AS TO THE ADMISSIBILITY OF

Application No. 21893/93
by 1. Hüseyin AKDUVAR
2. Abdurahman AKDUVAR
3. Ahmet AKDUVAR
4. Ali AKDUVAR
5. Zülfükar CICEK
6. Ahmet CICEK
7. Abdurahman AKTAS
8. Mehmet KARABULUT
against Turkey

The European Commission of Human Rights sitting in private on 19 October 1994, the following members being present:

MM. C.A. NØRGAARD, President
A. WEITZEL
F. ERMACORA
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 May 1993 by Hüseyin AKDUVAR, Abdurahman AKDUVAR, Ahmet AKDUVAR, Ali AKDUVAR, Zülfükar CICEK, Ahmet CICEK, Abdurahman AKTAS and Mehmet KARABULUT against Turkey and registered on 18 May 1993 under file No. 21893/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 15 February 1994 and the observations in reply submitted by the applicant on 19 April 1994;

- additional material submitted by the applicants on 15 August, 23 September and 4 and 10 October 1994;

- additional material submitted by the Government on 4 and 7 October 1994;

- the parties' oral submissions at the hearing on 18 October 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Turkish nationals, all live in the village of Kelekçi in the Dicle district, the province of Diyarbakir.

They are represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

A. The particular circumstances of the case

The facts of the present case are in dispute.

The applicants claim that the following events have occurred:

On 10 November 1992, in the evening, soldiers entered the applicants' village. These forces included, in addition to regular military forces, a group of soldiers known as "special teams" who are trained for anti-terrorist operations.

The soldiers instructed the first applicant, Hüseyin Akduvar, who is the elected Mayor of the village, to evacuate all the inhabitants immediately. According to the applicants, while the Mayor attempted to call the people together, the soldiers began firing with heavy weapons from armoured cars at houses and at villagers. They also set fire to a number of houses including those of the Mayor, his son and those of the other six applicants. A total of nine houses and their contents were burnt to the ground. The soldiers also shot the villagers' livestock.

The background to this attack was the decision of some villagers, including the first applicant, who had been unwillingly made village guards by the military, to refuse to continue as protectors. In August 1992 they had handed in the weapons which had been issued by the military following an attack on the village on 17 July 1992 by the PKK as part of their campaign against the village guard system, and during which attack guards were killed.

The military attack on 10 November 1992 followed an armed attack by the PKK on the police station in a nearby village, Bogazali, on 1 November 1992. The military burnt the applicants' houses down as punishment for having resigned from the village guard.

Following the gunning and the burning of the houses the inhabitants, who numbered over 500, fled the village. Most went to the city of Diyarbakir. Some who had relatives there moved in with them. Others were forced to live in the streets.

All the inhabitants of Kelekçi have now been completely evacuated. Following the evacuation, at least 90 % of the houses were destroyed, particularly during a further military attack on the village on 6 April 1993.

The applicants' representatives assert that contradictory statements collected during subsequent official inquiries into these events should be treated with caution because villagers were allegedly promised compensation if they declared that the village had been destroyed by terrorists. No compensation has been paid. Fear of reprisal if the security forces are accused of these events must also be taken into account.

The Government submit a different account of events, particularly as regards the authors of the damage in question.

According to the Government, the applicants' village was attacked

by the PKK on 17 July 1992, when three people died and three others were injured. On the night of 1 November 1992 between 100 to 150 PKK terrorists attacked the gendarme stations at Bogazali and Kelekçi with heavy weapons, killing a soldier at the Kelekçi station and injuring eight others, some of them severely. The Kelekçi station collapsed under the bombardment, and had to be evacuated. There was also shooting from houses in the two villages which required retaliation from the security forces. This cross-fire caused physical and material damage in both villages.

After this, the villagers began to evacuate their homes in Kelekçi voluntarily and on their own initiative as they felt insecure there. Three families later returned.

On 10 November 1992 a search of the village was carried out by soldiers without any damage being caused. The security forces found 14 terrorist hide-outs containing large quantities of food, clothes, propaganda material and a missile for a rocket launcher.

On 6 April 1993, after having been tipped off about an imminent PKK attack, the security forces searched Kelekçi without causing any damage. They noticed the return to the village of three families, as well as the collapse of several mud houses which had not resisted the effects of the winter climate in the absence of any maintenance. Later that night, after the security forces had left, terrorists returned to the village and set fire to the remaining houses.

B. The relevant domestic law and practice

The Government have submitted that the following domestic law is relevant to the case:

Article 125 of the Turkish Constitution provides as follows:

(translation)

"All acts or decisions of the Administration are subject to judicial review ...

The Administration shall be liable for damage caused by its own acts and measures."

This provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the Administration, whose liability is of an absolute, objective nature, based on a theory of "social risk". Thus the Administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

The principle of administrative liability is reflected in the additional Article 1 of Law 2935 of 25 October 1983 on the State of Emergency, which provides:

(translation)

"... actions for compensation in relation to the exercise of the powers conferred by this law are to be brought against the Administration before the administrative courts."

The Turkish Criminal Code makes it a criminal offence

- to deprive someone unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),

- to oblige someone through force or threats to commit or not commit an act (Article 188),

- to issue threats (Article 191),

- to make an unlawful search of someone's home (Articles 193 and 194),

- to commit arson (Articles 369, 370, 371, 372), or aggravated arson if human life is endangered (Article 382),

- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383), or

- to damage another's property intentionally (Article 526 et seq.).

For all these offences complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

If the suspected authors of the contested acts are military personnel, they may also be prosecuted for causing extensive damage, endangering human lives or damaging property, if they have not followed orders in conformity with Articles 86 and 87 of the Military Code. Proceedings in these circumstances may be initiated by the persons concerned (non-military) before the competent authority under the Code of Criminal Procedure, or before the suspected persons' hierarchical superior (Articles 93 and 95 of Law 353 on the Constitution and the Procedure of Military Courts).

If the alleged author of a crime is a State official or civil servant, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the State Council; a refusal to prosecute is subject to an automatic appeal of this kind.

Any illegal act by civil servants, be it a crime or tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts.

Proceedings against the Administration may be brought before the administrative courts, whose proceedings are in writing.

Damage caused by terrorist violence may be compensated out of the Social Help and Solidarity Fund.

The applicants point to certain legal provisions which in themselves weaken the protection of the individual which might otherwise have been afforded by the above general scheme:

Articles 13 to 15 of the Constitution provide for fundamental limitations on constitutional safeguards.

Provisional Article 15 of the Constitution provides that there can be no allegation of unconstitutionality in respect of measures taken under laws or decrees having the force of law and enacted between 12 September 1980 and 25 October 1983. That includes Law 2935 on the State of Emergency of 25 October 1983, under which decrees have been issued which are immune from judicial challenge.

Extensive powers have been granted to the Regional Governor of

the State of Emergency by such decrees, especially Decree 285, as amended by Decrees 424 and 425, and Decree 430.

Decree 285 modifies the application of Law 3713, the Anti-Terror Law (1981), in those areas subject to the state of emergency, with the effect that the decision to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. These councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the Regional Governor or Provincial Governors, who also head the security forces.

Article 8 of Decree 430 of 16 December 1990 provides as follows:

(translation)

> "No criminal, financial or legal responsibility may be claimed against the State of Emergency Regional Governor or a Provincial Governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of an individual to claim indemnity from the State for damages suffered by them without justification."

According to the applicants, this Article grants impunity to the Governors. Damage caused in the context of the fight against terrorism would be "with justification" and therefore immune from suit. Moreover, Decree 430 reinforces the powers of the Regional Governor to order the permanent or temporary evacuation of villages, to impose residence restrictions and to enforce the transfer of people to other areas. So the law, on the face of it, grants extraordinarily wide powers to the Regional Governor under the state of emergency and is subject to neither parliamentary nor judicial control. However, there is no decree providing for the rehousing of displaced persons or the payment of compensation.

COMPLAINTS

The applicants' complaints to the Commission concern the events of 10 November 1992.

The applicants allege under Article 3 of the Convention that the forced and immediate expulsion of the entire village of Kelekçi, including themselves, represents a form of collective punishment and the most manifest and deliberate infliction of inhuman and degrading treatment.

The applicants submit that the expulsion policy was discriminatory on grounds of their Kurdish origin. The policy therefore constitutes a violation of Article 3 on that ground alone. According to the applicants, on account of this situation, there has also been a violation of Article 14 in conjunction with Article 3.

The applicants further complain under Article 5 of the Convention that the fact that they, along with all the other villagers, were compelled to abandon their homes and village represents a flagrant breach of the right to the exercise of liberty and the enjoyment of security of person.

The applicants submit that the deprivation of their liberty and security of person was a direct result of a deliberate policy targeted at them as a national minority or as an ethnic group. They claim therefore that they are victims of a violation of Article 5 in conjunction with Article 14 of the Convention.

The applicants complain under Article 6 of the Convention that

the arbitrary expulsion from their homes and village was a flagrant, direct interference with their civil rights. They have been denied any effective procedure to challenge or resist the deprivation of their freedom to reside in their homes and to seek compensation for their deprivation of possessions.

The applicants claim a violation of Article 14 in conjunction with Article 6 of the Convention on similar grounds to those set out above with respect to Article 5.

The applicants argue that their arbitrary expulsion from their village and from their homes represents a direct violation of Article 8 of the Convention, in particular their right to respect for their homes and family life. The destruction of their homes through the action of the military constitutes a separate breach of their rights under this Article.

The applicants maintain that the interference with their right to respect for home and family life was deliberately pursued against an entire village, as in hundreds of other cases, because the inhabitants were Kurds. It represents therefore a separate violation of the Convention, namely a breach of Article 14 of the Convention in conjunction with Article 8.

The applicants further complain under Article 1 of Protocol No 1 to the Convention that they were deprived of the peaceful enjoyment of their possessions in the most arbitrary manner conceivable.

The applicants submit that their experiences also constitute a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No 1 for the reasons set out above with respect to other Articles.

The applicants also allege violations of Article 13 taken alone and in conjunction with Article 14 of the Convention.

Finally, the applicants submit that their experiences, which they claim represent an authorised practice by the State, constitute a violation of Article 18 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 May 1993 and registered on 18 May 1993.

After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 30 August 1993. It decided, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on admissibility and merits. The Government's observations were submitted on 15 February 1994, after an extension of the time limit fixed for that purpose, to which the applicants replied on 19 April 1994.

On 27 June 1994 the Commission decided to invite the parties to make oral submissions on the admissibility of the application at a hearing. For the purposes of the hearing the application was joined to two others: No. 21894/93, Akkum and Others v. Turkey, and No. 21987/93, Aksoy v. Turkey. The hearing was fixed for 18 October 1994. Prior to the hearing the parties submitted additional material: the applicants on 15 August, 23 September and 4 and 10 October 1994 and the Government on 4 and 7 October 1994.

The applicants were granted legal aid on 14 October 1994.

At the hearing on 18 October 1994, the Government were represented by Mr. B. Çaglar, Agent, Mr. S. Alpaslan, Mr. M. Özmen, Ms.

D. Akçay and Mr. H. Golsong, all counsel, and Ms. i. Boivin, Mr. i. Kovar, Mr. A. Kurudal, Mr. F. Erdogan, Mr. Y. Kizilkaya, Mr. C. Duatepe and Ms. S.B. Ersöz, all experts. The applicants were represented by Professor K. Boyle and Ms. F. Hampson, both counsel, Mr. S. Aslantas, legal adviser from the Diyarbakir Bar, and Mr. M. Yildiz, assistant.

THE LAW

1. The applicants allege that on 10 November 1992 State security forces launched a gun attack on their village. They claim that the soldiers shot at them, destroyed their homes by fire and forced them to evacuate the village. Livestock was also killed. The applicants invoke Article 3 (Art. 3) of the Convention (the prohibition on inhuman and degrading treatment), Article 5 (Art. 5) (the right to liberty and security of person), Article 6 (Art. 6) (the right of access to court), Article 8 (Art. 8) (the right to respect for family life and the home), Article 13 (Art. 13) (the right to effective national remedies for Convention breaches) and Article 18 (Art. 18) (the prohibition on using authorised Convention restrictions for ulterior purposes), as well as Article 1 of Protocol No. 1 (P1-1) to the Convention (the right to property).

2. The Government deny the applicant's allegations and provide an entirely different account of events, which they claim were largely the doing of the PKK, and which in turn led to the voluntary evacuation of the village by the inhabitants themselves out of fear for their safety.

The Government argue that the application is inadmissible for the following reasons:

i. the applicants failed to exhaust domestic remedies;

ii. alternatively, the applicants did not observe the six months' time-limit;

iii. the application is an abuse of the right of petition;

iv. the applicants have not shown that they are themselves victims of the alleged violations of the Convention; and

v. the application is anyway manifestly ill-founded.

3. Exhaustion of domestic remedies

The Government submit that the applicants have failed to comply with the requirement under Article 26 (Art. 26) of the Convention to exhaust domestic remedies before lodging an application with the Commission. They contend that the applicants had several remedies at their disposal which they did not try:

i. By way of the administrative and civil courts

According to the applicants' version of the facts, which is anyway denied, the security powers were responsible for material damage to their homes and livestock, as well as for the involuntary evacuation of their village. They had the possibility of introducing an administrative action before the administrative courts for compensation in accordance with Article 125 of the Turkish Constitution (p. 4 above). Claims for compensation could also have been lodged in the ordinary civil courts.

ii. By way of criminal proceedings

The acts alleged by the applicants have no lawful authority under emergency legislation or decrees and would constitute punishable criminal offences under both criminal and military law (see p. 5 above).

The Government assert that there is no administrative practice or official tolerance of the type of acts alleged by the applicants. The aforementioned remedies represent nothing extraordinary and are accessible and effective before independent judicial authorities. Any suggestion that people expose themselves to risk if they pursue these normal remedies can only be qualified as abusive, fallacious and wholly devoid of credibility.

In order to demonstrate that the available remedies were not ineffective, the Government have referred to a number of judgments by the administrative and criminal courts. Some of these decisions concern cases in which the State Council has awarded compensation to individuals for damage inflicted by public officials or by terrorists, or suffered in the course of confrontations between the security forces and the PKK. In other cases referred to by the Government, public officials have been sanctioned for acts committed against individuals.

The applicants maintain that there is no requirement that they pursue domestic remedies. Any purported remedy is illusory, inadequate and ineffective because:

i. the operation in question in this case was officially organised, planned and executed by the agents of the State;

ii. there is an administrative practice of not respecting the rule in Article 13 (Art. 13) of the Convention which requires the provision of effective domestic remedies;

iii. whether or not there is an administrative practice, domestic remedies are ineffective in this case owing to the failure of the legal system to provide redress;

iv. whether or not there is an administrative practice, the situation in South-East Turkey is such that potential applicants have a well-founded fear of the consequences, should they try alleged remedies.

The applicants consider that none of the remedies suggested by the Government could be regarded as effective because the scale of destruction of villages, as well as the expulsion and creation of internal refugees, is so great in South-East Turkey that this must be considered high-level Government policy - an administrative practice - in regard to which all remedies are theoretical and irrelevant.

The applicants do not deny that the procedures identified by the Government are formally part of the Turkish legal structure, but they contend that the Government have not shown how such procedures could conceivably be effective for the specific circumstances of the present case. The purported remedies are ineffective for the following reasons:

- the limitations on rights and remedies created by the state of emergency, such as the immunity from suit of the Regional Governor;

- the lack of genuine investigations by public prosecutors and other competent authorities;

- even if an investigation is made, the lack of effective action being taken afterwards;

- an official attitude of legal unaccountability towards the security forces;

- the positive discouragement of those who do wish to seek remedies;

- the absence of any significant case-law showing the payment of adequate compensation to villagers for the destruction of their homes and villages, or for their expulsion (which is unsurprising considering the systematic blame placed by the Government on the PKK for such acts);

- the absence of successful cases against the Regional Governor for compensation under the State of Emergency Law;

- the absence of any compensation being paid to the villagers in the present case, despite promises made; and

- the absence of any significant prosecutions against gendarmes for the alleged offences connected with the destruction of villages and forcible expulsions in 1992/1993 despite hundreds of allegations.

The applicants add that, in order to be able to use a remedy, the individual needs to be able to seek and obtain legal advice and the lawyers need to be able to pursue appropriate remedies without fear of the consequences. They allege, however, that several lawyers who have dealt with cases of this kind have been subjected to detention and ill-treatment. At present 16 lawyers are facing criminal charges, which include drawing up documents belittling the Turkish State and faxing them to human rights organisations in Europe. This is demonstrated in other cases pending before the Commission.

The Commission has noted the wide range of remedies put forward by the Government, the extensive case-law provided to demonstrate the efficacy of those remedies and the remarks of the applicants as to their theoretical and illusory nature.

The Commission does not deem it necessary to determine whether there exists an administrative practice on the part of Turkish authorities tolerating abuses of human rights of the kind alleged by the applicants, because it agrees with the applicants that it has not been established that the applicants had at their disposal adequate remedies under the state of emergency to deal effectively with their complaints. The Commission has formed this view for the following reasons:

It is a known fact there has been significant destruction of villages in South-East Turkey with many people displaced as a result. The applicants allege that their homes, village and livestock have been destroyed by the security forces acting on their own initiative. The applicants deny that the damage was caused by the PKK or by any cross-fire between the PKK and the security forces.

The Government have outlined a general scheme of remedies that would normally be available for complaints against the security forces. However, it is noteworthy that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the numerous decisions by the administrative courts referred to by the Government all concern compensation for damage in different circumstances. The Government have not provided a single example of compensation being awarded to villagers for damage like that allegedly suffered by the present applicants.

Nor have significant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers. In this connection it would seem unlikely that such prosecutions could follow from acts committed pursuant to the orders of the Regional Governor under the state of emergency to effect the permanent or temporary evacuation of villages, to impose residence prohibitions or to enforce the transfer of people to other areas.

The Commission understands the vulnerability of the dispossessed applicants, under pressure from both the security forces and the terrorist activities of the PKK. It cannot be said at this stage that their fear of reprisal if they complain about acts of the security forces is wholly without foundation.

The Commission recalls that the existence of "remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness ... It falls to the respondent State to establish that these various conditions are satisfied (Eur. Court H.R., De Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, p.18, para. 36, and Nos. 14116/88 and 14117/88, Sargin and Yagci v. Turkey, Dec. 11.05.89, D.R. 61 p. 250, 262).

In the absence of clear examples that the remedies put forward by the Government would be effective in the circumstances of the present case, the Commission concludes that the applicants are absolved from the obligation to pursue them. The application cannot, therefore, be rejected for non-exhaustion of domestic remedies under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

4. The six months' rule

The Government contend that, even assuming that the applicants have exhausted domestic remedies, they have failed to comply with the second requirement of Article 26 (Art. 26) of the Convention, namely that of lodging the application within six months of the final effective decision or, if none, within six months of the events of which complaints are made.

The applicants point out that the events complained of took place on 10 November 1992 and the present application was lodged on 3 May 1993, i.e. within the six month period.

The Commission agrees with the applicants. They have indeed complied with the six months' rule laid down in Article 26 (Art. 26) of the Convention.

5. Abuse of the right of petition

The Government maintain that the application, being devoid of any sound judicial basis, has been lodged for the purposes of political propaganda against the Turkish Government. Accordingly the application constitutes an abuse of the right of petition which discredits the legal nature of the Convention control mechanism.

The applicants reject the Government's submission and respond that their complaints relate exclusively to alleged violations of the Convention, which have not formally been brought before the local instances for fear of reprisal. Such fear is widespread among Turkish people of Kurdish origin in South-East Turkey. The applicants do not make their assertions for political motives, but to obtain redress for the violations of the Convention they have suffered and with a concern to secure the return of the rule of law in Turkey.

The Commission considers that the Government's argument could only be accepted if it were clear that the application was based on untrue facts. However, this is far from clear at the present stage of the proceedings, and it is therefore impossible to reject the application on this ground.

6. Victim status

The Government contend that the application constitutes an "actio popularis" in which the applicants, in deliberately failing to bring their vague, but serious, claims before Turkish justice in order to

establish the causal link of the alleged damage, have failed to demonstrate that they are victims of a violation of the Convention.

The applicants refute this contention.

The Commission notes that the applicants have claimed that their homes and livestock were destroyed and that they were expelled from their village. It is therefore clear that they claim themselves to be victims. The question whether or not their allegations are true is a matter belonging to the merits. Consequently, there is no basis for declaring the application inadmissible on this ground.

7. As regards the merits

The Government submit that it is generally accepted in the comparative and international law on terrorism, authorising "certain adaptations of the liberal model", that restrictions on Convention rights will be deemed necessary in a democratic society threatened by terrorist violence, as being proportionate to the aim of protecting public order.

The threat posed to Turkey by the PKK and its affiliations is internationally recognised, as is the need to react firmly to it. Terrorism strikes at the heart of democracy, its fundamental rights and the judicial and political systems. This has been acknowledged by the Convention organs (Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, and Nos. 11209/84, 11234/84, 11266/84 and 11386/85, Brogan and Others v. the United Kingdom, Comm. Report 14.5.87 para. 106). It is not for the Convention organs to substitute their view on how a State should conduct the necessary fight against terrorism. In this respect the Government assert that the search of the applicants' village on 10 November 1992, conducted by the security forces, did not exceed the margin of appreciation conferred on States by the Convention.

The Government maintain that there is no evidence to substantiate the applicants' allegations against the security forces under Articles 3, 8 and 14 (Art. 3, 8, 14) of the Convention, or under Article 1 of Protocol No. 1 (P1-1) to the Convention. Any damage to the applicants' village, homes and livestock was caused by the terrorist acts of the PKK. Nor is there any evidence of forced expulsion or discrimination against the applicants because of their Kurdish origin. The applicants still live near their village and the first applicant is still mayor. According to the latter's statements, as well as that of other villagers, the departure from the village occurred after the PKK attacks and possibly in accordance with the usual winter migration towards the town of Diyarbakir.

The Government also consider that Article 5 (Art. 5) of the Convention has no relevance to the present case, and, if it did, they refer to their derogation under Article 15 (Art. 15) of the Convention since 6 August 1990 suspending the former Article's applicability. As to Articles 6 and 13 (Art. 6, 13) of the Convention, the Government submit that Turkish law guarantees several remedies (as described above at pp. 4-6) without discrimination.

Finally, the Government contend that there is no evidence whatsoever of any abuse of power by the State in breach of Article 18 (Art. 18) of the Convention. On the contrary, if abuse there be, it is that of the applicants in exploiting the Convention mechanism to make fallacious allegations for the purposes of political propaganda.

Accordingly, the Government consider that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The applicants maintain that their account of events is accurate.

There has been no voluntary migration in the region. Instead there has been a well-attested policy of forced evacuation of over 1000 villages in South-East Turkey in the last few years. Within a two month period over 50 villages were forcibly depopulated in the Diyarbakir and neighbouring area. The official nature of this policy is reflected in a letter re-printed in the Hürriyet newspaper, dated 16-18 November 1993, allegedly from the late President Turgut Özal to the then Prime Minister, Süleyman Demirel. The letter proposes the policy of clearing villages to destroy logistical support to the PKK. Moreover, the Minister for Human Rights recently spoke of a policy of "State terrorism" in the region in question.

The applicants contend that the Government's submissions on the restrictions which necessarily flow from the fight against terrorism are immaterial to the facts of the present case. The applicants are ordinary villagers who have been expelled from their homes by the security forces. Their homes were then destroyed by those same forces. No anti-terrorist strategy in conformity with the Convention, with or without an Article 15 (Art. 15) derogation, could justify such actions. These actions were anyway in breach of the non-derogable rights under Article 3 (Art. 3) of the Convention.

They maintain their complaints outlined above (pp. 7-8), which they claim are substantiated on the present state of the evidence.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)