



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

THIRD SECTION

CASE OF MATYAR v. TURKEY

(Application no. 23423/94)

JUDGMENT

STRASBOURG

21 February 2002

FINAL

10/07/2002

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

In the case of Matyar v. Turkey,

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

Mr L. CAFLISCH, *President*,

Mr P. KŪRIS,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr K. TRAJA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 7 March 2000, 3 May 2001, 17 January and 31 January 2002,

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

PROCEDURE

1. The case originated in an application (no. 23423/94) against the Republic of 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 two Turkish nationals, İzzet Matyar (“the applicant”) and Mehmet Safi Aranacak, on 24 January 1994.

2. The applicant was represented by Mr P. Leach, a lawyer practising in London. The Turkish Government (“the Government”) were represented by their Agent, Mr B. Kaleli.

3. The applicant alleged that his house had been damaged and property destroyed by the security forces during an armed attack on his village. He invoked Articles 3, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1. He also alleged that he had been intimidated in respect of his application, invoking former Article 25 of the Convention.

4. The application was declared partly admissible by the Commission on 13 May 1996. The complaints introduced on behalf of Mehmet Safi Aranacak were struck out as it transpired that he had in fact died on 13 January 1994 before the application was lodged and the applicant’s representatives had been unable to contact his widow with a view to her continuing any complaints. The application was transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

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 in his place (Article 27 § 2 of the Convention and Rule 29 § 1). On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

6. The applicant and the Government each filed observations on the merits (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 23 July 1993, were disputed by the parties. Having regard however to the length of time which had elapsed since those events and the nature of the documentary material submitted by the parties, the Court decided that a fact finding investigation, involving the hearing of witnesses, would not effectively assist in resolving the issues. It has proceeded to examine the applicant's complaints on the basis of the written submissions and documents provided by the parties.

8. The applicant's and Government's submissions concerning the facts are set out below (Sections A and B). The documents relating to the events and complaints are also summarised (Section C).

A. The applicant's submissions on the facts

9. In July 1993, the applicant was 60 years' old and the father of 10 children, living in the Basoğ hamlet about two kilometres from the village of Ormanici (also known as Ormandışı or Cicika), in the Silvan district, Şırnak province in South-East Turkey. This village had been subject to previous attacks by security forces in conjunction with village guards during 1993-1994 (see application no. 21689/93, *Ahmet Ozcan and Others v. Turkey*).

10. On 24 July 1993, the applicant's village was subject to an armed attack by village guards supported by a helicopter gunship under the

direction of the Silvan Gendarme Headquarters and gendarmes from Bayrambası. The attack started at about 17.00 hours. The applicant was at his home in Başog with his wife Nezihe, his sons Burhan and Hamit and his daughter Neşihat. They heard sounds of gunshots coming from the village and saw flames and smoke starting to rise from different parts of the village. Women and children fleeing the village ran towards the applicant's hamlet. The applicant called to his son Burhan to take the tractor and flee, which he did. The applicant saw a number of village guards whom he knew – Esref Simpil, Ihsan Simpil, Nuri Simpil and Guri Simpil (this family name appears in some documents as Sumbul).

11. Hamit and Neşiat pleaded with the village guards holding the Koran. The guards nonetheless burned the applicant's house and burned his crops. The applicant saw that a helicopter gunship was firing at his son Burhan. Burhan got off the tractor and put his hands over his head. The helicopter descended to within a few metres, took a look at him and his friends and then flew away. Burhan carried on by tractor to Batikan village, 5–6 kilometres away. Looking back from Batikan, he could see his house and fields burning. When it was dark, the applicant went by tractor to Altinkum. He returned later when the village guards had left.

12. His house was damaged as follows. The walls were riddled with bullets and all the windows were broken. The 3-ton diesel tank attached to the back of the tractor had been pierced by bullets and all the diesel had poured out. The tank had caught fire because of the bullets. Two barrels full of diesel, a tractor trailer and the wheels of the trailer were riddled with bullets. His tractor, irrigation pump and 110 irrigation pipes had been destroyed by bullets. Two hundred sacks in front of the house had also been burned. Four tons of harvested wheat, two tons of barley and two lorryloads of straw had been burned, a whole year's labour.

13. During the attack on Ormanici itself, a 70-year-old villager Seve Nibak and a 7-year-old boy Cihan Matyar were shot and killed. The village guards shot at and set on fire other houses, including that of Mehmet Safi Aranacak, and destroyed crops in the fields and burned crop stores.

14. The Silvan district gendarme captain, Captain Hakan Temel Aksel, told the villagers that they were to say that the terrorists raided the village or it would cost them dear. The captain drew up a report stating that there had been a clash between terrorists and village guards and had villagers sign it.

15. The applicant continued to live in his house for about a year. He was summoned a year after the incident to the Bayrambası gendarme station and detained there by the commander who was angry with him for staying in Gom. The commander summoned his son Burhan and told him that the applicant would not be released unless he burned down the house. Burhan burned the house and the applicant was released. The applicant was later told by a gendarme at Bayrambası that the gendarmes had taken photographs of the burned house. The Silvan district gendarme commander

had been angry as he wanted photographs of a house in good condition. The gendarmes had then come and taken photographs of the applicant in front of his son's house.

16. On 29 September 1994, the applicant was summoned to the Silvan Gendarmerie where he allegedly counter-signed a report by sergeant Ömer Temel and gendarme private Ibrahim Bilgin. This was sent to the Silvan chief public prosecutor by Captain Aksel. On 30 September 1994, the applicant was forced to sign a statement by the Silvan public prosecutor.

17. The Silvan public prosecutor opened an investigation into the complaints of the applicant. On 3 October 1994, a decision was taken that due to lack of evidence the investigation could not be pursued.

18. An investigation also took place into the deaths which took place on 24 July 1993. This substantiated the applicant's claim that an attack took place on Ormanici village by armed village guards from Boyunlu, that the village guards fired at the houses, damaged or destroyed the villagers' property and crops, that they were supported by local gendarme units including a helicopter and that there were no members of the PKK in the village. The applicant refers *inter alia* to the petition of Bişar Nibak dated 27 July 1993, the statements of Bisar and Husna Nibak dated 2 August 1993, of Mehmet Sabri Matyar and Mehdi Matyar dated 31 August 1993, of Sevkett Aslan dated 1 September 1993 and of Hasan Manar dated 2 September 1993.

19. On 27 October 1993, the public prosecutor issued a decision of non-jurisdiction in respect of the two deaths and referred the case to the Diyarbakır State Security Court. On 24 November 1993, that court referred the case back to Silvan concerning the prosecution of four village guards, İhsan Simpil, Esref Simpil, Mehmet Zaman and Gurkan Simpil. In 1997, the four village guards were acquitted of murder on the basis of insufficient evidence.

B. The Government's submissions on the facts

20. On 23 July 1993, Sadık Simpil and two of his relatives were going to pick up wood cut down by the Rışta stream (elsewhere referred to as Hışta or Pişta). On coming across PKK terrorists resting by the stream, an armed clash broke out. Sadık and Medeni Simpil were wounded. Other Boyunlu village guards watching from a hill noticed the clash and went to help. The terrorists fled towards Ormandışı. The gendarmerie were informed by wireless. As the terrorists passed through the village, they fired their guns at random, killing Cihan Matyar and Seve Nibak. The terrorists were chased out of the village by the village guards and gendarmes. As it became dark, they gave up the pursuit. Next morning, the area was searched but nothing was found save that the terrorists had run away towards Altınkum.

21. On 24 July 1993, the gendarmes drew up an incident report and a location sketch map. The statements of the villagers were taken by the gendarmerie. Zeki Matyar, father of the murdered child, stated that he had been hit on the head by Bişar Nibak, the husband of the murdered woman and that he blamed the PKK for the murder of his son. On 24 July, six village guards gave their statements which corroborated their stories and were not contradictory on any important point. These described how the terrorists had fired on the village guards by the stream and then fled through Ormandısı firing at random. On 26 July 1993, statements were taken from the two wounded village guards who had been taken to hospital. These supported the other village guards.

22. On 27 June 1993, Bişar Nibak lodged a complaint with the Silvan public prosecutor alleging that the Boyunlu village guards had attacked Ormandısı, killed his wife and burned the crops and some of the houses. The public prosecutor took statements from his sister-in-law, several other villagers and the village guards accused of the attack. On 13 September 1993, Zeki Matyar and Azize Matyar made statements to the public prosecutor alleging that their son had been murdered by village guards. These statements were seriously contradictory, e.g. Zeki, contrary to his earlier statement, said that he was in the village and saw his son shot, while Azize said that he was outside the village.

23. On 27 October 1993, the public prosecutor gave a decision of non-jurisdiction and sent the case to the Diyarbakır State Security Court. On 24 November 1993, the file was sent back as the accused were village guards.

24. The four village guards were tried by the Diyarbakır Aggravated Felony Court, which on 1 June 1996 released them due to lack of evidence. The court did not rely on the statements of the complainants as they were contradictory.

25. The applicant did not make any complaint to the public prosecutor about events. On being informed that he had made an application to Strasbourg, the public prosecutor questioned him with a view to initiating an investigation. In his statement the applicant mentioned that none of his possessions had been burned and stated that he did not make any complaint about this. The public prosecutor therefore decided not to pursue the investigation further.

C. The documentary evidence submitted by the parties

1. Statements submitted by the applicant

Statement by the applicant dated 28 July 1993 and taken by the Human Rights Association (HRA)

26. On 24 July 1993, the applicant was at his home in Basoğ hamlet, about 2 km from Ormandışı village. At about 17.00 hours, shots were heard coming from the village. Smoke and flames appeared. Village women and children were fleeing in his direction. At first he thought it was the soldiers raiding the village. He later discovered that it was the protectors. He called to his son Burhan in the fields and told him to escape. His son got on his tractor and fled. He knew some of the village guards and recognised Esref Simpil, Ihsan Simpil, Nuri Simpil and Guri Simpil coming towards their hamlet. His daughter Neşiat and son Hamit brought out the Koran and pleaded with the guards not to burn their house and crops. Despite that, the village guards burned the house and crops. He saw that a helicopter was firing at his son in the tractor. He ran away to hide with the women from the village; his wife and children did not leave the house. When it got dark, he and other villagers went on a tractor to Altinkum. In the evening, thinking the village guards had gone, he went to his house. No-one was there. He saw nothing had happened to the objects in the house but the walls of the house were full of bullet holes and the windows broken. The diesel tank of the tractor had been hit by bullets and the petrol leaking out had caught fire. The barrel full of diesel, the tractor trailer and its wheels were also shot up. The irrigation pump had been rendered unusable due to gunfire. Two hundred empty sacks in front of the house had been burned. In the fields, he saw that 4 tons of harvested wheat, 2 tons of barley and two lorry loads of straw had been completely burned.

27. On the television it was said that there had been a clash between the terrorists and the village guards in the village. The Captain came to the village and shamelessly told the villagers that the terrorists had burned the village and hamlet. No guerrillas had come to the village and they would not have done such a thing.

Statement dated 28 July 1993 by Mehmet Safi Aranacak taken by the HRA

28. On the evening of 24 July 1993, the village guards of Boyunlu, about 80 to 90, carried out a raid on his village of Ormandışı. He was working in his field at the time. He heard gunshots coming from Boyunlu village, about 4-5 km from Ormandışı. About half an hour later, the village guards came towards Ormandışı, shouting that they were going to burn and shoot up the village and claiming that the children of the Ormandışı villagers were guerrillas. The men in the fields were able to run away more easily, getting

into tractors and fleeing. Some women and children hid in the clumps of trees near the village. He saw the village guards rake the village with gunfire. In the evening, he learned that Seve Nivak and Cihan Matyar were shot inside the village. He got into his tractor and fled towards Badik. As they fled, guards shot at them from the ground while military helicopters fired on them from the air. When he returned later, he found that his house had been shot up and the goods inside destroyed and set on fire. His crops had also been burned and destroyed.

29. The Captain from the Silvan gendarme command came to the village and said: "You'll say that your crops and homes were burned and shot up by terrorists, that terrorists raided your village. If you accuse the village guards, it will cost you much dearer". He heard that the Captain drew up a report saying that a clash had broken out between the terrorists and village guards, that two people had died in the cross fire and that the village had been burned and destroyed by terrorists. The report was signed by the son of Seve Nibak, against his will. The PKK had not come to the village. The State was forcing them either to go to the mountains or to leave the village. They were in fear of the village guards and their lives were in danger from them.

Statement by the applicant dated 28 October 1998 and taken by the lawyer Ayla Akat

30. The applicant had been shown the photograph submitted by the Government. He stated that the house was not his.

He explained as follows.

31. The house in those photographs was not his. On 24 July 1993, after burning houses in Ormanici, the village guards had come to his house in Basoğ, two kilometres away, and burned his crops and fired on the agricultural equipment and their homes. He watched from 500 metres away. The house was damaged but still habitable. He lived there for another year. A year later, he was summoned to Bayrambaşı gendarme station. The commander was angry with him and took him into detention. Then the commander summoned the applicant's son, Burhan, and threatened him that unless he destroyed his father's house, his father would not be released. So his son went to his house in Gorn and destroyed it. The applicant on release went to live with Burhan in Ormanici village. A few months later, he heard that the captain of the Silvan district gendarmerie was asking for photographs of his house. The Bayrambaşı gendarmes took photographs of his destroyed house and sent them to Silvan. The applicant heard from a soldier at the police station that the Silvan gendarme captain was angry as he had wanted pictures of a house in good condition. The soldiers then came to the applicant's son's house and took photographs of the applicant outside his son's house. At the time, the applicant had no idea why they were doing so.

32. As regarded the statement which he made to the Silvan public prosecutor on 30 September 1994, he stated that he had been detained on various occasions in connection with this incident and subject to threats over his complaints against the State. He was forced to make such a statement at the public prosecutor's as he was afraid of being taken into detention again and threatened.

Statement by the applicant dated 12 April 2000

33. In this statement taken by a lawyer, Cihan Aydın, the applicant said that he was under pressure due to his application. He had been called to the gendarmes' station and threatened. After he submitted documents to the Court, the documents were sent to Silvan and the gendarmes there, who were perpetrators of the incident, threatened him to force him to withdraw his complaints. He was frightened that they would do bad things.

Statement by the applicant dated 27 June 2001

34. In 1993, a clash broke out between village guards and the PKK in the area between Boyunlu and Ormandışı villages. Two village guards were wounded. Towards evening, a large number of village guards entered Ormandışı and began to burn the harvested crops. After burning Ormandışı, the guards came to the applicant's hamlet. His house was the only one in the hamlet. They set his house alight and raked it with gunfire. His son fled on the tractor. The village guards shot at the trailer. The applicant's irrigation pump, a three-ton diesel tank, two barrels of diesel, a tractor and 110 irrigation pipes were rendered unusable by gunfire. The guards also burned four tons of wheat, two tons of barley and two lorryloads of straw. He, his wife Neziha, his daughter Neşiat and his sons Burhan and Hamit (now in Germany) were in the hamlet at this time. Afterwards, they moved to live as a family in Ormandışı. Five to six months later, the Boyunlu village guards came and told them they had to leave their house and they moved into Ormandışı. The village guards burned Ormandışı village and his house and their statements were not true.

35. A few years later, he was summoned to Bayrambası gendarme station by the Silvan public prosecutor. The station commander threatened him and the village muhtar Ebedin Sezgir, saying that he had made a complaint about the State and that if he did not change his testimony it would not be good for him. They then went to the public prosecutor's office and as he was frightened he could not say that his house had been burned down. He was illiterate and his statement was not read to him. He was also arrested about a year after the attack and detained for 14 days. He was tortured and ill-treated. He did not say his house was burned down as he was afraid that he would be tortured. Ebedin Sezgir, the muhtar, was not keen on testifying as he was scared, as was the imam. The photographs

taken by the Government of his house were in fact of the house of his son Sait Matyar in Ormandışı.

Statement by Burhan Matyar dated 27 June 2001

36. At the time of the incident, he was staying with his father, the applicant, in Basoğ hamlet. A clash broke out between the PKK and village guards. Two village guards were wounded. After that the guards set Ormandışı alight and came to their hamlet. When he saw them coming, he was scared and drove off on the tractor. He told three others in the fields and they got on their tractors too. As they crossed a stream, a helicopter opened fire on them. They got off their tractors and put their hands on their heads. The helicopter descended to a few metres above their heads, looked at them and then flew away. He got on his tractor and went on to Batikan village. Looking back from there, he could see that the house and fields had been burned. After a day and a night he returned. The house was a ruin, part of it burned and shot up. The tractor and trailer were burned, shot up and unusable. Harvested crops had been burned and a diesel tank, two barrels of diesel, a motor pump, and water pipes had been shot up and were unusable.

Statement by Nezihe Matyar (the applicant's wife) dated 26 July 2001

37. At about 16.00-17.00 hours on the day of the incident, there were gunshots near Ormandışı. She was in front of the house. Bullets began to hit the house. Soldiers and village guards from Boyunlu arrived and began to set the village alight, firing haphazardly in all directions. Everything they fired at burst into flames. They set alight the wheat and then again raided her house. They entered her house and took them all outside. They broke and burned the fridge, TV, radio-cassette player, butter maker, curtains, quilts, mattresses, rugs and kitchen implements. They set the house alight and meanwhile insulted and threatened them. They told them to leave the village or they would kill them all. They also burned crops and shot up the farm equipment. After the incident, the family moved to Silvan.

Statement by Neşihat Matyar dated 26 July 2001

38. At about 16.00-17.00 hours on the day of the incident there were gunshots near Ormandışı. She was in front of the house. Bullets began to hit the house. Soldiers and village guards came into the village and set it alight, firing haphazardly in all directions. Her statement reproduced in almost identical terms the statement of her mother above.

Statement by Halime Eruncak (Aranacak) dated 2 July 2001

39. At the time of the incident, she was living in Ormandışı village with her husband Mehmet Şafi. A clash broke out near the village. After this, village guards came to the village firing at random. A 70-year-old woman

and a child were killed. They set alight harvested crops and shot up all houses. Her house was a colander and everything inside ruined. The guards then went to Basoğ hamlet and shot up the applicant's house and property and burned his crops. Her husband went with the applicant to the Human Rights Association in Diyarbakır and applied to the European Court of Human Rights. Some five to six months later, her husband was captured wounded with a PKK militant after a clash with the security forces. He was later killed for refusing to assist the security forces in capturing other members of the PKK. Some four to five months later, her house was burned by village guards and soldiers. She went to live in Mersin. She had now returned to stay in Ormandış and had spoken to the applicant and contacted her lawyers. She had not followed up the application about the burning of her house and the murder of her husband out of fear and as she was not able to contact her lawyers. She now wanted to take responsibility for the application made by her husband.

2. Documents from the domestic investigation

Petition dated 11 January 1992 by Bisar Nibak and Hacı Ali Mustak

40. The petitioners complained that Ihsan Simpil, Esref Simpil and Mehmet Zaman Simpil had fired at villagers from Ormandış. It was stated that the aggressors were from Boyunlu village who hated and had a grudge against the Ormandış village due to the latter's lodging of legal proceedings against the Boyunlu villagers' illegal entry onto Ormandış village lands.

Statement by Mehmet Zeki Matyar dated 24 July 1993 and taken by gendarmes

41. On 23 July 1993, he was attending his herd. In the evening, he heard shots towards the upper end of Ormandış village. When he returned to the village, his son Cihan was not there. He was told that he was at a neighbour's. The next morning, a villager, Hacı Bisar, ran up, saying that Cihan had been killed in a clash between the PKK and village guards. His dead body was outside the village. Bisar told him to say that he must say that the guards shot his son or the terrorists would shoot him. When the witness asked Bisar who shot his son, the man hit him with a stick. The witness went to find the body. There were soldiers around. He took his son to the Silvan hospital for an autopsy. His guess was that the PKK terrorists murdered his son and filed a complaint. He also filed a complaint against the man who hit him with the stick.

Statement by Mehdi Guzec dated 24 July 1993 and taken by gendarmes

42. The witness was a village guard in Boyunlu village. On 23 July 1993, while he was in the village, he and others received a request for help

from others who had been cutting poplar trees near Ormandışı and had clashed with terrorists. The guards went to the place and found that two persons had been injured. The terrorists were firing randomly while dispersing. The guards followed them. On entering the village, the terrorists continued firing. The guards entered the village; apparently two villagers were killed and the terrorists ran from the village. Security forces then arrived. The next morning, an operation was carried out but no result was achieved. The guards were asked to return to their village.

Statement by Hüseyin Cesur dated 24 July 1993 and taken by gendarmes

43. The witness was a village guard in Boyunlu village. On 23 July 1993, he and other guards were told to come as there was a clash. On their arrival at the Hista stream area they found two injured persons. The terrorists were firing randomly and continued doing so when they entered the Ormandışı village. The guards entered the village and the terrorists fled from the northern part. They were told that two villagers had died. At this stage, the security forces caught up with them. It was dark then. The next morning, they followed the trail of the terrorists, who had run away towards Altinkum. There had been 7-8 of them but they were not found. The guards were told to return to their village.

Statement by Reşat Değerli dated 24 July 1993 and taken by gendarmes

44. On 23 July, in the afternoon, the witness and others went to cut down poplars in the Hista area which belonged to Sadık Simpil. Three village guards were keeping watch on the hills. They heard gunshots downstream and returned fire. Sadık Simpil was injured. They reported to the village. The clash continued for some time. When help arrived, the terrorists, about 7 to 8, ran back towards Ormandışı. Medeni Sumbul, who came to help from the village, was also injured. They ran after the terrorists who kept turning back to fire. The terrorists who entered the village fired randomly. When the village guards entered the village, they saw that an old woman and a child had died due to the wild firing of the terrorists. The security teams arrived. A search was carried out. The terrorists had run towards Altinkum and the gendarme commander gave instructions. The area was besieged. However the operation was abandoned due to the nightfall. It continued next morning without result. The guards were asked to return to their village.

Statement by Ramazan Moğuç dated 24 July 1993 and taken by gendarmes

45. The witness, a village guard, recalled that a call for help came from friends out cutting poplars. They went to the place of the incident and found two injured persons. They left men to tend the injured and went after the terrorists, who were randomly firing as they tried to escape. Entering Ormandışı the terrorists kept firing heavily. As the terrorists ran from

Ormandış1, the guards entered. They heard that two villagers had died due to the terrorists' firing. The operation teams arrived as it was getting dark. The commander waited until morning to send out a search party. The terrorists who had fled towards Altinkum village could not be found. The village guards were told to return to their village.

Statement by Hamdusena Güleç dated 24 July 1993 and taken by gendarmes

46. The witness, a village guard, had been providing security to the men cutting poplars at the Hista stream. Gunshots were heard and two of the men were injured. The guards returned fire. When help arrived, the terrorists started fleeing towards Ormandış1, about 6 or 7 of them. The guards went in hot pursuit. The terrorists fired randomly and intensively inside the village. As the guards neared the village, the terrorists left. They lost them in the stream below the village. They learned that two villagers had died during the terrorist shooting. The military arrived. Due to darkness, the commander covered the terrorists' possible escape routes and sent out a search party early in the morning. On following their trail, it was found that the terrorists had gone to Altinkum. The guards were sent home.

Statement by Hamdusena Simpil dated 24 July 1993 and taken by gendarmes

47. The witness had gone to cut poplar trees, while three men watched from the hills. Terrorists fired on them and his brother yelled that he was injured. They returned fire. Other village guards came to help after they reported on the radio. The terrorists fled north, about 7 to 8. With the help, the guards followed towards Ormandış1. Medeni Sumbul, who had come to help, was injured by terrorist fire. The injured were carried back to the village while the others continued after the terrorists, who fired back as they went. The terrorists entered Ormandış1. The exchange of fire there went on for some time. Military teams arrived. The terrorists used the stream bed and escaped to the north. On entering the village, the village guards learned that two villagers had died under indiscriminate terrorist fire. The commander positioned his teams and due to nightfall left the search till morning. It was found that the terrorists had fled on a tractor to Altinkum. The village guards returned to their homes.

Incident report dated 24 July 1993

48. The report was signed by Lt Hakan Temel Aksel, NCO senior sergeant Hacı Ali Buber as well as Mehmet Zaman Simpil, village guard, Zeki Matyar, father of a deceased victim, and Ahmet Nibak, son of the other deceased victim. It stated the following:

49. On 23 July 1993, at around 16.00 hours, the Boyunlu village guards heard a report on the radio that 6 village guards, who had gone to cut poplar trees, had clashed with terrorists. Sadık Simpil and Medeni Simpil had been injured. A second team of village guards went to the location of the

incident. The terrorists broke off contact and ran towards Ormandış1. Information was received that the village guards had re-established contact with the terrorists. Two teams from Silvan gendarmes commando division were deployed at Altinkum. One village guard team and one internal security team from Bayrambası gendarmerie station deployed in Babakaya village. During deployment, it was learned that the terrorists had entered into Ormandış1, and firing between them and the village guards on the hills continued. The terrorists escaped on a tractor towards Altinkum village, still firing. Bayrambası gendarmes and village guards arrived at the village from Babakaya. They discovered that a woman, Seve Nibak (born in 1926) and Cihan Matyar (born in 1985) died as a result of indiscriminate fire from the terrorists. The security forces were positioned for the night. In the morning, a search uncovered 5 rounds of 7.62mm G3 bullets, 18 rounds of 7.62 calibre Kalashnikov rifle bullets and 25 rounds of Biksi automatic rifle bullets belonging to PKK terrorists. The injured village guard and citizen were transferred to Silvan and in turn referred to Diyarbakır Military Hospital in a helicopter for treatment.

50. Upon the instructions of the Silvan public prosecutor, the bodies of the villagers murdered by the terrorists were sent to the district centre for an autopsy. During the incident, the Boyunlu village guards used up 3 projectiles, 10 hand grenades and 40 rounds of 7.62 mm calibre kalashnikov bullets, while the commandos from Silvan used 25 rounds of 60mm mortar projectiles and 1950 rounds of G3 infantry rifle bullets. Despite searches, empty cartridges could not be found due to the rocky and tree-covered terrain. Following searches of the village and the location of the clash, it was established that no other life or property was lost.

**Sketch map of the location of the incident drawn up on 24 July 1993 by NCO
Haci Ali Buber**

51. This map showed, *inter alia*, the path taken by the terrorists from the poplar trees to the south of Ormandış1 village into the village from where they escaped north towards Kulp, the position of the commando teams to the south of the village and the location of the bodies of the two villagers.

Body examination and autopsy report dated 24 July 1993

52. This report was signed by the public prosecutor and two doctors. It stated that the body identified as Seve Nibak had one entry bullet hole on the left back scapula and an exit hole on the level of the front armpit. Death was due to widespread internal thoracic haemorrhage occurring as a result of injury to vital internal organs. On the body of the eight-year-old child, identified as Cihan Matyar, there was a bullet entry hole 2-3 cm to the left of the xiphoid bone and an exit hole 2-3 cm to the left of the 10th vertebra. Death was due to widespread internal haemorrhage and loss of blood. As the cause of death was certain, no classical autopsy was required.

Medical report on Zeki Matyar, dated 24 July 1993, from Silvan State Hospital emergency clinic

53. This report recorded 1-2 day old bruising on the head and large ecchymotic areas on the left side of his back and costal vertebral region. There were signs of suspected broken ribs. The patient was referred to Diyarbakır State Hospital for diagnosis and treatment.

Medical report on Sadık Simpil, dated 23 July 1993, from Silvan State Hospital emergency clinic

54. This report noted one probable bullet entry hole on the foot, one on the right arm and a possible third entry hole (location illegible). There was no danger to life. The patient was referred to the Diyarbakır State Hospital's Orthopaedics unit.

Medical report on Medeni Simpil, dated 23 July 1993, from Silvan State Hospital emergency clinic

55. A bullet entry hole was noted 5-10 cm above the rear left kneecap and an exit hole 10 cm above the knee cap. There was the possibility of a fracture. There was no danger to life. The patient was referred to the Diyarbakır State Hospital's Orthopaedics unit.

Statement by Sadık Simpil dated 26 July 1993 and taken by gendarmes

56. The witness, a Boyunlu village guard, was chopping down trees with Muhyettin Simpil and Medeni Simpil, with three other men guarding them 300 metres away on high ground (so that their radio worked). He saw two men firing at them. He was injured in the arm and leg. He fired back. The terrorists ran away. The guards had called Boyunlu on the radio summoning the other guards. They arrived and pursued the terrorists. He heard gunshots coming from Ormandış. He and Medeni Simpil were taken to hospital.

Statement by Medeni Simpil dated 26 July 1993 and taken by gendarmes

57. The witness, a village guard, was chopping trees near Ormandış village at Pista fountain. Two or three terrorists opened fire as they arrived. He and Sadık Simpil were injured immediately. Sadık fired back and the terrorists ran away. The guards protecting them reported the incident. The area was besieged. He heard gunshots coming from Ormandış village. He was taken to hospital for treatment of his injured leg.

Petition of Bişar Nibak dated 27 July 1993

58. On 23 July 1993, at about 17.30 hours, the petitioner's village Ormandış had been raided by Boyunlu village guards. He escaped from the house while his wife and daughter-in-law escaped. Village guards İhsan Sumbul, Esref Sumbul, Zaman Sumbul and Gurgin Sumbul indiscriminately fired at his house, killing his wife. They also set fire to their crops and

burned some houses. They had had a land dispute with the above-mentioned individuals, the documents on which for the years 1981-1982 were at the judiciary. He lodged a complaint against the four village guards.

Statement by Bişar Nibak dated 2 August 1993 and taken by the Silvan public prosecutor

59. On 23 July 1993, gunshots were heard in the village. The witness's wife Seve had told him that village guards had arrived. The witness and his son ran out of the village. He came back at about 20.00 hours when the gendarmes were there. He found his wife lying dead in their house. His daughter-in-law told him that village guards from Boyunlu village (Ihsan Sumbul, Esref Sumbul, Zaman Sumbul and Gurgin Sumbul) had entered the house and shot her. The guards fired at and burned houses and also burned the crops. There were no terrorists in the village. The village had had a land dispute in 1984-85 with the Boyunlu guards named above; he guessed that was the reason for the attack. While the guards were there, a helicopter flew over the village, manoeuvring. He requested that the perpetrators be punished and his crops be reimbursed.

Statement by Husna Nibak dated 2 August 1993 and taken by the Silvan public prosecutor

60. On 23 July, at about 17.30 hours, a raid was carried out on the village by the Boyunlu village guards. The witness's father-in-law Bisar ran away with other villagers on hearing the shots. Four guards (Ihsan Sumbul, Esref Sumbul, Zaman Sumbul and Gurgin Sumbul) entered the house and killed her mother-in-law. The guards fired at the houses and burned the crops. She named other witnesses of events.

Statement by Mehmet Zaman Simpil dated 2 August and taken by the Silvan public prosecutor

61. The witness, a Boyunlu village guard, was told on the radio that terrorists had opened fire on his brother and others who were chopping wood. They informed the Bayrambası gendarmerie station immediately. The gendarmes told them to go to the location of the incident where they themselves would arrive shortly. The guards arrived at the place of the clash. The terrorists were running away. The guards followed them. The terrorists entered Ormandışı village. The guards took position to the south and on the hill. There was an exchange of fire. The terrorists started to run away and got into a tractor shortly before nightfall. A helicopter arrived. The officer brigade commander was in it. The helicopter fired on the terrorists in the tractor. During the clash, a fire broke out in the crops surrounding the village. Darkness fell. First Lieutenant Hakan told the guards to return to Boyunlu. He later heard that there were two dead villagers but the guards had not killed anyone. Bisar Nibak, who had filed a

complaint, had a grandson who was a terrorist and was killed and many of his relatives were terrorists. They were slandering the guards due to pressure from the terrorists.

Statement by Gurkan Simpil dated 2 August 1993 and taken by the Silvan public prosecutor

62. The witness, a shepherd from Boyunlu, was grazing his sheep on 23 July 1993. He was not a guard. He heard about the clash in the evening. He had not been involved in any way. He named witnesses to support him.

Statement by Ihsan Simpil dated 2 August 1993 and taken by the Silvan public prosecutor

63. The witness, the head village guard from Boyunlu, heard over the radio that his brother and others who were chopping wood had been fired at by terrorists. They immediately informed the local gendarme station by radio. The clash was at the Pišta stream area. They arrived at the location and participated in the clash. The terrorists started to run away and entered Ormandışı. The guards positioned themselves to the south. They exchanged fire with the terrorists. The helicopter arrived and opened fire on the terrorists. When the terrorists got into a tractor to escape towards Kulp, the helicopter and the guards started to follow them. Some guards passed through the village. During the clash tracer bullets started a fire in the crops and threshing piles. The guards followed the terrorists to Altinkum village outskirts. Due to the darkness and as the terrorists had reached the Kulp side, they returned to Ormandışı where the soldiers had arrived. He learned that a woman and child had been killed. The guards and soldiers stayed in Ormandışı during the night. Nobody claimed that the guards had killed anyone. Seve Nibak was a close relative of his, like an aunt to him. The complaints had been made against the guards due to pressure from the terrorists. The terrorists wanted to undermine the village guard system.

Statement by Eşref Simpil dated 2 August 1993 and taken by the Silvan public prosecutor

64. The witness, a village guard, recalled that the guards heard on the radio that people cutting poplars were under fire by terrorists in the Pista stream area. After informing the Bayrambası gendarme station, they went to help them and participated in the clash. Sadık, the head guard's brother, and Medeni were injured. As the clash continued, the terrorists made their way to Ormandışı, which they entered. The guards could not, taking position on the hill outside. Gendarmes arrived nearby at the Babakaya. A helicopter flew over, firing on the terrorists in the village. The terrorists started to escape towards Kulp. The helicopter went in pursuit. Some guards followed. The witness stayed in the village with some other guards. The terrorists had left at about 17.00 hours. Before the guards left at about 20.30 hours, they

heard that a woman and child had died. At about 20.30 hours, the soldiers arrived in the village. At 22.00 hours, the Bayrambası gendarme commander contacted the village guards on the radio and the village guards returned to Ormandışı and stayed the night. The witness had not killed anyone. The complaints must have been made due to pressure from the terrorists.

Report dated 18 August 1993 signed by gendarmes

65. This reported that, following a joint operation between 8 and 12 August 1993 by the Ergani Commando Battalion, the Silvan commando unit and the signatories' gendarme station, the perpetrators of the murders of Seve Nibak and Cihan Matyar, who had injured Sadik Sampil, Medeni Sampil and Muhyettin Sampil, had not been apprehended nor their identities established.

Statement by M. Sabri Matyar dated 31 August 1993 and taken by the Silvan public prosecutor

66. At about 16.00 hours, about 30 Boyunlu village guards entered Ormandışı village and started firing at all the houses. Bullets hit his house. There were no terrorists in the village or any clash. He heard that the guards murdered Seve Nibak and Cihan Matyar. The guards set fire to the grain piles but not the houses. After two hours, they returned to their village. Before they left, a helicopter flew low over the village, firing at some places. After nightfall, at about 19.00 hours the soldiers arrived. The witness told Hacı Ali, the NCO commander of the local Bayrambası station, what had happened. They did not open any proceedings though.

Statement by Mehdi Matyar dated 31 August 1993 and taken by the Silvan public prosecutor

67. About 30 Boyunlu village guards came into Ormandışı village firing their guns. They fired at the houses and entered, using bad language. The witness heard that two persons, Seve Nibak and Cihan Matyar, were killed. The guards burned the harvest and crops but not the houses. At about 19.30 hours, the guards left towards their own village. A short time before, a helicopter appeared, firing at various targets. After the guards left, the soldiers entered the village. The villagers told them everything but the soldiers did not believe them and did not apprehend the village guards.

Statement by Sevket Aslan dated 1 September 1993 and taken by the Silvan public prosecutor

68. At about 16 to 17.00 hours, the witness heard gunshots in the village. Guards from Boyunlu entered firing their guns. There were no terrorists in the village, nor was there any clash. The guards set fire to the crops and threshing piles but not the houses. They came to the witness's house,

searching for weapons, and tied up his son, claiming that he was a terrorist. They took his son away. His son later managed to run away. While their crops were burning, a helicopter flew over the village at a low height. The head guard Ihsan was talking into a radio to the commanding officer, saying: "They are running away on a tractor towards Kulp". The helicopter then flew in that direction. At nightfall, most of the guards left, the head guard and a few others staying on. The others went towards Altinkum Bezvan, probably to burn the crops there. The soldiers arrived. Due to fear of the guards, the villagers did not feel able to complain. The soldiers did not do anything to them.

Statement by Hasan Manar dated 2 September 1993 and taken by the Silvan public prosecutor

69. At 16.00 to 17.00 hours, village guards arrived in the village. He and other villagers shut themselves in their houses out of fear. He heard gunshots. Apparently the guards shot at the houses. There were no terrorists in the village, and no clash occurred. Apparently the guards burned the crops and threshing piles. After dark the soldiers arrived. Husna Nibak told him that when Seve Nibak came to the door to tell the guards not to enter they killed her. While these incidents were taking place, there was a helicopter flying low over the village.

Statement by Mehmet Zeki Matyar dated 13 September 1993 and taken by the Silvan public prosecutor

70. Village guards from Boyunlu had come into the village of Ormandışı firing their weapons. He saw his son Cihan shot by the chief village guard as he came to the house. Later the guards burnt the crops. At nightfall, the guards left. There had been no terrorists in the village and there had been no armed clash. Soldiers apparently arrived after the guards had left – he did not see them as he stayed inside out of fear.

Statement by Azize Matyar dated 13 September 1993 and taken by the Silvan public prosecutor

71. On hearing gunshots, the witness had run towards Veysi's house. Her son Cihan was with her. They entered the house and bolted it. There was gunfire and Cihan was shot. Her husband was outside the village grazing livestock. The village guards apparently burned the crops, starting a fire in the threshing area. No terrorists were in the village nor was there any clash with terrorists.

Statement by Faysal Aslan dated 21 September 1993 and taken by the Silvan public prosecutor

72. The witness was out in the fields. At about 13.00 hours, he heard gunshots. Returning to his house, his father met him 100 metres from the

house and said that he should hide as the Boyunlu village guards were killing the men of the village. He hid near the stream not far from the house. He saw that about 100 people from Boyunlu were raiding the village. He named the ones he recognised. He saw Eşref, Gorgu and Ihsan Simpil enter his house and randomly fire with their rifles. They took his father, mother, sister, brother and wife hostage and announced that they would be killed if he did not come out. His mother appealed to him and he came out. Eşref tied him up and demanded to know where the terrorists were. He told Eşref that the terrorists had taken him and his father away 10 days before. They were released on payment of TRL 50 million. Eşref said that he was lying and that he had made a deal with the terrorists. He was hit with rifle butts. He did not see Seve Nibak or Cihan Matyar being killed. The guards threatened to kill him too. They released his hands to allow him to drink and he took advantage of the opportunity to run away.

73. The village guards burned the threshing piles. A helicopter flew over the village at a low altitude. Ihsan was talking to the helicopter on the radio. It was the provincial gendarme regional commander. Ihsan claimed that there were 70-80 dead and told the helicopter to fire at certain places. He said the terrorists were running away in a tractor. When the helicopter queried whether they were villagers, he said that they were terrorists and to kill them all. The helicopter refused to do so as they were civilians.

74. At about 19.00 hours, when the security forces arrived, the witness told the NCO commander what had happened. The NCO said that they had been told that they had been raided by terrorists. The NCO talked to Ihsan, who was there. Ihsan laughed, claiming that he could have destroyed the whole village but the first lieutenant had said that it was enough. The guards stayed in the village for three days. The witness filed a complaint against them.

Expert ballistics report dated 23 October 1993

75. This report listed the cartridges recovered from the incident on 23 July 1993. It established that they had been fired from 7 different weapons. They were currently under examination to see if they had been fired in other incidents. A further report would issue if that was the case.

Decision on lack of jurisdiction dated 27 October 1993 and issued by the Silvan public prosecutor

76. This decision listed the deceased victims, Seve Nibak and Cihan Matyar, and the injured persons, Zeki Matyar, Sadik Simpil and Medeni Simpil, and identified the suspects as PKK terrorists. It was understood that an armed assault was carried out on village guards by terrorists in the Pişta area. The terrorists withdrew, entering Ormandış village and firing indiscriminately. Two villagers died. The security forces arrived and the terrorists escaped. As the offences were within the jurisdiction of the State

Security Court, the Silvan prosecutor referred the file to the Diyarbakır State Security Court's chief public prosecutor.

Decision on lack of jurisdiction dated 24 November 1993 and issued by the Diyarbakır State Security Court public prosecutor

77. This decision listed Ihsan, Esref, Mehmet Zaman and Gurkan Simpil as suspected perpetrators of the murder of Seve Nibak and Cihan Matyar. It was understood that the suspected village guards had raided Ormandışı village and murdered the above persons by indiscriminate firing on duty. The case was referred to the Silvan public prosecutor for the institution of proceedings.

Incident report dated 23 July 1994 and signed by the Silvan district gendarme commander

78. The incident was described as an armed clash with members of the PKK, which took place on 13 January 1994. It was stated that three Boyunlu village guards set out for Kaforme hill where they came across a group of seven to eight terrorists. A clash occurred during which Mehmet Safi Aranacak and an unidentified PKK terrorist were killed. As soon as contact was made, three teams of village guards from Boyunlu, a team of village guards from Onbaşılar, a BTR-80 unit and three gendarme commando units set out in pursuit. Though bloodstains were found and it was thought that two terrorists were wounded, no further terrorists were discovered.

Protocol dated 29 September 1994 and signed by gendarmes and the applicant

79. This protocol stated that an investigation had been carried out into the complaints of the applicant and Mehmet Safi Aranacak that their houses and gardens had been burned in Ormandışı. No complaint had been made to the local gendarme station about this. Mehmet Safi Aranacak had however been killed during a skirmish with the security forces on 13 January 1994 near Boyunlu village in which he had taken part as a terrorist. The applicant had houses in Silvan and in Ormandışı village. He came to Ormandışı village during the harvest season. His house, garden and fields in Ormandışı had not been burned down by village guards.

Statement by the applicant dated 30 September 1994 and taken by the Silvan public prosecutor

80. The applicant stated that he lived in Ormandışı village. Mehmet Safi Aranacak was killed in armed clashes with the security forces on 13 January 1994. He did not know whether he was a terrorist or not. His own house, garden and fields in Ormandışı were not burned as was alleged. He had not applied to any authority about the matter.

Letter of 30 September 1994 from the Silvan district gendarme commander to the Silvan public prosecutor

81. It had been reported that the applicant and Mehmet Safi Arancak had applied to the European Commission of Human Rights, alleging that their houses, garden and fields had been burned down by village guards on 24 July 1993.

82. According to their investigations, it appeared that no complaint had been made to the gendarmerie about this matter. Mehmet Safi Arancak had been killed on 13 January 1994 fighting as a terrorist against the security forces at Kaforme hill, Boyunlu village. The applicant had houses in Silvan and Ormandışı, and his house, garden and fields had not been burned down by village guards. The allegations were false.

Decision not to prosecute dated 3 October 1994 and made by the Silvan public prosecutor

83. Although it had been alleged that the applicant and Mehmet Safi Arancak's houses, gardens and fields had been burned by village guards and that they had been forced to leave their village, it appeared from the applicant's statement, the letter from the Silvan district gendarmerie, the autopsy report and all other documents that the investigation failed to produce any evidence that the allegations were true and that the offences charged had been committed. It followed that no public prosecution should be opened.

Judgment of the Diyarbakır Aggravated Felony Court dated 1 July 1996

84. This judgment acquitted Ihsan Simpil, Eşref Simpil, Mehmet Zaman Simpil and Gokhan Simpil of the murder of Seve Nibak and Cihan Matyar.

85. The court found that on 23 July 1993 a clash took place between the PKK and the defendant village guards. The terrorists escaped towards Ormandışı, where the victims lived. The village guard defendants went into the village in pursuit. The Court summarised the evidence as follows.

Gurkan Simpil claimed that he was not at the incident but was grazing his sheep. His defence was confirmed by the testimony of Yasar, Makbule, Kamil Simpil and Salih (name illegible). Eşref, Ihsan and Mehmet Zaman Simpil stated that they were in the incident and that when they entered the village, a two-way conflict took place. The victims might have died in the conflict but the village guards did not kill them.

Bişar Nibak, the husband of Seve Nibak, had run away and did not witness what happened to his wife. Husnu Nibak stated that four men had fired. Azize Matyar, mother of Cihan, had stated that they had shut themselves in their house. There had been firing outside and a bullet had hit and killed her son. She had opened the door and seen the three defendants Eşref, Ihsan and Gurkan. Mehmet Zeki Matyar stated that he did not see the incident himself. Faysal Arslan said that he did not know who killed the

victims and did not see the incident with his own eyes. Metin Matyar stated that he did not see the perpetrators of the murder incident with his own eyes.

Empty cartridges or other material evidence at the location proving the defendant's participation in the murder were absent.

Statements had been taken from Captain Hakan Temel Aksel and First Lieutenant Hacı Ali Biber, commanding officers during the incident. They stated that there had been a conflict between the PKK and the village guards and that the victims died as a result of firing by the terrorists. They had seen the terrorists running from the village through their binoculars. They had carried out an investigation and concluded that the victims were killed by terrorists. However, some witnesses indicated that as a result of pressure from the terrorists, some villagers held the defendants responsible. Consequently, on the basis of the evidence gathered, no convincing evidence had been obtained to prove that the defendants killed the victims. The fact that the victims were killed by the terrorists or the defendants could not be established with certainty.

The claims made by the complainants were not based on eye witness accounts. The statements made during the investigation contradicted those given in court and could not be taken into account. The witnesses' statements and the content of the file did not furnish sufficient, definitive and convincing evidence of the offence. Therefore the defendants had to be acquitted.

Statement by the applicant dated 2 July 1996 and taken by a public prosecutor

86. The applicant stated that he had already made a statement to the Silvan public prosecutor. At his request, that statement of 30 September 1994 was read out to him. He stated that he maintained it. He was under no pressure and denied the allegations that had been made to that effect. His house and property had not been burned. In July 1993, there were clashes between Ormandışı and Boyunlu village, after which the terrorists fled. After the incident, the village was searched by village guards. In the course of the incident, two people were killed. His house was not burned at that time. He had not applied to any authority.

Statement by Ebedin Sezgir dated 2 July 1996 and taken by a public prosecutor

87. The witness was not in the village at the time of the incident but was told that clashes broke out between people not from the village, presumably terrorists, and village guards from Boyunlu and Ormandışı. Those people fled through the village. Two people were killed during the clashes. He had not heard or seen that the applicant's house or garden were burned. He had known Mehmet Safi Arancak, who had been killed in an armed clash with the security forces in the winter months of 1994. There were 25 households

in the village, and the applicant was still living there working in his orchard and garden.

Statement by Ahmet Baykuşak dated 14 April 2000 and taken by gendarmes

88. The witness lived in Bayrambası village, located in an area subject to frequent terrorist incidents. Many villagers abandoned their homes because of the harassment from the terrorists, and moved to safer areas protected by village guards and the security forces. About that time, the applicant moved to Ormandışı, taking out the windows and doors of his house in the Basoğ district to sell. As the house was abandoned, it fell into ruin, though the concrete parts were still sound. His house was not burned down or destroyed by village protectors. He guessed that the applicant was influenced by his son who lived in Germany and was a member of the PKK.

Statement by Kamil Sampil dated 14 April 2000 and taken by gendarmes

89. The witness lived in Boyunlu village, as he had been forced to leave his former house and gardens in the Pista valley due to intensive terrorist activity. Many others, including the applicant, who was a relative of his, did the same. The applicant's house in the Basoğ district was also harassed by terrorists. On one occasion there was a PKK raid on the valley, during which Sadık Sampil and Medeni Sampil were injured and terrorists escaping from the battle entered the applicant's house. The applicant abandoned his house there and came to live in Ormandışı. He returned to remove the wooden parts. The concrete parts of the house still stood though some stone had collapsed as he had removed beams. There was no question of village guards tearing down his house. All the villagers knew that the applicant's sons lived in Germany and supported the PKK.

3. Photographs

Photographs submitted by the Government

90. On 15 July 1998, the Government provided two photographs, accompanied by a procès-verbal dated 11 September 1996.

91. The two photographs showed a man, purported to be the applicant, standing outside his house at Orrmandisi. The one-storey house was roofed and intact.

Photographs submitted by the applicant

92. On 22 June 2000, the applicant's lawyer submitted two colour photographs of the applicant standing outside his house. They showed a derelict building, without roof, with bricks and stones remaining up to the height of the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

93. The Court refers to the overview of domestic law derived from previous submissions in other cases, in particular the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 28-43, the *Menteş and Others v. Turkey* judgment of 28 November 1997, *Reports* 1997-VIII, §§ 36-51; the *Selçuk and Asker v. Turkey* judgment of 24 April 1998, *Reports* 1998-II, §§ 33-45; the *Gündem v. Turkey* judgment of 25 May 1998, *Reports* 1998-III, §§ 32-45; and no. 23819/94, *Bilgin v. Turkey* (Sect. 2), judgment of 16 November 2000.

A. State of emergency

94. Since approximately 1985, serious confrontations have occurred in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has claimed the lives of thousands of civilians and members of the security forces.

95. Two principal decrees relating to the south-eastern region have been made under the Law on the State of Emergency (Law no. 2935, 25 October 1983). The first, Decree no. 285 (10 July 1987), established a regional governorship of the state of emergency in ten of the eleven provinces of south-eastern Turkey. Under Article 4 (b) and (d) of the decree, all private and public security forces and the Gendarmerie Public Peace Command are at the disposal of the regional governor.

96. The second, Decree no. 430 (16 December 1990), reinforced the powers of the regional governor, for example to order transfers out of the region of public officials and employees, including judges and prosecutors, and provided in Article 8:

“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.”

B. Constitutional provisions on administrative liability

97. Article 125 §§ 1 and 7 of the Constitution provides as follows:

“All acts or decisions of the authorities are subject to judicial review...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

98. This 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 liability is of an absolute, objective nature, based on 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.

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

C. Criminal law and procedure

100. The Criminal Code makes it a criminal offence:

- 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 subject an individual to torture or ill-treatment (Articles 243 in respect of torture, and Article 245 in respect of ill-treatment, inflicted by civil servants); and
- to damage another’s property intentionally (Articles 526 *et seq.*).

101. 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. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not to bring a prosecution (Article 153). Complaints may be made in writing or orally. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

102. 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. In these circumstances proceedings may be initiated by the (non-military) persons concerned before the competent authority under the Code of Criminal Procedure, or before the suspected persons’ hierarchical superior (Articles 93 and 95 of Law 353 on the Constitution and the Procedure of Military Courts).

103. If, at the relevant time, the alleged author of a crime is a State official or civil servant, 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.

D. Civil-law provisions

104. 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. Pursuant to Article 41 of the Code of Obligations, an injured person may file a claim for compensation against an alleged perpetrator who has caused damage in an unlawful manner whether wilfully, negligently or imprudently. Pecuniary loss may be compensated by the civil courts pursuant to Article 46 of the Code of Obligations and non-pecuniary or moral damages awarded under Article 47. Damage caused by terrorist violence may be compensated out of the Aid and Social Solidarity Fund.

E. Impact of Decree no. 285

105. In the case of alleged terrorist offences, the public prosecutor is deprived of jurisdiction in favour of a separate system of State security prosecutors and courts established throughout Turkey.

106. The public prosecutor is also deprived of jurisdiction with regard to offences allegedly committed by members of the security forces in the state of emergency region. Decree no. 285, Article 4 § 1, provides that all security forces under the command of the regional governor (see paragraph 50 above) shall be subject, in respect of acts performed in the course of their duties, to the Law of 1914 on the prosecution of civil servants. The Law of 1914 has been replaced by another law in the meantime. Thus, any prosecutor who receives a complaint alleging a criminal act by a member of the security forces must make a decision declining jurisdiction and transfer the file to the Administrative Council. These councils are made up of civil servants, chaired by the governor. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

THE LAW

I. THE COURT'S ASSESSMENT OF THE FACTS

A. General Principles

107. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

108. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them (see the *Klaas v. Germany* judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see the *Klaas* judgment cited above, p. 18, § 30).

109. Where allegations are made under Articles 2 and 3 of the Convention however, the Court must conduct a particularly thorough scrutiny (see, *mutatis mutandis*, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, p. 24, § 32). When there have been criminal proceedings in the domestic court concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court’s jurisdiction is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense.

B. The Court's evaluation in this case

1. Background

110. The applicant lived in a hamlet Basoğ about two kilometres from the village of Ormandışı, in the Silvan district. Contrary to the assertion in the applicant's memorial, this is not the same village, Ormanici, which has been the subject of a factfinding investigation by the European Commission of Human Rights in application no. 21689/93, *Ahmet Ozcan and Others v. Turkey*. The village in the Ozkan case, Ormanici, is situated in the Eruh district, over a hundred kilometres to the south-east. The references in the submissions and statements provided by the applicant which refer to the village Ormanici are therefore inaccurate (see paragraphs 9-19 and 31-32 above).

111. The village of Ormandışı is situated in an area in south-east Turkey where in 1993 the PKK were conducting activities and the security forces were carrying out operations against them.

112. The village of Ormandışı did not appear to have any village guards, i.e. villagers appointed by the authorities with a view to protecting the villages and assisting the security forces. The village of Boyunlu, which lay nearby, did have village guards, of which the chief village guard was Ihsan Simpil (also spelled Sumbul in some documents). His brothers Eşref and Mehmet Zaman Simpil were also village guards.

113. It appears that there had been a previous incident between the two villages in or about January 1992. A petition dated 11 January 1992 by two villagers from Ormandışı alleged that Ihsan, Eşref and Mehmet Zaman had fired on the village and that Boyunlu village hated the Ormandışı villagers due to a land dispute between the two villages. A longstanding land dispute was also referred to in a petition of 27 July 1993 and statement of 2 August 1993 (see paragraphs 58-59 above). The Court has therefore had to take into account that there may be a history of ill-feeling and rivalry between the two villages concerned in this application.

2. The events of 23 July 1993 in Ormandışı village

114. While the applicant in his memorial refers to the incident in Ormandışı occurring on the evening of 24 July, all the other documents and statements of witnesses taken in the domestic proceedings give the date as 23 July 1993. The Court considers, on the basis of the evidence, that the incident took place on 23 July, towards the evening.

115. The statements taken from the village guards who acknowledged involvement in events give a consistent account. They state that a clash occurred between some Boyunlu villagers out collecting wood and members of the PKK. Two of the Boyunlu villagers were wounded. This is supported by medical reports indicating that they were taken for treatment for bullet

injuries. One of these villagers was the brother of the head village guard Ihsan Sampil. According to this version, the village guards who went to the assistance of the injured men then pursued the terrorists as they fled into and through Ormandışı where the firing continued. Two villagers were killed as a result of the random firing by the terrorists.

116. Almost all the statements taken from the Ormandışı villagers do not refer to any clash occurring. Statements dated 31 August 1993 by Mehmet Sabri Matyar, 1 September 1993 by Sevkett Aslan, 2 September 1993 by Hasan Manar and 13 September by Mehmet Zeki Matyar and Azize Matyar denied that there had been any terrorists or any clash. The only statement taken from a villager which referred to a clash between guards and terrorists was the first statement, dated 24 July 1993, of Mehmet Zeki Matyar, who was the father of the young boy killed. This statement, which is completely at odds with his later statement of 13 September 1993, makes no claim that he himself witnessed any of the incident. Rather he was told that his son had been killed in a clash and that he was put under pressure, indeed assaulted with a stick, by Bışar Nibak to claim that it was the guards who were responsible for the shooting. This statement is supported by a medical report indicating that Mehmet Zeki Matyar was examined on 24 July 1993 at the Silvan emergency clinic and found to have bruising on the head, back and ribs, as well as suspected broken ribs.

117. The applicant has submitted that Mehmet Zeki Matyar was put under pressure by the gendarmes to sign both the statement of 24 July 1993 and to countersign the gendarmes' incident report of the same date and that his statement to the public prosecutor of 13 September 1993 gave his real personal account of events, namely, that he had been in the village and had seen his son shot by the head village guard and that there had been no armed clash. It may be observed however that his wife, in her statement of 13 September 1993, gave yet a different version: that her son had been with her and had been hiding inside a house with her when a bullet hit him fired from outside. Her husband, on her account, was outside the village and therefore was not in a position to witness the killing.

118. The Court further notes that in the latest statements submitted by the applicant and members of his family in June-July 2001, it is now stated that there was a clash between the village guards and the terrorists outside the village. This appears to accept the account of the village guards as to the incident at the stream. The applicant's statement however goes on to infer that the village guards then came to Ormandışı to shoot up the village as revenge for the fact that two village guards had been wounded. This is the first suggestion that this was the reason for the incident.

119. The Diyarbakır Aggravated Felony Court which heard evidence concerning the alleged murder of Seve Nibak and Cihan Matyar found, in its judgment of 1 July 1996, that a clash had taken place. It accepted the accounts of the village guards and gendarmes that the terrorists had escaped

towards Ormandış1 and that the village guards followed in pursuit. It summarised the evidence of the villagers and found that none had claimed in its proceedings that they had witnessed the Boyunlu village guards shoot the two dead villagers. It commented that some witnesses had stated that the villagers had been under pressure from the terrorists to hold the village guards responsible. It concluded that there was insufficient evidence to convict the village guards in the circumstances.

120. The killing of the two villagers is outside the scope of the Court's examination in this case. The decision of the Diyarbakır criminal court however highlights the contradictory nature of the evidence concerning events in Ormandış1.

121. This Court is in no better position, more than eight years after the event, to resolve the inconsistencies in the accounts, in particular as to whether the village guards entered the village in pursuit of terrorists and shot in defence or to stop the terrorists' flight, or whether they entered the village to wreak some kind of retaliation on its inhabitants. The history of ill-feeling between the villages could suggest additional motivation for the Boyunlu village guards to pick on Ormandış1 or equally indicate that the Ormandış1 villagers might be quick to blame the Boyunlu village guards for their problems. The assertion that the villagers were under pressure from the gendarmes to blame the PKK is matched by the assertion that they were under pressure from the PKK to blame the village guards.

122. The evidence does support, and the applicant now appears to accept, the village guards' account of how events began with a clash with the PKK outside Ormandış1. Gendarmes arrived in support of the village guards and to pursue the terrorists. The Court is not prepared to make any further findings as to what occurred within the village of Ormandış1.

3. The alleged attack on the applicant's home

123. The applicant claims that his house and property in Basoğ were attacked and damaged by the village guards and gendarmes, after they had raided Ormandış1. In his memorial, he claims that the walls were riddled with bullets and all the windows broken. The guards set fire to some sacks outside, destroyed farming equipment also by riddling them with bullets and burned the harvested crops.

124. The applicant first complained about these matters in his statement dated 28 July 1993 taken by the HRA. He has maintained his complaints in subsequent statements of 28 October 1998 and 27 June 2001.

125. There are a number of contradictions in these statements which reflect negatively on their reliability.

In particular, the statements vary as to the degree of damage to the house. In his first statement of 28 July 1993, he alleged that his house was burned as well as his crops and then he stated that nothing had happened to the contents of the house. In the statement dated on 27 June 2001, he again

states that his house was set alight and that it was burned down. In a statement submitted on 22 June 2000 in response to the Government's allegation that his house was still standing, he stated that after the attack on 23 July 2000 his house was damaged by gunfire but still habitable. In this version, he alleges that his own son Burhan burned down the house a year later in order to secure his father's release from Bayrambası gendarme station.

126. It is true that these statements are consistent insofar as they refer to the house and agricultural equipment being damaged by gunfire and the crops being burned. However, the Court observes that there was not, until recently, any independent corroboration of these allegations. None of the statements submitted in the domestic proceedings referred to the applicant's house being damaged, as these proceedings were concerned, it must be said, with events in Ormandış1, so that this absence of comment is not surprising. The applicant was however questioned by the public prosecutor on 30 September 1994, following his application to Strasbourg, and he stated that his house, garden and fields had not been burned by village guards. A statement to the Silvan public prosecutor dated 2 July 1996 also recorded that his house had not been burned during the incident and denied the previous allegations of damage, claiming that he was not under pressure to do so. The applicant claims before the Court that these statements to the public prosecutor were not true and that he denied his claims out of fear and intimidation. The Court shall examine these allegations below.

127. In June-July 2001, the applicant submitted for the first time statements by members of his family who claimed also to have witnessed the village guards attack the family home at Basoğ. The Court observes that the statements from his wife and daughter are almost identical word for word and give the impression of being reduced to a formula. They are difficult to reconcile with the applicant's own statement, right after the event, that none of the household items inside the house were damaged. The statement of his wife and daughter now give a detailed list of household goods which are purported to have been rendered unusable. The Court further notes that the statement of the applicant's son, Burhan, makes no mention of the fact that, according to the applicant's statement of 28 October 1998, it was Burhan who burned their house down after the incident, acting under threats from the gendarmes. While the statement of Halime Eruncak dated 2 July 2001 referred to the village guards going to Basoğ and shooting up the applicant's house, this villager was, on her own account, in Ormandış1 village two kilometres away at the time of the incident and her statement does not purport to give eye-witness testimony.

128. The Court does not find sufficient, consistent or reliable evidence to establish, to the necessary degree of proof, that the village guards or gendarmes damaged the applicant's home and property as alleged.

4. Subsequent events

129. The Court finds it impossible to deduce from the varying statements submitted by the applicant whether, and if so for how long, he continued to live in his house at Basoğ. According to some accounts, he remained there for either six months or a year until he came under pressure from the gendarmes and went to live with his son in Ormandışı. According to his wife, they went to live in Silvan.

130. It is not disputed that the applicant did not approach the public prosecutor concerning his complaints against the village guards. After he had submitted his complaint to Strasbourg via the HRA, however, he alleges that he was summoned by the gendarmes to Bayrambası and threatened by them because of his application. It appears that the Commission indeed communicated the application to the Government on 12 July 1994. This led to an investigation into his allegations, as shown by a protocol dated 29 September 1994 drawn up by the gendarmes, which contained a denial that the applicant's house and crops had been burned by village guards. The next day, the applicant made a statement to the Silvan public prosecutor which referred to his application to the Commission and also denied any misconduct by village guards. On the basis of this denial, and the fact that Mehmet Safi Arancak, who had complained at the same time as the applicant, had died, the public prosecutor issued a decision not to prosecute for a lack of evidence.

131. The applicant further alleged that he was detained by the gendarmes at about this time, a year after the incident (see the statement of 28 October 1998, at paragraphs 31-32 above), apparently for the purpose of coercing his son into burning his house down. The Court has already noted that the statement of the son makes no mention of this. The applicant's latest statement of 27 June 2001 goes on to specify that he was detained for 14 days and adds that he was tortured and ill-treated. No details are given. Again, it is not apparent that any complaint of torture was made to a public prosecutor.

132. On or about 11 September 1996, photographs were taken of the applicant outside a house and submitted to the Commission by the Government in 1998. The applicant has explained that the gendarmes took a photograph of him outside his son's house in Ormandışı as the gendarme commander wanted a photograph of a house that was still standing. He has submitted himself photographs of a ruined house, which he claims was his house, burned down by his son under threat from the gendarmes.

133. The applicant was questioned again by the public prosecutor on 2 July 1996, the public prosecutor also taking a statement from the village *muhtar*. Neither is recorded as upholding any allegation against the village guards concerning damage to the applicant's property. The applicant asserts that both he and the *muhtar* were threatened by the gendarmes before they saw the public prosecutor and that he was too scared to say that his house

had been burned down. There is no independent evidence in support of this assertion.

5. Complaints made by Halime Eruncak

134. In her statement dated 2 July 2001, Halime Eruncak, the widow of Mehmet Safi Eruncak (Arancak), states that she wishes to continue the complaints introduced by him on 24 January 1994 concerning damage to their home and property in Ormandışı and also to complain about the circumstances of his death (see paragraph 39).

135. The Court recalls that the complaints introduced on behalf of her husband were struck off by the Commission in their decision of admissibility dated 13 May 1996. The applicant's representatives in this case have not provided a letter of authority signed by her nor have they made any submissions to the Court regarding the substance of her complaints or their compliance with the admissibility criteria set out in Article 35 of the Convention, in particular, the six-months rule. Given the considerable lapse of time since the events in issue, the Court is not prepared to restore the complaints struck out on 13 May 1996 or to entertain any new complaints in the context of this application.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

136. Article 3 of the Convention provides:

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

137. The applicant submits that the armed attack by village guards and gendarmes on him, his family, his house and hamlet and the experience of being forced to flee for their lives amounted to inhuman and degrading treatment or punishment under Article 3 of the Convention. He refers *inter alia* to the deliberate, punitive and life-threatening nature of the violence involved. He also claims that violations of Article 3 arise from the alleged failure of the State adequately to regulate the village guard system or to investigate allegations of serious ill-treatment.

138. The Government denies the applicant's version of events and submit that any damage or injury caused in the village was the result of terrorists firing as they were pursued through Ormandışı.

139. The Court does not find it established, to the required degree of proof, that the applicant's home and family were attacked in the manner alleged.

140. It accordingly finds no violation of Article 3 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

141. Article 8 of the Convention provides:

“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.”

142. Article 1 of Protocol No. 1 provides in its first paragraph:

“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.”

143. The applicant submits that the deliberate attack on his family’s home, the forced expulsion from their village, the destruction of their property, crops and other materials constituted very clear violations of both these provisions. There was also, in his view, sufficient evidence to show a systematic practice of village destruction by the authorities.

144. The Government denies the applicant’s version of events and submit that any damage or injury caused in the village was the result of terrorists firing as they were pursued through Ormandışı.

145. The Court recalls that the evidence has not made it possible to reach any findings as to when the applicant’s house was destroyed and by whom, or at what time he ceased living there and in what circumstances. Consequently, his complaints as to State responsibility for damage to his home and property have not been substantiated and no findings of violation of the above provisions can be made.

IV. ALLEGED VIOLATIONS OF ARTICLES 14 AND 18 OF THE CONVENTION

146. Article 14 of the Convention provides:

“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.”

147. Article 18 of the Convention 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.”

148. The Court, on the basis of the facts as established in this case, finds no violations of these two provisions.

V. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

149. The applicant complains that, as regards his complaints under the Convention, no effective remedy is available in south-east Turkey as required by Article 13 of the Convention. In the alternative, he relies on Article 6 of the Convention, claiming that he had no access to court to obtain compensation for interference with his civil rights.

150. Article 6 § 1 of the Convention provides in its first sentence:

“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.”

Article 13 of the Convention provides:

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

151. The applicant submits that there were no effective remedies available to him in the circumstances, as the attack was instigated and carried out by the village guards and security forces, that the villagers were threatened into accepting a false account of events and that it was impossible for the applicant in an area under emergency law and controlled by the security forces to have his account listened to or acted upon by anyone in authority. Such investigation as was carried out into his complaints was wholly inadequate and incomplete.

152. The Government submit that the applicant himself made no complaint to the authorities and, when questioned by the public prosecutor, did not allege that any damage had been caused to his property. The event that was subject of the applicant’s allegations was investigated by the Silvan public prosecutor, who took statements from villagers and village guards. At the end of the investigation and trial, the village guards were released, the evidence against them being held insufficient.

153. The Court has not found it established that village guards or gendarmes damaged the applicant’s property in the way alleged or at all. In the circumstances, it finds no basis for holding that the applicant has been denied access to court in the determination of any civil claim contrary to Article 6 of the Convention.

154. Insofar as the applicant invokes Article 13 of the Convention, the Court recalls that according to the Court’s case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see the *Boyle and Rice v. the United Kingdom*

judgment of 27 April 1988, Series A no. 131, § 52). Having regard to the lack of substantiation of the applicant's factual claims, he cannot be regarded as having an "arguable claim". Article 13 is therefore inapplicable to his case, and no violation can be found.

VI. ALLEGED VIOLATION OF FORMER ARTICLE 25 OF THE CONVENTION

155. This provision (now Article 34 of the Convention) 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 this 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..."

156. The applicant complained that he had been intimidated in relation to his application to the Commission and Court. He submitted that he had been detained several times by gendarme officers, intimidated into signing false statements by the gendarmes on 29 September 1994, by the public prosecutor on 30 September 1994, and that whilst in detention he was repeatedly questioned about his application and threatened. Further, gendarmes had attempted to mislead the Commission by taking photographs wrongly purporting to be of his house.

157. The Government submitted that the applicant had not lodged any complaint himself with the authorities and that the genuineness of his application was in doubt. He had been questioned by the public prosecutor of Silvan, without making any complaint. They denied that he had ever been threatened or intimidated because of his application to the Commission or Court.

158. The Court recalls 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. 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 using a Convention remedy.

However, the issue of whether or not contacts between the authorities and an applicant amount 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 the context of the questioning of applicants

about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual petition (e.g. the *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, pp. 1899-1990, §§ 115-117; *Salman v. Turkey* [GC], 21986/93, § 130 with further references, to be reported in ECHR 2000-VIII).

159. The Court has not found that the applicant has substantiated his complaints about detention and ill-treatment. It has found (see paragraph 130 above) that on 29 September 1994 the applicant was questioned about the events which were the subject-matter of his application to the Commission by the gendarmes. However, the Court's evaluation of the evidence before it leads it to find that there is an insufficient factual basis to enable it to conclude that the authorities of the respondent State have intimidated or threatened the applicant in circumstances calculated to induce him to withdraw or modify his complaint or otherwise interfere with the exercise of his right of individual petition.

160. Accordingly the Court finds that the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 3 of the Convention;
2. *Holds* unanimously that there has been no violation of Article 8 of the Convention or Article 1 of Protocol No. 1;
3. *Holds* unanimously that there has been no violation of Articles 14 or 18 of the Convention;
4. *Holds* unanimously that there has been no violation of Articles 6 or 13 of the Convention;
5. *Holds* by four votes to three that the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention.

Done in English, and notified in writing on 21 February 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Lucius CAFLISCH
President

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

L.C.
V.B.

PARTLY DISSENTING OPINION OF JUDGE HEDIGAN
JOINED BY JUDGE KÜRIS

I am in agreement with the decision of the Court save only where it finds that the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention. In this regard I must regretfully dissent from the decision of the majority.

Article 25 (now replaced by Article 34) is central to the system of individual petition. Applicants must be able to bring their complaints before the Court without fear of reprisal and free from all intimidation aimed at raising a fear of such reprisal or indeed any form of prejudice in the future as a result of their application. There must be no pressure brought to bear with the hidden aim of such intimidation. Such pressure may take many forms and the questioning of applicants about their application to the Court without convincing explanation by the authorities as to the reasons therefor must always in my opinion give rise to a presumption that such questioning was in fact illicit pressure.

I agree that each case must be judged on its own facts as to whether illicit pressure was brought to bear. Nonetheless, as a general rule, in my opinion, where authorities bring before them an applicant to the European Court of Human Rights and question them about their application, a presumption arises that it is with the intention of discouraging them from proceeding.

In this case, the Court has found (see paragraph 130 above) that on 29 September 1994 the applicant was questioned about the subject matter of his application to the Commission by the gendarmes. He also had been summoned to an interview with the Silvan public prosecutor which took place the following day. No reasons have been advanced as to why the gendarmes needed to conduct such an interview prior to the applicant's interview with the prosecutor the following day. Such actions call for a clear and convincing explanation from the respondent authorities. No such explanation has been forthcoming.

In the circumstances, in my opinion, the presumption I refer to above has not been rebutted and I therefore find that the Government have failed to comply with their undertaking not to hinder in any way the effective exercise of the right of petition under the Convention (see the *Bilgin v. Turkey* (Section 2) judgement of 16 November 2000, § 134, unreported).

I should add that even if I did not believe that a presumption arises as I note above, on the facts of this case I would still have found that the coincidence of the dates of interview without explanation provides the factual basis upon which to conclude that the authorities of the respondent State did in fact attempt to intimidate the applicant by questioning him about his application.