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. 51398/99
by Ali DÖKER and Yusuf ÖZTEKİN
against Turkey
lodged on 20 July 1999

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 20 July 1999,

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, Ali Döker and Yusuf Öztekin, are Turkish nationals who were born in 1933 and 1929 respectively and live in Diyarbakır. They are represented before the Court by Mr M. Vefa and Mr B. Deyar, 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 May 1994, the applicants lived in Erkenciler hamlet of Dolapdere village in Silvan, Diyarbakır, where they own property. Following an armed clash with the PKK militants in a nearby area, the security forces came to Erkenciler and required the inhabitants to establish a village guards system. Upon their refusal, the security forces evacuated the hamlet.

After the evacuation, the applicants moved to the city centre of Diyarbakır, where they currently live.

On an unspecified date, the security forces set fire to the houses and the cultivated fields in the hamlet.

Following the incidents, the applicants filed applications with the administrative and military authorities, asking for an authorization to return to their hamlet, or in the alternative, to continue to cultivate their fields. The applicants maintained that they were unable to provide copies of all of the complaints and requests they had filed, except for one letter dated 17 January 1996, which had been sent to the Governorship of Diyarbakır. In the letter, which was later transmitted to the gendarmerie command, Mr Döker stated that the hamlet had been burnt down by the security forces and requested to be remedied.

The authorities have not responded to these requests or taken any action.

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 alleged a violation of Article 1 of Protocol No. 1 and Article 13 of the Convention.

They complained under Article 1 of Protocol No. 1 that they had been deprived of their right to peaceful enjoyment of their possessions because of the destruction of their property and the denial of access to their hamlet.

They alleged under Article 13 of the Convention that they had no effective remedy for their grievances under Article 1 of Protocol No. 1.

THE LAW

A. Complaint under Article 1 of Protocol No. 1

The applicants complained that the destruction of their homes as well as their forcible displacement and the authorities' refusal to allow them to return to their homes and land had given rise to a breach of Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

> "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 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 their displacement 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 applicants 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 applicants complained that there was no effective domestic remedy capable of providing redress for their grievances under Article 1 of Protocol No. 1. They 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 Government disputed the above allegations, arguing that there were effective domestic remedies of which the applicants had failed to avail themselves.

The Court has already found that the Compensation Law does provide the applicants with an effective remedy in respect of their complaint concerning the alleged forced displacement, destruction of property and denial of access to their 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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President