



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

THIRD SECTION

CASE OF AKSAKAL v. TURKEY

(Application no. 37850/97)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

09/07/2007

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 Aksakal 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. TÜRMEŖ,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 37850/97) 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 Halis Aksakal (“the applicant”), on 3 November 1995.

2. The applicant, who had been granted legal aid, was represented by Reyhan Yalçındağ and Cihan Aydın, lawyers practising in Diyarbakır, and Lucy Claridge, Tim Otty, Anke Stock, Philip Leach and Mark Muller, lawyers practising in London. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that State security forces had destroyed his home and possessions and had forced him to leave his place of residence with no possibility of return and that he had been denied an effective remedy in domestic law in violation of Articles 3, 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 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 1 July 2003, the Court declared the application partly admissible.

7. 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

8. The applicant was born in 1963 and lives in Diyarbakır. He was living in Görbeyli village at the time of the alleged events giving rise to this application. The facts of the case are in dispute between the parties and may be summarised as follows.

A. The applicant's version of the facts

9. Until April 1994 the applicant lived in Görbeyli, a village of Lice district in Diyarbakır province, in the then state-of-emergency region of Turkey. The village which was situated some 3 km from Lice district comprised approximately eighty households before 1995. In 1995 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*).

10. On 5 May 1995, at around 10 a.m., the applicant heard an explosion which seemed to come from a place under the control of the army. Following the explosion a group of reinforcement soldiers from Lice came to the area and entered the applicant's village. The soldiers told the inhabitants that one soldier had died and two soldiers had been injured in the explosion which had been caused by the explosion of a grenade in the hand of a soldier.

11. The soldiers then rounded up the villagers beside the primary school and split them into two groups, one of women and children and the other of the men. They apprehended Süleyman Şanlı, aged 67, in the fields and stripped him naked and inflicted ill-treatment upon him before the villagers. The soldiers then beat the men of the village using clubs. At the same time, another group of soldiers entered the village and started destroying the villagers' possessions. All the windows and doors of their houses were broken. The soldiers took those goods which might be of use to them. In the meantime, the beating of the men continued. Before leaving the village, the soldiers told the villagers that they would return in three days and if the villagers were still there, they would kill them all. As it was spring and their

crops were not yet ready for harvest, the inhabitants did not leave the village. They rather set about fixing their houses and other property.

12. On 12 May 1995 the soldiers arrived in the village, they assembled the villagers in the school yard and beat them as before. The soldiers demolished the houses and killed many of the livestock in the village.

13. In the second half of June 1995 the soldiers raided the village again and razed it to the ground, including the vineyards, orchards and forestry.

14. The applicant filed complaints with the offices of the State of Emergency Regional Governor, the Diyarbakır Chief Public prosecutor and the Diyarbakır Provincial Regiment Command. The applicants' fellow villagers' request to return and cultivate their lands was rejected by the authorities.

15. Meanwhile, the applicant has submitted to the Court a report prepared by the Human Rights Association in Diyarbakır, entitled "The Burned and Evacuated Settlement Units". This report gives the list of villages or settlements which were allegedly evacuated or destroyed by the security forces. The applicant's village appears on this list as having been burned down on 15 May 1995.

16. Another report entitled, "The Destruction of Villages in Southeast Turkey, prepared by Medico International and the Kurdish Human Rights project in June 1996, provides background information on the destruction of villages in South-east Turkey and makes suggestions on the steps to be taken in order to address the immediate humanitarian needs and long term strategies to remedy the problems of internally displaced persons.

17. The applicant has also furnished the Court with photocopies of four photographs showing four houses in ruins allegedly in Sexan (Görbeyli) village. However, it is not possible to determine the exact cause of the current state of these houses from these photos.

B. The Government's version of the facts

18. On 5 June 1995 the applicant and two members of the village elders' council, namely Mehmet Şanlı and Alaattin Altan filed a petition with the Lice Public Prosecutor's office, for submission to the Diyarbakır Chief Public Prosecutor's office, complaining that the security forces had evicted the inhabitants of their village and destroyed their property. They asked the judicial authorities to conduct an investigation into the events and to prosecute those responsible for the destruction of their property.

19. In letters dated 15 December 1995 the Lice Chief Public Prosecutor asked the Lice District Gendarme Command and the Diyarbakır Chief Public Prosecutor to carry out an investigation into the allegations made by the applicant and his two other fellow villagers.

20. In a letter of 23 January 1996 the Diyarbakır Chief Public Prosecutor requested the Security Directorate to summon the complainants to his office in order to hear evidence from them.

21. The investigation conducted by the Security Directorate to find out the address of Alaattin Altan did not yield any result. Halis Aksakal could only be found at the end of four months' search.

22. On 25 April 1996 the Diyarbakır Public Prosecutor took statements from the applicant, who reiterated his allegations and asked the judicial authorities to prosecute the security forces who perpetrated the impugned acts. He further informed the prosecutor that Mehmet Şanlı had returned to his village and that Alaattin Altan worked in Van.

23. Meanwhile, in a letter of 7 February 1996 the Gendarmerie Commander replied to the Lice Chief Public Prosecutor's letter and informed him that, contrary to the allegations, no houses had been burned on 15 May 1996 and that no one had applied to the command with such allegations.

24. On 18 May 1996 the Lice Chief Public prosecutor issued a decision of non-jurisdiction and transferred the case-file to the Lice District Governor's office in accordance with the Law on Prosecution of Civil Servants. Thereupon, Deputy to the Diyarbakır Governor, who was then in charge of the case, asked the Diyarbakır Gendarmerie Command to appoint an investigator to carry out the preliminary investigation.

25. The preliminary investigation was carried out by Captain Hacı İlbas, who was at the relevant time the Gendarmerie Unit Commander in Lice. On 29 July 1996 Inspector İlbas took statements from five inhabitants of Gürbeyli, including the *muhtar* of the village. The villagers all stated that, on 15 May 1995, following a road block by members of the PKK, a clash had erupted between the security forces and the PKK militants. After the clash, the security forces had carried out a house search in Gürbeyli and other neighbouring villages. The witnesses all claimed that the security forces had not inflicted any damage to their property, that no houses had been burned down and that the inhabitants had not been forced to leave the village. Furthermore, they all noted that the complainants, including the applicant, had all been living in Diyarbakır and that they could return to the village if they wished.

26. In his investigation report dated 12 August 1996, Inspector İlbaş concluded that the applicant's allegations were groundless. He found it established that on 15 May 1995 members of the PKK had blocked the Lice-Kulp road and kidnapped one person. Consequently, the security forces had intervened and during the clashes three PKK terrorists had been killed, following which the security forces had carried out searches in the villages in the region with due respect to the citizens.

27. On 10 October 1996, having regard to the inspector's report, the Lice District Administrative Council issued a decision of non-prosecution in respect of the security forces.

28. On 6 March 1997, the Regional Administrative Court upheld the District Administrative Council's decision of non-prosecution.

II. RELEVANT DOMESTIC LAW

29. A full description of the relevant domestic law may be found in *Yöyler v. Turkey* (no. 26973/95, §§ 37-49, 24 July 2003), *Matyar v. Turkey* (no. 23423/94, §§ 93-106, 21 February 2002) and *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 31-35, ECHR 2004-...).

THE LAW

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

30. The applicant alleged that his forced eviction from Görbeyli village and destruction of his house and possessions 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.”

31. The applicant submitted that his eviction from his family home and deliberate destruction of his property by the State security forces constituted a violation of his right to peaceful enjoyment of his possessions and his right to respect for his family life. He also claimed that the circumstances surrounding the destruction of his property and his eviction from his village also amounted to inhuman and degrading treatment.

32. The Government denied the factual basis of the applicant's complaints and submitted that they were unsubstantiated. The investigation conducted by the authorities had revealed that the applicant's village had never been evacuated or burned down by the security forces. The applicant had left his village of his own free will. Furthermore, there existed no obstacle preventing the applicant to return to his village.

33. 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 from a number of settlements to ensure the safety of the population in the region (*Doğan and Others*, cited above, § 142). 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).

34. 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 in 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*; and *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.

35. 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. 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).

36. As noted earlier, the applicant has submitted reports concerning the evacuation and destruction of villages in south-east Turkey with a view to substantiating his allegations (see paragraphs 16 and 17 above). However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt." 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).

37. In this context, the Court notes that the applicant did not submit any independent eye-witness statement in relation to the burning down of his house and possessions by the security forces. Nor did he give any particulars as to the identity of the soldiers involved in the alleged events or when and how he was prevented by the authorities from returning to his village. Furthermore, it does not appear that the applicant intervened in the proceedings which were commenced by the Lice Public Prosecutor's office or that he pursued his case subsequent to the lodging of a complaint with the prosecuting authorities. The applicant has offered no explanation for his 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 findings of the national authorities, in particular, the testimonies obtained from the applicant's fellow villagers (see paragraph 26 above).

38. In the light of the above and having regard to the applicant's failure to corroborate his allegations, the Court does not find it established to the required standard of proof that the applicant's house was burned down or that he was forcibly evicted from his village or prevented from returning there by the State security forces.

39. 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.

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

40. The applicant complained that he had been denied access to all effective remedies in violation of 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

41. 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.

42. 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.

43. The Court notes that the applicant did not bring an action before the civil courts for the reasons given in the admissibility decision of 1 July 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).

44. 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

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

46. 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.

47. 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).

48. 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 31-40 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 1 July 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.

49. 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 paragraphs 36 and 37 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).

50. 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 Lice Administrative Council (see paragraph above). The gendarme captain conducted an on-site inspection, took statements from five witnesses, who were all inhabitants of Görbeyli, and concluded that the applicant's allegations were unfounded (see paragraph 27 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 (see paragraph 28 above).

51. 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 did not consider visiting the scene of the incident in order to verify whether the applicant's house or any other house in Görbeyli was indeed burned down, as alleged by the applicant. They were rather content to rely on the information given by the Gendarmerie authorities that no houses were burned down in Görbeyli (see paragraph 24). The gendarme officer in charge of the investigation did not attempt to take statements from members of the security forces who conducted operations in and around Görbeyli village subsequent to the clashes on 15 May 1995.

52. 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 of the property, and serious doubts about the credibility of his investigation, do not permit the Court to reach a different conclusion in the present case.

53. 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 Görbeyli.

54. 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 3, 6, 8 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

55. 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.”

56. 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.

57. 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. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

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

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

59. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed a total amount of 164,734.11 euros (EUR) in

respect of the pecuniary damage suffered by him as a result of the destruction of his house and his inability to regain his economic activities since April 1994.

62. 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.

63. 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 down or that he and his family were forcibly evicted from their village by the State security forces (see paragraph 39 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 applicant. It therefore dismisses the applicant's claim under this head.

B. Non-pecuniary damage

64. The applicant claimed a total amount of EUR 35,000 in respect of non-pecuniary damage. He referred in this regard to the pain and poverty he had suffered following his forced eviction from his village and the destruction of his house and possessions in Görbeyli.

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

66. 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 45-54 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 the applicant EUR 4,000 to be converted into Turkish liras at the rate applicable at the date of payment (see *Nuri Kurt v. Turkey* no. 37038/97, § 132, 29 November 2005 and *Artun and Others v. Turkey*, application no. 33239/96, § 88, 2 February 2006).

C. Costs and expenses

67. The applicant claimed a total of EUR 14441.90 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 in Turkey and the United Kingdom (EUR 6,769.9 for his lawyers in Turkey and 5,211.66 pounds sterling (GBP) for his lawyers in the United Kingdom, in respect of legal work and expenses such as telephone calls, postage, translation and stationary).

68. 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 their claim.

69. 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 3,000, 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

70. 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 Articles 3 and 8 of the Convention and of Article 1 of Protocol No. 1;
2. *Holds* that it is not necessary 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 3, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1;
5. *Holds* that there has been no violation of Article 18 of the Convention;

6. *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, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, exclusive of any value-added tax that may be chargeable, 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;

(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;

7. *Holds*

(a) that the respondent State is to pay the applicant's representatives, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), in respect of costs and expenses, exclusive of any value-added tax that may be chargeable, less EUR 630 (six hundred thirty euros) granted by way of legal aid, to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the representatives' sterling bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President