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. 39680/98
by Yusuf YILMAZ
against Turkey
lodged on 15 December 1997

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 with the European Commission of Human Rights on 15 December 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 applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Yusuf Yılmaz, is a Turkish national who was born in 1950 and lives in Istanbul. He is represented before the Court by Mr Selim Okçuoğlu, 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

The applicant at one time lived with his parents and brothers in the Kalkanlı village of Bingöl. Their house was on the outskirts of the village. The applicant later moved to Istanbul. His family continued to live in Kalkanlı.

On an unspecified date in 1994 the applicant learned that the security forces had chopped down his family's fruit trees in the village. On an unspecified date, the local gendarme commander orally stated that the soldiers who had chopped the trees had subsequently been disciplined. The applicant's family did not make any formal complaints.

In the unspecified past, the soldiers had allegedly burned five houses in the centre of the village and compelled the villagers to leave the village. In the evening of an unspecified day in 1994, while the applicant's father was visiting him in Istanbul, some soldiers opened fire in the direction of the house, presumably in the course of a clash with the PKK. The soldiers' bullets caused a fire near the house of the applicant's family, burning dry leaves and chopped wood only.

The applicant's family informed him about these incidents and expressed their fears. They did not feel secure to live in this region. The applicant came to the village in order to take his family to Istanbul. His family left all their belongings in the house and voluntarily gave the keys to the local gendarme station for potential house searches.

The applicant's family began to live with him in Istanbul. In 1996 the father of the applicant died.

From 1994 to 1996 the applicant went to the village every year in order to check the house. In June 1996 he noticed that some of their belongings and some food supplies were missing. Moreover the doors and the windows of the house had been removed.

On 6 June 1996 the applicant wrote to the Yayladere County Governor's Office. He explained that he wanted to return to his village that he had left in 1994. He reported about the damage caused to his house and belongings and requested that his damage be assessed. He further requested financial aid to repair his house.

On 19 July 1996 the State of Emergency Bureau of the Yaylıdere County Governor's Office wrote in reply that an investigation had been carried out by the Yaylıdere Gendarme Command. It was observed that there were no residents in the village as a result of the acts of terror. According to the Office, the damage had been caused by severe weather conditions and lack of proper care and maintenance. It was noted that the damage had accelerated after the roof of the house was ruined. The Office concluded in the light of these facts and under the relevant law that it was not possible to provide any compensation or financial aid, as requested. The applicant did not challenge this decision.

In September 1996 the applicant went to the village again. He observed that the roof of the house had suffered some more damage since June 1996. He further noticed that some – unspecified – family belongings had been stolen.

On 25 October 1996 the applicant wrote a second letter similar to the letter of 6 June 1996. He did not submit a copy of it to the Court.

On 8 January 1997 the State of Emergency Bureau wrote in reply to the second letter that an investigation had been carried out. It referred to an internal directive of 27 September 1996 of the State of Emergency Bureau of the Bingöl Governor's Office. The referred directive had ordered the identification of the families who had emigrated as a result of the acts of terror but subsequently returned and built houses, or those who wished to return. The letter noted that, under the relevant law, it was not possible to provide any compensation or help from the Yaylıdere County Governor's Office and the Social Aid and Solidarity Foundation.

The letter nevertheless stated that, on the condition that the applicant would return to the village, his situation would be reconsidered in the light of a new investigation to be conducted on site. The letter further stated that if his request were found to be well-suited, necessary aid could be provided.

The applicant did not find the letter sincere. He was of the opinion that the local gendarme commander would not allow any construction work in the village. He also believed that various unreasonable security measures in the village would make it undesirable to live there. The applicant neither returned to the village nor wrote to any other State institution.

In the autumn of 1997, the applicant learned from unspecified sources that his house was destroyed to a greater extent and the village forests were burned.

2. The Government's version of the facts

The security forces had not destroyed or stolen the applicant's belongings. Furthermore, 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 applicant complained of violations of Articles 3, 5, 6, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1.

He complained under Articles 3, 5 and 8 of the Convention that, because of the security forces' intimidation, he and his family had been compelled to abandon their village home and property. He further submitted that they could not be expected to return to their village home as they would systematically be intimidated by the security forces or compelled to serve as village guards.

Under Article 1 of Protocol No. 1, he complained that the authorities deprived him and his family of the right of peaceful enjoyment of their possessions in the village.

Under Articles 6 and 13, he complained that the authorities had failed to initiate an effective investigation into his allegations and that he had been denied a right to compensation for the destruction of his house and property.

Finally he argued under Article 14 in connection with the above mentioned Articles that his rights had been violated due to his ethnic origin.

THE LAW

A. Complaints under Articles 3, 5 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 a breach of Articles 3, 5 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 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save ... in accordance with a procedure prescribed by law"

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."

At the outset, the Court notes that the applicant was not deprived of his liberty falling under Article 5 (see *Jancova v. Slovakia* (dec.), no. 51233/99, 8 October 2002). Given that it is free, in the performance of its task, to attribute to the facts of the case a characterisation in law different from that given by the applicant (see *Camenzind v. Switzerland,* judgment of 16 December 1997, *Reports of Judgments and Decisions,* 1997-VIII, § 50), the Court considers it appropriate to examine the applicant's Article 5 complaint under Article 8 instead.

The Government raised an objection to the Court's jurisdiction, arguing that the applicant had failed to exhaust domestic remedies as he had not availed himself 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 applicant's complaints and offered a reasonable prospect of success.

The Court observes that under the Compensation Law it is open to persons whose applications are pending before the Court, such as the applicant in the present case, to lodge until 3 January 2007 an application with local 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 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. Complaints under Articles 6 and 13 of the Convention

The applicant complained that he had not been able to have access to a court for compensation and that there was no effective domestic remedy capable of providing redress for his Convention grievances. He relied on Articles 6 and 13 of the Convention, which provide in relevant part:

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 applicant maintained that because of his Kurdish origin he had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 3, 5, 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* 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