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. 52082/99
by Ali SENCAR and Others
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 R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 17 October 1997,

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 applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, whose names appear in the appendix, are Turkish nationals and live in Silopi. They are represented before the Court by Mr T. Elçi, a lawyer 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 facts

Until 14 June 1993 the applicants lived in the Selçik village in the district of Silopi in the Şırnak province, where they own property.

On the night of 13 June 1993, the Gendarmerie Battalion in Görümlü, near the village of Selçik where the applicants reside, was attacked by the PKK.

On 14 June 1993 early in the morning the security forces carried out an operation on the applicants' village, forcing women, children and men to come out of their homes. They gathered them in a square outside the village. The security forces accused the villagers of assisting the PKK. They then dispersed among the houses and set them on fire. The applicants were not allowed to retrieve any belongings from their houses and were forced to evacuate the village. They moved to the Silopi District.

On 30 June 1993 the applicants applied to the Silopi Magistrates' Court for an assessment of the damage they had suffered as a result of the burning down of their homes and possessions. However, due to the extent of the damage, it was not possible to make a complete assessment of the damage caused to their possessions, neither was it possible to make any assessment of damage caused to the fields, vineyards and gardens.

On 28 July 1993 an independent expert submitted his detailed damage assessment reports to the Silopi Civil Court of First Instance. In his reports, he described the nature and the amount of the damage suffered by each applicant. On an unspecified date, copies of the assessment of damage reports were given to the Ministry of Interior.

The applicants repeatedly applied to the administrative authorities in Şırnak for permission to return to their village after the incident. However, the authorities refused their requests.

2. The Government's version of the facts

The investigation carried out by the authorities indicated that on 13 June 1993 there was an attack to the mechanize battalion by missiles, flak and

longed barrelled rifles from inside and around Selçik village. During the clash six soldiers died and thirteen wounded, the houses of the villagers were also burned down. On 14 June 1993 a search was conducted in and around the Selçik village.

Concerning this incident an investigation was lodged by the Şırnak Public Prosecutor's Office. On 12 July 1993 the public prosecutor decided that he lacked jurisdiction and sent the file to the Diyarbakır State Security Court on 20 August 1993. This investigation is still pending before this court.

The official records indicated that there was no obstacle preventing the applicants from returning to their homes and possessions in their villages. Selçik village is available for resettlement from the beginning of the year of 2001. The letter of the Şırnak Governorship dated 10 July 2001 to the district administrations stated that certain villages, including the applicants were available for resettlement. However, none of the villagers applied to return to their village. They only went to crop their fields time to time.

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 applicants complained that the destruction of their property amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

They contended under Article 8 of the Convention that their right to respect for their family life and home had been violated since they were forcibly evacuated from their village and were unable to return to their village.

The applicants alleged under Article 13 of the Convention that there were no effective remedies in domestic law in respect of their Convention grievances.

They finally complained under Article 1 of Protocol No. 1 that their right to the peaceful enjoyment of possessions was violated since the security forces had destroyed their houses and they had been prevented from returning to their villages.

THE LAW

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

The applicants complained that their forcible displacement and destruction of their property as well as the refusal of the authorities to allow them to return to their homes 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 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, 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, destruction of property 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 Convention grievances. 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 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.

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

Appendix

List of Applicants

1. Ali Sencar
2. Şemsettin Tamboğa (due to the death of the applicant, his son, Mehmet Tamboğa, lodged the application on his behalf.)
3. Feyzi Tümer
4. Mehmet Sedik Tümer
5. Salih Tümer
6. Ali Tümer
7. Seyfettin Kutluk
8. İdris Sencar
9. İbrahim Kutluk
10. Gamu Toftik
11. Üzeyir Sencar
12. Sait Sencar
13. Mehmet Sencar
14. Ömer Kutluk
15. Şahin Kutluk
16. Mehmet Kocaman
17. Osman Kocaman
18. Salih Mete
19. Ahmet Kocaman
20. Halil Kutluk
21. Yakup Kutluk
22. Abdullah Kutluk
23. İsmail Özmen
24. Cemil Salih
25. Süleyman Salih
26. Osman Elçe
27. Abdullah Özmen
28. Hacı Altınsız
29. Süleyman Kutluk
30. Hüseyin Kutluk
31. Levent Kutluk
32. Ali Kocaman
33. Hasan Kocaman
34. İsmet Kutluk
35. Mustafa Kocaman
36. Sıtkı Tamboğa (due to the death of the applicant, his son, Agit Tamboğa lodged the application on his behalf.)
37. Ömer Sencar
38. Kamil Sencar

39. Beşir Tamboğa
40. Abdullah Tamboğa
41. Necmettin Sencar
42. Fettah Sencar
43. Memduh Özkan
44. Abdullah Tümer
45. Abdulkerim Tamboğa
46. Ahmet Özkan
47. Musa Sencar
48. Müslüm Sencar
49. Lütfü Sencar
50. Tahir Özmen,
51. Nusrettin Tümer
52. Fadıl Tümer
53. Resul Kutluk
54. Halime Sencar