CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 56534/00
by Mehmet ALTINTOP and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 22 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President,*
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 25 March 2000,

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 applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mehmet Altıntop, Abdurrahman Altıntop and Hüseyin Altıntop, are Turkish nationals, who were born in 1939, 1943 and 1935 respectively and live in Diyarbakır. They were represented before the Court by Mr Mesut Beştaş and Ms Meral Beştaş, lawyers practising in Diyarbakır.

A. The circumstances of the case

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

1. The applicants' version of the facts

Until January 1994 the applicants lived in Gümeç village of Hani district in Diyarbakır. On 4 January 1994 the security forces came to the village and burned the villagers' houses together with the belongings in them. The following day, the applicants left the village.

The applicants have not been supplied with alternative housing by the authorities. They currently live in Diyarbakır.

Upon the villagers' complaint, the gendarmes drafted an incident report and the public prosecutor at the Diyarbakır State Security Court initiated an investigation into the incidents, which was pending at the time of the current application.

On 24 December 1998 the applicants filed a petition with the Ministry of Interior requesting compensation for their losses and permission to return to their village. The Ministry did not respond within the 60-day statutory period which meant that the petition was tacitly rejected.

On 30 April 1999 the applicants filed an action with the Diyarbakır Administrative Court against the Ministry of Interior, requesting compensation for the damage they had suffered and permission to return to their village. They also applied for legal aid and submitted to the court documents obtained from the village headman indicating their poverty (*fakirlik belgesi*).

On 22 June 1999 the applicants received a letter from the Hani District Governor on behalf of the Ministry of Interior. The Governor informed them that, due to security reasons, the villagers would not be allowed to return to their villages until security was restored in that region.

On 23 June 1999 the Diyarbakır Administrative Court rejected the applicants' request for legal aid. The court held that, since the applicants had sufficient means to be represented by a lawyer, they could not be considered to be in need of legal aid according to the case-law of the Court of Cassation and the rules of civil procedure.

On 28 October 1999 the court decided to discontinue the proceedings on the ground that the required legal fees had not been paid. This decision was served on the applicants on 24 November 1999.

2. The Government's version of the facts

The investigation carried out by the authorities indicated that the applicants had left their villages of their own will. The security forces had not destroyed the applicants' village or forced them to leave their homes.

The official records indicated that 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.

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 ("Compensation Law"). 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.

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.

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. Many villagers had already been awarded compensation for the damage they had sustained.

B. Relevant domestic law

A description of the relevant domestic law can be found in the Court's decision of *İçyer v. Turkey* (no. 18888/02, §§ 44-54, 12 January 2006) and in its judgment of *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 31-35, ECHR 2004-VI)

COMPLAINTS

The applicants complained of a violation of Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No.1 to the Convention.

Under Article 8 of the Convention and Article 1 of Protocol No.1, they complained that their houses had been burnt down by the security forces and that they were not allowed to return to their village.

Under Articles 6 and 13, they submitted that they had been denied access to a court on account of the authorities' refusal to grant them legal aid and that they had no effective remedy in respect of their Convention grievances.

THE LAW

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

The applicants complained that their forcible displacement and the destruction of their property as well as the refusal of the authorities to allow them to return to their home and land had given rise to a breach 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."

The Government raised an objection to the Court's jurisdiction, arguing that the applicants had failed to exhaust domestic remedies as they had not availed themselves of the new remedy offered by the Compensation Law. 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 applicants' complaints and offered a reasonable prospect of success.

The Court observes that under the Compensation Law it is open to persons whose applications are pending before the Court, such as the applicants in the present case, to lodge until 3 January 2007 an application with local compensations commissions in order to claim compensation for the damage they had sustained as a result of their displacement, destruction of property and inability to gain access to their possessions in their villages in south-east Turkey.

The Court has already examined that remedy and found it effective in respect of complaints about the alleged forced displacement and denial of

access to possessions in the villages in south-east Turkey. In particular, it considered that the new remedy was accessible and provided reasonable prospects of success (see *İçyer*, cited above, §§ 73-87).

In the light of the above, the Court considers that there are no exceptional circumstances capable of exempting the applicant from the obligation to exhaust domestic remedies.

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

B. Complaints under Articles 6 and 13 of the Convention

The applicants complained that they had been denied of a right of access to a court and that there had been no effective domestic remedies capable of providing redress for their Convention grievances. They relied on Articles 6 and 13 of the Convention which, in relevant part, read as follows:

Article 6

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 13

"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."

The Court considers that these complaints collectively relate to the availability of effective remedies to the applicants within the meaning of Article 13. The Court reiterates its finding that the Compensation Law does provide applicants in these types of cases with an effective remedy in respect of their complaints concerning alleged forced displacement, destruction of property and/or denial of access to their property.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President