



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF AYDER AND OTHERS v. TURKEY

(Application no. 23656/94)

JUDGMENT

STRASBOURG

8 January 2004

FINAL

08/04/2004

This judgment is final but it may be subject to editorial revision.

In the case of Ayder and Others v. Turkey,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mrs K. HAJIYEV, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 4 December 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 23656/94) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Turkish nationals, Ahmet Ayder, Yusuf Lalealp, Nadir Doman, Şevket Biçer and Zeydin Ekmekçi (“the applicants”), on 20 April 1994. The application was also brought on behalf of the applicants' spouses and dependent children. The applicant Şevket Biçer, moreover, also brought the applicant on behalf of his younger sister Huri.

2. The applicants, who had been granted legal aid, were represented before the Court by Ms F. Hampson, a lawyer practising in the United Kingdom, and Ms R. Yalçındağ, Mr C. Aydın and Mr M. Kılavuz, lawyers practising in Turkey. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicants alleged principally that their homes and property had been destroyed during an operation by security forces in the town of Lice in south-east Turkey.

4. The application was declared admissible by the Commission on 15 May 1995. In its report of 21 October 1999 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1, that there had been no violation of Articles 2, 14 and 18 of the Convention and that it was not necessary to examine the applicants' complaint under Article 5 of the Convention.

5. The case was referred by the Commission to the Court on 30 October 1999. The Commission's request referred to former Articles 44 and 48 of the Convention and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2, 3, 5, 8, 13, 14 and 18 of the Convention as well as Article 1 of Protocol No. 1 to the Convention. Before the Court, the applicants withdrew their complaints under Articles 2, 5 and 14 of the Convention.

6. On 6 and 8 December 1999 a panel of the Grand Chamber decided that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently the application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

8. On 5 September 2001 the panel of the Grand Chamber declared inadmissible the applicants' request for reconsideration of its decision to assign the case to a Section.

9. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section. Within this Section also, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants are Turkish citizens of Kurdish origin born in 1940, 1934, 1964, 1966 and 1963 respectively. At the time of the events giving rise to their application, the applicants and their families were living in the town of Lice in Diyarbakır province (south-east Turkey). The application concerns the applicants' allegation that the security forces deliberately

destroyed the town of Lice, including their houses and other possessions, as an act of retaliation for the inhabitants' alleged sympathy for the PKK.

A. Introduction

11. The facts of the case, particularly concerning events on or about 22 and 23 October 1993, are disputed by the parties.

12. The facts as presented by the applicants are set out in Section B below (paragraphs 16-23). The Government's submissions concerning the facts are summarised in Section C below (paragraphs 24-25).

13. The Commission, in order to establish the facts disputed by the parties, conducted an investigation with the assistance of the parties, pursuant to former Article 28 § 1 (a) of the Convention. Three delegates of the Commission heard the applicants in Ankara from 16 to 20 June 1997 as well as the following 15 witnesses: Leyla Ayder, daughter of the applicant Ahmet Ayder; Huri Biçer, sister of the applicant Şevket Biçer; Türkan, Tahir and Bedriye Ekmekçi, respectively the step-mother, father-in-law and mother-in-law of the applicant Zeydin Ekmekçi; Mustafa Öztan, chief constable of the Lice police; Mehmet Dabak and Özcan Küçüköz, public prosecutors; Ebedi Delidere, deputy mayor of Lice; Gürcan Acar, judge at the Lice Magistrates' Court; İbrahim Şahin, Governor of Diyarbakır province; Hasan Çakır, commander of Lice central gendarmerie station; Şahap Yaralı, commander of Lice district gendarmerie; Mustafa Küçük, commander of Lice gendarmerie commando unit; and Yunus Nebioğlu, gendarmerie investigator appointed by the Office of the Diyarbakır Provincial Governor.

A further three witnesses, who had been involved in the damage assessments carried out in Lice, had been summoned but did not appear before the Commission's Delegates.

14. The Commission's evaluation of the evidence and its findings of fact are set out in its report of 21 October 1999 and are summarised in Section D below (paragraphs 26-61). The applicants accept the Commission's findings of fact.

15. Section E (paragraphs 62-63) contains excerpts of the summary of the evidence given to the Commission's Delegates by Gürcan Acar and İbrahim Şahin. Section F (paragraphs 64-66) sets out the documents submitted by the parties to the Commission and the Court relating to the assessment of damage.

B. The applicants' submissions on the facts

16. Lice was a small town with a population of, very approximately, 5,000 people. Following an earthquake in 1975 many of the houses had been rebuilt in materials which, if set alight, burned easily. Many of the citizens had built stables close to their houses out of mud; these offered greater protection from fire. The official buildings were more substantial. Lice was built on a hillside, the northernmost part of the town being significantly higher than the southern side.

17. There had previously been considerable PKK activity both within and in the vicinity of Lice. Attacks within Lice were directed against State buildings and occurred at night. In the surrounding area, attacks were not confined to the hours of darkness. A short time before the events at issue there had been an operation outside Lice which resulted in the bodies of 15 dead terrorists being brought to Lice for the necessary administrative formalities to be carried out.

18. On 22 October 1993 a large scale, pre-planned operation was carried out in Lice by security forces, notably gendarmes, who opened fire indiscriminately. Before firing commenced, artillery had been placed across the Diyarbakır-Lice road, people in coffee shops had been instructed by gendarmes to go home and children whose parents were in the security forces had been collected from school. Soon after the firing started, helicopters arrived. Some of these were combat helicopters, rather than troop carriers, and machine guns operating out of them were used to fire into the town. Shots were also fired from, notably, the police headquarters, the gendarme commando unit compound, the gendarme station and the regional boarding school where military units were stationed. There was no PKK presence in the town and there was no incoming fire, which explains why these security buildings sustained little or no damage.

19. Any clashes between the PKK and the security forces that took place on 22 October 1993 occurred to the south and south-east of Lice. In the morning, a police vehicle had come under attack on the Lice-Kulp road as it made its way to a petrol station. Later that day, the Lice commando unit which had left town early in the morning to conduct an operation elsewhere was attacked as it attempted to re-enter Lice near the creek which runs from north to south to the east of Lice.

20. The residents of the north-westerly neighbourhood of Kalı, where the houses of all applicants except Yusuf Lalealp's were situated, heard the sounds of bullets impacting on the walls of their homes and stables. They saw members of the security forces driving round in armoured

vehicles, firing randomly, and they also saw them on foot – the security forces were not being fired at. They saw and heard helicopters and heard explosions close by, just after the helicopters had passed overhead.

21. Yusuf Lalealp's house in the Şaar neighbourhood in the south-east of Lice was deliberately set alight by security forces on 22 October 1993. The houses of the other applicants were deliberately burned by security forces the following morning, after the shooting had stopped. At about 8 a.m. people were ordered out of their houses by security forces without being given the opportunity to gather their possessions. The first group, consisting of the households of the applicants Ahmet Ayder and Nadir Doman and their neighbours, was gathered in an open area opposite their homes. The security forces broke down doors and/or windows and set fire to the houses with the use of a weapon in the shape of a long tube. The houses situated lower down in the neighbourhood were already on fire by the time the households belonging to the family of the applicant Zeydin Ekmekçi were ordered out of their homes and taken to join the others. The family of the applicant Şevket Biçer were made to leave their home later and by that time the group gathered in the open area had already left for the square near the police headquarters.

22. A large number of people were made to wait in that square for three or four hours for the arrival of the Provincial Governor. The Governor, speaking in Turkish, told the people that the PKK was responsible for the destruction. A middle-aged man and a young woman protested that the soldiers had set fire to the houses; the man was taken away and beaten up, the woman was arrested. Following the Governor's speech a curfew was imposed. Upon returning to their houses the applicants found nothing but a pile of ashes. After the curfew was lifted they left Lice.

23. The applicants complained to the public prosecutor. He did not formally record their complaints but he did make arrangements for damage assessment reports to be drawn up. The applicants received no compensation. No investigation was launched into the actions of the security forces until the notification of the present application to the Government by the Commission, despite the applicants' complaints and allegations of a similar nature being widely reported in the media.

C. The Government's submissions on the facts

24. On 22 October 1993, at 8 a.m., the PKK launched an attack on Lice which continued until the evening. The security forces had to respond. Despite the precautions taken by the security forces, two of their members were killed and one was injured. Among the civilian population 13 people died and 74 were injured. In the course of the PKK attack and the defence by the security forces certain houses and shops were damaged.

25. The State acted immediately in support of the inhabitants of Lice. Tents were distributed. Buildings and shops that had been damaged were repaired after the damage had been assessed. Money was paid to shop owners whose merchandise had been damaged. Houses were repaired; however, no money was paid to house owners.

D. The Commission's evaluation of the evidence and findings of fact

1. General background

26. In the town of Lice a large part of the population lived in prefabricated housing, erected after an earthquake. These dwellings were made of materials which, if set alight, burned easily.

27. In late 1993 there was a sizeable security force presence based in Lice. There was a police force and a central gendarmerie. The district gendarmerie headquarters was also based in Lice, sharing a building with the central gendarmerie. There was also a commando unit, attached to the gendarmerie and stationed in its own compound. According to the commander of that unit, Hasan Çakır, that compound also housed a mechanised infantry company. In addition, there appeared to have been an infantry battalion billeted at or near the regional boarding school at the relevant time.

28. The evidence obtained concerning the frequency of attacks carried out on Lice by the PKK was contradictory. Most of the Government witnesses stated before the Delegates that official buildings were attacked by terrorists on a regular basis and they named a number of buildings which had been destroyed by terrorists. A number of the applicants and their witnesses, however, contended that no clashes had taken place in or around Lice, or that such clashes had been confined to the surrounding areas and the mountains. In their final observations to the Commission, the applicants, referring to newspaper cuttings, submitted that the PKK had avoided attacking Lice for two years in order to spare the civil population. Although this tallied with the testimony of Türkan Ekmekçi, who said that there had been clashes in the past but that they had stopped, Ebedi Delidere and Leyla Ayder told the Delegates that there had been clashes, tension and violence in Lice prior to 22 October 1993, Delidere adding that no one in Lice would go out after dark.

29. From other cases that the Commission had dealt with concerning events in south-east Turkey, it had become clear that PKK activity was rife in 1993. The evidence with which it was presented in the instant case did not persuade the Commission that this level of PKK activity would have been significantly different in Lice. The Commission further found credible the evidence – offered by both the applicants' and the Government's witnesses – that PKK attacks mainly took place at night. The Commission

also found it established that about a fortnight prior to the events at issue there had been an incident outside Lice during which between 12 and 15 terrorists were killed and their bodies taken to Lice.

30. The Commission was prepared to accept, however, that those applicants and witnesses who professed to have no knowledge whatsoever of PKK activities in Lice or its vicinity may well have done so out of fear, and it considered that this did not necessarily affect the credibility of the rest of their testimony. It noted in this respect that police chief constable Öztan and the gendarme officers Yaralı and Nebioğlu indicated that the voicing of accusations against the PKK could well have adverse consequences for the individual concerned.

2. Concerning events in Lice on 22 October 1993

31. The Commission noted that according to the applicants, the town of Lice was not attacked by the PKK on 22 October 1993 but was deliberately destroyed by security forces in a pre-planned operation. In their view, the most likely motive for this action, given previous incidents in the town, was to terrorise the local population and to 'teach them a lesson' for their alleged sympathy for the PKK.

32. Also according to the applicants, there was no evidence, either in the form of casualties or damage to security buildings, of any PKK presence in the town on 22 October. They nevertheless conceded that the attacks on the police vehicle and subsequently on the returning commando unit which, they submitted, took place outside the town, to the south-east, could plausibly be attributed to terrorists.

33. The Commission noted that the position of the petrol station where the police vehicle was shot at was not indicated on the map provided by the Government (Appendix II to the Commission's report). On the map submitted by the applicants it featured (as "Garage") just outside Lice (Appendix III to the Commission's report). Neither map containing an indication of scale, it was difficult to assess how far outside the town the petrol station was situated. Nevertheless, it did not appear to be in dispute that the shots fired came from the vineyards rather than the town.

34. The Commission was less inclined to accept, however, that the attack on the returning commando unit also occurred outside the town. It observed that according to the gendarmerie incident report of 22 October, the armoured vehicle which was to collect the commando unit was sent to an area in the vicinity of the Şaar neighbourhood, that Şahap Yaralı's report described this area as situated "in the south of the district and to the south of the commando unit compound" and that in his oral testimony Mr Yaralı stated that he had instructed the commando unit to enter Lice through the creek bed in the Şaar neighbourhood to the south of the commando unit compound. Again, in the absence of an indication of scale on the maps it was difficult to place this event with accuracy, but it would appear that the

creek mentioned ran quite close to the inhabited area of the Şaar neighbourhood. More importantly, Mr Yaralı added that shots had been fired from houses facing the creek. The Commission found that the evidence before it thus pointed to a presence of PKK members or militiamen [*Nota: Militiamen: term used to describe members of the civilian population who provide the PKK with food, shelter and/or information.*] in at least some part of the town.

35. The applicants also argued that the availability of helicopters very soon after the shooting started served as a further indication of the planned nature of the operation. The Commission noted that a considerable number of witnesses, including members of the security forces, testified to the presence of helicopters. Both in his report and in his account to the Delegates, Şahap Yaralı related how helicopters had been used to transport injured persons, including General Aydın, to hospital in Diyarbakır and how armed Cobra helicopters had been deployed. It was only police chief constable Mustafa Öztan according to whom just two helicopters had briefly flown over Lice around midday: one a troop carrier and one with fire-power which had been sent in order to enable the first helicopter to land but which had returned to Diyarbakır upon learning that that first helicopter had been forced to put down at Hani. The Delegates found Mr Öztan an evasive and rather reluctant witness who was unwilling to acknowledge pieces of information unless these were directly put to him from the various incident reports. Although his ignorance of the actions of the various gendarmerie units appeared genuine and he might therefore not have had direct knowledge of the request for helicopters emanating from the gendarmerie, the Commission considered it scarcely credible that he would not have become aware of the presence of these helicopters as events unfolded.

36. As to the time of arrival of the various helicopters, Şevket Biçer told the Delegates that he had seen six helicopters arrive from the direction of Diyarbakır 10 to 15 minutes after the shooting had commenced. Huri Biçer stated that helicopters had been flying around throughout the day. The Commission observed that it appeared from Şahap Yaralı's account that one helicopter, with General Aydın on board, had landed at the commando unit compound early in the morning and also that the commando unit's single helicopter had been sent to Kulp early on in the day. Although there had, therefore, been helicopters flying over Lice at an early stage, the helicopters used to transport the wounded and the armed Cobra helicopters did not arrive until later. The Government denied that any orders had been given to the helicopter forces prior to the events. However, they failed to comply with the Commission's request to submit the operational orders for these forces. The Commission found this regrettable, given that the orders would presumably have been able to clarify at what time the helicopters had taken off.

37. Although Mustafa Öztan was adamant that no shots or bombs had been fired from helicopters, the Commission found it established that armed helicopters were deployed and that shots were fired from them. However, it remained in dispute whether this shooting was at all directed at populated areas or, as Mr Yaralı maintained, confined to the areas to the north of Lice. The Commission found some strength in the argument that indiscriminate gunfire from helicopters over the town would have endangered the security forces on the ground, especially if, as the applicants alleged, members of these forces were moving around on foot.

38. In spite of the above, the Commission considered that no clear picture of events emerged from the account, given both in writing and orally, by members of the security forces. In this context it noted in the first place the diverging recollections of the police on the one hand and the gendarmerie on the other. The differing accounts relating to the presence and number of helicopters had already been addressed. In addition, whereas police chief constable Öztan estimated that some 50 terrorists had been ensconced in the mosque, gendarme officer Yaralı put this number at between five and ten and reckoned that in the town as a whole a maximum of only 30 terrorists had been present. The Commission was struck by the apparent lack of communication and coordination between the police and gendarmerie which the oral testimony of Mr Öztan in particular brought to the fore: even after the events, this official, who was in charge of the local police force, appeared to be in the dark about many aspects of what had transpired on 22 October 1993.

39. The successful escape of all terrorists allegedly present in the town was also rather surprising, as this was said to have occurred at a time when the security forces would by far have outnumbered the terrorists. Even if the Commission accepted that the terrorists' escape route, northwards through the creek to the west of the Kalı neighbourhood, was impossible to secure, it was not clear how they would have reached that part of the town. This question was even more pertinent in respect of the terrorists allegedly hiding in the mosque and who only had two gates available to them to make their way out of an otherwise walled-in area.

40. The Commission further observed that no satisfactory explanation had been provided for the limited amount of damage sustained by buildings belonging to the security forces, despite the fact that these were said to be the terrorists' main targets. It noted that the police headquarters was not even included in the report of determination of damaged buildings. Given that these buildings were allegedly not only subjected to gunfire but also to rocket attacks, the Commission was not convinced that the mere fact that these buildings were made out of more solid materials than most of the houses could account for this.

41. Although the Commission was thus of the opinion that a disturbing amount of relevant questions remained unanswered, it considered this an

insufficient basis for a conclusive finding that no clash whatsoever took place on 22 October 1993, particularly given that it had similarly not been able to rule out a terrorist presence in some part of the town.

3. Concerning the alleged burning of Yusuf Lalealp's house on 22 October 1993

42. Yusuf Lalealp submitted that on 22 October 1993 his house and his barn situated in the Şaar neighbourhood were deliberately set alight by soldiers.

43. It was not in dispute that his house was damaged and that an assessment of the damage was carried out. Mr Lalealp told the Delegates that he had not obtained a copy of the relevant documents relating to the assessment, but the Government provided the file number under which his request for an assessment had been registered. Moreover, Mr Lalealp's property was listed in the report on determination of damaged buildings as having sustained medium damage. While the foregoing allowed the Commission to find it established that Mr Lalealp's property was damaged, the parties did not agree on whether the security forces or the PKK caused the damage, and the Commission therefore had to assess the evidence relating to this issue.

44. The Commission noted that it had serious doubts about the accuracy of the record of the search of a house dated 23 October 1993 according to which a number of empty Kalashnikov cartridges were found in Mr Lalealp's house. In this respect, it noted in the first place that Mr Lalealp told the Delegates that it would have been impossible to find anything amongst the burned remains of his property. More importantly, it appeared that Mr Lalealp was at no stage questioned by the authorities about these cartridges: neither in the days following 22 October 1993 – despite the facts that a considerable number of people had been arrested, that Mr Lalealp had been staying near his home and that he had in fact remained in Lice longer than many other people –, nor on the occasion when he was asked to make a statement to a public prosecutor nearly one year after the event. Indeed, the assertions that cartridges were found in his house struck the Commission as implausible or at least very doubtful.

45. It was true that there were some discrepancies between Mr Lalealp's statement to the Diyarbakır branch of the Human Rights Association (“HRA”) and his testimony before the Delegates, notably with regard to the question whether he attended the speech given by the Provincial Governor on 23 October 1999. According to the statement to the HRA this had been the case, but before the Delegates Mr Lalealp said that he was not aware of any such speech having been made and he had not attended it.

46. The wording of the part of Mr Lalealp's statement to the HRA that related to the Governor's speech was very similar to the wording used in the statements of Ahmet Ayder and Nadir Doman and it seemed likely that parts

of one statement were copied and used in respect of other applicants. The Commission, recalling that it had previously had occasion to remark critically on the accuracy of statements taken by the Diyarbakır branch of the HRA, stressed that it could not be expected to guess at possible explanations for inaccuracies encountered in such statements.

47. The Delegates' general assessment of Mr Lalealp's oral evidence was that it was somewhat confused but, nevertheless, frank and convincing. In their observation of Mr Lalealp's demeanour the Delegates obtained the impression that he was sincere in his testimony and that he was a credible witness. The Delegates were of the opinion that any discrepancies between Mr Lalealp's oral evidence and his statement to the HRA were due more to a lack of attention to particular detail than indicative of any untruthfulness in his account. The Commission was prepared to accept that this might explain why Mr Lalealp told the Delegates that his daughter Süryan had been in his house on 22 October 1993 whereas according to his statement to the HRA Süryan was married and living in Diyarbakır. It appeared in any event from his oral evidence that after the lifting of the curfew Mr Lalealp's family had left Lice and had moved in with his daughter in Diyarbakır so that, regardless of whether Süryan was in Lice or not on 22 October 1993, it did not appear in dispute that her home was in Diyarbakır.

48. While the Commission found that it could not be excluded that on 22 October 1993 a clash took place between the PKK and the security forces and that there could well have been a presence of either PKK or militiamen in the Şaar neighbourhood where Mr Lalealp's house was situated, it did not consider the possibility of such a clash having occurred to be sufficient to cast doubt on the veracity of Mr Lalealp's affirmations regarding the origin of the damage to his property. Moreover, his account was on this point entirely consistent with the allegations made by the other applicants in regard to the destruction of their property.

49. Making a global assessment, the Commission found it established that Mr Lalealp's property and possessions were deliberately burned by security forces on 22 October 1993. As a result of this destruction Mr Lalealp's family moved to Diyarbakır, followed some time later by Mr Lalealp himself.

4. Concerning the events in Lice on 23 October 1993 and the alleged burning of the houses of Ahmet Ayder, Nadir Doman, Şevket Biçer and Zeydin Ekmekçi

50. The Commission noted that it was not in dispute that on the morning of 23 October the shooting had come to an end. It was, moreover, not in dispute that the houses of the applicants Ahmet Ayder, Nadir Doman, Şevket Biçer and Zeydin Ekmekçi in the Kalı neighbourhood were destroyed – this was confirmed by the report on determination of damaged buildings.

51. According to the eye-witness accounts of events on 23 October given by the applicants Ahmet Ayder and Nadir Doman and the witnesses Türkan, Tahir and Bedriye Ekmekçi, Huri Biçer and Leyla Ayder, soldiers came to the Kalı neighbourhood that morning, ordered the people out of their homes and proceeded to set the houses alight. Most of these witnesses also described how the houses were set alight either by a pipe-shaped instrument or by something being thrown into the houses, Huri Biçer mentioning both methods. Ahmet Ayder saw his own house being set on fire by soldiers and Nadir Doman and Leyla Ayder had witnessed this as well. Moreover, Huri Biçer and Türkan, Tahir and Bedriye Ekmekçi saw Ahmet Ayder's house on fire. These witnesses, except for Bedriye Ekmekçi, also saw Nadir Doman's house burning. Türkan and Tahir Ekmekçi saw Şevket Biçer's house on fire. Moreover, Türkan Ekmekçi saw soldiers surrounding the house of Zeydin Ekmekçi the moment this caught fire. Tahir and Bedriye Ekmekçi saw that Zeydin Ekmekçi's house was on fire.

52. Several witnesses told the Delegates that the soldiers who burned the houses had operated in groups. The Commission observed in this respect that teams made up of members of various commando units were active inside the town on the morning of 23 October. According to the commando unit commander Mustafa Küçük these teams carried out searches.

53. Most of the applicants and witnesses concerned stated that before they were made to go to the square in front of the police headquarters, where they were to be addressed by the Provincial Governor, they had been gathered in an area near the school except for the Biçer family who were the last to leave the neighbourhood. Upon their return to the Kalı neighbourhood they found their houses burned down.

54. The Delegates found these applicants and witnesses convincing, even if the evidence of the more elderly ones was at times somewhat confused. The Commission considered that their accounts were detailed and on the whole consistent.

55. The Government's witnesses maintained, however, that no houses were set alight on 23 October but that houses had burned down the previous day as a result of fighting between the PKK and security forces. Yet those inhabitants of the Kalı neighbourhood who appeared before the Delegates and who had been in Lice on 22 and 23 October were adamant that their houses had still been intact at daybreak of that last day. In this respect the Commission found significant the assumption expressed by the police chief constable Mustafa Öztan that the people of Lice would have slept in their own homes in the night of 22 October or perhaps, because they were scared, in the house of a neighbour or of relatives. He appeared to discount the fact that if more than 400 houses had been destroyed in the course of that day it would have been impossible for people to stay in their own homes or those of most of their neighbours and relatives. This also led the Commission to make the observation that in all likelihood there would have been many

more casualties and injured if all of the more than 400 houses that ended up damaged or destroyed had caught fire on 22 October since this implied that a very large number of people would have been out in the open, looking for shelter, perhaps attempting to put out the fires, amidst the heavy gunfire of that day. The testimonies of the afore-mentioned applicants and witnesses before the Delegates, on the contrary, contained convincing accounts of how they had spent the night of 22 October sheltering from gunfire rather than fire. At no stage had this evidence been disputed or any kind of suggestion made as to where these people would have spent the night if they were not where they said they were.

56. The Commission thus accepted that Huri Biçer, for instance, spent the night of 22 October in her brother Şevket's house. Tahir and Bedriye Ekmekçi took shelter in their barn on 22 October and spent the night either in that barn or, as Tahir Ekmekçi stated, in their house – Bedriye not specifically mentioning where she spent the night. Consequently, the destruction of Şevket Biçer's house and Tahir Ekmekçi's house and barn, as documented in the report on determination of damaged buildings must have taken place after 22 October. While this element deprived the account presented by the Government's witnesses of credibility, it rendered that of the four applicants concerned all the more probable.

57. Having regard to the evidence as a whole, the Commission found that the property and possessions in Lice of the applicants Ahmet Ayder, Nadir Doman, Şevket Biçer and Zeydin Ekmekçi were deliberately burned by security forces on 23 October 1993. This led to these applicants and their families leaving the town.

5. Concerning the investigation at the domestic level

58. The Commission noted that no investigation was lodged into allegations of wrongdoing on the part of the security forces until the present application was referred to the respondent Government, despite the fact that a number of Government witnesses told the Delegates that, not long after the incident, they had become aware of the existence of allegations that houses had been burned deliberately by security forces. Police chief constable Mustafa Öztan had read reports to that effect in the newspapers and judge Gürcan Acar had heard women voice such accusations while he was carrying out damage assessments, but neither man appeared to have seen any cause to inform the public prosecutor. Şahap Yaralı had also been apprised of these allegations through newspaper- and television reports. In the light of this evidence, Mr Acar's statement that no newspapers were available appeared untrue.

59. The applicants Ahmet Ayder and Yusuf Lalealp stated that they went to the public prosecutor's office but that they did not receive any help. However, public prosecutor Mehmet Dabak told the Delegates that he had

not received any complaints of security forces deliberately having burned down houses. Even though the Commission could not rule out the possibility, put forward by Mr Dabak, that people had in fact gone to the judge of the Magistrates' Court rather than to him, it found it nevertheless peculiar that Mr Dabak would not have read about allegations of wrongdoing by the security forces in the newspapers whereas Messrs Öztan and Yaralı had. It is clear that various newspapers reported the allegations and the Commission was less than impressed with Mr Dabak's statement that he would have made enquiries into the underlying facts of such reports had he read them.

60. The Commission further observed that the investigation launched after the present application was brought to the attention of the Government, and which ended with a decision of non-prosecution being taken by the Lice District Administrative Council, still did not address the complaints of four of the five applicants, namely that their houses had been burned on 23 rather than 22 October 1993. Finding that he lacked jurisdiction, Lice public prosecutor Mustafa Küçüköz referred the investigation to the District Administrative Council, after having obtained statements from four of the applicants. Yunus Nebioğlu, who was in charge of the subsequent investigation, requested the police to take statements from the applicants but it appeared that he drew up his report on the matter at a time when a statement from only one of the applicants, Zeydin Ekmekçi, had in fact been taken. The Commission noted that although this statement contains a very clear accusation of wrongdoing on the part of the security forces, Mr Nebioğlu did not judge it necessary to hear any security force personnel. From the text of his report and his testimony before the Delegates, it seemed to the Commission that his attitude towards the complaints brought by the applicants was seriously prejudiced and that these complaints did not receive serious consideration.

61. In conclusion, the Commission found that no effective investigation was carried out.

E. Evidence given by Gürcan Acar and İbrahim Şahin to the Commission's Delegates

62. The following are excerpts from the summary of the oral evidence as set out in the Commission's report (§§ 278-290), given to the Commission's Delegates by Gürcan Acar, a judge in the Lice Magistrates' Court at the relevant time:

“Some 300 or 400 applications for damage assessment had subsequently been filed. Such an assessment could only be carried out if a person requested it, and the findings of the on-site inspection would serve as the basis for any future law-suit.

...

The owners of the property had received a copy of the damage assessment report. Such a report constituted evidence. A claim for compensation could subsequently be filed with the administrative courts. Not all the people had understood this. Some had thought that they were going to receive material assistance or money directly from him. Although he had not been obliged to do so, he had usually attempted to explain that they had to apply to the administrative courts.

He did not know if any other teams had collected evidence as to the cause of the fires. He did, however, think that a team came from the office of the Provincial Governor to establish the extent of the destruction to property.”

63. The following are excerpts from the summary of the oral evidence as set out in the Commission's report (§§ 317-327), given to the Commission's Delegates by İbrahim Şahin, Governor of Diyarbakır province at the relevant time:

“He had gone to Lice a little after midday on 23 October 1993. He had informed the security forces less than an hour beforehand that he wanted to find out about the problems of the citizens and determine in what way they could be helped. ... He had ... found a group of 200-300 people waiting for him in an open area near the police headquarters. He assumed that they had been told by the security forces that they could ask him for assistance. ...

Using a car microphone he had then made a speech in which he had emphasised the harmfulness of terrorism. He had assured the people that the State would compensate all the damage they had suffered.

All the people had asked for was for their damage to be repaired. He had sent two technical committees to Lice to have the damage suffered by each and every person determined. He had ordered for the shops to be repaired. In order to secure normal living conditions he had given priority to the shops. ...

The damage assessment which he had ordered only concerned buildings and not the contents of those buildings. Within the limits of the budget of the province he had provided the necessary help. He had subsequently sent the assessments to Ankara and had asked the Government for assistance. ...”

F. Documents relating to damage assessment

64. In the proceedings before the Commission, the applicants submitted a “Report on Determination of Damaged Buildings”, which had been given to the HRA by the Lice public prosecutor. The third section of this report lists 402 owners of 436 private homes and/or stables and the extent of damage sustained by these properties (the preceding sections of the report concern commercial premises and public buildings). According to this section of the report, the houses of Ahmet Ayder (spelled Aydaş), Nadir Doman (spelled Duman) and Şevket Biçer were destroyed, the house and stable of Zeydin Ekmekçi were destroyed, and the house of Yusuf Lalealp sustained medium damage.

65. In the proceedings before the Commission the applicants, apart from Yusuf Lalealp, also submitted experts' reports relating to the inspections carried out at their request by a judge of the Lice Magistrates' Court and an independent expert. These inspections were aimed at establishing that the roof and walls of their houses had burned down and collapsed, that their possessions inside the houses had burned, as well as at the identification of the remains.

66. On 30 August 2000, and again on 5 January 2001, the Government submitted the documents of this damage assessment procedure "in relation to the properties of Yusuf Lalealp".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State of emergency

67. Since approximately 1985, serious confrontations have occurred in the south-east of Turkey between the security forces and members of the PKK (Workers' Party of Kurdistan). This confrontation has claimed the lives of thousands of civilians and members of the security forces.

68. Two principal decrees relating to the south-eastern region have been made under the Law on the State of Emergency (Law no. 2935, 25 October 1983). The first, Decree no. 285 (10 July 1987), established a regional governorship of the state of emergency in ten of the eleven provinces of south-eastern Turkey, including Diyarbakır. Under Article 4 (b) and (d) of the Decree, all private and public security forces and the Gendarmerie Public Peace Command are at the disposal of the Regional Governor.

69. The second, Decree no. 430 (16 December 1990), reinforced the powers of the Regional Governor, for example to order transfers out of the region of public officials and employees, including judges and prosecutors, and provided in Article 8:

"No criminal, financial or legal responsibility may be claimed against the state of emergency regional governor or a provincial governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this Decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim an indemnity from the State for damage suffered by them without justification."

According to the applicants, this Article grants impunity to the governors and reinforces the powers of the regional governor to order the permanent or temporary evacuation of villages, to impose residence restrictions and to enforce the transfer of people to other areas. Damage caused in the context of the fight against terrorism would be "with justification" and therefore immune from suit.

B. Constitutional provisions on administrative liability

70. Article 125 §§ 1 and 7 of the Constitution provides as follows:

“All acts or decisions of the authorities are subject to judicial review...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

71. This provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the administration, whose liability is of an absolute, objective nature, based on the theory of “social risk”. Thus, the administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

72. Proceedings against the administration may be brought before the administrative courts, whose proceedings are in writing.

C. Criminal law and procedure

73. The Criminal Code makes it a criminal offence:

- to make an unlawful search of an individual's home (Articles 193 and 194);
- to commit arson (Articles 369, 370, 371, 372), or in case human life is endangered aggravated arson (Article 382);
- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383); or
- to damage another's property intentionally (Articles 526 *et seq.*).

74. For all these offences complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not to bring a prosecution (Article 153). Complaints may be made in writing or orally. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

75. If the suspected authors of the contested acts are military personnel, they may also be prosecuted for causing extensive damage, endangering human lives or damaging property, if they have not followed orders in conformity with Articles 86 and 87 of the Military Code. In these circumstances proceedings may be initiated by the (non-military) persons concerned before the competent authority under the Code of Criminal

Procedure, or before the suspected persons' hierarchical superior (Articles 93 and 95 of Law 353 on the Constitution and the Procedure of Military Courts).

D. Civil-law provisions

76. Any illegal act by civil servants, be it a crime or a tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts. Pursuant to Article 41 of the Code of Obligations, an injured person may file a claim for compensation against an alleged perpetrator who has caused damage in an unlawful manner whether wilfully, negligently or imprudently. Pecuniary loss may be compensated by the civil courts pursuant to Article 46 of the Code of Obligations and compensation for non-pecuniary or moral damage awarded under Article 47. Damage caused by terrorist violence may be compensated out of the Aid and Social Solidarity Fund.

E. Impact of Decree no. 285

77. In the case of alleged terrorist offences, the public prosecutor is deprived of jurisdiction in favour of a separate system of State security prosecutors and courts established throughout Turkey.

78. The public prosecutor is also deprived of jurisdiction with regard to offences allegedly committed by members of the security forces in the state of emergency region. Decree no. 285, Article 4 § 1, provides that all security forces under the command of the Regional Governor (see paragraph 68 above) shall be subject, in respect of acts performed in the course of their duties, to the Law of 1914 on the prosecution of civil servants. The Law of 1914 has been replaced by another law in the meantime. Thus, any prosecutor who receives a complaint alleging a criminal act by a member of the security forces must make a decision declining jurisdiction and transfer the file to the Administrative Council. These councils are made up of civil servants, chaired by the Governor. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

THE LAW

I. THE COURT'S ASSESSMENT OF THE FACTS

79. The Court reiterates its settled case-law that under the Convention system prior to 1 November 1998 the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). While the Court is not bound by the Commission's findings of facts and remains free to make its own assessment in the light of all the material before it, it is however only in exceptional circumstances that it will exercise its powers in this area (see, among other authorities, *Timurtaş v. Turkey*, no. 23531/94, § 63, ECHR 2000-VI).

80. Whereas the applicants accepted the Commission's findings of fact, the Government disputed them. They qualified the Commission's approach to the evidence as selective, arguing that undue weight had been given to the evidence of the applicants and the other inhabitants of Lice who testified before the Delegates. If, as it should have done, the Commission had meticulously analysed the verbatim records of the fact-finding mission, it would have become clear that the evidence given by these persons was improbable, inconsistent and contradictory. According to the Government, the applicants and their witnesses – simple and credulous people – had been instructed by the applicants' lawyers to learn by heart a false account of events in Lice, following the publication in *Özgür Gündem*, a newspaper close to the PKK, of allegations to the effect that no terrorist attack had taken place in Lice on 22 October 1993. The Government regretted that the Commission had disregarded the evidence given by public servants, whose testimonies were consistent, corroborative and were based on detailed knowledge of events.

81. The Government identified three areas in particular where contradictory evidence had been given. Firstly, the applicants had presented the Commission's Delegates with differing accounts of the number of helicopters in the skies over Lice on 22 October 1993, with one applicant saying there had been one helicopter, another insisting there had been six and a third not mentioning any at all. Also, some of the applicants alleged that shots had been fired or bombs had been dropped on Lice from the helicopters. Their testimony was in stark contrast to the clear explanations provided by police chief constable Mustafa Öztan and gendarme commander Şahap Yaralı as to the number and role of the helicopters.

Secondly, the argument of the applicants that no terrorists were present in Lice on 22 October 1993 was shown to be untenable in the light of the testimony of Mr Öztan who had related in detail and without any contradictions how PKK terrorists had ensconced themselves in the courtyard of the mosque.

Thirdly, the applicants and their witnesses had been unable to provide a consistent account of the way in which houses had caught or been put on fire. Gunshots were mentioned, but also inflammable liquids and powders, as well as rockets.

82. The Court does not share the misgivings of the Government. It notes that the Commission reached its findings of fact after a delegation had heard evidence over a period of five days in Ankara. It considers that the Commission approached its task of assessing the evidence with the requisite caution, giving detailed consideration to the elements which supported the applicants' claims and those which cast doubt on their credibility. Thus, on the basis of the evidence presented to it – but contrary to what the applicants claimed –, the Commission found, for example, that it could not be excluded that there had been a terrorist presence in Lice on 22 October 1993. It follows already from this finding alone that the Government's position that no account was taken of evidence submitted by their officials does not stand up. The Court further does not hold with the premise which the Government appear to put forward, namely that where part of an applicant's allegation is not found proved, the entirety of that applicant's claims is invalidated. There is even less room for the application of such a premise in the present case where the Commission's Delegates did not express any doubts as to the general trustworthiness and reliability of the applicants and their witnesses. On the contrary, the Delegates found the applicants Ayder, Doman, Biçer, Ekmekçi and their witnesses convincing – even if the evidence of the more elderly witnesses was at times somewhat confused. The Commission considered that their accounts were detailed and on the whole consistent (see paragraph 54 above). The applicant Lalealp's oral evidence was described as somewhat confusing, but nevertheless frank and convincing. The Delegates considered that he was sincere in his testimony and adjudged him to be a credible witness (see paragraph 47 above). Police chief constable Öztan, on the other hand, was described as an evasive and rather reticent witness (see paragraph 35 above).

83. The Court can also not detect any deficiencies in the Commission's assessment of the evidence relating to the manner in which houses were set alight and the presence of helicopters, the Commission's analysis of the latter issue being especially detailed. The Court would remark that it does not behove the Government to criticise the Commission's efforts in respect of this particular issue, given that they refused to comply with the request for the operational orders issued to the helicopter forces on 22 October 1993 to be made available (see paragraph 36 above).

84. In sum, the Court finds that the criticisms made by the Government do not raise any matter of substance which might warrant the exercise of its own powers of verifying the facts. In these circumstances, the Court accepts the facts as established by the Commission.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Article 34 of the Convention

85. In their reply to the applicants' observations (see paragraph 7 above), the Government argued, by way of a “preliminary observation”, that the individual right of petition as laid down in Article 34 of the Convention did not allow for applications to be lodged on behalf of other persons, as the applicants in the present case had done in respect of their spouses and independent children and, in the case of Şevket Biçer, also in respect of his younger sister (see paragraph 1 above). In the Government's view, extending the group of applicants in this manner was abusive and was aimed at obtaining a higher amount of just satisfaction.

86. The Court notes that it does not transpire from the material before it that the Government raised this objection prior to the Commission's decision of 15 May 1995 declaring the application admissible – or indeed at any stage of the proceedings before the Commission. It notes from the Commission's decision on the admissibility of the application that the Government were granted an extended time-limit by which to comment on the issue of admissibility. Notwithstanding this facility, they failed to submit any observations on this particular issue. They are therefore estopped from raising objections to the admissibility of the application before the Court (see *Loizidou v. Turkey*, judgment of 23 March 1995 (*preliminary objections*), Series A no. 310, p. 19, § 44). Accordingly, this preliminary objection must be dismissed.

B. Non-exhaustion of domestic remedies

87. The Government, as they had done at the admissibility stage before the Commission, stressed that in the absence of any attempts by the applicants to raise their Convention grievances before a domestic authority they could not be regarded as having exhausted domestic remedies as required by Article 35 § 1 of the Convention. The Government pointed to the availability of administrative, civil as well as criminal-law remedies in the Turkish legal system. This system had been short-circuited by the Human Rights Association, which had done nothing to encourage the applicants to have recourse to these remedies.

There were numerous cases decided by administrative courts establishing that the State would be held liable for compensation where its agents had destroyed property. Examples of such cases had been made available to the Court in the past (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1207, § 57) and the Government submitted a number of similar decisions in the

present proceedings. These included two decisions taken by the Diyarbakır Administrative Court, awarding compensation to plaintiffs for, respectively, “the death of the plaintiffs' son/brother which occurred as a result of the security forces responding to the attack staged by terrorists on Lice district on 22 October 1993” (decision no. 1996/485 on file no. 1995/457, 14 June 1996), and “the destruction of the plaintiff's household goods which had caught fire during an armed clash between terrorists and the security forces in Lice on 22-23 October 1993” (decision no. 1996/788 on file no. 1994/482, 20 November 1996). Moreover, whilst enabling plaintiffs to obtain compensation for all damage they had suffered, this remedy did not require them to prove that the acts which had caused the damage were imputable to the State.

88. The Government further emphasised that, following events in Lice, the authorities – of their own motion, as was confirmed by Provincial Governor İbrahim Şahin – had quickly proceeded to establish the damage in order to facilitate the administrative courts' task of awarding compensation. In addition, an investigation into the events had been carried out in accordance with legal provisions, which had concluded with a decision of non-prosecution being taken by the Lice District Administrative Council.

89. The applicants, in their memorial, relied on their reply to the Government's observations at the pre-admissibility stage of the proceedings before the Commission. In that reply they argued that any purported remedy was illusory, inadequate and ineffective.

90. The Commission, in its decision on admissibility (see paragraph 4 above), determined that the applicants were absolved from the obligation of pursuing the remedies put forward by the Government in the absence of concrete examples of those remedies working in cases comparable to those of the applicants.

91. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. However, there is no obligation under Article 35 § 1 to have recourse to remedies which are inadequate or ineffective. In addition, according to the “generally recognised rules of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal; one such reason being the failure of the national authorities to undertake an investigation or offer assistance in response to serious allegations of misconduct or infliction of harm by State agents (see *Akdivar and Others*, cited above, §§ 65-69, and *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 907, § 65).

92. The application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the

protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2707, § 58).

93. Regard must therefore be had in this case to the situation which existed in south-east Turkey at the time of the events complained of by the applicants, which was characterised by violent confrontations between the security forces and members of the PKK (*ibid.*). In such a situation, as the Court has recognised in previous cases, there may be obstacles to the proper functioning of the system of the administration of justice (see *Akdivar and Others*, cited above, § 70; *Menteş and Others*, cited above, § 58; and *Selçuk and Aşker*, cited above, § 67).

94. The Court notes that Turkish law provides civil, administrative and criminal remedies against illegal acts attributable to the State or its agents.

95. As regards a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents, the Court reiterates that a plaintiff must, in addition to establishing a causal link between the tort and the damage he or she has sustained, identify the person believed to have committed the tort (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 73). In the instant case, however, those responsible for the destruction of the applicants' property are still unknown.

96. With respect to an action in administrative law under Article 125 of the Turkish Constitution based on the authorities' strict liability, the Court reiterates that the remedy indicated by the Government must be sufficiently certain, in practice as well as in theory (see, among other authorities, *Avşar v. Turkey*, no. 25657/94, § 375, ECHR 2001-VII). In this connection, the Court notes that the Government submitted two judgments delivered by the Diyarbakır Administrative Court in which that court awarded compensation to inhabitants of Lice in respect of damage to property and the killing of a relative in the course of clashes between the PKK and the security forces. The Government also referred to other cases which concerned the award of compensation by the administrative courts to those who brought actions as a result of damage or injury they had suffered due to terrorist incidents. Undoubtedly these decisions illustrate the real possibility of obtaining compensation before these courts in respect of injuries or damage to property arising out of the disturbances or acts of terrorism.

97. However, as the Court has constantly held in similar cases, despite the extent of village destruction in the state of emergency region, there appears to be no example of compensation having been awarded at the material time in respect of allegations that property has been deliberately destroyed by members of the security forces or of prosecutions having been brought against them as a result of such allegations (see *Akdivar and Others*, cited above, § 71; *Menteş and Others*, cited above, § 59; and *Selçuk and Asker*, cited above, § 68). On that account, the Court points out that, in the cases submitted by the Government, the administrative courts awarded compensation on the basis of the doctrine of social risk, which is not dependent on proof of fault. Thus, under Turkish law an administrative law action is a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification is not, by definition, a prerequisite to bringing an action of this nature.

98. For the Court, however, when an individual formulates an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, the notion of an “effective remedy”, in the sense of Article 13 of the Convention, entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access by the complainant to the investigative procedure (see *Menteş and Others*, cited above, § 89). Otherwise, if an action based on the State's strict liability were to be considered a legal action that had to be exhausted in respect of complaints of this nature, the State's obligation to pursue those guilty of such a serious breach of the Convention might thereby disappear.

Accordingly, the Court does not consider that a remedy before the administrative courts can be regarded as adequate and effective in respect of the applicants' complaints, since it is not satisfied that a determination can be made in the course of such proceedings concerning the allegations that their property was purposely destroyed by members of the security forces.

99. In the opinion of the Court, therefore, it has not been demonstrated by the Government with sufficient certainty that effective and accessible domestic remedies existed for complaints such as the applicants'.

100. In addition, the Court finds that there were in any event special circumstances in the present case which relieved the applicants of the obligation to exhaust such a remedy. It notes in this regard that it is not in dispute that the events of 22 and 23 October 1993 resulted in massive destruction and damage to homes and property in Lice, as was also demonstrated by the number of damage assessment reports which judge Gürcan Acar stated had been prepared (see paragraph 62 above). In his testimony to the Commission's Delegates, İbrahim Şahin, the then Provincial Governor of Diyarbakır, confirmed that a public assurance had been given to the people of Lice that all damage sustained would be

compensated by the State (see paragraph 63 above). It is true that Mr Acar testified that the damage assessment reports prepared on his instructions were intended to serve as evidence in the event that claims were filed by the individual property owners with the administrative courts and that, as appears from the judgments submitted by the Government, certain property owners filed such claims and obtained some compensation for their loss. However, as Mr Acar also accepted, not all property owners had understood this, believing that they would receive compensation without the need to bring proceedings. While Mr Acar stated in evidence that he had usually attempted to explain that property owners had to apply to the administrative courts to recover compensation for their loss, it would appear that this was not generally understood.

101. Where, as here, an unqualified undertaking is given by a senior public official that all property owners will be compensated for the damage sustained and damage assessment reports are thereafter prepared in respect of each property, the Court finds that, in the absence of a clear indication to the contrary, property owners could legitimately expect that compensation would be paid without the necessity of their commencing proceedings in the administrative courts. The Court does not consider that it has been shown that the need for each property owner to bring separate judicial proceedings was made sufficiently clear.

102. In the light of the foregoing, the Court concludes that there existed special circumstances which dispensed the applicants from the obligation to exhaust domestic remedies. It follows that the Government's preliminary objection must be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

103. The applicants invoked Article 3 of the Convention, which provides:

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

A. Inhuman treatment

104. The applicants submitted that they had been terrified by the manner in which they were forced out of their homes and had to watch helplessly as the security forces set fire to their homes and personal belongings. They had been left destitute, with only the clothes they stood up in and, in some cases, with no shoes.

105. The Government denied that any deliberate burning of homes had taken place by security forces. On the contrary, the actions undertaken by the authorities in order to protect the population from harm and to provide

assistance to those who had suffered damage demonstrated the lack of any such intent.

106. The Commission considered that the burning of the applicants' homes constituted an act of violence and deliberate destruction in utter disregard of the safety and welfare of the applicants or their families who were left without shelter and in circumstances which caused them anguish and suffering. The Commission took into account the fact that the applicants were unable to save their personal belongings as well as the dire personal situation in which they and their families subsequently found themselves, being deprived of their homes in Lice and, in respect of Ahmet Ayder and Şevket Biçer, of the livelihood which they had been able to derive from their fields. It accordingly found that the applicants had been subjected to inhuman treatment.

107. As the Court has emphasised on many occasions, Article 3 enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. No provision is made, as in other substantive clauses of the Convention and its Protocols, for exceptions and no derogation from it is permissible (see, *inter alia*, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2278, § 62).

108. The Court has consistently held that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

109. The Court notes that the applicants' homes and possessions were burned before the eyes of some of the applicants as well as of members of their families. The destruction of their property deprived the applicants and their families of shelter and it also deprived two of the applicants of their livelihood. In addition, it obliged them to leave the place where they had been living and to build up new lives elsewhere.

110. The Court considers that the destruction of the applicants' homes and possessions, as well as the anguish and distress suffered by members of their family, must have caused them suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3 (see *Selçuk and Asker*, cited above, §§ 77-78). Even assuming that the motive behind the actions of the security forces was to punish the applicants and their relatives for their alleged involvement in, or support of, the PKK, that would not, in the opinion of the Court, provide a justification for such ill-treatment.

111. The Court concludes that there has been a violation of Article 3 of the Convention.

B. Inhuman punishment

112. The applicants also requested the Court to find that they had been subjected to collective punishment, the imposition of which, they contended, constituted inhuman and degrading treatment. They argued that on 23 October 1993, when according to all the witnesses the fighting in Lice had stopped, the security forces acted in a manner calculated to terrify a significant proportion of the population of Lice and to force them to move elsewhere by way of punishment either for attacks carried out by the PKK or for presumed support of the PKK.

113. The Government contended that the applicants wished to disguise the fact that a clash between the PKK and the security forces had taken place in order to support their allegation of a collective punishment having been meted out. It was, however, clear from the actions of the authorities that they had not had any intention of causing the applicants to suffer damage and, even less so, of degrading them within the meaning of Article 3.

114. The Commission, in the light of its finding that the applicants had been subjected to inhuman treatment on account of the deliberate destruction of their homes, did not consider it necessary to examine this complaint separately.

115. The Court notes that the Commission made no finding as regards the underlying motive for the destruction of the applicants' property. In these circumstances, and having regard to its own finding in respect of the applicants' other complaint under Article 3 (see paragraph 111 above), it is of the opinion that it is not necessary to consider this complaint.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

116. The applicants complained of the deliberate destruction of their homes and property. They relied on Article 8 of the Convention, which reads:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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”.

and on Article 1 of Protocol No. 1, which provides:

“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.”

117. The Government argued that the fact-finding mission conducted by the Delegates of the Commission had not established any premeditated interference with the applicant's private or family life. Since that mission had similarly not been able to establish the true course of events, the destruction of the applicants' houses could not be attributed to the Turkish authorities. In addition, the applicants – apart from Ahmet Ayder – had not submitted any proof of ownership of the houses where they had been living.

118. The Commission found that there had been a breach of these Articles.

119. The Court has found it established that the security forces deliberately destroyed the applicants' houses and property, thus forcing them and their families to leave Lice. There is no doubt that these acts, in addition to giving rise to a violation of Article 3, constituted particularly grave and unjustified interferences with the applicants' rights to respect for their private and family life and home, and to the peaceful enjoyment of their possessions (see *Selçuk and Asker*, cited above, § 86).

120. In so far as the Government aver that the applicants Yusuf Lalealp, Nadir Doman, Şevket Biçer and Zeydin Ekmekçi did not own the houses in which they and their families were living, the Court does not consider that the failure to submit title deeds is decisive in this respect. It notes that in the “Report of Determination of Damaged Buildings” these applicants are listed as the owners of houses which had sustained damage (see paragraph 64 above). Moreover, in their letter of 5 January 2001 to the Court, the Government themselves stated that the documents of the damage assessment procedure which they enclosed with that letter relate to the “properties” of Yusuf Lalealp (see paragraph 66 above). Therefore, the Court accepts that the applicants owned the houses in which they had been living.

121. It follows that the Court finds violations of Article 8 of the Convention and Article 1 of Protocol No. 1.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

122. The applicants submitted that, in breach of Article 13 of the Convention, they had no effective remedy available to challenge the destruction of their homes and possessions by the security forces and to seek compensation. Article 13 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.”

123. The Government, considering that the allegations of the applicants had not been proved, submitted that the applicants did not have an arguable claim of a violation of a substantive provision of the Convention. In the alternative, they argued that the applicants could have obtained compensation had they brought proceedings before the administrative courts.

124. The Commission held that there had been a breach of Article 13.

125. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, cited above, § 95; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 117, ECHR 1999-IV; and *Timurtaş v. Turkey*, cited above, § 111).

126. As the Court has already stated above (paragraph 98), where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigation procedure.

127. In the present case, the Court has found established that the applicants' homes and possessions were destroyed, disclosing violations of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1. The applicants' complaints in this regard are therefore “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*,

judgment of 27 April 1988, Series A no. 131, p. 23, § 52, *İlhan v. Turkey* [GC], no. 22277/93, § 98, ECHR 2000-VII).

128. The Court refers to its above findings that it has not been established with sufficient certainty that the remedies indicated by the Government were capable of providing any effective prospect of obtaining redress in the circumstances of this case (see paragraph 99 above). Furthermore, despite the fact that a number of Government witnesses told the Commission's Delegates that, not long after the incident, they had become aware of allegations that houses had been burned deliberately by security forces, no official investigation was commenced until notice of the present application was given to the Government. The Lice public prosecutor reached a decision of non-jurisdiction because the investigation concerned alleged wrongdoing on the part of civil servants, and the file was referred to the District Administrative Council (see paragraphs 60 and 88 above). The Court has already found in a number of cases that this body, made up of civil servants who are hierarchically dependent on the Governor – an executive officer linked to the security forces under investigation –, cannot be regarded as independent (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1731-33, §§ 77-82, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 85-93, ECHR 1999-III; see also *Mahmut Kaya v. Turkey*, no. 22535/93, § 95, ECHR 2000-III). Moreover, in the present case Yunus Nebioğlu, who had been appointed to investigate the applicants' allegations for the District Administrative Council, drew up his report on the matter after having obtained a statement from only one of the applicants, Zeydin Ekmekçi, and, despite Mr Ekmekçi maintaining his allegations, without hearing any members of the security forces (see paragraph 60 above).

In these circumstances, the Court considers that no thorough or effective investigation was conducted into the applicants' allegations.

129. The Court concludes that there has been a breach of Article 13 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

130. The applicants invoked Article 18 of the Convention, which reads:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

131. The applicants argued that the enforced evacuation of between two and three million people from south-east Turkey, allegedly for security reasons, disclosed an arbitrary exercise of power, outside the framework of domestic legal safeguards and in deliberate subversion of the rule of law and the rights guaranteed under the Convention.

132. The Government submitted that even in the difficult conditions of the fight against terrorism, the operations conducted by the security forces in the state of emergency region had a legal basis in precisely-worded legal provisions which also set out domestic remedies.

133. The Commission considered this complaint unsubstantiated.

134. Having regard to its above findings, the Court does not consider it necessary to examine this complaint separately.

VII. ALLEGED PRACTICES BY THE AUTHORITIES IN VIOLATION OF THE CONVENTION

135. The applicants complained that a practice of intentional destruction of homes and possessions and forced evacuation in south-east Turkey in and around 1993 aggravated the violations of the Convention of which they had been victims. Referring to other cases concerning events in south-east Turkey in which the Commission and the Court had also found breaches of the Convention, the applicants argued that they revealed a pattern of denial by the authorities of allegations of serious violations of human rights as well as a denial of remedies.

136. Having regard to its above findings under Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1, the Court does not find it necessary to determine whether the failings identified in the instant case are part of a practice adopted by the authorities.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

138. The applicants claimed a total amount of 179,549.90 pounds sterling (GBP) (Ahmet Ayder: GBP 47,169.37; Yusuf Lalealp: GBP 24,054.10; Nadir Doman: GBP 30,117.48; Şevket Biçer: GBP 32,306.06; Zeydin Ekmekçi: GBP 45,902.89) for pecuniary damage in respect of the loss of their houses and outbuildings, livestock, household goods, foodstuffs and income as well as for costs incurred for alternative accommodation, as outlined below (paragraphs 141-142, 147, 151 and 153).

139. The Government argued that the applicants' allegations that their homes and possessions were destroyed by security forces were unfounded

and there was thus no requirement for the Court to award any compensation. In any event, compensation for damage brought about in the course of the fight against terrorism could be obtained from the administrative courts at the domestic level.

They submitted, in the alternative, that the applicants' claims were out of all proportion to the value of the items listed, were unsubstantiated and largely imaginary.

140. The Court has found that the applicants' homes and possessions were destroyed by security forces. In view of this finding it is undoubtedly necessary to award compensation for pecuniary damage. However, as the applicants have not substantiated all their claims as to the quantity and value of their lost property with documentary or other evidence, the Court's assessments of the amounts to be awarded must, by necessity, be speculative and based on principles of equity.

1. Houses and outbuildings

141. The applicants submitted a letter, dated 13 July 2000, from the Diyarbakır branch of the Civil Engineering Association setting out that the cost of rebuilding prefabricated housing according to the legislation that entered into force on 25 February 2000 amounted to 99,901,000 Turkish Lira (TL) per square metre (sq. m) or, at the exchange rate that applied on the last mentioned date, GBP 110. In respect of the cost of rebuilding barns and poultry houses, the applicants claimed TL 1,762,700 per sq. m.

142. Ahmet Ayder claimed that his house measured 52 sq. m. Yusuf Lalealp's house comprised 65 sq. m and his barn 30 sq. m, Nadir Doman's house measured 60 sq. m and his poultry house 30 sq. m, Şevket Biçer's house measured 90 sq. m and his poultry house 50 sq. m, and Zeydin Ekmekçi's house comprised 56 sq. m.

143. The Government argued that, apart from Ahmet Ayder, the applicants had failed to submit any documents establishing their title to the land or houses in respect of which they claimed compensation. They considered that any award under this heading should be based on the evaluation carried out by a multi-party commission, the results of which had been transmitted to the Commission.

144. The Court notes at the outset that it appears from the material before it that the documents relating to the evaluation referred to by the Government were not appended to their letter of 17 May 1999 to the Commission, as was pointed out to them by the Secretary to the Commission on 31 May 1999. The Government were further reminded of this fact by the Section Registrar's letter of 6 July 2000. This evaluation can therefore have no bearing on the assessment of the amounts to be awarded.

145. The Court refers to its findings above (paragraph 120), where it accepted that the applicants owned the houses in which they were living. It further notes that the Government have not disputed the costs per sq. m for

the rebuilding of houses and outbuildings as claimed by the applicants. Therefore, the Court will base its award on the data supplied by the applicants in this respect. In view of the high rate of inflation in Turkey, the rebuilding costs for outbuildings have been calculated on the basis of the rate applicable on 20 February 2000, the date on which the applicants submitted their claims under Article 41.

As to the surface area of the houses and outbuildings, the Court notes that only Ahmet Ayder was able, by submitting title deeds, to have the surface area of his house established. The Court will proceed on the basis of this surface area (52 sq. m) in respect of the houses of the other applicants as well, and on the basis of a surface area of 30 sq. m of the outbuildings of Yusuf Lalealp, Nadir Doman and Şevket Biçer.

146. Accordingly, the Court makes the following awards in equity in respect of houses and outbuildings:

- (a) EUR 8,144.90 (Ahmet Ayder)
- (b) EUR 8,239.70 (Yusuf Lalealp)
- (c) EUR 8,239.70 (Nadir Doman)
- (d) EUR 8,239.70 (Şevket Biçer)
- (e) EUR 8,144.90 (Zeydin Ekmekçi)

2. Other property

147. The applicants submitted claims in respect of the loss of household goods, personal items, foodstuffs, firewood and livestock. They argued that these claims were confirmed by the itemised lists of household contents which had been drawn up as part of the damage assessment process (see paragraphs 65-66 above). Under this head, Ahmet Ayder claimed GBP 21,120.55, Yusuf Lalealp claimed GBP 8,543.38, Nadir Doman claimed GBP 8,627.74, Şevket Biçer claimed GBP 7,129.02 and Zeydin Ekmekçi claimed GBP 7,909.82.

148. The Government argued that the applicants' claims were highly exaggerated and referred to the evaluation carried out by a multi-party commission (see paragraph 143 above).

149. The Court has found it established that the contents of the applicants' houses were destroyed and that, after their houses had been burned, the applicants had been obliged to leave Lice, which must have entailed some consequential losses.

150. In the absence of any independent and conclusive evidence as to the value of the property concerned and on the basis of principles of equity, the Court awards each applicant an amount of EUR 6,000.

3. Loss of income

151. All the applicants, with the exception of Yusuf Lalealp, also claimed compensation for loss of income from farming. These applicants submitted that they made their living from their land. As a direct consequence of being forced to leave Lice, they were no longer able to look after their land and were therefore deprived of the income it had generated. Their claims under this head totalled GBP 43,204.11.

152. The Court observes that it appears from the summaries of the applicants' oral evidence as set out in the Commission's report, that Ahmet Ayder and Şevket Biçer indeed told the Delegates that they had been farmers in Lice (see paragraphs 132 and 167 of the Commission's report). The Government have not disputed this. The Court is satisfied that these applicants must have suffered loss of income as a result of being forced from their homes and town. In the absence of independent evidence on the size of these applicants' landholdings and income derived therefrom, and having regard to equitable considerations, the Court awards Ahmet Ayder and Şevket Biçer under this head an amount of EUR 6,000 each.

Nadir Doman, however, by his own admission had been a construction worker whose earnings from this profession had been sufficient to support his family (see paragraphs 155 and 162 of the Commission's report). Zeydin Ekmekçi, finally, told the Delegates that he was a mouldmaker which activity had him working away from home for much of the year (see paragraph 184 of the Commission's report). In these circumstances, the Court does not find it justified to make an award for loss of income in respect of these applicants.

4. Costs incurred as a result of the destruction of property

153. The applicants further sought reimbursement of the amount of GBP 0.52 which each of them incurred in obtaining an assessment of their damage (see paragraphs 65-66 above). They further claimed reimbursement of a total amount of GBP 47,012.21 in respect of the rent they had paid and the losses incurred on account of expenditure on fuel, building services, electricity and water following their relocation from Lice.

154. The Government, arguing that the Convention did not constitute an insurance police to guarantee a certain life style, submitted that costs incurred after the alleged events had taken place were not eligible for reimbursement within the framework of just satisfaction.

155. In the absence of documentary substantiation of this part of the applicants' claim, and having regard to equitable considerations, the Court awards each of the applicants an amount of EUR 6,000 under this heading.

5. *Summary*

156. Consequently, in respect of pecuniary damage the Court awards the applicants the following sums in equity, to be converted into Turkish lira at the rate applicable at the date of settlement:

- (a) EUR 26,144.90 to Ahmet Ayder;
- (b) EUR 20,239.70 to Yusuf Lalealp;
- (c) EUR 20,239.70 to Nadir Doman;
- (d) EUR 26,239.70 to Şevket Biçer; and
- (e) EUR 20,144.90 to Zeydin Ekmekçi.

B. Non-pecuniary damage

157. The applicants submitted that in respect of non-pecuniary damage an amount of GBP 10,000 should be awarded to each of them as well as to each of the relatives on whose behalf the application was also brought and who had been present at the time their homes in Lice were burned. In the case of Ahmet Ayder, apart from himself, his spouse and seven of his children had been present at that time. In the case of Yusuf Lalealp, six relatives had been present: the applicant, his wife and four children. Nadir Doman, his wife and three children had been present. In the case of Şevket Biçer, the applicant himself, three children and his sister Huri had been present. In the case of Zeydin Ekmekçi, finally, four relatives had been present: the applicant, his wife and two children. The total amount claimed under this head thus amounted to GBP 290,000.

158. The Government did not comment on this claim.

159. The Court considers that an award should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations which it has found in respect of Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1 due to the deliberate destruction of the applicants' homes and property and their subsequent relocation from Lice (see paragraphs 111, 121 and 129 above).

As regards the applicants' claim for separate awards to be made in respect of each member of the applicants' families present at the time when their house in Lice was burned, the Court would observe that no findings of fact were made by the Commission as to the number of people present in the applicants' houses on 22 and 23 October 1993. For the sake of completeness, the Court notes that it appears from the oral evidence given to the Commission's Delegates by Şevket Biçer and Zeydin Ekmekçi that neither of these applicants, nor Mr Ekmekçi's wife, were present in the Kali neighbourhood in Lice when their houses were burned (see paragraphs 170-175 and 185-187 of the Commission's report). In any event, whilst the Court is prepared to accept that the facts complained of have not only affected the applicants on a strictly individual basis, but also their

immediate family, it is nevertheless not persuaded that separate awards for each member of those families are called for. The Court considers that awards made under this heading are intended to compensate the applicants' households as a whole.

160. It awards in equity each of the applicants EUR 14,500 for non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

161. Finally, submitting a schedule of costs, the applicants claimed a total sum of GBP 42,767.56 (corresponding to EUR 61,252) for costs and expenses. These claims comprised:

- (a) GBP 20,750 for the fees of two United Kingdom-based lawyers (240 hours);
- (b) GBP 3,550 for the fees of three Turkish lawyers (122 hours);
- (c) GBP 8,500 for the fees of the Kurdish Human Rights Project ("KHRP");
- (d) GBP 130.20 for administrative costs incurred by the United Kingdom-based lawyers;
- (e) GBP 630 for administrative costs incurred in Turkey;
- (f) GBP 2,240 for administrative costs incurred by the KHRP;
- (g) GBP 5,287.50 for translations carried out by the KHRP; and
- (h) GBP 1,679.86 for the costs incurred by lawyers during the Commission's fact-finding mission in Ankara.

162. The Government considered these claims exorbitant and unsubstantiated. They disputed that any sums should be awarded in respect of the role of the KHRP, which organisation could be categorised neither as an applicant nor a representative.

163. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Krombach v. France*, no. 29731/96, § 106, ECHR 2001-II).

164. The Court observes that this case involved complex issues of fact and law requiring detailed examination and involving the taking of evidence from witnesses in Ankara. However, it is not convinced that the fees and administrative costs of the KHRP were necessarily and reasonably incurred since the work carried out by this organisation, as set out in its schedule of fees and disbursements, appears to a large extent to have overlapped the activities carried out by the United Kingdom and Turkey-based lawyers. In addition, the Court considers the amount claimed in respect of translation costs excessive.

165. Making its own estimate based on the information available, the Court awards the applicants in respect of costs and expenses EUR 40,000

(corresponding to GBP 27,955) exclusive of any value-added tax that may be chargeable but less EUR 725 having been received in legal aid from the Council of Europe, the net award to be paid in pounds sterling into the applicants' representatives' bank account in the United Kingdom as requested and identified by the applicants.

D. Default interest

166. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the destruction of the applicants' homes and possessions;
3. *Holds* that it is not necessary to consider the complaint under Article 3 of the Convention of inhuman punishment;
4. *Holds* that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention;
6. *Holds* that it is not necessary to consider the complaint under Article 18 of the Convention;
7. *Holds* that it is not necessary to determine whether the failings identified in the instant case are part of a practice adopted by the authorities;
8. *Holds*
 - (a) that the respondent State is to pay, within three months from the date of delivery of the present judgment, the following amounts in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Turkish lira at the rate applicable on the date of settlement:
 - (i) EUR 26,144.90 (twenty-six thousand one hundred and forty-four euros ninety cents) to Ahmet Ayder;
 - (ii) EUR 20,239.70 (twenty thousand two hundred and thirty-nine euros seventy cents) to Yusuf Lalealp;

- (iii) EUR 20,239.70 (twenty thousand two hundred and thirty-nine euros seventy cents) to Nadir Doman;
 - (iv) EUR 26,239.70 (twenty-six thousand two hundred and thirty-nine euros seventy cents) to Şevket Biçer;
 - (v) EUR 20,144.90 (twenty thousand one hundred and forty-four euros ninety cents) to Zeydin Ekmekçi;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Holds*

- (a) that the respondent State is to pay each of the applicants, within the above-mentioned three months, EUR 14,500 (fourteen thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Turkish lira at the rate applicable on the date of settlement, plus any tax that may be chargeable;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Holds*

- (a) that the respondent State is to pay the applicants, within the above-mentioned three months and into their legal representatives' bank account in the United Kingdom, in respect of costs and expenses, EUR 40,000 (forty thousand euros) plus any value-added tax that may be chargeable, and less the amount of EUR 725 (seven hundred and twenty-five euros) having been received in legal aid from the Council of Europe, to be converted into pounds sterling at the rate applicable on the date of settlement; and
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Peer LORENZEN
President