



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

FOURTH SECTION
[In its composition before 1 November 2001]

CASE OF YÖYLER v. TURKEY

(Application no. 26973/95)

JUDGMENT

STRASBOURG,

24 July 2003

FINAL

24/10/2003

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 Yöyler v. Turkey,

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

Mr A. PASTOR RIDRUEJO, *President*,

Mr L. CAFLISCH,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ,

Mrs S. BOTOUCHAROVA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 March and 26 October 2000 and on 3 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 26973/95) against the Republic of Turkey lodged with the European Commission of Human Rights under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Celalettin Yöyler ("the applicant"), on 4 April 1995.

2. The applicant, who had been granted legal aid, was represented by Ms A. Stock, a lawyer practising in London. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicant alleged that State security forces had destroyed his house and possessions in the village of Dirimpınar. He relied on Articles 3, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No 1.

4. The application was declared admissible by the Commission on 13 January 1997 and 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 Fourth 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. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The Court, having regard to the factual dispute between the parties over the circumstances surrounding the alleged destruction of the applicant's property, conducted its own investigation pursuant to Article 38 § 1 (a) of the Convention. The Court appointed three delegates to take evidence from witnesses at hearings conducted in Ankara from 2 to 5 April 2001.

7. 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 § 3 *in fine*). The parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section IV.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Celalettin Yöyler, is a Turkish citizen who was born in 1941 and is at present living in Istanbul (Turkey). Until June 1994 the applicant lived in the village of Dirimpınar, attached to the Malazgirt district in the province of Muş. Between 1966 and 1994 the applicant was the *imam* (religious leader) of the village. As a result of his involvement with a number of political organisations, including the Social Democratic Populist Party (SHP), the People's Labour Party (HEP) and the Democracy Party (DEP), of which he became the local leader, he was imprisoned on a number of occasions. The applicant left and had never returned to his village prior to the alleged events in question, since he had been threatened with death. The application concerns the applicant's allegations that State security forces destroyed his house.

A. The facts

10. The facts surrounding the destruction of the applicant's house are in dispute between the parties.

1. Facts as presented by the applicant

11. In 1994 three young women from the village, all of whom were related to the applicant's extended family, decided to join the PKK.

12. On 15 September 1994 the gendarme unit commander of Malazgirt came to the village and threatened to burn the village to the ground if the women were not brought to him within three days.

13. The applicant's family and the families of the young women, frightened by this threat, loaded up their possessions and fled. However, the gendarmes, accompanied by special teams, forced them to return to the village and to unload their possessions. They gathered the families into a house by force, where they assaulted certain of them, including the applicant's wife. They withdrew from the village telling the villagers to take good photographs of their houses, as that was all they would have to remember them by.

14. On 18 September 1994, at 8 p.m., special gendarme teams and village guards came to the village. Villagers were ordered to go into their homes and to turn off their lamps. The security forces then took diesel oil from the villagers' tractors and barrels and set fire to the houses of the applicant and his family. The applicant was out of the village, in İzmir, when his house was burned down.

15. On 23 September 1994 the applicant filed a criminal complaint with the Karşıyaka public prosecutor in İzmir for submission to the Malazgirt public prosecutor, calling for an on-site investigation and the institution of proceedings against the perpetrators. This document was registered as no. 35798 by the Karşıyaka public prosecutor's office.

16. On 24 September 1994 the applicant made a press statement through a human rights body, the Human Rights Association, which was carried the same day in the pro-Kurdish newspaper *Özgür Ülke*.

17. On 8 November 1994 the public prosecutor (no. 31583) sent a letter to the Gendarme Command in Malazgirt requesting a report on the matters raised in the applicant's allegations. He repeated his request in letters of 8 December 1994 (no. 30965) and 2 February 1995 (no. 31583).

18. By letter of 2 March 1995, the Gendarme Central Command in Malazgirt replied to the prosecutor's letter of 8 December 1994 by submitting the records of the statements they had taken. The prosecutor took further statements in May 1995, and the gendarme commander M.A. in June and November 1995. Since November 1995, there has been no development in the investigation.

2. Facts as presented by the Government

19. The applicant left the village of Dirimpinar of his own free will, together with his spouse and children. He settled first in Adapazarı and then in Istanbul or Izmir. The Government submitted various records of the statements taken by the authorities in relation to the burning of the applicant's house.

(a) Statements taken on 29 May 1995

20. Mr Muhsettin Yöyler, the mayor (*muhtar*) of the village of Dirimpinar, stated to the public prosecutor that on the night of the incident,

he had seen some persons setting fire to the applicant's house but as they had their faces covered, he had not been able to recognise them. He did, however, recognise one of them, Ahmet (A.K.), a village guard from the village of Nurettin.

The statement by the applicant's fellow villager, Mr Abdulcebbar Sezen, revealed that the applicant had not been in the village during the incident, but that his family had been.

(b) Statements dated 19 June 1995 before the gendarme commander M.A.

21. Mr Muhsettin Yöyler claimed that although he had seen the applicant's house burning, he had not seen who had set fire to it, as it was dark.

Mr Süleyman Yılmaz and Mr Ömer Sezen from the same village made identical statements.

(c) Statements of 22 November 1995 given by the applicant's fellow villagers to the gendarme commander M.A.

22. Mr Aydın Sezen declared before the same gendarme commander that the applicant had always acted in a subversive manner towards the State, that his house had indeed been burned, that he had not seen who had set fire to it, but it had definitely not been the security forces. He also added that all the villagers were pleased that the applicant had left the village. In a further statement, Mr Muhsettin Yöyler told M.A. that the applicant had always been a PKK supporter, that the applicant and his family had not been in the village on the night of the incident, that he had not seen who had set fire to the house, but that he was sure that it was not the security forces. He also stated that the applicant himself might perhaps have done it.

23. Mr Abdulcebbar Sezen was recorded as having declared to the police officer that the applicant was a member of the PKK, that he used to be a source of trouble in the village and that the villagers were pleased that he had left the village. He also stated that the applicant's house had definitely not been burned by the security forces or the gendarmes and that the security forces had always helped the villagers.

24. Mr Muhlis Umulgan recalled having declared that the applicant was collaborating with the PKK, that on the night of the incident he had seen the applicant's house burning but had been afraid to go out, as he knew that the PKK were in the region at the time. He added that the security forces had not set fire to the applicant's house.

25. As to Süleyman Yılmaz, he declared that the applicant had not been in the village when the incident had occurred, that three days before the fire his spouse and children had left the village as well, taking the furniture, and that although some days before the incident security forces had been in the village, they had not been there during the incident. He finally stated that he

did not know who had set fire to the applicant's house but was sure that it had not been the gendarmes.

26. The investigation could not continue in the applicant's absence. According to a letter of 2 April 1995 from the Gendarmerie Central Command in Malazgirt, the applicant had left Dirimpınar for an unknown place, probably Adapazarı.

B. Documents submitted by the parties

1. The documents submitted by the applicant

27. The documents contained under this heading concern the applicant's statement letters and his petitions to the authorities about his complaints as well as the statements made by several witnesses in support of the applicant's allegations.

(a) The applicant's statements and petitions concerning his allegations

28. The documents listed below pertain to the applicant's complaints about the destruction of his house by the Malazgirt gendarmerie forces.

(i) Petition by the applicant dated 23 September 1994 to the Karşıyaka public prosecutor's office for submission to the Malazgirt public prosecutor's office;

(ii) Letter from the applicant to Kerim Yıldız of the Kurdish Human Rights Project ("KHRP") in London, containing his complaints about the destruction of his property;

(iii) A report dated 23 November 1994, signed by the applicant, setting out the sequence of the impugned events and the details of the property destroyed;

(iv) Letter of 11 May 2000 from the applicant to Kerim Yıldız and Philip Leach of the KHRP, in which he set out his efforts to exhaust domestic remedies in regard to his complaints;

(v) Letter of 4 July 2000 from the applicant to the KHRP concerning the statements taken by the gendarmerie from the *muhtar*, Muhsettin Yöyler.

(vi) Letter dated 9 December 2000 from the applicant to Kerim Yıldız of the KHRP, containing his comments about the statements taken by the gendarmes from his fellow villagers.

(b) Statements given by the applicant's witnesses

29. The witnesses mentioned below alleged in their statements that gendarmes had burned the applicant's house along with some other houses in Dirimpınar on 18 September 1994.

(i) Statements dated 20 May 2000 by Dilsa, Saliha, Leyla, Evin, Gülüstan and Ziri (Esma) Yöyler and Kutbettin Firtına;

- (ii) An undated statement by Ahmet Kınay and statements dated 23 December 1996 and 20 May 2000 by Bahattin Kınay;
- (iii) Statement of 9 January 2001 by Bahattin Sezen;
- (iv) Statement of 3 November 2000 Zeynel Abidin Daş together with his statement to the Sakarya Human Rights Association, also dated 3 November 2000.

(c) Press releases and articles

30. The applicant produced press releases and articles concerning the alleged destruction of his property by State security forces as well as the general situation in south-east Turkey at the relevant time.

- (i) A Turkish Daily News article dated 15 September 1994;
- (ii) Statement of 23 September 1994 by the applicant to the press complaining about the destruction of his property and explaining the general situation in south-east Turkey;
- (iii) *Özgür Ülke* newspaper articles dated 24 September 1994 concerning the burning of the applicant's house along with other houses in villages in the Nusaybin and Malazgirt districts.

(d) Other documents

- (i) A copy of a plan of the village of Dirimpınar;
- (ii) A copy of the applicant's title deed, to his house, land and buildings in Dirimpınar;
- (iii) Guiding Principles on Internal Displacement issued by the Office of the UN High Commissioner for Human Rights.

2. Documents submitted by the Government

31. The documents listed below concern the statements taken from various witnesses in regard to the applicant's allegations and the investigation conducted by the national authorities into the impugned events as well as the criminal proceedings against the applicant for having been involved in the PKK.

(a) Statements taken from the applicant's fellow villagers

32. The witnesses mentioned below alleged in their statements to the authorities that they did not know or had not seen who had burned the applicant's house. They deny the applicant's allegations that the gendarmes burned his house. They claimed that the applicant was involved in the PKK and that for this reason nobody had wanted him in the village.

- (i) Report dated 27 December 1994, containing statements by Muhsettin Yöyler, taken by the gendarmes, about the applicant's allegations;

(ii) Statements dated 28 April 1999, taken by the Malazgirt Chief Public Prosecutor, and made by Zilkif and Gürsel Polat, Abdulmuttalip, Abdulkerim and Abdulbaki Koçak and Celal Çelik;

(iii) Statements dated 29 April 1999, taken by the Malazgirt Chief Public Prosecutor, and made by Ali Haydar, Azmi, Yılmaz and Hüseyin Polat, İhsan Erkoçak, Mehmet, Kemal, Bahattin and Abdullah Koçak and Nizamettin and Ahmet Çelik.

(iv) Statement dated 20 May 2000 by Ahmet Kınay;

(v) Statements of 22 November 1995 and 20 June 2000 by Aydın Sezen;

(vi) Statements of 19 and 20 June 1995 and 20 and 23 June 2000 by Ömer Sezen;

(vii) Statements of 22 November 1995, 26 July 1996, 20 and 23 June 2000 by Muhlis Umulgan;

(viii) Statements of 19 and 20 June 1995, 22 November 1995 and 20 and 23 June 2000 by Süleyman Yılmaz;

(ix) Statements of 27 December 1994, 29 May 1995, 19 and 20 June 1995, 22 November 1995, 26 July 1996 and 20 and 23 June 2000 by Abdülcebbar Sezen;

(x) Statements of 27 December 1994, 29 May 1995, 19 and 20 June 1995, 22 November 1995, 26 July 1996 and 20 and 23 June 2000 by Muhsettin Yöyler.

(b) Documents concerning the domestic investigation

33. The documents below concern the authorities' investigation into the applicant's allegations of the destruction of his property by the gendarmes.

(i) Duty schedules of 15-20 September 1994;

(ii) Letters of 8 November 1994, 8 December 1994, 2 February 1995, 14 March 1995, 5 May 1995 and 7 August 1995 from the Malazgirt public prosecutor to the Gendarmerie Command in Malazgirt;

(iii) Letters of 2 March 1995, 21 April 1995 and 25 August 1995 from the Malatya District Gendarmerie Commander to the public prosecutor's office in Malazgirt;

(iv) Report dated 18 April 1994 drafted by the gendarmes;

(v) Assessment report of the scene of the incident, dated 19 June 1995 and drafted by the gendarmes;

(vi) Report dated 2 August 1995 drafted by the gendarmes;

(vii) Letter of 23 October 1995 from public prosecutor no. 30965 to the Magistrates' Court in Malazgirt;

(viii) Letter of 3 October 1996 from the Malazgirt District Governor to Mr Metin Alacuklu, an agricultural engineer, who was appointed as an inspector by the District Council;

(ix) Letter of 16 October 1996 from the Malazgirt District Governor to the Magistrates' Court;

- (x) Letter of 16 October 1996 from the Malazgirt District Governor to the Malazgirt District Gendarme Command;
- (xi) Letter of 6 November 1996 from the Malazgirt public prosecutor to the District Governor;
- (xii) Letter of 7 November 1996 from the Malazgirt Deputy District Commander to the Directorate of Agriculture in Malazgirt;
- (xiii) Investigation report of 19 November 1996 by Metin Alacuklu for submission to the District Governor's office;
- (xiv) Letter of 19 November 1996 from Metin Alacuklu to the Malazgirt District Governor;
- (xv) Decision of 15 January 1997 by the Commission on the Prosecution of Civil Servants to discontinue the proceedings against the gendarme officers accused of destruction of the applicant's property;
- (xvi) On-site report of 16 January 1997 by the The Malazgirt Chief Public Prosecutor;
- (xvii) Inspection report of 16 January 1997 concerning the burned buildings in the village of Dirimpınar;
- (xviii) Expert report and sketch maps dated 21 January 1997 on the burning of houses in Dirimpınar;
- (xix) Letter of 27 January 1997 from the Malazgirt Deputy Mayor to the public prosecutor's office in Malazgirt;
- (xx) Investigation report by the Malazgirt Chief Public Prosecutor for submission to the Chief Public Prosecutor's office in Muş;
- (xxi) Letter of 25 March 1997 from the Malazgirt District Governor to the Van Administrative Court;
- (xxii) The Van Administrative Court's decision of 1 April 1997 to uphold the decision given by the Commission on the Prosecution of Civil Servants on 15 January 1997;
- (xxiii) Letter of 4 June 1997 from the Muş Public Prosecutor to the Muş Assize Court and the latter's letter of the same day in reply;
- (xxiv) Letter of 5 June 1997 from the Muş Public Prosecutor to the Muş Assize Court and the latter's letter of the same day in reply;
- (xxv) Decision of non-jurisdiction by the Malazgirt Chief Public Prosecutor, dated 6 June 1997;
- (xxvi) Report dated 30 September 1997 signed by the Dirimpınar village *muhtar*, Mr Muhsettin Yöyler, and two of his fellow villagers;
- (xxvii) Permanent search warrant dated 14 November 1997 issued by the Malazgirt public prosecutor to find the perpetrators of the burning of the applicant's house;
- (xxviii) Reports dated 4 February 1998, 19 May 1998, 20 September 1998, 22 December 1998 and 17 September 1999 signed by the Dirimpınar village *muhtar*, Muhsettin Yöyler, and two gendarmes;

(xxix) Letters of 8 February 1998, 24 June 1998 and 6 April 1999 from the Malazgirt Deputy District Commander to the Malazgirt public prosecutor;

(xxx) Letters of 29 March 1998, 24 June 1998, 23 September 1998, 5 May 1999 and 22 September 1999 from the Malazgirt District Gendarme Commander to the Malazgirt Chief Public Prosecutor;

(xxxi) Letters of 11 March 1999 and 24 April 1999 from the Malazgirt public prosecutor to the Malazgirt Gendarme Command;

(xxxii) Report dated 24 March 1999, drafted and signed by three gendarmes;

(xxxiii) Letter of 1 October 1999 from the Malazgirt Public Prosecutor to the Chief Public Prosecutor's office in Muş;

(xxxiv) Undated documents indicating that Abdulcebbar Sezen and Celalettin Yöyler were no longer resident in the village, drafted by the village *muhtar*, Muhsettin Yöyler.

(c) Criminal proceedings against Ahmet Kınay

34. These documents concern the criminal proceedings brought against Ahmet Kınay, the applicant's fellow villager, for allegedly setting the applicant's house on fire. Ahmet Kınay was acquitted of the charges in a judgment of 6 May 1997 by the Muş Assize Court.

(i) Copy of a birth certificate belonging to Ahmet Kınay dated 23 October 1995;

(ii) Letter of 23 October 1995 from the Sakarya Chief Public Prosecutor to the Ministry of Justice;

(iii) Letter of 23 October 1995 from the Sakarya Security Director to the Sakarya Chief Public Prosecutor's office;

(iv) Report dated 23 October 1995 drafted by police officers in Sakarya;

(v) Arrest warrant *in absentia*, issued by the Malazgirt Magistrates' Court on 25 October 1995, against Ahmet Kınay;

(vi) Report dated 13 November 1996 for the arrest of Ahmet Kınay;

(vii) Body search report concerning Ahmet Kınay;

(viii) Petition of 15 November 1996 by Ahmet Kınay filed with the Sakarya public prosecutor's office for submission to the Malazgirt public prosecutor's office;

(viii) Letters of 15 November and 26 December 1995 from the Malazgirt public prosecutor to the Chief Public Prosecutor's office in Adapazarı;

(ix) Letter of 15 December 1995 from the Sakarya Security Director to the Public Order Department;

(x) Petition of 18 November 1996 filed by Ahmet Kınay with the Sakarya Criminal Court on duty, for submission to the Malazgirt Criminal Court, which includes his request for release;

(xi) Petition of 18 November 1996 from the representative of Ahmet Kınay to the Chief Public Prosecutor's office in Sakarya for submission to the Chief Public Prosecutor's office in Malazgirt;

(xii) Decision of non-jurisdiction by the Malazgirt Chief Public Prosecutor, dated 9 September 1996, addressed to the Malazgirt District Administrative Council;

(xiii) Decision of 9 September 1996 by the Malazgirt Chief Public Prosecutor to sever the criminal proceedings against the gendarmes from the criminal proceedings against Ahmet Kınay;

(xiv) Indictment of 7 February 1997 by the Muş Chief Public Prosecutor against Ahmet Kınay charging the latter with setting the applicant's house on fire;

(xv) Decision of 31 January 1997 by the Muş Chief Public Prosecutor ordering the continued detention of Ahmet Kınay, who was accused of setting the applicant's house on fire;

(xvi) Minutes of the preliminary hearings before the Muş Assize Court concerning the trial of Ahmet Kınay, dated 7 February 1997 and 6 March 1997;

(xvii) Judgment of 6 May 1997 by the Muş Assize Court which acquitted Ahmet Kınay of burning the applicant's house.

(d) Criminal proceedings brought against the applicant

35. The documents under this heading concern the criminal proceedings instituted against the applicant on account of his alleged involvement in the PKK.

(i) Judgment of 10 March 1992 by the Erzincan State Security Court which acquitted the applicant of the charges of having been involved in subversive activities and of membership of the PKK;

(ii) Supplementary decision of 24 September 1992 by the Malazgirt Chief Public Prosecutor to discontinue the criminal proceedings against the applicant on charges of involvement in the PKK;

(iii) Supplementary decision of 24 November 1992 by the Malazgirt Chief Public Prosecutor to discontinue the criminal proceedings against the applicant on charges of membership of the PKK;

(iv) Decision of 11 March 1992 by the Malazgirt Chief Public Prosecutor to discontinue criminal proceedings against the applicant;

(v) Decision of 27 March 1992 by the Court of Cassation to uphold the first instance court's decision to refuse the applicant's request to change his family name;

(vi) Decision of 10 February 1994 by the Chief Public Prosecutor at the Diyarbakır State Security Court to discontinue the proceedings against the applicant on charges of aiding and abetting the PKK.

C. Oral evidence

36. The facts of the case being in dispute between the parties, the Court conducted an investigation with the assistance of the parties. In this connection, three Delegates of the Court (Mr A. Pastor Ridruejo, Mr M. Pellonpää and Mrs S. Boutoucharova) took oral evidence from 2 to 5 April 2001 from thirty witnesses. A further four witnesses had been summoned but did not appear for various reasons. The Delegates took evidence from the following witnesses [*Nota*: The verbatim records of the evidence given by the witnesses are available to the public at the Court's archives.]:

- (1) Celalettin Yöyler;
- (2) Dilsa Yöyler;
- (3) Saliha Yöyler;
- (4) Leyla Yöyler;
- (5) Gülistan Yöyler;
- (6) Evin Yöyler;
- (7) Ahmet Kınay;
- (8) Bahattin Kınay;
- (9) Esmâ (Ziri) Yöyler;
- (10) Kutbettin Fırtına;
- (11) Zeynel Abidin Daş;
- (12) Mehmet Şirin Yıldız;
- (13) Selahattin Yıldırım;
- (14) Serhat Yöyler;
- (15) Hakan Tekin;
- (16) Halil İbrahim Akkan;
- (17) Muhsettin Yöyler;
- (18) Abdülcabbar Sezen;
- (19) Muhlis Umulgan;
- (20) Ömer Sezen;
- (21) Ahmet Çelik
- (22) İsmail Mezgil;
- (23) Süleyman Yılmaz;
- (24) Fuat Girişken;
- (25) Mustafa Akkan;
- (26) Erdal Yanıker;
- (27) Halil İbrahim Kuş;
- (28) Sacit Savaşçı;
- (29) Cengiz Yıldız;
- (30) Turgut Abaş.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

37. Article 125 of the Constitution provides:

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

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

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

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

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

B. Criminal responsibility

40. The Criminal Code makes it a criminal offence

(a) to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants);

(b) to oblige an individual through force or threats to commit or not to commit an act (Article 188);

(c) to issue threats (Article 191);

(d) to make an unlawful search of an individual's home (Articles 193 and 194);

(e) to commit arson (Articles 369, 370, 371, 372), or in case human life is endangered aggravated arson (Article 382),

(f) to commit arson unintentionally by carelessness, negligence or inexperience (Article 383); or

(g) to damage another's property intentionally (Articles 526 et seq.).

41. For all these offences complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and

the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

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

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

C. Provisions on compensation

44. 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.

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

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

D. Provisions on emergency measures

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

48. Decree no. 285 modifies the application of Law no. 3713, the Prevention of Terrorism Act (1991), in those areas which are subject to the state of emergency, with the effect that the powers to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. These councils are made up of civil servants and are under the authority of the provincial governors who also head the security forces.

49. Article 8 of Decree no. 430 of 16 December 1990 provides:

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

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

THE LAW

I. THE COURT'S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. Arguments of the parties

1. The applicant

50. The applicant alleged that on 18 September 1994 gendarmes had raided his village and that his home and possessions had been destroyed, together with those of six other villagers related to him. He requested the Court to find that the destruction of his property and the failure to carry out an effective investigation by the authorities engaged the responsibility of the respondent State under Articles 3, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1 and that each of these Articles had been violated.

2. The Government

51. The Government submitted that there was no evidence on which to conclude that security forces had burned the applicant's house. With reference to the statements given by the applicant's fellow villagers, the Government averred that the gendarmes had not been in Dirimpinar that night and that the security forces could therefore not be held responsible for the burning of the applicant's house, which might have been the result of a private dispute.

B. The Court's evaluation of the facts

1. *The Court's assessment of the parties' submissions and of the evidence*

52. The Court reiterates that, in assessing evidence, it adopts the standard of proof “beyond reasonable doubt” (see *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161). The Court further reiterates that 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 criminal responsibility of any particular individuals (*Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

53. The Court notes that the applicant alleged that State security forces had raided his village and burned his house on 18 September 1994. The Government denied that allegation. The Court will therefore verify the facts by assessing the weight and effects of the evidence gathered by the Court's delegates.

54. The Court observes that it is not in dispute between the parties that following the disappearance of three young women, all of whom were related to the applicant's extended family, the houses of the applicant and his relatives in Dirimpınar were burned down on 18 September 1994. However, the Court has been presented with conflicting accounts as to the sequence of events leading to the burning of the applicant's house on 18 September 1994 and as to who might have been responsible.

55. The Court notes that the applicant gave detailed and precise evidence to the Court's delegates. His evidence on the whole was consistent with the applications and statements he had made both to the national authorities and to the Convention institutions subsequent to the burning of his house. It appears from the applicant's evidence that gendarmes burned his house along with six other houses in Dirimpınar.

56. The oral testimonies of the applicant's family members, namely Dilsa Yöyler (his wife), Saliha Yöyler (his daughter-in-law), Leyla, Gülistan and Evin Yöyler (his daughters) and Esma Yöyler (his sister-in-law), were also consistent with their previous statements submitted to the Convention institutions. Although their testimonies varied slightly as to the exact time and date of the impugned events between 15 and 18 September 1994, they gave a detailed description of the various incidents surrounding the burning of the houses, such as the arrival of the security forces in the village following the disappearance of the girls, and the threats made by the Malazgirt gendarme commander and the gendarmes accompanied by Ahmet

Çelik, who showed the *muhtar* a list of persons whose houses were to be burned and who asked the *muhtar* to indicate the houses to them. Their testimony supported the applicant's allegation that gendarmes had set his house and six other houses alight on the night of 18 September 1994.

57. The applicant's fellow villagers, Ahmet and Bahattin Kınay, Kutbettin Fırtına, Zeynel Abidin Daş, Muhsettin Yöyler, Abdulcabbar Sezen and Muhlis Umulgan were reliable witnesses whose testimonies were consistent in their essential details. Their testimonies confirmed the applicant's account of the events. The witnesses Muhsettin Yöyler, Abdulcabbar Sezen and Muhlis Umulgan, who were then the members of the village elders' council (*Köy ihtiyar meclisi*), denied the accuracy of their statements taken by the gendarmes. They asserted that they had been forced to sign and stamp blank sheets of paper, which had then been filled in by the gendarmes. They maintained, in the alternative, that the statements prepared by the gendarmes had not been read out to them and that they were unable to read them, as they were illiterate. Mr Sezen submitted further that in every gendarmerie station in south-east Turkey there were blank sheets of paper signed by village *muhtars*. In view of these witnesses' consistent testimonies and somewhat stereotyped nature of the statements in question, the Court considers that it cannot attach any weight to the statements prepared by the gendarmes.

58. As regards Serhat Yöyler, Ömer Sezen and Süleyman Yılmaz, the Court notes that these witnesses tried to minimise what they had seen or known. They generally claimed that they had not seen the perpetrators or had no idea as to who might have burned the houses since they were busy with their work. Concerning Mehmet Şirin Yıldız and Selahattin Yıldırım, a resident and the *muhtar* of the neighbouring village of Beşçatak, the Court considers that they were evasive in their testimony as they claimed that they had heard nothing about the burning of the houses in Dirimpınar, which is only six or seven kilometres away from their village. Accordingly, no conclusion can be drawn from these witnesses' testimonies.

59. As to Ahmet Çelik, the head of the village guards in the Nurettin village, the Court considers that he lacked credibility since his evidence was inconsistent. The Court points out in this connection that the witness claimed that the villagers had told him that terrorists had burned the houses although he could not name any villager who might have told him this. He denied the allegation that he had been involved in the impugned incidents and claimed that he had been asleep on the night of the incident.

60. The evidence given by Captain İsmail Mezgil, commander of the Malazgirt gendarmerie station, was of an evasive nature. He denied the allegations that he had ordered the burning of the applicant's house. Nevertheless, he conceded that he had gone to the village immediately after the disappearance of the girls and that he had talked to the villagers in the village square, where he had told the families to bring their daughters back.

61. The Court has also examined the testimonies of the gendarmes Fuat Girişken, Mustafa Akgün, Erdal Yanıker, Cengiz Yıldız and Turgut Abaş who were involved in the investigation into the applicant's allegations. They all denied the suggestion that the *muhtar* or members of the village elders' council could have been asked to sign blank documents or statements prepared in advance. They claimed that the statements had been taken from the villagers one by one and that everything they had said had been written down. As to the stereotyped nature of the statements taken from the villagers, the witnesses submitted that, on the way to the station, the villagers might have discussed among themselves what they would say. Mr Yıldız further explained that when typing everyone reflected his own style. In his opinion, it was not possible that the gendarmes could have burned the houses. The Court attaches no particular weight to these witnesses' evidence.

62. As to Halil İbrahim Kuş, who issued a decision of non-jurisdiction, the Court notes that he was the principal public prosecutor in charge of the investigation into the burning of the applicant's house. He took statements from the *muhtar* and the members of the village elders' council in relation to the applicant's allegations. However, he did not visit the scene of the incident. The Court is struck by the fact that the witness considered it unnecessary to take statements from the gendarmes in the face of an allegation that they had burned the applicant's house. According to the witness, even if he had taken their statements, the gendarmes would have denied the allegations and, in any event, they could not have been the perpetrators of the burning of the houses in Dirimpınar.

63. Concerning the remaining three public prosecutors, the Court notes that Sacit Savaşçı took statements, between January and August 2000, from fifteen village guards from the village of Nurettin in relation to the applicant's allegations. He claimed that when he took statements everything was written down word for word. However, the nature of the statements he took from the village guards, which were alike in length, content and language, casts doubt about the witness' claim and, therefore, his credibility.

As to Hakan Tekin, who carried out the on-site investigation on 16 January 1997 and took statements from the *muhtar* and the villagers, he stated that when he took up his functions in Malazgirt an on-site investigation had been the only item lacking in the investigation file. The Court finds this witness' testimony contradictory since he claimed on the one hand that he had not come across any statement about the houses being burned by the gendarmes, while also stating that he had seen the applicant's petition containing the allegation that his house had been burned by the security forces. The Court finds that the witness was evasive to the extent that he asserted that he had not seen other houses which had been burned or had not heard of any such allegation from the villagers when conducting the on-site investigation.

Concerning the evidence of Halil İbrahim Akkan, the Court notes that his involvement in the investigation was limited to the issuing of permanent search warrant to find the perpetrators of the burning of the applicant's house. Accordingly, the Court cannot draw any conclusion from his evidence.

2. The Court's findings of fact and conclusion

64. In view of the testimonies of the witnesses heard by the Court's delegates (paragraph 36 above) and the documentary evidence submitted to it by the parties (paragraphs 27-35 above), the Court finds it to be proved beyond reasonable doubt that the security forces deliberately burned the applicant's home and part of his household property, thus forcing his family to leave the village of Dirimpınar. Accordingly, the Court accepts the following account as the true facts pertaining to the events surrounding the destruction of the applicant's property.

65. In June 1994 the applicant left his village and never returned, since he was under intense pressure from the security forces in the region.

66. On the night of 15 September 1994 three young women, all of whom were related to the applicant's extended family, left Dirimpınar to join the PKK.

67. On 16 September 1994, early in the morning, the three girls' fathers and the *muhtar* went to Malazgirt to report their daughters' disappearance at the gendarmerie station. The gendarmes first took them to the police station. They were then taken to the village by security forces under the command of the then first lieutenant, İsmail Mezgil. The latter convened the inhabitants of Dirimpınar in the village square and, according to the consistent evidence given by several witnesses, threatened them, saying that if the three girls were not brought back to him in three days the houses in the village would be burned down. Thereupon, the applicant's family, along with other villagers related to the applicant, hired trucks and loaded up their possessions to flee.

68. On 17 September 1994, receiving an information that the villagers were fleeing with their belongings, the gendarmes, accompanied by special teams, stopped the trucks on the way and forced them to return to the village and to unload their possessions. Following the departure of the gendarmes, the applicant's family hid part of their belongings in the *muhtar*'s garage.

69. On 18 September 1994, at around 8 p.m., gendarme teams wearing masks came to the village. They were accompanied by Ahmet Çelik, the head of the village guards in the neighbouring village of Nurettin, who was identified by several witnesses. Ahmet Çelik was not wearing a mask and he was holding a list of persons whose houses were to be burned. Villagers were ordered to go into their homes and to switch off their lights. The gendarmes called the *muhtar* and asked him to indicate the houses of the persons on the list, which he did. The gendarmes then took diesel oil from

the barrels and the tractors of the village and set fire to the houses of the applicant and his relatives. They then left the village.

70. On the basis of these findings, the Court will proceed to examine the applicant's complaints under the various Articles of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. The applicant, referring to the circumstances of the destruction of his home and eviction of his family from their village, maintained that there had been a breach of Article 3 of the Convention, which reads:

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

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

73. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms treatment contrary to this provision. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 909, §§ 75-76).

74. The Court notes that the applicant's home was burned before the eyes of members of his family, depriving them of shelter and support and obliging them to leave the place where they lived and their family friends. In the Court's opinion, even assuming that the motive behind this impugned act was to punish the applicant and his relatives for their alleged involvement in the PKK, that would not provide a justification for such ill-treatment.

75. The Court considers that the destruction of the applicant's home and possessions, as well as the anguish and distress suffered by members of his family, must have caused him suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3 (see *Selçuk and Asker*, cited above, p. 910, §§ 77-78).

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

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

77. The applicant complained of the deliberate destruction of his home and property. He relied on Article 8 of the Convention, which reads:

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

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

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

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

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

78. The Government denied the factual basis of the applicant's complaints and averred that his allegations were unsubstantiated.

79. The Court has found it established that the security forces deliberately destroyed the applicant's house and property, obliging his family to leave their village (see paragraph 64 above). There is no doubt that these acts, in addition to giving rise to a violation of Article 3, constituted grave and unjustified interference with the applicant's rights to respect for his private and family life and home, and to the peaceful enjoyment of his possessions (see *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2711, § 73, and *Dulaş v. Turkey*, no. 25801/94, § 60, 30 January 2001, unreported).

80. The Court therefore concludes that there has been a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1.

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

81. The applicant complained that he had been denied an effective remedy by which to challenge the destruction of his home and possessions by the security forces, and to had been denied access to court to assert his civil rights. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

and Article 13 of the Convention, which 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.”

A. Article 6 § 1 of the Convention

82. The applicant submitted that his right to access to court to assert his civil rights had been denied on account of the failure of the authorities to conduct an effective investigation into his allegations. In his opinion, without such an investigation he had no chance of succeeding in obtaining compensation in civil proceedings.

83. The Government maintained that the applicant had failed to pursue the remedies available in domestic law. Had the applicant filed a civil action, he would have enjoyed effective access to a court.

84. The Court notes that the applicant did not bring an action before the civil courts for the reasons given in the admissibility decision of 13 January 1997. It is therefore impossible to determine whether the national courts would have been able to adjudicate on the applicant's claims had he initiated proceedings. In the Court's view, however, the applicant's complaints mainly pertain to the lack of an effective investigation into the deliberate destruction of his family home and possessions by the security forces. It will therefore examine this complaint from the standpoint of Article 13, which imposes a more general obligation on States to provide an effective remedy in respect of alleged violations of the Convention (see *Selçuk and Asker*, cited above, p. 912, § 92).

The Court therefore finds it unnecessary to determine whether there has been a violation of Article 6 § 1 of the Convention.

B. Article 13 of the Convention

85. The applicant submitted that he had no effective remedy available in respect of his Convention grievances. With reference to previous cases concerning the destruction of villages, the applicant asserted that there was an administrative practice of violating Article 13 of the Convention in south-east Turkey and that he was a victim of that practice.

86. The Government argued that the applicant had deliberately ceased to pursue remedies in domestic law. In this connection, they pointed out that after filing a criminal complaint with the Public Prosecutor's office in İzmir, the applicant had disappeared without leaving any address to the judicial authorities. Despite this omission, the judicial authorities had carried out an

effective investigation into the applicant's allegations by taking statements from his fellow villagers and committing a suspect for trial on charges of setting the applicant's house on fire.

87. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Dulaş*, cited above, § 65).

88. Where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigation procedure (see *Menteş and Others*, cited above, pp. 2715-16, § 89).

89. The Court points out that it has already found that the applicant's home and possessions were destroyed in violation of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1. The applicant's complaints in this regard are therefore “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and *Dulaş*, cited above, § 67).

90. The Court has previously held that the implementation of the criminal law in respect of unlawful acts allegedly carried out with the involvement of the security forces discloses particular characteristics in south-east Turkey in the first half of the 1990s and that the defects found in the investigatory system in force in that region undermined the effectiveness of criminal law protection during this period. This practice permitted or fostered a lack of accountability of members of the security forces for their actions which was not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention (see *Bilgin v. Turkey*, no. 23819/94, § 119, 16 November 2000, unreported).

91. Turning to the particular circumstances of the case, the Court notes that the applicant filed a petition of complaint with the Karşıyaka public prosecutor's office shortly after the destruction of his house. On receipt of

this petition, the Malazgirt Public Prosecutor's office instigated an investigation into the applicant's allegations. However, there were striking defects and omissions in the investigation. The Court would observe that the applicant's fellow villagers denied the content and veracity of the statements taken by the gendarmes, stating that they had been asked to sign blank sheets of paper and statements which had been written in advance and which had not been read out to them (see paragraph 57 above). The Court, having found these three witnesses' evidence credible, considers this practice totally incompatible with the notion of an investigation required by Article 13 of the Convention. The Court also points to its earlier finding that the statements taken from fifteen village guards were of a stereotyped nature - giving the impression that they had been prepared by the public prosecutor - and that therefore no particular weight can be attached to them (see paragraph 63 above).

92. Furthermore, the Court notes that the public prosecutors did not make any attempt to interview members of the security forces during the course of the investigation, despite the fact that the applicant had clearly named gendarmes as the perpetrators of the burning of his house and possessions. The Court finds it striking that there seemed to be a general reluctance on the part of the public prosecutors to admit that members of the security forces might have been involved in the destruction of property (see paragraph 62 above). Moreover, the prosecuting authorities visited the scene of the incident more than two years and three months after they had received the applicant's criminal complaint (see paragraph 33 (xvi) above).

93. On 9 September 1996 jurisdiction over the investigation was transferred to the Malazgirt Administrative Council, which decided to discontinue the criminal proceedings against the gendarmes (see paragraph 33 (xv) above). However, the Court has already found in a number of cases that the investigation carried out by this body cannot be regarded as independent since it is composed of civil servants, who are hierarchically dependent on the governor, and an executive officer is linked to the security forces under investigation, (see *Güleç v. Turkey*, judgment of 27 July 1998, Reports 1998-IV, pp. 1732-1733, § 80).

94. Finally, the Court considers it regrettable that the judicial authorities prosecuted and detained Ahmet Kınay, although he was not the perpetrator of the crime and no criminal complaint had been lodged against him. It notes that apparently this was due to a statement dated 20 June 1995, prepared by the gendarmes and bearing the name and the signature of Muhsettin Yöyler, who denied that he had ever made such a statement and told the Court's delegates that the signature on the document was a fake. In the Court's opinion, this is a significant fact, which demonstrates that no serious investigation was conducted into the applicant's Convention grievances and that the involvement of the gendarmes in the investigation resulted in the cover-up of certain facts.

95. As to the Government's assertion that the investigation was undermined by the applicant's failure to leave an address with the authorities, the Court notes that it is true that attempts were made to locate the applicant with a view to obtaining his statements in regard to his allegations. However, it should be borne in mind that, following the destruction of his family home, the applicant had no permanent address to give to the authorities since he was moving from one city to another in order to find a shelter for himself and his family. His feelings of vulnerability and insecurity are also of some relevance in this connection (see *Menteş and Others*, cited above, p. 2707, § 59). Accordingly, the Court considers that the personal circumstances of the applicant and the omissions and the defects in the domestic investigation outweigh his failure to provide his address to the authorities.

96. In the light of the foregoing, the Court concludes that the authorities failed to conduct a thorough and effective investigation into the applicant's allegations and that access to any other available remedy, including a claim for compensation, has thus also been denied him.

97. There has therefore been a breach of Article 13 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, IN CONJUNCTION WITH ARTICLES 3, 6, 8 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

98. The applicant maintained that, because of his Kurdish origin, he had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 3, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1. Article 14 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.”

99. The applicant argued that the destruction of his family home and possessions was the result of an official policy, which constituted discrimination because of his status as a member of a national minority.

100. The Court has examined the applicant's allegation in the light of the evidence submitted to it, but considers it unsubstantiated. There has therefore been no violation of Article 14 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

101. The applicant alleged that the interference or restrictions complained of have been imposed for purposes incompatible with the Convention. He invoked Article 18 of the Convention, which reads:

“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.”

102. The Court points out that it has already examined this allegation in the light of the evidence submitted to it, and found that it was unsubstantiated. Accordingly, no violation of this provision has been established.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Pecuniary damage

104. The applicant claimed 454,320 US dollars (USD) in respect of the pecuniary damage suffered by him as a result of the destruction of his house and outbuildings, household goods, agricultural goods and machinery, loss of income and costs incurred for alternative accommodation.

105. The Government did not submit any observations on the applicant's claims within the time-limit set, and subsequently extended, for this purpose.

106. In view of its finding that the applicant's home and possessions were destroyed by the security forces (see paragraphs 64 and 79 above), the Court considers that it is necessary to award compensation for pecuniary damage. However, as the applicant has not substantiated his claims as to the quantity and value of his lost property with any documentary or other evidence, the Court will make its assessment of the amounts on an equitable basis.

1. House and outbuildings

107. The applicant claimed damages in respect of a two-storey house covering 166 square metres, a one-storey house, about which he did not give

any details, and a garage and grain store, covering 60 square metres. The applicant valued all three properties at USD 70,000.

108. In the absence of any decisive evidence and making its assessment on an equitable basis, the Court awards the amount of 10,000 euros (EUR) in respect of the destroyed building.

2. Other property

109. The applicant submitted claims in respect of household goods, such as carpets, handwritten books and kitchen utensils amounting to USD 50,000. In addition he claimed to have lost agricultural tools and machinery worth USD 20,000.

110. The Court reiterates that it has already found that members of the applicant's family had hidden part of their belongings in the *muhtar's* garage a day before their house was burned (see paragraph 68 above). In view of this and in the absence of any independent and conclusive evidence as to the applicant's claims for property and on the basis of equity, the Court awards him EUR 2,500.

3. Loss of income

111. The applicant claimed the amount of USD 290,000 in compensation for loss of income from farming and loss of earnings sustained as a result of his children's inability to continue their education.

112. In the absence of independent evidence of the applicant's income from his landholdings, and having regard to equitable considerations, the Court awards him EUR 6,000 under this head.

4. Alternative accommodation

113. The applicant claimed the reimbursement of USD 24,320 in respect of the rent he had paid for ninety-one months and the losses incurred on account of expenditure on water, fuel and bread to maintain his family.

114. In the absence of any substantiation of this part of the applicant's claim, and having regard to equitable considerations, the Court awards the applicant EUR 6,500 for the cost of alternative housing.

5. Summary

115. Consequently, in respect of pecuniary damage the Court awards the applicant a total sum of EUR 25,000, to be converted into Turkish liras at the rate applicable at the date of settlement.

B. Non-pecuniary damage

116. The applicant claimed USD 654,523 in respect of non-pecuniary damage. He referred in this regard to the pain he had suffered on account of

the destruction of his property and on account of the pressure exerted on him as a result of his involvement in the Democracy Party.

117. The Government did not comment on this claim.

118. The Court considers that an award should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations which it has found in respect of Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 76, 80 and 97 above). It awards the applicant EUR 14,500 for non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

119. The applicant claimed a total of 33,246.98 pounds sterling (GBP) for fees and costs in the preparation and presentation of his case before the Convention institutions. This included administrative costs incurred (1) by his British representatives Mr Andrew Collender QC (GBP 9,000 for 90 hours' work) (2) by Mr Kerim Yıldız, Mr Philip Leach, Ms Anke Stock and others, attached to the Kurdish Human Rights Project in London (GBP 23,942.98 for approximately 244 hours' legal work, and GBP 1,570 for translations and summaries from English into Turkish and from Turkish into English); and (3) in respect of expenses such as telephone calls, postage, photocopying and stationery (GBP 304).

120. The Government did not submit any observations on this claim either.

121. The Court notes that the present case involved complex issues of fact and law requiring detailed examination, including the taking of evidence from witnesses in Ankara. It reiterates in this connection that only legal costs and expenses necessarily and actually incurred can be reimbursed under Article 41 of the Convention. Accordingly, the Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. It considers excessive the total number of hours of legal work (over 334 hours) for which the applicant submitted claims in respect of his legal representatives and finds that it has not been proved that all those legal costs were necessarily and reasonably incurred. As regards the translations and summaries and administrative costs, the Court considers that they may be regarded as necessarily and actually incurred. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, the Court awards him the sum of EUR 14,700 exclusive of any value-added tax that may be chargeable, less EUR 355 received by way of legal aid from the Council of Europe, such sum to be converted into pounds sterling and paid into the applicant's representative's bank account in the United Kingdom as set out in his just satisfaction claim.

D. Request for restoration of rights

122. The applicant submitted that in accordance with the principle of *restitutio in integrum*, he and his family should be settled in their village and be enabled to restore their way of life in the village so that it was as close as possible to their way of life prior to the impugned incident in September 1994.

123. The Government did not comment on this point.

124. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible, the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers of the Council of Europe, acting under Article 46 § 2 of the Convention, to supervise compliance in this respect (see *Selçuk and Asker*, cited above, p. 918, § 125).

E. Default interest

125. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1;
3. *Holds* that it is unnecessary to determine whether there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds* that there has been no violation of Article 14 of the Convention, in conjunction with Articles 3, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1;
6. *Holds* that there has been no violation of Article 18 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement and to be paid into the applicant's bank account in Turkey:
 - (i) EUR 25,000 (twenty-five thousand euros) for pecuniary damage;
 - (ii) EUR 14,500 (fourteen thousand five hundred euros) for non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Holds*
 - (a) that the respondent State is to pay the applicant's representative, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 14,700 (fourteen thousand seven hundred euros), in respect of costs and expenses, exclusive of any value-added tax that may be chargeable, less EUR 355 (three hundred and fifty-five euros) granted as legal aid, to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the latter's sterling bank account in the United Kingdom;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President