



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18888/02
by Aydın İÇYER
against Turkey

The European Court of Human Rights (Third Section), sitting on 12 January 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMEŒ,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Mrs R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 29 January 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aydın İçyer, is a Turkish national who was born in 1946 and lives in Istanbul. He is represented before the Court by Mr M. A. Kırdök and Mr Özcan Kılıç, lawyers practising in Istanbul.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant's version of the facts

3. Until October 1994 the applicant lived in Eğrikavak, a village of the Ovacık district in Tunceli, where he owns property.

4. On 3 October 1994 the inhabitants of Eğrikavak were forcibly evicted from their village by security forces on account of the disturbances in the region. The security forces also destroyed the applicant's property. The applicant and his family then moved to Istanbul.

5. On 4 October 1994 the applicant lodged a petition with the Public Prosecutor's Office in Ovacık complaining that his house was burned down by the security forces on 3 October 1994.

6. On 9 December 1994 the Ovacık public prosecutor declined jurisdiction and sent the case file to the office of the Administrative Council in Ovacık, in accordance with Article 4 (b) of Decree no. 285 and the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

7. On 25 October 1995 the Administrative Council sent a letter to the applicant stating that there would not be an investigation into his allegations as the perpetrators of the alleged acts could not be identified. With reference to a letter from the Ovacık District Gendarme Command of 1 November 1994, the Administrative Council also noted that no house had been burned down by the security forces in the region.

8. On 26 October 2001 the applicant filed petitions with the Governor's office in Tunceli and the District Governor's office in Ovacık requesting permission to return to his village.

9. On 31 October 2001 the state-of-emergency office attached to the Ovacık District Governor's office stated the following in response to the petition submitted by the applicant:

"Your petition requesting permission to return to your village has been received by the District Governor's office and will be considered under the 'Return to Village and Rehabilitation Project'."

2. The Government's version of the facts

10. The applicant was a resident of Eğrikavak village. The official records indicated that the inhabitants of Eğrikavak had evacuated their village on account of intense terrorist activities in the region and threats issued by the PKK (Workers' Party of Kurdistan) terrorist organisation against the villagers. The security forces had not forced the applicant or his fellow villagers to leave their village.

11. Currently there was no obstacle preventing villagers from returning to their homes and possessions in their villages. Persons who had left their villages as a result of terrorism had already started returning and regaining their activities in their villages, as demonstrated by 110 applicants who indicated in their petitions to the Diyarbakır Compensation Commission that their current domiciles were in their respective villages (see paragraph 43 below).

12. On 14 July 2004 the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism was passed by the Grand National Assembly and entered into force on 27 July 2004. That Law provided for a sufficient remedy capable of redressing the Convention grievances of persons who were denied access to their possessions in their villages.

13. In that connection Damage Assessment and Compensation Commissions were set up in seventy-six provinces. Persons who had suffered damage as a result of terrorism or of measures taken by the authorities to combat terrorism could lodge an application with the relevant compensation commission claiming compensation.

14. The number of persons applying to these commissions had already attained approximately 170,000. A further 800 persons, whose applications were pending before the Court, had also applied to the compensation commissions (see paragraph 43 below). Many villagers had already been awarded compensation for the damage they had sustained (see paragraphs 28-40 below).

B. Documents submitted by the parties

1. The documents submitted by the applicant

- (a) List of household goods and animals owned by the applicant, undersigned by the latter and the village headman (*muhtar*), dated 9 August 2001**

15. According to this document, at the time of the burning down of his house and the eviction of the inhabitants from Eğrikavak village, the applicant owned three hundred sheep, one hundred goats, one horse, six hundred trees, one TV set, one refrigerator, one bed and fifty kitchen utensils.

- (b) A photocopy of the relevant page of the village land registry record, signed by the *muhtar***

16. It appears from this document that the applicant owns five plots of land in Eğrikavak.

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

17. 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 2,523 hamlets were evicted and forced to move to other regions of the country. The number of people evicted from 183 villages and 823 hamlets in the province of Tunceli, which includes Eğrikavak village, was estimated to be around 40,933. The detailed content of this report can be found in the Court's judgment of *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 31-35, ECHR 2004-...).

(d) Committee of Ministers Interim Resolution ResDH (2002)98 on action of the security forces in Turkey

18. This Resolution gives a detailed account of the abuses by members of the Turkish security forces and urges the Turkish Government to take the necessary administrative, judicial and legislative measures to halt human rights violations (*Doğan and Others*, cited above, § 36).

(e) Report on Internal Displacement in Turkey prepared by the Turkish Economic and Social Studies Foundation (*Türkiye Ekonomik ve Sosyal Araştırmalar Vakfı "TESEV"*), released on 28 October 2005

19. This report was prepared by a working and monitoring group composed of five scholars and experts commissioned by the TESEV (hereafter "TESEV report"). It contains the findings of the working and monitoring group subsequent to field researches they had conducted in Diyarbakır, Batman, Hakkâri and Istanbul. The TESEV report examines the problems arising from the implementation of Law no. 5233 on compensation for losses sustained as a result of terrorism or the fight against terrorism. It also aims to suggest policy proposals to the Government, national and international bodies and NGOs.

20. According to the TESEV report, there are serious problems concerning the return of internally displaced persons ("IDP") to their villages. Firstly, IDPs are unable to fund their travel and removal expenses in order to return to their villages from the cities. Secondly, the infrastructure of the villages is not in a good shape. In most villages there is no electricity, water, mains or health services. Thirdly, IDPs still worry about the lack of sufficient security in their former places of residence on account of intimidation by the PKK, military operations and clashes or possible pressure exerted on them by the State authorities to agree to become village guards. Finally, non-governmental organisations point to the

presence of land mines which cause the death or injury of people living in the region.

21. The TESEV report welcomes the enactment of Law no. 5233 and considers it a positive step towards redressing the human rights violations caused by the forced displacements. However, it is unclear whether persons who left the country can benefit from the Law in question. It appears that the a majority of IDPs misconceive the rights contained in the Law. Although Law no. 5233 provides a remedy for cases of death or injury, most IDPs consider that the Law is confined to cases of forced evacuation of villages. Furthermore, since Law no. 5233 includes the term “terrorism” in its title, IDPs generally think that they might be considered terrorists if they lodged an application under the Law and complained about the State. Some IDPs think that the remedy envisaged by the Law falls far short of meeting their needs since it does not offer sufficient compensation and there is no possibility of bringing the perpetrators of unlawful acts to justice. Moreover, Law no. 5233 does not contain a right to non-pecuniary damages. IDPs therefore prefer to lodge an application with the European Court of Human Rights.

22. As regards the implementation of Law no. 5233, there are three major problems. Firstly, the members of the compensation commissions have a very limited margin of appreciation in rendering decisions. Secondly, even if they are in good faith, the members of the compensation commissions, who are civil servants, do not want to take any risks and therefore expect the Government to demonstrate a clear political will in implementing the Law. Thirdly, some of the commission members seem to be prejudiced towards IDPs, considering them to be opportunists and/or PKK sympathisers who want to misuse the Law.

23. The burden of proof on the victims to prove their claims used to be a major problem. However, subsequent to decision no. 9239 of the Council of Ministers, on 15 September 2005, claimants can prove their allegations by means of any information or document.

24. Concerning the composition of the compensation commissions, it was noted that the majority of their members are civil servants. Accordingly, in the eyes of the victims there are doubts about their independence and impartiality.

25. It was recommended that the Law should stay in force for another year so that justice can be done and the process of redress achieve its aim.

26. Consequently, the TESEV report makes a number of other recommendations with a view to tackling the problems of the IDPs and to establishing peace and security in south-east Turkey.

(f) Other documents

27. The documents listed below concern the inability of the administrative and judicial authorities to visit or to conduct on-site

inspections in the villages of Ovacık on account of the lack of security in the area.

- (i) The letter of the Ovacık First Instance Court judge, dated 18 October 1994, to the Ovacık District Governor.
- (ii) The letter of the Tunceli Cadastre Director, dated 25 October 1994, to the Ovacık First Instance Court.
- (iii) The Ovacık District Gendarme Commander's letter dated 6 November 1994 to the Ovacık District Governor.
- (iv) A petition dated 18 October 1994 filed by a resident of Yazıören village with the Ovacık First Instance Court.
- (v) The Tunceli Governor's letter of 22 November 1994 to the Ovacık First Instance Court.
- (vi) Supplementary decision dated 22 November 1994 issued by the Ovacık First Instance Court.

2. The documents submitted by the Government

(a) Decisions pertaining to the implementation of the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism

28. The Government claimed that the Damage Assessment and Compensation Commissions ("compensation commissions") established to provide an effective domestic remedy for the grievances of persons who were affected either by terrorism or the acts of the security forces in combating terrorism had become fully functional. In this connection they furnished the Court with copies of decisions and declarations issued by these bodies with a view to demonstrating the effectiveness of the new remedy offered by the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism.

(i) Decisions concerning awards of compensation to persons who could not gain access to their possessions

29. The Government submitted a copy of 440 decisions issued by the compensation commissions set up in Tunceli and Diyarbakır. These decisions exclusively concern awards of compensation to persons who suffered damage as a result of their inability to gain access to their homes and land in villages in the Tunceli and Diyarbakır provinces.

30. In a decision of 29 September 2005 the Tunceli Compensation Commission awarded compensation to twenty-four persons. As an example, in the case of Cafer Biçici (application no. 6607), the compensation commission found that the claimant had been unable to gain access to his possessions in Boydaş village of the Hozat district in Tunceli for seven years between 1994 and 2001. Relying on expert opinions, the compensation commission considered that the claimant should be awarded 5,404 new Turkish liras (YTL) for damage caused to his immovable

property, YTL 1,100 for his poplar trees, YTL 1,060 for his land and fruit trees and YTL 7,420 for deprivation of income from agriculture for seven years ($7 \times 1,060 = 7,420$). Thus, the compensation commission decided to award the claimant a total amount of YTL 14,000 (approximately 8,725 euros (EUR)) to compensate his damage.

31. In the case of Hüseyin Biçici (application no. 10436), the compensation commission awarded the claimant YTL 26,600 (approximately EUR 16,580) for the damage he had suffered on account of his inability to gain access to his possessions in Boydaş village. On the basis of the expert opinions and investigations, the compensation commission found that the claimant had sustained damage in the amounts of YTL 7,720 for his immovable property (house, barn etc.) and YTL 18,900 for deprivation of income from agriculture for seven years between 1994 and 2001 ($7 \times 2,700 = 18,900$). Likewise, in the case of Hüsnü Özkay (decision of 9 September 2005, no. 2005/4-564) the Diyarbakır Compensation Commission awarded the claimant YTL 27,520 (approximately EUR 23,000) for the damage he had suffered as a result of his inability to return to his village since 1993. This amount consisted of compensation of YTL 15,269 for the destruction of Mr Özkay's house, YTL 8,950 for his barn, YTL 7,700 for his inability to cultivate his land, and YTL 5,250 for his vineyard. The compensation commission issued similar decisions with similar conclusions in respect of the applications by twenty-two other claimants. It sent the claimants friendly-settlement declarations specifying the amounts to be paid.

32. By a decision of 1 August 2005 the Diyarbakır Compensation Commission no. 4 decided to award YTL 50,246 (approximately EUR 31,365) to Mustafa Narin, who had been unable to gain access to his possessions since 1993 in Şaklat village of the Kocaköy district in Diyarbakır province. Subsequent to the determination of the damage and the decision to award the aforementioned amount of compensation, the compensation commission sent the claimant a friendly-settlement declaration. The Diyarbakır Compensation Commission issued similar decisions with similar conclusions in respect of 415 other applications lodged by persons who had sustained damage as a result of their inability to gain access to their possessions in villages in Diyarbakır.

(ii) Decisions concerning awards of compensation to persons who had sustained damage to property

33. The Government also submitted a number of decisions issued by the compensation commissions in Şırnak, Diyarbakır, Batman and Hakkâri. The subject matter of these decisions is the award of compensation to persons who sustained damage to their property as a result of terrorist acts.

34. In a decision of 14 June 2005 the Şırnak Compensation Commission decided to award YTL 8,000 (approximately EUR 5,000) to Kemal Ecer,

whose house in Oymakaya village of the Beytüşşebap district in Şırnak province had been burned down by a group of terrorists.

35. In an application lodged by Abdullah Salman, Mehmet Salman and İsmail Tekin, the Diyarbakır Compensation Commission decided to award YTL 1,692 (approximately EUR 1,056) to claimants on account of the damage caused to their fruit trees in the course of an anti-terrorist operation by the security forces in Diyarbakır.

36. As regards the application lodged by Adil Erdoğan, the Bitlis Compensation Commission decided to award YTL 466.88 (approximately EUR 300) for the death of the claimant's cow during a clash between the village guards and PKK terrorists in Kavakdibi village in Bitlis province.

37. By a decision of 20 June 2005 the Diyarbakır Compensation Commission decided to award YTL 25,000 (approximately EUR 15,600) to İ. Burhan Aslan on account of the burning down of his tractor by members of the PKK in Ağılı village of the Bismil district in Diyarbakır province.

(iii) Decisions concerning awards of compensation for death or injury

38. The compensation commissions also issued a number of decisions awarding compensation to persons who were injured or whose relatives were killed during terror incidents.

39. As an example, in a decision of 20 June 2005 the Tunceli Compensation Commission decided to award compensation to Hasan Dalkılıç, Mevlüt Cantürk, Sinan Yıldırım, Dilber Karik Dal, Hıdır Yadigaroğulları and Ali Kes on account of the killing of their relatives during terror incidents. The compensation commission awarded a fixed amount of YTL 14,035 (approximately EUR 8,760) to each of the claimants. The claimants all signed the friendly-settlement declarations sent by the compensation commissions.

40. On 8 June 2005 the Tunceli Compensation Commission decided to award YTL 1,294.95 to İsmail Baştımur on account of the injuries he had suffered as a result of the explosion of a mine. It also awarded YTL 8,421 to Alişan Bulut, who was injured and became disabled as a result of a terrorist attack.

(b) Supreme Administrative Court (*Danıştay*) decisions

41. The Government submitted a copy of three judgments rendered by the Supreme Administrative Court. In an appeal lodged with the latter court (decision no. 2000/5120, on file no. 1999/2162, 11 October 2000) against the judgment rendered by the Erzurum Administrative Court, the appellant, Mr Ömer Akakuş, alleged that he had left his village in the province of Ağrı on account of terror incidents and of the lack of security and that he had suffered damage because he had not been able to use his property since 1993. The Supreme Administrative Court acceded to his request and overruled the first-instance court's judgment. The former court noted that

the appellant had left his village owing to the terrorist incidents and not at the request or on the instructions of the authorities. On that account, it considered that, even if the damage sustained by the appellant could not be ascribed to the authorities and though there was no “causal link”, the authorities were liable since they had failed to prevent terrorist incidents and maintain security.

42. The Supreme Administrative Court delivered judgments with similar conclusions in the cases of Muammer and Burhan Gürtürk (decisions nos. 2001/4431-35, on files nos. 2000/4372 and 2000/4997, 5 December 2001).

(c) List of persons who lodged an application with the Court and the Diyarbakır Compensation Commission

43. According to this list, 800 persons, whose applications are pending before the Court, have also applied to the Diyarbakır Compensation Commission and claimed compensation for the damage they incurred as a result of their inability to gain access to their possessions in their villages. In their petitions to the Diyarbakır Compensation Commission, 110 persons, whose names appear on this list, indicated their addresses as being in their villages.

C. Relevant domestic law and practice

1. Law no. 5233 of 27 July 2004

44. On 14 July 2004 Law no. 5233, entitled “Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”), was passed by the Grand National Assembly and entered into force on 27 July 2004. On 28 December 2005 the Grand National Assembly enacted Law no. 5442 and amended several provisions of the compensation law. This Law lays down the principles and procedure for compensating damage sustained by persons as a result of terrorist acts or of measures taken by the authorities to combat terrorism. In particular, it aims to indemnify the material damage sustained by natural or legal persons who have migrated or have been displaced due to terrorism or anti-terrorist activities. It also aims to partially compensate the damage sustained by civil servants who cannot be considered as part of the internally displaced population or migrants, but who have been affected by terrorism or by anti-terrorist activities carried out by the security forces.

45. Section 7 of the Compensation Law reads:

“The damage to be compensated by this Law, through friendly settlement, is as follows:

a) All types of damage caused to livestock, trees, agricultural products and any moveable or immoveable property;

b) Damage resulting from injury, physical disability and death and expenditure incurred for medical treatment and funeral expenses;

c) Material damage suffered by those who could not gain access to their property because of the acts carried out within the context of the fight against terrorism.”

46. The damage incurred and the compensation payable under section 7 are determined by damage assessment commissions (“compensation commissions”). In this connection section 4 provides:

“Damage assessment commissions shall be established in provinces within a period of ten days from receipt of applications made under this Law.

The commission shall be composed of a chairman and six members. The chairman of the commission shall be the deputy governor designated by the governor; and the members shall be appointed by the governor from among the public employees working in that particular province and shall be experts on finance, public works and housing, agriculture and rural affairs, health, industry and commerce; and a lawyer appointed from among bar members by the relevant bar association.

The commission must be quorate when it convenes and its decisions shall be taken by an absolute majority of the number of participants at the meeting. The working principles and procedures of the commission shall be regulated by a regulation.”

47. In accordance with section 5, the compensation commissions’ duties mainly involve the determination of damage suffered by claimants and the preparation of friendly-settlement declarations (*sulhname*) for payment of compensation to the claimants in cash or in kind. In this respect prior aid received from public funds is deducted from the amount to be paid to the claimants. In case of a disagreement about the terms of the friendly-settlement declaration, the compensation commission prepares a protocol of non-agreement to be sent to the complainant.

48. Under section 6, anyone who has suffered damage as a result of terrorism or of measures taken by the authorities to combat terrorism can lodge an application with the relevant compensation commission claiming compensation. The application must be lodged within sixty days of the date on which knowledge was obtained of the incident causing damage and, in any event, within one year of the impugned incident. The compensation commission must reach a decision within a maximum period of six months after the application is lodged. Where necessary, this period can be extended by the governor for another three months.

49. Under section 8, in determining the compensation payable, the compensation commissions will take into account the damage declared by the claimants, the information to be provided by the legal, administrative and military authorities, the circumstances of the incident causing the damage and, if applicable, the negligence of the claimants. In accordance

with an amendment introduced by the Council of Ministers on 15 September 2005, the claimants can prove their allegations by means of any information or document. The commissions determine the amount of compensation on the basis of equity and current economic conditions. Expert opinion can also be obtained with a view to determining whether compensation should be awarded.

50. Under section 12, following the determination of the amount of compensation payable the compensation commission prepares a friendly-settlement declaration and serves it on the claimant in an annex to a letter stating that the claimant must apply to the commission to sign the declaration within thirty days of receipt and that failure to appear will be deemed to be a refusal by the claimant, in which case, he or she will have to apply to the courts for compensation. Should the claimant accept the terms of the settlement declaration prepared by the commission, the declaration must be signed by the claimant or his or her representative and by the president of the commission. If the claimant refuses to sign the declaration or is deemed to have refused the terms of the declaration, a protocol of non-agreement must be prepared and sent to the claimant, following which the claimant can bring an action for compensation in the courts.

51. Section 13 provides that after the parties have signed the friendly-settlement declaration and the governor has approved it, the amount of compensation specified in the friendly-settlement declaration shall be paid within three months from an appropriation earmarked in the budget of the Ministry of the Interior. Following payment of the compensation, the State has a right to bring proceedings against the perpetrators of the acts which caused the damage in question.

52. Finally, Section 14 provides that the compensation commissions are subject to the supervision of the Ministry of the Interior and the relevant Governor.

2. Regulation on Compensation for Losses resulting from Terrorism and the Fight against Terrorism

53. On 20 October 2004 Regulation no. 25619 was issued by the Council of Ministers for the implementation of Law no. 5233 on Compensation for Losses resulting from Terrorism and the Fight against Terrorism. This regulation sets out the duties of the compensation commissions, the procedure to be followed by/before the compensation commissions and the assessment and payment of compensation for damage to life, physical integrity and property.

3. *Further legislation*

54. A description of the further relevant domestic law at the material time and background information can be found in the Court's judgment of *Doğan and Others* (cited above, §§ 68-88).

COMPLAINTS

55. The applicant complained of the refusal of the authorities to allow him to return to his home and land. He alleged a violation of Articles 1, 6, 7, 8, 13, 14 and 17 of the Convention and Article 1 of Protocol No. 1.

THE LAW

A. Complaints under Article 8 of the Convention and Article 1 of Protocol No. 1

56. The applicant complained that the refusal of the authorities to allow him to return to his home and land had given rise to breaches of Article 8 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 8 of the Convention

“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.”

1. The submissions of the parties

(a) The Government's submissions

57. The Government raised an objection to the Court's jurisdiction, arguing that the applicant had failed to exhaust domestic remedies and to comply with the six-month rule as required by Article 35 § 1 of the Convention.

58. The Government submitted that the applicant had failed to exhaust domestic remedies as he had not availed himself of the new remedy offered by the Compensation Law of 27 July 2004. In that connection they claimed that the mechanism which they had set up subsequent to the *Doğan and Others* judgment of 29 June 2004 was capable of providing redress in respect of the applicant's complaints and offered a reasonable prospect of success.

59. Following the entry into force of the new Law, compensation commissions had been set up in seventy-six provinces. In a period of less than one year 170,000 applications had been lodged with the compensation commissions, which had clearly demonstrated that the new remedy was accessible to all and that the public trusted the just functioning of the newly established domestic remedy. The compensation commissions continued to receive applications from claimants and the Law would be amended so as to extend the time-limit for lodging an application with the compensation commissions by one more year, namely, until 27 July 2006. The awards made by the compensation commissions also proved that the remedy in question was an effective one and ensured success (see paragraphs 28-40 above).

60. The Government averred that currently there was no obstacle preventing the applicant from returning to his village and that he could seek compensation under the new Law for the damage he had sustained on account of his inability to gain access to his possessions in his village. In the Government's opinion, complaints such as those raised by the applicant in the instant case should in principle be redressed under the domestic law. That being so, the new Compensation Law, which had been inspired by the guiding principles laid down by the Court in the *Doğan and Others* judgment, had been enacted to enable the Turkish authorities to remedy at domestic level the Convention grievances of persons who had suffered damage as a result of terrorism or of the acts of the security forces in combating terrorism. It further aimed at alleviating the workload of the Court by reducing the number of applications lodged with it.

61. Consequently, the Government asked the Court to acknowledge the existence at domestic level of an effective remedy in respect of "return-to-village applications" and to reject the present application for non-exhaustion

of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

62. The Government submitted, in the alternative, that there existed administrative, criminal and civil-law remedies capable of affording redress for the applicant's complaints and leading to an award of compensation (see *Doğan and Others*, cited above, §§ 94-97). They maintained that the applicant had also failed to comply with the six-month rule under Article 35 § 1 of the Convention since the alleged incident had taken place in 1994 and the applicant had applied to the authorities in 2001.

(b) The applicant's submissions

63. The applicant disputed the Government's submissions and alleged that the new remedy introduced by the Compensation Law of 27 July 2004 could not be regarded as effective.

64. The applicant challenged, primarily, the composition of the compensation commissions. Referring to the Court's considerations in its admissibility decision in the case of *Xenides-Arestis v. Turkey* ((dec.) no. 46347/99, 2 September 2004), the applicant claimed that the compensation commissions could not be regarded as "national authorities" capable of providing an effective remedy within the meaning of Article 13 of the Convention. In this respect he pointed out that these commissions were composed of six civil servants who were appointed by a provincial governor and a lawyer appointed by the bar association of each province. Thus, in his opinion, there were insufficient guarantees that the members of the compensation commissions would act impartially and independently of their hierarchical superiors.

65. The applicant maintained that the proceedings before the compensation commissions were not of an adversarial nature given that the friendly-settlement declarations prepared by the commissions were subject to the approval of the governor or of the Minister of the Interior. The commissions did not communicate to the complainant the documents submitted by the authorities and therefore deprived the claimant of the opportunity of bringing counter-evidence to prove his or her claim. Furthermore, section 8 of the Compensation Law referred only to negligence on the part of the claimant and did not take into account fault or negligence on the part of the authorities in determining the damage suffered by the claimant.

66. The applicant also pointed out that section 7 of the Compensation Law did not cover all types of damage and gave a narrow interpretation of the concept of "possessions", which had been defined by the Court to cover the income derived from pasture, grazing and forest land as well as stockbreeding and tree-felling (see *Doğan and Others*, cited above, § 139). Nor did the Compensation Law extend to covering non-pecuniary damage suffered by internally displaced persons, but merely envisaged pecuniary

damage. Even assuming that non-pecuniary damage could be claimed before the administrative courts, that did not provide an effective remedy owing to the statutory time-limit laid down under the administrative law, namely that a claim had to be lodged with the administrative courts within one year of the act complained of.

67. The applicant further asserted that his application should not be declared inadmissible in the light of the new preliminary objection raised by the Government given that at the time he had lodged it with the Court, his application had met all the admissibility conditions. The Government's objection on grounds of non-exhaustion had already been examined and dismissed by the Court in its judgment in the case of *Doğan and Others* (cited above, § 110) which raised similar issues to his application. In the aforementioned "pilot case", the Court had identified the presence of a systemic and structural problem which had affected at least 380,000 persons and had led to the submission of approximately 1,500 applications to the Court. In that connection the applicant submitted that the Court's approach to the problem should be the same as the one adopted in the case of *Broniowski v. Poland* ((friendly settlement-just satisfaction) [GC], no. 31443/96, §§ 35-36, 28 September 2005). Accordingly, the applicant submitted that the most effective solution in his case and in other "return-to-village applications" would be to reach a friendly settlement with the assistance of the Court.

68. Finally, the applicant alleged that the administrative, criminal and civil remedies referred to by the Government were ineffective and did not provide any prospect of success for his complaints. He also claimed to have complied with the six-month rule since the acts complained of in the present case amounted to a continuing situation.

2. The Court's assessment

(a) The general principles

69. The Court reiterates that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Accordingly, this rule requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts. Yet, the rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, cited in both *Charzyński v. Poland*, no. 15212/03, and *Tadeusz Michalak v. Poland*, no. 24549/03, decisions of 1 March 2005).

70. In this respect, the burden of proof is primarily on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210-11, §§ 65-69, and *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2706, § 57).

71. Nevertheless, according to the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

72. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001, and *Brusco*, cited above). In particular, the Court has previously departed from this general rule in cases against Italy, Croatia, Slovakia and Poland concerning remedies in respect of the excessive length of proceedings (see *Brusco*, cited above, *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Charzyński and Tadeusz Michalak*, both cited above).

(b) The application of the general principles to the present case

73. The Court recalls that it has already examined the Government's objections concerning the non-exhaustion of the administrative, criminal and civil remedies and six-month rule in respect of the "return-to-village cases" in its *Doğan and Others v. Turkey* pilot judgment (cited above, §§ 102-10 and 111-14) and has rejected them. It finds no particular circumstances in the instant case which would require it to depart from its findings in the aforementioned case and therefore dismisses them in the instant case as well.

74. Accordingly, the Court must confine its examination to the new remedy introduced by the Compensation Law of 27 July 2004 and must determine whether the Government's objection that the applicant has failed to exhaust this particular domestic remedy is well-founded.

75. In this connection the Court observes at the outset that the applicant can at present return to his village without any hindrance by the authorities (see paragraph 60 above). Indeed, this has not been disputed by the applicant. Turning to the new remedy in question, it notes that under section 6 of the Compensation Law persons who have suffered damage as a result of terrorism or of measures taken by the authorities to combat terrorism are entitled to lodge a claim with the relevant compensation commission (see paragraph 48 above). Such claims can be proved by means of any information or document (see paragraph 49 above). Section 7 lists the types of damage to be compensated and covers the damage sustained by persons who could not gain access to their property, like the applicant in the present case, as a result of the acts carried out by the authorities (see paragraph 45 above). After determining the damage suffered by the claimant, the compensation commission prepares a friendly-settlement declaration and makes an offer to the claimant (see paragraph 50 above). Should the claimant accept the offer, he or she signs the declaration and the Ministry of the Interior pays the amount of compensation specified in it (see paragraphs 50 and 51 above). However, the claimant may refuse the amount proposed by the compensation commission and seek a remedy in the ordinary courts (*ibid.*).

76. In the light of the above, it appears that the applicant is entitled to claim compensation under the new Law for the damage he allegedly sustained as a result of the authorities' refusal to allow him to gain access to his possessions for a substantial period of time.

77. As regards the effectiveness of the remedy in question, the Court notes that the compensation commissions seem to be operational in seventy-six provinces, including Tunceli and Diyarbakır, which can be considered the epicentre of the internal displacement phenomenon, and that there are already 170,000 persons seeking a remedy before these commissions (see paragraph 14 above). It can be seen from a substantial number of sample decisions furnished by the Government that persons who have sustained damage in cases of denial of access to property, damage to their property or death or injury can successfully claim compensation by using the remedy offered by the Compensation Law (see paragraphs 28-40 above). Thus, these decisions demonstrate that the remedy in question is available not only in theory but also in practice.

78. However, relying on the Court's findings in *Xenides-Arestis* (cited above), the applicant challenged the composition of the compensation commissions and argued that the proceedings before them were not adversarial in nature. The Court considers that the circumstances of the

present case differ from those of the *Xenides-Arestis* case. In the latter case the reason that led the Court to express concern about the composition of the compensation commission was that the majority of its members were living in houses owned or built on property owned by Greek Cypriots and that there was therefore a potential conflict of interest which could unduly affect the decisions of the compensation commission.

79. In the instant case the Court does not find any evidence on which to call into question the composition of the compensation commissions and the proceedings before them. These bodies do not assume the task of a “tribunal” and do not therefore need to provide adversarial proceedings for the purposes of Article 6 of the Convention. Having regard to the duties conferred on them and to their individual members, who sit on account of their expertise in various fields, the compensation commissions merely serve to enable the authorities to determine the damage sustained by individuals and to make a friendly-settlement offer either in kind or in cash.

80. With regard to the alleged narrow interpretation by the compensation commissions of the concept of “possessions” under Article 1 of Protocol No. 1, the Court notes that the decisions of the compensation commissions demonstrate that compensation can be obtained not only for damage to property but also for deprivation of a wide range of economic activities, such as loss of income derived from agriculture, tree-felling or stockbreeding (see paragraphs 29-32 above).

81. Furthermore, while it is true that the Compensation Law refers only to the possibility of claiming compensation for material damage (see paragraph 44 above), it appears that section 12 of the Compensation Law opens an avenue to the possibility of seeking non-pecuniary damages in the administrative courts (see paragraph 50 above).

82. In view of the foregoing, the Court is not persuaded by the applicant’s arguments and considers that the provisions of the Compensation Law are capable of providing adequate redress for the Convention grievances of persons who were denied access to their possessions in their places of residence and, accordingly, satisfy the “effectiveness” test established in the *Doğan and Others* judgment.

83. As to the applicant’s contention that he should not be required to exhaust the new remedy offered by the Compensation Law, which had entered into force after he had lodged the present application with the Court, the Court acknowledges that, as stated above (see paragraph 72 above), the assessment of whether domestic remedies have been exhausted is normally made with reference to the date of the introduction of the application. However, in exceptional cases the Court may adopt a different position and depart from this rule if the circumstances of those cases justify such a departure (see the decisions of *Charzyński* and *Tadeusz Michalak*, both cited above). The Court considers that there are several factors which favour an exception from this rule in the present case as well. As noted earlier, section

7(c) of the Compensation Law covers the type of damage suffered by the applicant and entitles him to claim compensation. It also appears that the Compensation Law was enacted to remedy at domestic level the Convention grievances of persons whose applications pending before the Court raise similar issues to the case of *Doğan and Others* (see paragraph 60 above). Furthermore, recent practice of the compensation commissions indicates that the new remedy is accessible and provides reasonable prospects of success (see paragraphs 28-40 above).

84. Moreover, as pointed out by the applicant (see paragraph 68 above), the most appropriate strategy to be followed in situations where the Court points to structural or general deficiencies in national law or practice is to ask the respondent Government to review, and where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court (*Broniowski v. Poland* judgment ([GC], no. 31443/96, § 191, ECHR 2004-...). Once such a defect has been identified, it falls to the national authorities, under the supervision of the Committee of Ministers of the Council of Europe, to take, retroactively if appropriate, the necessary remedial measures in accordance with the subsidiary character of the Convention, so that the Court does not have to repeat its finding in a lengthy series of comparable cases (*ibid.*, § 193). Otherwise, in the long run, that situation might undermine the effective operation of the human rights protection mechanism set up by the Convention.

85. Thus, the Court notes that in its judgment in the case of *Doğan and Others* it has already identified the presence of a structural problem with regard to internally displaced persons and indicated possible measures to be taken in order to put an end to the systemic situation in Turkey. Subsequent to the aforementioned judgment, the authorities of the respondent State have taken several measures, including enacting the Compensation Law of 27 July 2004, with a view to redressing the Convention grievances of persons who were denied access to their possessions in their villages. Accordingly, the Government can be deemed to have fulfilled their duty to review the systemic situation at issue and to introduce an effective remedy.

86. In the light of the foregoing, the Court considers that the applicant should be required by Article 35 § 1 of the Convention to lodge an application with the relevant compensation commission under the Law of 27 July 2004 and to claim compensation for the damage he sustained as a result of his inability to gain access to his possessions. Furthermore, it finds no exceptional circumstances capable of exempting him from the obligation to exhaust domestic remedies.

87. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Complaint under Article 13 of the Convention

88. The applicant complained that there was no effective domestic remedy capable of providing redress for his Convention grievances. He relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

89. The Government disputed the above allegations, arguing that there were effective domestic remedies of which the applicant had failed to avail himself.

90. The Court has already found that the Compensation Law does provide the applicant with an effective remedy in respect of his complaint concerning the alleged denial of access to his property. That finding is valid in the context of the complaint under Article 13 of the Convention.

91. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaints under Articles 1, 7, 14 and 17 of the Convention

92. The applicant further complained that his rights guaranteed under Articles 1, 7, 14 and 17 of the Convention had been breached on account of the refusal of the authorities to allow him to gain access to his possessions.

93. The Government did not address these issues beyond denying the factual basis of the substantive complaints.

94. The Court notes that in its *Doğan and Others v. Turkey* pilot judgment (cited above, §§ 118-33) it has examined complaints similar to those raised by the applicant in the instant case and has found them unsubstantiated. It finds no particular circumstances in the instant case which would require it to depart from its findings in the aforementioned case.

95. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President