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

THIRD SECTION

CASE OF ARTUN AND OTHERS v. TURKEY

(Application no. 33239/96)

JUDGMENT

This version was rectified on 7 December 2006
under Rule 81 of the Rules of the Court

STRASBOURG

2 February 2006

FINAL

03/07/2006

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 Artun and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 33239/96) 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 five Turkish nationals, Ali Artun (who was replaced by his heirs Selvi Artun and Kemal Artun, Kenan Artun, Ercan Artun, Himet Artun[1] upon his death on 9 August 2000), Hıdır Sevim (whose application has been pursued by Ali Sevim upon his death on 24 January 2005),[2] Sinan Güloğlu, Zeynel Güloğlu and Mazlum Artun ("the applicants"), on 5 September 1996.

2. The applicants, who had been granted legal aid, were represented by Mr Ö. Kılıç, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicants alleged that State security forces had destroyed their homes and possessions and had forced them to leave their place of living in Tepsili village of Ovacık district in Tunceli province. They alleged a violation of Articles 3, 5, 6, 8, 13, 14 and 18 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).

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[1] Rectified on 7 December 2006. The name of Himet Artun read Nimet Artun in the former version of the judgment.

[2] Rectified on 7 December 2006. The name Sevim Güloğlu was struck out of the judgment.

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

6. By a decision of 2 September 2003, the Court declared the application admissible.

7. The applicants 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 Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants are all Turkish nationals. They were living in Tepsili village at the time of the alleged events giving rise to the present application. In a letter dated 6 July 2001 the applicants' lawyers informed the Court that one of the applicants, namely Ali Artun, had died on 9 August 2000 and that his heirs Selvi Artun, Kemal Artun, Kenan Artun, Ercan Artun, Himet Artun wished to pursue the application. Hıdır Sevim also died on 24 January 2005 and his heirs named Ali Sevim to pursue the application on their behalf. The facts of the case are in dispute between the parties and may be summarised as follows.

A. The applicants' version of the facts

10. Until October 1994 the applicants all lived in Tepsili, a village of Ovacık district in Tunceli province, in the then state-of-emergency region of Turkey. In 1994, terrorist activity was a major concern in this area. Since the 1980s a violent conflict had been going on in the region between the security forces and sections of the Kurdish population in favour of Kurdish autonomy, in particular members of the PKK (*Workers' Party of Kurdistan*). The inhabitants of the applicants' village were suspected of "aiding and abetting terrorists"; and accordingly they were strictly and frequently controlled by the gendarmes stationed near the village.

11. On 3 October 1994 security forces surrounded Tepsili and assembled the inhabitants in the village square. Using curse words, they told the villagers that the village would be evacuated at once with no possibility of return. The applicants took what they were able to carry with them and left

the village. Immediately after the evacuation, the soldiers set the houses and the crops on fire.

12. Ali Artun, Mazlum Altun, Zeynel Güloğlu and Hıdır Sevim moved temporarily into a prefabricated State disaster housing complex close to Ovacık, while Sinan Güloğlu moved to Çakmaklı village.

13. Following the incident, the applicants filed individual petitions with the Ovacık Public Prosecutor's office complaining about the burning down of their village by gendarmes. The applicants noted their temporary addresses as the reply address for their petitions.

14. As the case concerned an investigation into alleged acts of the security forces, the Ovacık Public Prosecutor issued a decision of non-jurisdiction and referred the petitions to the office of the District Governor in Ovacık in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

15. The District Governor sent a letter to the Ovacık Gendarmerie Headquarters and requested information about the applicants' allegations.

16. In a letter of 1 November 1994 the Gendarmerie Commander informed the District Governor that the security forces had not burned any house during their operations in the area. Accordingly, on 9 December 1994 the Ovacık Administrative Council issued a decision to discontinue the criminal proceedings against the gendarmes.

17. On 25 October 1995 the Ovacık District Governor sent a letter to the applicants. Relying on the Ovacık Gendarmerie Commander's letter of 1 November 1994, he explained that he was unconvinced by their allegations. He further explained that pursuant to the established case-law of the Supreme Administrative Court (*Danıştay*), no inquiry was possible unless the identity of the accused civil servant were specified. He therefore stated that the authorities would not initiate an investigation into the alleged events.

18. On 15 February 1996 the District Governor's above letter was served upon one of the applicants Ali Artun, who is the former mayor (*muhtar*) of the evacuated Tepsili village. The cover letter stated that the authorities were unable to find out the new addresses of the applicants and that therefore Ali Artun, as the mayor of the village, had been required to forward it to the other petitioners. The applicants learned about the District Governor's letter through their relatives and acquaintances at a much later stage.

B. The Government's version of the facts

19. In 1994 members of the PKK started a propaganda campaign for the organisation in the villages of Ovacık district. They kidnapped young men from these villages and forced them to join the organisation. The PKK militants issued threats against the villagers and harassed them. The

inhabitants of the villages left their homes as a result of the pressure exerted by the PKK.

20. The investigation carried out by the authorities revealed that the applicants' houses had not been burned by the security forces but by terrorists wearing military uniforms. In their statements to the investigating authorities, the applicants failed to indicate the identity of the perpetrators of the alleged crime.

C. The documents submitted by the parties

21. The parties submitted various documents with a view to substantiating their claims. These documents, in so far as they are relevant, can be summarised as follows.

1. The documents submitted by the applicants

(a) Damage description protocol dated 29 June 2001

22. The applicants, Sinan Güloğlu, Süleyman Ersiz, Mazlum Artun, Zeynel Güloğlu and Ercan Artun submitted a protocol dated 29 June 2001 in which they claimed that Zeynel Güloğlu had suffered financial damages because of the destruction of his beehives and 1,000 kilograms of honey in Tepsili village.

(b) Annual Reports of the Human Rights Foundation ("the TIHV")

23. 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.

24. 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.

25. 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 1,767 hamlets had been evacuated for various reasons, although never admitting that evacuations had been carried out by security forces.

26. The 1997 and 1998 Reports described the Government's policy of evacuating villages as a systematic "internal security operation" applied throughout the 1990s.

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

27. 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 Tepsili as having been evacuated and destroyed.

28. 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.

29. 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.

(d) 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

30. 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).

31. 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).

32. 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).

33. 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).

34. 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.

2. The documents furnished by the Government

(a) Report of April 2004 concerning the property owned by each of the applicants

35. This report was prepared by Şahin Özyurt who is an investigator for human rights abuses. It aims at establishing the property owned by each of the applicants. It appears that Ali Artun owned land measuring 16,234 square metres from which he could derive 128,000,000 Turkish liras' (TRL) annual income at the relevant time. Total value of his property was TRL 470,000,000. Mr Artun was not subscribed to TEDAŞ, meaning that he did not have electricity at home. According to the official records, he did not have any commercial activity given that he did not pay any tax before 1994.

36. Mazlum Artun owned 17,406 square metres of land according to the land registry records. It was estimated that he could derive TRL 224,000,000 annual income at the relevant time. The value of his property was estimated around TRL 826,000,000. It further appeared that he owned a "green card" given to very poor people for medical care and that he received TRL 3,000,000 from the Ovacık District Governor's office for his treatment.

37. Hıdır Sevim owned a total of 26,520 square metres of land according to the land registry records. It was estimated that he could derive TRL 224,000,000's annual income at the relevant time. The value of his property was estimated around TRL 400,000,000. It further appeared that he did not have any "private forest" as alleged, but was only allowed to do timber felling. Such privilege was only given to poor people who do not have sufficient income.

38. Sinan Güloğlu lived in Çakmaklı village of Ovacık. He owned 625 square metres of land according to the land registry records. He did not live in Tepsili but only had beehives there. He received a flock of sheep and TRL 176,000,000 in aid from the Ovacık District Governor's office. Since 13 May 1999 he also had a green card.

39. Zeynel Güloğlu also lived in Çakmaklı village of Ovacık. He owned a total of 992 square metres of land according to the land registry records. He was living in the house of Musa Arat as a tenant and had beehives in Tepsili. He received TRL 75,000,000 in aid from the Ovacık District Governor's office. Since 15 January 2004 May 1999 he had a green card.

(b) Seyit Ali Aktaş's statements dated 10 March 2004, taken by two gendarme officers

40. The witness is a resident of Tepsili village. His statements were taken in order to determine the situation of Ali Artun and Hıdır Sevim who had lodged an application with the Court. The witness stated that the village had been evacuated on account of terrorist activities and lack of security in the region. The villagers all moved to other villages or provinces and at the relevant time nobody lived in Tepsili. The houses in the village had fallen into ruin because of natural forces. There was no electricity, school or telephone in the village. Ali Artun left the village and moved to Istanbul where he died in 2000. Hıdır Sevim moved to Genze district of Izmit province where he lives with his family.

(c) Joint statements by Hıdır Güloğlu and Seyit Ali Aktaş, taken on 10 March 2004 by two gendarme officers

41. The witnesses Hıdır Güloğlu and Seyit Ali Aktaş are inhabitants of Çakmaklı and Tepsili villages, respectively. They stated that the applicant Sinan Güloğlu did not reside but had beehives in Tepsili. Nor did he have any land in Tepsili. They further claimed that Sinan Güloğlu currently lived in Çakmaklı, which village had an open road, water, electricity and telephone services.

42. As regards the applicant Zeynel Güloğlu, the witnesses noted that he lived in the house of Musa Arat as a tenant in Tepsili but that he did not own any land in the village. He earned his living by stockbreeding. The witnesses also stated that Zeynel Güloğlu currently lived in Kandolar neighbourhood of Ovacık district.

II. RELEVANT DOMESTIC LAW

43. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

44. In their supplementary observations dated 29 April 2005, the Government raised a preliminary objection concerning non-exhaustion of domestic remedies in the light of the 'Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism' adopted on 14 July 2004. This Law provided for a sufficient remedy capable of redressing the Convention grievances of the applicants who had suffered damages during the authorities' struggle against terrorism. The Government therefore asked the Court to suspend the examination of this application and to require the applicants to avail themselves of the new remedy introduced in domestic law.

45. The applicants disputed the Government's objection and argued that they could not be required to exhaust a new remedy after the admissibility decision of the Court.

46. The Court recalls that in its admissibility decision of 2 September 2003 it has already held that the applicants were not required to pursue any further remedy in domestic law given the lack of an effective investigation into their complaints. It notes that this objection was raised after the application was declared admissible. On that account, the Government may be considered in principle estopped from raising their objections to admissibility at this stage (Rule 55 of the Rules of Court; see *inter alia, Amrollahi v. Denmark*, no. 56811/00, § 22, 11 July 2002; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II). The Government's objection cannot, therefore, be taken into account at this stage of the proceedings.

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

47. The applicants alleged that their forced eviction from Tepsili village and destruction of their houses and possession by the State security forces had given rise to 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."

48. The applicants submitted that their forcible eviction from their homes and deliberate destruction of their property by the State security forces constituted a violation of their right to peaceful enjoyment of their possessions and their right to respect for their family life. They also claimed that the circumstances surrounding the destruction of their property and their forcible eviction from their village also amounted to inhuman and degrading treatment.

49. The Government denied the factual basis of the applicants' complaints and submitted that they were unsubstantiated. In this connection, they maintained that the applicants' village had never been evacuated or burned down by the security forces. The applicants had left their village because of the intense terrorist activities carried on by the PKK in the region. The investigation conducted by the authorities had revealed that the applicants' houses might have been burned down by terrorists wearing military uniforms.

50. The Court is confronted with a dispute over the exact cause of the events giving rise to the present application. Accordingly, it must 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).

51. 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-...). 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.

52. 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, have 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.

53. 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 23-34 above), the applicants' allegations that they had been forcibly evicted from their village and that their houses and possessions 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 unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

54. In this context, the Court notes that the applicants did not submit any eye-witness statement in relation to the burning down of their houses and possessions by the security forces. Nor did they give any particulars as to the identity of the soldiers involved in the alleged events. Furthermore, it does not appear that the applicants intervened in the proceedings which were commenced by the Ovacık Public Prosecutor's office or that they pursued their case subsequent to lodging a complaint with the prosecuting authorities. The applicants have offered no explanation for their failure to follow up the investigation conducted by the authorities. Moreover, the Court also finds no evidence in the file which would rebut the Government's submissions and the testimonies of the applicants' fellow villagers.

55. In the light of the above and having regard to the applicants' failure to corroborate their allegations, the Court does not find it established to the required standard of proof that the applicants' houses were burned or that they were forcibly evicted from their village by the State security forces.

56. Against this background, the Court concludes that there has been no violation of Articles 3 and 8 of the Convention or Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

57. The applicants alleged that the circumstances surrounding the destruction of their houses and their forced eviction from Tepsili village had also amounted to a violation of their right to liberty and security of person enshrined in 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."

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

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

60. In the present case, the applicants were never arrested or detained, or otherwise deprived of their liberty. The applicants' insecure personal circumstances arising from the alleged loss of their home and possessions do not fall within the notion of security of person as envisaged in Article 5 § 1 (see *Çaçan*, cited above, § 70; and *Cyprus v. Turkey* [GC], no. 25781/94, § 228, ECHR 2001-IV).

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

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

62. The applicants complained that they had been denied an effective remedy by which to challenge the destruction of their houses and their forced eviction by the security forces, including access to a court to assert his civil rights. They 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

63. The applicants submitted that their right of access to a court to assert their civil rights had been denied on account of the failure of the authorities to conduct an effective investigation into their allegations. In their opinion, without such an investigation, they would have had no chance of obtaining compensation in civil proceedings.

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

65. The Court notes that the applicants did not bring an action before the civil courts for the reasons given in the admissibility decision of 2 September 2003. It is therefore impossible to determine whether the national courts would have been able to adjudicate on the applicants' claims had they initiated proceedings. In the Court's view, the applicants' complaints mainly pertain to the alleged lack of an effective investigation into the deliberate destruction of their family home and possessions and their forced eviction from their village 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).

66. 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

67. The applicants complained under Article 13 of the Convention that they had no effective remedy available in respect of their Convention grievances.

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

69. 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).

70. 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 applicants' houses were destroyed or that they were forcibly displaced by the State security forces as alleged (see paragraph 55 above). This does not however mean, for the purposes of Article 13, that their 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 2 September 2003, the Court had already concluded that the applicants had been absolved from pursuing any further remedy in domestic law given the lack of a thorough and effective investigation into their complaints.

71. 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 60 above), the Court considers that the applicants' 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).

72. Turning to the particular circumstances of the case, the Court notes that following the Ovacık Public Prosecutor's decision of non-jurisdiction, the administrative authorities of the Ovacık District Council commenced an investigation into the applicants' allegations. However, the investigation in question was limited to asking the Gendarmerie Headquarters to provide information about the applicants' allegations (see paragraph 14 above). It does not seem that any attempt was made to interview members of the security forces during the course of investigation, despite the fact that the applicants had clearly accused gendarmes of burning their houses and possessions. Nor does it appear that the authorities considered visiting the scene of the alleged events in order to verify the applicants' allegations. Rather, they were content to rely on the information given by the security forces. It is noteworthy in this connection that the Court has consistently found a general reluctance on the part of the authorities to consider the possibility that members of the security forces could have perpetrated such acts (see the above-mentioned judgments of *Selçuk and Asker*, § 68, *İpek*, § 206; *Yöyler*, § 92). Indeed, the response given by the Ovacık District Governor in the instant case confirms the Court's previous findings (see paragraph 17 above). Finally, subsequent to the gendarmerie authorities' denial of the applicants' allegations no further investigation was carried out by the authorities of the Ovacık District Council.

73. In any event, the Court has previously expressed serious doubts as to the ability of the administrative councils in south-east Turkey to carry out an independent investigation given that they were composed of civil servants, who were hierarchically dependent on the governor, and an executive officer who was linked to the security forces under investigation (see, among many others, *Güleç v. Turkey*, no. 21593/93, § 80, *Reports* 1998-IV; *Yöyler* and *İpek*, both cited above, §§ 93 and 207 respectively). The serious defects identified in the investigation do not permit the Court to reach a different conclusion in the present case.

74. In these circumstances, it cannot be said that the authorities have carried out a thorough and effective investigation into the applicants' allegations of the destruction of property in Tepsili.

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

V. 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

76. The applicants maintained that, because of their Kurdish origin, they 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."

77. The applicants argued that the destruction of their houses and possessions was the result of an official policy, which constituted discrimination due to their Kurdish origin.

78. The Government rejected the applicants' allegations.

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

VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

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

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

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

A. Damage

83. The applicants claimed a total amount of 916,560,000,000 Turkish liras (TRL)[1] in respect of the pecuniary damage suffered by them as a result of the destruction of their houses and their inability to regain their economic activities since October 1994.

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[1] Approximately 560,000 euros.

84. The Government submitted that no just satisfaction should be paid to the applicants 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 applicants were speculative and did not reflect the economic realities of the region.

85. The Court reiterates that there must be a causal connection between the damage claimed by the applicants 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, Messegué 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 applicants' houses were burned or that they were forcibly evicted from their village by the State security forces (see paragraph 55 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 claimed by the applicants. It therefore dismisses the applicants' claim under this head.

B. Non-pecuniary damage

86. The applicants each claimed an amount of 20,000 euros (EUR) in respect of non-pecuniary damage. They referred in this regard to the pain and poverty they had suffered following their forced eviction from their village and the destruction of their houses and possessions in Tepsili.

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

88. The Court has found that the national authorities failed to carry out an effective and thorough investigation into the applicants' complaints in breach of Article 13 of the Convention (see paragraphs 67-75 above). Accordingly, an award should be made in respect of non-pecuniary damage. Taking into account the seriousness of the allegations and deciding on an equitable basis the Court awards EUR 4,000 to each of the applicants (a total sum of EUR 20,000), to be converted into Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

89. The applicants claimed a total of EUR 31,850 for fees and costs in the preparation and presentation of their case before the Convention institutions. This sum included fees and costs incurred by their lawyers (60 hours and 20 minutes' legal work and expenses such as telephone calls, postage, translation and stationary).

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

91. The Court would point out that the applicants have only partly succeeded in making out their 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 applicants, the Court awards them the sum of EUR 3,150, exclusive of any value-added tax that may be chargeable, less 3,800 French francs (approximately EUR 580) received by way of legal aid from the Council of Europe.

D. Default interest

92. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been no violation of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1;

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

4. *Holds* that it is unnecessary to determine whether there has been a violation of Article 6 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention;

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

7. *Holds* that there has been no violation of Article 18 of the Convention;

8. *Holds*

(a) that the respondent State is to pay, 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 applicants' bank account in Turkey:

(i) EUR 4,000 (four thousand euros) to each applicant in respect of non-pecuniary damage;

(ii) EUR 3,150 (three thousand one hundred and fifty euros) to the applicants jointly in respect of costs and expenses, less EUR 580 (five hundred and eighty 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;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President