, *loc. cit.*).

Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of former Article 25 § 1 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see the Akdivar and Others and Kurt v. Turkey judgments, cited above, p. 1219, § 105 and pp. 1192-93, § 160, respectively). In previous cases, the Court has had regard to the vulnerable position of applicant villagers and the reality that in south-east Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, and it has found that the questioning of applicants about their applications to the Commission amounted to a form of illicit and unacceptable pressure, which hinders the exercise of the right of individual petition in breach of former Article 25 of the Convention (*ibid.*).

80. In the instant case, the Court recalls that the Government had not provided any information to the Commission about the authorities’ contacts with the applicant and that the Commission reached its finding of undue interference on the basis of the oral testimony of the applicant and her son. The statement now provided to the Court (see paragraphs 24-26) indicates that the applicant was shown the statement made by her to the Human Rights Association (HRA) and the letter of authority concerning her legal representation before the Commission. It also appears that she was asked to verify her thumbprint and to verify the contents of the statement as accurate. The text of the statement also implies that the applicant was questioned as to whether she wanted to maintain an application to the Commission in Europe and whether she wished to pursue a complaint against the HRA lawyer. Though the applicant maintained that her statement to the HRA was accurate and repeated the substance of her allegation against the security forces, it does not appear that the public prosecutor pursued any questions with a view to adding to the factual detail of the applicant’s complaints.

81. In these circumstances, the Court is not satisfied that the interview related solely to the public prosecutor’s duty to collect information about the applicant’s complaints for the purpose of his own investigation. It also trespassed into verifying the authenticity of the applicant’s application and whether she wanted to continue it. The applicant not unreasonably must have felt intimidated by this interview and felt under pressure to withdraw

complaints considered as being against the State. This constituted undue interference with her petition to the Convention organs.

82. The respondent State has therefore failed to comply with its obligations under former Article 25 § 1 of the Convention.

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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 damages

84. The applicant claimed pecuniary damage in respect of the loss of her house, household goods, food stuffs, loss of income and costs incurred for alternative accommodation of 76,164.84 pounds sterling (GBP).

85. The Government argued the applicant's claims were out of all proportion to the value of the items listed and were, in any event, unsubstantiated and largely imaginary. Furthermore, the applicant's allegations that her home and possessions had been destroyed by security forces were unfounded and therefore, there was no requirement to award any compensation. Any just satisfaction should not exceed reasonable limits or lead to unjust enrichment.

86. The Court recalls its finding that the applicant's home and possessions were destroyed by security forces (see § 60 above). In view of this finding it is undoubtedly necessary to award compensation for pecuniary damage. However, as the applicant has not substantiated her claims as to the quantity and value of her lost property with any documentary or other evidence, the Court's assessment of the amounts to be awarded must, by necessity, be speculative and based on principles of equity.

#### *1. House and outbuildings*

87. The applicant claimed damages in respect of a house covering 250 square metres, which she valued at GBP 3,224.37 and a barn measuring 250 square metres and valued at GBP 2,149.58.

88. The Government disputed that the applicant, a villager in the rural area of Hazro, would own a house of the dimensions claimed.

89. The Commission has not made any findings as to the nature and size of the applicant's house and outbuildings.

90. The Court notes that the Government have not provided an inspection report of the site to contradict the applicant's figures, as in the Bilgin case (see the Bilgin v. Turkey judgment of 16 November 2000, § 142). Making its assessment on an equitable basis therefore, the Court awards an amount of GBP 5,000 in respect of the destroyed buildings, which sum is to be converted into Turkish liras at the rate applicable at the date of payment.

## *2. Other property*

91. The applicant submitted claims in respect of 300 acres of irrigated arable land, 50 acres of dry arable land, a 20 acre fruit orchard, 30 acres of vineyards, a 50 acre tobacco field and 100 pear trees, assessed altogether at GBP 33,960.16; livestock worth in total GBP 3,731.62, household goods worth in total GBP 2,129.55 and food stuffs and tobacco stores worth an estimated value of GBP 4,824.38.

92. The Government submitted that the applicant's claims were highly exaggerated and failed to reflect economic or any other reality.

93. The Court recalls that it has been found established that the contents of the applicant's house had been destroyed and that, after her house had been burned, she had been obliged to leave Çitlibahçe (see paragraph 60), which must have entailed some consequential losses. The Court further recalls the Commission's finding that the damaged household goods in the applicant's home included a fridge, television, kitchen utensils, household goods, and produce, including tobacco, wheat, barley, lentils, and winter provisions (see paragraphs 16 and 18).

94. In the absence of any independent and conclusive evidence as to the applicant's claims for other property and on the basis of principles of equity, the Court awards an amount of GBP 4,000, such sum to be converted into Turkish liras at the rate applicable at the date of payment. The Court has not awarded any sum in respect of the cultivated land and orchards in respect of which it has not been established that the applicant has been expropriated nor in respect of the livestock as it has not been established that this livestock perished as a consequence of the destruction of the applicant's house and outbuildings.

## *3. Loss of income*

95. The applicant claimed an amount of GBP 22,904.33 in compensation for loss of income from farming.

96. The Government disputed that any award of such a speculative nature should be made.

97. The Court is satisfied that the applicant must have suffered loss of income as a result of being forced from her home and village. In the absence of independent evidence on the size of the applicant's landholdings and

income derived therefrom, and having regard to equitable considerations, the Court awards under this head an amount of GBP 3,000, to be converted into Turkish liras at the rate applicable at the date of payment.

#### *4. Alternative accommodation*

98. The applicant claimed the reimbursement of rent to an amount of 1,401,960,860 Turkish liras (TRL) which she paid in Diyarbakır between August 1993 and June 1997 and 1,561,000,000 TRL for rent paid in İstanbul since June 1997, which corresponds to GBP 3,204.61 for a 60 month period.

99. The Government considered these claims excessive.

100. In the absence of documentary substantiation of this part of the applicant's claim and having regard to the information at its disposal concerning the rates for rented accommodation, the Court awards the applicant on an equitable basis for costs of alternative housing an amount of GBP 600, such sum to be converted into Turkish liras at the rate applicable at the date of payment.

### **B. Non-pecuniary damage**

101. Referring to the destruction of her home and possessions, expulsion from her village and her inability to return there, the applicant claimed GBP 50,000 for non-pecuniary damage.

102. The Government, rejecting that any violations had occurred, submitted that no award for non-pecuniary damage should be awarded and that, if such an award was to be made, the Court should take into account the economic circumstances prevailing in Turkey.

103. 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 §§ 56, 61 and 69). Additionally, the applicant was hindered in the effective exercise of her right of petition under the Convention (see § 82).

104. The Court awards the applicant GBP 10,000 for non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of payment.

### **C. Costs and expenses**

105. The applicant claimed a total of GBP 17,881.40 for fees and costs incurred in bringing the application, less legal aid received from the Council of Europe of 7,500 French francs (FRF). A sum of GBP 5,075.16 was

claimed in respect of fees and costs incurred by lawyers in Turkey and GBP 3,000 in respect of the Kurdish Human Rights Project (KHRP).

106. The Government submitted that the claims for costs and fees were excessive and unsubstantiated. They disputed that any sums should be awarded in respect of the role of the KHRP.

107. The Court is not persuaded that the fees claimed in respect of the KHRP were necessarily incurred. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, the Court awards the applicant the sum of GBP 14,900 together with any value-added tax that may be chargeable, less the 7,500 FRF received by way of legal aid from the Council of Europe, such sum to be paid into the sterling bank account in the United Kingdom as set out in her just satisfaction claim.

#### **D. Default interest**

108. The Court considers it appropriate to take the statutory rate of interest applicable in the United Kingdom at the adoption of the present judgment, namely 7.5% per annum.

#### **FOR THESE REASONS, THE COURT**

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No.1;
4. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;
5. *Holds* unanimously that it is not necessary to decide on the applicant's complaint under Article 18 of the Convention;
6. *Holds* unanimously that the respondent State has failed to comply with its obligations under former Article 25 § 1 of the Convention;
7. *Holds* unanimously
  - (a) that the respondent State is to pay the applicant, within three months, the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) 12,600 (twelve thousand, six hundred) pounds sterling for pecuniary damage;
  - (ii) 10,000 (ten thousand) pounds sterling for non-pecuniary damage;
  - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
8. *Holds* unanimously
- (a) that the respondent State is to pay the applicant, within three months and into the sterling bank account identified by her in the United Kingdom, in respect of costs and expenses, 14,900 (fourteen thousand, nine hundred) pounds sterling together with any value-added tax that may be chargeable, less 7,500 (seven thousand, five hundred) French francs to be converted into pounds sterling at the rate applicable at the date of delivery of this judgment;
  - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
9. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 30 January 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Elisabeth PALM  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Gölcüklü is annexed to this judgment.

E.P.  
M.O'B.

## DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

*(Translation)*

I regret that I am unable to agree with the Court's conclusion that there has been a violation of Article 13 of the Convention (see point 4 of the operative provisions of the judgment).

Here are my reasons for disagreeing with that conclusion:

1. Firstly, the parts of the judgment setting out the procedure and summarising the circumstances of the case contain significant gaps concerning the dates when certain procedural steps were taken; the omission of those dates makes it difficult to have a precise understanding of the case for the purposes of examining the complaint under Article 13. The missing information includes: the date the public prosecutor issued his decision that he had no jurisdiction, the date the relevant administrative council decided not to pursue the case for want of sufficient evidence substantiating the complaints and, lastly, the date the Supreme Administrative Court upheld the administrative council's decision.

Each of those dates was relevant for determining with certainty whether the applicant had been denied a domestic remedy, in breach of Article 13.

2. The only information provided on the subject in the instant case is, firstly, that the applicant lodged her application with the European Commission of Human Rights on 2 May 1994, through the route that has become customary in this type of case – namely the Diyarbakır Human Rights Association, a firm of British lawyers in London, and Strasbourg – without taking any steps to air her grievances before the national authorities. The Commission then delivered its admissibility decision on 23 May 1996, the Government only becoming aware of the case when the application was communicated to them. The fact of the matter is that the applicant at no stage cooperated with the authorities dealing with the case and was of no assistance to them.

3. I reluctantly agree with the Court's decision to dismiss the Government's preliminary objection that domestic remedies have not been exhausted, but have difficulty in accepting a finding of a violation of Article 13 in a case in which the applicant took no steps, not even minor ones, before the national courts to have the violations which she alleged remedied. In that connection, I also refer to the dissenting opinion which I delivered jointly with Judge Matscher in *Mentes and Others v. Turkey* (judgment of 28 November 1997, Reports 1997-VIII), a case similar to the instant one, and to the opinions of Judge Russo and Judge De Meyer in that case.