



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

FOURTH SECTION

CASE OF ALTUN v. TURKEY

(Application no. 24561/94)

JUDGMENT

STRASBOURG

1 June 2004

FINAL

01/09/2004

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 Altun v. Turkey,

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

Mrs V. STRÁŽNICKÁ, *President*,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 11 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 24561/94) 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 a Turkish national, Mr Abdullah Altun ("the applicant"), on 30 June 1994.

2. The applicant was represented by Mr Boyle and Ms Hampson, lawyers in the United Kingdom. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that State security forces had destroyed his family home and possessions in the village of Akdoruk at the end of 1993. He relied on Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol 1 to the Convention.

4. The application was declared admissible by the Commission on 11 September 1995. Delegates of the Commission then took oral evidence at a hearing in Ankara between 28 June to 2 July 1999.

5. The case 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.

6. 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 F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

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). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1933 and lives in Diyarbakır. Until the end of 1993, the applicant lived in the village of Akdoruk, attached to the Kulp District in the province of Diyarbakır. The applicant left and has never returned to the village after the alleged incident.

A. The facts

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

1. Facts as presented by the applicant

11. Early in the morning of 11 November 1993 the applicant left his house and went to the fields to work. At about 7 a.m. a large number of soldiers arrived in the village of Akdoruk on foot. The soldiers had a list of names in their hands and started burning down some of the houses. From the field, the applicant saw that his house was on fire. The applicant's wife tried to save some of their belongings and animals however she was prevented by the gendarmes who hit her with the butt of their rifles. In all, the soldiers burned down six houses in the village.

12. The applicant tried to go back to the village but was prevented by his wife, who told him that if he went back he would be arrested by the soldiers. The soldiers arrested ten villagers and sent them to the gendarmerie station. After spending the night in the village, the soldiers left Akdoruk village early in the morning of 12 November 1993.

13. The applicant spent the night at his sister's house and then went to Diyarbakır to live with his daughter.

14. In February 1994, the applicant went to the Kulp Magistrate's Court together with Ahmet Altun and Mustafa Aldemir to lodge a petition about the burning of his house. All three of them submitted handwritten petitions to the judge and requested him to conduct a visit to the village to establish the damage they had suffered. The judge however refused their request for security reasons. The same day, the applicant and the two other villagers were called to the public prosecutor's office in Kulp, where they were interrogated about their complaints. The public prosecutor took their statements and typed down their complaints. The applicant, Ahmet Altun and Mustafa Aldemir, signed these petitions without understanding the content, as they were illiterate.

15. The applicant later learnt from his friends that these petitions had been transferred to the Kulp District Gendarmerie whose officers the applicant considered responsible for the destruction of his house. He was informed that the gendarmes were looking for him however he was too frightened to go to the gendarmerie headquarters, because the other two villagers, who had also lodged a petition with him, had also been summoned to the gendarmerie and had been severely beaten.

16. In the beginning of 1994 the gendarmes returned to the Akdoruk village and burned down the remaining houses.

17. The applicant is currently unemployed and occasionally works as a builder in constructions.

2. Facts as presented by the Government

18. No military operation was conducted in or around the village of Akdoruk on 11 November 1993. Subsequent to the applicant's complaint with the Kulp public prosecutor, an investigation was commenced into the allegations of the applicant. On 22 August 1994 the Kulp public prosecutor issued a decision of non-jurisdiction and transferred the case to the Kulp Administrative Council pursuant to the Law on the prosecution of civil servants.

19. On 24 June 1994 the Kulp District Governor appointed the Kulp District Gendarme Commander, Ali Ergülmez, as investigating officer. By a report dated 1 April 1995, the District Gendarme Commander submitted that no military operation had been conducted in Akdoruk village on 11 November 1993 and stated that the clashes between the security forces and the PKK had commenced after January 2004 when the village had already been evacuated. He accordingly proposed that the District Administrative Council should issue a decision of non-prosecution.

20. On 13 July 1995 the Kulp District Administrative Council delivered a decision of non-prosecution on the basis of the investigating officer's report.

B. Documents submitted by the parties

21. The parties submitted various documents to the Court. While delivering its judgment, the Court had particular regard to the following documents:

- a) Statement of the applicant, dated 15 April 1994, made to the Diyarbakır Human Rights Association;
- b) Petition of the applicant, Ahmet Altun and Mustafa Aldemir, dated 17 December 1993, submitted to the Kulp Chief Public Prosecutor's office concerning the burning of their houses by security forces;
- c) Statements of the applicant, Ahmet Altun and Mustafa Aldemir, dated 17 December 1993, taken by the Kulp public prosecutor;
- d) Letter of Kulp Chief Public Prosecutor's office to Kulp District Gendarmerie Commander, dated 28 January 1994, requesting information as to whether or not a military operation had been conducted on 13 November 1993 in the village of Akdoruk;
- e) Statement of Ahmet Altun, dated 22 February 1994, taken by the gendarmes officers;
- f) Statement of Mustafa Aldemir, dated 3 March 1994, taken by the gendarmes officers;
- g) Report dated 23 June 1994, signed by the mayor of Akdoruk village, Mehmet Yeşil, and two gendarmes officers, indicating that it had not been possible to interrogate Abdullah Altun as his address could not be established;
- h) Letter of Kulp District Gendarmerie Commander to the Kulp Chief Public Prosecutor's office, dated 24 June 1994, stating that it had not been possible to interrogate Abdullah Altun as his address could not be established;
- i) Non-jurisdiction decision issued by the Kulp Chief Public Prosecutor's office, dated 22 August 1994;
- j) Letter of Kulp District Governor to Kulp District Gendarmerie Commander, Ali Ergülmez, dated 2 September 1994, appointing him as investigating officer;
- k) Investigation and examination report, dated 2 May 1995, signed by Kulp District Gendarmerie Commander Ali Ergülmez, gendarmes officer Kamil Taşçı and village mayor Mehmet Yeşil;
- l) Report of District Gendarmerie Commander Ali Ergülmez, dated 1 April 1995, proposing that the District Administrative Council should issue a decision of non-prosecution;
- m) Letter of District Gendarmerie Commander Ali Ergülmez, dated 2 July 1995 to Kulp District Governor, submitting the results of the investigation;

- n) Non-prosecution decision dated 13 July 1995, delivered by the Kulp District Administrative Council;
- o) Report dated 28 August 1995, prepared by Kulp District Gendarmerie Commander Ali Ergülmez, indicating that no military operation had been conducted in the Akdoruk village on 13 November 1994. The report stated that the clashes between the security forces and the PKK had commenced after January 1994 when the village had already been evacuated;
- p) Letter of Kulp Magistrate's Court judge to Kulp public prosecutor's office, dated 23 January 1995, stating that Abdullah Altun had not brought any proceedings concerning the burning of his house;
- q) Letter of Kulp public prosecutor to Diyarbakır Chief Public Prosecutor's office, dated 25 September 1995 stating that Abdullah Altun had not applied to the Kulp Magistrate's Court for an assessment of the damage he had suffered following the burning of his house;
- r) Letter of Kulp Magistrate Court judge to Kulp public prosecutor, dated 2 August 1999, indicating that no hand-written petition had been submitted to the registry of the court by Abdullah Altun, Ahmet Altun and Mustafa Aldemir;
- s) Letter of Kulp Chief Public Prosecutor to International Law and Foreign Relations Directorate of the Ministry of Justice, dated 8 October 1999, indicating that there were no records relating to the killing of 6 terrorists on 13 October 1993 in the vicinity of Akdoruk village.

C. Oral evidence

22. The facts of the case being in dispute between the parties, three Delegates of the Commission took oral evidence in Ankara between 28 June and 2 July 1999 from thirteen witnesses, including the applicant. A further five witnesses had been summoned, but they failed to appear for various reasons. The evidence of those who attended the hearing may be summarised as follows:

1. Abdullah Altun

23. Mr Altun stated that he was living in the village of Akdoruk at the time of the events. He explained that on the day of the incident, early in the morning, he had gone to the fields to work. While he was working in the fields, he saw that smoke was rising above the village. From where he was standing, he was able to see that the village was full of soldiers and that it was burning. On his way back to the village, he was stopped by his wife, who told him not to return to the village. She informed him that the soldiers

had burned down six houses including theirs and that their house, animals and possessions had been completely destroyed. Mr Altun's wife further told him that the soldiers had a list of names in their hands and that his name was also included on it.

24. Mr Altun affirmed that he had stayed at his sister's house for a few days after the burning of his home and then had gone to Diyarbakır to stay with his daughter.

25. Concerning his application to the national authorities, he further confirmed that he had gone to the judge at the Kulp Magistrate's Court with his brother Ahmet Altun and his fellow villager Mustafa Aldemir. They had submitted hand-written petitions to the judge and requested him to conduct a visit to the village of Akdoruk to assess the damage they had suffered. The judge however had refused their request for security reasons. On the same day, the applicant, Ahmet Altun and Mustafa Aldemir were further called before the Kulp public prosecutor, who took their statements concerning the burning of their houses. Mr Altun further testified that Ahmet Altun and Mustafa Aldemir, who had been called to the Kulp Gendarmerie Station to give further evidence, had been beaten by the gendarmes. He was therefore frightened to go to the gendarmerie station to give a statement.

26. Mr Altun further stated that the soldiers had gone back to the village of Akdoruk in January 1994 and burned down the remaining houses.

2. Hediye Altun

27. The witness, who is the applicant's wife, was in the village of Akdoruk at the time of the incident. She explained that after her husband had gone to the fields early in the morning, a large number of soldiers arrived in the village on foot. The soldiers had a list in their hands and they read out the names of certain villagers, including the applicant's. Thereafter, they threw a sort of flammable material towards their house and the stable which caught alight. She tried to save the animals but was stopped by the soldiers. She believed that the soldiers had burned down the houses because the villagers had refused to become village guards. The witness further stated that Ahmet Altun, Mustafa Aldemir and Hüseyin Aldemir had been arrested by the soldiers.

3. Vesile Yaman

28. Mrs Yaman, who is the sister of the applicant, was living in the village of Akdoruk at the time of the events. She explained that on the day of the incident, the soldiers had arrived in the village on foot. She saw them throw some chemical substance and burn down the applicant's house. Her sister-in-law tried to save some of the animals but was stopped by the gendarmes. Her brother was not in the village at the time of the incident. The witness affirmed that the applicant and his wife had stayed at her house

after their house was burned down. The witness believed that the soldiers had burned down the village as a punishment, when the villagers refused to become village guards. She explained that her own house was also burned down in January 1994.

4. Mustafa Aldemir

29. Mr Aldemir was living in the village of Akdoruk at the time of the events. On the day of the incident, a number of soldiers came to the village on foot. They first went to the applicant's house and burned it down. Then they burned down six more houses including his house and that of the village mayor, Mehmet Yeşil. The soldiers had a list in their hands and told the villagers that they had instructions to burn down the houses of those on the list. The soldiers subsequently apprehended the witness together with some other villagers. They were all taken to Narlıca village on foot. Mr Aldemir stated before the Delegates that the villagers of Akdoruk had been asked to become village guards about a month prior to the incident. The witness moved to Diyarbakır following the burning of his house. Together with the applicant and another villager, Ahmet Altun, he went to the Kulp Magistrate's Court judge to complain about the burning of their houses. They further gave statements to the public prosecutor on the same day. Mr Aldemir testified that Ahmet Altun and himself had been summoned to the Kulp Gendarme Station to give further evidence. He affirmed that he had been beaten by the gendarmes and forced to sign a paper. He therefore disowned the content of the statement dated 3 March 1994.

5. Mehmet Yeşil

30. Mr Yeşil was the mayor of Akdoruk village at the time of the incident. On 13 November 1993 early in the morning the witness heard intensive shooting around the village. An armed clash was taking place outside the village. He later learnt that 6 terrorists had died during this clash. Subsequently, a group of soldiers arrived in the village and told him to leave the village for his life was in danger. As a result, leaving his wife and children in the village, the witness left the village on foot with some soldiers and returned to the village three days later. When he returned, he saw that six of the houses, including his house and that of the applicant, had been burned down. The witness further affirmed that he did not see who had burned down the houses but he maintained that the houses were burned because of the clash between the PKK and the security forces. When asked about the investigation and examination report, dated 2 May 1995, the witness admitted that he had signed this report at the Kulp Gendarme Station but stated that no on-site inspection had been conducted in the village.

6. *Süleyman Tutuş*

31. The witness was living in one of the hamlets of Akdoruk village at the time of the event. Early in the morning of the incident, the witness saw a number of soldiers arrive in the village. The soldiers asked the witness to act as their translator. The soldiers had a list of names in their hands and their captain told the witness that they were going to burn down Abdullah Altun's house. They therefore ordered the witness to tell the applicant's wife to evacuate the house. The witness saw that soldiers scattered chemicals around the house with a tube, put a match to it and set it alight. They burned down everything, including the animals. In all, the soldiers burned down six houses in the village, including the house of the village mayor, Mehmet Yeşil, who was also in the village during the incident. The soldiers subsequently arrested some of the villagers, including the village mayor and his three daughters. After spending the night in the village, the soldiers left the village on foot the next morning. The witness affirmed that a month before the burning of the houses, the villagers had been called to a meeting in Narlıca by the security forces and had been asked to become village guards.

7. *Abbas Eren*

32. Mr Eren was living in the village of Akdoruk at the time of the events. Early in the morning of the incident, he saw soldiers arriving in the village. He did not hear any gunshots. The witness then saw the soldiers burning down some of the houses in the village, including the house of the applicant and that of the village mayor, Mehmet Yeşil. He recalled that Abdullah was not in the village when his house was burned down but he remembered seeing Abdullah's wife crying. His own house was not burned down that day. The soldiers subsequently arrested some villagers, including the witness. They were taken to Narlıca village on foot and then to the Kulp Gendarmerie Station by military vehicles. They were kept in the station for three days and three nights and were given only bread and water. The soldiers came back to the village at the beginning of 1994 and burned down the remaining houses.

8. *Kamil Taşçı*

33. The witness was the gendarmerie station commander in Kulp District in 1993. He was under the command of Ali Ergülmez. The witness confirmed that he had been involved in the investigation of the complaint concerning the burning of the applicant's house by the security forces. He had taken statements from two of the complainants but one of the complainants had not shown up for interrogation. He admitted that it had not been possible to conduct an on-site inspection report in the village due to security reasons. The witness stated that there were no records about a military operation or

an armed clash in the village of Akdoruk at the time of the incident. He further affirmed that there had been several large scale operations carried out by different military forces in the area and that not all of these operations had been recorded in the log book of the Kulp Gendarme Station. He explained that Akdoruk village had been evacuated by January 1994 and that armed clashes had been quite frequent in the area. When questioned about the possible involvement of security forces in burning down houses, the witness denied this possibility.

9. Selahattin Aksoy

34. The witness was the deputy commander of the Kulp Gendarme Station in 1993. His commander was Ali Ergülmez. He stated that he had been involved in the investigation and had taken a statement from Mustafa Aldemir on 3 March 1994. He affirmed that, had a military operation been conducted in the Akdoruk village by the Kulp Gendarmerie, they would definitely have the pre- and post-operation reports. However at that time several military units had been engaged in many military operations and the witness did not know for certain whether another military troop had conducted an operation in the area or not. He admitted that they did not keep records of the operations carried out by other units. Arguing that terrorists, dressed up in military uniforms, had been burning some of the villages, the witness denied any involvement of the military forces in burning down the houses in the area.

10. Ali Ergülmez

35. The witness was the commander of Kulp District Gendarmerie in 1993 and Akdoruk village had fallen under his jurisdiction. He stated that when he was appointed as investigating officer by the District Governor to investigate the allegations into the burning of the applicant's house, he had assigned Mr Taşçı to investigate the matter. He stated that he had signed the report that had been drafted by Mr Taşçı without verifying its content. He further admitted that another military troop could have conducted a military operation in the Akdoruk village without his knowledge. The witness further denied the allegations which suggested that the Kulp gendarmerie forces had been involved in burning villages in the area.

11. Adil Aslan

36. The witness was the Kulp public prosecutor in 1993 and had taken the first statements from the applicant, Ahmet Altun and Mustafa Aldemir. Mr Aslan stated that he had written down everything that the three complainants had told him and had read out their statements to them before taking their signatures. The witness further admitted that it had not been possible for him to conduct a visit to the Akdoruk village for security

reasons. He also recalled that at that time, the prosecutors in the region had lacked investigative powers to investigate the allegations against the security forces.

12. Selahattin Gündüz

37. The witness stated that he was living in the Kulp District at the time of the incident. He was in the Akdoruk village a few days before the incident and saw six dead bodies outside the village. He maintained that the villagers were all afraid to live in the area as a result of terrorist attacks. The witness affirmed that he was not in the village when the applicant's house was burned down.

13. Salih Afşin

38. The witness stated that he had moved from Akdoruk village to the Kulp District in 1979. Indicating that he had never lost contact with his fellow villagers from Akdoruk, he stated that he was aware that most of the villagers were afraid to live in the area as a result of the frequent terrorist attacks. The witness affirmed that he was not in the village when the applicant's house was burned down.

II. RELEVANT DOMESTIC LAW

39. A full description of the relevant domestic law may be found in *Yöyler v. Turkey* (no. 26973/95, §§ 37-49, 24 July 2003).

THE LAW

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

A. Arguments of the parties

1. The applicant

40. The applicant alleged that towards the end of 1993, gendarmes had raided his village and that his home and possessions had been destroyed. 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, 5, 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

41. 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, and to the gendarmerie reports, the Government maintained that the gendarmes had not conducted an operation in the Akdoruk village on 11 November 1993 and that the security forces could therefore not be held responsible for the burning of the applicant's house.

B. General Principles

42. The Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. 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, the *McKerr v. the United Kingdom* decision, 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 authorities and, as a general rule, it is for those authorities to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the latter's findings, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact they have reached (*ibid.*, p. 18, § 30). 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).

C. The Court's evaluation of facts

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

43. The Court observes that the applicant's oral testimony (see paragraphs 23-26 above) broadly reiterated the written statements he had given both to the national authorities and the Convention institutions. The applicant's version of the facts was further supported in important details by

the eye-witnesses of the burning of his property. The evidence of the key eye-witnesses, Hediye Altun, Vesile Ayman, Mustafa Aldemir, Süleyman Tutuş and Abbas Eren provided plausible details about how the applicant's house and belongings were burned down by the soldiers. These witnesses gave detailed information about how the soldiers had arrived in the village and how they had set alight the houses. Three of the witnesses submitted that the soldiers had a list of names in their hands, and had burned down the houses of those people whose names had been indicated in the list.

44. The Court further observes that the Government witnesses were evasive in their oral testimonies. They all steadfastly refused any suggestion that the security forces would engage in village burning (see paragraphs 33, 34, 35 above). Basing themselves on the absence of any logged reference to a military operation, they all denied that any military operation had been conducted in the village or in its vicinity. The Court is also struck by the testimony of the mayor of Akdoruk village, Mehmet Yeşil, who gave the impression of minimising what he had seen or known (see paragraph 30 above). Although he admitted that a large number of soldiers had arrived in the Akdoruk village early in the morning of the incident and that there had been a clash in the vicinity of the village, he rejected the possibility that the soldiers could have burned down the houses.

45. The Court therefore concludes that the Government witnesses were not sufficiently persuasive to rebut the direct eye-witness testimonies of the applicant's witnesses and that there is a strong basis in fact to establish that a military operation was conducted in Akdoruk village on 13 November 1993 and that the applicant's property and possessions were burned down by the security forces.

2. The Court's findings of facts and conclusion

46. In view of the testimonies of the witnesses heard by the delegates (see paragraphs 22-38 above) and the documentary evidence submitted to it by the parties (see paragraph 21 above), the Court's conclusion of facts can be summarised as follows.

47. On 13 November 1993, early in the morning a large number of soldiers arrived in the village of Akdoruk. The soldiers had a list of names in their hands and started to set fire to some of the houses. The applicant was not in the village at the time of the incident. He had gone to the fields to work. From where he was standing, the applicant saw the smoke and flames rising from the village. The applicant's house, belongings and livestock were destroyed during the incident.

48. 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

49. 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.”

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

51. 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).

52. The Court notes that the applicant’s home was burned down before the eyes of members of his family, depriving them of shelter and support and obliging them to leave their home and friends.

53. The Court considers that the destruction of the applicant’s home and possessions in the above circumstances 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).

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

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

55. The applicant alleged that he was compelled to abandon his home and village in breach of the right to exercise of liberty and enjoyment of security of person.

56. The Government did not address this aspect of the case.

57. The Court recalls that the primary concern of Article 5 § 1 of the Convention is protection from an arbitrary deprivation of liberty. The notion of security of person has not been given an independent interpretation (see in this respect *Selçuk and Asker v. Turkey*, nos. 23184/94 and 23185/94, Commission’s report of 28 November 1996, §§ 185-187).

58. In the present case, the applicant was never arrested or detained, or otherwise deprived of his liberty. The Court notes that the applicant’s

insecure personal circumstances arising from the loss of his home does not fall within the notion of security of person as envisaged by Article 5 § 1 of the Convention (see the *Selçuk and Asker v. Turkey*, Commission's report, cited above, § 186).

59. In the light of the foregoing, the Court concludes that there has been no violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 8 AND ARTICLE 1 OF PROTOCOL No. 1

60. 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.”

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

62. 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 47 above). There is no doubt that these acts, in addition to giving rise to a violation of Article 3, constituted a 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).

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

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

A. Article 6 § 1 of the Convention

64. 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.

65. 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.

66. The Court notes that the applicant did not bring an action before the civil courts for the reasons given in the admissibility decision of 11 September 1995. 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).

67. 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

68. 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.

69. 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 Kulp, the applicant had disappeared without leaving any address with 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.

70. 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 and *Yöyler*, cited above, 87).

71. 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).

72. The Court reiterates 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).

73. The Court observes that following the burning of their houses and belongings, the applicant, Ahmet Altun and Mustafa Aldemir lodged a complaint with the Kulp public prosecutor. In their statements, the applicant and his two fellow villagers clearly indicated that their houses had been burned down by security forces. Upon receipt of these complaints, the Kulp public prosecutor initiated a preliminary investigation into the applicant’s claims. Given the seriousness of the allegations, the Court is of the opinion that the public prosecutor was under an obligation to gather and record evidence which would help to shed light on the facts of the incident. However, it is noted that the public prosecutor’s investigation was limited to taking statements from the three complainants. It does not appear that any attempt was made to carry out an on-site inspection at the scene of the incident, to establish the true version of the facts through questioning other villagers who might have witnessed the events or to interview the members of security forces who were allegedly involved in the incident. It therefore considers that these elements disclose considerable defects in the reliability and thoroughness of this part of the investigation.

74. According to the case-file before the Court, after taking statements from the three complainants, the Kulp public prosecutor declared that he

had no jurisdiction and transferred the file to the Kulp Administrative Council pursuant to the Law on the prosecution of civil servants. In respect of this second part of the domestic investigation, the Court considers that the authorities who were responsible for the investigation lacked the requisite independence and impartiality. In this context, it is recalled that the Kulp District Governor appointed the Kulp District Gendarme Commander, who was the hierarchical superior of the gendarmes who were allegedly involved in the incident, as investigating officer. It is also clear from the witness testimonies that the Kulp District Gendarme Commander further delegated the Kulp Gendarme Station Commander to conduct the investigation. In view of the fact that the Kulp Gendarmerie was allegedly accused of being involved in the burning of the applicant's house, the Court finds it unacceptable that the same gendarme station was delegated to conduct an investigation into the allegations.

75. 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.

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

VI. 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

77. 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."

78. 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.

79. 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.

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

80. 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.”

81. The Court points out that it has 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.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed a total amount of 87,078.82 pounds sterling (GBP) for pecuniary damage in respect of the loss of his house, livestock, household goods, foodstuffs and income.

84. The Government argued that the applicant’s allegations that his home and possessions had been destroyed by security forces had not been substantiated and that, therefore, there was no requirement to award any compensation.

85. In view of its finding that the applicant’s home and possessions were destroyed by the security forces (see paragraph 47 above), the Court considers that it is necessary to award compensation for pecuniary damage. However, as the applicant has not supported 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

86. The applicant claimed damages in respect of a house covering 240 square metres, which he valued at GBP 15,664.70.

87. 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

88. The applicant submitted claims in respect of the loss of household goods, such as furniture, carpets and kitchen utensils and in respect of his livestock. Under this head he claimed GBP 4,732.90.

89. In view of 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 6,000.

3. Loss of income

90. The applicant also claimed compensation for loss of income from farming. In this respect, he submitted that he had made his living from his land. As a direct consequence of being forced to leave the Akdoruk village, he was no longer able to look after their land and was therefore deprived of the income it had generated. His claims under this head totalled GBP 66,681.21.

91. The Court is satisfied that the applicant must have suffered a loss of income as a result of being forced from his home and village. 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. Summary

92. Consequently, in respect of pecuniary damage the Court awards the applicant a total sum of EUR 22,000 to be converted into Turkish liras at the rate applicable at the date of settlement.

B. Non-pecuniary damage

93. The applicant claimed GBP 15,000 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.

94. The Government, disputing that any violations had occurred, submitted that no award for non-pecuniary damage should be awarded to the applicant. The Government further contended that, in the event that the Court found a violation, this would be sufficient to compensate for any non-pecuniary damage suffered by the applicant.

95. 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 due to the deliberate destruction of the applicant's home and property and his subsequent relocation from Akdoruk village.

96. It accordingly 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

97. Finally, submitting a schedule of costs, the applicant claimed a total sum of GBP 15,523.21 for costs and expenses. These claims comprised:

- (a) GBP 8,835 for fees of United Kingdom-based lawyers;
- (b) GBP 1,158.44 for administrative costs incurred by the United Kingdom-based lawyers;
- (c) GBP 655 for administrative costs incurred by the Kurdish Human Rights Project (“KHRP”);
- (d) GBP 2,000 for translations carried out by the KHRP;
- (e) GBP 2,874.77 for costs incurred by lawyers during the Commission’s fact-finding mission in Ankara.

98. The Government considered these claims exorbitant and unsubstantiated. They disputed that any sum should be awarded in respect of the role of the KHRP, which organisation could be categorised neither as an applicant nor as a representative.

99. 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.

100. Making its own estimate based on the information available, the Court awards the applicant in respect of costs and expenses EUR 15,000 exclusive of any value-added tax that may be chargeable 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. Default interest

101. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been no violation of Article 5 of the Convention;

3. *Holds* that it is unnecessary to determine whether there has been a breach of Article 6 of the Convention;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention;
6. *Holds* that there has been no violation of Article 14 of the Convention;
7. *Holds* that there has been no violation of Article 18 of the Convention;
8. *Holds* that there has been a violation of Article 1 of Protocol 1 to the Convention;
9. *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 free of any tax that may be chargeable:
 - (i) EUR 22,000 (twenty-two thousand euros) in respect of pecuniary damage to be converted into Turkish liras at the rate applicable at the date of payment and to be paid into the applicant's bank account in Turkey;
 - (ii) EUR 14,500 (fourteen thousand five hundred euros) in respect of non-pecuniary damage to be converted into Turkish liras at the rate applicable at the date of payment and to be paid into the applicant's bank account in Turkey;
 - (iii) EUR 15,000 (fifteen thousand euros) in respect of costs and expenses such sum to be converted into pounds sterling and to be paid into the bank account in the United Kingdom indicated by the applicant;
 - (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;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Viera STRÁŽNICKÁ
President