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. 57918/00
by Necmettin AYYILDIZ 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 17 January 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, Mr Necmettin Ayyıldız, Mr İsmail Yakut and Mr Abdullah Şeker, are Turkish nationals, who were born in 1928, 1927 and 1926 respectively and live in Diyarbakır. They are represented before the Court by Mr M. S. Tanrıkulu, a lawyer practising in Diyarbakır.

On 23 May 2000, the applicant Mr Ayyıldız died and on 4 May 2005, his heirs expressed interest in continuing his present applicant.

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

On 24 July 1999 an armed clash took place between the security forces and PKK militants in the applicants' village of Narlıca, in district of Kulp, Diyarbakır. During the clash, some of the applicants' property was destroyed. In particular, Necmettin Ayyıldız's vineyards of 3 *dönüm* (2,760 m2) and fruit trees, İsmail Yakut's home, dairy barn and livestock, Abdullah Şeker's dairy barn and livestock were damaged as a result of a fire that broke out. The village guards did not allow the applicants to save their livestock during the fire.

On 25 July 1999 three gendarme officers drew up a scene of incident report. According to the report, a fire started as a result of the clash which then spread to the barns of İsmail Yakut and Abdullah Şeker. The report further stated that a number of livestock belonging to these applicants were killed because of the fire.

On 26 July 1999 officers from the Kulp Gendarme Command took statements from İsmail Yakut and Abdullah Şeker. Their statements confirmed the scene of the incident report of 25 July 1999.

Abdullah Şeker and İsmail Yakut lodged petitions with the Kulp County Governor's Office on 2 August and 3 August 1999 respectively. They requested the authorities to establish their damage but they received no response to their petitions.

Abdullah Şeker and İsmail Yakut brought declaratory actions before the Kulp Civil Court on 9 August and 11 August 1999 respectively. They requested the court to assess the damage they had sustained.

On 12 August 1999 the Kulp Civil Court decided not to hold an on-site visit in Narlıca as it had been informed by the district gendarme command that the area was not safe and that there was not sufficient staff or equipment to provide security for the visit.

On 13 August 1999 Necmettin Ayyıldız brought a declaratory action before the Kulp Magistrates' Court (*Sulh Hukuk Mahkemesi*) for an assessment of the damage he had suffered.

On 16 August 1999 the court decided not to hold an inspection citing the same reasoning as the Kulp Civil Court.

2. The Government's version of the facts

The investigation carried out by the authorities indicated that subsequent to their requests for compensation, Mr Şeker and Mr Yakut had received 350,000,000 Turkish liras (TL) and 400,000,000 TL respectively. The investigation further revealed that Mr Ayyıldız had not suffered any loss or damage upon the incidents.

The Government also pointed to the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism that was passed by the Grand National Assembly on 14 July 2004 and entered into force on 27 July 2004 ("Compensation Law"). The Compensation Law provided for a sufficient remedy capable of redressing the Convention grievances of persons who suffered damages resulting from the fight against terrorism in the region.

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 under Article 1 of Protocol No. 1 that they had been deprived of their right to the peaceful enjoyment of their possessions on account of the destructions of their property. They further complained under the same heading about the authorities' inactivity to assess and redress their damage.

They alleged under Article 6 of the Convention that they had been denied of their right of access to a court as the domestic courts had not assessed their damage.

The applicants contended under Article 8 of the Convention that the destruction of their home and possessions amounted to a breach of their right to respect for their family life and home.

THE LAW

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

The applicants complained that the destruction of their property as well as the authorities' inactivity to assess and redress their damage 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."

The Government raised an objection to the Court's jurisdiction, arguing that the applicants had failed to exhaust domestic remedies. In that regard the Government stated that the applicants had failed to initiate lawsuits for damages before administrative courts.

The Government further stated that the applicants had not availed themselves 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 applicants' complaints and offered a reasonable prospect of success.

The Court observes that under the Compensation Law it is open to persons, such as the applicants in the present case whose applications are

pending before the Court, to lodge until 3 January 2007 an application with the compensations commissions in order to claim compensation for the damage they had sustained as a result of the fight against terrorism in south-east Turkey.

The Court has already examined that remedy and found it effective. 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 applicants from the obligation to exhaust domestic remedies. In view of its finding with respect to the Compensation Law, the Court does not find it necessary to examine whether compensation lawsuits before domestic administrative courts provided the applicants with another effective remedy to resort to.

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 6 of the Convention

The applicants complained that, since the domestic courts did not assess their damage, they had been deprived of any remedies they could have received. They relied on Article 6 of the Convention which, in relevant part, reads as follows:

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

The Court considers that this complaint relates to the availability of effective remedies to the applicants. In view of its finding above with respect to the Compensation Law introduced 2004, the Court considers that it is unnecessary to examine this complaint separately.

It follows that this complaint must be rejected under Article 35 §§ 3 and 4 of the Convention for being manifestly ill-founded.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President