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. 54879/00
by Ömer GÜRTEKİN 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 5 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, whose names appear in the appendix, are Turkish nationals. They were living in Güldiken village of Lice district of Diyarbakır at the time giving rise to the applications. They are 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 December 1992 the applicants lived in Güldiken village of Lice, Diyarbakır. On 10 December 1992 the applicants' village was forcibly evacuated by the security forces on account of intense terrorist activities in the region. After the evacuation, the security forces burned down the houses in the village. Ever since the incident, the applicants have been living in Diyarbakır.

On 30 March 1993 the village headman filed a petition with the Governor's Office in Diyarbakır on behalf of the villagers, requesting a damage assessment and compensation. On the same day the Governor transferred the letter to the Diyarbakır Head Office for Public Works (*Bayındırlık ve İskan Müdürlüğü*). The experts from this office assessed the damage and drafted a report. The report was submitted to the Governor who, however, did not inform the applicants about it.

On 4 November 1998 the applicants applied to the Governor's Office to obtain a response to their petition. On the same day the Governor informed the applicants that their petition and the relevant report had been sent to the Diyarbakır Head Office of Public Works.

On 12 November 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 of Interior referred the applicants' request to the Governor's Office.

On 30 December 1998 the Governor sent a letter to the applicants informing them that the District Social Aid and Solidarity Association *(İlçe Sosyal Yardımlaşma ve Dayanışma Vakfı Başkanlığı)* could not afford to pay the compensation requested by the applicants.

On 26 April 1999 the applicants filed an action with the Diyarbakır Administrative Court against the Ministry of Interior requesting compensation for their losses. They also applied for legal aid and submitted to the court documents obtained from certain state authorities indicating their poverty.

On 23 June 1999 the Diyarbakır Administrative Court rejected the applicants' request. 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. The decision was served on the applicants on 28 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, 13 and 14 of the Convention and Article 1 of Protocol No.1.

They complained under Article 1 of Protocol No.1 that their houses had been burnt down and that they were denied permission to return to their village.

They maintained under Article 6 that they had been denied access to a court on account of the refusal of legal aid.

Under Article 8, they contended that their right to respect for their family life and home had been breached as a result of the destruction of their houses.

They submitted under Article 13 that they had had no effective remedy for their various Convention grievances.

Finally, they asserted under Article 14, in conjunction with the above-mentioned Articles of the Convention that, they were discriminated against on the basis of their ethnic origin.

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 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. In that regard the Government stated that the applicants had failed to deposit the necessary court fees to in order 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. 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. Complaints under Articles 6 and 13 of the Convention

The applicants complained that they had been denied 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.

C. Complaint under Article 14 of the Convention

The applicants maintained that because of their Kurdish origin they had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1. Article 14 provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court notes that in its *Doğan and Others v. Turkey* pilot judgment (cited above, §§ 118-133) it has examined a similarly framed complaint and found it unsubstantiated. It finds no particular circumstances in this case which would require it to depart from its findings in the aforementioned case.

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

APPENDIX

List of the applicants

1. Ömer GÜRTEKİN
2. Ali DAİMİ
3. Ali DEMİR
4. Salih YILMAZ
5. Hamdullah GÜNDOĞAN
6. Naif YILDIRIM
7. Tahir GÜNDOĞAN
8. Selim DEMİR
9. Cemil YILDIRIM
10. Ali GÜRTEKİN
11. Gafer YILDIRIM
12. Kazım SÖNMEZ
13. Yusuf DEMİR
14. Adem SÖNMEZ
15. Salih GÜRTEKİN
16. Yusuf YILMAZ
17. Abdulgani GÜRTEKİN
18. Abdullah YILDIRIM
19. Mesut YILDIRIM
20. Ahmet SÖNMEZ
21. Hasan DAİMİ
22. Abdullah SÖNMEZ
23. Yusuf ORAK
24. Mehmet DEMİR
25. Hasan DEMİR
26. Adil DEMİR
27. Selahattin YILDIRIM
28. Namet YILDIRIM
29. Mehmet YILDIRIM
30. Salih TAŞKAYA
31. Ömer DEMİR
32. Selahattin GÜNDOĞAN
33. Sadık GÜRTEKİN
34. Behçet ORAK
35. Mahmut GÜNDOĞAN
36. Ali ORAK
37. Mehmet DAİMİ
38. M. Emin SÖNMEZ
39. Kadri GÜLTEKİN

40. Emin YILDIRIM
41. Abdulmenaf SÖNMEZ
42. Mahmut SÖNMEZ
43. Mehdin SÖNMEZ
44. İhsan GÜNDOĞAN
45. Ahmet YILDIRIM
46. Mehmet YILDIRIM
47. Hatip GÜNDOĞAN
48. Hasan YILDIRIM
49. Kadri YILDIRIM
50. Mehdin YILDIRIM
51. Hüseyin YILMAZ