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. 43599/98
by Beko BULUT
against Turkey

The European Court of Human Rights (Third Section), sitting on 1 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 1 July 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

The applicant, Beko Bulut, is a Turkish national who was born in 1946 and lives in Tunceli. He is represented before the Court by Mr O. Kılıç, a lawyer practising in Istanbul.

A. The circumstances of the case

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

1. The applicant's version of the facts

Until October 1994 the applicant lived in the Halitpınar village in the Ovacık district of the Tunceli province. In October 1994 the applicant's village was forcibly evacuated by security forces on account of intense terrorist activities in the region. Subsequently, the applicant's house was burned down along with the other houses in the village. He is still living in Elazığ with his family.

On 2 April 1998 the applicant filed a petition with the Office of the Ovacık Governor, requesting compensation for his losses and permission to return to his village.

On 25 May 1998 the Office of the Ovacık County Governor replied to the applicant's petition, stating that the operations in the applicant's village were still continuing and that he would be resettled when public order in the region was re-established. There was no explanation in the context of the reply as regards the applicant's claim for compensation of his loss. The applicant did not challenge this reply.

2. The Government's version of the facts

The applicant was residing in Elazığ. According to his statement of 12 October 1994, given before the Public Prosecutor, he had only a summer house in Halitpınar village.

On 19 October 1994 the Public Prosecutor asked the District Gendarme Commander for information concerning the applicant's allegations concerning the destruction and eviction of the Halitpınar village.

On 1 October 1994 the District Gendarme Commander informed the Public Prosecutor that according to the witnesses' statements the houses in Halitpınar village were burned down by the terrorist, dressed as security forces.

On 9 December 1994 the Public Prosecutor gave a decision of non-jurisdiction and referred the file to the office of the Governor.

On 25 October 1995 the Ovacık Governor gave a decision of non-prosecution as the alleged offences were not attributable to the security officers.

On 2 April 1998 the applicant filed a petition with the Office of the Ovacık Governor, requesting compensation for his losses and permission to return to his village.

On 25 May 1998 the Office of the Ovacık County Governor replied to the applicant's petition, stating that the operations in the applicant's village were still continuing and that he would be resettled when public order in the region was re-established. There was no explanation in the context of the reply as regards the applicant's claim for compensation of his loss. The applicant did not challenge this reply.

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-...).

COMPLAINTS

The applicant complained under Article 3 of the Convention that he was subjected to inhuman and degrading treatment as well as collective punishment since he was forcibly evicted from his village and his property was destroyed. He alleged that the destruction of his house deprived him of his liberty and security within the meaning of Article 5 of the Convention.

He maintained under Article 6 and 13 of the Convention that he was deprived of his right to access to a court to assert his civil rights and that there was no effective remedy to enable him to challenge the destruction of his home and possessions

He alleged under Article 8 of the Convention that his right to respect for family life and home was breached as his house was burned down by the security forces and he was forcibly evicted from his house and village.

The applicant complains under Article 14 of the Convention in conjunction with the above-mentioned Articles, that he was discriminated on the ground of his Kurdish origin.

He complained under Article 1 of Protocol No. 1 that his house was burned down by the security forces. Moreover he contended that the fact that he is still not allowed to return to his village amounts to a continuing violation.

Finally, he complained under Article 18 of the Convention that the State did not take any effective measures in order to prevent violations of the rights as guaranteed especially under Articles 5, 6 and 13 of the Convention and Article 1 of Protocol No. 1.

THE LAW

A. Complaints under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1

The applicant complained that his forcible displacement and destruction of his property as well as the refusal of the authorities to allow him to return to his home and land had given rise to breaches of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

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 Court observes that under the compensation law of 27 July 2004 it is open to persons, such as the applicant in the present case whose application is pending before the Court, to lodge until 3 January 2007 an application with the compensations commissions in order to claim compensation for the damage he had sustained as a result of his 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. Complaint under Article 13 of the Convention

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."

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 forced displacement, destruction of property and denial of access to his property. That finding is valid in the context of the complaint under Article 13 of the Convention.

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 5, 6, 14 and 18 of the Convention

The applicant contended that he was deprived of his liberty and security in violation of Article 5 of the Convention and that his rights guaranteed under Articles 6 of the Convention had been breached on account of the refusal of the authorities to allow him to gain access to his property. He further complained under Article 18 of the Convention that the State did not take any effective measures in order to prevent violations of the rights as guaranteed under the Convention. Invoking Article 14 of the Convention, he alleged that he was discriminated on account of his Kurdish origin.

The Court notes that in its *Doğan and Others v. Turkey* pilot judgment (cited above, §§ 118-133) it has examined similar complaints raised under Articles 6 and 14 of the Convention and has found them unsubstantiated. It finds no particular circumstances in these cases which would require it to

depart from its findings in the aforementioned case. It further notes that the applicant failed to substantiate his allegations under Article 5 and 18 of the Convention.

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

Accordingly, The Court concludes that Article 29 § 3 of the Convention should no longer apply to the case.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President