



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

SECOND SECTION

CASE OF NURİ KURT v. TURKEY

(Application no. 37038/97)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Nuri Kurt v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005

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

PROCEDURE”

1. The case originated in an application (no. 37038/97) 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 Nuri Kurt (“the applicant”), on 30 May 1997.

2. The applicant, who had been granted legal aid, was represented by Mr M. Vefa, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained of the destruction of his house in Suçıktı, a village of the Kocaköy district in the province of Diyarbakır, by State security forces and of the refusal of the Turkish authorities to allow him to return. He alleged that the destruction of his house and his exclusion from his village gave rise to breaches of Articles 6, 8, 13 and 14 of the Convention, and Article 1 of Protocol No. 1.

4. The application 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 Third 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.

6. By a decision of 12 June 2003, the Court declared the application admissible.

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

8. On 1 November 2004 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, Mr Nuri Kurt, is a Turkish citizen who was born in 1954 and currently lives in Diyarbakır, Turkey. Until 1994 the applicant lived in Suçıktı, a village of the Kocaköy district in the province of Diyarbakır.

10. The application concerns the alleged destruction of the applicant's house by State security forces and village guards, and the national authorities' refusal to allow the applicant to return to his village.

11. The facts surrounding the alleged destruction of the applicant's house and his inability to return to his village are in dispute between the parties.

A. The applicant's version of the facts

12. In December 1994 a landmine placed on the road to Geyiksırtı, a neighbouring village of Suçıktı, exploded and caused the death of a number of village guards. Security forces from the District Gendarmerie Command in Kocaköy and village guards from the Geyiksırtı village accused the inhabitants of Suçıktı of perpetrating the explosion since they had refused to serve as village guards. They threatened to evacuate the village unless the inhabitants left their homes within a week. Along with a number of fellow villagers, the applicant left his home and moved to Diyarbakır where he currently lives.

13. Sometime in July or August 1995, village guards from the Geyiksırtı village burned the villagers' crops in Suçıktı. During the incident, a small number of houses caught fire, although the applicant's house remained intact.

14. On an unspecified date, the applicant learned through his acquaintances that on 22 December 1995, two days before the general elections, security forces and village guards had set fire to his house, along with all other houses in the village.

15. Immediately after the burning of the village, the security forces and village guards arrived in Günelan, a neighbouring village. They required the villagers to assemble in the village square and threatened to burn the houses in Günelan too if the villagers were to vote for HADEP (the People's Democracy Party) in the forthcoming elections.

16. On 2 February 1996 the applicant, along with some of his fellow villagers, lodged applications with the offices of the Diyarbakır Governor, the Kocaköy District Governor and the Diyarbakır Chief Public Prosecutor. He complained that security forces from the District Gendarmerie Command in Kocaköy and village guards from Geyiksirtı had set fire to his house, along with other houses in the village. He requested that the perpetrators of the act be prosecuted, that the damage he had sustained be redressed and that the required measures be taken in order to enable him and other villagers to return to their homes.

17. On 1 May 1997 the Diyarbakır Chief Public Prosecutor issued a decision of lack of jurisdiction and sent the case file to the office of the Administrative Council in Diyarbakır, in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

18. On 30 May 1997 the applicant lodged his application with the European Commission of Human Rights alleging violations of Articles 6, 8, 13 and 14 of the Convention, and Article 1 of Protocol No. 1.

19. On 31 May 1997 the Kocaköy District Administrative Council launched an investigation into the applicant's allegations. The investigation was conducted by a gendarme major, Mr Metin Fırat, who had been appointed as an investigator (*muhakkik*) by the Commission on the Prosecution of Civil Servants ("the CPCS").

20. On 3 September 1997 the CPCS decided that most of the houses in Suçıktı had been burned down as a result of a fire which had started in the Haran hamlet of Karaçimen, due to the burning of stubble in a field. The CPCS concluded that no proceedings should be brought against the accused security forces and the village guards. The case file was then sent to the Diyarbakır Regional Administrative Court.

21. On 27 November 1997 the Kocaköy District Administrative Council's decision was served on the applicant.

22. On 1 December 1997 the applicant filed an objection with the Diyarbakır Regional Administrative Court against the decision given by the CPCS.

23. On 2 December 1997 the Diyarbakır Regional Administrative Court quashed the decision of the CPCS on the ground that the investigation file was incomplete. The court reasoned that the investigating authorities should have heard the applicant before reaching a conclusion on the matter.

24. On 8 July 1998 the CPCS, after completing the investigation file, reiterated its decision of 3 September 1997 that no proceedings should be brought against the security forces and the village guards.

25. On 20 October 1998 the Diyarbakır Regional Administrative Court upheld the decision of the CPCS.

26. On 8 July 1999 the Registry of the Court sent a letter to the applicant's representative requesting him to provide a copy of the Administrative Court's decision.

27. On 20 July 1999 the applicant applied to the Diyarbakır Regional Administrative Court's registry for a copy of its decision of 20 October 1998. The request was rejected, the applicant being informed that he should apply to the Kocaköy District Governor's office.

28. In July 2000 a group of people, encouraged by unspecified village guards, settled in Suçıktı together with their livestock.

29. On 17 August 2000 the applicant filed a petition with the Kocaköy District Governor's office requesting permission for his family's return to Suçıktı and the eviction of these new dwellers from their property. The applicant did not receive any response to his petition.

B. The Government's version of the facts

30. In April 1994 the applicant, along with other villagers, left the Suçıktı village due to pressure by the PKK (the Kurdistan Workers' Party).

31. On 27 September 1994 a fire started in Haran, a hamlet of the Karaçimen village in Diyarbakır, caused by the burning of stubble in a field. The fire went out of control and spread to the Bozbağlar village, the Gültarla hamlet and the Suçıktı village. Despite the efforts of the Kocaköy Fire Brigade and the village guards from the neighbouring villages, most of the buildings in Suçıktı burned down, although the applicant's house remained undamaged.

32. On 19 December 1996 the applicant lodged a petition with the Public Prosecutor's office in Diyarbakır, complaining about the burning down of his house by security forces from the District Gendarmerie Command in Kocaköy and village guards from the Geyiksırtı village.

33. On 17 March 1997 the Diyarbakır Chief Public Prosecutor issued a decision of lack of jurisdiction and sent the case file to the office of the Administrative Council in Diyarbakır, in accordance with the Law on the Prosecution of Civil Servants.

34. On 16 May 1997 the Governor's office in Diyarbakır initiated an investigation into the applicant's allegations.

35. On 31 May 1997 a gendarme captain was appointed by the District Gendarmerie Command in Kocaköy to investigate the applicant's allegations. Between 6 June 1997 and 5 August 1997, the investigator took statements from a total of fourteen witnesses, including some inhabitants of nearby villages, military officers and fire fighters serving in Kocaköy.

36. In view of these statements, the investigator concluded that the houses in Suçıktı had been burned down in September 1994 as a result of a

fire which had started in the Haran hamlet of Karaçimen, due to the burning of stubble in a field. He further noted that there were no traces of burning on the wooden parts of the applicant's house and that, therefore, it could not have been exposed to fire.

37. The investigation conducted by the gendarmes further revealed that the applicant leased his land to two villagers in return for a share of the crop, which fact was confirmed by some villagers and the village mayor (*muhtar*).

38. Currently, there are inhabitants living and cultivating fields in Suçıktı.

C. Documents submitted by the parties

1. Documents submitted by the applicant

(a) A copy of the applicant's petition to the Governor's office in Diyarbakır, dated 2 February 1996

39. In his petition submitted to the Governor's office in Diyarbakır, the applicant complained about the forced eviction of the inhabitants of Suçıktı and the subsequent burning of the houses in the village by security officers and village guards. The applicant requested that their safe return to their homes be guaranteed, the perpetrators be brought to justice and their damage be redressed.

(b) A copy of the applicant's petition to the Diyarbakır Regional Administrative Court against the CPCS decision of 3 September 1997

40. On 1 December 1997 the applicant filed an objection with the Diyarbakır Regional Administrative Court against the decision given by the CPCS, which had held that no prosecution should be initiated against the alleged perpetrators. The applicant complained that the CPCS had conducted a superficial investigation with a view to covering up the crimes.

(c) A copy of the applicant's petition to the Diyarbakır Regional Administrative Court, requesting notification

41. On 20 July 1999 the applicant applied to the Diyarbakır Regional Administrative Court's registry for copies of its decisions of 2 December 1997 and 20 October 1998. The request was rejected.

(d) Statement dated 4 July 2000 by Mr Mehmet Yoldaş; and statements dated 3 July 2000 by Mr Abdalbaki İpek, Mr Masum Tosin, Mr Hasan Kaya and Ms Mevlude Uçar

42. Until 1994, the witnesses were resident in Suçıktı. They provided separate but, in part, identical statements.

43. Among these witnesses, Mr Yoldaş stated that in 1994 security forces and village guards had exerted pressure upon them into either becoming village guards or vacating the village. Mr Yoldaş and Mr İpek stated that security forces and village guards had been harassing the villagers as they believed that the villagers had been aiding and abetting the PKK. They claimed further that the village had been raided and searched on several occasions and that the villagers had been routinely battered.

44. Mr Yoldaş stated, but none of the other witnesses confirmed, that one night in October or November 1992, unidentified persons opened fire at the village, wounding Mr Yoldaş and killing his 15-year old daughter. Mr Yoldaş heard rumours that the village guards from the Kırmataş and Rıkala villages were responsible for the shootings. He believed that the public prosecutor in charge had conducted a spurious investigation without even taking his statement. He stated that security forces and village guards had threatened to kill the villagers if they filed complaints against the allegedly guilty village guards. Out of fear and ignorance, Mr Yoldaş did not complain to the authorities about such threats.

45. Mr Yoldaş and Mr İpek asserted that in March 1993 security forces and village guards had assembled the villagers in Akrad-Günalan and had tortured them. Mr Abdalbaki İpek elaborated on the incident, stating that he was one of the four victims and that he had suffered three broken ribs. They also submitted that, angered by the landmine explosion, security forces and village guards had come to Suçıktı and had threatened to kill the villagers if they did not vacate the village. Such threats, added to earlier incidents, caused these witnesses and their families to leave the village on an unspecified date. Conversely, Masum Tosin, Hasan Kaya and Mevlude Uçar stated that the fire in September 1994 had taken place six or seven months after they had left the village. In this connection, Mr Tosin and Mr Kaya noted that, after the fire, they had gone to the village to examine the damage. It appears from these statements that at least some of the villagers, including these witnesses and their families, had left the village long before December 1994, the time when the landmine exploded and security forces and village guards allegedly forced the inhabitants of Suçıktı to evict their homes.

46. In response to the Government's claim that the village was abandoned due to PKK repression, the witnesses explained that PKK militants had never come to Suçıktı, even less terrorized the villagers.

47. Concerning the fire which started in 1994, the witnesses explained that the fire had spread to the Haran hamlet, the Gültarla village and finally

to Suçıktı, and had burnt the crops in those areas, including those of the applicant and his brother. They stated that around 20 houses on the west side of Suçıktı had burned down, while the concrete houses and the ones located in the centre and the east side of the village had survived the fire.

48. The witnesses said that they had heard from their acquaintances living in neighbouring villages that, two days before the general elections of 1995 (i.e. 22 December 1995), security forces and village guards had set fire to the houses which had survived the previous fire of 1994. According to Mr Yoldaş and Mr İpek, immediately after the burning down of Suçıktı, security forces and village guards went to the Akrad-Günelan village and threatened to burn that village too if the villagers voted for HADEP in the elections.

49. The witnesses added that, since 1998 or 1999, the authorities had been allowing the Suçıktı villagers to cultivate their fields in association with subcontractors from neighbouring villages. They claimed, however, that the applicant and his brother had been denied such permission.

(e) Statements by Mr Zeynar Nifak and Yemlihan Fahrioglu, dated 18 November 2003

50. Mr Nifak and Mr Fahrioglu have lived in the Karaçimen village of the Kocaköy District in Diyarbakır since their childhood. They have been cultivating the applicant's land since 2002. They stated that on 1 February 2003 they were called to the District Gendarmerie Command in Kocaköy and made to sign some documents, which they had later learned to be their witness statements. Since they were both illiterate they had not been aware of the content of such statements.

51. They further asserted that everybody knew how the village had been evacuated but that they had preferred to remain silent for their own sake.

(f) Letter from the Gendarmerie Command in Lice distributed to the village mayors' office in Lice, dated 9 September 2001, regarding the official policy on "the return to villages"

52. This letter informed all village mayors in Lice about the policy set for an orderly return to the villages previously abandoned because of terrorism. It stated that all villagers were free to return to the villages found suitable for habitation by the respective District Governors.

53. The letter divided villages into three categories in respect of the permitted time for such returns. It gave no indication as to which village fell under which "phase". It explained that the former inhabitants of certain "phase-II villages" could return to those villages only for cultivation purposes during the day time. The letter did not contain any indication about the phase/category in which Suçıktı falls.

54. According to the letter, no villager was allowed to resettle in or stay overnight in “phase-II” and “phase-III” villages until a decision had been taken by the respective governor’s office to that effect.

(g) Letter from the Land Forces Command in Lice, Diyarbakır, addressed to the District Governor’s office in Lice, dated 11 September 2001

55. The letter pointed out the difficulties faced by security forces during the military operations conducted in the rural areas of Lice, Kulp and Hani. It explained that during such operations it was difficult to distinguish terrorists from the villagers wandering around in rural areas. The letter advised that notice be given to villagers to avoid any unfortunate incident for which the authorities would not accept any responsibility.

(h) Annual Reports of the Human Rights Foundation (“the TIHV”)

56. The Human Rights Foundation is a non-governmental organisation with its head office in Ankara, Turkey. Its 1993 Report stated that, from 1990 to 1993, more than 913 villages and hamlets had been evacuated. The 1993 Report maintained that village evacuations had accelerated in 1993, mostly targeting the villages whose inhabitants refused to serve as village guards.

57. The 1994 Report of the TIHV argued that the Government’s policy was to claim that the evacuations and eventual destructions were caused by PKK terror, poverty and the forces of nature. According to the same report, some 50 to 60 villages were burned down in each of the provinces subject to the emergency rule.

58. The 1995 Report maintained that more than 400 villages had been evacuated in 1995. According to the 1996 Report, the State-of-Emergency Regional Governor once mentioned that a total of 918 villages and 1767 hamlets had been evacuated for various reasons, although never admitting that evacuations had been carried out by security forces.

59. The 1997 and 1998 Reports described the Government’s policy of evacuating villages as a systematic “internal security operation” applied throughout the 1990s.

(i) Excerpts from “Burned-down / Evacuated Villages and Migration”, a book published by the Human Rights Association

60. The excerpts gave a comprehensive list of burned-down and/or evacuated villages from February 1990 to January 1999. The list did not make any reference to Suçıktı as having been evacuated and destroyed.

61. The excerpts contained several articles reproduced from a daily newspaper *Ülkede Gündem*, relating to the evacuation of villages and its

detrimental effects on the displaced persons. The articles stressed that numerous villagers had filed petitions with the State authorities, complaining that their villages had been burned down by security forces.

62. The articles also emphasized that the Government's public declarations, which appeared to allow displaced villagers to return to their villages, were unreliable. Whenever villagers had attempted to do so, they were physically denied access to their villages.

(j) The report of 14 January 1998 of the Turkish Grand National Assembly's Commission of Inquiry on the measures to be taken in order to address the problems of the persons displaced following the evacuation of settlement units in east and south-east Anatolia

63. This report was prepared by a Commission of Inquiry composed of ten members of parliament. According to the report, in 1993 and 1994 the inhabitants of 905 villages and 2,923 hamlets were evicted and forced to move to other regions of the country (p.13). The number of people evicted from 90 villages and 225 hamlets in the province of Diyarbakır, where the Suçıktı village is located, was estimated to be around 50,371 (p.12).

64. The report included a statement by Mr Doğan Hatipoğlu, a former governor of Diyarbakır. Mr Hatipoğlu explained that, during his office, occasional village evacuations by military authorities were brought to his attention. He stated that – although very rarely – he had received complaints about village burnings. According to Mr Hatipoğlu, it was inconceivable to assert that all the villages were vacated due to PKK coercion. He alleged that the Government had failed to take the necessary measures for a healthy resettlement of displaced persons (p.13).

65. The report also referred to the "Human Rights Report – Turkey", prepared and submitted to the Commission of Inquiry in 1995 by Mr Yavuz Önen, the chairman of the Human Rights Foundation. This latter report dedicated a chapter to immigrants and evacuated villages. It argued that, in 1995, the practice of evacuation of villages and hamlets was widespread. Many houses in villages were either destroyed or made uninhabitable. People were forced to emigrate from the region and pressure was exerted on the inhabitants until they left their villages. In early 1995 there was practically no village or hamlet inhabited except those whose inhabitants agreed to become village guards (p.19).

66. The report of the Commission of Inquiry also referred to the speech delivered at the Turkish Grand National Assembly by Mr Salih Yıldırım, a deputy from Şırnak, on 3 June 1997 on the question of evacuated villages. Mr Yıldırım stated, *inter alia*, that the villages were evacuated either by the PKK, in order to intimidate those who opposed it, by the authorities since they were unable to protect the villages, or because the inhabitants of those villages refused to become village guards or were suspected of having aided the PKK (p. 20).

67. In conclusion, it was recommended in the report that the inhabitants of the settlement units should be re-housed in the provinces, districts or central villages – rather than hamlets – close to the area where they used to live and that necessary economic measures should be taken with a view to providing employment to the inhabitants of the region, priority being given to the immigrants.

(k) Photographs of the Suçıktı village showing the ruined houses and copies of title deeds

68. In his letters dated 31 May 1999 and 24 March 2000, the applicant provided the Court with copies of title deeds representing the land jointly owned by him and others in Suçıktı, and three colour photographs of what he described as his and some other villagers' burned-down houses. The applicant's house and the date of those photos were not specified. There was no indication whether his house was indeed one of them. It was not possible to tell from the pictures whether the houses in question were burned down or had simply deteriorated over the years. The applicant supplied no expert opinion as to the nature of such destruction. Also, there were a number of undamaged houses in the photos.

2. Documents submitted by the Government

(a) A copy of the letter from the District Gendarmerie Command in Kocayol to the Central Gendarmerie Station, dated 18 June 1997

69. Kocayol District Gendarmerie Command sent a letter to Central Gendarme Station, ordering that various witnesses be summoned to give statements in connection with the investigation in progress.

(b) Report of the gendarmerie investigation into the applicant's allegations, dated 5 August 1997

70. This report was prepared by a gendarme captain from the District Gendarmerie Command in Kocaköy. It contained the findings of the captain after his investigation into the applicant's allegations of 31 May 1997. It gave an account of witness statements by villagers, army officers and fire fighters, as well as the investigator's on-site observations.

71. Between 6 June 1997 and 5 August 1997, the investigator took statements from a total of 14 witnesses, including inhabitants of nearby villages, military officers and fire fighters serving in Kocaköy.

72. Behçet Başaran, Şeymuz Çakıştı, Salih Yılmaz, Maaz Yalçınkaya, Ahmet Gezer, Habip Ek, Hüseyin Buğdaycı, Kazım Buğdaycı, Abdulhaluk Ek and Mehmet Yıldız are inhabitants of nearby villages. In their individual statements, Şeymuz Çakıştı, Ahmet Gezer, Habip Ek, Hüseyin Buğdaycı,

Kazım Buğdaycı and Abdulhaluk Ek pointed out that the inhabitants of Suçıktı had left their homes in 1994 because of the mounting coercion exerted by the PKK. Behçet Başaran, Salih Yılmaz and Maaz Yalçinkaya stated that they had rushed to Suçıktı when they heard about the fire in September 1994. They claimed that the fire fighters and village guards had made every effort to put the fire out and that they had not seen any soldier nor had they heard a rumour that soldiers and village guards had started the fire. Mr Başaran, Mr Yılmaz, Mr Yalçinkaya and Mr Gezer further stated that they believed that the fire had stemmed from the burning of wheat stubble.

73. Mehmet Kaya and Abdullah Efe are fire fighters in Kocaköy. In their individual statements, these witnesses explained that they had rushed to Suçıktı immediately after the Mayor's office had informed them about the fire. They submitted that, despite all efforts, the fire had got out of control and had burned the village, together with some parts of the neighbouring villages. They added that gendarmes and village guards could not have started the fire as there were no soldiers in the area and the village guards were the ones making the most fervent efforts to extinguish the fire.

74. Mustafa Kalfa and Kazım Çelik were gendarme officers. In their separate statements, they asserted that all gendarme operations had been recorded in a book on a daily basis but that there was no record of any operation on 22 December 1995 in Suçıktı. Mr Çelik explained that gendarmes had had no reason to go to Suçıktı as the inhabitants had already abandoned that village. Mr Çelik added that most houses in Suçıktı had been built of adobe, which would explain their natural deterioration over the years.

75. Hüseyin Buğdaycı, Kazım Buğdaycı and Abdulhaluk Ek were village guards. They each stated that the villagers had left their home in 1994 because of PKK terrorism. They noted that everybody in the neighbouring villages knew about the fire in September 1994 and how it had destroyed Suçıktı. They further explained that the applicant was making dishonest claims in an effort to discredit them as village guards.

76. In view of these statements, the investigator concluded that the houses in Suçıktı had been burned down in September 1994 as a result of a fire which had started in the Haran hamlet of Karaçimen, due to the burning of stubble.

77. The report also included photographs of the applicant's ruined house in Suçıktı. From his examination, the investigator concluded that there were no traces of burning on the wooden parts of the applicant's house. Accordingly, the investigator concluded that the house could not have been exposed to fire.

78. The investigator further established that the applicant had been leasing his land to two farmers from a neighbouring village in return for a

share of the crop, and thereby had been reaping economic benefits from his land.

(c) A copy of the Diyarbakır Regional Administrative Court's decision of 2 December 1997

79. In a decision of 2 December 1997, the Diyarbakır Regional Administrative Court overturned the “non-prosecution” decision of the CPCS. The court reasoned that the applicant’s testimony should have been taken. It therefore ruled that the investigation file was incomplete.

(d) A copy of the “non-prosecution” decision of the CPCS, dated 8 July 1998

80. Upon the Diyarbakır Regional Administrative Court’s invalidation of the CPCS decision of 3 July 1997 on procedural grounds, the CPCS completed the case file by taking the applicant’s testimony.

81. In his testimony, the applicant admitted that he had not been present in Suçıktı at the time of the burning of his house by security forces and village guards. He claimed that he had heard about the incident from Mahmut Gezer, a resident of the Günalan village. However, in his statements dated 8 July 1998, Mr Gezer submitted that he had not seen or stayed in contact with the applicant since he had left the village in 1994.

82. The decision further indicated that the photographs taken at the site of the alleged incident revealed that the applicant’s house had deteriorated for natural reasons and the fact that it had remained uninhabited for years.

83. Based on such findings, the CPCS reiterated its previous decision that no proceedings should be brought against the accused security forces and the village guards.

(e) Decision dated 8 July 1998 on the notification of the CPCS decision via a newspaper announcement and a copy of that announcement

84. Upon failed attempts to locate the applicant, the Kocaköy District Governor’s office decided to serve the CPCS’ decision of 8 July 1998 to the applicant by way of an announcement, pursuant to Articles 28 et seq. of the Law on Service of Process no. 7201.

85. On an unspecified date, the announcement appeared in a local newspaper.

(f) Investigation report dated 30 July 2003, prepared by gendarme officers Mr Yavuz Hüsem, Mr Uğur Turan and the Suçıktı village mayor (*muhtar*) Mr Muharrem Buğdaycı

86. This report contains the gendarme officers’ findings that the applicant’s house had deteriorated because it had not been inhabited for a

long time. The report indicated that the applicant has leased his land for cultivation to two villagers by the names of Emrihan and Zeynar.

(g) Mehmet Kaya's statements dated 30 July 2003

87. In September 1994, Mr Kaya was a fire fighter in Kocayol. He and his colleague, Mr Abdullah Efe, were on duty when the fire started in Suçıktı and its vicinity. He and his colleagues immediately rushed to Suçıktı as soon as they heard about the fire from the Mayor's office. Mr Kaya was driving the fire engine, accompanied by Mr Efe. By the time they arrived, the flames had already surrounded the entire village of Suçıktı. In the meantime, village guards came out to help. It was impossible to cut through the flames surrounding the village. As a matter of priority, they strived to extinguish the utility poles. Before long they ran out of water and were unable to quench the flames, which eventually burned down Suçıktı and the cultivated lands attached to it. Mr Kaya pointed out that he had not seen any military vehicles or gendarmes at the site of the fire. He added that the village guards had made every effort to fight the fire.

(h) Şeyhmuz Çakıştı's statements dated 30 July 2003

88. Mr Çakıştı was a resident of the Günelan village of Kocayol. He stated that the inhabitants of Suçıktı had left their homes due to PKK coercion. When he had heard about the fire, he and his fellow villagers had gone to Suçıktı on tractors. They assisted the fire fighters and the village guards to put out the fire. The fire spread very quickly because of the strong wind and burned down Suçıktı and some parts of the neighbouring villages of Bozbağlar and Günelan. The witness did not hear any rumour that security forces and village guards had started the fire. He explained that the village guards were making every effort to fight the fire. This witness also believed that the fire had started due to the burning of wheat stubble.

(i) Behçet Başaran's statements dated 30 July 2003

89. Mr Başaran lived in the Gültarla hamlet of the Suçıktı village. Like the Government's other witnesses, Mr Başaran stated that, together with a group of fellow villagers, he had rushed to Suçıktı by tractor when he had heard about the fire. The fighters and village guards had made every effort to extinguish the fire which had been spread by a strong wind. The witness had never heard a rumour that security forces and village guards had started the fire.

(j) Statements by Mevlut Ek and Necati Ek, dated 1 October 2003

90. The witnesses are brothers who lived in the Geyiksırtı hamlet of Suçıktı. In their statements they submitted that the applicant's allegations regarding the subject matter of the current application were untrue. They explained that the applicant, together with other inhabitants of Suçıktı, had left the village in 1993 or 1994 due to the PKK coercion. They stated that the applicant had made similar allegations in the past, which had also been fabricated. The witnesses added that nobody's land in Suçıktı or the Geyiksırtı hamlet had been confiscated, and that the villagers could freely cultivate their fields.

(k) Hüseyin Buğdaycı's statements dated 1 October 2003

91. Mr Buğdaycı was the head of the village guards in the Kocayol District at the relevant time, and resided in the Geyiksırtı hamlet of Suçıktı. This witness stated that the inhabitants of Suçıktı had left their homes in 1994 as a result of PKK coercion and intimidation, and that the applicant had chosen to move to Diyarbakır. He noted that the applicant's land was being cultivated by two farmers from the Karaçimen village, Mr Zeynel Nifak and Mr Yemlihan Fahrioğlu. Accordingly, the applicant was not denied either the economic use of his land or access thereto.

(l) Statements by Zeynar Nifak and Yemlihan Fahrioğlu, dated 2 October 2003

92. The witnesses lived in the Çıkınılı hamlet of the Karaçimen village in Diyarbakır. They had been breeding livestock in the applicant's village for many years. They stated that the Suçıktı villagers had left their homes in 1993 and had moved to neighbouring districts and cities. They noted that the fields in the village had been left uncultivated for a while, but from 1996 certain villagers had resumed farming, whereas Nuri Kurt had not. Seeing that there was no farming activity on the applicant's land, the witnesses offered to cultivate his fields in return for a share of the crop. The witnesses agreed with the applicant on a verbal basis and have been cultivating his fields since 2002.

93. The witnesses claimed that State security forces and village guards had not in any way exerted pressure on them or prevented them from cultivating the applicant's fields.

II. RELEVANT DOMESTIC LAW

94. 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 ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

95. The applicant alleged that the deliberate burning of his house by the State security forces and the refusal of the Turkish authorities to allow him to return to his village constituted a breach of Article 8 of the Convention and Article 1 of Protocol No. 1, which read in so far as relevant as follows:

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.”

96. The applicant contended that he and his fellow villagers had been compelled to leave their homes in Suçıktı subsequent to the threats issued by the State security forces, and that the latter, acting in concert with the village guards from Geyiksırtı, had deliberately burned down his house as well as a number of other houses in the village. The applicant also maintained that the gendarmes in the region had been denying him access to his possessions in Suçıktı. In this connection, the applicant referred to the

witness statements and to the findings contained in a number of reports on the issue of evacuation and destruction of villages in south-east Turkey (see paragraphs 42-51 and 56-69 above). The applicant asserted that the Government's witnesses Behçet Başaran, Abdullah Efe, Necati Ek, Mevlut Ek and the *muhtar*, Muharrem Buğdaycı, did not tell the truth since they were among the village guards who perpetrated the burning of his house (see paragraphs 87-91 above). Moreover, Zeynar Nifak and Yemlihan Fahrioglu, whose written statements were also relied on by the Government, are illiterate and were unaware of the content of the documents containing their alleged witness statements (see paragraphs 50-51 and 92-93 above).

97. The Government disputed the applicant's allegations and submitted that there was no evidence on which to conclude that the security forces or village guards had burned the applicant's house or that they had forcibly evicted the inhabitants of Suçıktı. They claimed that the applicant and other villagers had left Suçıktı on account of the duress exerted and threats issued by the PKK. With reference to the findings of the investigating authorities, the Government maintained that some of the houses in Suçıktı had indeed burned down as a result of a fire which had been started by the burning of stubble in a neighbouring village in September 1994, but that the applicant's house had never caught fire (see paragraphs 70-78 above). They further refuted the allegation that the applicant had been denied access to his property and claimed that the applicant had been leasing his land to two farmers from a neighbouring village in return for a share of the crops (see paragraph 78 above).

98. The Court is confronted with a dispute over the exact cause of the events giving rise to the present application. Accordingly, it must primarily have regard to the general situation prevailing in the region at the time of the alleged events. In this connection it observes that at the relevant time violent confrontations had taken place between the security forces and members of the PKK in the state-of-emergency region of Turkey. This two-fold violence resulting from the acts of the two parties to the conflict forced many people to flee their homes. Moreover, the national authorities had evicted the inhabitants of a number of settlements to ensure the safety of the population in the region (*Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 142, ECHR 2004-... (extracts)). Yet the Court has also found in numerous similar cases that security forces deliberately destroyed the homes and property of certain applicants, depriving them of their livelihood and forcing them to leave their villages in the state-of-emergency region of Turkey (see, among many others, *Akdivar and Others v. Turkey* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV; *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II; *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII; *Bilgin v. Turkey*, no. 23819/94, 16 November 2000, and *Dulaş v. Turkey*, no. 25801/94, 30 January 2001).

99. This being so, it is to be pointed out that both the European Commission of Human Rights and the Court have previously embarked on fact finding missions in similar cases from Turkey where the State security forces were allegedly the perpetrators of the unlawful destruction of property (see, among many others, the above cited judgments of *Akdivar and Others* and *Yöyler*; *İpek v. Turkey*, no. 25760/94, ECHR 2004-... (extracts)). In those cases, the main reason which prompted the Convention institutions to have recourse to such an exercise was their inability to establish the facts in the absence of an effective domestic investigation.

100. It is a matter of regret for the Court that it is unable to attempt to establish the facts of the present case by embarking on a fact finding exercise of its own by summoning witnesses. However, it considers that such an exercise would not yield sufficient evidence capable of establishing the true circumstances of the case, given that the passage of a substantial period of time, almost eleven years in the instant case, makes it more difficult to find witnesses to give testimony and takes a toll on a witness' capacity to recall events in detail and with accuracy (see *İpek*, cited above, § 116). Accordingly, the Court 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, cited in *Çaçan v. Turkey*, no. 33646/96, § 61, 26 October 2004). However, it must be wary of the fact that the documentary material provided by the parties, in particular written statements, has not been tested in examination or cross-examination and, thus, might constitute a potentially misleading basis for any conclusion to be reached in the present case.

101. As noted earlier and having regard to the independent reports concerning the evacuation and destruction of villages in south-east Turkey at the relevant time (see paragraphs 56-67 and 98 above), the applicant's allegations that he had been forcibly evicted from his village and that his house had been burned down by State security forces cannot be discarded as being *prima facie* untenable. However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences, or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

102. In this context, the Court notes that the applicant did not submit any eye-witness statement concerning the burning down of his house by the security forces or village guards. Nor did he give any particulars as to the identity of the soldiers, such as a regiment, involved in the alleged events. While it is true that the applicant has submitted witness statements capable of rebutting the testimonies of Zeynar Nifak and Yemlihan Fahrioğlu submitted by the Government (see paragraphs 50-51 and 92-93 above), he has not furnished any evidence concerning the alleged involvement of

Behçet Başaran, Abdullah Efe, Necati Ek, Mevlut Ek and Muharrem Buğdaycı in the destruction of his house and, therefore, failed to rebut their testimonies.

103. Furthermore, the witness statements submitted by the applicant confirm the findings of the investigator that a number of houses in Suçıktı were burned down as a result of a fire caused by the burning of stubble in a neighbouring village, but they do not lend sufficient support to the allegation that the applicant's house and other houses in the village were burned down by the security forces and the village guards (see paragraphs 42-49 above). In this connection, it is to be pointed out that the statements made by Masum Tosin, Hasan Kaya and Mevlude Uçar do not go beyond hearsay statements in view of their admission that they had left the village six or seven months before the fire in September 1994, and that they had heard about the burning down of the houses on 22 December 1995 from their acquaintances living in neighbouring villages (see paragraph 48 above).

104. Moreover, the Court is unable to determine, on the basis of the photographs furnished by the applicant, whether the houses shown there had burned down or merely collapsed for other reasons, such as natural deterioration over time (see paragraph 68 above). Having regard to these pictures, it is not possible to tell whether the remains of houses show any trace of having been exposed to fire. In this respect, it is noteworthy that the applicant failed to submit any expert opinion as to the nature of such destruction. Accordingly, the suggestion that these houses had fallen into ruin because of natural forces cannot be excluded, owing to the fact that adobe was the main material used in their construction (see paragraph 74 above).

105. In the light of the above and in the absence of any independent eye-witness account of the alleged incident, the Court does not find it established to the required standard of proof that the applicant's house was burned or destroyed by the State security forces as alleged.

106. As regards the alleged forced eviction of the applicant and his inability to return to his village, the Court observes that the applicant waited until 2 February 1996 to file a complaint with the public prosecutor about the alleged forced eviction from his village in December 1994. He offered no explanation for his failure to remain totally passive after he had left the village. Furthermore, he did not provide any information or evidence to substantiate his allegation concerning the authorities' denial of access to his village. In particular, he did not explain when and by whom he was prevented from having access to Suçıktı or the use of his property. The Court considers, therefore, that the applicant has also failed to corroborate his allegation that he was forced to leave and denied access to his village by State security forces.

107. Against this background, the Court concludes that there has been no violation of Article 8 of the Convention or Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

108. The applicant complained that he had been denied an effective remedy by which to challenge the destruction of his house by the security forces, including access to a 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 reads:

“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

109. The applicant submitted that his right of access to a 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 would have had no chance of obtaining compensation in civil proceedings.

110. 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.

111. The Court notes that the applicant did not bring an action before the civil courts for the reasons given in the admissibility decision of 12 June 2003. 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, 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, § 92).

112. 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

113. The applicant complained under Article 13 of the Convention that he had no effective remedy available in respect of his Convention grievances.

114. The Government contended that there had been no shortcomings in the investigation and that the authorities had conducted an effective inquiry into the applicant's allegations.

115. 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 its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Dulaş and Yöyler*, both cited above, §§ 65 and 87 respectively).

116. The Court recalls that on the basis of the evidence collected in the present case, it has not found it proved to the required standard of proof that the applicant's house was destroyed by the State security forces as alleged (see paragraphs 95-107 above). This does not however mean, for the purposes of Article 13, that his complaints fall outside the scope of its protection (see *D.P. and J.C. v. the United Kingdom*, no. 38719/97, 10 October 2002, § 136). These complaints were not declared inadmissible as manifestly ill-founded and therefore necessitated an examination on the merits. Furthermore, in its admissibility decision of 12 June 2003, the Court had already concluded that the applicant had been absolved from pursuing any further remedy in domestic law given the lack of a thorough and effective investigation into his complaints.

117. 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). Accordingly, having regard to its findings in the admissibility decision and to its conclusion that the applicant's allegations could not be discarded as being *prima facie* untenable (see paragraph 101 above), the Court considers that the applicant's complaints raised arguable claims of violations of the Convention for the purposes of Article 13 of the Convention (see, *mutatis mutandis*, insofar as the applicability of Article 6

of the Convention was at stake, *Mennitto v. Italy* [GC], no. 33804/96, § 27, ECHR 2000-X).

118. Turning to the particular circumstances of the case, the Court notes that subsequent to the applicant's criminal complaint to the authorities, an investigation was carried out by a gendarme officer, who was appointed as an investigator by the Commission on the Prosecution of Civil Servants attached to the Kocaköy Administrative Council (see paragraph 35 above). The gendarme captain conducted an on-site inspection, took statements from a total of fourteen witnesses, including inhabitants of nearby villages, gendarmes and fire fighters, and concluded that the applicant's allegations were unfounded (see paragraphs 70-78 above). Relying on the findings and conclusion of the gendarme captain, the Administrative Council decided that no proceedings should be brought against the security forces and village guards.

119. However, the Court notes that there were serious defects in the investigation conducted by the authorities. In this connection, it points out that the investigating authorities visited the scene of the incident one and a half years after they had received the applicant's criminal complaint (see paragraphs 32 and 35 above). The gendarme officer in charge of the investigation did not attempt to take statements from the inhabitants of the applicant's village. He was content to rely on the testimonies of gendarmes, firemen and persons from neighbouring villages who all seemed to be village guards. Moreover, some of the witnesses denied the content and accuracy of their statements taken by the gendarme captain, alleging that they had been asked to sign some documents without being aware of their content (see paragraphs 50 and 51 above). In this context, the Court recalls that in a similar Turkish case it had already established a practice by the gendarmerie authorities of making witnesses sign blank sheets and filling them in themselves afterwards (see *Yöyler*, cited above, § 57). On that account, the Court had observed that statements taken from those witnesses had been of a stereotyped nature – giving the impression that they had been prepared by the investigating authorities – and that therefore no weight could be attached to them (*ibid.*, §§ 57 and 91). Likewise, in the instant case, the Court has serious doubts about the credibility of the investigation carried out by the gendarme captain, given the denial of some of the witnesses that they made such statements. In particular, it considers this practice incompatible with the notion of the investigation required by Article 13 of the Convention.

120. In any event, the Court has already found in a number of cases that investigations carried out by local administrative councils could not be regarded as independent since they were composed of civil servants, who were hierarchically dependent on the governor, and an executive officer was linked to the security forces under investigation (see *Güleç v. Turkey*, no. 21593/93, § 80, *Reports* 1998-IV; *Yöyler* and *İpek*, both cited above,

§§ 93 and 207 respectively). The appointment of a gendarme officer as the investigator in a case where gendarmes were alleged to have been the perpetrators of the destruction property, and serious doubts about the credibility of his investigation, does not permit the Court to reach a different conclusion in the present case.

121. In these circumstances, it cannot be said that the authorities have carried out a thorough and effective investigation into the applicant's allegations of the destruction of his house in Suçıktı.

122. Accordingly, there has been a violation of Article 13 of the Convention.

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

123. 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 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1. Article 14 provides as follows:

“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.”

124. The applicant argued that the destruction of his family home and possessions was the result of an official policy, which constituted discrimination due to his Kurdish origin.

125. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant claimed 84,837 euros (EUR) in respect of the pecuniary damage suffered by him as a result of the destruction of his house and his inability to cultivate his land since 1999.

128. The Government submitted that no just satisfaction should be paid to the applicant since there had been no violation of the Convention. They contended, in the alternative, that should the Court find a violation of any of the provisions of the Convention, the amounts claimed by the applicant were speculative and did not reflect the economic realities of the region. They further noted that there was no obstacle to the applicant's return to his village and the cultivation of his land.

129. The Court reiterates that there must be a causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings (see amongst others, the *Barberà, Messegue and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20). However, the Court recalls that in the instant case it was not established to the required standard of proof that the applicant's house was burned or destroyed by the State security forces or that he was denied access to his property (see paragraphs 105-107 above). Accordingly, there is no causal link between the matter held to constitute a violation of the Convention – the absence of an effective investigation – and the pecuniary damage alleged by the applicant. It therefore dismisses the applicant's claim under this head.

B. Non-pecuniary damage

130. The applicant claimed EUR 10,000 in respect of non-pecuniary damage. He referred in this regard to the pain and poverty he had suffered on account of the destruction of his house and his inability to cultivate his land in Sucıktı.

131. The Government maintained that this amount was excessive and unjustified.

132. The Court has found that the national authorities had failed to carry out an effective and thorough investigation into the applicant's complaints in breach of Article 13 of the Convention (see paragraphs 121-122 above). Accordingly, an award should be made in respect of non-pecuniary damage. However, the amount claimed by the applicant is excessive. Taking into account the seriousness of the allegations and deciding on an equitable basis the Court awards the applicant EUR 4,000, to be converted into new Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

133. The applicant claimed a total of EUR 3,000 for fees and costs in the preparation and presentation of his case before the Convention institutions. This sum included fees and costs incurred by his lawyers (20 hours' legal work).

134. The Government maintained that this claim was excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicant to prove his claim.

135. The Court would point out that the applicant has only partly succeeded in making out his complaints under the Convention. Yet, the present case involved complex issues of fact and law that required detailed examination. That said, the Court reiterates that only legal costs and expenses that have been necessarily and actually incurred can be reimbursed under Article 41 of the Convention. Having regard to the details of the claims submitted by the applicant, the Court awards him the sum of EUR 2,000, exclusive of any value-added tax that may be chargeable, less EUR 630 received by way of legal aid from the Council of Europe.

D. Default interest

136. 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 no violation of Article 8 of the Convention and Article 1 of Protocol No. 1;
2. *Holds* that it is unnecessary to determine whether there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been no violation of Article 14 of the Convention, in conjunction with Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1;
5. *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 new 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 4,000 (four thousand euros) in respect of non-pecuniary damage;

- (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, less EUR 630 (six hundred and thirty euros);
- (iii) plus any tax that may be chargeable on these amounts;
- (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President