



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

SECOND SECTION

**CASE OF ÇAÇAN v. TURKEY**

*(Application no. 33646/96)*

JUDGMENT

STRASBOURG

26 October 2004

**FINAL**

***26/01/2005***

*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 Çaçan v. Turkey,**

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

Mr A.B. BAKA, *President*,

Mr L. LOUCAIDES,

Mr K. JUNGWIERT,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 October 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 33646/96) 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, Ms Zahide Çaçan (“the applicant”), on 16 September 1996.

2. The applicant, who had been granted legal aid, was represented by Mrs N. Kaplan Akkuş, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. The applicant alleged, in particular, that the security forces had destroyed her family home and possessions in the village of Düzcealan in December 1993. In this respect, she relied on Articles 3, 5, 6, 8, 13, 14 of the Convention and Article 1 of Protocol No. 1.

4. The case was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. 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).

6. By a decision of 28 March 2000, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). 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 Second Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1952 and lives in Switzerland. Until December 1993 she lived in the Düzcealan village, attached to the Tatvan District in the province of Bitlis. She left and has never returned to the village after the events alleged below.

#### **A. Particular circumstances of the case**

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. Before the alleged incident, the village of Düzcealan had been subjected to attacks by the security forces, who had forced the villagers to become village guards.

12. On 27 December 1993 PKK members attacked and burned a bus on the Tatvan-Van highway, about one kilometre from the Düzcealan village.

13. On the same day at about 3 p.m. security forces, led by Gendarmerie Brigade Commander Korkmaz Tağma, entered the village and surrounded it with armoured military vehicles and unmarked cars. Thereafter, soldiers using G3 weapons and other fire arms opened fire on the village and destroyed some of the houses with mortar shells. This attack lasted about four hours.

14. At about 9 p.m. three masked men with white oil drums began burning the houses in the village. The applicant's house and possessions were also burned during the incident. All the villagers were gathered in the village square and beaten by the soldiers. Necmi Çağan, the applicant's brother-in-law, was killed during the incident.

15. After the incident, the applicant left Düzcealan and moved to Izmir and subsequently to Istanbul. On 5 September 1996 she filed a complaint with the Istanbul public prosecutor for the attention of the Tatvan public

prosecutor's office. She alleged that on 27 December 1993 security forces had raided the village of Düzcealan and burned down her house and belongings.

16. While she was living in Istanbul, on 27 May 1997 the applicant's house was raided by the police. As a result of the intimidation to which she was subjected in Turkey, the applicant had to move to Switzerland.

## *2. Facts as presented by the Government*

17. The Government submitted in the first place that the village of Düzcealan had been under constant threat from PKK members, who forced the villagers to provide them with food and supplies. Young villagers were also forced to join the PKK. However, the villagers resisted the pressures brought to bear on them.

18. In their observations, the Government disputed the facts as submitted by the applicant. They stated that no military operation had been conducted in the village of Düzcealan. In this connection, they maintained that on 29 December 1993<sup>1</sup>, at about 3 p.m., a bus and a truck had been attacked and burned by the PKK on the Tatvan-Van highway, about one kilometre from the Düzcealan village. After this attack, PKK members escaped and entered the applicant's village. The terrorists raided the village, killed Necmi Çaçan, and burned down some of the houses. This attack lasted until the morning of the following day.

19. On the morning of 30 December 1993, an on-site investigation was conducted in the village by the non-commissioned gendarme officer, Yavuz Gürbüz. In his incident report, Mr Gürbüz noted that the houses of Hikmet Küçükarslan, Mehmet İşbulan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Küçükarslan and Mehmet Şirin Çaçan, and the harvest of Sait Adar, Abdülmecit Çaçan, Mehmet İşbulan, Bedrettin Çaçan, Necmi Çaçan and Hikmet Kılıçarslan had been burned by the PKK. The report further noted that Necmi Çaçan had been shot dead by members of this illegal group. The security forces found one cartridge and 94 empty cartridges, 4 of which were near Necmi Çaçan's body. The non-commissioned officer further drew a sketch of the houses which had been burned down the day before. The Government emphasised that the applicant's house was not among the houses which had been burned down on 29 December 1993.

20. Further to this incident, the Tatvan public prosecutor commenced an investigation into the destruction of the six houses and the killing of Necmi Çaçan. On 4 January 1994 the Tatvan public prosecutor delivered a decision of non-jurisdiction and transferred the file to the Diyarbakır State Security Court Public Prosecutor. On 12 December 1995 Mehmet Durman, Mehmet Şirin Mete, Alattin Çaçan and Mehmet Sait Adar, who used to reside in the

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1. While the applicant alleged that the events had occurred on 27 December 1993, the Government indicated the key date as 29 December 1993.

Düzcealan village before April 1994, gave statements to the gendarme. They said that they had left the village in April 1994 due to pressure from the terrorist organisation. The proceedings are still pending before the Diyarbakır State Security Court as the perpetrators of the crime remain unknown.

21. When the applicant filed a complaint concerning the destruction of her house and possessions by the security forces on 5 September 1996, the authorities undertook a further investigation into her allegations. On 9 October 1996 the Tatvan public prosecutor declared that he was not competent for reasons of jurisdiction and transferred the file to the Diyarbakır public prosecutor's office at the State Security Court. On 30 October 1996 the Diyarbakır State Security Court Public Prosecutor declined jurisdiction and sent the file back to the Tatvan public prosecutor. On 14 November 1996 the Tatvan public prosecutor delivered another non-jurisdiction decision and transmitted the case file to the Bitlis Governor's office, pursuant to the Law on the Prosecution of Civil Servants.

22. Upon receipt of the file, the Bitlis Provincial Administrative Council immediately commenced an investigation and appointed Mr Sabri Dikici, a gendarme officer, to investigate the allegations against the security forces.

23. Mr Dikici took fifteen statements from nine different persons, namely Alaattin Çaçan (mayor of the Düzcealan village), Şemsettin Demir (mayor of the Kolbaşı village), Servet İlhan, İbrahim Çaçan, Yavuz Gürbüz (gendarme officers), Ismail Çaçan, Mehmet Durman, Sait Adar and Mehmet İşbulan (villagers from Düzcealan). The applicant's statement was also taken by the police. In her statement she mainly reiterated her complaint lodged with the public prosecutor.

24. On 13 February 1997 the investigator conducted an on-site inspection in Düzcealan together with the village mayor. The village mayor informed him that the applicant had already left the village when her house was burned by the PKK in April 1994. In his report, the investigator indicated that there were no signs of mortar or gunfire on the remains of the houses. He concluded that the houses had been burned down by the PKK to punish the villagers for abandoning the village in April 1994. Some of the houses were further damaged on account of bad weather.

25. The investigator inquired from the relevant military commanders whether a military operation had been conducted in the Düzcealan village on 27 December 1993. On 24 December 1997 the Bitlis Gendarme Commander informed the Tatvan District Gendarme Commander that no military operation had been conducted in the village on 29 December 1993. However, he indicated that a bus had been burned near the Düzcealan village on that day. He further maintained that as the accused gendarme commander, Korkmaz Tağma, had retired from the military, his address could not be established and it was therefore impossible to take his statement. The Bitlis Security Directorate and Tatvan District Security

Directorate further stated, on 8 and 10 January 1997 respectively, that they had not been involved in an operation in the Düzcealan village on 27 December 1993.

26. In the light of the evidence before him, the investigator concluded that the applicant's house had not been burned down by the security forces as alleged, but by the PKK after the villagers had evacuated the village in April 1994. In a report dated 14 May 1997, he advised the Bitlis Provincial Administrative Council to discontinue the proceedings against the security forces. On 20 May 1997 the Governor of Bitlis approved the conclusion of the investigator and ordered that the procedure against the security forces be terminated.

27. The Government finally submitted that the applicant's husband owned three plots of land totalling 14,245 square metres in the Düzcealan village. They further contended that the applicant had only one cow, which she had sold to Ramazan Gökçe, a villager from a neighbouring village, before she left Düzcealan.

## **B. Documents submitted by the parties**

### *1. Documents submitted by the applicant*

**Petition of the applicant, dated 5 September 1996, submitted to the Istanbul Chief Public Prosecutor's office for transmission to the Tatvan public prosecutor's office**

28. In her petition, the applicant complained of the killing of her brother-in-law, Necmi Çaçan, and the destruction of her house and possessions by the security forces.

**Copies of title deeds to the plots of land in the Düzcealan village that belong to the applicant's husband**

29. According to the copies of the title deeds, submitted to the Court, the applicant's husband, Hakim Çaçan, owns three plots of land in the village of Düzcealan.

### *2. Documents from the domestic investigation*

**Non-jurisdiction decision, dated 4 January 1994, delivered by the Tatvan public prosecutor concerning the killing of Necmi Çaçan and the burning of six houses in the Düzcealan village on 29-30 December 1993**

30. On 4 January 1993 the Tatvan public prosecutor delivered a non-jurisdiction decision and sent the case file on the killing of Necmi Çaçan and the burning of six houses in the village of Düzcealan to the office of the chief public prosecutor attached to the Diyarbakır State Security Court. In

the decision, it was stated that on the night of 29 December 1993 unidentified PKK terrorists had attacked the Düzcealan village, killed Necmi Çağan and burned down the houses and harvest of Hikmet Kılıçarslan, Mehmet İşbulan, Sebahattin Çağan, Hayrettin Çağan, Feyzullah Kılıçarslan, Mehmet Şirin Çağan, Mehmet Sait Adar, Abdülmecit Çağan and Bedrettin Çağan.

**Non-jurisdiction decision of the Tatvan public prosecutor, dated 9 October 1996**

31. On 9 October 1996 the Tatvan public prosecutor took a decision not to prosecute and transferred the case file to the office of the public prosecutor attached to the Diyarbakır State Security Court, as the complaint fell within the jurisdiction of that court, pursuant to Laws No. 2845 and 3713.

**Non-jurisdiction decision of the public prosecutor attached to the Diyarbakır State Security Court, dated 30 October 1996**

32. On 30 October 1996 the Diyarbakır State Security Court public prosecutor remitted the case to the Tatvan public prosecutor on the ground that he lacked jurisdiction to examine this complaint.

**Non-jurisdiction decision of the Tatvan public prosecutor, dated 14 November 1996**

33. On 14 November 1996 the Tatvan public prosecutor delivered a non-jurisdiction decision and sent the file to the Bitlis Governor's office pursuant to the Law on the Prosecution of Civil Servants.

**Letter of appointment of Mr Sabri Dikici as investigator, pursuant to the Law on the Prosecution of Civil Servants**

34. On 22 November 1996 a gendarme officer, Sabri Dikici, was appointed as investigator by the Bitlis Provincial Administrative Council.

**Statement of Alaattin Çağan, dated 13 February 1997, taken by the gendarme**

35. In his statement the witness explained that he had lived in the Düzcealan village until April 1994 and had been the village mayor for three years. According to the witness, PKK members had been coming to Düzcealan to spread propaganda and ask for food, clothes and shelter. They also tried to persuade the young villagers to join the PKK. The witness recalled that the terrorists had conducted a raid in Düzcealan on the night of 29 December 1993, killed Necmi Çağan and burned down the houses and harvest of the villagers. He emphasised, however, that the applicant's house had not been burned down on that day. It was burned down by the terrorists after the villagers had abandoned the village. The villagers left Düzcealan of their own free will. The security forces never forced the villagers to

abandon their homes. The village was therefore empty when Zahide Çaçan's house was burned down.

**Statements of Şemsettin Demir, dated 14 February 1997 and 30 July 1998, taken by the gendarmes**

36. In his statements the witness reiterated that he had been the mayor of the Kolbaşı village, a neighbouring village of Düzcealan. He recalled that following the incidents that took place on 30 December 1993, he heard that Necmi Çaçan from the Düzcealan village had been killed and that the houses of Mehmet İşbulan, Hikmet Kılıçarslan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Kılıçarslan, Mehmet Şirin Çaçan, and the harvest of Said Adar, Abdülmecit Çaçan, Mehmet İşbulan, Necmi Çaçan and Hikmet Kılıçarslan had been burned down by the terrorists. Due to PKK pressure, the villagers decided to evacuate the village in April 1994. Before leaving, they sold their animals in neighbouring villages. The applicant's husband sold his cow to Ramazan Gökçe from the Kolbaşı village. When the villagers left, PKK members burned down the remaining houses, including the applicant's. The witness concluded that Zahide Çaçan's house was burned down in April 1994 by the PKK after the village had already been evacuated.

**Statement of Ibrahim Çaçan, dated 3 February 1997**

37. The witness is a gendarme officer, who used to live in the Düzcealan village until 1991. After his family left Düzcealan, the witness never returned to the village and stated that he had no knowledge of the alleged incidents.

**Statement of Yavuz Gürbüz, dated 25 April 1997**

38. The witness was the gendarmerie commander in Yelkenli attached to Tatvan in the Bitlis province between 1991 and 1994. The Düzcealan village was among the fifteen villages in the region that were attached to his command. He stated that he did not remember the exact date of the incident. On the day of the incident, terrorists attacked a bus on the Tatvan-Van road, which is about one kilometre from the Düzcealan village. The terrorists burned the bus and tried to escape through the Düzcealan village, setting fire to five or six places in the village. The next day, at about 6 a.m., the witness went to the scene of the incident with a security team, and drafted a sketch of the bus and of the houses. Korkmaz Tağma was the Bitlis Provincial Security Commander at the time of the events. He was informed about the events via wireless. The villagers in Düzcealan abandoned their village of their own free will due to pressure from the terrorists.

**Letter of the Bitlis Security Directorate dated 8 January 1997**

39. In a letter dated 8 January 1997, the Bitlis Security Directorate indicated that their Directorate had not been involved in any operation in the Düzcealan village on 27 December 1993.

**Letter of the Tatvan Security Directorate, dated 10 January 1997**

40. The Tatvan Security Directorate concluded that their Directorate had not been involved in an operation in the Düzcealan village on 27 December 1993.

**Letter of the Bitlis Gendarme Command, dated 26 February 1997, to the Bitlis Governor**

41. In this letter, the Bitlis Gendarme Commander informed the Bitlis Governor that no military operation had been conducted in the Düzcealan village on 27 December 1993.

**Letter of the Bitlis Gendarme Commander, dated 24 December 1997, to the Tatvan District Gendarme Commander**

42. In a letter dated 24 December 1997 the Bitlis Gendarme Commander informed the Tatvan District Commander that on 27 December 1993 a bus had been burned by the PKK. He indicated that there were no military records indicating that a possible military operation had been conducted in the village of Düzcealan on the same date.

**Scene of incident report, dated 13 February 1997**

43. On 13 February 1997 the investigator Sabri Dikici conducted an on-site visit to the village of Düzcealan together with the mayor of Alaattin Çaçan. In his report, he concluded that there were 35 households in the village and that the village had been completely evacuated. The houses, which were made of concrete, had been badly damaged or were in ruin due to disuse and the effect of bad weather. There were no signs of a mortar attack.

**Investigation report, dated 14 May 1997**

44. Referring to the statements of the villagers, gendarme officers, the relevant military reports and documents, the investigator concluded that the applicant's allegation that her house had been destroyed by the security forces did not reflect the true circumstances of the case. He found that the village was in fact raided by the PKK on the night of 29 December 1993. However, it was clear from the testimonies of the villagers that the applicant's house was not destroyed that day. From the evidence before him, the investigator found that the applicant had in fact stayed in the village until April 1994, when the villagers evacuated Düzcealan to escape the

pressure from PKK members. The applicant sold her cow to a certain Ramazan Gökçe from the Kolbaşı village and moved out before her house was burned down by the PKK. When the village was evacuated, they burned down all the houses. There was no pressure from the security forces to evacuate the village.

**Letter of Administrative Council, dated 20 May 1997, to the Bitlis Governor to discontinue the proceedings against the security forces**

45. Referring to the investigation report prepared by gendarme officer Sabri Dikici, the Head of the Bitlis Administrative Council recommended the Governor to discontinue the proceedings against the security forces.

**Approval given by the Bitlis Governor on 20 May 1997 to discontinue the proceedings against the security forces**

46. On 20 May 1997 the Bitlis Governor decided that the proceedings against the security forces should be dismissed.

**Statement of Mehmet Durman, dated 24 July 1996, taken by the gendarmes**

47. In his statement, the witness explained that he had been living in Çamaltı hamlet of the Düzcealan village until April 1994. He stated that the village of Düzcealan and its hamlets had been evacuated by the villagers of their own free will as they wanted to escape from the pressure exerted on them by the PKK. After the village was evacuated, the PKK burned down all the houses.

**Sketch of the location of the incident, dated 29 December 1993**

48. In the sketch, drafted by the gendarme officer Yavuz Gürbüz, the locations of the six houses which had been burned down on 29 December 1993 were indicated.

**Incident report, dated 30 December 1993**

49. In the report, prepared by gendarme officer Yavuz Gürbüz, it was noted that on 29 December 1993, at about 3.45 p.m., a bus with the registration number 34 JYL 13 was burned by PKK terrorists. The terrorists then escaped to the Düzcealan village and burned down the houses of Mehmet İşbulan, Hikmet Kılıçarslan, Sebahattin Çağan, Hayrettin Çağan, Feyzullah Kılıçarslan and Mehmet Şirin Çağan, and the harvest of Said Adar, Abdülmecit Çağan, Mehmet İşbulan, Necmi Çağan and Hikmet Kılıçarslan. They also killed Necmi Çağan.

**Letter of the Tatvan District Gendarme Commander, dated 3 January 1997, to Bitlis Gendarme Commander**

50. In this report, it was noted that a bus had been burned on 29 December 1993. This was followed by the killing of Necmi Çağan and

the burning down of some houses in the Düzcealan village. It was, however, established that no military records existed indicating that a military operation had been conducted in Düzcealan on that day. The Commander further noted that as Korkmaz Tağma, the accused gendarme commander, had retired from military forces, his address could not be established, with the result that no statement could be taken from him.

**Statement of Mehmet Durman, dated 12 December 1995, taken by the gendarmes**

51. In his statement, the witness deposed that he used to reside in Çamaltı hamlet attached to the Düzcealan village. He explained that all the villagers evacuated the village and the hamlet in April 1994 due to the activities of the PKK. PKK members had been asking the villagers to supply them with food, clothes and weapons. They also wanted to persuade the children to go to the mountains. According to the witness, the security forces never forced the villagers to abandon the village. The villagers left of their own motion due to PKK pressure. The houses were burned down subsequently by PKK members after the village had been evacuated.

**Statement of İsmail Çaçan, dated 30 July 1998, taken by the gendarme**

52. The witness used to live in the Düzcealan village until April 1994. He recalled that, on the night of 29 December 1993, PKK members raided the village, burning down the houses of Mehmet İşbulan, Hikmet Kılıçarslan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Kılıçarslan and Mehmet Şirin Çaçan, and the harvest of Said Adar, Abdülmecit Çaçan, Mehmet İşbulan, Necmi Çaçan and Hikmet Kılıçarslan. Necmi Çaçan, a villager, was also killed by PKK members. The PKK pressurised the villagers and demanded logistic support. In order to escape this intimidation, the witness left the village in April 1994, together with all the villagers of Düzcealan. He explained that Zahide Çaçan had also lived in the village until April 1994. He recalled that, before leaving, she had sold her cow to Ramazan Gökçe from the Kolbaşı village.

**Statement of the applicant, dated 30 January 1997, taken by the police**

53. In her statement, dated 30 January 1997, the applicant mainly reiterated the complaints she had made to the public prosecutor.

**Statement of Sait Adar, dated 29 December 1993, taken by the gendarmes**

54. The witness used to reside in the village of Düzcealan. Following the burning of a bus on the Tatvan-Van highway, a clash broke out between the security forces and PKK terrorists. The terrorists entered the Düzcealan village. They killed Necmi Çaçan, burned down the houses of Mehmet İşbulan, Hikmet Kılıçarslan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Kılıçarslan and Mehmet Şirin Çaçan, and the harvest of Abdülmecit Çaçan,

Mehmet İşbulan, Necmi Çaçan and Hikmet Kılıçarslan. The witness stated that his crops were burned down by PKK members.

**Statement of Mehmet İşbulan, dated 30 December 1993, taken by the gendarmes**

55. The witness, who used to live in the Düzcealan village, stated that on 29 December 1993 at about 4 p.m. a bus had been burned by the PKK on the Tatvan-Van highway. Subsequently a clash broke out between the security forces and PKK members. The PKK members escaped to the village of Düzcealan. When they arrived in the village, they burned and destroyed his house and harvest. The houses of Hikmet Kılıçarslan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Kılıçarslan and Mehmet Şirin Çaçan, and the harvest of Said Adar, Abdülmecit Çaçan, Necmi Çaçan and Hikmet Kılıçarslan were also destroyed. Moreover, they killed Necmi Çaçan.

## II. RELEVANT DOMESTIC LAW

56. A full description of the relevant domestic law may be found in *Yöyler v. Turkey* (no. 26973/95, §§ 37-49, 24 July 2003) and *Matyar v. Turkey* (no. 23423/94, §§ 93-106, 21 February 2002).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

57. The applicant alleged that the security forces of the respondent State burned down her house and belongings. On that account she complained that there had been breaches of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, which read in so far as relevant as follows:

#### **Article 3**

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

#### **Article 8**

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

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

#### **Article 1 of Protocol No. 1**

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

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

58. The applicant maintained that the circumstances surrounding the destruction of her home and the eviction of her family from their village constituted a breach of Article 3 of the Convention.

59. The applicant further complained of the deliberate destruction of her home and property. In this respect, she invoked Article 8 of the Convention and Article 1 of Protocol No. 1.

60. The Government denied the factual basis of the applicant's complaints and contended that her allegations were unsubstantiated. They submitted that no military operation had been conducted in the Düzcealan village on 27 December 1993 as alleged by the applicant. They maintained that on 29 December 1993 PKK members had attacked and burned a bus on the Tatvan-Van highway and subsequently raided the Düzcealan village. Following this incident, an investigation was commenced. According to the investigation report dated 17 May 1997 and the on-site report dated 30 December 1993, six houses had been burned down by the PKK on that day. The applicant's house was not among the houses burned down on 29 December 1993. According to the Government, the villagers had to evacuate the village after this incident as they were afraid of the pressure which the PKK was exerting on them. PKK members burned down the remaining houses in the village as a punishment, after the villagers, including the applicant, had left the village of their own free will in April 1994.

61. The Court notes that it is confronted with a dispute over the exact nature of the events that took place on 29 December 1993. Accordingly, it must reach its decision on the basis of the available evidence submitted by the parties (see *Pardo v. France*, judgment of 20 September 1993, Series A no. 261-B, p. 31, § 28).

62. The Court observes in the first place that following the events that took place in the Düzcealan village on 29 December 1993, an on-site

inspection was conducted by gendarme soldiers on 30 December 1993. According to the incident report (see paragraph 49 above), and the sketch (see paragraph 48 above), six houses had been burned down on 29 December 1993. The witness testimonies (see paragraphs 36, 52, 54 and 55 above) further support the Government's submission that PKK members had burned down the houses of Hikmet Küçükarslan, Mehmet İşbulan, Sebahattin Çaçan, Hayrettin Çaçan, Feyzullah Küçükarslan and Mehmet Şirin Çaçan, and the harvest of Sait Adar, Abdülmecit Çaçan, Mehmet İşbulan, Bedrettin Çaçan, Necmi Çaçan and Hikmet Kılıçarslan. The applicant's house was not listed among those six houses. Furthermore, the testimonies of the village mayor and three other villagers (see paragraphs 35, 36 and 52 above) appear to indicate that the applicant continued to live in the village until April 1994.

63. The Court notes that the applicant waited until 5 September 1996, almost three years, to file a complaint with the public prosecutor about the alleged burning of her house. The applicant has offered no explanation for this. It has not been explained either why she did not intervene in the proceedings which were commenced by the Tatvan public prosecutor in December 1993 after the burning of the six houses and the murder of Necmi Çaçan.

64. The Court also finds no evidence in the file which would rebut the testimonies of the applicant's fellow villagers. Furthermore, it notes that the testimonies of the villagers were consistent and that their accounts are backed up by the incident report and the sketch map.

65. In view of the unexplained delay on the part of the applicant to lodge her complaint and her complete failure to rebut the testimonies of the villagers, the Court does not find it established beyond reasonable doubt that the applicant's home and possessions were attacked in the manner alleged.

66. Against this background, and in the absence of a sufficient factual basis on which to reach a conclusion that the applicant's home and possessions were destroyed, as alleged, by the security forces, the Court holds that there has been no breach of Articles 3 and 8 of the Convention or Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

67. The applicant alleged that she was compelled to abandon her home and village in breach of the right to liberty and of security of her person. She invoked Article 5 § 1 of the Convention, which reads:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.”

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

69. The Court recalls that the primary concern of Article 5 § 1 of the Convention is the protection from arbitrary deprivation of liberty by the State.

70. In the present case, the applicant was never arrested or detained, or otherwise deprived of her liberty. The applicant's insecure personal circumstances arising from the loss of her home do not fall within the notion of security of person as envisaged in Article 5 § 1 of the Convention (see *Cyprus v. Turkey* [GC], no. 25781/94, § 228, ECHR 2001-IV).

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

### III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

72. The applicant complained that she had been denied an effective remedy by which to challenge the destruction of her home and possessions by the security forces, including access to a court to assert her civil rights. She 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

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

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

75. The Court observes that the essence of the applicant's complaint under Article 6 § 1 of the Convention concerns the domestic authorities' failure to mount an effective criminal investigation into the alleged deliberate destruction of her family home and possessions by the security forces. In the Court's view, it is therefore more appropriate to examine the applicant's Article 6 complaint in relation to the more general obligation on

Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention (see amongst other authorities, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998 I, p. 329, § 105 and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996 VI, p. 2286, § 93).

76. 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**

77. The applicant complained under Article 13 of the Convention that she had no effective remedy available in respect of her Convention grievances.

78. The Government contended that there had been no shortcomings in the investigation and that the authorities had taken all the necessary steps to conduct an effective investigation.

79. The Court recalls in the first place 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 its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Dulaş v. Turkey*, no. 25801/94, § 65, 30 January 2001 and *Yöyler*, cited above, § 87).

80. The Court recalls that on the basis of the evidence adduced in the present case, it has not found it proved beyond reasonable doubt that the applicant's home and possessions were destroyed by the security forces as alleged (see paragraphs 62-66 above). That said, the Court reiterates that notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision is not a prerequisite for the application of the Article (*Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). However, having regard to its above findings on the applicant's substantive complaints under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, the Court cannot conclude that the applicant has laid the basis of a *prima facie* case of misconduct on the part of the security forces. It refers in this connection to the applicant's failure to rebut the testimonies of the villagers or the conclusions reached in

the investigation conducted by the domestic authorities into her complaints (see in this respect *Matyar*, cited above, § 154).

81. In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy.

82. Accordingly, there has been no violation of Article 13 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 3, 5, 6, 8 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

83. The applicant maintained that, because of her Kurdish origin, she had been subjected to discrimination in breach of Article 14 in conjunction with Articles 3, 5, 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.”

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

85. The Government rejected the applicant's allegations.

86. The Court has examined the applicant's allegation. It finds on the basis of the documents submitted that there has been no breach of Article 14 of the Convention.

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no 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 no violation of Article 8 of the Convention;
5. *Holds* that there has been no violation of Article 13 of the Convention;

6. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Articles 3, 5, 6, 8 and 13, and Article 1 of Protocol No. 1;
7. *Holds* that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 26 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

A.B. BAKA  
President