EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

İÇYER v. TURKEY CASE INADMISSIBLE

The European Court of Human Rights has declared **inadmissible** the application lodged in the case of ***İçyer v. Turkey*** (application no. 18888/02). (The decision is available in English and in French).

The Court has found that the applicant – who complained that the Turkish authorities had refused to allow him to return to his home and land after he was evicted from his village in late 1994 – ought to have claimed compensation from one of the commissions set up under a new law in Turkey.

There are approximately 1,500 similar cases from south-east Turkey (where applicants complain about their inability to return to their villages) registered before the Court.

Summary of the facts

The applicant, Aydin İçyer, is a Turkish national who was born in 1946. Until October 1994 he lived in Eğrikavak, a village of the Ovacık district in Tunceli (Turkey).

According to the appplicant, on 3 October 1994 the inhabitants of Eğrikavak were forcibly evicted from their village by security forces on account of disturbances in the region. The security forces also burned down his home, following which he moved with his family to Istanbul. On 25 October 1995 he claimed that he was informed by the authorities that there would not be an investigation into his allegations as the perpetrators could not be identified. On 26 October 2001 he requested permission to return to his village and was told his request would be considered under the 'Return to Village and Rehabilitation Project'."

According to the Turkish Government the inhabitants of Eğrikavak had left their village voluntarily on account of intense terrorist activities in the region and threats issued by the PKK (Workers' Party of Kurdistan) terrorist organisation. Currently there was nothing preventing villagers from returning to their villages and some had already done so.

The Government pointed out that, under the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism (the Compensation Law of 27 July 2004), Damage Assessment and Compensation Commissions were set up in 76 provinces. Those 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 commission claiming compensation. 170,000 had already applied plus a further 800, whose applications were pending before the Court. Many villagers had already been awarded compensation for the damage they had sustained.

Complaints

The applicant complained that the Turkish authorities refused to allow him to return to his home and land. He relied on Article 1 (obligation to respect human rights), Article 6 (right to a fair hearing), Article 7 (no punishment without law), Article 8 (right to respect for private and family life and home), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) Article 17 (prohibition of abuse of rights) and Article 1 of Protocol No. 1 (protection of property).

Procedure

The application was lodged with the Court on 29 January 2002.

Decision of the Court[1]

Article 8 and Article 1 of Protocol No. 1
The Court examined whether the Government's objection that the applicant had failed to exhaust the new remedy introduced by the Compensation Law of 27 July 2004 was well-founded.

In that connection the Court observed that the applicant could return to his village without any hindrance by the authorities. It also appeared that he was 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.

As regards the effectiveness of the remedy in question, the Court noted that the compensation commissions seemed to be operational in 76 provinces, including Tunceli and Diyarbakır, which could be considered the epicentre of the internal displacement phenomenon, and that there were already 170,000 people seeking a remedy before the commissions. It could also be seen, from a substantial number of sample decisions furnished by the Turkish Government, that those who had sustained damage in cases of denial of access to property, damage to their property or death or injury could successfully claim compensation by using the remedy offered by the Compensation Law. Those decisions demonstrated that the remedy in question was available not only in theory but also in practice.

The Court considered that the provisions of the Compensation Law were capable of providing adequate redress for the Convention grievances of those who were denied access to their possessions in their places of residence.

The Court noted that in its judgment of 29 June 2004 in the case of ***Doğan and Others*** (application nos. 8803-8811/02, 8813/02 and 8815-8819/02), it had identified the presence of a structural problem with regard to internally displaced people and indicated possible measures to be taken in order to put an end to the systemic situation in Turkey. Following that judgment, the Turkish authorities had taken several measures, including enacting the Compensation Law of 27 July 2004, with a view to redressing the Convention grievances of those denied access to their possessions in their villages. Accordingly, the Government could be deemed to have fulfilled their duty to review the systemic situation at issue and to introduce an effective remedy.

[1] This summary by the Registry does not bind the Court.

The Court therefore considered 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. His complaints under Article 8 and Article 1 of Protocol No. 1 had therefore to be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

Article 13
The Court had already found that the Compensation Law did provide the applicant with an effective remedy in respect of his complaint concerning the alleged denial of access to his property. It followed that the applicant's complaint under Article 13 was manifestly ill-founded.

Articles 1, 7, 14 and 17
The Court noted that, in its pilot judgment ***Doğan and Others v. Turkey***, it had examined complaints similar to those raised by the applicant and had found them unsubstantiated. Finding no particular circumstances which would require it to depart from its findings in that case the Court found those complaints to be manifestly ill-founded.

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The decision is available on the Court's Internet site (http://www.echr.coe.int).

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