KHRP

Kurdish Human Rights Project

MENTEŞ and Others

v

TURKEY

A KHRP CASE REPORT ON
VILLAGE DESTRUCTION IN TURKEY

SEPTEMBER 1998

KHRP Suite 319, Linen Hall, 162-168 Regent Street, London W1R 5TB,United Kingdom
Tel/Fax: (0171) 287 2772 / 734 4927 - E-mail: khrp@khrp.demon.co.uk
Website: http://www.khrp.org

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KHRP

Kurdish Human Rights Project

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The Kurdish Human Rights Project is an independent, non-political, non-governmental human rights organisation. It is committed to protecting the human rights of all persons living in the Kurdish regions of Turkey, Iran, Iraq, Syria and the former Soviet Union, irrespective of race, religion, sex, political persuasion, belief or opinion. It is a registered charity (Charity No. 1037236) and a company limited by guarantee registered in England.

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This report was written by Nathalie Boucly, KHRP legal officer; Carla Buckley, lawyer; and Jacob Jensen, acting Deputy Director of KHRP.

The Admissibility Decision, the Report of the European Commission of Human Rights and the Judgment of the European Court of Human Rights in the case of **Menteş and Others v. Turkey** can be obtained in their original form from the European Commission and Court of Human Rights, Council of Europe, F-67075 Strasbourg Cedex, France. Telephone: (33) 3-88-41-20-24 Facsimile: (33)3-88-41-27-04 Website: http://www.dhcour.coe.fr

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Foreword

This report deals with the case of **Menteş and Others v Turkey,** a case which part of a series of judgments of the European Court of Human Rights on the issues of Village Evacuations and Destruction in the Kurdish Region (south east) of Turkey.

When the Kurdish Human Rights Project (KHRP) initially submitted this case the Turkish Government disputed the facts and the European Commission had to conduct investigation hearings in Turkey where the arguments of both parties were heard and the witnesses cross-examined. This case took approximately 4 years from the initial application to the stage of being heard in the court. Finally the Commission and the Court were satisfied with the accounts of the applicant and delivered a judgment in favour of Mrs Menteş stating that the Turkish State Security Forces had attacked and destroyed the applicant' s house (as well as those of 2 of the 3 other applicants) and that the Turkish judicial system had failed to redress Mrs Menteş' complaint to this effect. This judgment like many others has an important significance for democracy and the Rule of Law in Turkey.

The KHRP has been involved with the Human Rights Association (IHD)[1] of Turkey in bringing a large number of cases complaining of the most serious violations of human rights to the European Commission of Human Rights. According to the statistics of the European Commission and the Court, until 1993 there were very few cases brought against the state of Turkey, however, Turkey now ranks highest among the states with complaints registered against it.

The European Court of Human Rights' first ruling was on the case of **Akdivar v Turkey**, also a 'village destruction' case in 1996 and the Court found the state of Turkey in breach of The European Convention.[2]

Since this judgements village destruction and evacuations have continued to occur in the Kurdish regions.

Despite these important judgments, the state of Turkey has not taken substantive steps to tackle the issue and resettle or compensate the millions of victims of their policy.

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[1] The IHD (Insan Haklari Derneği) (Human Rights Association) was established in July 1986 with the purpose of promoting human rights and civil liberties in Turkey. It is a non-governmental organisation with nearly 16,000 members and 58 local branches around Turkey. One of the activities of the Diyarbakir branch of IHD of IHD is to assist individuals who have suffered a violation of their human rights to obtain a domestic remedy and if this fails, to assist them in applying to the European Commission of Human Rights. IHD staff have been arrested and subjected to intimidation on many occasions. Recently, on 12 May 1998, Akin Birdal, head of IHD in Ankara was shot in his office by unidentified gunmen. Depsit having been hit 6 times by bullets, his life is now out of danger.

[2] Reports available from KHRP include:" Akduvar v Turkey, the story of Kurdish villagers seeking Justice in Europe", October 1996; "The destruction of villages in south east Turkey, 1996; "Aksoy v Turkey and Aydin v Turkey, a case report on the practice of torture in Turkey", Vol. I and II, December 1997. To order any of these reports, please contact the Kurdish Human Rights Project, Publications Department, Suite 319, Linen Hall, 162-168 Regent Street, London W1R 5TB or telephone on (0171) 287 2772. Alternatively, any order can also be placed by fax by dialling (0171) 734 49 27. Publications list are also available on request.

Turkey is bound to honour its obligations under the European Convention on Human Rights, however despite the number of judgments produced by the Court, its domestic legislation and jurisprudence are still in direct conflict with the rights set out by the Convention.

It is now time for the International Community to monitor the implementation of the Court's judgments.

We believe that it is the duty and obligation of the International Community to ensure that the Government of Turkey takes steps towards changing its state policy on the issue of village destruction and forced evacuation of villages and in general to respect the Rule of Law and fundamental human rights of the Kurds living in the regions.

The first part of the present report deals specifically with the case of Menteş and Others v Turkey and provides a legal analysis of the Commission's decision and the Court's judgment. The second part sets out the general backdrop to the decision and presents a study of the practice of village destruction and forced evacuation, particulary in south east Turkey. The admissibility decision, the Commission's article 31 report as well as the Court's judgment are annexed to the report.

Kerim Yildiz
Executive Director, KHRP

Hans Brandscheidt
Director, *medico international.*

PART I

MENTEŞ and Others v. TURKEY
Azize Menteş, Mahile Turhallı, Sulhiye Turhallı, Sariye Uvat v. Turkey

SUMMARY OF THE CASE

On 28 November 1997, the European Court of Human Rights (the Court) delivered its judgment in the case of **Menteş and Others v. Turkey**. The Court confirmed the European Commission of Human Rights' (the Commission) decision in respect of articles 8 and 13 of the European Convention of Human Rights (the Convention). It found a violation of article 8 with respect to the first three applicants (Azize Menteş, Mahile Turhallı and Sulhiye Turhallı) in that, on 25 June 1993, soldiers had set fire to the applicants' houses and arbitrarily expelled them from their village. In addition, the Court found a violation of article 13 of the Convention with respect to the first three applicants on account of the failure of the state authorities to conduct a thorough and effective investigation into the applicants' allegations thereby undermining the exercise of any domestic remedies available to the applicants. As regards the fourth applicant, Sariye Uvat, neither the Commission nor the Court found any breach of the Convention.

THE FACTS

The facts as presented by the applicants

The applicants are all Turkish nationals of Kurdish origin who lived in the hamlets of Sağgöze[1], in the Genç district of the province of Bingöl in south-east Turkey. The first three applicants, Azize Menteş (aged 29 years), Mahile Turhallı (aged 49 years), and Sulhiye Turhallı (aged 56 years), lived in the lower neighbourhood in Sağgöze village and the fourth applicant, Sariye Uvat (aged 36 years), lived in Piroz, a hamlet of the village.

They stated that on 23 June 1993, an attack was carried out by the Kurdistan Workers' Party (PKK) on Üçdamlar gendarme station. The security forces carried out a follow-up operation in pursuit of those responsible and, on the evening of 24 June 1993, the security forces arrived in the area, surrounding Sağgöze village by helicopter. The following morning, gendarmes entered the village and assembled people from the upper neighborhood in the area in front of the school. Gendarmes in the lower part of Sağgöze village carried out a search and then proceeded to burn the houses. The gendarmes told the villagers they were burning village houses because they helped the

[1] In Turkey, several hamlets form a village. For instance, in this case the hamlet of Piroz where the fourth applicant lived is part of the village of Sağgöze. Villages are part of a district which itself is part of a province. In south-east Turkey, villages often have an older Kurdish or Ottoman name as well as a newer, official Turkish name. In this case, **Sağgöze** is the Turkish name and **Riz** the Kurdish name of the village.

PKK and that they were to remain quiet or else they would be thrown onto the fire.

In all, 10 to 13 houses in the lower neighborhood were destroyed. Around midday, a senior officer arrived at the scene and ordered the burning to stop, thus saving the upper village. The applicants were told to leave the village and now live elsewhere. Later, in the autumn of 1993, the remaining population of the village left. In March 1994, the remaining part of the village was burnt down.

The fourth applicant, Sariye Uvat, stated that her house in the hamlet of Piroz was burnt down by the security forces in a separate incident. She alleged that, on 25 June 1993, a raid was organised by soldiers from the Lice Gendarmerie Headquarters on the Piroz hamlet of Sağgöze village, in the course of which her house was set on fire.

On the day of the incident, the men of the village were either working in town or in the fields.

The applicants alleged that the burning of their houses was consistent with a practice of burning houses as part of the policy of the security forces to combat the PKK, especially where the authorities hold the view that villagers are giving support to the PKK by providing food and shelter to its members.

Damage and Losses

Azize Menteş, the first applicant, lost her house, including 3 tons of wood, 25 poplar trees in the garden and all winter food stores in the barn. She went to live with her three children and her husband in Diyarbakır, in a two bedroom house, in a shanty town area, which she shares with her mother-in law, father-in-law, sister-in-law and two brothers-in-law.

Mahile Turhallı's three bedroom house was also completely destroyed. The cattle were also burnt in the barn. After the burning she spent the night in the village with her children and, the next day, walked for 10 hours towards the Diyarbakır road. She reached Diyarbakır by obtaining rides in passing vehicles. She now lives there with her family, in very difficult conditions since her husband is 70 years of age and in poor health while her children are still young. One of her sons, aged seven, sells water and polishes shoes to bring a little money home.

Sulhiye Turhallı's house was also destroyed, together with the furniture, trees and firewood. She sheltered for a while in houses that had not been burnt and then walked with Mahile and other villagers for 10 hours towards Diyarbakır where she now lives with her seven children in very poor conditions.

Sariye Uvat also alleged that her house was destroyed by the soldiers. After it was destroyed she walked for six hours to the Sarimcayi road and obtained rides from passing vehicles into Diyarbakır. She was nine months pregnant at the time of the raid and because of the long walk in difficult conditions, she gave birth to her twin boys prematurely. They died when they were 10 days old. She did not have the money to pay for hospital treatment. She and her family lived briefly with a relative in Diyarbakır and then moved into a three bedroom house in the shanty town area with the family of another villager.

The facts as presented by the Government of Turkey

The Government stated that since 1983, the PKK had sought to use the applicants' village as a place of shelter and a supply base and that, due to attacks by the PKK, the applicants were forced to leave their village. The terrorists used the houses from time to time and when the security forces took action against them, they fled, setting the houses on fire.

The Government denied that there had been any operation by the security forces in the area on 25 June 1993. They alleged that the applicants had left the village some six to seven years prior to the incident and that they were the close relatives of six named individuals suspected of being members of the mountain branch of the PKK. The government supplied evidence of charges laid against alleged relatives of the applicants and further submitted that the applicants had been subjected to pressure by their other relatives who currently worked for the PKK in rural areas.

The findings of fact of the European Commission of Human Rights (article 31 report)

The Commission had the benefit of hearing the evidence given by three of the applicants in the course of an investigation hearing which took place in Ankara in July 1995[2]. The fourth applicant was ill and provided a medical certificate to the effect that she was unable to attend the session. The Commission was satisfied that the applicants still lived in the village in the summer of 1993, that they were present on 25 June 1993 and that, although not owning the house herself, Azize Menteş lived in her father-in-law's house during the summer months.

The Commission found that on the evening of 24 June 1993, a large gendarme force arrived in the vicinity of Sağgöze village. On 25 June 1993, the gendarmes entered both upper and lower neighbourhoods and carried out searches. At some point, the villagers in the upper neighbourhood (with the exception of the younger men who were working outside the village) were gathered before the school, probably to be asked questions about the PKK in the area. In the lower neighbourhood, the women, including the applicants, were required by the soldiers to leave their houses which were set on fire together with their contents, including children's clothing and footwear. The burning was restricted to the lower neighbourhood and at approximately midday, a senior officer arrived by helicopter and gave orders to stop the burning. The gendarmes left that day and the applicants, together with their children and other members of their family, were forced to walk for up to ten hours to reach the Lice-Diyarbakır road where they were driven to Diyarbakır.

As regards the events in the Piroz hamlet as alleged by the fourth applicant, Sariye Uvat, the Commission found that apart from the statement of the applicant herself, no other independent evidence had been submitted concerning the alleged events and concluded that no facts had been established in relation to the applicant's complaints.

[2] See section on investigation hearings below.

The findings of fact of the European Court of Human Rights (Judgment)

The Court recalled that, under its case law, fact finding is primarily the role of the Commission. It stated:

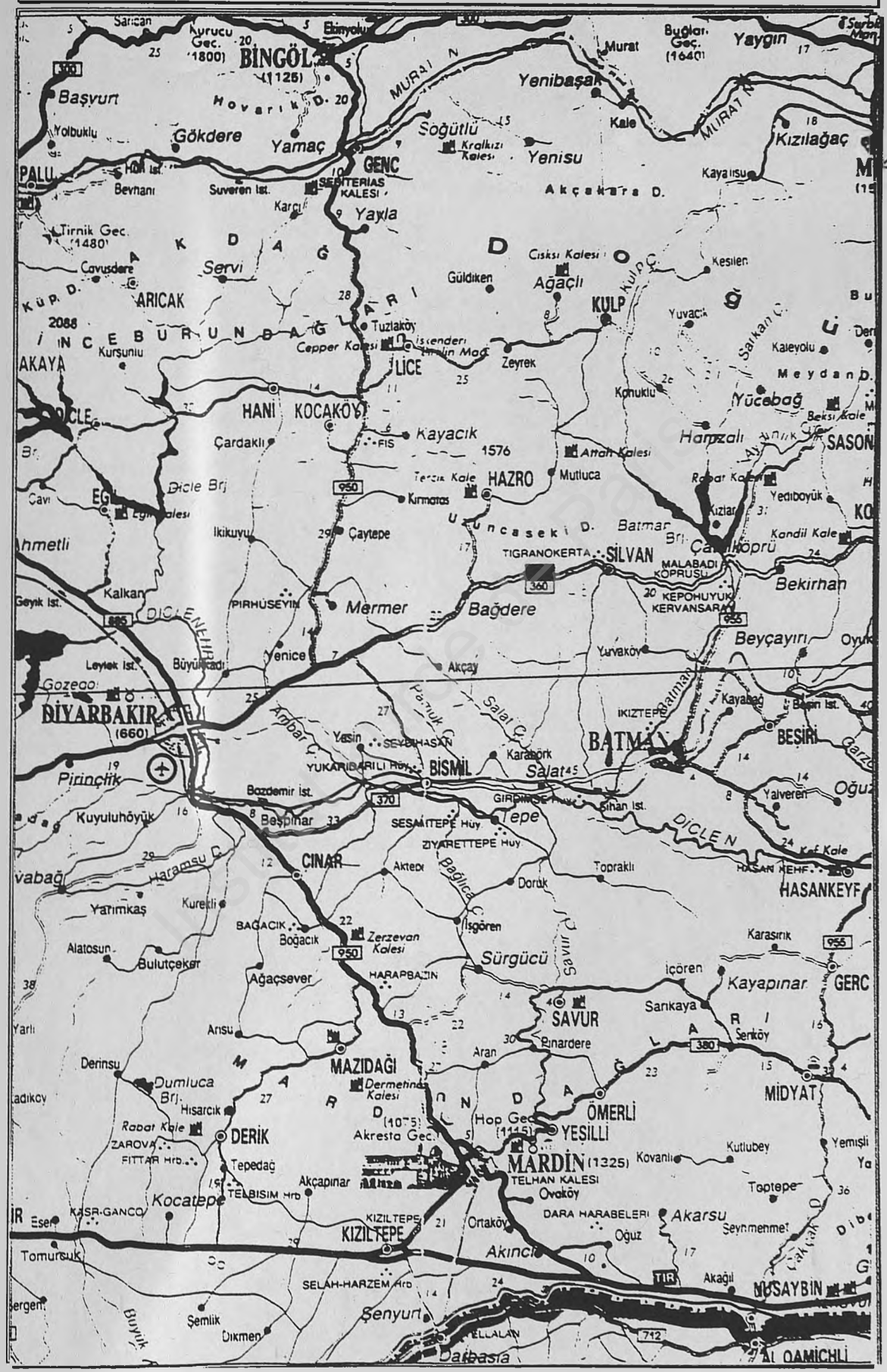
> While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of the material before it, it is only in exceptional circumstances that it will exercise its powers in this area.[3]

In **Menteş**, the Commission established the facts on the basis of an investigation, in the course of which documentary evidence, including written statements, was submitted and oral evidence taken. Witnesses were examined and cross-examined in detail and the Commission was thus in a position to observe their demeanour and assess the veracity and probative value of the evidence given by the parties.

The Court carefully examined the evidence gathered by the Commission and was satisfied that the facts as established by the Commission were proved beyond reasonable doubt with respect to the allegations of three of the four applicants.

[3] See the Court's judgment at paragraph 66.

MAP OF THE AREA WHERE THE ALLEGED INCIDENT OCCURRED



CHRONOLOGY OF EVENTS AND LEGAL PROCEEDINGS

25 June 1993	Security forces searched the village of Sağgöze, set fire to the applicants' houses and ordered them to leave the village.
20 December 1993	Application lodged with the Commission.
11 January 1994	Commission registered the Application.
15 April 1994	Application communicated to the Turkish Government and parties invited to submit written observations on admissibility and merits.
15-25 April 1994	Turkish Ministry of Justice contacted the Public Prosecutors' Office in Genç informing him of the applicants' complaints.
25 April 1994	A Public Prosecutor at Genç, Mr. Ata Köycü, decided that no operation had been conducted on the day of the incident and issued a decision of non-prosecution of the security forces in relation to the applicants' allegations.
9 May 1994	The Ministry of Justice again contacted the Office of the Public Prosecutor at Genç to notify it of the applicants' complaints.
30 May 1994	A second Public Prosecutor at Genç, Mr Kadir Karaca, issued a 'no grounds to proceed' decision in respect of the complaints, concluding that the applicants had left the village 6-7 years previously due to terrorist threats.
8 September 1994	Government's observations submitted.
2 November 1994	Applicants' observations submitted.
9 January 1995	Application declared admissible by the Commission.
17 February 1995	A third Public Prosecutor in Genç, Mr Selik Sözen, issued a decision of non-prosecution.
20 May 1995	Commission decided to take oral evidence in respect of the applicants' allegations.
10-12 July 1995	Oral evidence taken in Ankara.
9 September 1995	Commission invited the parties to present written conclusions on the merits.
23 November 1995	Applicants submitted final observations.
1 December 1995	Government submitted observations and factual information relating to the applicants' relatives.
7 March 1996	Commission's article 31 report finds Turkey in breach of articles 3, 6, 8 and 13 with respect to the first three applicants.
17 April 1996	Case referred to the Court.
22 January 1997	Hearing before the Court.
28 November 1997	Court finds Turkey to be in breach of articles 8 and 13 with respect to the first three applicants.

How to Bring a Case before the European Commission and Court of Human Rights

The procedure involved in lodging a complaint with the Commission has already been explained in our previous publication **Aksoy v. Turkey and Aydin v. Turkey - A Case Report on the Practice of Torture in Turkey** (December 1997). For further information about the procedure in the Commission and the Court, please consult that publication or any leading human rights textbook such as *The Law of the European Convention of Human Rights* by D.J.Harris, M.O'Boyle and C.Warbrick, Butterworths, London Dublin and Edinburgh 1995.

What are 'investigation hearings' or 'taking of oral evidence'?

If the Commission considers it necessary, it may, under article 28(1)(a) of the Convention, "undertake...an investigation for the effective conduct of which the state concerned shall furnish all necessary facilities". These powers of investigation have been used in inter-state complaints and have sometimes taken the form of on the spot inquiries such as those in the complaint brought by Greece against the United Kingdom.[4] In the case of individual complaints where the facts are very much in dispute, action under article 28(1)(a) of the Convention usually takes the form of investigation hearings whereby all proposed witnesses give evidence before a selected number of Commission delegates (usually three).

Investigation hearings are held *in camera* with the parties in attendance. For the sake of convenience, they are usually conducted in the country of the respondent government. The evidence obtained during investigation hearings is then communicated to the parties for their observations.

The procedure adopted during investigation hearings is as follows: the parties draw up a list of their witnesses, and subject to the Commission's approval and time constraints, summonses to give evidence at the hearing are served on proposed witnesses. In **Menteş**, the hearings were conducted in the Palace of Justice at Ankara, located next to the State Security Court.

The Commission hears the applicants and their witnesses first. The government then cross-examines them. The government's witnesses are usually heard last and they are then cross-examined by the applicants' legal representatives. Investigation hearings enable the Commission to establish the facts, having had the advantage of hearing the witnesses "live", it is able to observe their reactions and demeanour and thereby assess the veracity and probative value of all the evidence. The onus of proof is on the applicant. The requisite standard of proof is that of proof beyond reasonable doubt, but as the Court has constantly stated in its case law (see for example, *Ireland v. United Kingdom, Judgment of 18 January 1978*), such proof may follow from "the co-existence of sufficiently strong, clear and concordant inferences".[5]

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[4] Application No.176/56, YB II (1972). On that occasion, an inquiry was made in Cyprus into the existence of certain torture practices allegedly undertaken by the UK and into whether the threat to public order was such that the UK's interference was justified.

[5] See the Court's judgment at paragraph 66.

In the course of investigation hearings, parties are also permitted to present documentary evidence to the Commission, including written witness statements. In **Menteş**, witnesses included two Public Prosecutors who had investigated the matter, the four villagers whom they had interviewed prior to reaching their decision of non-prosecution, another villager and the first three applicants.

THE APPLICANTS' COMPLAINTS UNDER THE EUROPEAN CONVENTION OF HUMAN RIGHTS

The four applicants complained of violations of articles 3, 5(1), 6, 8,14 and 18 of the Convention. In addition, the fourth applicant complained of a breach of article 2 on account of the death of her twins born prematurely as a result of walking for hours when ordered by the security forces to leave the village. While the Commission found most of the facts complained of by the first three applicants to be established, it was unable to reach the same conclusion as regards the fourth applicant. The Court agreed with the findings and accordingly, both the Commission and the Court found Turkey to be in breach of a number of articles as set out in Table 1.

Table 1

The table provides a summary of the Commission's opinion and the Court's judgment with regard to the articles alleged to have been violated by the Turkish Government.

Articles allegedly Violated	***Commission's Opinion***	***Court's Judgment***	***Applicants concerned***
Art.8	*Violation*	*Violation*	*1st, 2nd & 3rd*
Art.3	*Violation*	*Non-violation*	*1st, 2nd & 3rd*
Art.5(1)	*Non-violation*	*Complaint not pursued Before the Court*	*1st, 2nd & 3rd*
Art.6	*Violation*	*Complaints considered best under art.13*	*1st, 2nd & 3rd*
Art.13	*Violation*	*Violation*	*1st, 2nd & 3rd*
Art.14	*Non-violation*	*Non-violation*	*1st, 2nd & 3rd*
Art.18	*Non-violation*	*Non-violation*	*1st, 2nd & 3rd*
Art.2 4th applicant only	*Non-violation*	*Non-violation*	*4th*

Article 8: Right to respect for private and family life, home and correspondence

Article 8 of the Convention provides as follows:

> 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.*

The applicants alleged that the destruction of their homes by the security forces and the arbitrary expulsion from their villages constituted two separate violations of the right to respect for family life and home under article 8.

The Government maintained that there was no evidence to substantiate the applicants' allegations.

The Commission, bearing in mind its findings as to the facts, was of the opinion that there had been a serious interference with the applicants' rights under article 8, for which no justification[6] had been established.

It found that the first-named applicant Azize Menteş, probably did not own the house herself but that she was living in her father-in-law's house when she visited the village in the summer. The Commission found that given the close family tie and the nature of the applicant's residence, her occupation of the house on the day of the incident fell within the scope of protection provided by article 8 and that there was therefore no reason for distinguishing her case from that of the other two applicants.

However, the Commission felt it was unnecessary to distinguish between the two alleged violations - of destruction of the homes and expulsion from the village - as it considered that "the grave nature and effects of the violations cut across the entire personal sphere protected by different and frequently overlapping limbs of article 8(1)".

The Commission concluded that there was a violation of article 8(1) of the Convention.

The Court agreed with the Commission's finding that there was no reason to distinguish between the first applicant on the one hand and the second and third applicants on the other. In concurring with the Commission's decision, it found that article 8(1) had been breached. It stated:

> ...the facts...disclosed a particularly grave interference with the first three applicants' right to respect for private life, family life and home...and that the

[6] See the section on limitations below.

measure was devoid of justification.[7]

Limitations under paragraph 2 of article 8 of the Convention

While the first paragraph of article 8 defines the rights that the article protects, the second paragraph lays down the conditions upon which a state might legitimately interfere with the enjoyment of those rights.

Limitations to the rights are allowed if they are "in accordance with the law" or "prescribed by law" and are "necessary in a democratic society" for the protection of one of the objectives set out in that paragraph. The Court usually proceeds first to consider the law restricting the right, then the objective the law seeks to further and finally whether the measure adopted was necessary.

In assessing whether an interference is "proportionate to the legitimate aim" by reference to which the government claims it is imposing the limitation, the Court and the Commission concede a "margin of appreciation" to the national authorities.

The procedure adopted to ascertain whether one of the rights protected by article 8 has been violated is first to ascertain whether there has been an interference and once this is established, to determine whether such interference falls within the second paragraph of the article.

In **Menteş**, the Commission and the Court established that there had been a grave interference; however they did not examine the justification for the interference as the Government denied any interference ever occurring and did not therefore seek to justify it under any of the grounds listed in article 8(2).[8] Had the Government admitted the infringement, it is unlikely that they would have been able to justify it on any grounds.

Limitations are also permitted under articles 9, 10 and 11 of the Convention.

By contrast, limitations upon rights that are expressed in unqualified terms - for example, ill-treatment within the terms of article 3 - are never permitted even in public interest; nor can they be the subject of derogation under article 15 of the Convention.

[7] See the Court's judgment at paragraph 73.

[8] It is usual for States first to deny that interference ever occurred and then to say that, even if it did occur, it was justified under paragraph 2 of the relevant article.

Article 3: Freedom from torture or inhuman or degrading treatment or punishment

Article 3 of the Convention provides as follows:

> *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

The applicants alleged that their forced and immediate expulsion and that of their families on 25 June 1993, in the circumstances surrounding the incident, caused them such severe physical and mental suffering as to constitute inhuman and degrading treatment contrary to article 3 of the Convention.

The Government again contended that the allegation was wholly groundless as there had been no operation by the security forces in the village on that day and any damage to the village had been caused later by PKK terrorists.

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 and their children who were left without shelter and assistance in circumstances which caused them anguish and suffering". It noted in particular the "traumatic circumstances in which the applicants were prevented from saving their personal belongings and the dire personal situation in which the applicants subsequently found themselves, being deprived of their own homes in their village and the livelihood which they had been able to derive from their gardens and fields".[9]

Accordingly, the Commission found that the applicants had been subjected to inhuman and degrading treatment within the meaning of article 3.[10]

The Court, bearing in mind the particular circumstances of the case as established by the Commission and in view of its own finding of a violation of the first three applicants' rights under article 8, did not proceed to further examine the allegation of inhuman and degrading treatment.[11]

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[9] See paragraph 190 of the Commission's article 31 report.

[10] But note the dissenting opinion of Mr Cabral Barreto.

[11] The Court was therefore of the opinion that its finding of a violation of article 8 sufficed in the circumstances of the case and that it was therefore unnecessary to consider the issue of destruction of the houses and expulsion from the village under the separate head of inhuman and degrading treatment. While such issue usually arises under article 3 in the context of detention, deportation or the use of psychological interrogation techniques, it is worth noting that the Court, in its judgment in **Asker & Selçuk v. Turkey** (24 April 1998), found that the burning of the applicants' homes raised a separate issue under article 3 (in addition to article 8) and, in view of the age and the circumstances of the applicants, found a violation of article 3. In that case, Mrs Selçuk was aged 54 and Mr Asker 60 years. In **Menteş**, the applicants were aged between 29 and 56 years and the circumstances surrounding the burning of their houses were similar to that in **Selçuk and Asker**. Yet, the Court declined to consider this issue under article 3.

Article 5(1): Right to liberty and security of the person

Article 5(1) of the Convention relevantly provides:

> *Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
> *(a) the lawful detention of a person after conviction by a competent court;*
> *(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
> *(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*

The applicants alleged that they had been compelled to abandon their homes and village on 25 June 1993 in flagrant breach of the right to liberty and the enjoyment of security of the person.

The Government again denied that the incident had occurred.

The Commission recalled that the primary concern of article 5(1) and noted that the applicants had not been arrested or detained or otherwise deprived of their liberty. Thus, it considered that their insecure personal circumstances arising from the loss of their homes did not fall within the notion of security of person as envisaged by article 5(1). Accordingly, the Commission concluded that there had been no violation of article 5.

In view of the Commission's opinion, the applicants decided not to pursue this complaint before the **Court**.

Articles 6(1) and 13: Right to access to a court and right to an effective remedy before a national authority

Article 6(1) of the Convention provides as follows:

> *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...*

Article 13 of the Convention provides as follows:

> *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by*

persons acting in an official capacity.

The applicants alleged that the arbitrary expulsion from their homes and villages was a flagrant, direct interference with their civil rights within the meaning of article 6(1). They claimed to have been denied an effective procedure, as required under article 6, to challenge or resist being deprived of their possessions. They also claimed they had no effective domestic remedies, contrary to article 13, to remedy the violation of their various rights under the Convention.

The Government contended that the applicants had failed to resort to both civil and administrative remedies that were available to them.

The Commission held that the case law relied upon by the Government (according to which individuals can be awarded compensation by an administrative court on the basis of the administration's strict liability) was insufficient to demonstrate that compensation claims provided effective remedies for those in the emergency regions of south-east Turkey. It considered that the Public Prosecutors' decisions not to prosecute were flawed, as regards both the evidential basis upon which they rested and the attitude revealed by the procedure which was followed. For instance, the investigations undertaken were brief (two to three weeks) and based on extremely limited inquiries which omitted any attempt either to contact the complainants or to seek substantive explanations from the alleged perpetrators of the burning. Furthermore, the Commission found that there was too great a readiness on the part of the authorities to place the blame for all the damage on the PKK without seriously inquiring further.

The Commission found that the investigations which took place in relation to the applicants' complaints of destruction of houses did not, in practice, receive the serious or detailed consideration required for a public prosecution to be initiated. The Commission concluded that, in the absence of any positive findings of fact by state investigators, it was unrealistic to expect villagers to pursue theoretical civil or administrative remedies.

As regards complaints which do not involve civil rights, such as claims relating to the applicants' forcible evacuation, the Commission expressed the opinion that positive state action to investigate the incident promptly and re-house the applicants, rather than passively awaiting administrative court intervention, would have been a more appropriate response to the applicants' plight. For the same reason as above, the Commission considered that the applicants did not have other effective remedies at their disposal to enforce their Convention rights as required by article 13.

The Court found it more appropriate to deal with this complaint under article 13 alone. Having found that the applicants did not make any attempt to have their civil rights determined before a civil or administrative court – (for the reasons outlined in the Commission's decision), it was, therefore, impossible to determine whether the Turkish courts would have been able to adjudicate on the applicants' claims. In the Court's opinion, the complaint was thus more appropriately examined in relation to the more general obligation imposed upon states under article 13 to provide an effective remedy. Accordingly, the Court found it unnecessary to determine whether there had been a violation of article 6(1).

In the Court's opinion, the nature and gravity of the interference complained of under article 8 had implications for article 13 of the Convention. This provision imposes, without prejudice to any other remedy available under the domestic system, an obligation upon the state to conduct a thorough and effective investigation of allegations of deliberate destruction of houses which are brought to its attention. Although the applicants only took their grievances to the domestic authorities after approaching the Convention institutions, the Court took into account the manner in which the Office of the Public Prosecutor conducted its investigations when examining whether or not the applicants had an effective remedy at their disposal.

In this respect, the Court reached the same conclusion as the Commission. It concluded that no thorough and effective investigation of the applicants' complaints had been conducted by the state and that this undermined the exercise of any remedies that the applicants had at their disposal. Accordingly, it concluded that article 13 of the Convention had been breached.

Articles 6 and 13 of the Convention - The Debate

Article 6(1) guarantees *inter alia* the right to effective access to a court for the determination of civil claims. This means access in practice as well as in law - there must be a court to which the claim can be taken and access to this court must not be unduly impeded or restricted. Any restriction on access to the judicial system must be "proportionate to the legitimate aim pursued" by the state.

Article 13 of the Convention is designed to ensure that persons with a complaint of a violation of the rights guaranteed by the Convention, are provided by the national authority with a remedy which is effective. Such remedies are not limited solely to remedies provided by courts.

In the case of **Menteş,** the **Commission** was of the opinion that both articles 6 and 13 had been violated. However, the **Court** was of the opinion that since the applicants had made no attempt to bring their case before a national court, it could not determine whether the national courts would have dealt with it. In the Court's opinion, however, the issue to be decided was not one of "access to court" (art.6) but one of availability of an effective domestic remedy (art.13). The Court considered it more appropriate to examine the complaints under article 13 which "contains a more general obligation on States". This is debatable in the light of the Court's previous jurisprudence.[12]

One may also question to what extent this reasoning contradicts the Court's finding that the absence of a thorough investigation into the applicants' complaints had resulted in the undermining of the exercise of any remedy the applicants had at their disposal. Indeed, one could argue that the flagrant unwillingness of the authorities to investigate amounts to their unduly restricting the applicants' right to access to court, and amounted to a breach of article 6 of the Convention.

In his dissenting opinion, Nick Bratza, a Commission delegate, favoured finding a violation of article 13 only, but not exactly for the same reason as that subsequently adopted by the Court (that is, the fact that article 13 embodies article 6 in this respect). In his opinion, article 6 is not primarily designed to guarantee the effectiveness of the remedies available in the domestic legal system. Since the applicants' complaint was that they had no effective remedy in the special circumstances of this case, their claim was best considered under article 13.

Although it is true that the applicants did not dispute the fact that a right of action existed and was, in theory, open to them, they nevertheless also alleged that, for all practical purposes, such right is unduly restricted by the conduct of the national authorities, which by acting the way they do, in effect also hinders the exercise of the right to access to court, in breach of article 6. As mentioned above, the requirement of access to court under article 6 must be entrenched not only in law but also in practice. The individual should have a clear, practical and effective opportunity to challenge an administrative act that is a direct interference with civil rights. One could argue that, in this case, such a practical and effective way was being denied to the applicants and that the Court should also have found a violation of article 6.

[12] For an outline of the developments in the jurisprudence of the Court in this respect, see *Aksoy v Turkey and Aydin v Turkey, A Case Report on the Practice of Torture in Turkey*, London December 1997, at pp. 21 and 22. For instance, in its earlier judgment in *Campbell and Fell v. UK (28 June 1984)*, the Court held that the requirements under article 13 were "less strict or absorbed by those ensuing from article 6".

The dissenting opinions of the Turkish Delegate and Judge as regards articles 6 and 13

In the Commission, Mr Gözübüyük noted that in the Commission's opinion, the Government had not provided a single example of compensation having been awarded to victims in situations similar to that of the applicants in **Menteş**. In his opinion, the authorities did not have enough evidence to hold members of the security forces[13] responsible for the damage that occurred. However, it was in his opinion open to the applicants to resort to administrative remedies.

Applicants who choose the administrative route only have to prove that they have suffered some damage; they do not have to prove that the administration or its agents or indeed any third party was at fault. The Turkish delegate cited various court decisions whereby the applicants were awarded compensation. In one instance, the court awarded compensation to a plaintiff whose house and attic had been destroyed in a clash between the security forces and the terrorists.[14]

In the Court Judge Gölcüklü agreed with the opinion expressed by Mr Gözübüyük, as did Judges Meyer and Russo, who thought that the applicants should have attempted to use the available domestic remedies. Judge Jambrek took a somewhat different approach. In his opinion, the national courts should be the primary fact-finders and in this respect, granting applicants an exemption from exhausting national remedies, or at least attempting to do so, places a burden on the Convention institutions which was not anticipated by the designers.

Articles 14 and 18 of the Convention: Freedom from discrimination and permitted restrictions under the Convention

Article 14 of the Convention provides as follows:

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

Article 18 of the Convention provides as follows:

> *The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.*

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[13] But is it not the Commission's argument that the authorities should have availed themselves of such evidence by conducting a thorough and effective investigation? On the basis of the very scarce investigation that was conducted - only four witnesses were interviewed and the public prosecutor did not even know the names of the applicants - it comes perhaps as no surprise that such evidence was lacking.

[14] In the Commission's opinion, this was not sufficient. Note that the incident invoked involved both the security forces and terrorists but, in the present case, only the security forces proved to be involved.

The applicants alleged that the Government violated their rights under the Convention because of their Kurdish origin in breach of article 14 and that their experiences represented an authorised practice by the state, in breach of article 18 of the Convention.

The Government denied the factual basis of the complaint.

The Commission considered that the applicants' allegations were unsubstantiated and concluded that there was no violation of articles 14 and 18 of the Convention.

The Court also found these allegations to be unsubstantiated on the basis of the facts as established by the Commission.

Administrative practice

The applicants alleged that any purported remedy is illusory, inadequate and ineffective since the village evacuations and destruction were officially organised, planned and executed by state agents. The scale of destruction of villages and of expulsions is so great in south-east Turkey that it must be considered high level Government policy - that is, an administrative practice - with regards to which all remedies are theoretical and irrelevant. They requested that the Court find that they had been the victims of aggravated violations of articles 3, 6, 8 and 13 on account of the existence such an administrative practice.

The Commission found that it was not established that the applicants had at their disposal adequate remedies under the State of Emergency Law to deal effectively with their complaints. Having found this, the Commission did not find it necessary to determine whether there existed an administrative practice on the part of the Turkish authorities, of tolerating abuses of human rights of the kind alleged by the applicants.

The Court confined itself to examining the alleged aggravated violations with respect to articles 8 and 13. It concluded that the evidence established by the Commission was insufficient to allow it to reach a conclusion concerning the existence of any administrative practice in violation of the articles of the Convention.[15]

Just satisfaction: Compensation under article 50

Article 50 of the Convention provides as follows:

> *If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party, is*

[15] An "administrative practice" consists of two elements: first, a repetition of acts (that is, an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system) and secondly, official tolerance (where superiors, though cognizant of such acts of violation, take no action to punish them or to prevent their repetition, or where a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity). For a discussion of this concept, see supra: *Aksoy v. Turkey and Aydin v Turkey - A Case Report on the Practice of Torture in Turkey*, supra footnote 12.

completely or partially in conflict with the obligations arising from ...the Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

Entitlement to Just Satisfaction

Article 50 of the Convention provides that the Court should grant compensation "if necessary". There is therefore no entitlement to an award of compensation and the Court, in exercising its discretion, is guided by the circumstances of each case. On many occasions the Court has held that no award should be made since the finding of a violation constituted sufficient just satisfaction. This reasoning would be quite unsatisfactory in respect of cases involving willful destruction of property by the authorities.

Where the Court awards just satisfaction, it does so under two heads: (1) pecuniary and non-pecuniary damage; and (2) costs and expenses. Pecuniary damages refer to the loss of tangible property, as well as loss of past and future earnings. Non-pecuniary damages are damages awarded in respect of distress, anxiety, loss of employment prospects and other forms of pain and suffering.

As regards costs and expenses, the injured party must prove that these were actually and necessarily incurred and were reasonable in amount.

a) Pecuniary damage

The first three applicants claimed £25,000 each in compensation for the destruction of home, family lifestyle, including damage to home and loss of livelihood, as well as £10,000, based on an average £3,000 per annum, in respect of loss of income and the cost of alternative accommodation. The applicants' claims for compensation related to many various items including their homes and the contents including food supplies, bedding, clothes, other household property, crops, barns, acres of land and orchards. They sought global amounts without substantiating their claims under each head as to the quantity and value of their losses.

The Court initially reserved its article 50 judgment[16]. On 24 July 1998, the Court handed down its decision[17]. It accepted that, because of the destruction of family records during the burning of the houses and the security situation in the area, the applicants had been faced with particular difficulties in adducing evidence to support their claims. In assessing the amount of pecuniary damages to award, the Court took into account estimates provided by the Government,[18]as well as the awards made in

[16] The Court followed the same procedure in the case of **Akdivar v Turkey**. The judgment was delivered on 16 September 1996 and the article 50 decision was handed down on 1 April 1998. In that case, the 7 applicants were awarded sums ranging from £6,057 and £25,974 in respect of pecuniary damages (as well as £8,000 each in respect of non-pecuniary damages) and on account of the destruction by the security forces of their homes and cattle.

[17] A full copy of this judgment is contained in Part III of this report.

[18] The Government provided figures based on an estimate of one year net annual income of a farmer in

the cases of **Akdivar and others v Turkey** (Judgment of 1 April 1998) and **Selçuk and Asker v Turkey** (Judgement of 24 April 1998) and added that "given the limited nature of the evidence adduced (...) the Court's assessment will inevitably involve a degree of speculation".

As regards the destruction of home, damage to household property and loss of livelihood, the Court awarded Azize Menteş the sum of £12,000, Mahile Turhallı the sum of £18,000 and Sulhiye Turhallı the sum of £16,000. As regards loss of income and cost of alternative accommodation, the Court awarded Azize Menteş the sum of £6,000 and the other two applicants the sum of £8,000 each.

b) Non-pecuniary damage

The first three applicants each claimed £30,000 in respect of suffering and moral damage and £15,000 each for punitive damages in respect of the violation of their Convention rights, submitting that the award should reflect the particular character of the violations suffered and also serve as a deterrent with respect to violations of a similar nature by the Turkish state. In addition, they claimed £20,000 by way of aggravated damages.

The Court considered that an award should be made under this head and bearing in mind the seriousness of the violations awarded the applicants £8,000 each but rejected the claims for punitive and aggravated damages.

Summary of compensatory awards

The first applicant, Azize Menteş, was awarded the total sum of £26,000, the second applicant, Mahile Turhallı, was awarded the total sum of £34,000 and the third applicant, Sulhiye Turhallı, the total sum of £32,000.

Sağgöze, the average price of a house in the village and the household property and submitted a final figure of TRL 2,241,083,120 (approximately £5,547).

PART II

MENTEŞ and Others v. TURKEY
In the Context of Village Evacuation and Destruction in south-east Turkey

Turkey has had a long history of involuntary migration from its Kurdish region[19], the current phenomenon having its roots partly in the circumstances surrounding the establishment of the modern Turkish state.

Upon its establishment in 1923 under the leadership of Mustafa Kemal (Atatürk), nation building in the new republic required the absolute loyalty of all its citizens to the state and to its ideology that all citizens were by definition Turkish. Allegiance to any other ethnic group was considered to be inconsistent with this belief: for a Kurdish citizen to question his or her newly conferred Turkish identity was perceived to be an act in defiance of the state itself.

The military too has had a pivotal role to play in the political life of Turkey. Both the Ottoman Empire and the Republic of Turkey were founded by force of arms against formidable odds. The role of the military, and the notion of its invincibility, therefore lay at the heart of Turkish political ascendancy and national culture. Perhaps as a consequence, in contemporary Turkey there appears to be an enduring sense in which Turkey finds it difficult to resolve ethnic tensions through dialogue and negotiation; anything short of manifest military ascendancy might seem like a defeat of the armed forces and, moreover, a betrayal of national self-image.

It was shortly after the founding of the Turkish Republic that state forces used mass exile and village destruction as a means of dominating ethnic consciousness in its Kurdish region. Ostensibly, forced evacuations were used to restore order by "cleansing" disturbed areas. In reality, the majority of displaced people were non-combatants most of whom had no practical connection with Kurdish insurgents. Their forcible displacement, therefore, arose because, being Kurds, they were viewed as "part of the problem".

By 1987 the Kurdistan Workers' Party (the PKK) had also deliberately targeted villages; while the current state-sponsored process of involuntary village evacuations formally commenced with Decree No. 285 of 10 July 1987 whereby a state of emergency region covering the provinces of Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli and Van was established (Batman and Şırnak being added in 1990).

By 1990, it was possible to identify which villages were likely to be evacuated.[20]

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[19] See generally: *medico international* and The Kurdish Human Rights Project, *The Destruction of Villages in South-East Turkey*, London 1996; Kurdish Human Rights Project, *Village Evacuations and Destructions in South-East Turkey*, London 1996; Leckie S., *When Push Comes to Shove – Forced Evictions and Human Rights*, Habitat International Coalition, The Netherlands 1995.

[20] See also: Turkish Parliamentary (Temporary) Committee, *Report by the Parliamentary (Temporary) Committee Established for Studying and Determining Necessary Measures to the Problems of Villagers Who Emigrated Because of Village Evacuations in the East and South-East Turkey*, 1998, at pp.2-5;

Villages targeted were those close to PKK food and ammunition caches located by the security forces, villages suspected of providing logistical support to the PKK, villages close to PKK activity; villages close to the border and villages where the inhabitants refused to join the village guard.[21] The reasons for village evacuation, therefore, had little to do with security but, rather, with revenge or punishment for PKK activity.

From 1992 a wholesale state programme of village evacuation commenced. Involuntary evacuations were systematically undertaken, initially in the areas immediately north of the Iraqi border but then widening to include much of the province of Mardin and a wide area north of Diyarbakır. The government reportedly prepared lists of villages and their inhabitants; those listed as "unreliable" or sympathetic to the PKK began to be evacuated. In addition, in the second half of the year the security forces attacked towns in the region noted for their nationalist sentiment: namely Şırnak, Çukurca, Cizre and Lice. By the end of the year, entire districts - for example, Silopi, Şırnak, and Eruh – had lost all their villages with the exception of one village guard district.

Official Turkish figures[22] have put the total number of involuntary evacuations during 1993 and 1994 at 905 villages and 2,923 hamlets, displacing an estimated 378,335 people. In 1996, although estimates vary, credible sources state that 2,164 villages were evacuated[23] resulting in more than 400,000 people being displaced.[24]By 1994 the large number of displaced villagers made the state's policy of denial no longer credible, and in 1994 the Turkish Chief of Staff admitted publicly that village evacuations were part of the state's strategy against the PKK; a strategy that now aimed at territorial domination.

Not only did Turkey evacuate villages, it did so with brutality. Its programme of evacuation has included arbitrary arrests, torture, extra-judicial killings, sexual violence and the wanton destruction (or plunder) of movable property, livestock and food stocks.

The social, environmental and economic problems which the village evacuation programme have created are complex and acute.[25] The mental and physical health of those forced to emigrate has been adversely affected due vulnerability to violence, malnourishment, crowding, lack of sanitation, poor heating, and contaminated drinking water. In 33% of the families there have been deaths in children less than five years old. Approximately 44% of children suffer from developmental

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Committee on Migration, Refugees and Demography of the Council of Europe, *Report on the Humanitarian Situation of the Kurdish Refugees and Displaced Persons in South-East Turkey and North Iraq*, Doc. 8131, June 1998, at paras 14-15, and see also the dissenting opinion of the Turkish members of the Committee.

[21] Village guards are an armed force of Kurdish villagers who are recruited and paid by the Turkish government. Theoretically, recruitment to the village guards is voluntary; in practice, refusal is reportedly followed by government reprisals against villagers; see Committee on Migration,*supra.* 20, at paras 9-11.

[22] Parliamentary (Temporary) Committee, *supra.* 20, at pp.1-2; *cf.* Committee on Migration, *supra.* 20, at paras 17, 21-22.

[23] According to the Office of the General Staff, reported in *Turkish Daily News*, 14 July 1997.

[24] According to Mustafa Erdoğan, *Turkish Daily News*, 28 March 1998.

[25] See Parliamentary (Temporary) Committee, *supra.* 20, at pp. 5.

deficiencies. Few of the children forced to emigrate attend school as local schools are forced to close and, when they do attend in their new places of residence, they are often turned away.

Municipalities receiving the villagers have inadequate resources to absorb the sudden swell in population numbers. Due to inadequate infrastructure, shantytowns develop. Unemployment is higher among the emigrating villagers than in the general population.

Meanwhile, with the reduction in the rural workforce as evacuated villagers fled to the cities, the overall productivity of the agricultural sector is diminished. Further, forests, crops, and livestock are destroyed as a direct result of the village destruction programme.

In its Report, the Turkish Parliamentary (Temporary) Committee on Village Evacuations in East and South-east Turkey concluded:[26]

> The evacuation of many villages and hamlets, within the framework of an exaggerated security concept, was not done in compliance with the authorities recognised by the State of Emergency Law.
>
> Since the village evacuations were not done within a legal framework, the state did not assume responsibility in settling the people who were evacuated in safe places and in meeting their needs.
>
> In brief, the efforts of the state in overcoming the sufferings of the people who were forced to leave their villages and hamlets were not sufficient and the basic human rights of these people such as the rights to live, housing, employment, to own property, health, education and free movement were violated.

The cases of **Akdivar and Others v. Turkey** and **Menteş and Others v. Turkey** provide an insight into the experience of the people subjected to state sponsored village evacuations. It will be recalled that in **Akdivar** the European Court of Human Rights found that in 1992 Turkish security forces burnt the applicants' houses and that the loss of their homes caused them to abandon their village and move elsewhere.[27] The Court also noted that a large number of villages, estimated by Amnesty International and the applicants at more than 1,000 villages, had been destroyed and evacuated during the conflict between the state security forces and the PKK.[28] The Court awarded compensation to the seven applicants for, *inter alia*, the loss of their houses, income from cultivated and arable land, household property and livestock and feed and the cost of alternative accommodation.

Village evacuations, of course, need not be a violation of international law, if properly implemented with orderly resettlement. However, the evacuations in south-east Turkey - taking place in circumstances of considerable secrecy and denial - have constituted serious breaches of that law by Turkey.

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[26] Parliamentary (Temporary) Committee, *supra.*20, at p. 18.
[27] Judgment of the Court on 16 September 1996, at para. 81.
[28] *Ibid.*, at para. 13.

A problem that has arisen in relation to international law, however, is that, whereas the rights of refugees are protected under international law, internally displaced persons do not enjoy the same protection. A "refugee" is traditionally defined as a person who is has taken up residence, voluntarily or involuntarily, in a state outside of his or her country of origin owing to a fear of persecution. This definition, however, is limited to someone who faces individual persecution and does not encompass people who have fled their country due to internal strife.

On the other hand, the term "internally displaced person" refers to a person who has not suffered individual persecution, but rather someone who suffers because of armed and violent conflict, yet is unable or unwilling to leave his or her country of origin. This is the term which most accurately describes the Kurdish person migrating within Turkey today as a result of village evacuations.

Generally, the term "migrant" refers to a person who has taken up voluntary residence in a state in which he is not a national. In the case of Turkey, the term "migrant" describes the millions of Turkish citizens who in the 1960's and 1970's settled in Western Europe, whereas the term "internally displaced person" is a more recent phenomenon, coming about as a result of the insurgency which has ravaged south-east Turkey since 1984. In effect, the armed conflict between the Turkish government security forces and Kurdish insurgents, the PKK, have resulted in a mass exodus from south-east Turkey towards the western parts of the country or, mostly, to the poor cities in Kurdistan. However, it was not until late 1997, when thousands of displaced Turkish citizens of Kurdish origin literally turned up on the shores of Italy, that the international community gained an insight into the social and political hardship which this conflict has produced.

Since 1995 the figures have disclosed a declining, but nevertheless a continuing, use of forcible evacuations by the state. In 1997 the Human Rights Association of Turkey (IHD) reported that 22 villages and hamlets, had been evacuated and, sometimes, burned by state agents. These are as follows:

- During February there were two forcible evacuations being at Mıçi (Turkish name, Uzunsırt) in the town of Yuksekova, province of Hakkari and Timog (Turkish name, Gümüşörgü) in the town of Kozluk, province of Batman (which was also burned down allegedly by the state security forces).
- During March there were four forcible evacuations being at the village of Hilaluk (Turkish name, Gölgelikonak), in the town of Eruh, the province of Siirt, and the village of Zeve (Turkish name, Yakıtlı) and the hamlets of Male, Biniye and Baranemza, in the town of Beşiri, the province of Batman, all of which were also burnt down.
- During April there were two forcible evacuations being at Avetax, in the town of Tatvan, the province of Bitlis and the hamlet of Goma Iskender, in the town of Lice, the province of Dıyarbakır.
- During July there were four forcible evacuations being at the village of Karpuzlu and the hamlets of Kıran, Kafa and Köprübaşı, in the town of Kulp, in the province of Diyarbakır, reportedly due to the inhabitants refusing to become village guards.
- During October there was one forcible evacuation, being at the village of Parez (Turkish name, Uzunluk) in the town of Eruh, the province of Siirt, reportedly

due to the inhabitants refusing to become village guards.

- During November there were two forcible evacuations and burning of houses reportedly by soldiers, being at the village of Sileriya and the hamlet of Homend, in the town of Baykan, in the province of Siirt.
- During December there were forcible evacuations in the Black Sea area, reportedly due to security force activity, being at the villages of Sırcak, Sarıtarla, Yeşilalan, Serkiz and Eskiköy, in the province of Tokat; and an evacuation at the village of Kuse, at the town of Eruh, the province of Siirt reportedly due to the inhabitants refusing to become village guards; and at the villages of Hergule and Misefra the inhabitants immigrated reportedly due to pressure from the security forces.

In 1998 until May, the IHD has reported four forcible evacuations:

- During January 1998 the village of Lude (Turkish name, Ballıkavak), in the town of Eruh, the province of Siirt, was totally evacuated and the hamlet of Darik (Turkish name, Yakınca), in the town of Genc, province of Bingöl, was attacked by soldiers and later all the houses were burnt down by them.
- During February the hamlet of Dertawi, in the town of Eigani, the province of Diyardakir, was evacuated reportedly by soldiers and village guards and in the village of Havikpag (Turkish name, Babaocağı), in the province of Tunceli, all houses were burned down by soldiers alleging that the inhabitants were assisting the PKK.

Although fewer in number than in previous years, the circumstances surrounding these most recent evacuations suggest that the Turkish government has not changed its method of addressing the question of Kurdish ethnic identity. Indeed, it is arguable that little comfort can be derived from current figures at all, as it is probably because virtually the entire PKK affected areas have already been evacuated that the number of village evacuations have declined.[29]

A number of solutions to the perceived conflict between the Turkish state and Kurdish ethnic identity and the ensuing village evacuations were canvassed before the Turkish Parliamentary (Temporary) Committee.[30] For example, the Governor of Mardin, Fikret Güven, is quoted as stating that,

> (T)he first thing to do is to achieve a compromise... You cannot establish anything by regarding everybody as a terrorist... This is not a military matter, but a state issue.

While the **Mayor of Tunceli**, Mazlum Aslan, reasoned,

> It is wrong to try to resolve the problem by force without taking economic measures and without handling education, health and housing problems. If no solution could be achieved through this method (village evacuation) since 1980, it shows that the diagnosis is wrong and another solution should be sought.

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[29] See also: Committee on Migration, *supra.*20, at para. 18.
[30] Parliamentary (Temporary) Committee, *supra.*20, at pp. 5-12.

Professor Dogu Ergil stated,

> Security is the problem of the state. It is wrong to arm people against another group of people...One should not regard Kurdishness with suspicion or a reason for division. In the study I conducted, 90% of Kurds do not want separation, but there must be respect for Kurds...

The **Diyarbakir Democracy Platform** argued,

> The basic need of the country is a reversal in policies that have been pursued for years...Villages are set on fire as part of wrong policies for resolving the Kurdish problem. The (v)illage guard system, too, played a role in the current result (sic)... The problem can be resolved by creating (a) suitable atmosphere for making villagers return to production... Necessary arrangements must be made for implementing the rights and freedoms that are brought with the international agreements that Turkey signed... finally, villagers must give up artificial solutions, villagers must be allowed (to be) free to return to their villages... and their losses must be compensated.

The chairman of the **Turkish Human Rights Association**, Akın Birdal, submitted,

> There is a Kurdish problem. We are saying that this problem is tied to the democratic and peaceful resolution of the issue. If (we) do not accept the existence of this problem, it will not be possible to eliminate the end results of that problem...No matter what this is called, this problem is a consequence of rejection of the identity, culture, (and) language of the Kurdish people...

Whatever organisation, individual or group formulated a solution, all agreed that the state sponsored process of Kurdish village and hamlet evacuations is problematic and should cease.

At the international level, the only organisation to have recently conducted a thorough examination of the situation of displaced persons in south-east Turkey is the Committee on Migration, Refugees and Demography of the Council of Europe. Under the auspices of the Parliamentary Assembly, the Committee has released a report which states that it "condemns the evacuation and burning of villages by the Turkish armed forces".[31] In particular, it invited Turkey to, *inter alia*:

- find a non-military solution for the existing problems in the south-eastern provinces; and
- restore the rule of law in south-east Turkey, and in particular to lift the emergency rule in those provinces, ensure effective protection of the villages, exercise civilian control over the military activity in the area and prosecute members of the armed forces charged with human rights violations.[32]

Recently, there has also been some discussion generated at the national level in Turkey concerning migration from east and south-east Turkey. The Report of the

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[31] Committee on Migration, *supra.*20, at Recommendation 1377 (1998) para.5.

[32] *Ibid*, paras. *iv* (a) and (g). According to press reports, the Turkish government reacted strongly against the Committee's Revised Preliminary Draft Report released on April 1998; see *Cumhuriyet*, 2 July 1998.

Parliamentary (Temporary) Committee, clearly identifies the substantial role of the Turkish security forces in the evacuation of villages. In addition, shortly after taking up his duties, Deputy Prime Minister Bülent Ecevit led a delegation to Diyarbakır, the centre of Turkey's Kurdish regions, to announce job creation programmes, housing for the forcibly displaced and increased educational opportunities.

Yet despite its initiatives, the government has maintained that the depopulation of south-east Turkey is attributable solely either to (voluntary) migration for economic purposes or to PKK attacks on villages. Thus the Turkish government continues to refuse to acknowledge its role in village evacuations. For example[33], the Minister of the Interior, Mr M. Başesgioğlu, in a recent comment reportedly criticised the FP Ministers of Parliament for saying that the villagers were forcibly evacuated by the state and alleged that these MP's were using terrorist propaganda. In addition the State Minister, Mr S. Yıldırım, has reportedly stated that the evacuation of villages in south-east Turkey are necessary as these are the realities in the region.

In light of government members adopting such positions, the only legal remedy for injustices committed is that provided by the European Convention on Human Rights.

However, the attitude of denial towards the evacuation and destruction of Kurdish villages in south-east Turkey adopted by the Turkish Government, may also frustrate the effectiveness of the remedies offered under the European Convention. This is demonstrated by the Turkish Government's refusal to grant to the seven applicants in the **Akdivar** case access to their land and its failure to restore the infrastructure of the village despite the Court's statement in handing down its decision:

> The Court recalls that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach.

The failure to allow applicants access to their land also raises fears that there is a continued state policy that these villagers will never be allowed to re-establish their homes and that their villages and other villages will remain depopulated.

The Council of Europe Committee on Migration comes to a number of conclusions[34] concerning Turkey. In particular, it holds that the:

> ...recognition of the rights of the Kurdish minority is a precondition for a return to peace in the south-east of the country. The Kurdish population should have the right to use and sustain their natural language and cultural traditions which is entirely in accordance with the principles of the Council of Europe's Framework Convention on Protection of National Minorities and the European Charter for Regional and Minority Languages. Therefore the Turkish Government should adopt policies and take adequate measures to enable Turkish citizens of Kurdish origin to exercise their cultural rights as a minority.

It also calls for the restoration of the rule of law in the south-east; the lifting of

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[33] *Cumhuriyet*, 3 June 1998.
[34] Committee on Migration, *supra.* 20, at paras. 91-107.

emergency rule in the south-eastern provinces; effective protection of villages; and control by the government over military activity.

Surely, had such measures been taken by the Turkish government from the outset, then the suffering at issue in **Menteş and Others v. Turkey** would never have occurred.

PART III

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23186/94
by 1. Azize MENTEŞ
2. Mahile TURHALLI
3. Sulhiye TURHALLI
4. Sariye UVAT
against Turkey

The European Commission of Human Rights sitting in private on 9 January 1995, the following members being present:

MM. H. DANELIUS, Acting President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY
E. KONSTANTINOV
G. RESS

Mr. M. DE SALVIA, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 December 1993 by 1. Azize MENTEŞ, 2. Mahile TURHALLI, 3. Sulhiye TURHALLI and 4. Sariye UVAT against Turkey and registered on 11 January 1994 under file No. 23186/94;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 8 September 1994 and the observations in reply submitted by the applicants on 2 November 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Turkish citizens of Kurdish origin, are four women from the village of Riz in the Genç district, the province of Bingöl. They were born in 1970, 1948, 1945 and 1961 respectively. They and their families now live in Diyarbakır city.

They are represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

The facts as submitted by the parties may be summarised as follows.

A. The particular circumstances of the case

The applicants state that the following events occurred.

On 25 June 1993, in the early morning some time after 6.00, about 500 soldiers blocked off the village and surrounding area. A large number of helicopters landed and soldiers from these began searching the village and the houses. The forces involved included the gendarmes and special forces from the Kidyat and Mardin Gendarme stations.

The soldiers searched the village but they found nothing. They rounded up all the old men and took them to an open space near the school building. They were made to lie face down in the sun from 7.00 to 12.00. According to several persons, the soldiers swore and assaulted the old people throughout these hours. Meanwhile the women and children were held together in the inner part of the village.

The soldiers systematically set fire to the houses, neighbourhood by neighbourhood, in sight of the women and children. They would not let them remove any possessions from the houses.

The second applicant, Mahile Turhalli, reports the soldiers' explanation for the destruction of the village as follows: "...they said you assist terrorists, shelter them in your homes and give them food. This is the reason why we are burning down all your homes".

The raid ended after 16.00 with the helicopters ferrying soldiers into the mountains. As the soldiers had incinerated the village bus, some of the women and the children of the village left on foot. The applicant Mahile Turhalli walked first ten hours to the Diyarbakır road and then hitch-hiked to Diyarbakır. The fourth applicant, Sariye Uvat, set out with other villagers in the middle of the night before the soldiers had descended on the village. She walked with the group six hours to the Sarimcavi road, which was chosen to avoid the military. The others stayed on in the village a few days, sheltering in some houses that had not been burned down. All of the applicants finally arrived in Diyarbakır.

All the applicants stay in Diyarbakır with relatives or in overcrowded accommodation. They are without money for basic necessities including food and rent and they have no employment. The fourth applicant Sariye Uvat lost her two prematurely born twins after they had lived for ten days because she could not afford to be admitted to hospital.

The respondent Government state that since 1983 the PKK (the Kurdish Workers' Party - an armed separatist organisation) has sought to use the applicant's village as a place of shelter and supply base. The villagers under the incursions of the terrorists were forced to leave the village. The terrorists used the houses from time to time and when the security forces took action against them, the terrorists fled setting the houses on fire.

The Government state that there were no operations by the security forces in the area on 25 June 1993 and that indeed the villagers had been absent from the village for 6-7 years by that point. They submit that the applicants are the close relatives of six named individuals who are suspected of being members of the mountains branch of the PKK.

On 25 April 1994, the public prosecutor of Genç issued his decision that there was no ground to prosecute the security forces in relation to the applicants' allegations. The decision was based on four statements from persons taken on 21 April 1994 and concluded that there was no operation on the day of the incident, though clashes had taken place in the area from time to time in respect of nearby PKK camps and that the villagers had evacuated as a result of persecution by the terrorists.

On 30 May 1994, another public prosecutor issued a decision that there was no ground to proceed in respect of the complaints, referring to the previous decision above and with further statements taken from three persons on 27 May 1994. He found that the villagers had left the village 6-7 years previously due to the threats of the terrorists, that the houses had been destroyed by terrorists fleeing from security forces and that the applicants were close relatives of PKK militants in the mountains.

COMPLAINTS

The applicants allege violations of Articles 3, 5, 6, 8, and 13 of the Convention, combined with Article 14. In addition, they allege that the respondent Government is in violation of Article 18 of the Convention.

The applicants invoke the submissions in application No. 21893/93, Akduvar v. Turkey (communicated to the respondent Government on 30 August 1993) both as regards the substance of their complaints and as to the question of exhaustion of domestic remedies.

The fourth applicant, Sariye Uvat, submits on behalf of her two premature twins, who died ten days after their birth, that they were victims of a violation of Article 2 of the Convention. Mrs Uvat was in her ninth month of pregnancy when she set out to walk to safety with the rest of her neighbours. As a result of the forced walk she gave birth prematurely to two twin boys after reaching Diyarbakır. The twin boys died through neglect and lack of medical attention. She should have been admitted to hospital but could not afford hospital care.

The applicants state that they have not complained to the relevant authorities since it was those same authorities who ordered the destruction of their homes and village and violated their rights.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 December 1993 and registered on 11 January 1994.

On 5 April 1994, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application. The questions put to the Government included a question as to whether Article 1 of Protocol No. 1 to the Convention had been violated.

The Government's observations were submitted on 8 September 1994 after the expiry of the time-limit and the applicant's observations in reply were submitted on 2 November 1994.

THE LAW

The applicants allege that on 25 June 1993 State security forces launched a raid on their village, destroying their houses and possessions and forcing them to evacuate the village. The applicants invoke Article 3 of the Convention (the prohibition on inhuman and degrading treatment), Article 5 (the right to liberty and security of person), Article 6 (the right of access to court), Article 8 (the right to respect for family life and the home), Article 13 (the right to effective national remedies for Convention breaches) and Article 18 (the prohibition on using authorised Convention restrictions for ulterior purposes). The fourth applicant, Sariye Uvat invokes Article 2 (the right to life) in respect of the death of the twins who were born prematurely after the raid.

Exhaustion of domestic remedies

The Government submit that the applicants have failed to comply with the requirement under Article 26 of the Convention to exhaust domestic remedies before lodging an application with the Commission. They contend that the applicants failed to make complaint to the competent authorities. While they do not specify which remedies the applicants should have pursued, the Commission has had regard to the Government's submissions in the case of Akduvar and others v. Turkey (No. 21983/93, Dec. 19.10.94) in which it was stated that claims for compensation could be introduced before the administrative and civil courts and that complaints concerning the alleged criminal offences could have been lodged with the competent civil and military authorities.

The applicants maintain that there is no requirement that they pursue domestic remedies. Any purported remedy is illusory, inadequate and ineffective since, inter alia, the operation in question in this case was officially organised, planned and executed by the agents of the State. None of the remedies suggested by the Government could be regarded as effective, in the applicants' view, because the scale of destruction of villages, as well as the expulsion and creation of internal refugees, is so great in South-East Turkey that this must be considered high-level Government policy - an administrative practice - in regard to which all remedies are theoretical and irrelevant.

Further, the applicants submit that, whether or not there is an administrative practice, domestic remedies are ineffective in this case

having regard, inter alia, to the situation in South-East Turkey which is such that potential applicants have a well-founded fear of the consequences; the lack of genuine investigations by public prosecutors and other competent authorities; the absence of any cases showing the payment of adequate compensation to villagers for the destruction of their homes and villages, or for their expulsion; and the lack of any prosecutions against members of the security forces for the alleged offences connected with the destruction of villages and forcible expulsions.

The Commission recalls that Article 26 of the Convention only requires the exhaustion of such remedies which relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach. It is furthermore established that the burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the rule (cf. Eur. Court H.R., De Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, p.18, para. 36, and Nos. 14116/88 and 14117/88, Sargin and Yagci v. Turkey, Dec. 11.05.89, D.R. 61 p. 250, 262).

The Commission does not deem it necessary to determine whether there exists an administrative practice on the part of Turkish authorities tolerating abuses of human rights of the kind alleged by the applicants, because it agrees with the applicants that it has not been established that they had at their disposal adequate remedies under the state of emergency to deal effectively with their complaints.

The Commission refers to its findings in Application No. 21893/93, Akduvar and others v. Turkey (Dec. 19.10.94) which concerned similar allegations by the applicants of destruction of their village and forcible expulsion. In that case, the Commission noted that it was a known fact there has been destruction of villages in South-East Turkey with many people displaced as a result. While the Government had outlined a general scheme of remedies that would normally be available for complaints against the security forces, the Commission found it significant that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the Government had not provided a single example of compensation being awarded to villagers for damage comparable to that suffered by the applicants. Nor had relevant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers.

The Commission considered that it seemed unlikely that such prosecutions could follow from acts committed pursuant to the orders of the Regional Governor under the state of emergency to effect the permanent or temporary evacuation of villages, to impose residence prohibitions or to enforce the transfer of people to other areas. It further had regard to the vulnerability of dispossessed applicants, under pressure from both the security forces and the terrorist activities of the PKK, and held that it could not be said at this stage that their fear of reprisal if they complained about acts of the security forces was wholly without foundation.

The Commission concluded that in the absence of clear examples that the remedies put forward by the Government would be effective in the circumstances of the case, the applicants were absolved from the obligation to pursue them.

In the present case, the Government have not provided any additional information which might lead the Commission to depart from the above conclusions. The Commission further notes that the competent public prosecutors have subsequently found that there was no ground for prosecution in this case. This application cannot, therefore, be rejected for non-exhaustion of domestic remedies under Articles 26 and 27 para. 3 of the Convention.

As regards the merits

The Government submit that the security forces were not in operation in the village on the date alleged by the applicants and that in fact they and other villagers had been absent from the village for 6-7 years driven out by the persecution of terrorists. They submit that the houses in the village were burned by terrorists as they fled from the security forces. It refers to the findings of two public prosecutors in this regard.

The applicants maintain their account of events. They point out weaknesses and discrepancies in the witness statements relied on in the investigations carried out after the case was communicated to the Government. In particular, they note that of the seven witnesses one was not in fact in the village on the date of the incident, two others appear to refer to an operation being carried out on that date in contradiction to the statement of others who deny that the security services were there. They allege that four of the witnesses lived in hamlets 7-10 kilometres away and that there was a history of local enmity between the applicants and the witnesses relied on by the Government.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Deputy Secretary to the Commission — Acting President of the Commission

(M. DE SALVIA) — (H. DANELIUS)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Or. English

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 23186/94

Azize MENTEŞ
Mahile TURHALLI
Sulhiye TURHALLI
Sariye UVAT
against
Turkey

Report of the Commission

(Adopted on 7 March 1996)

Strasbourg

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 23186/94

Azize Menteş
Mahile Turhallı
Sulhiye Turhallı
Sariye Uvat

against

Turkey

REPORT OF THE COMMISSION

(adopted on 7 March 1996)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicants are Turkish citizens who were residents of the village of Sağgöze (Riz) in the Genç district of the province of Diyarbakır. They were born in or about 1967, 1948, 1940 and 1961 respectively. They were represented before the Commission by Professor K. Boyle and Ms. F. Hampson, both teachers at the University of Essex.

3. The application is directed against Turkey. The respondent Government were represented by their Agent, Mr. B. Çaglar.

4. The applicants allege that their homes were burnt and that they were forcibly and summarily expelled from their village by State security forces on 25 June 1993. They invoke Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention. The fourth applicant, Sariye Uvat, invokes Article 2 of the Convention in relation to the death of her twins who were born prematurely after the expulsion from her home.

B. The proceedings

5. The application was introduced on 20 December 1993 and registered on 11 January 1994.

6. On 5 April 1994, the Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on its admissibility and merits.

7. The Government's observations were submitted on 8 September 1994, after the expiry of the time-limit fixed for this purpose. The applicants replied on 2 November 1994.

8. On 9 January 1995, the Commission declared the application admissible.

9. The text of the Commission's decision on admissibility was sent to the parties on 19 January 1995 and they were invited to submit such further information or observations on the merits as they wished. They were also invited to indicate the oral evidence they might wish to put before delegates.

10. On 20 May 1995, the Commission decided to take oral evidence in respect of the applicants' allegations. It appointed three delegates for this purpose: Mrs. G.H. Thune, Mrs. J. Liddy and Mr. N. Bratza. It notified the parties by letter of 22 May 1995, proposing certain witnesses and requesting the Government to identify certain security force personnel and two public prosecutors. The Government were also requested to provide the contents of the investigation files of the two public prosecutors involved in investigating the alleged incident.

11. By letter dated 31 May 1995, the applicants' representatives requested a further witness to be heard.

12. By letter dated 3 July 1995, the Commission's Secretariat requested the Government to provide the outstanding information in regard to the identities of relevant witnesses and the contents of the investigation files.

13. On 6 July 1995, the Government submitted further comments on the facts of the case, with annexed documents relating to terrorist activities in the area.

14. By letter dated 7 July 1995, the Government requested that two witnesses be heard by the Delegates.

15. Evidence was heard by the delegation of the Commission in Ankara from 10 to 12 July 1995. Before the Delegates the Government were represented by Mr. B. Çaglar, Agent, assisted by Mr. T. Özkarol, Mr. O. Someren, Ms. B. Pekgöz, Mr. A. Kurudal, Ms. S. Eminağaoğlu, Mr. M. Kılıc, Ms. T. Toros and Mr. A. Kaya. The applicants were represented by Professor K. Boyle and Ms. F. Hampson, counsel, assisted by Ms. A. Reidy and Ms. D. Deniz (interpreter). Further documentary material was submitted by the Government during the hearings. At the conclusion of the hearings, and later confirmed by letter of 24 July 1995, the Delegates requested the Government to provide certain documents and information concerning matters arising out of the hearings and again requested to be provided with the contents of the investigation files of the two public prosecutors. The applicants were also requested to provide certain information and documents.

16. On 31 August 1995, the applicants' representative provided the information and documents requested. On 5 September 1995, the Government provided some of the documents requested.

17. On 9 September 1995, the Commission decided to invite the parties to present their written conclusions on the merits of the case. By letter dated 9 October 1995, the Secretariat reminded the Government of the information and documents, requested in the earlier letter of 24 July 1995, which had still not been provided.

18. On 23 November 1995, the applicants submitted their final observations on the merits. On 1 December 1995, the Government submitted comments and factual information relating to the applicants' relatives.

19. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

20. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
K. HERNDL

21. The text of this Report was adopted on 7 March 1996 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

22. The purpose of the Report, pursuant to Article 31 of the Convention, is:

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

23. The Commission's decision on the admissibility of the application is attached hereto as an Appendix.

24. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

25. The facts of the case, particularly concerning events in or about 25 June 1993, are disputed by the parties. For this reason, pursuant to Article 28 para. 1 (a) of the Convention, the Commission has conducted an investigation, with the assistance of the parties, and has accepted written material, as well as oral testimony, which has been submitted. The Commission first presents a brief outline of the events, as claimed by the parties, and then a summary of the evidence submitted to it.

A. The particular circumstances of the case

1. Concerning the alleged events in the village of Sağgöze (Riz)

26. The village in which the alleged events took place has been referred to in documents and by witnesses as both Sağgöze and Riz. As with many of the villages in the south-east, it has an older, Kurdish or Ottoman name and a newer, official Turkish name. For the sake of convenience, the report refers throughout to the former, which it appears is the name of official usage.

a. Facts as presented by the applicants

27. The various accounts of events as submitted in written and oral statements by the applicants are summarised in Section B below. The version as presented in the applicants' final observations on the merits is summarised here.

28. The applicants, Turkish nationals, all lived in hamlets of the village of Sağgöze, in the Genç district of the province of Bingöl in South-East Turkey. The applicants, Azize Menteş, Mahile Turhallı and Sulhiye Turhallı lived in the lower neighbourhood in Sağgöze village and the applicant, Sariye Uvat, lived in Piroz, a separate hamlet of the village.

29. On 23 June 1993, an attack was carried out by the PKK (Kurdish Workers' Party), an armed terrorist group, on Üçdamlar gendarme station. On the evening of the same day, the security forces stopped a minibus belonging to Naif Akgül, which regularly took people between Diyarbakır and the Lice area, as it approached the gendarme station. The security forces set fire to the minibus. The security forces carried out a follow-up operation in pursuit of the PKK who had attacked the station. On 24 June 1993, security forces came to the Pecar (Güldiken) village and burned some of the houses.

30. On the evening of 24 June 1993, security forces arrived in the area surrounding Sağgöze village by helicopter. On the morning of 25 June 1993, gendarmes entered the village and gathered people from the upper neighbourhood in the area in front of the school. Gendarmes in the lower area carried out a search and then proceeded to burn houses in the lower neighbourhood of Sağgöze village. Villagers pleaded with the gendarmes not to burn their houses but were told to remain quiet or they too would be thrown on the flames. When asked why they were burning the houses, the gendarmes told the villagers that it was a punishment for helping the PKK.

31. The house where Azize Menteş lived (which probably belonged to her father-in-law) was burned completely, along with her furniture, firewood, barn and a shed with winter feed for the animals. Mahile Turhallı's house was burned and the gendarmes threatened to throw her into the burning house if she tried to retrieve some of her children's clothes. Sulhiye Turhallı's house was burned, after she and her children had been thrown out and she had been kicked, cursed at and a gun put to her face. In all, ten to thirteen houses in the lower neighbourhood were destroyed. The soldiers told the applicants that they were burning their houses because they helped the terrorists.

32. The intention of the gendarmes in Sağgöze village appeared to have been to burn the whole village in revenge for the attack by the PKK on the gendarme station. However, the arrival of a commanding officer at midday, a colonel who ordered the burning to stop, saved the upper village.

33. The house of the applicant, Sariye Uvat, in the hamlet of Piroz was burned by the security forces in a separate incident.

34. The applicants were forced to leave Sağgöze and now live elsewhere.

35. Later, in the autumn of 1993 the remaining population of the village left and in March 1994 the remainder of the village was burned down. By this date in 1994, the entire area seems to have been burned, devastated and depopulated.

36. The burning of the applicants' homes is consistent with a practice of burning houses as part of the policy by the security forces to combat the PKK, especially where the authorities view villages as giving support to the PKK.

b. Facts as presented by the Government

37. The Government have not presented any written submissions on the merits regarding the assessment of the oral evidence and other material before the Commission. In their observations on admissibility, they submitted as follows concerning the facts of the case.

38. Since 1983 the PKK has sought to use the applicants' village as a place of shelter and supply base. The villagers under the incursions of the terrorists were forced to leave the village. The terrorists used the houses from time to time and when the security forces took action against them, the terrorists fled setting the houses on fire.

39. There were no operations by the security forces in the area on 25 June 1993. In fact, the applicants had been absent from the village for 6-7 years by that point. They are the close relatives of six named individuals who are suspected of being members of the mountains branch of the PKK.

40. The Government have provided further factual information relating to relatives of the applicants (see Evidence before the Commission) who have been detained on charges alleging, inter alia, that they have aided and abetted the PKK terrorist organisation. They further submit that other members of the applicants' families are currently working for the PKK in rural areas. They submit that it is not a remote probability that the applicants have been subject to pressure by their relatives who aid and abet and work for the PKK.

2. **Proceedings before the domestic authorities**

41. Following the communication of this application by the Commission to the respondent Government on 15 April 1994, it appears that the Ministry of Justice (International Law and External Relations General Directorate) contacted the public prosecutors' office in Genç informing them in two separate notifications (one letter dated 9 May 1994) of the complaints made by the applicants.

42. On 25 April 1994, a public prosecutor at Genç, Ata Köyçü, issued his decision that there was no ground to prosecute the security forces in relation to the applicants' allegations. The decision was based on four statements from persons taken on 21 April 1994 (Selahattin Can, Omer Yaraşir, Mehmet Yolagelen and Ekrem Yarar) and concluded that there was no operation on the day of the incident, though clashes had taken place in the area from time to time in respect of nearby PKK camps, and that the villagers had evacuated the village as a result of persecution by the terrorists.

43. On 30 May 1994, another public prosecutor at Genç, Kadir Karaca, issued a decision that there was no ground to proceed in respect of the complaints, referring to the previous decision above and with further statements taken from three persons on 27 May 1994 (Selahattin Can, Omer Yaraşir and Ekrem Yarar). He found that the applicant villagers had left the village 6-7 years previously due to the threats of the terrorists, that the houses had been destroyed by terrorists fleeing from security forces and that the applicants were close relatives of PKK militants in the mountains.

44. Following further contact by letter dated 2 January 1995 by the Ministry of Justice with the Genç prosecutors' office concerning the subject-matter of the application, a third decision not to prosecute was issued on 17 February 1995 by public prosecutor, Selik Sözen. It referred to the findings of the previous two investigations and explained that two investigations had been undertaken on the earlier occasion following the principle of division of work applied by public prosecutors. According to that principle, since two documents, bearing different reference numbers and dates, had been received, it was necessary for two different prosecutors to carry out separate investigations, notwithstanding the similarity of the subject-matter. The decision stated that the reason it was not possible to hear the applicant complainants was that they were no longer in the village and it was not possible to establish their exact addresses with a view to continuing the investigation. It concluded that there had been no military personnel in the village and that no offence, or offender, had been identified.

B. The evidence before the Commission

1) Documentary evidence

45. The parties submitted various documents, photographs and maps to the Commission. The documents included reports about Turkey, reports concerning terrorist activity in the region, and statements from the applicants and witnesses concerning their version of the events in the case.

46. The Commission had particular regard to the following documents:

a) General reports and official documents

Report of 8 August 1994 from Ministry of Justice to Ministry of Foreign Affairs

47. The report, issued by the Directorate General for International Law and External Relations of the Ministry of Justice, refers to the information which had been received relating to the applicants' complaints and to the decisions not to prosecute issued by the Genç public prosecutors' office. It concludes that the events alleged did not take place, that no operation was carried out in Sağgöze on the date in question, that the complainants had left the village 6-7 years previously and that the villagers had left the village as the result of terrorism. It lists the names of fourteen individuals, members of the applicants' families, who are alleged to be PKK sympathisers. It states that following an operation in June 1991 when 20 members of the PKK were killed, two leaders of the PKK, "Amed" Zeki Parmaksiz and Sakık Şemdin, held the local villages responsible and decided that the villages should be evacuated. The villagers from Geyikdere left, but when the villagers of Sağgöze did not, the PKK put pressure on them and set fire to their houses. The report includes the details of the applicants' addresses and personal circumstances, the source of which is given as a letter dated 1 July 1994 from the Head of Public Order Branch of the Diyarbakır Police Headquarters. The police source is also cited as stating that Azize Menteş left the village to live in Diyarbakır in 1987, Mahile Turhallı in 1990, and Sulhiye Turhallı fifteen years before and that Sariye Uvat left her village in 1990.

Decisions of public prosecutors concerning relatives of the applicants

48. The Government have provided three decisions of non-jurisdiction concerning relatives of the applicants who have been detained on suspicion of terrorist-related activities, namely decisions dated 19 October 1994 concerning Bahri Menteş, dated 28 October 1994 concerning Mehmet Gündoğan and dated 25 November 1994 concerning Abdurrahman Turhallı. Since the offences charged concern aiding and abetting the PKK terrorist organisation, the decisions indicate that the Genç public prosecutors lacked jurisdiction and the cases had been transferred to the Chief Prosecutor's Office attached to the Diyarbakır State Security Court.

b) Statements by applicants

Azize Menteş

Statement dated 22 July 1993 taken by the Human Rights Association, Diyarbakır

49. At about 6.00-7.00 hours on 25 June 1993, 500-600 soldiers, gendarmes and special team members carried out a raid on Sağgöze village. Many of the young men and old men had left the village before this occurred, since they guessed a raid would take place when soldiers began blockading the mountain.

50. The soldiers carried out a search and then surrounded the village. In the lower neighbourhood of about ten houses, where the applicant lived, the soldiers shouted at the women and children. They said, "Where are the terrorists? You are all helping them, we'll burn down all your houses and burn you alive inside them." The soldiers set the houses on fire with a "lav" weapon. The applicant was unable to salvage anything from her house. She lost all her property, including 3 tons of wood, 25 poplar trees in the garden and all the winter foodstores in the barn. After the houses were burned, the gendarme commander told them to leave the village.

51. The applicant went to live with her husband, three children, mother-in-law, father-in-law, sister-in-law and two brothers-in-law in Diyarbakır, where they live in a house with two bedrooms in a shanty town area. They used to earn their living with agricultural farming but now could not get any work or bring in any income.

Mahile Turhallı

Statement dated 14 July 1993 taken by the Human Rights Association, Diyarbakır

52. At about 6.00-7.00 hours on 25 June 1993, 500-600 soldiers blockaded the village of Sağgöze. About 16 helicopters flew over the village and landed on one side of the village and another 15 helicopters landed on the other side. The soldiers carried out a search of the village, which they repeated. They found nothing. The young men of the village had left the village the day before as they had received word of the raid. The soldiers took the old men, including her husband, to the space in front of the school and made them lie on their faces in the sun from 7.00 to 12.00 hours, beating and swearing at them. The women and children were held in the inner part of the village.

53. The soldiers poured petrol over the houses in the neighbourhood where the applicant lived and burned them down, not allowing any possessions to be removed. The soldiers said that they were doing these things since the villagers helped the terrorists by sheltering them in their homes and giving them food. They threatened to burn them alive and kill them if they saw the villagers again. Before the soldiers left, they shouted to the villagers to leave. After they left, they surrounded the mountains around the village and kept it under surveillance for three days. The villagers whose houses were burnt down, including the applicant, walked ten hours to the Diyarbakır road and reached Diyarbakır by hitching rides in passing vehicles. The applicant now lives with her husband and children with relatives in Diyarbakır. Before they had worked in their fields and orchards and now they were unable to secure an income.

Sulhiye Turhallı

i. Statement dated 16 July 1993 taken by the Human Rights Association, Diyarbakır

54. On 25 June 1993, helicopters of the Turkish security forces began arriving in the mountains around the village. At about 6.00 hours, the security forces, consisting of about 400-500 men, mostly special team members, carried out a raid on the village. 16 helicopters landed in front of the village and 15 behind. The soldiers began searching the

village neighbourhood by neighbourhood, and repeated the process twice. The soldiers took the old men (the young men were not in the village) to the area near the school and made them lie face down in the sun from 7.00 to 12.00 hours.

55. The women and children were ejected from their houses by the soldiers, who set the houses on fire with "lav" weapons. The children fainted from fear. The soldiers beat and swore at the women and children and threatened to throw them on the fires. The soldiers began to leave at about 16.00 hours. The applicant and the other villagers whose houses had been burned could not leave the village immediately as the village vehicle (bus) had been destroyed. They sheltered for a while in houses which had not been burned and then the applicant, with a few of her women neighbours walked for ten hours to the Diyarbakır road and from there, were given rides in passing vehicles. All the applicant's possessions were burned and she now lives with her 7 children in very bad conditions in Diyarbakır.

ii. Statement dated 2 November 1994 taken by the Human Rights Association, Diyarbakır

56. This applicant gave a further statement, with Mahile Turhallı and Sariye Uvat, in response to statements from other villagers submitted by the Government.

57. The applicants were not related to Selahattin Can, Omer Yaraşir, Mehmet Yolagalen or Ekrem Yarar. Can, Yaraşir and Yarar lived in a hamlet called Mordağlık at least 7 km away from them, at a distance of two hours walk. Yolagalen lived in Xizginosk hamlet at least 10 km away. These men were not present in the village on the day of the raid.

58. These other villagers blamed the applicants for the operations against the village, since the applicants had the same names as people in the PKK. Earlier, when the villagers were choosing the muhtar, there was always a conflict between the applicants and these others. The houses of these others were not damaged and they have promised to help the Government in return for benefits. The applicants were forced to leave the village after their houses were burned.

Sariye Uvat

Statement dated 5 August 1993 taken by the Human Rights Association, Diyarbakır

59. At about 6.00 hours on 25 June 1993, approximately 400 soldiers from the Lice gendarme headquarters organised a raid on the Piroz hamlet of Sağgöze village which has 19 households. The villagers in the hamlet had heard about a raid on Pecar (Güldiken) village one day before and they left in the middle of the night before the soldiers arrived. The applicant and the others walked six hours to the Sarimcayi road and got rides from passing vehicles into Diyarbakır. When the soldiers arrived in the hamlet, they set fire to all the houses and remained in the area for two days before leaving. The applicant heard about this from villagers from Sağgöze, whose houses had also been burned down on the same day.

60. The applicant was nine months pregnant at the time of the raid. Because of the long walk in difficult conditions, she gave birth a few days prematurely. The twin boys died when they were 10 days old. She should have been admitted to hospital but did not have the money. The applicant and her family (husband and five children) lived briefly with a relative in Diyarbakır and then moved to live in a three-bedroomed house in the shanty town area with the family of another villager.

c) Statements by other persons

Aysel Gündoğan

Statement undated, faxed on 3 November 1994, taken by the Human Rights Association, Diyarbakır

61. Aysel Gündoğan lived in Sağgöze village. On 25 June 1993, at about 6.00-7.00 hours, the security forces carried out a raid on the village and burned down ten houses, which were the homes of Abdullah Satilmiş, Abdullah Menteş, Sadık Sağ, Ahmet Sağ, Hasan Turhallı, Selahattin Turhallı, Azize Menteş , Mahile Turhallı, Sulhiye Turhallı and Sariye Turhallı. The men had run away when it was known that the soldiers were coming. The soldiers beat the women when they tried to put the fires out. Azize, Mahile, Sulhiye and Sariye were in the village when this happened and watched helplessly with the others. There was a conflict between these women and Selahattin Can, Omer Yaraşir, Mehmet Yolagalen and Ekrem Yarar, which concerned the elections for the muhtar. These four men lived in another hamlet, at least two hours away. Because of the high mountains, it was not possible to see from their hamlet to the village. She lived herself three minutes away from the houses which were burned in the raid. There was no fighting in the village on the day of the raid. It was after their houses were burned that the people (applicants) moved away.

Selahattin Can

i. Statement dated 21 April 1994 taken by Ata Köycü, Genç public prosecutor

62. On 26 June 1993, Can was living in Sağgöze village. There was no incident where the men where tied up or the houses bombed by 30 helicopters. There had been from time to time clashes between the PKK and the security forces. The terrorists had settled in houses in the mountainous parts of the village which had been deserted by people leaving under the threat of terrorists. The security forces carried out an operation against these terrorists, who then fled from the village, burning the houses. He had been forced to leave the village because of threats from the terrorists.

ii. Statement dated 27 May 1994 taken by Kadir Karaca, Genç public prosecutor

63. In June 1993, Can was living in the Tanriverdi hamlet of Sağgöze village. On 25-26 June, he went to the village. The security forces carried out an operation but stayed outside the village: there was no incident in which the elders were forced to lie on the ground or the houses were fired at. He knew the four applicants but they had left the village 5-6 years before and had not returned. They are close relatives of terrorists in the mountains and make these allegations because of

that. He left the village because of the terrorists and came to live in Genç. From time to time the terrorists came and sheltered in the empty houses in the village which had been deserted by villagers because of the terrorists. There were frequent clashes between the security forces and the PKK.

Omer Yaraşir

i. Statement dated 21 April 1994 taken by Ata Köycü, Genç public prosecutor

64. Yaraşir left Sağgöze village in November 1993 as a result of terrorism and came to live in Genç. The mountainous terrain around the village suited the terrorists and there were clashes between the PKK and security forces at various times. This was why they were forced to leave. He was in the village on 26 June 1993 and on that day the security forces did not tie up the village men or bomb the village with 30 helicopters.

ii. Statement dated 27 May 1994 taken by Kadir Karaca, Genç public prosecutor

65. Yaraşir was in the village in June 1993. It was true that the security forces carried out an operation in those months but it was not true that they emptied the houses and tortured the people by keeping them in the sun. Terrorists lived in a large number of camps in the mountains around. They came often to the village and because of their threats all the people left and no-one remained. Terrorists came and stayed in some of the deserted houses. When the security forces came, the terrorists burned the houses and fled. He knew the four applicants who were from the village but had settled in Diyarbakır 6-7 years previously and had not come back to the village on the date mentioned. They are close relatives of people in the PKK organisation.

Mehmet Yolagalen

Statement dated 21 April 1994 taken by Ata Köycü, Genç public prosecutor

66. Yolagalen is a member of the Sağgoz village council of elders. On 26 June 1993, he was in the village and no incident as alleged occurred. The men of the village were not tied up nor was the village held under fire from 30 helicopters. There were terrorist camps around the village and there were clashes between the PKK and security forces from time to time.

Ekrem Yarar

i. Statement, undated, taken by Ata Köycü, Genç public prosecutor

67. Yarar left Sağgöze village about two years before and moved to Genç. He went to the village from time to time. He had been and still was the mayor. Because the terrain round the village was mountainous, there were PKK camps nearby. There were clashes from time to time between the PKK and the security forces and the camps were bombed. The villagers started to leave the village as they had no guarantee of safety from the terrorists. For the last year, there has been no-one

in the village, everyone leaving because of the terrorist camps. The security forces did not come to the village, force the men to lie on the ground and burn the houses. He was not in the village at that time. There were only a few people living there then. He went there from time to time and he would have been told if such an incident had occurred.

ii. Statement dated 27 May 1995 taken by Kadir Karaca, Genç public prosecutor

68. Yarar, the mayor of Sağgöze village, lived in Genç because of the terrorists. He knew the applicants who were from the village. They had left the village 6-7 years ago to live in Diyarbakır. They had no relatives left in the village and they never came back to the village afterwards. Azize Menteş's brother-in-law was a terrorist in the mountains and Mahile and Sulhiye Turhallı are close relatives of the PKK Bingöl regional leader Yusuf Turhallı, codenamed "Dr. Ali". Sariye Uvat is also a close relative of them. There were terrorist camps near the village and clashes broke out often, the security forces organising operations against the terrorists. The terrorists constantly threatened the villagers and the villagers all left the village because they were not safe. The claimed incident where security forces made citizens lie in the sun and destroyed the houses did not occur. The allegations have been made by the applicants because they are close relatives of the terrorists in the mountains. He has heard that the terrorists burned the houses when the security forces launched operations against them.

Mizgin Ovat

Statement dated 24 July 1993 taken by the Human Rights Association in the context of Application No. 23180/94

69. Early on the morning of 24 June 1993, 500-600 gendarmes organised a raid on the village of Pecar (Güldiken) in retaliation for the armed attack on the Üçdamlar gendarme station by the PKK the day before. The evening before the security forces had burned the minibus of Naif Akgül which ran to and from the Lice district. The young people of the village had already left after this incident. The soldiers surrounded the village and began burning down the houses. The house of Mizgin Ovat was burned down on 25 June 1993.

Emine Yilmaz

Statement dated 3 August 1993 taken by the Human Rights Association in the context of Application No. 23179/94

70. On the evening of 23 June 1993, at about 17.00 hours, Emine Yilmaz and her husband were among the passengers on the minibus run by Naif Akgül between Diyarbakır and the village of Pecar, when it was stopped by gendarmes from Üçdamlar gendarme station about 2 km from Pecar and taken to the station, where there were 2 helicopters, 10-15 armoured cars and 15 military vehicles. The driver was forced by the gendarmes to set his bus on fire with petrol and then he and a number of the other passengers, including some from Sağgöze village, were taken into custody. The applicant and her husband walked to Pecar where they arrived in the evening. The villagers guessed that the gendarmes would be carrying out an operation in the area and many of the young people left.

71. At about 6.00-7.00 hours on 24 June 1993, about 500-600 gendarmes from Lice district and Diyarbakır province gendarme stations arrived at the village of Pecar. The house of the mayor was burned down, as well as houses in the neighbouring hamlets and that of Emine Yilmaz.

2) Oral evidence

72. The evidence of 11 witnesses heard by the Commission's delegates may be summarised as follows:

Azize Menteş

73. Azize Menteş stated that she was 28 years old and that she used to live in Sağgöze village. The village is situated at the foot of a mountain and the surrounding terrain is mountainous and covered with woodlands. The village was scattered with seven different neighbourhoods. She lived in a lower neighbourhood, which was about five minutes walk from the upper neighbourhood where the school was situated. There were about 60 houses in these two neighbourhoods. The security forces had visited the village six or seven times. She remembered the soldiers assembling the entire population of the village outside the schoolhouse on three occasions and on these other occasions they carried out a search and went away again. Before the incident occurred on 25 June 1993, she had been staying in Diyarbakır for ten days, returning to the village about twenty days beforehand.

74. Soldiers arrived near the village in helicopters at about 19.00 hours on 24 June 1993. There were many soldiers (700, 800, a million or more). They surrounded the village. On the morning of 25 June 1993, the soldiers began searching the houses, looking for weapons. While many of the young men were absent, working elsewhere, the older men were there. Her own husband was in Diyarbakır.

75. There were four soldiers in front of her house while it was being searched. About half an hour after the search, at about 09.00 hours, four soldiers came from the school and said that the houses should be burned down. Ten houses in the lower neighbourhood were burned. When the houses were burning, the children were crying and they begged them not to burn the houses. They were told, "if you speak any further we will throw you on the fire". They watched the houses burn until ashes. While initially, she stated that her own house caught fire from the other burning houses, she later described the soldiers putting dust in the house, using a small weapon with flames coming out, which caused the dust to ignite. Soldiers said that they burned the houses because they helped the terrorists and that if their houses were burned they could not stay and help them any more. She said there was no clash when the houses were burned. She was not allowed by the soldiers to take any of her things out of her house before it burned down.

76. At about midday, 13.00 hours, another helicopter arrived and an order was given to stop the burning, which saved the other houses from being burned. The soldiers ate a meal prepared by the villagers and then left at about 16.00 hours. After the burning took place, she stayed five days in the village in a neighbour's house and then went to Diyarbakır, where she lived with her husband, children and members of her husband's family. In Diyarbakır, she went to the Human Rights Association and spoke to them about what had happened.

77. No-one lived in the village any more. All the other houses had been burned after they had been bombed by helicopters. This is what she heard from the villagers who left at that time. She did not remember the date, only that the villagers arrived in Diyarbakır when there was snow on the ground. She asserted that she had lived in Sağgöze village for 25 years and that it was a lie that she had left six to seven years before the incident. The villagers who said these things came from hamlets three hours away. While the PKK had occasionally come in twos or threes asking for food, they did not burn the village: they knew it was the soldiers who had done this. The clashes which occurred did so after June 1993 and it was then that the other houses were burned down.

78. She confirmed, inter alia, that her father-in-law was in prison in Muş, accused of helping terrorists and that her husband's sister Selamet was also in prison accused of involvement with the PKK.

Mahile Turhallı

79. Mahile Turhallı said that she was fifty years of age. The date of birth on her identity card is 3 May 1948. Azize Menteş was her neighbour and Sulhiye Turhallı is married to her husband's brother. Prior to June 1993, she had lived in the village of Sağgöze all her life.

80. On the day of the incident, 25 June 1993, she had been in her house with her children. Her husband was in Diyarbakır hospital with an eye-problem. The evening before, helicopters arrived with many soldiers who surrounded the village. They had a meal, some tea, and then went back to the place where they stayed all together overnight. She had provided food for some of them. The soldiers returned the next morning around 7.00-8.00 hours. While the children were still in bed, her house was surrounded by soldiers. They told her to take the children out of the house because they were going to burn it. She asked them if she could take out the children's clothes and shoes, but the soldiers said, "If you go back in we will burn you too." She and the children, who were naked, waited outside. She pleaded with them not to burn the house but they said that she was giving food to the terrorists. She said that she would only give food to the terrorists out of fear and that she also gave food to the soldiers. The soldiers scattered something in the house, then set fire to it with a match. The soldiers did not leave until the roof of the house had collapsed.

81. Thirteen houses in the same neighbourhood were destroyed by fire on that day. These included her house and those of Azize Menteş and Sulhiye Turhallı which were next to hers. After burning this group of houses the soldiers said they were going to burn the whole village down. However an order was received to stop the burning and the rest of the houses were left intact. She and her children stayed the night in the village and the next morning, they walked ten hours to the road where a driver took them to Diyarbakır.

82. She remembered going to the Human Rights Association and making a complaint. She had not seen any incident in which the old men of the village were gathered together or ill-treated nor had she made any statement to that effect. Her husband had not been there, nor had the husbands of Azize Menteş and Sulhiye Turhallı, who were out in the fields harvesting the wheat. She did not know if other men had been

in the village. There had been no men in her neighbourhood. She had not said in her statement to the Human Rights Association that the young men had left the village the night before for fear of a raid by the soldiers.

83. Previously, the soldiers had not come very often to the village and when they had done so it had been in small numbers. They had made searches and left. There had been no clashes while she had been there. On a later occasion, the other houses in the village had been burned. She said that she did not know Omer Yaraşir or Selahattin Can. Nor did she have any knowledge of persons of the name Turhallı who were alleged to have been arrested, or to have fled the country or been members of the PKK.

84. Her family has a difficult time in Diyarbakır with her husband being 70 years old and in poor health with his eyes. Her children are still young. She is knitting sweaters and labouring. One of her sons is 7 years old and he is selling water and polishing shoes. Her house in the village had had three rooms with plenty of furniture, beds and sofas. When the house burned down, she had lost a little money but mostly furniture and animals. They had had walnuts in the house; the goats were in the mountains but three cattle in the barn were burned along with the house.

Sulhiye Turhallı

85. Sulhiye Turhallı said that she was 55 years old. Before June 1993, she had lived for 27 years in the lower neighbourhood of Sağgöze village where Azize Menteş and Mahile Turhallı were her neighbours. There were 13 houses in the lower neighbourhood: it took 20-30 minutes to reach the upper neighbourhood from there.

86. The soldiers arrived in helicopters the day before 25 June 1995. There were many soldiers (over a thousand). At 8.00 hours on 25 June 1993 the soldiers entered the village. They came to her house and she served some of them tea. The soldiers told her to leave the house which was to be burned. They stopped her and her family removing furniture, gathered furniture together in the house, scattered stuff over it and set fire to it with a match. She was kicked and pulled out of the house by her arm. Powder was also scattered over the garden and set alight. The house collapsed in the flames. She, the other women and children cried as the houses burned: the soldiers threatened to kill them and stuck guns in their mouths. The lower neighbourhood was the only part of the village burned: all thirteen houses were burned, the soldiers staying until the roofs had collapsed. She heard from a woman who came down from the upper neighbourhood that a colonel from Genç district had arrived in the upper neighbourhood: he said that the soldiers had not been ordered to burn the houses and directed them to stop. They had been in the process of spreading chemical powder in the upper neighbourhood when he arrived. She heard also that in the upper neighbourhood the old people were hit in front of the school. A bridge was also burned down.

87. She said that there were some men in the upper neighbourhood but none in her neighbourhood; some of them had gone to work and others to the fields. Her own husband had left early that morning to go to Diyarbakır. The soldiers left the village before evening. She and her children hid in the rocks nearby overnight and left next morning,

walking ten hours to the main road, which took two more nights. They came to live in Diyarbakır. All her possessions were destroyed (house furniture, trees, firewood), save a little money. She had done well living in the village, making bread and with her own garden and vegetables. Now it was hard for them to make ends meet washing clothes and doing manual work.

88. She heard later that the houses in the upper neighbourhood of the village had been burned down in autumn 1993. She said that she did not know the villagers who had made different statements about what had happened in the village. She knew the name of Ekrem Yarar, but did not know him and said that he wanted to be muhtar in the village. He lived in a hamlet 5 hours away from her neighbourhood.

Aysel Gündoğan

89. Aysel Gündoğan said that she was born on 1 July 1970 and presently lived in Diyarbakır. In the summer of 1993, she and the applicants lived in the village of Sağgöze. Her house was in the upper neighbourhood about four or five minutes walk from the applicants, with the exception of Sariye Uvat whose house was in the Piroz (Piranz) hamlet about two and a half to three hours away. Her own house was a few minutes away from the school and mosque. Azize Menteş , who was her sister-in-law, lived in the neighbourhood with her father-in-law and members of his family but used to go back and forth from Diyarbakır. Mahile and Sulhiye Turhallı stayed in the village all the time.

90. On the day of the incident, she had been at home. On the evening before, soldiers had arrived by helicopters in the mountains near the village. Around 7.00-8.00 hours next morning, they entered the village and searched the houses, including her own. The soldiers who searched her house asked her what she was doing, how she earned her living. When the soldiers had first arrived in the village, they had burned down a bridge and a mill. Then they had gone to the lower neighbourhood where they burned houses. She had first realised that the houses of the applicants were burning when she saw smoke coming out of them. She asked people what was going on and they replied that the houses were being burnt. She could see and hear children crying. She had heard from the soldiers that around noon (in fact any time between 11.00 and 13.00 hours) a commander had arrived by helicopter and ordered the soldiers over the wireless to stop the burning. There had been many soldiers, more than a thousand in her opinion, although she could not count. The soldiers left around four or five o' clock in the afternoon by helicopter. They had not gathered the people in front of the school: that was what had happened on a previous visit by the soldiers, when she was not there. She had not been beaten by the soldiers, only prevented from going down to the lower neighbourhood to help.

91. After the soldiers had left, she went down to the lower neighbourhood and saw the houses smouldering there. She saw Azize Menteş, Mahile Turhallı and Sulhiye Turhallı there and she spoke to the latter two. She thought all three left the village that night. The houses of Mahmut Sadık, Abdullah Satilmiş, Abdullah Menteş, Refik Satilmiş, Sadık Sağ, Hilmi Sağ, Hasan Turhallı and Faik Satilmiş had also been burned.

92. Her husband had not been in the village, having gone to work elsewhere. The young people had left the village immediately, fearing the soldiers, and only the elderly men and the women were at home. She had left in the autumn with her husband. She was told that the soldiers returned to the village one or two months after the June incident. They made a search but caused no damage. The rest of the villagers left the village in October 1993. Some of the villagers had gone to live in Genç and others, most of her relations and herself, had gone to live in Diyarbakır. No-one had been back to the village since and she did not know if her house was destroyed or not.

93. She said that she did not know Selahattin Can, Omer Yaraşir or Mehmet Yolagalen, though she knew that Can had an uncle who lived in her neighbourhood. However she did recognise the name of Ekrem Yarar because he was the mayor of Sağgöze, who used to come and go between the different parts of the village. She said that there had not been good relations between the Sağgöze village and the mayor because the villagers had wanted another candidate for mayor. She said that there was only one woman in the village called Sulhiye Turhallı, who was elderly (that is to say, around forty to fifty years old).

94. She remembered going to the Human Rights Association in Diyarbakır in the summer of 1994. She had made her statement to the Association. They had read it back to her and she signed it. She confirmed her signature on the document.

Selahattin Can

95. Selahattin Can said that he was born in 1954 and now living in Genç. He previously lived in Mordağlık which was a hamlet of Sağgöze village. This was an hour from the other houses in the village, where he had some relatives. He used to visit there about once or twice a week (four-five times per month).

96. He said that on 25 June 1993 he was in Sağgöze visiting an uncle. However, in his own words, he also said that it was in the tenth month that he was at his uncle's. His uncle's neighbourhood was ten minutes away from the lower part of the village where Azize Menteş, Mahile and Sulhiye Turhallı lived. It was Azize Menteş' father-in-law Bahri Menteş, not Azize herself, who had a house in the lower neighbourhood. At about 7.00-8.00 hours, he looked out and saw an operation was taking place. They surrounded the village and told the villagers to go to the area near the school. A helicopter arrived, with a colonel. There were 10-15 soldiers with him. This was in June 1993; he did not know what day but there was no burning at that time. He said that the colonel chatted to them and said it was a pity that they were leaving the village and told them not to. One or two days before this visit, the terrorists had apparently carried out a raid on the gendarme station at Üçdamlar village, near Lice. This was the reason for the operation in the village. The colonel said to the villagers that terrorists had been there and asked where they had gone. The villagers replied that there had been no terrorists in the village. The soldiers left that day. They had not gone into the lower neighbourhood. There were no searches or assaults. He stayed two-three more nights with his uncle before returning to his own hamlet.

97. In October 1993 all the villagers left, half to Diyarbakır and half to Bingöl. He left then and no-one remained. At another point, the

witness seemed to say that he left with all the others in January 1994. The village had not been burned at that stage. They left because they could not cope with the terrorists, they kept asking for food and wanted the young men and girls. He referred to terrorists coming to the village and to Piroz when there was one metre of snow on the ground (possibly January) and settling in some of the houses (eg. the lower neighbourhood houses which Menteş and the others had left), though the villagers told them to leave. When the terrorists said they would stay during the winter, the people took their families and animals and left. Then in 1994 in the summer there was a big operation in the village and a clash. The village was burned though he did not know who burned the village. He had not himself been back to the village.

98. He knew Azize Menteş and Mahile and Sulhiye Turhallı. Their houses could be seen from his uncle's house - there were no hills between, though there were trees. He said that he had heard that Azize Menteş, Mahile and Sulhiye Turhallı had left their houses in 1990. In 1993 in the summer the elderly came back to plant vegetables but no-one stayed in the winter. Only Sulhiye Turhallı and her daughter-in-law were there in June 1993. There was no burning then.

99. As regarded his statements to the public prosecutor in April and May 1994, he stated that he went in response to an appeal by the public prosecutor. When he was called a second time he said that his statement was the same and he did not recall signing a second statement. Where the statement referred to terrorists burning the houses, this occurred in the summer of 1994. He could not read or write and did not know what the public prosecutor wrote. He appeared to agree that some villagers blamed the Turhallı and Menteş families because they had similar names to alleged terrorists, which brought the attention of the soldiers to the village, and that the soldiers came to the villages to search as a result of this. The soldiers had come to the village once or twice in two-three months saying that terrorists were there and that the villagers should let them know when the terrorists came.

Omer Yaraşir

100. Omer Yaraşir said he was born in 1933. Since October 1993, he had lived in Genç. Previously he lived in Mordağlık all his life. His hamlet of about 13 households was an hour to an hour and a half from Sağgöze village. The soldiers used to visit the village every month or so to ask about the terrorists.

101. Some time in June, towards the end of the month, a helicopter with a few soldiers had stopped in Sağgöze. He went over to the village in the afternoon out of curiosity as to why a helicopter should land there. He thought something must be going on, some sort of terrorist affair. He arrived two-three hours before sunset. On his way, he caught up with Selahattin Can who was also going to the village. The villagers told him what had happened. Soldiers came along the Lice road to the village and carried out a search. They asked if terrorists were there. The villagers had replied in the negative. A colonel had arrived in the helicopter and assembled the old people and children and asked them if they had any information about terrorists. The helicopter only stayed about half an hour and the soldiers left down the Lice road.

There was no incident on that date in the village or hamlets. He saw no damage to any of the houses. They were burned apparently at the end of October or beginning of November. He did not know whether the houses were burned down, and if so, by whom, or whether they caught fire from weapons.

102. The villagers had problems with the terrorists who came for food and to hold meetings, asking for the young people. In fact, there had been no young people left in the village after 1990. The situation was bad. The village was evacuated by the villagers in October 1993. It was after that that houses were burned. He heard that about 300 terrorists came to live in the empty houses in Sağgöze and about 200 in Piroz. He heard that there was a clash between the terrorists and the security forces in November 1993, in which eight terrorists were killed and one soldier. The houses were burned down in the clash. A few people stayed in his hamlet until April 1994, when everyone left and terrorists moved in. He heard from village guards, who had been involved in an operation in the village in April 1994, that there was no hamlet left and not a single house left standing; there had been a clash in which several terrorists and soldiers had been killed and the village set on fire. The village guards said that all the villages in the region were burned down.

103. He knew the applicants. Sariye Uvat was from Piroz. He had heard that Azize Menteş had married and gone to Diyarbakır. He said that the applicants always went to Diyarbakır in the autumn and in the summer came back to the village to tend their walnut trees and fruit. Azize Menteş did not have a house; she came to her father-in-law's house or stayed with her father (Selahattin Turhallı). On his way into the village in June 1993, he had passed through the lower neighbourhood: he had seen Sulhiye outside her house which was intact as were the others.

104. He had given two statements to the public prosecutor concerning alleged events in Sağgöze in June 1993. The muhtar had told him that a call had come from the public prosecutor requesting that several people attend to answer questions. He was told by the public prosecutor the names of the people who made the complaints. He did not tell the prosecutor that it was the terrorists who burned the houses but said that the houses burned because of a clash and it was either the soldiers or the terrorists.

Ekrem Yarar

105. Ekrem Yarar said that he was born in 1955. He used to live in Mordağlık (Tanriverdi) hamlet but had gone to live in Genç in 1987. He had been the mayor of the village since 1978. He used to go back and forth to the village once a week, 2-3 times a month. There were 9 hamlets. There were constant clashes between the PKK and the security forces, which was why in October 1993 the villagers evacuated the village. After that, there were clashes from October until the sixth or seventh month in 1994. In October 1993, there was a clash for four-five days in which up to ten houses were burned down (those of Abdullah Satilmiş, Sadık Sağ and Ahmet Sağ). Then there were clashes from April for a couple of months. By the time of the sixth-seventh month, no houses were left. Sulhiye's and Mahile's houses burned in 1994. He had been to the village once in 1994, in May, and he saw Sulhiye's house with his own eyes. Only a few were left standing then, the others

having been burned. He also referred to an operation involving 700 PKK members and in the resulting clash which lasted two days a number of PKK members (probably six) and one soldier were killed and the whole village was apparently burned. He did not know whether it was the PKK or the security forces who set fire to it, since it happened after the villagers had left. He heard news about their village from village guards who were involved in operations. He had made a petition about the destruction of the houses to the Governor of the province, the district governor's office and other military offices. He commented that the Genç zone and its villages were in ruins. He stated that he had never heard of the Turkish army inflicting acts of cruelty on the people or burning down houses for no reason.

106. He knew the four applicants, who had used to live in the village, Sariye in Piroz, Azize Menteş and Sulhiye Turhallı in Sağgöze. They were friends, with no animosity between them. Azize had left before 1990 or 1991 with her husband and he never heard of her coming back after 1991 (she was in Diyarbakır and more recently in Istanbul). She did not have a house but her father-in-law Bahri Menteş had a house where she stayed before 1991. He had seen Bahri when he visited the village after the soldiers' visit in June: Bahri had also arrived after the soldiers had left. He used to come in the summer. He had asked the villagers and they had said Azize was not there in June 1993; he had asked them again after he heard that she had made a petition. Sulhiye and Mahile Turhallı used to go to Diyarbakır in the winter and to the village in the summer. They were both in the village from June to August 1993. Sağgöze was about an hour and a half from Mordağlık.

107. He was not in the village at the time of the alleged incident but the villagers would have told him when he came a week later. He heard of no incident occurring, only that in June a group of soldiers came from Lice, one commander and fifteen soldiers, gathered people in front of the school and asked them about the PKK visiting the village: they stayed 3-4 hours in the village, without going to the lower part and then left. There was no burning or anything of the sort. He referred to being visited by Sulhiye who stayed the night at his house and made no mention of any incident. He had helped Sulhiye with her old age pension forms and they visited each other once or twice per year. Her ID card recorded her date of birth as 1928-1929. He had only heard that in or about August 1993 when the soldiers visited the village again, they went to Sulhiye's house and she offered them tea and food, for which the soldiers expressed proper thanks. When he had seen her in February 1995, he had mentioned the complaint and she had said that maybe the people who had filed the application were using her name and that she had never heard a thing about it.

108. As regarded his statements to the public prosecutors, he remembered that the public prosecutor had called him asking about an incident on that date and saying that if there were reliable people from his village who had seen the incident on that date he was to bring them. He took 2-3 people with him and they made statements that no such incident had occurred. He could not take anyone from Sağgöze since there were no families from there living in Genç: they were all in Diyarbakır, Hatay and Erzin. On both occasions, he and the other witnesses went together. On the first occasion, the public prosecutor had read out the names of the people making the complaint. He did not know the addresses of the applicants in Diyarbakır. He knew that they had relatives in the PKK.

Mehmet Yolagalen

109. Mehmet Yolagalen said that he was born in 1960, and that he had lived in Genç for the last 3 years. Before that, he had lived in Hızgümüz, Sevimli hamlet, which was one hour's walk from the Sağgöze village. It was one of the ten hamlets of Sağgöze. He could see the houses of the applicants from his hamlet and from the front of his own house. It was a flat area. On the day in question, at about 8.00-9.00 hours, he saw a helicopter flying over. He went to visit his uncle in Sağgöze in the morning arriving at about 9.00-10.00 hours (he at another point said that it was the evening when he arrived at his uncle's and then that he had visited the village on two consecutive days). The helicopter had left by the time he arrived and he saw no soldiers. His uncle said that a colonel had arrived in the helicopter with a few soldiers, told the people to assemble and talked to them, offering to take any sick people to hospital. Helicopters used to come and survey the area all the time checking the villages for terrorism problems. This was the first time that one landed. There was no burning at that time.

110. He knew the people in the upper and lower neighbourhood of Sağgöze village. His uncle lived in the upper neighbourhood. Azize Menteş had no house in Sağgöze, having left eight years before.

111. He came to live in Genç three years ago because of terrorism. About four years before, the terrorists came, gathered all the villagers and asked for the young people. The old men discussed this and in the evening the young people all fled to Genç. The old people stayed for one-two years. He left since there was no peace and had never been back. Village guards told him that his house had been destroyed and that there were no houses left standing.

112. He confirmed his statement of April to the public prosecutor. He was sent word by the muhtar to go to the public prosecutor's office and he went alone. He was asked a second time, probably by a different public prosecutor, and he repeated the same statement. There were people from Sağgöze village living in Genç, as well as in Diyarbakır. He knew the addresses of the villagers living in Genç.

Ata Köycü

113. Ata Köycü was born in 1962 and was public prosecutor at Genç from December 1992 until 7 June 1994. He was unable to recall exactly how the investigation culminating in his decision not to prosecute of 25 April 1994 had commenced. He did not have the file with him. From the material available before the Delegates, he stated that the investigation commenced on receipt of a request by the Ministry of Justice. He would have taken the initiative to interview the four women complainants if their names had been notified to him. He investigated events in the village which had been evacuated due to terrorism a year after the alleged offence. He seemed to recall that he tried to contact the four women, but they had left the village without giving any address and they contented themselves with the evidence which they had found. At another point, he stated that if he had known the names of the women they would have figured in his decision not to prosecute, but whether the names were known at the time of his investigation would appear from the file. To find witnesses, they usually write to the police and to the security forces, who

investigate previous addresses and anywhere else where the witnesses might be; his conjecture was that there were documents in the file showing that such inquiries were carried out. He did not consider it necessary to go to the village or to question the military. The four witnesses who gave statements were found at random through the police and they had said that they were from the same hamlet where the events took place. The muhtar was one of those chosen but he did not choose the others. He thought that he would have enquired from the gendarme station as to any operations carried out on 25 June 1993 and that this would be in the file.

114. He was aware that a second investigation had been carried out by the other prosecutor at Genç, Kadir Karaca. He explained that if two claims or notices are received, or subsequent information is received, a second investigation may be carried out relating to the same matters.

115. As regarded the events of 1993, he recalled that it was a year of intense terrorist activity, with clashes constantly breaking out. They received no complaint during that time of villagers' houses being burned by security forces but, where there were allegations that terrorists had set fire to houses, they carried out the necessary investigations and referred the matters to the Diyarbakır State Security Court. He was issuing scores of documents like that every day: there were daily incidents of violence at that time. He had never recommended prosecution of the security forces with respect to any alleged burning of villages. He supposed that they must have dealt with the investigation of the alleged terrorist burning of the village earlier, whenever those houses were burned.

Kadir Karaca

116. Kadir Karaca said that he was born on 15 November 1964 and that he had been one of the public prosecutors in Genç for 20 months. As regarded his decision not to prosecute of 30 May 1994, he started this investigation following the report from the Ministry of Justice, International Law and External Relations Department and he discovered that there had been a previous investigation. There was no reference to the first investigation in the Ministry's report which concerned only the incident and the complaint of the four women. When asked what he did to get in touch with the applicants, he said that the applicants had not contacted them directly and that they did not know their addresses, only the village having been mentioned. The statements of the witnesses said that the applicants had not been there for 6 to 7 years. He seemed sure that he would have issued oral or written instructions to the security forces to find the applicants. He considered that they made a complete investigation - he talked to witnesses, studied his colleague's decision, wrote to gendarmes and security officers. He did not think it necessary to visit the village and from the reasoning of the decision, it was apparent that he had thought it unnecessary to take statements from security force members, but without seeing the file, he could not be sure whether he did or not.

117. As regarding how he found the witnesses from whom he had taken statements, he had based himself on the previous investigation. He called them a second time since there were things they might have forgotten. He had no personal recollection of hearing of any incident in Sağgöze in 1993. He received 400 to 500 documents a year. He

recalled that the security situation was problematic and clashes happened in Sağgöze and elsewhere. He referred to the failure of complainants to come forward and assist with the investigation.

118. He explained that every complaint received is registered in the investigation record and is followed to a conclusion, whether a decision of lack of jurisdiction or a decision not to prosecute. No decision of insufficient grounds is final, therefore it was always possible for further steps to be taken on new matters arising and, in such circumstances, it is more correct to carry out a new investigation under a new number. He could not recall ever having instigated a prosecution against a member of the security forces in relation to allegations of destruction of houses, though he had done so in respect to other types of offences. He must have prepared almost a hundred files relating to terrorist acts.

Yaşar Tuna

119. Yaşar Tuna said that he was thirty-three years of age, having been born in 1962. He took up the post at Genç as the commander of the gendarmerie in the Bingöl province on 18 July 1993, i.e. he was not in the Genç district on 25 June 1993. His predecessor was now working in the western part of Turkey and was called Major Adil Boğakaptan. When he took up office there had been a two-week overlap, with his predecessor informing him of the work to be done and briefing him on the area. He had been told of the camp positions of the terrorists for example. He had also been informed that Sağgöze was used frequently by the terrorists, for the holding of meetings and the like. His predecessor had not mentioned anything about an incident in Sağgöze village in June 1993. When he started, there were many clashes between the terrorists and security forces. There were continuous confrontations.

120. The village of Saggöze was under his responsibility. He had never actually been there himself but has seen it from the air, from helicopters. The village is in a mountainous region and the landscape lends itself to terrorist settlement. The north, east and west of Sağgöze are surrounded by high mountains. To the south there is a valley which creates the only access. This valley runs south, with a deep riverbed like a canyon, which runs through Üçdamlar and then branches off. Sağgöze is the first village at the entrance to the valley. It has two hamlets in the south and two in the north which are about six to eight hours apart. These hamlets are attached to the village but are some way from each other. In the winter, communications were severed due to weather conditions: 6-8 metres of snow. Because of the terrain, helicopters would have to be used to transport men there.

121. The winter migration of villagers was common. Many had their own houses in Diyarbakır. In Sağgöze the villagers used to leave in the winter and go to Diyarbakır where most had connections but some also went to Genç or elsewhere, returning in the summer to tend to their crops. After the winter of 1993, because of terrorist activities, the villagers no longer felt safe and left the village completely empty. He had never heard any complaints from villagers that soldiers or police had burnt their houses. Sağgöze had not been intentionally destroyed, but had been damaged during clashes which may have involved bombing or burning. These houses are fragile, being made of a special kind of earth and clay, reinforced with stones. The roofs are made of

wood, which is covered in mud made from this special earth. He could not be sure if the Sağgöze houses had been damaged in clashes or by difficult weather conditions. He had no information that any houses in Sağgöze had been burned down. The gendarmes would have received petitions for help from the villagers if this was so.

122. He explained that it was true that some houses get damaged during confrontations between the terrorists and security forces. In this case the State pays compensation to the victims of such clashes. Elsewhere to the north-east of Sağgöze, houses have been built for the evacuated population. He mentioned two housing programmes with up to one hundred units being built and also the rehousing of villagers from Geyikdere, northeast of Sağgöze, in 55 houses built for them in Genç. A committee had been formed to evaluate the level of the destruction, the amounts to be paid to villages, which villagers were the priority cases for aid, and which villagers should benefit from the new housing. In respect of one programme for 100 houses, they had received applications from 1,500 people alleging that they had suffered damage. The gendarmerie received hundreds of applications for help after damage had been caused in PKK clashes. He confirmed that there was a housing programme for the needy, as well as financial and food contributions to the families in need. Financial assistance had been given to about 100 persons the year before. The gendarmerie had assisted in the organisation of medical programmes, for example that of the polio vaccination of children. The gendarmerie coordinated road construction, electricity and waterworks where needed. Announcements had been made to the villagers of the possibility of such help.

123. Helicopters are frequently used to patrol the area and transport troops. Depending on the size of the helicopter and the type, the height of the region to be patrolled and the temperature, different types of helicopter are used which carry from 10-25 men. He has access to all types of helicopters for this purpose. Several helicopters may be used in an operation, such operations having to be planned thoroughly in advance. After each clash, reports are made to the superior commander by the operation commander.

124. He could not estimate how many people had migrated in south-east Turkey but did not agree that one million had been displaced. The destruction of housing may have non-violent explanations such as seasonal conditions. Such houses are not strong and may collapse in poor weather. They are rebuilt in the spring by the villagers. Only the schools, medical centres and other official buildings remain intact because they are made out of concrete. No-one under his command had deliberately destroyed houses. This would be a crime so it could not happen. The gendarmerie's purpose is not to harm people but to help them. They provide all kinds of assistance eg. ambulances in maternity cases. He did not share the opinion, as alleged in various reports, that soldiers systematically destroy villages as part of a counter-terrorism strategy.

C. Relevant domestic law and practice

125. The parties have made no separate submissions with regard to domestic law and practice. The Commission has incorporated its summary of the relevant domestic law and practice in the case of Akdivar and others v. Turkey (No. 21893/93 Comm. Rep. 10.95 pending before the

Court), which includes the provisions relied on by the Government and representatives of the applicant villagers (the applicants in this case adopt the same arguments for the purposes of this application).

126. The Government submit that the following provisions are relevant.

Article 125 of the Turkish Constitution provides as follows:

(translation)

"All acts or decisions of the Administration are subject to judicial review ...

The Administration shall be liable for damage caused by its own acts and measures."

127. 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 a 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.

128. The principle of administrative liability is reflected in the additional Article 1 of Law 2935 of 25 October 1983 on the State of Emergency, which provides:

(translation)

"... actions for compensation in relation to the exercise of the powers conferred by this law are to be brought against the Administration before the administrative courts."

129. The Turkish Criminal Code makes it a criminal offence

- to deprive someone unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),
- to oblige someone through force or threats to commit or not to commit an act (Article 188),
- to issue threats (Article 191),
- to make an unlawful search of someone's home (Articles 193 and 194),
- to commit arson (Articles 369, 370, 371, 372), or aggravated arson if human life is endangered (Article 382),
- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383), or
- to damage another's property intentionally (Article 526 et seq.).

130. 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. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

131. 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. Proceedings in these circumstances may be initiated by the persons concerned (non-military) 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).

132. If the alleged author of a crime is a State official or civil servant, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the Council of State; a refusal to prosecute is subject to an automatic appeal of this kind.

133. 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.

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

135. Damage caused by terrorist violence may be compensated out of the Social Help and Solidarity Fund.

136. The applicants point to certain legal provisions which in themselves weaken the protection of the individual which might otherwise have been afforded by the above general scheme (paras. 137-142 below):

137. Articles 13 to 15 of the Constitution provide for fundamental limitations on constitutional safeguards.

138. Provisional Article 15 of the Constitution provides that there can be no allegation of unconstitutionality in respect of measures taken under laws or decrees having the force of law and enacted between 12 September 1980 and 25 October 1983. That includes Law 2935 on the State of Emergency of 25 October 1983, under which decrees have been issued which are immune from judicial challenge.

139. Extensive powers have been granted to the Regional Governor of the State of Emergency by such decrees, especially Decree 285, as amended by Decrees 424 and 425, and Decree 430.

140. Decree 285 modifies the application of Law 3713, the Anti-Terror Law (1981), in those areas which are subject to the state of emergency, with the effect that the decision to prosecute members of the security

forces is removed from the public prosecutor and conferred on local administrative councils. These councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the Regional Governor or Provincial Governors, who also head the security forces.

141. Article 8 of Decree 430 of 16 December 1990 provides as follows:

(translation)

> "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 indemnity from the State for damage suffered by them without justification."

142. According to the applicants, this Article grants impunity to the Governors. Damage caused in the context of the fight against terrorism would be "with justification" and therefore immune from suit. Moreover, Decree 430 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. So the law, on the face of it, grants extraordinarily wide powers to the Regional Governor under the state of emergency and is subject to neither parliamentary nor judicial control. However, at the relevant time there was no decree providing for the rehousing of displaced persons or the payment of compensation.

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

143. The Commission has declared admissible the applicants' complaints that on 25 June 1993 State security forces burned their homes, destroying their property and forcing them to evacuate the village and causing, in the case of Sariye Uvat who was pregnant at the time, the premature delivery of twins, who died shortly afterwards.

B. Points at issue

144. The points at issue in the present case are as follows:

Concerning Azize Menteş, Mahile Turhallı and Sulhiye Turhallı

- whether there has been a violation of Article 8 of the Convention;

- whether there has been a violation of Article 3 of the Convention;

- whether there has been a violation of Article 5 para. 1 of the Convention;

- whether there has been a violation of Article 6 para. 1 of the Convention;

- whether there has been a violation of Article 13 of the Convention;

- whether there has been a violation of Article 14 of the Convention;

- whether there has been a violation of Article 18 of the Convention.

Concerning the fourth applicant, Sariye Uvat

- whether there has been a violation of the above provisions and, in addition, a violation of Article 2 of the Convention, in respect of the premature delivery and demise of her twin boys.

C. The evaluation of the evidence

145. Before dealing with the applicants' allegations under specific Articles of the Convention, the Commission considers it appropriate first to assess the evidence and attempt to establish the facts, pursuant to Article 28 para. 1 (a) of the Convention. It would make a number of preliminary observations in this respect.

i. there has been no detailed investigation on the domestic level as regards the events which occurred in Sağgöze village and its surrounding hamlets over the period from June 1993 to summer 1994; the Commission has accordingly based its findings on the evidence given orally before its Delegates or submitted in writing in the course of the proceedings;

ii. it has been significant in this case that there have been material differences between the written and oral statements made by applicants and witnesses. Where this has occurred, the Commission has tended to give weight to the oral testimony given before its Delegates. It is a matter of grave concern that the statements taken both by the Human Rights Association, for the purpose of applications to the Commission, and by public prosecutors, in the context of domestic investigations, do not appear to record strictly the independent recollections of the applicants or witnesses concerned but often appear to recite stereotyped and preconceived assumptions to suit the purpose of the document in question;

iii. in relation to the oral evidence, the Commission has been aware of the difficulties attached to assessing evidence obtained orally through interpreters (in some cases via Kurdish and Turkish into English): it has therefore paid careful and cautious attention to the meaning and significance which should be attributed to the statements made by witnesses appearing before its Delegates; in relation to both the written and oral evidence, the Commission has been aware that the cultural context of the applicants and witnesses has rendered inevitable a certain imprecision with regard to dates and other details (in particular, numerical matters) and does not consider that this by itself reflects on the credibility of the testimony;

iv. the Government have failed to provide, despite repeated requests by the Commission's secretariat and the Commission's Delegates, documentary materials, in particular the contents of the investigation files of the two public prosecutors who carried out investigations into the alleged incident in Sağgöze village. At the taking of evidence in July 1995, the Government failed to identify and serve with the Commission's summons the gendarme commander for the area on 25 June 1993, his successor Mr. Tuna appearing instead. No explanation has been forthcoming for this. In this respect, the Commission has had regard to the principle that, in assessing the evidence in an application the conduct of the parties may be taken into account (eg. Eur. Court H.R. Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 161 in fine).

1. General background

146. The Commission notes that the village of Sağgöze was situated in a mountainous area which was subject to significant PKK terrorist activity. Due to the events in the region in 1993 and 1994, many of the villages in the district have been evacuated by the villagers and the houses destroyed. It recalls the statement of the mayor, Ekrem Yarar, that the Genç area and its villages were in ruins and the number of persons whom the gendarme commander Yaşar Tuna recalled applying for one rehousing project (1500 for 100 houses). By the summer of 1994, the village of Sağgöze and its surrounding hamlets were deserted, the villagers having left for Diyarbakır, Genç and other places, and the houses ruined.

147. Having regard to the written and oral statements of the applicants and villagers (Gündoğan, Yarar, Yaraşir, Yolagalen, Can), the Commission finds that Sağgöze village was evacuated as a whole by the villagers in or about October 1993, following pressure from the PKK in the area. Some of the villagers in the outer hamlets stayed beyond October 1993 but had all left due to PKK presence by summer 1994. Shortly after the villagers began leaving, the PKK moved into the empty houses. Clashes with security forces ensued, one in October or November 1993, another in April/May 1994. It is probable that houses in the village were burned or destroyed in the course of these clashes, possibly including bombing from helicopters (Tuna para. 121, Menteş para. 77): however whether the PKK or the security forces set fire to the houses intentionally or accidentally is not established, no witness having any direct knowledge.

148. Whether or not the applicants' houses were burned in the course of an operation by the security forces at an earlier date in June 1993 is examined below.

2. Inquiries and investigations at a domestic level

149. While in oral evidence, public prosecutor Ata Köycü supposed that there must have been an investigation at that time into the burning of houses in Sağgöze by terrorists which occurred in late 1993 or before the summer of 1994, the Commission has not been provided with any report or document relating to any such investigation. It is not prepared to assume that any such investigation took place at that time.

150. The first investigation into the events in Sağgöze was conducted by one of the two public prosecutors at Genç, Ata Köycü, in response to a letter from the Ministry of Justice, which appears to have been motivated by information received when the applicants' complaints were communicated by the Commission to the Turkish Government on 15 April 1994 (date of letter informing them of the Commission's decision of 5 April). The Commission has not been provided with the letter or with copies of the contents of the investigation file. In reconstructing the investigation, the Commission's Delegates received little assistance from the public prosecutor who was also handicapped by not having the copy of his file for reference.

151. However, his decision not to prosecute was dated 25 April 1994, which must have been a matter of less than two weeks from his receipt of the first notification of the complaints. It seems likely, based on his own recollection and from the lack of any reference in statements and the decision, that the applicants' names were not known to him at that stage. He appears to have contacted the police with a view to locating villagers, who put him in contact with the muhtar Ekrem Yarar. While he stated that the witnesses were chosen at random and not by the muhtar, Ekrem Yarar's recollection was that he had been invited to make a statement and to bring other reliable witnesses from the village. He took Yaraşir, Can and Yolagalen, two of them from his own hamlet and the third from another hamlet at some distance from the village. Yolagalen and Yaraşir also recalled that they were told to come by the muhtar.

152. The statements of the four villagers taken on 21 April 1994 are brief. They do not specify that these villagers are from different hamlets, distinct from Sağgöze and appear mainly directed at refuting specific allegations : the bombing by helicopters in June 1993 (not in fact alleged in the applicants' original application) and the tying up or beating of the old men. All refer to terrorist clashes with security forces leading to the villagers' departure from the village. Only one, Can, attributed the burning of houses to the PKK.

153. The decision not to prosecute, which concludes that the evidence indicates that no incident occurred on 25 June 1993, is based, in the Commission's view, solely on the four statements from villagers. In the absence of any other documents from the investigation file being provided as requested, the Commission finds that no other steps were taken to investigate.

154. As regards the second investigation which immediately succeeded the first, the Commission again has not been provided with the letter from the Ministry of Justice of 9 May 1994 which caused the other public prosecutor to open another investigation. This time however it appears that the names of the applicants were provided, being referred to in the statements taken and in the concluding decision not to prosecute which was issued on 30 May 1994, three weeks later. The Commission finds that the second public prosecutor at Genç, Kadir Karaca, based himself on the investigation of his colleague. He referred to the previous four statements and summoned the four villagers concerned, though it appears that Yolagalen did not sign another statement. Can also recalled informing the prosecutor that his statement was the same though a second statement, including new elements, appears to have been signed by him. In the absence of any other material from the investigation file, the Commission finds that no other steps were taken to establish the facts of what occurred, either by way of enquiring from the gendarmes as to any operation which might have taken place or by seeking to question villagers from the upper or lower neighbourhoods of Sağgöze itself. While the muhtar denied that anyone from the upper or lower neighbourhoods of Sağgöze lived in Genç, both Aysel Gündoğan and Mehmet Yolagalen knew of persons who did.

155. Further, it appears that, while the names of the applicants were known, no approach was made either to find the addresses of or to contact the applicants with a view to inviting them to provide statements as to the factual circumstances of the case. The Commission notes that the addresses of the applicants were known to the authorities in Ankara who had been in contact with the police in Diyarbakır (see report dated 8 August 1994 from Ministry of Justice referring to a letter from the police dated 1 July 1994). The Commission does not accept that the public prosecutor was unable to contact the applicants: it finds that in all probability he considered that, in light of the statements which he had taken from the villagers, it was unnecessary to do so.

156. The decision of 30 May 1994 not to prosecute concluded that the PKK burned the houses in the village, that no incident alleged took place in June 1993 and that the applicants were close relatives of members of the PKK. In oral evidence however Yaraşir denied that he had told the public prosecutor that the PKK burned the houses, since he did not know whether it was the soldiers or the PKK and Yarar also

stated that the burning happened after he left and he did not know who set fire to the village.

3. Concerning the alleged events of 25 June 1993

a. concerning the presence of Azize Menteş, Mahile Turhallı and Sulhiye Turhallı in Sağgöze village on 25 June 1993

157. The Government submit that the applicants were not in the village on 25 June 1993, the date of the alleged incident, and that they had left the village 6-7 years before. They appear to rely on the written statements of Can, Yarar and Yaraşir which have since been supplemented by the oral evidence of those three villagers and Mehmet Yolagalen.

158. The Commission recalls that the written statements of the villagers, Yaraşir, Can and Yarar, refer in general and brief terms to the "applicants" as having left the village 5-6 or 6-7 years before. The written statements are generally directed at the applicants from the lower village, without any differentiation between the factual circumstances of each individual. However in the oral evidence given before the delegates, Selahattin Can, Omer Yaraşir and Ekrem Yarar said that Sulhiye Turhallı was there in the summer of 1993, the latter two referring to seeing her in the village, and Ekrem Yarar said that Mahile Turhallı was there in the summer also. Indeed the thrust of the oral evidence regarding the absence of the applicants from the village concentrates on the applicant Azize Menteş . The villagers Can, Yaraşir, Yolagalen and Yarar all insisted orally that she did not have a house there and that it was her father-in-law, Bahri Menteş, who did. Ekrem Yarar stated orally that she had left before 1990 or 1991 and that according to what he had heard she did not return. Can stated that only Sulhiye Turhallı was there, the Menteş' and other Turhallıs being absent and having left in 1990. Yaraşir seemed orally to include Azize Menteş in his description of the applicants' custom of coming to the village in the summer, stating that Azize stayed in her father-in-law's house. Yolagalen stated briefly that she had left eight years before, without adverting to whether or not she could have returned for the summer.

159. The Commission recalls that Azize Menteş, Sulhiye and Mahile Turhallı maintained in their oral evidence before the Delegates that they were present in the village, and that this was supported by the evidence of Aysel Gündoğan who came from the upper neighbourhood. It notes that Ekrem Yarar was not in fact in Sağgöze on the day in question, visiting only a week later and that he bases his opinion that Azize Menteş was not there on the fact that he had asked villagers, who had said that she was not. Can and Yolagalen also lived elsewhere, in the hamlet of Mordağlık, an hour to an hour and a half away, though they stated that they visited the upper neighbourhood of the village on that day.

160. The Commission is satisfied that Sulhiye and Mahile Turhallı were still living in their houses in the village of Sağgöze, in its lower neighbourhood, in the summer of 1993 and that they were present on 25 June 1993. However, as appears to be a not uncommon pattern of life in this region according to the gendarme commander Yaşar Tuna, these two applicants left the village in the winter for Diyarbakır and returned in the summer to tend to their gardens and crops. As regards Azize Menteş, the Commission finds that, while she probably did not own a

house herself, she lived in the house of her father-in-law, when she returned in the summer months to the village and that, on the balance of the evidence, she was also there in the lower neighbourhood on 25 June 1993. The Commission does not find the evidence of Yarar, based on hearsay from unspecified sources, or that of the other villagers who came from other hamlets, convincing on this point.

b. the alleged operation by security forces on 25 June 1993 in Sağgöze village

161. The Government deny that the applicants' houses in Sağgöze village were burned by the security forces on 25 June 1993 as alleged in their application. The Commission has considered the written and oral evidence of the four villagers, Can, Yaraşir, Yolagalen and Yarar, which flatly contradicts the version of events given by the applicants in denying that any houses were burned by soldiers in the lower neighbourhood of Sağgöze village on 25 June 1993.

162. As regards the written statements, these are not detailed. The earlier statements taken in April are not particularly directed at the essence of the applicants' complaints, namely the burning of their houses; they refer to muddled details (bombing by helicopters, which was not alleged by the applicants) and appear to describe later events when the village as a whole was evacuated and destroyed in subsequent clashes between the PKK and the security forces. The statements taken in May are more specific, referring to the applicants by name and specifying, in the case of Can and Yarar, that houses were not burned as alleged. The Commission has had regard to the circumstances in which these statements were printed. No step was taken to question villagers who lived either in the upper or lower neighbourhood where the incident occurred. The public prosecutors relied on the muhtar Ekrem Yarar to bring witnesses: Yarar alleged that no villagers from Sağgöze itself lived in Genç, whereas according to Aysel Gündoğan, some of the villagers from Sağgöze had settled in Genç, including Mahmut Sadık, who allegedly also had had a house burned in the incident. Yolagalen also stated that he knew the addresses of persons from the village living in Genç. The muhtar chose instead to bring two villagers from his own hamlet and one from another hamlet. The Commission notes the reference by Ekrem Yarar to the instruction from the public prosecutor to bring "reliable" witnesses. It accordingly finds it unsafe to rely on the written statements insofar as they are unsupported by other evidence.

163. As regards the oral evidence given by the four villagers, the Commission recalls that three of them claim to have visited Sağgöze village on 25 June 1993 and to have seen that no operation in which houses were burned took place. They agree however that soldiers arrived on that date and spoke to the villagers in the upper village. The accounts of all four vary as to the other details. Can was the only one who said he was present at that time and he refers to the village being surrounded, which implies large numbers of soldiers at least outside the village, whereas Yarar and Yolagalen state that there were only a few soldiers (10-15 in Yarar's case). Can says that there was no search; Yaraşir says that there was. Yaraşir and Yolagalen appear to have arrived the evening after the soldiers had left and only heard from others what had occurred. Their accounts are particularly confused with regard to the time they left and arrived in the upper neighbourhood; Yaraşir also claims to have met on his way to the village Selahattin Can, who made no mention of this and who anyway

claims to have arrived there the night before. The Commission finds the accounts of Yaraşir and Yolagalen unconvincing. Both claim to have seen a helicopter fly over to Sağgöze and out of curiosity walked one hour or more to see what had happened, though Yaraşir stated that soldiers used to visit the village once a month and Yolagalen also referred to helicopters flying over frequently. Can's evidence is more consistent: he appeared to agree however that the applicants were blamed by certain villagers due to their names being the same as those of terrorists, which brought soldiers to the village. This supports to a limited extent the allegations of the applicants that there was a certain animosity between other villagers and themselves, which might have motivated their willingness to make statements contradicting the applicants.

164. The oral evidence given by Ekrem Yarar indicates that he only arrived at Sağgöze the week after the alleged incident but was clear as regards his denial that any houses had been burned by that date. However, his evidence includes a claim of close acquaintance with one of the applicants, Sulhiye Turhallı. When she was asked if she knew him, she answered in brief impersonal terms, stating that she did not know him: he paradoxically referred to helping her with an old age pension claim (eligibility for which is an age of 65) whereas she in her evidence stated that she was only 55 years old. The Commission finds it also significant that, as muhtar of the village, he did not know the addresses of the applicants particularly since he claimed to have been in contact with Sulhiye Turhallı. The tenor of his evidence was dogmatic, including blanket denials of any alleged cruelty or burning ever having been committed by Turkish soldiers.

165. The Commission has balanced the above evidence against the evidence given by the applicants and the witness Aysel Gündoğan.

166. It notes that the account given by the three applicants who gave oral evidence differed in material details from their written statements. Sulhiye and Mahile Turhallı are recorded by the Human Rights Association as alleging that the old men of the village (including in Mahile's account her own husband) were gathered and made to lie in the sun until midday, beaten and insulted. In oral evidence, Mahile Turhallı stated that her husband was not in the village and that no such incident took place and Sulhiye Turhallı referred only to hearing from someone else that old people were hit in front of the school. The written statements refer also to the young men leaving the village before the raid out of fear, whereas the applicants in oral evidence made no reference to any flight, indicating instead that the young men were working in the fields or elsewhere in the normal course of events. In oral evidence, all three applicants referred specifically to the particular event of the arrival of a helicopter with a colonel who put an end to the burning - a significant detail which is not included in any written account. This casts, in the Commission's view, serious doubt on the methods by which the Human Rights Association takes statements, and the extent to which care is taken to record accurately the recollections of each individual complainant without contamination from information gathered elsewhere.

167. The Commission has found the three applicants' oral evidence on the whole consistent and credible. It sees no significance in the differing estimates of the numbers of soldiers involved or in the inflated figures given by Azize Menteş : it seems probable that by one million she meant one thousand and it is in any event clear in the context that it was intended to convey the fact that there were many soldiers. Their account was also supported in material points by Aysel Gündoğan.

168. While the Commission finds that it is unsafe to rely on the contents of the applicants' written statements, there is no doubt that the applicants went to the Human Rights Association to make their petitions. These are dated 14, 16 and 22 July 1993, the first within three weeks of the alleged incident and the last within one month. This seems to the Commission to be a strong factor weighing in favour of the credibility of their central complaint, the burning of their houses: it would not be likely that the applicants would register a petition alleging that their houses had been burned if, in fact, the houses were still standing and could be verified as still standing, only eventually being burned, along with the other houses in the village, many months afterwards.

169. Consequently, the Commission is not persuaded by the Government's suggestion that the applicants' complaints are fabrications resulting from pressure exerted by their relatives in the PKK. It finds regrettable that the response of the domestic authorities and Government to the allegations made in this case has given the appearance of being directed more towards emphasising the PKK links of the applicants' families than to dealing with the substance of the applicants' grievances.

170. The Commission sought official verification of the nature and scale of the operation of the gendarmes which appeared in all accounts of the villagers to have taken place on 25 June 1993. In particular it wished to hear orally the gendarme commander with jurisdiction for the area in which the village was located. He was not identified or served with the Commission's summons by the Government. Yaşar Tuna who took over from this commander after the events in question stated that he was not briefed in relation to any operation in Sağgöze occurring on that date. The Commission requested copies of field reports for any operation conducted in the vicinity of the village in June 1993 until the end of October 1993. It was provided with 12 reports by Bingöl Provincial gendarme headquarters to Ankara, covering various incidents and clashes involving the PKK, none of which appeared to occur in the vicinity of Sağgöze village or in the month of June.

171. The applicants' representatives have relied on statements from applicants in other applications (No. 23180/94 Mizgin Ovat and No. 23179/94 Emine Yilmaz) which describe a raid by the PKK on a gendarmerie station at Üçdamlar, following which security forces responded in a retaliatory fashion, burning a local minibus, and carrying out an operation on the nearby village of Pecar (Güldiken) and, in their reconstruction of events, continuing the next day, to search and burn in the neighbourhoods and hamlets of Sağgöze. The Commission would note that the applications, declared admissible, are still pending determination on the merits and that the Government dispute the version of events given by the applicants. However, in the Ovat application, the Government provided a copy of a field report from

the gendarmerie. This report dated 24 June 1993 confirms that on 23 June 1993 the PKK opened fire on a party of gendarmes from Üçdamlar gendarme station, climbing İdris hill on reconnaissance and on the gendarme station itself. During these clashes, one gendarme died. It also appears that some of the PKK fled to the north-east and that the security forces responded to the clashes by a search which continued throughout the day.

172. In the course of his evidence, Yaşar Tuna described Sağgöze village as lying on the first inlet, branching off the valley running south with a river bed like a canyon towards Üçdamlar: he described it as suitable terrain for advancing. From the information and maps provided, it appears that Sağgöze lies about or within 10 kilometres of Pecar (Güldiken) village and the Üçdamlar station. Further, the villager Can stated spontaneously in his oral evidence that the reason for the operation in the village was that one or two days before there had been a raid on Üçdamlar gendarme station. The statement of Sariye Uvat also refers to the villagers of Piroz hearing of an operation at Pecar village on 24 June 1993.

173. In the absence of any written official record or other official source as to any operation in Sağgöze village in June 1993, the Commission finds that there is sufficient evidence before it to indicate that it was events in Ücdamlar which probably caused the visit of gendarmes to the village of Sağgöze on 25 June 1993. It is unnecessary and inappropriate to make any findings as to the alleged occurrences involving a village bus or the village of Pecar.

174. As regards the events in Sağgöze itself, the Commission accepts in its principal elements the evidence of the three applicants given orally before the Delegates. It finds that their oral evidence was more consistent, more credible and more convincing than the evidence of the four villagers, Can, Yaraşir, Yolagalen and Yarar, the circumstances in which their statements came to be given in particular undermining, in the Commission's view, their reliability. The Commission finds as follows:

175. On the evening of 24 June 1993, a large force of gendarmes arrived in the vicinity of Sağgöze village. On 25 June 1993, the gendarmes entered both upper and lower neighbourhoods and carried out searches. At some point, the villagers in the upper neighbourhood (with the exception of the younger men who were out working) were gathered before the school, probably to be questioned concerning the PKK in the area. In the lower neighbourhood, the women, including the applicants, were required by the soldiers to leave their houses and their houses were set on fire, with all their belongings and property inside, including the clothing and footwear of children. The burning was restricted to the lower neighbourhood. Around midday, a helicopter arrived in the village in the upper neighbourhood, probably bringing a senior officer, a colonel, and his arrival was associated by the applicants and some of the other villagers with an order to cease the burning. The gendarmes left that day. Shortly afterwards, the three applicants, with their children or other members of their family, had to walk for up to ten hours to the Lice-Diyarbakır road from where they were given rides in vehicles into Diyarbakır.

c. Concerning the alleged events in Piroz hamlet

176. The Commission notes that the only source of information relating to the alleged operation by security forces in which the house of the fourth applicant, Sariye Uvat, was burned along with others in the hamlet of Piroz, is the statement of 5 August 1993 taken by the Human Rights Association in Diyarbakır.

177. The Commission has had regard above to the inconsistencies between the oral testimony given by the three other applicants and the statements taken by the Human Rights Association. It finds that the reliability of this statement is in doubt, in light of the Commission's concerns with the way in which the other statements were taken.

178. No other independent evidence has been submitted to the Commission concerning alleged events in Piroz. The applicant herself was unable to come to give evidence before the Commission's delegates in Ankara, a statement of ill-health being provided which she had thumbprinted. The Commission notes that she herself in her statement is recorded as having left the village before any soldiers arrived. The basis on which it is stated that soldiers burned all the houses is not apparent.

179. The applicants' representatives have submitted that, if the account of the three other applicants regarding events in another part of the Sağgöze village is accepted as being true, then on the balance of probabilities, Sariye Uvat's account should also be accepted.

180. The Commission recalls that it has found the oral testimony of the other three applicants to be consistent and credible. It has also considered significant the timing of the applicants' complaints, less than a month after the alleged occurrence. While Sariye Uvat also complained within two months in relation to the alleged operation in her hamlet, the Commission does not find this sufficient to support any finding of fact as to what may or may not have occurred. It must therefore conclude that no facts have been established in relation to this applicant's complaints.

181. On the basis of these findings the Commission will now proceed to examine the applicants' complaints under the various Articles of the Convention.

D. Concerning the applicants Azize Menteş, Mahile Turhallı and Sulhiye Turhallı

1. As regards Article 8 of the Convention

182. Article 8 of the Convention reads as follows:

"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."

183. The applicants allege that the destruction of their homes by the security forces and their arbitrary expulsion from their village constitute two separate violations of the right to respect for their family life and home, ensured by Article 8 of the Convention.

184. The Government maintain that there is no evidence to substantiate the applicants' allegations against the security forces.

185. The Commission is of the opinion that, in the light of its findings of fact above (para. 175 above), there has been a very serious interference with the applicants' rights under Article 8 of the Convention by State security forces, for which no justification has been given. While it has found that the applicant Azize Menteş did not in all probability have a house herself, she did live in the house of her father-in-law when she visited the village periodically in the summer. The Commission finds that given the close family connection and the nature of Azize Menteş ' residence (she was present for significant periods on an annual basis and had property in the house), her occupation of the house on 25 June 1993 falls within the scope of protection provided by Article 8. In light of the grave nature and effects of the interference in this case, which cut across the entire personal sphere protected by the different and frequently overlapping limbs of Article 8 para. 1 (private life, family life and home), the Commission finds it unnecessary to distinguish between them.

CONCLUSION

186. The Commission concludes, by 27 votes to 1, that there has been a violation of Article 8 of the Convention.

2. As regards Article 3 of the Convention

187. The Commission will now examine whether the interference with the applicants' home and family life was so serious that it also amounted to a violation of Article 3 of the Convention, which provides as follows:

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

188. The applicants allege that the forced and immediate expulsion of themselves and their families on 25 June 1993, inflicted in the circumstances surrounding the incident, caused them such severe physical and mental suffering as to constitute inhuman and degrading treatment contrary to Article 3 of the Convention.

189. The Government contend that the allegation is wholly groundless on the facts, as there were no security operations in the village on that day and any damage to the village was caused later by PKK terrorists.

190. The Commission recalls its findings above (para. 175). It considers 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 and their children who were left without shelter and assistance and in circumstances which caused them anguish and suffering. It notes in particular the traumatic circumstances in which the applicants were prevented from saving their personal belongings and the dire personal situation in which the applicants subsequently found themselves, being deprived of their own homes in their village and the livelihood which they had been able to derive from their gardens and fields. It accordingly finds that the applicants have been subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

CONCLUSION

191. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 3 of the Convention.

3. As regards Article 5 para. 1 of the Convention

192. Article 5 para. 1 of the Convention guarantees the right to liberty and security of person.

193. The applicants allege that they were compelled to abandon their homes and village on 25 June 1993 in flagrant breach of the right to the exercise of liberty and the enjoyment of security of person.

194. The Government have not addressed this aspect of the case save insofar as they deny that any incident occurred.

195. The Commission recalls that the primary concern of Article 5 para. 1 of the Convention is protection from any arbitrary deprivation of liberty. The notion of security of person has not been given an independent interpretation (cf. Nos. 5573/72 and 5670/72, Dec. 16.7.76, D.R. 7 p. 8; No 4626/70 et al., East African Asians v. the United Kingdom, Dec. 6.3.78, D.R. 13 p. 5).

196. In the present case, none of the applicants was arrested or detained, or otherwise deprived of her liberty. The Commission considers that their insecure personal circumstances arising from the loss of their homes does not fall within the notion of security of person as envisaged by Article 5 para. 1 of the Convention (see also Akdivar and others No. 21893/93 Comm. Rep. 26.10.95 pending before the Court).

CONCLUSION

197. The Commission concludes, unanimously, that there has been no violation of Article 5 para. 1 of the Convention.

4. As regards Articles 6 para. 1 and 13 of the Convention

198. Articles 6 para. 1 and 13 of the Convention provide as follows:

Article 6 para. 1

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ... ".

Article 13

"Everyone whose rights and freedoms as set forth in this 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."

199. The applicants allege that the arbitrary expulsion from their homes and village was a flagrant, direct interference with their civil rights within the meaning of Article 6 para. 1 of the Convention. They claim to have been denied an effective procedure to challenge or resist the deprivation of their possessions. They also claim to have had no effective domestic remedies for their various Convention claims, contrary to Article 13 of the Convention.

200. The Government contend, without specifying, that there are several effective domestic remedies at the applicants' disposal, but that they tried none of them.

201. The Commission refers to its decision on admissibility in the present case (see appendix to this Report) where, in the context of Article 26 of the Convention, it found that the application raised identical issues to those considered by the Commission in the case of Akdivar and others (loc. cit., decision on admissibility, 19.10.94). In Akdivar, the Commission examined the remedies on which the Government relied as offering effective redress but concluded:

"...in the absence of clear examples that the remedies put forward by the Government would be effective in the circumstances of the present case,... that the applicants are absolved from the obligation to pursue them."

202. While there was domestic case-law referred to by the Government indicating that there might be a channel of complaint through the administrative courts which could award compensation to the individual against the State on the basis of the latter's liability to ensure the protection of citizens from various social risks, the Commission considered that this case-law was insufficient to demonstrate that compensation claims were effective remedies in the emergency regions of South-East Turkey for the destruction of homes and villages allegedly perpetrated by security forces.

203. The Commission recalls that Article 6 para. 1 of the Convention requires effective access to court for civil claims. This requirement must be entrenched not only in law but also in practice. The individual should have a clear, practical and effective opportunity to challenge an administrative act that is a direct interference with civil rights,

as in the present case (mutatis mutandis, Eur. Court H.R., de Geouffre de la Pradelle judgment of 16 December 1992, Series A no. 253-B, p. 43, para. 34).

204. The Commission finds that there are undoubted practical difficulties and inhibitions in the way of persons like the present applicants who complain of village destruction in South-East Turkey, where broad emergency powers and immunities have been conferred on the Emergency Governors and their subordinates. It notes that there has been no example given to the Commission of compensation paid to a villager in respect of the destruction of a house by the security forces nor any example of a successful, or indeed any, prosecution brought against a member of the security forces for any such act. The Commission refers to the evidence taken in the present case. The two investigations undertaken by the public prosecutors in Genç were brief (2-3 weeks duration), based on extremely limited enquiries which omitted any attempt either to contact the applicant complainants or to seek substantive information from the alleged perpetrators of the burning (see paras. 149-156). These enquiries further omitted to seek the most relevant and direct evidence by locating other villagers from the part of the village allegedly affected. The Commission has grave doubts as to the process by which the mayor Ekrem Yarar and the other three villagers from hamlets at some distance from the village were chosen and relied on to give evidence.

205. The Commission considers that the decisions not to prosecute which issued as a result of these investigations were fundamentally flawed, both as regards the evidential basis on which they rested and the attitude revealed by the procedure which was followed. This gives, in the Commission's view, the appearance not of pursuing the goal of establishing what might have occurred but of rebutting allegations, which were assumed in advance to be baseless. The Commission recalls that the prosecutor Ata Köycü stated that he had never received any complaints that houses had been burned by the security forces, nor had he ever instituted any prosecutions against any member of the security forces in respect of any such incident. Nor did Kadir Karaca recall carrying out any prosecution of gendarmes in respect of allegations of destruction of houses. The Commission observes that both these prosecutors noted in the villagers' statements and in their concluding decisions that it was the PKK which had burned Sağgöze and its hamlets. Before the Commission's Delegates however, two of the villagers whose evidence was apparently relied on by the prosecutors were not prepared to say whether the houses in the village were burned by the terrorists or soldiers since it happened after the villagers had all left. The Commission has found that no investigation took place to verify what occurred in the village and hamlets of Sağgöze. There is, it appears, too great a readiness on the part of the authorities to place the blame for all unattributed damage on the terrorists without seriously enquiring further (see also the Commission's findings in Akdivar and others v. Turkey, loc. cit. paras. 198 and 212).

206. The Commission recalls that the applicants did not in fact make any petition to the public prosecutors but that the investigations were instigated by the Ministry of Justice in Ankara when the complaints were communicated to the Government by the Commission. The investigations which occurred however indicate that complaints that security forces have destroyed villagers' houses do not in practice receive the serious or detailed consideration necessary for any

prosecution to be initiated. Where the allegations concern the security forces, which enjoy a special position in the emergency area in the south-east, the Commission considers that it is unrealistic to expect villagers to pursue theoretical civil or administrative remedies in the absence of any positive findings of fact by the State investigatory mechanism.

207. In the light of these considerations, the Commission is of the opinion that the applicants did not have effective access to a tribunal that could have determined their civil rights within the meaning of Article 6 para. 1 of the Convention.

208. Some of the applicants' Convention claims do not necessarily involve their civil rights, and may not require a full court remedy, for example their claim concerning the alleged forcible evacuation of their village and relating to their subsequent personal difficulties. Positive State action to investigate the incidents promptly, to rehouse or financially assist these villagers, rather than passively awaiting administrative court intervention, may have been a more appropriate response to the applicants' plight. The question arises therefore under Article 13 of the Convention whether the applicants have been afforded effective domestic remedies for these claims notwithstanding that the violations have allegedly been "committed by persons acting in an official capacity". However, for the same reasons outlined above (paras. 204-206), the Commission considers that the applicants did not have other effective remedies at their disposal for their remaining Convention claims as required by Article 13 of the Convention.

CONCLUSIONS

209. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 6 para. 1 of the Convention.

210. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 13 of the Convention.

5. As regards Articles 14 and 18 of the Convention

211. Articles 14 and 18 of the Convention provide as follows:

Article 14

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

Article 18

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

212. The applicants maintain that because of their Kurdish origin the various alleged violations of their Convention rights were discriminatory, in breach of Article 14 of the Convention. They also claim that their experiences represented an authorised practice by the State in breach of Article 18 of the Convention.

213. The Government have not addressed these allegations beyond denying the factual basis of the substantive complaints.

214. The Commission has examined the applicants' allegations in the light of the evidence submitted to it, but considers them unsubstantiated.

CONCLUSIONS

215. The Commission concludes, unanimously, that there has been no violation of Article 14 of the Convention.

216. The Commission concludes, unanimously, that there has been no violation of Article 18 of the Convention.

E. Concerning the fourth applicant, Sariye Uvat

217. The fourth applicant has complained of violations under the same provisions as the other three applicants and also invoked Article 2 in relation to the death after premature delivery of twin boys, born after she left her village.

218. The Commission recalls its findings above (para. 180). In view of the lack of any further substantiation of the allegations made in the applicant's written statement to the Human Rights Association, it considers that it has insufficient factual basis on which to reach a conclusion that there has been any violation of the provisions of the Convention invoked by her.

CONCLUSION

219. The Commission concludes, unanimously, that there has been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention.

F. Recapitulation

Concerning the applicants, Azize Mentes , Mahile and Sulhiye Turhalli

220. The Commission concludes, by 27 votes to 1, that there has been a violation of Article 8 of the Convention (para. 186 above).

221. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 3 of the Convention (para. 191 above).

222. The Commission concludes, unanimously, that there has been no violation of Article 5 of the Convention (para. 197 above).

223. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 6 of the Convention (para. 209 above).

224. The Commission concludes, by 26 votes to 2, that there has been a violation of Article 13 of the Convention (para. 210 above).

225. The Commission concludes, unanimously, that there has been no violation of Article 14 of the Convention (para. 215 above).

226. The Commission concludes, unanimously, that there has been no violation of Article 18 of the Convention (para. 216 above).

Concerning the fourth applicant, Sariye Uvat

227. The Commission concludes, unanimously, that there has been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention (para. 219 above).

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(S. TRECHSEL)

(Or. français)

OPINION PARTIELLEMENT DISSIDENTE DE M. GÖZÜBÜYÜK CONCERNANT LES ARTICLES 3, 6, 8 ET 13 DE LA CONVENTION

Le 9 janvier 1995, la Commission a déclaré la présente requête recevable à l'unanimité. Quant à la question de savoir s'il y avait eu épuisement des voies de recours internes, elle a estimé, en l'occurrence et sur la base des renseignements qui étaient à sa disposition au sujet de la voie de recours relevant du contentieux administratif, que le Gouvernement n'avait pas fait état d'un seul exemple dans lequel une réparation avait été accordée à des habitants des villages frappés par des mesures comparables à celles dont auraient été frappés les requérants. En ce qui concerne la possibilité que des enquêtes pénales soient diligentées, la Commission a relevé que de telles voies de recours n'auraient eu, dans les circonstances de la cause, aucun effet utile.

Je tiens à préciser d'emblée que deux des griefs portent sur l'absence de voies de recours effectives et qu'à cet égard les requérants s'appuient sur les articles 6 et 13 de la Convention.

A la lumière de l'enquête au fond menée par la Commission dans la présente affaire, certains faits de la cause ont pu être élucidés. En particulier, il ressort des témoignages recueillis lors de cette enquête que les difficultés rencontrées par les autorités judiciaires chargées de cette enquête découlaient en grande partie de l'insuffisance des éléments de preuve qui auraient pu mettre en cause des membres des forces de sécurité.

Ces éléments nouveaux, apparus au stade du fond, m'amènent à estimer, pour des raisons similaires à celles que j'ai exposées dans mon opinion dissidente (commune avec M. Weitzel) dans l'affaire Akdivar et autres c/ Turquie (N° 21893/93, Rap. Commission 26.10.95), qu'une voie de recours efficace existait, que les requérants ont omis d'utiliser, à savoir la voie du contentieux administratif et que, par conséquent, il aurait été opportun de faire droit à la demande du Gouvernement selon l'article 29 de la Convention.

Je tiens à rappeler, en effet, que la règle de l'épuisement des voies de recours internes dispense les Etats de répondre de leurs actes devant un organe international avant d'avoir eu l'occasion d'y remédier dans leur ordre juridique interne (Cour eur. D.H. De Wilde, Ooms et Versyp, arrêt du 18 juin 1971, Série A n° 12, p. 29, par. 50) à condition toutefois que ces voies apparaissent efficaces et suffisantes, c'est-à-dire de nature à porter remède aux griefs des requérants.

En l'occurrence - et l'enquête menée au fond, l'a démontré - l'action pénale déclenchée par le Parquet n'a pu aboutir faute d'éléments probants. Compte tenu de la nature des griefs qui portent principalement sur des destructions de maisons prétendument commises par les forces de sécurité, il est tout à fait évident qu'en l'absence ne fût-ce que d'un commencement de preuve, pareille action était vouée à l'échec. Ceci n'est pas étonnant, car les règles en matière de responsabilité pénale dans tous les Etats membres du Conseil de l'Europe s'inspirent des mêmes principes.

Toutefois, comme le démontre l'abondante documentation déjà soumise par le Gouvernement lors de l'examen de l'affaire Akdivar et autres c/ Turquie (N° 21893/93, précitée) et sur laquelle il conviendrait de se pencher avec plus d'attention comme les nombreux arrêts dont j'ai pu me procurer copie, les requérants disposaient d'une voie de recours efficace, qui existe avec un degré suffisant de certitude en théorie comme en pratique. Il ressort de cette jurisprudence que des citoyens turcs, confrontés à des problèmes somme toute très voisins de ceux rencontrés par les requérants (destruction de maisons et de biens divers), ont pu dans un laps de temps relativement court obtenir une satisfaction sous forme de réparation pécuniaire.

Or, les requérants n'ont pas utilisé cette voie.

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A cet égard, il convient de souligner que la situation aurait été complètement différente si les requérants avaient déclenché un contentieux administratif. En effet, le dommage moral ou matériel causé par un acte administratif peut, dans un premier temps, être contesté par la victime par l'introduction, auprès de l'Administration, d'un recours préalable. L'Administration est alors tenue de répondre au demandeur dans un délai de 60 jours. L'absence de réponse à l'expiration de ce délai équivaut à une décision implicite de rejet. Le demandeur peut dès lors, en déposant une simple requête au tribunal administratif, déclencher un contentieux administratif.

Devant les juridictions administratives, les demandeurs, afin d'obtenir une réparation, doivent seulement prouver qu'ils ont subi un dommage ; ils n'ont pas besoin de prouver que l'Administration a commis une faute dans le fonctionnement de ses services. Le tribunal administratif, après avoir constaté l'existence du dommage subi par la victime, fixe le montant de l'indemnité à verser à cette dernière.

Il faut rappeler que le Conseil d'Etat utilise le critère de la "responsabilité objective de l'Administration". Ce critère, appliqué depuis 1965 par cette juridiction, prévoit la responsabilité de l'Administration basée sur le principe du partage par tous les membres de la nation des charges découlant des difficultés rencontrées par celle-ci. Il n'est pas nécessaire de prouver l'existence d'une faute des agents de l'Administration. Il suffit d'établir l'existence d'un dommage résultant de l'acte incriminé. Le fait que cet acte ait été accompli par l'Administration ou par un tiers n'empêche pas l'octroi d'une indemnité.

Par exemple, dans le cas d'un véhicule détruit par des tirs provenant des avions de chasse, le Conseil d'Etat, dans son arrêt "Mizgin Yilmaz c/Ministère de la Défense" du 21.03.1995 (E. No 1994/5656, K. No 1995/1262), indique que "même si l'Administration n'a commis aucune faute, la réparation de tels dommages est nécessaire en application du principe de l'égalité des citoyens dans le cadre des contraintes résultant des tâches assumées par l'Etat dans l'intérêt public et découle obligatoirement de la nature "sociale" de l'Etat ... Il ressort du constat de dommage établi par le tribunal de grande instance de Şemdinli et de l'expertise ordonnée par le tribunal administratif que le montant de l'indemnité sollicitée par le demandeur est raisonnable."

Dans une affaire concernant la mort infligée par les gendarmes à un conducteur ayant refusé de s'arrêter à un point de contrôle, le tribunal administratif de Diyarbakır, dans son jugement "Sabriye Kara c/Ministère de l'Intérieur" du 27 janvier 1994 (E. N° 1990/870 et K. N° 1994/31), a estimé que "l'Administration devait réparer le dommage causé, nonobstant l'existence d'une faute ou de négligence de sa part. Par ailleurs, il n'est pas nécessaire qu'il y ait un lien de causalité entre le dommage et les actes de l'Administration. Lorsque l'Administration ne peut éviter les conséquences néfastes des activités terroristes, elle doit les réparer, conformément à la qualité "sociale" de l'Etat, étant donné que ces dommages résultent d'un 'risque social'".

Les décisions rendues par les juridictions administratives concluant à la "responsabilité objective" de l'Administration (sans qu'il y ait une faute de sa part) sont abondantes et témoignent de l'existence d'une jurisprudence bien établie en cette matière. Nous citerions pour exemple les décisions suivantes :

- Arrêt du Conseil d'Etat du 6.6.1995 dans l'affaire Osman KAYA et Cemil KAYA c/Ministère de l'Intérieur : il s'agit de la destruction de la maison, du grenier, de l'étable ainsi que de tous les biens mobiliers des demandeurs lors des combats qui ont eu lieu entre les forces de sécurité et les terroristes. Le Conseil d'Etat a confirmé le jugement du tribunal administratif de Diyarbakır qui a condamné l'Administration à indemniser les demandeurs sur la base de la notion du "risque social". Le tribunal administratif a estimé que la responsabilité de l'Administration ne devait pas être comprise uniquement en fonction de la faute de service ou de la responsabilité objective liées à des conditions strictes mais elle doit également englober le principe dit du "risque social".

- Jugement du tribunal administratif de Diyarbakır du 10.12.1991 dans l'affaire Behiye TOPRAK c/Ministère de l'Intérieur ; arrêt du Conseil d'Etat du 13 octobre 1993 concernant la même affaire : le mari de la demanderesse a été tué par des terroristes lorsqu'il voyageait dans son minibus. Celle-ci s'est plainte de "la perte de soutien familial" et a demandé des dommages matériel et moral. Le tribunal administratif a condamné l'Etat sur la base de la notion du risque social. Il a estimé que l'Administration était tenue d'indemniser les dommages causés par les tiers qu'elle n'a pas pu prévenir alors qu'elle en avait l'obligation, même si ces dommages ne résultaient pas de sa faute. Ce jugement a été confirmé par le Conseil d'Etat.

- Jugement du tribunal administratif de Diyarbakır du 28.04.1994 dans l'affaire Münire TEMEL c/Ministère de l'Intérieur : le fils du demandeur a été enlevé et assassiné par le PKK. Le tribunal administratif de Diyarbakır a condamné l'Administration à réparer les préjudices matériel et moral du demandeur sur la base du principe de la responsabilité objective de l'Administration. Il a estimé que "chaque citoyen turc possède ... le droit de mener une vie décente ... et de s'épanouir matériellement et spirituellement...". Selon le tribunal, il serait contraire au principe de l'égalité que l'Etat, alors qu'il indemnise les dommages subis lors des services publics par ses propres organes (agents), demeure indifférent aux dommages subis par les administrés. Le tribunal administratif a rendu ce jugement à la suite de l'annulation de son jugement préalable par le Conseil d'Etat. Le jugement préalable accordait au demandeur une réparation pour préjudice moral mais pas pour préjudice matériel.

- Jugement du tribunal administratif de Diyarbakır du 08.03.1994 dans l'affaire Cüneyt ALPHAN c/Ministère de l'Intérieur : la maison du demandeur a été incendiée lors des combats qui se sont déroulés entre les terroristes et les forces de sécurité. Le requérant a demandé des dommages et intérêts. Selon le tribunal administratif de Diyarbakır, l'Administration, même en l'absence d'une faute de service de sa part, devait verser une indemnité au demandeur sur la base de la notion de "responsabilité sans faute" de l'Administration.

- Jugement du tribunal administratif de Diyarbakır du 25 janvier 1994 dans l'affaire Hüsna KARA et autres c/Ministère de l'Intérieur : le mari de la demanderesse a été tué par des personnes inconnues. La demanderesse a poursuivi l'Administration pour dommages et intérêts. Le tribunal administratif a condamné l'Administration à indemniser la demanderesse sur la base de la notion du risque social. Il a estimé que les préjudices subis par cette personne, qui n'avait participé à aucune activité terroriste, n'avaient pas été causéS par ses propres actes fautifs, mais résultaient des circonstances troublantes auxquelles la société était confrontée.

- Jugement du tribunal administratif de Diyarbakır du 21 juin 1994 dans l'affaire Guli AKKUŞ c/Ministère de l'Intérieur : le concubin de la demanderesse a été tué par les forces de sécurité lors d'une manifestation non autorisée. Le tribunal administratif a condamné l'Administration à réparer les préjudices de la demanderesse. Le Conseil d'Etat a cassé le jugement au motif qu'il n y avait pas de mariage valable entre la requérante et son concubin. Le tribunal administratif toutefois a maintenu sa conclusion et a condamné l'Administration à indemniser la demanderesse. Il a considéré qu'il existait une vie familiale entre la demanderesse et son concubin. Il a estimé en outre que l'Administration devait réparer les dommages causés par ses agents, même si ces dommages ont été infligés suite à une négligence.

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De la jurisprudence qui vient d'être rappelée, il résulte que dans la présente affaire, les juridictions administratives, si elles avaient été saisies par les requérants, auraient pu condamner l'Administration, sur la base de la responsabilité objective de celle-ci, à réparer les préjudices matériels ou moraux causés aux requérants. Pour ce faire, les juridictions administratives n'avaient point besoin d'établir que les soldats avaient détruit illégalement et fautivement les maisons en cause. Il leur suffisait de constater le dommage causé et déterminer le montant de la réparation à accorder.

Dans la présente affaire, la Commission ne s'est pas prononcé sur une violation de l'article 1 du Protocole N° 1. Cependant, tous les allégations des requérants formulées au regard des articles 3 et 8 de la Convention pouvaient être examinées par les juridictions administratives dans le cadre d'un recours en indemnisation pour préjudice moral, et le cas échéant, pour préjudice matériel. La jurisprudence établie du contentieux administratif turc ne laisse planer aucun doute en cette matière.

Je relève sur ce point que les activités des forces de l'ordre qui se poursuivaient n'empêchaient nullement les requérants de demander une réparation devant les tribunaux. Il est vrai que le PKK était très actif dans la zone ou se trouvait le village des requérants. Mais ces derniers sont partis à Diyarbakır, après les événements en cause.

La simple consultation d'un avocat aurait suffi pour faire connaître aux requérants la possibilité de saisir les tribunaux administratifs d'un recours en dommages-intérêts.

Je constate également à cet égard qu'il n'a pas été démontré devant la Commission que les juges des tribunaux administratifs ne statuent pas impartialement dans les affaires mettant en cause les forces de l'ordre. Un manque général de confiance dans les recours offerts par le système du contentieux administratif dans cette région n'a pas été démontré non plus.

Il résulte également des témoignages recueillis par la Commission dans l'affaire Akdivar et autres (N° 21893/93, précitée) que les membres de l'Association des Droits de l'Homme à Diyarbakır n'ont pas suffisamment informé les requérants de la possibilité de saisir les tribunaux administratifs ou les ont mal informés sur les autorités nationales à saisir. En tout cas, ils ont conseillé aux requérants de saisir directement la Commission. Les membres de cette association ont en fait pour but, dans le cadre d'un projet consistant à présenter plusieurs requêtes individuelles, de faire valoir devant les instances internationales que les voies de recours internes sont inefficaces dans une région où l'état d'exception était en vigueur et orientent mal les requérants qui les avaient consultés.

En conséquence, je crois avoir démontré que les requérants disposaient en droit turc d'un recours efficace devant les juridictions administratives afin de faire valoir les griefs qu'ils soulèvent maintenant devant la Commission. Même si la réparation pécuniaire qui aurait pu leur être accordée découlait du principe de la responsabilité objective de l'Etat pour des actes prétendument accomplis par les forces de l'ordre, pareille réparation implique nécessairement que les juridictions administratives constatent au préalable que des dommages ont été causés, dus aux manquements par l'Etat du devoir de ménager un juste équilibre entre les droits individuels et les droits légitimes de la collectivité. Par la même, pareil constat aurait été de nature à constituer une réparation suffisante du préjudice moral subi par les intéressés.

Pour ces raisons, je suis d'avis qu'en ce qui concerne les griefs tirés des articles 6 et 13 de la Convention il n'y a pas eu violation de ces dispositions.

En ce qui concerne les griefs tirés des articles 3 et 8 de la Convention, je suis d'avis qu'à la lumière des éléments nouveaux recueillis lors de l'enquête, et pour l'ensemble des considérations qui viennent d'être développées, la Commission ne peut connaître du fond de l'affaire, faute d'épuisement des voies de recours internes.

(Or. français)

OPINION DISSIDENTE DE M. I. CABRAL BARRETO

A mon très grand regret, je ne peux partager l'avis de la Commission en ce qui concerne le constat de violation des articles 3 et 13 de la Convention, et ceci pour les motifs suivants:

S'agissant de l'article 3 de la Convention, j'estime que les mesures prises par les forces de sécurité, à savoir la destruction par le feu des maisons des requérantes et l'ordre qui leur a été donné de quitter le village, doivent être appréciées dans le contexte de l'ensemble de la situation en vigueur dans la zone, impliquant la lutte contre les membres du PKK et les tentatives pour "retirer l'eau aux poissons".

Même si la requête présente des éléments nouveaux par rapport à l'affaire Akdivar et autres, notamment le traitement infligé aux enfants, j'éprouve des difficultés à accepter l'idée que les mesures en cause, quoique objectivement graves, ont visé l'humiliation ou l'avilissement des requérantes.

Je me contente de soutenir, à cet égard, qu'il y a violation de l'article 8 de la Convention et de l'article 1er du Protocole N° 1 à la Convention.

S'agissant de l'article 13 de la Convention, je comprends les griefs des requérantes comme visant l'absence de voies de recours pour se plaindre de la violation de leurs droits de "caractère civil", à savoir le droit au respect de leur vie familiale et de leurs maisons. Toutefois, eu égard au constat de violation de l'article 6 de la Convention, je n'estime pas nécessaire de me placer de surcroît sur le terrain de l'article 13 de la Convention.

En revanche, je regrette que la Commission, après avoir constaté la destruction des maisons des requérantes (par. 175 de son rapport), n'ait pas conclu à la violation de l'article 1er du Protocole N° 1 à la Convention, grief communiqué au Gouvernement défendeur et développé par les requérantes dans leurs observations sur le fond.

(Or. English)

PARTLY DISSENTING OPINION OF MR. N. BRATZA

For substantially the same reasons as those set out in my separate opinion in Application No. 21893/93 Akdivar and Others v. Turkey, I voted in favour of a violation of Article 13 and not of Article 6 in the present case.

In all other respects I agree with the conclusions and reasoning of the majority of the Commission.

APPENDIX

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23186/94
by 1. Azize MENTEŞ
2. Mahile TURHALLI
3. Sulhiye TURHALLI
4. Sariye UVAT
against Turkey

The European Commission of Human Rights sitting in private on 9 January 1995, the following members being present:

MM. H. DANELIUS, Acting President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY
E. KONSTANTINOV
G. RESS

Mr. M. DE SALVIA, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 December 1993 by 1. Azize MENTEŞ, 2. Mahile TURHALLI, 3. Sulhiye TURHALLI and 4. Sariye UVAT against Turkey and registered on 11 January 1994 under file No. 23186/94;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 8 September 1994 and the observations in reply submitted by the applicants on 2 November 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Turkish citizens of Kurdish origin, are four women from the village of Riz in the Genç district, the province of Bingöl. They were born in 1970, 1948, 1945 and 1961 respectively. They and their families now live in Diyarbakır city.

They are represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

The facts as submitted by the parties may be summarised as follows.

A. The particular circumstances of the case

The applicants state that the following events occurred.

On 25 June 1993, in the early morning some time after 6.00, about 500 soldiers blocked off the village and surrounding area. A large number of helicopters landed and soldiers from these began searching the village and the houses. The forces involved included the gendarmes and special forces from the Kidyat and Mardin Gendarme stations.

The soldiers searched the village but they found nothing. They rounded up all the old men and took them to an open space near the school building. They were made to lie face down in the sun from 7.00 to 12.00. According to several persons, the soldiers swore and assaulted the old people throughout these hours. Meanwhile the women and children were held together in the inner part of the village.

The soldiers systematically set fire to the houses, neighbourhood by neighbourhood, in sight of the women and children. They would not let them remove any possessions from the houses.

The second applicant, Mahile Turhallı, reports the soldiers' explanation for the destruction of the village as follows: "...they said you assist terrorists, shelter them in your homes and give them food. This is the reason why we are burning down all your homes".

The raid ended after 16.00 with the helicopters ferrying soldiers into the mountains. As the soldiers had incinerated the village bus, some of the women and the children of the village left on foot. The applicant Mahile Turhalli walked first ten hours to the Diyarbakır road and then hitch-hiked to Diyarbakır. The fourth applicant, Sariye Uvat, set out with other villagers in the middle of the night before the soldiers had descended on the village. She walked with the group six hours to the Sarimcavi road, which was chosen to avoid the military. The others stayed on in the village a few days, sheltering in some houses that had not been burned down. All of the applicants finally arrived in Diyarbakır.

All the applicants stay in Diyarbakır with relatives or in overcrowded accommodation. They are without money for basic necessities including food and rent and they have no employment. The fourth applicant Sariye Uvat lost her two prematurely born twins after they had lived for ten days because she could not afford to be admitted to hospital.

The respondent Government state that since 1983 the PKK (the Kurdish Workers' Party - an armed separatist organisation) has sought to use the applicant's village as a place of shelter and supply base. The villagers under the incursions of the terrorists were forced to leave the village. The terrorists used the houses from time to time and when the security forces took action against them, the terrorists fled setting the houses on fire.

The Government state that there were no operations by the security forces in the area on 25 June 1993 and that indeed the villagers had been absent from the village for 6-7 years by that point. They submit that the applicants are the close relatives of six named individuals who are suspected of being members of the mountains branch of the PKK.

On 25 April 1994, the public prosecutor of Genç issued his decision that there was no ground to prosecute the security forces in relation to the applicants' allegations. The decision was based on four statements from persons taken on 21 April 1994 and concluded that there was no operation on the day of the incident, though clashes had taken place in the area from time to time in respect of nearby PKK camps and that the villagers had evacuated as a result of persecution by the terrorists.

On 30 May 1994, another public prosecutor issued a decision that there was no ground to proceed in respect of the complaints, referring to the previous decision above and with further statements taken from three persons on 27 May 1994. He found that the villagers had left the village 6-7 years previously due to the threats of the terrorists, that the houses had been destroyed by terrorists fleeing from security forces and that the applicants were close relatives of PKK militants in the mountains.

COMPLAINTS

The applicants allege violations of Articles 3, 5, 6, 8, and 13 of the Convention, combined with Article 14. In addition, they allege that the respondent Government is in violation of Article 18 of the Convention.

The applicants invoke the submissions in application No. 21893/93, Akduvar v. Turkey (communicated to the respondent Government on 30 August 1993) both as regards the substance of their complaints and as to the question of exhaustion of domestic remedies.

The fourth applicant, Sariye Uvat, submits on behalf of her two premature twins, who died ten days after their birth, that they were victims of a violation of Article 2 of the Convention. Mrs Uvat was in her ninth month of pregnancy when she set out to walk to safety with the rest of her neighbours. As a result of the forced walk she gave birth prematurely to two twin boys after reaching Diyarbakır. The twin boys died through neglect and lack of medical attention. She should have been admitted to hospital but could not afford hospital care.

The applicants state that they have not complained to the relevant authorities since it was those same authorities who ordered the destruction of their homes and village and violated their rights.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 December 1993 and registered on 11 January 1994.

On 5 April 1994, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application. The questions put to the Government included a question as to whether Article 1 of Protocol No. 1 to the Convention had been violated.

The Government's observations were submitted on 8 September 1994 after the expiry of the time-limit and the applicant's observations in reply were submitted on 2 November 1994.

THE LAW

The applicants allege that on 25 June 1993 State security forces launched a raid on their village, destroying their houses and possessions and forcing them to evacuate the village. The applicants invoke Article 3 of the Convention (the prohibition on inhuman and degrading treatment), Article 5 (the right to liberty and security of person), Article 6 (the right of access to court), Article 8 (the right to respect for family life and the home), Article 13 (the right to effective national remedies for Convention breaches) and Article 18 (the prohibition on using authorised Convention restrictions for ulterior purposes). The fourth applicant, Sariye Uvat invokes Article 2 (the right to life) in respect of the death of the twins who were born prematurely after the raid.

Exhaustion of domestic remedies

The Government submit that the applicants have failed to comply with the requirement under Article 26 of the Convention to exhaust domestic remedies before lodging an application with the Commission. They contend that the applicants failed to make complaint to the competent authorities. While they do not specify which remedies the applicants should have pursued, the Commission has had regard to the Government's submissions in the case of Akduvar and others v. Turkey (No. 21983/93, Dec. 19.10.94) in which it was stated that claims for compensation could be introduced before the administrative and civil courts and that complaints concerning the alleged criminal offences could have been lodged with the competent civil and military authorities.

The applicants maintain that there is no requirement that they pursue domestic remedies. Any purported remedy is illusory, inadequate and ineffective since, inter alia, the operation in question in this case was officially organised, planned and executed by the agents of the State. None of the remedies suggested by the Government could be regarded as effective, in the applicants' view, because the scale of destruction of villages, as well as the expulsion and creation of internal refugees, is so great in South-East Turkey that this must be considered high-level Government policy - an administrative practice - in regard to which all remedies are theoretical and irrelevant.

Further, the applicants submit that, whether or not there is an administrative practice, domestic remedies are ineffective in this case

having regard, inter alia, to the situation in South-East Turkey which is such that potential applicants have a well-founded fear of the consequences; the lack of genuine investigations by public prosecutors and other competent authorities; the absence of any cases showing the payment of adequate compensation to villagers for the destruction of their homes and villages, or for their expulsion; and the lack of any prosecutions against members of the security forces for the alleged offences connected with the destruction of villages and forcible expulsions.

The Commission recalls that Article 26 of the Convention only requires the exhaustion of such remedies which relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach. It is furthermore established that the burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the rule (cf. Eur. Court H.R., De Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, p.18, para. 36, and Nos. 14116/88 and 14117/88, Sargin and Yagci v. Turkey, Dec. 11.05.89, D.R. 61 p. 250, 262).

The Commission does not deem it necessary to determine whether there exists an administrative practice on the part of Turkish authorities tolerating abuses of human rights of the kind alleged by the applicants, because it agrees with the applicants that it has not been established that they had at their disposal adequate remedies under the state of emergency to deal effectively with their complaints.

The Commission refers to its findings in Application No. 21893/93, Akduvar and others v. Turkey (Dec. 19.10.94) which concerned similar allegations by the applicants of destruction of their village and forcible expulsion. In that case, the Commission noted that it was a known fact there has been destruction of villages in South-East Turkey with many people displaced as a result. While the Government had outlined a general scheme of remedies that would normally be available for complaints against the security forces, the Commission found it significant that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the Government had not provided a single example of compensation being awarded to villagers for damage comparable to that suffered by the applicants. Nor had relevant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers.

The Commission considered that it seemed unlikely that such prosecutions could follow from acts committed pursuant to the orders of the Regional Governor under the state of emergency to effect the permanent or temporary evacuation of villages, to impose residence prohibitions or to enforce the transfer of people to other areas. It further had regard to the vulnerability of dispossessed applicants, under pressure from both the security forces and the terrorist activities of the PKK, and held that it could not be said at this stage that their fear of reprisal if they complained about acts of the security forces was wholly without foundation.

The Commission concluded that in the absence of clear examples that the remedies put forward by the Government would be effective in the circumstances of the case, the applicants were absolved from the obligation to pursue them.

In the present case, the Government have not provided any additional information which might lead the Commission to depart from the above conclusions. The Commission further notes that the competent public prosecutors have subsequently found that there was no ground for prosecution in this case. This application cannot, therefore, be rejected for non-exhaustion of domestic remedies under Articles 26 and 27 para. 3 of the Convention.

As regards the merits

The Government submit that the security forces were not in operation in the village on the date alleged by the applicants and that in fact they and other villagers had been absent from the village for 6-7 years driven out by the persecution of terrorists. They submit that the houses in the village were burned by terrorists as they fled from the security forces. It refers to the findings of two public prosecutors in this regard.

The applicants maintain their account of events. They point out weaknesses and discrepancies in the witness statements relied on in the investigations carried out after the case was communicated to the Government. In particular, they note that of the seven witnesses one was not in fact in the village on the date of the incident, two others appear to refer to an operation being carried out on that date in contradiction to the statement of others who deny that the security services were there. They allege that four of the witnesses lived in hamlets 7-10 kilometres away and that there was a history of local enmity between the applicants and the witnesses relied on by the Government.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Deputy Secretary to the Commission — Acting President of the Commission

(M. DE SALVIA) — (H. DANELIUS)

EUROPEAN COURT OF HUMAN RIGHTS

CASE OF MENTES AND OTHERS v. TURKEY

(58/1996/677/867)

JUDGMENT

STRASBOURG

28 November 1997

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SUMMARY[fn1]

Judgment delivered by a Grand Chamber

Turkey – alleged burning of houses by security forces and lack of remedies in South-East Turkey

I. THE GOVERNMENT'S PRELIMINARY OBJECTION (non-exhaustion of domestic remedies)

Preliminary objection resolved in light of principles enunciated in the Akdivar and Others v. Turkey judgment and of the security situation in South-East Turkey and ensuing obstacles to proper functioning of system of administration of justice in that region - despite extent of problem of village destruction, no example of compensation being awarded in respect of allegations that property purposely destroyed by members of security forces or of prosecutions being brought against them - general reluctance of the authorities to admit that this type of practice had occurred - unlike Akdivar and Others, present applicants had not themselves approached any domestic authority with their Convention grievances - however, the competent public prosecutors had failed to carry out any meaningful investigation after becoming aware of their allegations - insecurity and vulnerability of the applicants' position following destruction of their homes also borne in mind - in the exceptional circumstances, not shown that remedies before administrative and civil courts were adequate and sufficient in respect of applicants' complaint that their homes had been destroyed by security forces - this ruling not to be interpreted as a general statement that remedies are ineffective in this area of Turkey.

Conclusion: preliminary objection dismissed (fifteen votes to six).

II. THE MERITS OF THE APPLICANTS' COMPLAINTS

A. Establishment of the facts

The Commission had reached its findings of fact on the basis of an investigation, in the course of which documentary evidence, including written statements, was submitted and oral evidence of eleven witnesses was taken by three Delegates at hearings in Ankara - witnesses were questioned and cross-examined in detail by all sides and confronted with inconsistencies and weaknesses in their evidence - the Delegates were thus in a position to observe the witnesses' reactions and demeanour and, hence, to assess the veracity and probative value of the evidence of both sides - the establishment of the facts by the Commission had been based on the appropriate evidentiary requirement, namely proof beyond reasonable doubt - it had had regard to the inconsistencies and contradictions in the evidence, notably differences between the written and oral statements, and for reasons which appeared convincing, attached more weight to latter - also bore in mind cultural and linguistic context, as well as the Government's uncooperative conduct - the Court, having itself carefully examined the evidence gathered by Commission, satisfied that facts as established by the latter were proved beyond reasonable doubt as far as concerned the first three applicants' allegations, but not those of the fourth applicant.

B. Complaints of the first three applicants

1. Article 8 of the Convention

No reason to distinguish between the first applicant, and the second and third applicants - given her strong family connection and the nature of her residence, first applicant's occupation of house fell within scope of Article 8 - furthermore the facts established by Commission and which Court had accepted disclosed a particularly grave interference with the first three applicants' right to respect for private life, family life and home, as guaranteed by Article 8 and that the measure was devoid of justification.

Conclusion: violation (sixteen votes to five).

2. Article 3 of the Convention

In view of specific circumstances of case and finding of violation of Article 8, complaint not examined further.

Conclusion: complaint not examined further (twenty votes to one).

3. *Article 5 § 1 of the Convention*

Complaint not pursued before the Court.

Conclusion: not necessary to examine (unanimously).

4. Articles 6 § 1 and 13 of the Convention

a) Article 6 § 1 of the Convention

Since applicants did not attempt to make an application before the courts, not possible to determine whether Turkish courts would have been able to adjudicate on their claims had they initiated proceedings - in any event, applicants complained essentially of lack of a proper investigation - therefore appropriate to examine this complaint in relation to general obligation under Article 13.

Conclusion: not necessary to consider (unanimously).

b) Article 13 of the Convention

Although applicants had not approached any domestic authority before bringing their application to Strasbourg, manner in which investigations conducted, following the Commission's communication of the application to the respondent Government, could be taken into account in examination of the applicants' initial complaint that they did not dispose of an effective remedy - no thorough and effective investigation had been conducted into the applicants' allegations and this had resulted in undermining the exercise of any remedies at their disposal, including the pursuit of compensation before the courts.

Conclusion: violation (sixteen votes to five).

5. Articles 14 and 18 of the Convention

Complaints not sustained by facts as established by Commission.

Conclusion: no violation (unanimously).

6. Alleged administrative practice of violating the Convention

Evidence established by Commission insufficient to allow conclusion as to the existence of any administrative practice of the violation of Articles 8 and 13.

C. Complaints of the fourth applicant

Fourth applicant accepted before court that no facts had been established with respect to her specific complaints under Articles 2, 3, 5, 6, 8, 13, 14 and 18.

Conclusion: no violation (unanimously).

III. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary and non-pecuniary damage: not ready for decision - question reserved (twenty votes to one).

B. Costs and expenses

Costs and expenses: awarded in part (sixteen votes to five).

COURT'S CASE-LAW REFERRED TO

18.1.1978, Ireland v. the United Kingdom; 7.9.1996, Akdivar and Others v. Turkey; 18.12.1996, Aksoy v. Turkey; 25.9.1997, Aydin v. Turkey

In the case of Mentes and Others v. Turkey[fn2] ,

The European Court of Human Rights, sitting in accordance with Rule 51 of Rules of Court A[fn3] as a Grand Chamber composed of the following judges:

Mr R. Ryssdal, *President*,
Mr R. Bernhardt,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr J. De Meyer,
Mr N. Valticos,
Mr I. Foighel,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr A.B. Baka,
Mr G. Mifsud Bonnici,
Mr D. Gotchev,
Mr P. Jambrek,
Mr P. Kuris,
Mr U. Lohmus,
Mr E. Levits,
Mr V. Butkevych,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,

Having deliberated in private on 21 March, 27 June and 22 October 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 17 April 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 23186/94) against the Republic of Turkey lodged with the Commission under Article 25 by Ms Azize Mentes, Ms Mahile Turhalli and Ms Sulhiye Turhalli and Ms Sariye Uvat, who are Turkish citizens, on 20 December 1993.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (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, 6, 8, 13, 14 and 18 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3d of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30). The President granted leave, pursuant to Rule 30 § 1, to Ms F. Hampson, Reader in Law at the University of Essex, to act as one of the applicants' representatives.

3. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice- President of the Court (Rule 21 § 4 (b)). On 27 April 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr N Valticos, Mr R Pekkanen, Mr J.M. Morenilla, Mr G. Mifsud Bonnici and Mr P. Kuris (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government of Turkey ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence, the Registrar received the applicants' memorial on 13 November 1996 and the Government's memorial on 19 November 1996. On 10 January 1997, the Secretary to the Commission indicated that the Delegate would submit her observations at the hearing.

5. On 20 June 1996 the President refused the applicants' request under Rule 27 to provide for interpretation in an unofficial language at the oral hearing, having regard to the fact that two of the applicants' representatives used one of the official languages of the Court.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 January 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr A. Gündüz, Professor of International Law,University of Marmara, *Agent*,
Mr A. S. Akay, Ministry of Foreign Affairs,
Mr M. Özmen, Ministry of Foreign Affairs,
Ms M. Gülsen, Ministry of Foreign Affairs,
Ms.A. Emüler, Ministry of Foreign Affairs,
Mr A. Kaya, Ministry of Justice,
Mr A. Kurudal, Ministry of Interior,
Mr O. Sever, Ministry of Interior, *Advisers*;

(b) *for the Commission*
MrsG. Thune, *Delegate;*

(c) *for the applicants*
Mr K. Boyle, Barrister-at-Law, *Counsel*,
Ms F. Hampson, University of Essex,
Mr O. Baydemir,
Ms A. Reidy,
Mr N. Stewart, Q.C.,
Mr K. Yildiz, Kurdish Human Rights Project, *Advisers*.

The Court heard addresses by Mrs Thune, Mr Boyle, Mr Gündüz and Mr Özmen, and also their replies to questions put by some of its members.

7. Following deliberations on 19 February 1997 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 51 § 1).

8. The Grand Chamber to be constituted included *ex officio* Mr R. Ryssdal, President of the Court, Mr R. Bernhardt, Vice-President of the Court, and the other members and substitute judges (namely Mr A. Spielmann, Mr P. Jambrek, Mr C. Russo and Mr I. Foighel), of the Chamber which had relinquished jurisdiction (Rule 51 § 2 (a) and (b)). On 28 January 1997, in the presence of the Registrar, the President drew by lot the names of the seven additional judges called on to complete the Grand Chamber, namely Mr J. De Meyer, Mr A.N. Loizou, Mr A.B. Baka, Mr D. Gotchev, Mr U. Lohmus, Mr E. Levits and Mr V. Butkevych.

9. On 29 January and 11 February 1997 the Commission supplied a number of documents from its case-file, including the verbatim record of the hearing of witnesses before the Delegates in Ankara, which the Registrar had requested on the instructions of the President of the initial Chamber.

10. Having taken note of the opinions of the Government's Agent, the applicants' representatives and the Commission's Delegate, the Grand Chamber decided on 21 March 1997 that it was not necessary to hold a further hearing following the relinquishment of jurisdiction by the Chamber (Rule 38, taken together with Rule 51 § 6).

AS TO THE FACTS

I. Particular circumstances of the case

A. Introduction

11. The applicants, Ms Azize Mentes, Ms Mahile Turhalli and Ms Sulhiye Turhalli and Ms Sariye Uvat are Turkish citizens of Kurdish origin from the village of Saggöze (which is the official Turkish name) or Riz (which is the older, Kurdish or Ottoman name) in the Genç district in the province of Bingöl in South East Turkey. At present they live in Diyarbakir.

12. Since approximately 1985, serious disturbances have raged in the South-East of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has so far, according to the Government, claimed the lives of 4,036 civilians and 3,884 members of the security forces.

At the time of the Court's consideration of the case, ten of the eleven provinces of south-eastern Turkey had since 1987 been subjected to emergency rule.

13. Saggöze is situated in a mountainous area which was subject to significant PKK terrorist activity. Due to the events in the region in 1993 and 1994, many of the villages in the district have been evacuated by the villagers and the houses destroyed. By the summer of 1994, the village of Saggöze and its surrounding hamlets were deserted, the villagers having left for Diyarbakir, Genç and other places, and the houses ruined.

14. The Saggöze village was evacuated as a whole by the villagers in or about October 1993, following pressure from the PKK in the area. Some of the villagers in the outer hamlets stayed beyond October 1993 but had all left by summer 1994 due to PKK presence. Shortly after the villagers began leaving, the PKK moved into the empty houses. Clashes with security forces ensued, one in October or November 1993, another in April/May 1994. It is probable that houses in the village were burned or destroyed in the course of these clashes, including possibly through bombing from helicopters. However whether the PKK or the security forces set

fire to the houses intentionally or accidentally is not established.

15. The facts in this case are disputed.

B. Applicants' version of the facts

16. According to the applicants their houses were burned in the course of an operation by the security forces in June 1993. Their version of the events could be summarised as follows.

17. The applicants all lived in hamlets of the village of Saggöze. Azize Mentes, Mahile Turhalli and Sulhiye Turhalli lived in the lower neighbourhood in Saggöze village and Sariye Uvat lived in Piroz, a separate hamlet of the village.

18. On 23 June 1993, an attack was carried out by the PKK on Üçdamlar gendarme station. On the evening of the same day, the security forces stopped a minibus belonging to Naif Akgül, which regularly took people between Diyarbakir and the Lice area, as it approached the gendarme station. The security forces set fire to the minibus. They subsequently carried out a follow-up operation in pursuit of the PKK who had attacked the station. On 24 June 1993, security forces came to the Pecar (Güldiken) village and burned some of the houses.

19. On the evening of 24 June 1993, security forces arrived in the area surrounding Saggöze village by helicopter. On the morning of 25 June 1993, gendarmes entered the village and gathered people from the upper neighbourhood in the area in front of the school. Gendarmes in the lower area carried out a search and then proceeded to burn houses in the lower neighbourhood of Saggöze village. Villagers pleaded with the gendarmes not to burn their houses but were told to remain quiet or they would be thrown on the flames. When asked why they were burning the houses, the gendarmes told the villagers that it was a punishment for helping the PKK.

20. The house where Azize Mentes lived was burned completely, along with her furniture, firewood, barn and a shed with winter feed for the animals. Mahile Turhalli's house was burned and the gendarmes threatened to throw her into the burning house if she tried to retrieve some of her children's clothes. Sulhiye Turhalli's house was burned, after she and her children had been thrown out and she had been kicked, cursed at and a gun put to her face. In all, ten to thirteen houses in the lower neighbourhood were destroyed. The soldiers told the applicants that they were burning their houses because they helped the terrorists.

21. The intention of the gendarmes in Saggöze village appeared to have been to burn the whole village in revenge for the attack by the PKK on the gendarme station. However, the arrival of a commanding officer at midday, a colonel who ordered the burning to stop, saved the upper village.

The house of the applicant, Sariye Uvat, in the hamlet of Piroz was burned by the security forces in a separate incident.

The applicants were forced to leave Saggöze.

22. Later, in the autumn of 1993, the remaining population of the village left and in March 1994 the remainder of the village was burned down. By this date in 1994, the entire area seems to have been burned, devastated and depopulated.

23. The burning of the applicants' homes is consistent with a practice of burning houses as part of the policy by the security forces to combat the PKK, especially where the authorities view villages as giving support to the PKK.

C. Government's version of the facts

24. Since 1983 the PKK has sought to use the applicants' village as a place of shelter and supply base. The villagers were forced by virtue the incursions of the terrorists to leave the village. The terrorists used the houses from time to time and when the security forces took action against them, the terrorists fled setting the houses on fire.

25. There were no operations by the security forces in the area on 25 June 1993. In fact, the applicants had been absent from the village for 6-7 years by that point. They were the close relatives of six named individuals who are suspected of being members of the mountains branch of the PKK. They also had relatives who had been detained on charges alleging, *inter alia*, that they have aided and abetted the PKK terrorist organisation. Other members of the applicants' families were working for the PKK in rural areas. It was not unlikely that the applicants had been subject to pressure by their relatives who aid and abet and work for the PKK.

D. The Commission's findings of fact

26. The Commission conducted an investigation, with the assistance of the parties, and accepted documentary evidence, including written statements and oral evidence of eleven witnesses taken by three Delegates of the Commission in Ankara from 10 to 12 July 1995. This included two local public prosecutors and four villagers whom they had investigated in connection with the applicants' allegations (see paragraphs 27-30 below); another villager; the first three applicants; and the Commander of the gendarmerie of the Bingöl province who had taken up his duties after the alleged events.

In relation to the oral evidence, the Commission had been aware of the difficulties attached to assessing evidence obtained orally through interpreters (in some cases via Kurdish and Turkish into English). It therefore paid careful attention to the meaning and significance which should be attributed to the statements of witnesses appearing before its Delegates. In respect of both written and oral evidence, the Commission was aware that the cultural context of the applicants and the witnesses made it inevitable that

dates and other details lacked precision (in particular, numerical matters) and did not consider that this by itself impinged on the credibility of the testimony.

It assessed the evidence and its findings could be summarised as follows.

1. Investigations at domestic level

27. Two investigations into the events at Saggöze had been carried out by the two public prosecutors at Genç, the first by Ata Köycü and the second by Kadir Karaca, both of which had ended in decisions, on 25 April and 30 May 1994, respectively, not to prosecute.

28. The first investigation had been in response to a letter from the Ministry of Justice, apparently motivated by information received when the applicants' complaints had been communicated by the Commission to the Turkish Government on 15 April 1994 (date of letter). In reconstructing the investigation, the Commission's Delegates had received little assistance from the public prosecutor who had also been handicapped in not having a copy of his file for reference.

His decision not to prosecute, which concluded that no incident had occurred on 25 June 1993, must have been taken less than two weeks from his receipt of the first notification of the complaints. It seemed likely that the applicants' names were not known to him at that stage. This decision had been taken solely on the basis of brief statements from four villagers, from different hamlets, distinct from Saggöze, which appeared mainly directed at refuting specific allegations : the bombing by helicopters in June 1993 (not in fact alleged in the applicants' original application) and the tying up or beating of the old men. All had referred to terrorist clashes with security forces leading to the villagers' departure from Saggöze; only one had attributed the burning of houses to the PKK.

According to Kadir Karaca, the witnesses had been selected at random, but Ekrem Yarar, *muhtar* of Saggöze, had said that he had been invited to make a statement and to bring other "reliable witnesses" from the village.

29. Also the second investigation had been in response to another letter from the Ministry of Justice. Kadir Karaca had based himself on the investigation of his colleague. He referred to the previous four statements and summoned the four villagers concerned. His decision not to prosecute concluded that the PKK burned the houses in the village, that the alleged incident had not taken place in June 1993 and that the applicants were close relatives of members of the PKK.

30. No other steps were taken to establish the facts of what occurred, either by enquiring from the gendarmes as to whether any operation might have taken place or by seeking to question villagers from the upper or lower neighbourhoods of Saggöze itself. Further, it appeared that, while the names of the applicants were known at the time of the second investigation, no attempt had been made either to find out their addresses or to contact them with a view to inviting them to provide statements as to the factual circumstances of the case. The addresses of the applicants were in fact known to the authorities in Ankara who had been in contact with the police in Diyarbakir.

2. Concerning the alleged events of 25 June 1993

31. The Commission observed that there had been no detailed investigation at the domestic level of the events in Saggöze village and its surrounding hamlets over the period June 1993 to summer 1994. It had accordingly based its findings on the evidence given orally before its Delegates or submitted in writing in the course of the proceedings;

It further noted that the Government, despite repeated requests by the Commission's secretariat and the Commission's Delegates, had failed to provide documentary materials, in particular the contents of the investigation files of the two public prosecutors who carried out investigations into the alleged incident in Saggöze village. At the taking of evidence in July 1995, the Government had failed to identify and serve with the Commission's summons the gendarme commander for the area on 25 June 1993, his successor, Mr. Tuna, appearing instead. No explanation had been forthcoming for this. In this respect, the Commission had had regard to the principle that, in assessing the evidence in a case the conduct of the parties may be taken into account (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 161 *in fine*).

32. The Commission was not persuaded by the Government's suggestion that the applicants' complaints were fabrications resulting from pressure exerted by their relatives in the PKK. The Commission found it regrettable that the response from the domestic authorities and the Government's allegations made in this case had given the appearance of being directed more at emphasising the PKK links with the applicants' families than at dealing with the substance of the applicants' grievances.

33. In establishing the facts, the Commission had regard to the inconsistencies and contradictions in the evidence.

As to the evidence given by the four villagers to the public prosecutors, the Commission observed that its tenor had been dogmatic, including blanket denials of any alleged cruelty or burning ever having been committed by Turkish soldiers. It had also given some support to the applicants' allegation that there was a certain animosity between the other villagers and themselves, which might have encouraged them to give statements contradicting the applicants' account. Moreover, the Commission noted that the village *muhtar* had been instructed by the prosecutor to bring some "reliable witnesses". In view of the manner of selection of witnesses by the prosecutor, the Commission found it unsafe to rely on their written statements in so far as they were unsupported by other evidence.

The Commission further noted that there were material differences between the statements of the first three applicants, Ms Azize Mentes, Ms Mahile Turhalli and Ms Sulhiye Turhalli, as recorded by the Human Rights Association and their oral

statements to the Delegates. However, the Commission found that the three applicants' oral evidence, which was supported in material points by a villager – Ms Aysel Gündogan - was on the whole consistent and credible. The fact that they had gone to the Human Rights Association in Diyarbakir to complain in July 1993 was a strong factor weighing heavily in favour of the credibility of their central complaint. On the other hand, the Commission considered that it could not rely on the written statements since it had serious doubts as to the manner in which the Association took statements and the extent to which care had been taken to record accurately each individual complaint without contamination from information gathered elsewhere.

34. The Commission was satisfied that Sulhiye and Mahile Turhalli were still living in their houses in the lower neghbourhood of the village of Saggöze, in the summer of 1993 and were present on 25 June 1993. However, as appeared to be a not uncommon pattern of life in this region, these two applicants left the village in the winter for Diyarbakir and returned in the summer to tend to their gardens and crops. As regards Azize Mentes, while she probably did not own a house herself, she lived in the house of her father-in-law when she returned in the summer months to the village. The Commission found that on the balance of the evidence, she was also living in the lower neighbourhood on 25 June 1993.

As regards the events in Saggöze the Commission accepted in its principal elements the oral evidence of Azize Mentes, Mahile Turhalli and Sulhiye Turhalli. Considering that their oral evidence was more consistent, more credible and more convincing than the evidence given by the four villagers, it found as follows.

On the evening of 24 June 1993, a large force of gendarmes had arrived in the vicinity of Saggöze village. On 25 June 1993, the gendarmes had entered both upper and lower neighbourhoods and carried out searches. At some point, the villagers in the upper neighbourhood (with the exception of the younger men who were out working) had been gathered in front of the school, probably to be questioned about the PKK in the area. In the lower neighbourhood, the women, including the applicants, had been required by the soldiers to leave their houses and their houses had been set on fire, with all their belongings and property inside, including the clothing and footwear of children. The burning had been restricted to the lower neighbourhood. Around midday, a helicopter had arrived in the village in the upper neighbourhood, probably bringing a senior officer, a colonel, and his arrival had been associated by the applicants and some of the other villagers with an order to cease the burning. The gendarmes left that day. Shortly afterwards, the three applicants, with their children or other members of their family, had to walk for up to ten hours to the Lice-Diyarbakir road from where they were given rides in vehicles into Diyarbakir.

35. As to the alleged operation by security forces in which the house of the fourth applicant, Sariye Uvat, was burned along with others in the hamlet of Piroz, no facts have been established in relation to this applicant's complaints. Due to ill-health she did not appear at the hearings before the Commission Delegates, unlike the first three applicants.

II. Relevant domestic law and practice

A. Administrative liability

36. Article 125 of the Turkish Constitution provides as follows:

> "All acts or decisions of the administration are subject to judicial review ...
>
> The administration shall be liable to indemnify any damage caused by its own acts and measures."

37. The above 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 responsibility is of an absolute, objective nature, based on a concept of collective liability and referred to as 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.

38. The principle of administrative liability is reflected in the additional Article 1 of Law no. 2935 of 25 October 1983 on the State of Emergency, which provides:

> "... actions for compensation in relation to the exercise of the powers conferred by this Law are to be brought against the administration before the administrative courts."

B. Criminal responsibility

39. The Turkish Criminal Code makes it a criminal offence

- to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),

- to oblige an individual through force or threats to commit or not to commit an act (Article 188),

- to issue threats (Article 191),

- to make an unlawful search of an individual's home (Articles 193 and 194),

- to commit arson (Articles 369, 370, 371, 372), or aggravated arson if human life is endangered (Article 382),

- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383), or

- to damage another's property intentionally (Articles 526 et seq.).

40. 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. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

41. 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. Proceedings in these circumstances may be initiated by the persons concerned (non-military) before the competent authority under the Code of Criminal Procedure, or before the suspected persons' hierarchical superior (sections 93 and 95 of Law no. 353 on the Constitution and Procedure of Military Courts).

42. If the alleged author of a crime is an agent of the State, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the Council of State; a refusal to prosecute is subject to an automatic appeal of this kind.

C. Provisions on compensation

43. 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.

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

45. Damage caused by terrorist violence may be compensated out of the Aid and Social Solidarity Fund.

D. Provisions on emergency measures

46. Articles 13 to 15 of the Constitution provide for fundamental limitations on constitutional safeguards.

47. Provisional Article 15 of the Constitution provides that there can be no allegation of unconstitutionality in respect of measures taken under laws or decrees having the force of law and enacted between 12 September 1980 and 25 October 1983. That includes Law no. 2935 on the State of Emergency of 25 October 1983, under which decrees have been issued which are immune from judicial challenge.

48. Extensive powers have been granted to the Regional Governor of the State of Emergency by such decrees, especially Decree no. 285, as amended by Decrees nos. 424 and 425, and Decree no. 430.

49. Decree no. 285 modifies the application of Law no. 3713, the Anti-Terror Law (1981), in those areas which are subject to the state of emergency, with the effect that the decision to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. According to the Commission, these councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the Regional Governor or Provincial Governors who also head the security forces.

50. Article 8 of Decree no. 430 of 16 December 1990 provides as follows:

> "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 indemnity from the State for damage suffered by them without justification."

51. According to the submissions of 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.

PROCEEDINGS BEFORE THE COMMISSION

52. In their application (no. 23186/94)to the Commission introduced on 20 December 1993, the applicants, relying on Articles 3, 5, 6, 8, 13, 14, and 18 of the Convention, complained that their homes had been burnt and that they had been forcibly and summarily expelled from their village by State security forces on 25 June 1993. The fourth applicant, Sariye Uvat, invoked Article 2 in relation to the death of her twins who were born prematurely after her expulsion from her home.

The Commission declared the application admissible on 9 January 1995. In its report of 7 March 1996 (Article 31), it expressed, with respect to the first three applicants, the opinion

(a) that there had been a violation of Article 8 (by twenty seven votes to one)

(b) that there had been a violation of Article 3 (by twenty six votes to two);

(c) that there had been no violation of Article 5 (unanimously);

(d) that there had been a violation of Article 6 (by twenty six votes to two);

(e) that there had been a violation of Article 13 (by twenty six votes to two);

(f) that there had been no violation of Article 14 (unanimously);

(g) that there had been no violation of Article 18 (unanimously).

As regards the fourth applicant, the Commission concluded that there had been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention (unanimously).

The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment[fn4] .

FINAL SUBMISSIONS TO THE COURT

53. At the hearing of 22 January 1997 the Government, as they had done in their memorial, invited the Court to hold that the applicants had failed to exhaust domestic remedies or, in the alternative, that there had been no violation of the Convention in the present case since the applicants had not substantiated their allegations.

54. On the same occasion the first three applicants reiterated their request to the Court stated in their memorial to find violations of Articles 3, 6, 8, 13, 14 and 18 of the Convention and to award them just satisfaction under Article 50 of the Convention. The fourth applicant accepted the Commission's finding that no facts had been established with respect to her complaints.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

55. 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 26 of the Convention. The Court had therefore no jurisdiction to entertain the applicants' complaints.

In the first place, it would have been open to the applicants to bring criminal proceedings and claim compensation (see paragraphs 39-45 above). In fact, on learning about the applicants' allegations, the local Public Prosecutor Office had carried out criminal investigations (see paragraphs 27-29 above). During those investigations the applicants could not be reached and the four villagers who had been questioned had all categorically denied that any houses were burned in the Saggöze village on 25 June 1993. On the basis of the evidence available, it was decided not to prosecute. Had the applicants co-operated the outcome could have been quite different.

Secondly, it would have been possible for the applicants to seek compensation in the administrative courts by invoking the objective responsibility of the State for damage caused by terrorist violence (see paragraphs 36-38 above). It was clear in view of the circumstances that a claim that the security forces had been responsible would have been rejected. However, there were a number of administrative court decisions to show that the applicants would have stood a very great chance of success had they claimed that the houses had been burned by members of the PKK or during clashes between them and the security forces.

56. The applicants and the Delegate of the Commission requested the Court to dismiss the Government's preliminary objection on non-exhaustion for the reasons which led it to reject a similar objection in the Akdivar and Others v. Turkey case (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210–13, §§ 65–76).

57. In applying Article 26 of the Convention to the facts of the present case, the Court will have regard to the principles enunciated in paragraphs 65 to 69 of the above-mentioned Akdivar and Others judgment (see also the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275–76, §§ 51–53). It reiterates that there is no obligation 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 disposal. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the

Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement. One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of.

58. Furthermore, 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 26 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 individual 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 the above-cited Akdivar and Others judgment, p. 1211, § 69; and the above-mentioned Aksoy judgment, p. 2276, § 53). It will thus have regard to the situation which existed in South-East Turkey at the time of the applicants' complaint – and which continues to exist, characterised by violent confrontations between the security forces and members of the PKK. As the Court held in Akdivar and Others:

> "In such a situation it must be recognised that there may be obstacles to the proper functioning of the system of the administration of justice. In particular, the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile and the administrative enquiries on which such remedies depend may be prevented from taking place."(pp. 1211–12, paragraph 70)

59. The Court notes that, despite the extent of the problem of village destruction, there appears to be no example of compensation being awarded in respect of allegations that property has been purposely destroyed by members of the security forces or of prosecutions having been brought against them in respect of such allegations. Furthermore, there seems to be a general reluctance on the part of the authorities to admit that this type of practice by members of the security forces has occurred.

It is true that, unlike Akdivar and Others, the applicants in the present case had not themselves approached any domestic authority with their Convention grievances. However, the Court attaches particular weight to the fact that, after becoming aware of their allegations, the competent public prosecutors did not, for the reasons elaborated on in paragraphs 90-92 below, carry out any meaningful investigation into the matter (see paragraphs 27-30 above).

The insecurity and vulnerability of the applicants' position following the destruction of their homes should also be borne in mind.

60. In the absence of any convincing explanations from the Government in rebuttal, the applicants have demonstrated the existence of special circumstances which dispensed them at the time of the events complained of from the obligation to exhaust domestic remedies. In the exceptional circumstances of this case, the Court is not satisfied that remedies before the administrative and civil courts were adequate and sufficient in respect of the applicants' complaint that their homes had been destroyed by the security forces.

61. In the light of the foregoing, the Court concludes that the Government's preliminary objection on non-exhaustion must be dismissed.

This ruling is confined to the exceptional circumstances of the present case and is not to be interpreted as a general statement that remedies are ineffective in this area of Turkey or that applicants are absolved from the obligation under Article 26 to have normal recourse to the system of remedies which are available and functioning.

II. THE MERITS OF THE APPLICANTS' COMPLAINTS

A. Establishment of the facts

62. Before the Court the Government vigorously challenged the findings of fact by the Commission. In their submission, whilst the latter had accepted the applicants' version of the events - apparently on the basis of the oral evidence given by the first three applicants and by Ms Gündogan, there were serious inconsistencies and contradictions in their evidence. In this connection the Government maintained *inter alia* the following.

Mrs Azize Mentes, who clearly did not own any house in the village, lied on an essential point when she said that she had a house there which was burned by the security forces. Moreover the applicants lied when they stated that they did not know the four villagers who appeared before the prosecutors. They were in fact neighbours and the applicants knew them very well. That their account of the events was fabricated was also illustrated by their statement that there were hills between their hamlet and those of the four villagers.

Furthermore, the Government pointed to a number of inconsistencies between written statements of the applicants taken by the Human Rights

Association and their oral evidence before the Delegates of the Commission. Whilst they all had said to the Human Rights Association that the soldiers had gathered people in front of the school and made them lie there for 5 hours, they had subsequently retracted this allegation before the Delegates. One of the applicants had stated to the Association that her husband had been among those gathered in front of the school; however she had later told the Delegates that he had been away on that day. Moreover, the applicants had previously stated that the men had fled the area because of fear before the soldiers arrived; however they had stated before the Delegates that the men were outside the village. There were also inconsistencies in their written and oral statements as to the manner in which the soldiers allegedly set fire to their houses - petrol, "dust" (meaning powder), flame throwers and matches had all been mentioned. There were contradictory accounts as to when the soldiers left the village - the same day or the next day or, as one of them had stated to the Human Rights Association, after three days. Although the statements taken by the Human Rights Association bore different dates, the applicants had testified to the Delegates that they had all gone to the Association on the same date.

In the Government's view, the above inconsistencies combined to prove that the applicants' version of the events could not be relied upon and that they had failed to prove beyond reasonable doubt that on 25 June 1993 the security forces deliberately burned their houses.

63. In this connection, the Government stressed that the applicants and one of the witnesses, Mrs Gündogan, were all closely related to each other and had a common interest in the outcome of the case.

64. The Government further emphasised that the Commission had disregarded the witness statements of the four villagers who had all categorically denied that any houses had been burned on the material date. The villagers would have been able to see smoke from their neighbouring hamlets as there were no hills in between. Some of them had even said that they had been visiting the village on the relevant date. Their testimonies should therefore have carried considerable weight.

Moreover, in concluding that the manner of selection of the witnesses had been tainted with bias, the Commission had misinterpreted the first public prosecutor's request to the *muhtar* to find "reliable witnesses" as meaning witnesses favourable to the Government (see paragraphs 28 and 33 above). The public prosecutor must have meant trustworthy witnesses who could relate the truth. In any event, the Commission had attached too much weight to this factor.

65. The applicants and the Commission's Delegate invited the Court to accept the facts as established by the Commission.

The Delegate reiterated the difficulties encountered by the Commission in gathering the evidence. She stressed that the Commission had indeed in its own establishment of the facts had regard to the inconsistencies in the evidence. She recalled that, under the Convention system, the establishment and verification of the facts was primarily the task of the Commission. Should the Court in the instant case decide not to rely on the Commission's findings of fact, it would give rise to certain practical difficulties.

In the applicants' submission the Government had been highly selective in the manner in which they had pointed to inconsistencies in the evidence and had failed to mention that the Commission did not rely on the statements taken by the Human Rights Association.

66. The Court reiterates that under its case-law the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it, it is only in exceptional circumstances that it will exercise its powers in this area (see, *inter alia*, the above-mentioned Aksoy judgment, p. 2272, § 38). Such exceptional circumstances may arise in particular if the Court, following a careful examination of the evidence on which the Commission has based its facts, finds that those facts have not been proved beyond reasonable doubt (see the Aydin v. Turkey judgment of 25 September 1997, *Reports of judgments and Decisions* 1997-…, p. …, § 70). In this connection it is recalled that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 64–65, § 161; and the above-cited Aydin judgment, p. … , § 73).

67. In the case under consideration the Commission reached its findings of fact on the basis of an investigation, in the course of which documentary evidence, including written statements, was submitted and oral evidence of eleven witnesses was taken by three Delegates at hearings in Ankara from 10 to 12 July 1995. The witnesses included the two public prosecutors who had investigated the matter, the four villagers whom they had heard, another villager and the first three applicants (see paragraph 26 above).

In the course of the above-mentioned adversarial hearings the witnesses were questioned and cross-examined in detail by all sides and confronted with the inconsistencies and weaknesses in their evidence. The Delegates were thus in a position to observe the witnesses' reactions and demeanour and, hence, to assess the veracity and probative value of the evidence of both sides.

68. The establishment of the facts by the Commission was based on the appropriate evidentiary requirement, namely proof beyond reasonable doubt. In reaching its conclusions, the Commission had regard to the inconsistencies and contradictions in the evidence, notably differences between the written and oral statements, and for reasons which appear convincing (see paragraphs 33 above), attached more weight to the latter. After hearing the witnesses, the Commission accepted in its principal elements the oral evidence of the first three applicants. This was supported in its essential aspects by that of Ms Gündogan and was in the Commission's view more consistent and convincing and therefore more credible than that of the four villagers supporting the Government's version of the events (see paragraph 34 above). The Commission also bore in mind the cultural and linguistic context, as well as the Government's uncooperative conduct when failing to provide certain documentary material requested by it and to identify and serve a summons on a key witness whom the Delegates sought to question (see paragraphs 26 and 31 above).

69. The Court, having itself carefully examined the evidence gathered by the Commission, is satisfied that the facts as established by the latter (see paragraph 33 above) were proved beyond reasonable doubt as far as concerns the first three applicants' allegations, but not those of the fourth applicant.

B. Complaints by Azize Mentes, Mahile Turhalli and Sulhiye Turhalli

1. Alleged violation of Article 8 of the Convention

70. The first three applicants, Azize Mentes, Mahile Turhalli and Sulhiye Turhalli, maintained that the destruction of their homes by the security forces and their expulsion from their village constituted violations of 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."

71. The Government denied that there had been any security operation in the village on 25 June 1993. They submitted that damage to the village had been caused after that date by PKK terrorists. There was no evidence to substantiate the applicants' allegations against the security forces. There had therefore been no violation of Article 8 of the Convention.

72. The Commission considered that there had been a breach of this provision in respect of the first three applicants.

73. The Court sees no reason to distinguish between the first applicant, Mrs Azize Mentes, and the second and third applicants. While it was in all probability her father-in-law and not she who owned the house in question, the first applicant did live there for significant periods on an annual basis when she visited the village (see paragraph 34 above). Given her strong family connection and the nature of her residence, her occupation of the house on 25 June 1993 falls within the scope of the protection guaranteed by Article 8 of the Convention.

Furthermore, the Court observes that the facts established by the Commission (see paragraphs 34 above) and which it has accepted disclose a particularly grave interference with the first three applicants' right to respect for private life, family life and home, as guaranteed by Article 8 and that the measure was devoid of justification.

In these circumstances the Court finds that there has been a breach of Article 8 of the Convention with respect to the first three applicants.

2. Alleged violation of Article 3 of the Convention

74. The first three applicants, referring to the circumstances of the destruction of their homes and their eviction from their village, maintained that there had also been a breach of Article 3 of the Convention, which reads:

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

75. The Government disputed the above allegation as being unsubstantiated on the facts.

76. The Commission considered that the burning of the first three applicants' homes constituted an act of violence and deliberate destruction in utter disregard of the safety and welfare of the applicants and their children who were left without shelter and assistance and in circumstances which caused them anguish and suffering. It noted in particular the traumatic circumstances in which the applicants were prevented from saving their personal belongings and the dire personal situation in which they subsequently found themselves, being deprived of their own homes in their village and the livelihood which they had been able to derive from their gardens and fields. In the Commission's opinion, the first three applicants had been subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

77. In view of the specific circumstances of the case and its finding of a violation of their rights under Article 8 of the Convention (see paragraphs 34 and 72 above), the Court does not propose to examine further this allegation.

3. Alleged violation of Article 5 § 1 of the Convention

78. Before the Commission the applicants alleged that they had been compelled to abandon their homes and village on 25 June 1993 in flagrant breach of their right to liberty and the enjoyment of security of the person as guaranteed by Article 5 § 1 of the Convention, which reads to the extent relevant:

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

79. The Commission found that none of the applicants had been arrested or detained or otherwise deprived of their liberty. The insecurity of their personal circumstances arising from the loss of their homes did not fall within the notion of "security of person" for the purpose of Article 5 § 1 of the Convention.

80. The Government did not comment save in so far as they denied that the alleged incident occurred.

Before the Court, the applicants stated that they did not wish to pursue this complaint.

81. Against this background the Court does not find it necessary to deal with the matter of its own motion.

4. Alleged violations of Articles 6 § 1 and 13 of the Convention

(a) Arguments of those appearing before the Court

82. The first three applicants complained that they had been denied an effective judicial or other remedy enabling them to challenge the destruction of their homes and possessions by the security forces and to seek compensation. This gave rise to a violation of Article 6 § 1 of the Convention which, in so far as is relevant, provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

In addition, they maintained that there had been a violation of Article 13 of the Convention, which reads:

"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."

83. The Government disputed the above contentions, emphasising that there were both administrative and civil remedies (see paragraphs 36-45 above), of which the applicants had failed to avail themselves.

84. In the applicants' submission, the administrative remedy applied essentially to acts by the public authorities causing damage to individuals. Where the acts had exceeded the legal boundaries of administrative powers, a claim for damages had to be pursued in the civil courts.

The acts complained of by the applicants were deliberate acts committed by members of the security forces. However, none of the court decisions referred to by the Government dealt with a claim that the security forces had purposely destroyed the houses of the claimants concerned. The social risk theory employed by the administrative courts as a ground for awarding compensation was therefore irrelevant and would necessarily mask the truth of the circumstances of the burning of their houses and possessions. A remedy which consisted merely of monetary compensation and which ignored the responsibility of the security forces was wholly unacceptable.

Moreover, the applicants stressed that in the absence of criminal proceedings against those responsible, a civil claim for damages would be doomed to failure. The criminal investigation conducted into their allegations had been wholly inadequate.

In addition, the applicants alleged that the system of redress in South-East Turkey did not operate to afford them an effective remedy. In particular, they were deprived of an effective remedy as a result of (a) the widespread powers and immunities granted to the authorities in the region (see paragraphs 48-51 above); (b) the attitude of the authorities to the complaints of the applicants (see paragraphs 27-31 above); and (c) the existence of a policy of village destruction which rendered any remedy for the complaints ineffective.

85. The Commission found that there were undoubted practical difficulties and inhibitions in the way of persons like the applicants who complained of village destruction in South-East Turkey, where broad emergency powers and immunities have been conferred on the Emergency Governors and their subordinates. There had been no example given of compensation paid to a villager in respect of the destruction of a house by the security forces nor any example of a successful, or indeed any, prosecution brought against the security forces for any such act. In this connection, the Commission referred to the evidence taken in the present case. The applicants had not in fact made any petition to the public prosecutors but the Ministry of Justice in Ankara had instigated the investigation when the Commission had communicated the application to the Government. As this investigation indicated, complaints that the security forces had destroyed villagers' houses did not in practice receive the serious and detailed consideration necessary for any prosecution to be initiated. In fact, no investigation had taken place to verify what occurred in the village and the hamlets (see paragraphs 27-30 above). Where the allegations concerned the security forces, which enjoyed a special protection in the south-east region, it was unrealistic to expect villagers to pursue theoretical civil or administrative remedies in the absence of any positive findings of fact by the State investigative mechanism.

In light of the above considerations, the Commission was of the opinion that, in breach of Article 6 § 1, the applicants did not enjoy an effective access to a tribunal for the determination of their "civil rights". Nor did they, in violation of Article 13, have an effective remedy with respect to any of their Convention grievances not covered by the expression "civil rights" in Article 6 § 1, and for this reason falling outside the scope of applicability of that provision. This was the case as regards, for example, their claims relating to the forcible evacuation of their village and their subsequent personal difficulties. State action to investigate the incidents promptly, to rehouse or financially assist the villagers, rather than passively awaiting administrative court intervention, may have been a more appropriate response to the applicants' plight.

(b) Court's assessment

(i) Article 6 § 1 of the Convention

86. The Court reiterates that the right of access to a court in civil matters constitutes one aspect of the "right to a court" embodied in Article 6 § 1 (see, amongst many authorities, the above-mentioned Aksoy judgment, p. 2285, § 92). This provision undoubtedly applies to a civil claim for compensation for the destruction of homes and possessions allegedly committed by agents of the State.

87. The applicants did not dispute that they could in theory have their civil rights determined by the administrative courts and the civil courts. However, for the reasons set out above (see paragraph 83 above) they did not attempt to make an application before the courts. It is therefore not possible for the Court to determine whether the Turkish courts would have been able to adjudicate on the applicants' claims had they initiated proceedings.

In any event, the Court observes that the applicants complained essentially of the lack of a proper investigation into their allegation that the security forces had purposely destroyed their houses and possessions.

88. In view of the above, the Court finds it appropriate to examine this complaint in relation to the more general obligation on States under

Article 13 to provide an effective remedy in respect of violations of the Convention. It does therefore not find it necessary to determine whether there has been a violation of Article 6 § 1.

(ii) Article 13 of the Convention

89. The Court reiterates that Article 13 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 this Article is thus to require the provision of a domestic remedy allowing the "competent national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The remedy 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 the Aksoy judgment cited above, p. 2286, § 95, and the above-mentioned Aydin judgment, p. ..., § 103).

Furthermore, the nature and gravity of the interference complained of under Article 8 of the Convention in the instant case has implications for Article 13. The provision imposes, without prejudice to any other remedy available under the domestic system, an obligation on the respondent State to carry out a thorough and effective investigation of allegations brought to its attention of deliberate destruction by its agents of the homes and possessions of individuals.

Accordingly, where an individual has 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" 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 for the complainant to the investigative procedure.

90. As already noted, the applicants in this case did not approach any domestic authority with their Convention grievances before bringing their application before the Strasbourg institutions. However, following the Commission's communication of the application to the respondent Government, the Ministry of Justice instigated criminal investigations by the Office of the public prosecutor in Genç (see paragraph 28 above). In the Court's view, the manner in which these investigations were conducted may be taken into account in its examination of the applicants' initial complaint that they did not dispose of an effective remedy as required by Article 13.

91. In this regard, the Court notes that the first investigation was terminated on 25 April 1994, which must have been less than a fortnight after the prosecutor was notified of the applicants' complaints to Strasbourg. He was apparently unaware of the applicants' names at the time. His decision not to prosecute was based solely on the brief statements from the four villagers who had been selected in a manner giving rise to certain misgivings and who lived in separate hamlets about one hour's walking distance from the applicants' neighbourhood. The second investigation consisted merely of a rehearing of the same four witnesses by another prosecutor. Although at that stage the public prosecutor knew the applicants' names and the authorities in Ankara were aware of their addresses, no measures were taken to invite the applicants to make statements. Nor were any attempts made to hear other witnesses from the village or to enquire into the activities of the security forces at the material time and place (see paragraphs 28 to 30 above).

92. The Court concludes that no thorough and effective investigation was conducted into the applicants' allegations and this resulted in undermining the exercise of any remedies the applicants had at their disposal, including the pursuit of compensation before the courts. There has therefore been a breach of Article 13 in respect of the first three applicants.

5. Alleged violations of Articles 14 and 18 of the Convention

93. The applicants maintained that, because of their Kurdish origin, they had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 3, 6, 8 and 13. Article 14 reads:

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

Furthermore, in the light of the evidence adduced by the applicants of a systematic, cruel and ruthless policy of population displacement, they requested the Court also to find a breach of Article 18 of the Convention, which provides:

> "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."

94. The Government did not address those allegations beyond denying the factual basis of the substantive complaints.

95. The Commission found the applicants' above allegations unsubstantiated and that there had thus been no violation of Article 14 or Article 18.

96. For its part the Court, on the basis of the facts as established by the Commission (see paragraphs 27-30 and 34 above), finds no violation of these provisions.

6. Alleged administrative practice of violating the Convention

97. In addition to finding individual violations of Articles 3, 6, 8 and 13 of the Convention, the first three applicants requested the

Court to find that they had been the victims of aggravated violations of these Articles on account of the existence of an administrative practice of village burning and forced evacuations and displacement of Kurds.

98. Having regard to its conclusions with respect to Articles 3 and 6 of the Convention (see paragraphs 77 and 88 above), the Court will confine its examination to the alleged aggravated violations with respect to Articles 8 and 13. It is of the view that the evidence established by the Commission (see paragraphs 27-30 and 34 above) is insufficient to allow it to reach a conclusion concerning the existence of any administrative practice of the violation of these Articles of the Convention.

C. Complaints by Sariye Uvat

99. Before the Commission, the fourth applicant, Sariye Uvat, complained of violations of the same provisions of the Convention as the first three applicants and, in addition, of Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary.
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

In this respect, she complained that after she left the village her twin boys died after premature delivery.

100. The Commission recalled its finding that no facts had been established in relation to this applicant's complaints (see paragraph 35 above). In the absence of any further substantiation of her written statement to the Human Rights Association, it considered that there was an insufficient factual basis on which to find a violation of any of the Convention Articles relied on by her.

101. The Court notes that in the proceedings before it the fourth applicant accepted that no facts had been established with respect to her specific complaints. In these circumstances the Court finds that there has been no violation of the Convention provisions relied on by this applicant.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

102. The applicants sought just satisfaction under Article 50 of the Convention, which provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

103. The applicants claimed compensation for pecuniary and non-pecuniary damage, punitive damages and also aggravated damages.

104. However, this matter is, in the Court's view, not ready for decision. The question must therefore be reserved and the future procedure fixed with due regard to the possibility of agreement being reached between the Government and the applicants concerned.

B. Costs and expenses

105. The applicants further sought costs and expenses amounting to a total of 31,795 pounds sterling (GBP) from which the amounts already received in legal aid from the Council of Europe should be deducted. Their claim included the following items:

(a) GBP 19,000 (190 hours at GBP 100 per hour) in legal fees for work by Mr Boyle;

(b) GBP 3,750 (75 hours at GBP 50 per hour) in fees for work by Ms Reidy;

(c) GBP 2,400 (96 hours at GBP 25 per hour) in fees for work by Mr Sakar and Mr Baydemir;

(d) GBP 4,000 (100 hours at GBP 40 per hour) for legal assistance by the Kurdish Human Rights Project ;

(e) GBP 1,655 in expenses for interpretation and translation;

(f) GBP 115 for photocopying and GBP 875 for telephone and postage.

The above fees covered the period up to and including the hearing of 22 January 1997.

106. The Government maintained that in the absence of any supporting evidence, the above claims must be rejected as unsubstantiated and, in any event, were unnecessarily incurred and excessive. As regards items (a), (b), (e) and (f), the Government vigorously contested the need for the applicants

to use United Kingdom based lawyers, whose fees were incomparably higher than those of Turkish lawyers, and whose appointment had had the effect of inflating expenses for travel, communication, interpretation and translation. Furthermore, the Government objected to any award being made in respect of item (d) on the ground that the organisation had not represented the applicants or played any other procedural role.

107. The Court sees no reason to doubt that the above costs and expenses indicated in items (a) to (c) and (e) and (f) were actually and necessarily incurred and were reasonable as to quantum. Deciding on an equitable basis, it awards the first three applicants the entirety of the amounts claimed, together with any Value-Added Tax (VAT) that may be chargeable, less the amount received by way of legal aid from the Council of Europe. As to the costs claimed by the Kurdish Human Rights Project, the Court is not persuaded that that association's involvement in the proceedings justifies the making of any award. It therefore dismisses their claim.

C. Default interest

108. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8 % per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* by fifteen votes to six the preliminary objection concerning the exhaustion of domestic remedies;

2. *Holds* by sixteen votes to five that there has been a violation of Article 8 of the Convention with respect to the first three applicants;

3. Holds by twenty votes to one that it does not propose to examine further whether there has been a violation of Article 3 of the Convention with respect to the first three applicants;

4. Holds unanimously that it is not necessary to examine the first three applicants' complaints under Article 5 § 1 of the Convention;

5. Holds unanimously that it is not necessary to consider whether there has been a violation of Article 6 § 1 of the Convention with respect to the first three applicants;

6. *Holds* by sixteen votes to five that there has been a violation of Article 13 of the Convention with respect to the first three applicants;

7. Holds unanimously that there has been no violation of Articles 14 and 18 of the Convention with respect to the first three applicants;

8 Holds unanimously that there has been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention with regard to the fourth applicant;

9. *Holds* by sixteen votes to five

(a) that the respondent State is to pay directly to the first three applicants' United Kingdom-based representatives, within three months, in respect of items (a) to (c), (e) and (f) of the claim for costs and expenses GBP 27,795 (twenty-seven thousand, seven hundred and ninety five pounds sterling) together with any VAT that may be chargeable, less FRF 13,295 (thirteen thousand, two hundred and ninety-five French francs) to be converted into pounds sterling at the rate applicable on the date of judgment;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned period until settlement;

10. Dismisses unanimously the remainder of the applicants' claim for costs and expenses;

11. *Holds* by twenty votes to one that the question of the application of Article 50 of the Convention as regards the claim for pecuniary and non-pecuniary damage is not ready for decision; and consequently,

(a) *reserves* the said question;

(b) *invites* the Government and the first three applicants to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Grand Chamber the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 November 1997.

Signed:Rolv Ryssdal
President

Signed: Herbert Petzold
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following opinions are annexed to this judgment:

(a) joint partly dissenting opinion of Mr Gölcüklü and Mr Matscher;

(b) partly dissenting opinion of Mr Gölcüklü;

(c) partly dissenting opinion of Mr Russo;

(d) partly dissenting opinion of Mr De Meyer;

(e) partly dissenting opinion of Mr Mifsud Bonnici;

(f) partly dissenting opinion of Mr Gotchev;

(g) partly dissenting opinion of Mr Jambrek.

Initialled : R. R.
Initialled : H. P.

JOINT PARTLY DISSENTING OPINION OF JUDGES GÖLCÜKLÜ AND MATSCHER

(Provisional translation)

I. Exhaustion of domestic remedies

In our opinion, it cannot seriously be said that domestic remedies have been exhausted where the applicants have not made the slightest effort to bring their alleged complaints before the national authorities.

In that respect, we consider that there is – as the Delegate of the Commission expressly acknowledged at the hearing on 22 June 1997 (p. 7 of the verbatim record) – a fundamental difference between this case and the Akdivar (and Aydin) cases, to which the Court refers (paragraph 59 of the judgment). The applicants in those cases had instituted proceedings before the national authorities. The fact that the authorities did not examine their complaints enabled the Court to find that domestic remedies had been exhausted. But, faced with repeated assertions, supported by a number of examples, that Turkish legislation does provide remedies, even if their effectiveness remains in doubt, it is being too simplistic to say that domestic remedies do not exist in cases such as the present one and for that reason applicants are *de plano* relieved of the obligation to exercise them.

The Diyarbakir Human Rights Association (DHRA) would better serve the interests of applicants if, instead of confining itself to fabricating dubious applications to the Convention institutions, it were to suggest to applicants that they (also) refer their complaints to the national authorities. But the impression can be gained that that would run counter to the aims pursued by the Association.

II. The merits

(a) General observations

There is no doubt that if the alleged events had been convincingly proved they would have constituted a blatant violation of the Convention Articles relied on. In our opinion, however, the evidence was far from convincing..

We would begin by saying that four years after the alleged events it is extremely difficult, if not impossible, to discover the whole truth about what really happened in the village of Saggöze at the material time. We also recognise that the Delegates of the Commission who took evidence from the witnesses in Ankara had a difficult task, especially because, as the Commission noted, the Turkish authorities were far from co-operative. In

addition, the fact that interpretation facilities from Kurdish into Turkish, Turkish into English and vice-versa were needed to enable the witnesses and the Delegates to communicate also contributed to the latter's difficulties.

On studying the Commission documents, one has the marked impression that the general approach of the Delegates was to treat as *prima facie* reliable the version of events given by the witnesses for the applicants, but not to so treat the version of the respondent State and its witnesses. The Commission accepted the Delegates' findings without putting forward any convincing reasons.

Admittedly, there are inconsistencies in the evidence of the witnesses for the Government, but there are equally serious, if not more serious, inconsistencies in the depositions of the applicants' witnesses (with which we will deal below). The Commission appears to have ignored the latter as though they were unimportant.

After all, the applicants and their witnesses were all related and belonged to families of which certain members were PKK activists and in some cases terrorists. There is accordingly no reason to suppose that the applicants had any less interest in lying than the villagers (witnesses for the Government) whose primary concern was, so it would appear, to live in peace in their country.

Admittedly, the Government carried out their investigation in a very superficial manner. They say that the complaints concerning the alleged incidents of June1993 were not made to them until after the application to the Commission was served on them in April 1994, in other words when it had become more difficult to obtain reliable information. However, given the seriousness of the alleged violations, the investigative measures taken by the national authorities could not be considered to constitute effective co-operation with the Convention institutions.

We do not attach any importance to the inconsistencies, inaccuracies or exaggerations concerning dates, distances and numbers of people. They may to a large extent be due to defective memories, misunderstandings, misconstructions or to the exaggerations and boasting that tends to be common among people from a certain background.

But there are other inconsistencies and discrepancies in the statements that amount to clear contradictions which cannot be ignored. If they had been examined in detail they might even have totally undermined the version of events put forward by the applicants and accepted by the Commission. To our regret, the Delegates did not make the slightest attempt to resolve these inconsistencies and discrepancies, although they could have done so easily enough and it would have been perfectly usual for any "investigating judge", acting professionally, to have done so.

The quality of the documents produced by the DHRA, on which the application is based, is so poor that even the Commission was very concerned and consequently attached most importance to the depositions taken by the Delegates.

(b) Specific observations

According to the four applicants, the Turkish security forces had deliberately burned down their houses.

Several witnesses have confirmed, and their testimony does not appear to have been disputed, that Azize Mentes did not own the house concerned. That also appears to have been the case with Mahile Turhalli. Moreover, we question whether Sulhiye Turhalli and Sariye Uvat were the owners of the other houses concerned.

We accept that for the purposes of Article 8 of the Convention, there is no requirement that the alleged victim be the owner of the "home". But why did the owners of the houses in the present case not join in the applicants' complaints and why did they not allege that there had been a violation of Article 1 of Protocol No. 1, a provision that has been relied on in similar cases against Turkey?

Sariye Uvat, too, alleged that on the same day (25 June 1993) soldiers set fire to all the houses in the hamlet of Piroz in Saggöze, including her's. She made her statement to the DHRA three weeks after the other applicants.

She claimed that she had been unable to attend the taking of evidence by the Delegates between 10 and 12 July 1995, because of her age and medical condition. The Commission considered that there was insufficient evidence for her application to be declared admissible. However, to our mind, it is not good enough to dismiss a complaint merely because there is insufficient evidence for it to be declared admissible without having regard to the contradictions it contains while going on to examine the complaints of the other applicants, which contain similar contradictions. Does that not suggest that the Commission should have carried out a more detailed investigation into all the other complaints?

Mahile Turhalli and Sulhiye Turhalli said in their statements to the DHRA that the soldiers took the old men from the village, including Mahile Turhalli's husband, to the school playground where they were made to lie face down in the sun for five hours during which they were beaten and insulted.

In her testimony, Mahile Turhalli told the Delegates that her husband was not in the village, as he was in hospital that day; she swore on the Koran that she did not know what had happened to the old men and that she had not said anything to the DHRA about their treatment.

Sulhiye Turhalli told the Delegates that the soldiers had tortured people: "the soldiers hit us with knotted sticks; they beat us continually; they kicked me; they hit the old people". On the other hand she said that she had not witnessed this personally, but had heard others speak about it.

That raises the question why the persons who were allegedly ill-treated did not lodge a complaint under Article 3 of the Convention. As for the Commission, it made no mention of these allegations in either its findings of fact or in its consideration of the applicant's complaints under Article 3.

The Commission does not appear to have made any serious attempt to clear up these major divergences and contradictions. In

these circumstances, we wonder whether it would be appropriate simply to disregard the statements – which are untenable and were in part contradicted before the Delegates – made before the DHRA and to rely solely on the witnesses' testimony before the Delegates, without considering what weight should be attached and what conclusions drawn from such a change in attitude by the persons concerned? Yet any investigating judge wanting to provide a solid basis for his findings of fact would have done so. In our view, what has been said above strongly suggests that the whole basis of the application is highly doubtful.

We have disregarded certain discrepancies and inconsistencies concerning: the number of hours the soldiers spent in the village; the number of helicopters (six or seven or even thirty-one); whether certain villagers were present or not on the day of the alleged incident; the dates the applicants left the village; whether the houses were set on fire with matches, incendiary devices or by other means; how the applicants and the soldiers managed to hold conversations or discussions (whose content was reported in detail by the Commission) when the applicants could speak hardly any Turkish and the soldiers hardly any Kurdish; what happened to the owners of the other thirteen houses at the bottom of the village all burned down the same day; whether there were real political differences between the applicants and the village headman (*muhtar*); whether there were any clashes between the security forces and the terrorists in the period preceding the alleged incident; how the witnesses were summoned to appear before the prosecutor, etc.

But there were serious contradictions which should have been resolved; let us give a few examples:

(a) Mahile Turhalli and Sulhiye Turhalli said that they did not know the witnesses Selahattin Can and Omer Yarasir, who lived in another part of the same village. Yet Selahattin Can and Omer Yarasir said that they knew Mahile Turhalli and Sulhiye Turhalli well as they were neighbours.

(b) Astonishingly, Mahile Turhalli said that he did not know her uncle on her father's side, Mehmet Turhalli.

(c) Ekrem Yarar, the village *muhtar* said that Sulhiye Turhalli came to see him about a week after the alleged incident and stayed with him that night; she did not mention either the incident or that houses had been burned down; they saw each other once or twice a year. When she had come to see him again in January/February 1995, he had spoken to her about the complaint, about which he had been questioned by the public prosecutor; she had sworn that she had not lodged any such complaint and said that perhaps other people had done so using her name.

Faced with a contradiction as important as this last one, a diligent "investigating judge" would have felt obliged to organise a confrontation between the two witnesses. It is hardly convincing to find, as the Commission did, that Ekrem Yarar's testimony was unreliable because he was a witness for the Government and that Sulhiye Turhalli's allegation was to be accepted at face value.

Even if certain inconsistencies not relevant to the case are disregarded, it is inconceivable that the serious inconsistencies and manifest contradictions to which we have referred be ignored.

In these circumstances, we are far from being convinced "beyond all reasonable doubt" (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 64-65 § 161) that the alleged breaches of the Convention, as accepted by the Commission and the Court, actually occurred. To our mind, there is insufficient basis in this case for finding of a violation by the Government.

For that reason we felt obliged to vote against a finding of a breach of Article 8.

III. Article 13

Where – as we find in this case (see Section I. above) – domestic remedies have not been exhausted and the applicants have not made the least attempt to bring their complaints before the national authorities, it seems to us impossible to hold that there has been a violation of Article 13.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Provisional translation)

In addition to what is said in the joint dissenting opinion of Judge Matscher and myself, I wish to add, as ancillary points, the following :

1. Although as a result of what is said in the joint dissenting opinion there is no need for me to consider the case under either Article 6 or Article 13, I wish to state that there has been no violation of those Articles, since the relevant Turkish legislation contains domestic remedies that are both adequate and effective. In that regard, I would refer to my dissenting opinions in the cases of Akdivar v. Turkey and Aydin v. Turkey where I explained the Turkish practice and system and gave a number of examples extracted from judgments of the national courts.

2. In paragraph 58 of the judgment in the present case, the Court, quoting from the Akdivar v. Turkey judgment, said: "...the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile...". In the light of that statement it may be wondered whether securing "probative evidence" is any less difficult and any easier for an international court.

3. In paragraph 59 of its judgment, the Court was at pains to note that "... despite the extent of the problem of village destruction, there appears to be no example of compensation being awarded in respect of allegations that property has been purposely destroyed by members of the security forces...". I wish to stress that that is untrue. During the proceedings before the Court the respondent State brought to the Court's attention the fact that the Turkish State had paid millions of Turkish liras for the reconstruction of villages allegedly destroyed by the armed forces irrespective of the cause of destruction. On that subject, I refer once more to my dissenting opinion in the case of Akdivar v. Turkey.

4. Lastly, the applicants' lawyers expressly asked that reimbursement of the legal costs and lawyer's fees be made not to the applicants, but directly to them, the legal representatives, in pounds sterling and in the United Kingdom.

Without giving any reasons the Court granted that request.

I am of the opinion that the costs and expenses and lawyers' fees were incurred by the applicants, (that would appear to be logical) and that it is they, the applicants, who must be reimbursed. As to the award of legal costs, that is solely a matter for the judicial body and any express request one way or the other by the representatives cannot alter the situation.

I imagine that it was the applicants who chose their representatives and the applicants who paid the costs. Therefore, it is to the applicants that the costs and expenses claimed should be awarded.

Is the claim for reimbursement directly to the lawyers and not to the applicants yet not another indication that there were no real applicants in the present case?

PARTLY DISSENTING OPINION OF JUDGE RUSSO

For the reasons stated by Judge De Meyer in his partly dissenting opinion, I cannot agree with the conclusions of the majority that the Government's preliminary objection concerning the exhaustion of domestic remedies should be dismissed and that there has been a violation of Article 13 of the Convention with respect to the first three applicants (points 1 and 6 of the operative provisions of the judgment). On the remainder of the points I have voted along with the majority.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(*Provisional translation*)

I. Exhaustion of domestic remedies

As the Court notes in paragraphs 59 and 90 of its judgment, the applicants had not approached any domestic authority with their Convention grievances. They referred to the Diyarbakir Human Rights Association, which made an application on their behalf directly to the Commission on 20 December 1993[fn5] .

That way of proceeding cannot be justified *a posteriori* by the summary and inadequate nature of the investigations conducted at the behest of the Ministry of Justice by the public prosecutors – Mr Köycü and Mr Karaca in April and May 1994 and Mr Sözen at the beginning of 1995 – when the case was already pending in Strasbourg[fn6] .

Nor can it be justified by the "insecurity and vulnerability of the applicants' position"[fn7] , as the Association referred to above, which had greater self-assurance and was less vulnerable than the applicants, had from the outset agreed to represent them.

It is true that the conflictual background to the case was not conducive to the exercise of domestic remedies[fn8] , but the applicants should at least have made some attempt to use them.

II. The factual position in the case of the first three applicants

The present case provides yet a further illustration of the difficulty that can arise in establishing the truth "beyond all reasonable doubt" of allegations concerning situations such as the one that has led to the conflict between the Turkish State and the Kurdish insurgents.

The Turkish authorities carried out investigations in the instant case only after several months had elapsed since the alleged incidents. Those investigations were clearly unsatisfactory[fn9] . Moreover, the limited information

thereby obtained and the information obtained by the Diyarbakir Human Rights Association is not particularly reliable[fn10] .

The Commission attempted to find out exactly what happened. It is perfectly possible and even relatively likely that events took place more or less as described in its report. But does that suffice?

It seems to have been established that soldiers raided Saggöze towards the end of June 1993. On that point the statements of Azize Mentes, Mahile Turhalli and Sulhiye Turhalli have been confirmed, not only by Azize Mentes's sister-in-law, Aysel

Gündogan[fn11] , but also by two other witnesses who said that they were at the scene at that time, Selahattin Can and Omer Yarazir[fn12] .

But the three applicants' affirmation that during the raid the soldiers burnt down several houses in the lower part of the village, including the applicants', was confirmed only by the sister-in-law[fn13] . That affirmation was contradicted by Can and Yarazir, who say that the village or the houses were only burnt down in clashes that took place several months later, after the inhabitants had left[fn14] .

On this essential point, the only evidence on file is thus the accusations made against the security forces by four people who were closely related by blood or marriage, not only to each other, but also to persons suspected of or charged with being members of the PKK[fn15] ; there is no independent confirmation.

That is scant proof that the soldiers set the houses on fire, but is sufficient to enable a "reasonable doubt" to subsist.

III. As to the law

As a result of this doubt, I do not believe that it is possible to find, in respect of the first three applicants, a violation by the Turkish State of the rights guaranteed by Article 8 of the Convention.

Furthermore, the conduct of the Diyarbakir Human Rights Association, which applied to the Commission six months after the alleged incidents occurred, without even having attempted to exercise any of the domestic remedies, prevents me from finding that there has been a violation of the applicants' rights guaranteed by Articles 6 and 13 of the Convention.

It also follows from the above that the award of compensation under Article 50 does not appear justified in the instant case.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

I. Alleged violation of Article 3 of the Convention

1. In the case of Akdivar and Others v. Turkey (judgment of 16 September 1996), the applicants had claimed that they had been "subjected to ... inhuman or degrading treatment" in breach of Article 3 of the Convention in that their houses had been destroyed by the Turkish security forces.

The majority of the Court decided not to examine whether the alleged violation had in fact occurred. I did not agree with this procedure and I expressed my dissent in these terms.

> "This dissent is limited to the procedural point which, to my mind, is raised by the decision arrived at with regard to the claim by the applicants of violations of Article 3 of the Convention through the burning of their houses. In point 4 of the operative part of its judgment, the Court reached the conclusion that 'it will not examine further whether there has been a violation of Article 3 of the Convention'.
>
> The reasons for this are set out in paragraph 91, namely (a) the absence of precise evidence concerning the specific circumstances in which nine houses, including those of the applicants, were destroyed (see paragraph 18); and (b) the finding of a violation of the applicants' rights under Article 8 of the Convention and Article 1 of Protocol No. 1.
>
> I am of the opinion that since the findings of violations of both the Articles mentioned stem from the salient fact that the applicants' houses were destroyed, it is procedurally proper to examine the major claim first and abstain from examining a minor one later if the first is deemed to practically absorb the latter. A hierarchical approach is more appropriate to attain the aim of guiding Contracting States as to the scope of their obligations under the Convention and its Protocols.
>
> I therefore conclude that the claim under Article 3 should have been examined further by the Court."

2. In the instant case, the first three applicants likewise referred to the circumstances surrounding the destruction of their homes and their evacuation from their village (see paragraph 74 of the judgment in the present case) maintaining that they had therefore suffered a violation of their rights guaranteed by Article 3 of the Convention.

3. Once again the majority followed a similar process of reasoning as in the Akdivar judgment:

> "In view of the specific circumstances of the case and its finding of a violation of their rights under Article 8 of the Convention (paragraphs 34 and 72 above) the Court does not propose to examine further these allegations."

4. In the present case, however, the Court could not repeat that it "does not propose to examine further these allegations" because it had accepted the following facts as established by the Commission:

> "In the lower neighbourhood, the women, including the applicants, had been required by the soldiers to leave their houses and their houses had been set on fire, with all their belongings and property inside, including the clothing and footwear of children." (see paragraph 34 of the judgment)

5. In view of those findings, I do not think that there is any justification for the procedural approach adopted by the majority to omit examining whether the facts concerned revealed that the applicants had been subjected to inhuman or degrading treatment.

I consider that the rights protected by Article 3 are as important, if not, more so, then those protected by Article 8 and therefore the *non liquet* position adopted by the majority does not seem to me to be valid.

II. Costs and expenses

6. In point 9 of the operative provision of the judgment, the Court has ordered the respondent State "to pay directly to the applicants' United Kingdom-based representatives" the sums specified therein by way of costs and expenses.

In my opinion, those representatives were not parties to the case. Therefore there is no legal relationship between them and the respondent State justifying the State being ordered to pay monies direct to them. This is a dangerous precedent.

PARTLY DISSENTING OPINION OF JUDGE GOTCHEV

To my regret, I am unable to agree with the majority's view that the Government's preliminary objection should be dismissed. A careful analysis of the relevant judgments of the Turkish administrative courts does in my opinion show that the remedies alluded to by the Government were adequate and sufficient in respect of the matters complained of by the applicants. Therefore, in line with the view I expressed in the case of Akdivar and Others v. Turkey, I consider in the instant case too that the applicants failed to fulfil the requirement of exhaustion of domestic remedies in Article 26 of the Convention and that the Court does not have jurisdiction to entertain their complaints.

The importance of the exhaustion rule for the operation of the Convention system of protection cannot be over-emphasised, for two reasons.

In the first place, as is not disputed, Article 26 of the Convention constitutes a crucial element in the relationship between the national courts and the Strasbourg institutions. Whilst it is first and foremost for the competent authorities in the Contracting States to secure compliance with the Convention guarantees, the role of the Strasbourg institutions comes into play only after the national authorities have had an opportunity to address the alleged Convention grievance. It is only by following this approach consistently that the Strasbourg institutions may encourage the national authorities to take their primary responsibility in securing compliance with the Convention rules seriously.

The above considerations have gained particular importance in the light of the recent expansion of the Convention community and the resultant need to establish a relationship of co-operation between the Strasbourg Court and the courts in the Contracting States which have recently acceded to the Convention.

Secondly, it is important to bear in mind the tremendous practical difficulties with which the Court will be faced, especially the future single Court to be established next year under Protocol No. 11, if the requirements of Article 26 were to be systematically dispensed with in all cases arising in the particular security situation obtaining in South-East Turkey. Having regard to the gravity of the human rights problems in that area, it would be more helpful if the Court were to encourage the domestic courts in providing proper redress in cases of allegations of violations of the Convention.

PARTLY DISSENTING OPINION OF JUDGE JAMBREK

1. In the present case I am not prepared to dismiss the preliminary objection of the respondent Government on exhaustion of domestic remedies. Nor, for this reason and after considering the merits of the applicants' complaints as established by the Commission and evaluated by the Court, do I find that there has been a violation of Article 8 of the Convention with respect to the first three applicants. As to the remainder of the judgment I agree with the majority.

2. The system of human rights protection under the Convention is based on a division of roles between the domestic authorities and the Strasbourg institutions. The Contracting States have primary responsibility for securing to everyone within their jurisdiction the Convention rights and freedoms (Article 1). The machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. The Strasbourg review plays a role only as a system for dispute settlement that operates once all effective domestic remedies have been exhausted and the respondent State has been afforded a proper opportunity to put right the matter complained of under the Convention (Article 26) (see, amongst other authorities, the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 22, § 48; and the Van Oosterwijk v. Belgium judgment of 6 November 1980, Series A no. 40, p. 17, § 34). It follows that the exhaustion rule and the subsidiary nature of the Strasbourg review serve not only to protect the interests of the Contracting State but also those of individuals within its jurisdiction.

3. Like the majority in this case and in the case of Akdivar and Others v. Turkey, I too consider that there may have been obstacles to the proper functioning of the system of the administration of justice because of the situation in South-East Turkey at the time of the applicants' complaints. In particular, there are difficulties in securing probative evidence and administrative inquiries, on which such remedies depend, may be prevented from taking place. However, in my view, such difficulties affect not only domestic administrative inquiries and legal proceedings but also, and maybe even more so, the international judge's ability to establish and evaluate the facts of a case.

4. In the instant case a number of reasons militate in favour of exempting the applicants from the requirement of exhaustion of

domestic remedies. However, granting exemption has the unfortunate consequence of putting an extra burden on the Strasbourg institutions, namely the task of acting as the primary fact-finder in cases concerning Convention complaints, which they are neither designed nor equipped to perform. Under the Convention system that role is to be exercised primarily by the national authorities, notably the courts. An international tribunal is incapable of assuming that protective role alone but must be able to rely on the domestic system of human rights protection. It is therefore preferable to encourage the domestic system in becoming more effective and efficient, even if that system suffers from certain weaknesses in the specific circumstances.

5. In view of the above considerations, I consider that the applicants should have at least tried to approach the domestic system for the protection of their rights before lodging a complaint with the Strasbourg institutions; but they failed to do so.

6. By following such an approach, which implies a stricter application of the requirements of Article 26 of the Convention than the one adopted by the majority, the Court could pinpoint defects in the proper functioning of the domestic administration of justice, instead of confining its findings to the individual case. In other words, a hungry man would be better served by being trained to catch fish rather than merely being given fish.

7. As to the alleged violations of the Article 8 of the Convention, it is difficult to ascertain the full truth about what really happened in the village of Saggöze at the relevant time. It is understandable that a number of inconsistencies may be noted in the evidence, whether for the applicants or the Government. However, I cannot agree with the majority's view that the facts as established by the Commission have been proved beyond reasonable doubt as far as the first three applicants' allegations are concerned. The description of the decisive events in paragraph 175 of the Commission's report appears to be a legal construction of a social reality which may or may not correspond to what really happened.

On the other hand, the deficiencies in the establishment and assessment of the facts in this case are not, in my view, to be attributed to any shortcomings on the part of the Strasbourg institutions, but to the inherent inability of those institutions to investigate facts in the manner of a domestic "first instance" tribunal.

8. Otherwise, with the exception of the issue raised under Article 13, I subscribe to most of the arguments put forward by Judges Matscher and De Meyer in their respective opinions.

Footnotes

[fn1] . This summary by the registry does not bind the Court. (Back to FN1)

[fn2]. The case is numbered 58/1996/677/867. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission. (Back to FN2)

[fn3]. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently. (Back to FN3)

[fn4] . *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry. (Back to FN4)

[fn5] . Paragraph 5 of the Commission's report. (Back to FN5)

[fn6] . Paragraphs 27-30 of the judgment; paragraphs 41-44 of the Commission's report. (Back to FN6)

[fn7] . Paragraph 59 of the judgment. (Back to FN7)

[fn8] . Paragraph 58 of the judgment. (Back to FN8)

[fn9] . Paragraph 91 of the judgment. (Back to FN9)

[fn10] . Paragraph 145 of the Commission's report. (Back to FN10)

[fn11] . ibid., §§ 89-94. (Back to FN11)

[fn12] . ibid., §§ 95-104. (Back to FN12)

[fn13] . ibid., §§ 90-91. (Back to FN13)

[fn14] . ibid., §§ 96, 97, 101 and 102. (Back to FN14)

[fn15] . ibid., §§ 48. (Back to FN15)

EUROPEAN COURT OF HUMAN RIGHTS

CASE OF MENTES AND OTHERS v. TURKEY

(Article 50)

(58/1996/677/867)

JUDGMENT

STRASBOURG

24 July 1998

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SUMMARY[fn1]

Judgment delivered by a Chamber

Turkey - first three applicants' claims for just satisfaction in respect of Court's findings, in the principal judgment, of violations of Articles 8 and 13 of the Convention

I. PECUNIARY DAMAGE

Court not prevented from making an award for pecuniary damage, although applicants had limited their complaint to Article 8 of the Convention and no ruling had been made as to whether the matter had also given rise to a violation of Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions).

While applicants sought global amounts without substantiating their claims as to the quantity and value of their losses with any documentary or other evidence, Court accepted that, because of the destruction of family records during the burning of the houses and the security situation in the area in question, they had been faced with particular difficulties in adducing evidence to support their claims - in assessing the pecuniary damage, Court took into account, as far as appopriate, estimates provided by Government and awards made in the previous judgments in comparable cases concerning Turkey.

Awards made in respect of first three applicants' houses, household property, agricultural machinery of one applicant and livestock and feed of two applicants.

Conclusion: respondent State to pay specified sums to first three applicants (fifteen votes to four).

II. NON-PECUNIARY DAMAGE

Having regard to the seriousness of the violations found, an award should be made. Claims for punitive and aggravated damages rejected.

Conclusion: respondent State to pay specified sums to first three applicants (fifteen votes to four).

III. REQUEST FOR RESTORATION OF RIGHTS

This was a matter for the Committee of Ministers under Article 54 of the Convention.

Conclusion: claim dismissed (unanimously).

IV. DEFAULT INTEREST

Statutory default interest applicable in United Kingdom was to apply to above awards expressed in pounds sterling.

Conclusion: default interest should be payable (seventeen votes to two).

COURT'S CASE-LAW REFERRED TO

1.4.1998, Akdivar and Others v. Turkey (Article 50); 28.11.1997, Mentes and Others v. Turkey; 24.4.98, Selçuk and Asker v. Turkey

In the case of Mentes and Others v. Turkey (Article 50)[fn2] ,

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A[fn3] , as a Grand Chamber composed of the following judges:

Mr R. Bernhardt, *President*,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr C. Russo,
Mr A. Spielmann,
Mr J. De Meyer,
Mr N. Valticos,
Mr I. Foighel,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr A.B. Baka,
Mr G. Mifsud Bonnici,
Mr D. Gotchev,
Mr P. Jambrek,
Mr P. Kuris,
Mr U. Lohmus,
Mr E. Levits,
Mr V. Butkevych,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,

Having deliberated in private on 25 April and 26 June 1998,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 17 April 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 23186/94) against the Republic of Turkey lodged with the Commission under Article 25 by four Turkish nationals, Ms Azize Mentes, Mahile Turhalli, Sulhiye Turhalli and Sariye Uvat, on 20 December 1993.

2. In a judgment of 28 November 1997 ("the principal judgment", *Reports of Judgments and Decisions* 1995-IV) the Court dismissed the Government's preliminary objection concerning the exhaustion of domestic remedies under Article 26 of the Convention. The Court then held, with respect to the first three applicants, that there had been a violation of Article 8 on account of the burning of their houses by the security forces on 25 June 1993; that it did not propose to examine further whether the circumstances of the destruction of their homes and their eviction from the village gave rise to a violation of Article 3; and that it was unnecessary to examine whether there had been a violation of the first three applicants' right to liberty and security of person under Article 5 § 1. The Court did not find it necessary to consider the alleged lack of effectiveness of national remedies under Article 6 § 1 but held that there had been a violation of Article 13. It found no violation of Articles 14 and 18. As regards the fourth applicant the Court held that there had been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention.

The Court also held that the respondent State was to pay directly to the first three applicants' United Kingdom-based representatives, within three months, 27,795 pounds sterling (GBP) together with any value-added tax that may be chargeable, less certain sums paid by way of legal aid, in respect of costs and expenses.

3. As the question of application of Article 50 of the Convention was not ready for decision in respect of pecuniary and non-pecuniary damage, the Court reserved it and invited the Government and the first three applicants to submit in writing, within three months, their observations on the matter and, in particular, to notify the Court of any agreement they might reach.

4. The Government, after having been accorded an extension by the President, submitted their observations under Article 50 of

the Convention on 31 March 1998, to which they appended two documents dated 11 February 1998, namely an expert report drawn up by two engineer-agronomists and a letter by the Director of Public Works and Settlement Office. By letter of 2 April 1998, the applicants informed the Registrar that they had no further observations to add to those submitted at the merits stage on 19 January 1997. At the same time they noted that there might be issues in the judgment of the Court in the case of Akdivar and Others v. Turkey which would have implications for their claims under Article 50.

No comments were received from the Delegate of the Commission to the submissions received from the Government and the applicants.

5. On 9 February 1998 Mr Bernhardt, then Vice-President of the Court and, since 24 March, President, replaced Mr Ryssdal who was unable to take part in the further consideration of the case (Rules 21 § 6 and 54 § 2 of Rules of Court A). Subsequently, on 9 March 1998 Mr B. Walsh died.

AS TO THE LAW

6. Article 50 provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

7. In its principal judgment the Court found violations of Articles 8 and 13 of the Convention with respect to the first three applicants, but not the fourth applicant. Only the first three applicants sought compensation under Article 50 for damage.

I. PECUNIARY DAMAGE

A. Arguments of those taking part in the proceedings

8. Under the head of pecuniary damage, the first three applicants each claimed:

(a) GBP 25,000 in compensation for the destruction of home, family life and lifestyle, including for damage to home property and livelihood;

(b) GBP 10,000, based on an average of GBP 3,000 per annum, in respect of loss of income and the cost of alternative accommodation.

9. The first three applicants pointed out that their claim of compensation for pecuniary damage was not based on any particular title to real or personal property but on an estimate of the costs of reconstructing their family life in the environment which had been destroyed. They stated that efforts made to obtain the precise costs had been frustrated by the unwillingness of any appropriate expert to travel to the village - allegedly because of security forces and fear for their personal safety. Furthermore, in view of the destruction of family records it had not been possible to provide a breakdown of the family income. The first three applicants' claims for compensation related to the following items:

(a) As regards Azize Mentes a 200 square metre house (with a barn on the first floor and three bedrooms), a 2,100 square metre hay store, a series of household property, including bedding, sitting room furniture and kitchen equipment, clothes and crops (a number of sacks of wheat, butter beans and barley), twelve tons of logs, agricultural machinery and tools, one hundred acres of cultivated land, thousands of fruit trees and over two hundred poplar trees.

(b) As to Mahile Turhalli a 250 square metre, eight bedroom house and (next to the house) a 300 square metre barn and 300 square metre garden, a 250 square metre pasture house with 200 square metre garden (2-3 kilometre outside village), a range of household property, including sitting room and bed room equipment, kitchen utensils, a year of food stock, five tons of wheat and two tons of barley, 1200 kg of wool and livestock (50 goats, 35 cows, 80 sheep, 5 horses and 40 chicken). She in addition submitted that she had paid amounts totalling Turkish liras (TRL) 228,000,000 in rent since she left the village in 1993 until 1997.

(c) As regards Sulhiye Turhalli a 200 square metre, eight bedroom house, a 200 square metre garden next to the house, a 250 square metre, one storey pasture house and a 200 square metre garden (2-3 km outside village); household property, including bedding, furniture, carpets, kitchen utensils, stocks of food and crops, livestock (2 horses, 14 cows, 20 goats, 20 sheep and 20 chicken), 150 acres of cultivated land, hundreds of fruit trees and nut trees, 1500 poplar trees and 500 logs.

10. The Government, in their initial observations on Article 50 filed at the merits stage on 16 January 1997, argued that, having not alleged a violation of Article 1 of Protocol No. 1, the applicants were barred from attempting to introduce a property element in their Article 50 claim. The Government pointed to a number of matters suggesting that the claim was unsubstantiated.

However, in their further observations of 31 March 1998, the Government proposed to pay TRL 2,241,083,120 for each of the first three applicants. The Government based this figure on an estimate of one year net annual income of a farmer in Saggöze (TRL 119,000,000), the average price of a house (80 square metres) in the village (TRL 1,822,083,120, including 70 per cent of inflation) and the average price for household properties (TRL 300,000,000).

As regard the estimates of income and price for an average house, the Government referred to two documents dated 11 February 1998, namely an expert report drawn up by two engineer-agronomists and a letter by the Director of Public Works and Housing Settlement Office. As regards the value of household properties, the Government referred to the expert report which they had submitted in the case of Akdivar and Others v. Turkey (Article 50) (see judgment of 1 April 1998, *Reports* 1998-..., p. ..., § 6). In addition, the Government supplied the Court with several decisions by the administrative courts concerning compensation for damage to property allegedly in comparable cases.

B. Court's assessment

11. From the outset, the Court notes that the applicants limited their complaint to Article 8 of the Convention and that the Court's finding of violation in the case at hand was that the security forces had burned the first three applicants' houses, with all their belongings and property inside, and had caused them to leave the village (see paragraphs 34, 69 and 73 of the principal judgment). The fact that no ruling was made as to whether the matter complained of also gave rise to a violation of Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) does not prevent the Court from making an award for pecuniary damage.

12. Turning to the first three applicants' claims, the Court notes that under each heading, they sought global amounts without substantiating their claims as to the quantity and value of their losses with any documentary or other evidence. The Court accepts that, because of the destruction of family records during the burning of the houses and the security situation in the area, the applicants were faced with particular difficulties in adducing evidence to support their claims.

In assessing the pecuniary damage sustained by the applicants, the Court will as far as appropriate take into account the estimates provided by the Government and the awards made in the above-mentioned Akdivar and Others (Article 50) judgment and Selçuk and Asker v. Turkey judgment of

24 April 1998 (*Reports* 1998-...). Given the limited nature of the evidence adduced under Article 50, the Court's assessment will inevitably involve a degree of speculation (see respectively paragraphs 19 and 106 of the aforementioned judgments).

1. Destruction of home, damage to household property and livelihood

13. As regards the alleged losses of houses, the Court will only make an award for the first three applicants' homes; it has not been established that the barn and pasture houses of Mahile and Sulhiye Turhalli had been destroyed. It will base its award on the average rate per square metre proposed by the Government and fifty per cent of the surface area claimed by the applicants (see the above-cited Akdivar and Others (Article 50) judgment, *Reports* 1998-..., p. ..., § 19).

14. On the other hand, no indications have been provided as to the value of the first three applicants' household property, the agricultural machinery and tools of Azize Mentes and the livestock and feed of Mahile and Sulhiye Turhalli. The Court nevertheless considers that compensation should be awarded in the light of equitable considerations and the level of comparable awards made in Akdivar and Others (Article 50) judgment on the basis of an expert report and in the Selçuk and Asker judgment.

15. As to the claims in respect of loss of land, the Court is of the view that, in the absence of any finding of expropriation of property in the principal judgment, these must be rejected (see the above-mentioned Akdivar and Others (Article 50) judgment, § 23).

16. In view of the above considerations, the Court makes the following awards in respect of lost property:

(a) GBP 12,000 (Azize Mentes);

(b) GBP 18,000 (Mahile Turhalli);

(c) GBP 16,000 (Sulhiye Turhalli).

These amounts, which have been expressed in GBP in view of the high rate of inflation in Turkey, are to be converted into Turkish liras at the rate applicable on the date of settlement.

2. Loss of income and cost of alternative accommodation

17. As regards loss of income the Court does not find that an award can be made on the basis of the average figures provided by the Government.

As to cost of alternative accommodation, the Court notes that only one of the applicants has supplied figures, whereas the Government have not provided any details on the subject.

In respect of the above items the Court will decide on an equitable basis and awards GBP 6,000 to Azize Mentes and GBP 8,000 each to Mahile and Sulhiye Turhalli, to be converted into Turkish liras at the rate applicable on the date of settlement.

II. NON-PECUNIARY DAMAGE

18. The first three applicants each claimed GBP 30,000 in compensation for suffering and moral damage. They also claimed GBP 15,000 each for punitive damages in respect of the violation of their Convention rights. They submitted that the award should reflect the particular character of the violations suffered by them and also serve as a deterrent with respect to violations of a similar

nature by the respondent State. In addition, the applicants sought GBP 20,000 in compensation for aggravated damage. They maintained that in the event that the Court found that they had been the victims of an administrative practice, this factor should be reflected in the award.

19. The Government, being of the view that the finding of violations of the Convention in itself constituted adequate just satisfaction for the purposes of Article 50 of the Convention, requested the Court to reject the applicants' claims in respect of non-pecuniary damage. The Government strongly contested the applicants' claims for punitive and aggravated damages.

20. The Court considers that an award should be made under the head of non-pecuniary damage, bearing in mind the seriousness of the violations which it has found in respect of Articles 8 and 13 of the Convention (see the principal judgment, Reports 1998-.., p. 2701, § 34, and pp. 2711, 2715-16, §§ 73, 89-91).

It awards the applicants GBP 8,000 each, to be converted into Turkish liras at the rate applicable on the date of settlement.

21. It rejects the claims for punitive and aggravated damages (see the above-mentioned Akdivar and Others (Article 50) judgment, § 38; and the above-cited Selçuk and Asker judgment, § 119).

III. REQUEST FOR RESTORATION OF RIGHTS

22. The first three applicants further requested the Court to confirm that a necessary implication of an award of just satisfaction was that it was incumbent on the respondent State to bear the costs of infrastructural repairs in Saggöze village which were necessary to enable them and their spouses, dependants and other family members to recreate their livelihood and way of life in the village. If damages and compensation were to be awarded on this basis, but the applicants were nevertheless prevented by the State from returning to their lands, this could result in their being victims of further violations of the Convention. The applicants believed that the village of Saggöze was now part of an area prohibited to civilian access and asked the Court to confirm that it would be inconsistent with its findings in their case for the respondent State to prevent them from returning to their village.

23. The Government maintained that the restoration of rights was not feasible due to the emergency conditions prevailing in the region. However resettlement will take place when the local inhabitants feel themselves to be safe from terrorist atrocities.

24. The Court recalls that, according to its case-law (see, for instance, the above-mentioned Akdivar and Others (Article 50) judgment, § 47; and the above-mentioned Selçuk and Asker judgment, § 125), a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach (Article 53 of the Convention) and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers acting under Article 54 of the Convention to supervise compliance in this respect.

IV. DEFAULT INTEREST

25. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7½% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by fifteen votes to four that the respondent State is to pay to the first three applicants, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of settlement

(a) in respect of pecuniary damage:

(i) 18,000 (eighteen thousand) pounds sterling to Azize Mentes,

(ii) 26,000 (twenty-six thousand) pounds sterling to Mahile Turhalli,

(iii) 24,000 (twenty-four thousand) pounds sterling to Sulhiye Turhalli,

(b) in respect of non-pecuniary damage the sum of 8,000 (eight thousand) pounds sterling each;

2. *Holds* by seventeen votes to two that simple interest at an annual rate of 7½% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 24 July 1998 pursuant to Rule 55 § 2, second sub-paragraph, of Rules of Court A.

Signed: Rudolf Bernhardt
President

Signed: Herbert Petzold
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the joint partly dissenting opinion of Judges De Meyer, Gölcüklü, Matscher and Gotchev, is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

JOINT PARTLY DISSENTING OPINION OF JUDGES DE MEYER, GÖLCÜKLÜ, MATSCHER AND GOTCHEV

For the reasons stated in our opinions concerning the merits of this case[fn4] , no compensation should have been awarded to the applicants.

Footnotes

[fn1] . This summary by the registry does not bind the Court.(Back to FN1)

[fn2] . The case is numbered 58/1996/677/867. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission. (Back to FN2)

[fn3] . Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.(Back to FN3)

[fn4] . *Reports* 1997-VIII, pp. 2722-2728, 2730-2731 and 2734.(Back to FN4)

PART IV

APPENDICES

Appendix - A

APPENDIX A

Extract of the Report of the Committee on Migration, Refugees and Demography,

Humanitarian Situation of the Kurdish Refugees and Displaced Persons in south-east Turkey and North Iraq,

June 1998

Humanitarian Situation of the Kurdish Refugees and Displaced Persons in South-East Turkey and North Iraq

Report June 1998

Document 8131

Committee on Migration, Refugees and Demography

Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group

This report seeks to understand the reasons for the large-scale displacement of population of mainly Kurdish ethnic origin both within and from northern Iraq and south-east Turkey and to assess their humanitarian situation and needs. Concluding that the lack of security and difficult economic and social conditions which characterise these regions have prompted such population movements, the report recommends that confidence-building measures be introduced in the framework of the Council of Europe programmes, and that the Turkish Government take steps to bring about a peaceful settlement of the armed conflict in which it is engaged in the south-east of the country. Moreover, the report calls on the member states of the Council of Europe to use their influence with the European Union to step up its economic development aid in the region, and to increase both their humanitarian aid to North Iraq and their efforts, through the United Nations Security Council, to promote peace between the conflicting parties in that region. The report also calls on the Committee of Ministers of the Council of Europe to draw up a series of measures designed to combat the conditions which foster clandestine migration in all its forms.

I. Draft recommendation

1. The Parliamentary Assembly recalls and reaffirms its Recommendation 1150 (1991) on the situation of the Iraqi Kurdish population and other persecuted minorities, Recommendation 1151 (1991) on the reception and settlement of refugees in Turkey, Resolution 1022 (1994) on the humanitarian situation and needs of the displaced Iraqi Kurdish population, Recommendation 1348 (1997) on the temporary protection of persons forced to flee their country, Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants and Recommendation 1306 (1996) on migration from the developing countries to the European industrialised countries.

2. The Assembly notes that one of the acute problems that most of the member countries of the Council of Europe are facing today is the general question of clandestine migration due to the social, economic and demographic differences between the developing and the industrialised countries and also to humanitarian causes in the regions concerned.

3. The Assembly notes with great anxiety the precarious humanitarian situation of the people of Kurdish and other origins in northern Iraq and in the south-eastern provinces of Turkey. The lack of security and difficult economic and social situation in these regions have resulted in large-scale internal and external population displacement and movements.

4. The Assembly strongly condemns the violence perpetrated by the Kurdistan Workers' Party (PKK), which has contributed to population displacement and movements, and urges this organisation to stop all armed activities. The Assembly also condemns the evacuation and burning of Kurdish villages by the Turkish armed forces, and considers that the operation of the village guard system raises serious human rights concerns.

5. The Assembly is concerned that the number of asylum-seekers and illegal migrants of Kurdish origin has increased in certain European countries.

6. The Assembly considers that the scale of the humanitarian plight of the Kurds fully justifies the involvement of the Council of Europe and of other relevant international organisations, and that all governments concerned should be urged to take effective steps to improve the situation, and, in the case of Turkey, to comply fully with the Council of Europe's principles.

7. The Assembly underlines once more with great concern that the problem of illegal trafficking in human beings also stirs up racism, xenophobia and intolerance.

8. The Assembly stresses once more that although this phenomenon is of great concern for receiving countries, it is also disturbing for the countries on the transit route.

9. The Parliamentary Assembly therefore recommends that the Committee of Ministers:

i. take steps to promote dialogue and reconciliation in the provinces of south-eastern Turkey inhabited mainly by Kurdish people, through appropriate action in the framework of the programme of confidence-building measures, and in particular through an immediate and bilateral cease-fire;

ii. instruct its appropriate committees to intensify their efforts to remedy the concrete problems connected with migration movements of Kurds;

iii. draw up a series of measures designed to combat the conditions which foster clandestine migration in all its forms, with provision for penalties for traffickers and employers who exploit illegal immigrants, in consultation with the Budapest Group;

iv. invite Turkey:

a.to stop using the armed forces against the civilian Kurdish population;

b.to expedite and intensify its efforts to promote the economic and social development of the south-eastern provinces;

c.to sign and ratify the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages;

d.to adopt policies and take adequate measures to enable Turkish citizens of Kurdish origin to exercise their cultural and political rights;

e.to restore the rule of law in the south-east of the country, and in particular to lift emergency rule in the south-eastern provinces, to ensure effective protection of villages, to exercise civilian control over military activity in the region including the keeping of records and observance of human rights, and to prosecute members of the armed forces charged with human rights violations;

f.to abolish the village guard system;

g.to undertake additional effective measures aimed at the reconstruction and revival of the economy in the south-eastern provinces;

h.to take further steps to reconstruct schools and hospitals in the area;

i.to implement, in cooperation with international humanitarian organisations, a major programme with a view to encouraging the return of the Kurdish population to their homes;

j.to ensure particular protection for returning women, children and elderly people;

k.to present reconstruction projects to be financed by the Council of Europe's Social Development Fund, in the framework of return programmes;

l.to adopt measures to integrate those displaced persons of Kurdish origin who wish to settle in other parts of Turkey, and provide them, as well as returnees, with compensation for property damaged by the Turkish armed forces where the case arises;

m.to grant access to the region for international humanitarian organisations, and provide them with support from local authorities;

n.to continue to facilitate the transfer of supplies for humanitarian purposes to Iraq;

o.to lift the geographical limitation to the 1951 Convention relating to the status of refugees and its 1967 Protocol, and in particular abstain from deportation of asylum-seekers without prior consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), and abolish the 5-day-limit for making asylum applications;

p.to refrain from all military incursions into northern Iraq, and seek an agreement with the Government of Iraq concerning the security of refugees in that region;

v. urge the member states:

a.to encourage the strengthening of aid programmes for development in the countries of origin and also in the countries of transit with a view to providing increased economic and technical assistance for migration-related development projects;

b.to step up their humanitarian aid to northern Iraq through the appropriate agencies;

c.to adhere scrupulously to the principle of non-refoulement in accordance with their international obligations;

d.to offer temporary protection, in consultation with UNHCR, to those who do not qualify for refugee status under the 1951 Convention relating to the status of refugees and its 1967 Protocol but who have been forced to flee because their lives or safety were endangered;

e.to ensure that all asylum-seekers are treated with dignity and sheltered in healthy conditions;

f.to continue efforts to conclude repatriation and readmission agreements with the countries of origin and with the countries of transit, provided that the people concerned are not returned against their will;

vi. use its influence with the European Union:

a.to ensure that any action taken to strengthen border controls or to combat clandestine trafficking do not infringe or undermine international law on the protection of refugees;

b.to resume promised financial cooperation with a view to fostering economic development in Turkey, particularly in its south-eastern provinces, and step up its provision of humanitarian aid to northern Iraq;

vii. set up, together with the European Union, a joint programme of cooperation with Turkey aimed at providing assistance in relation to the Kurdish people;

viii. use its influence with the United Nations Security Council to obtain an effective lifting of sanctions on Iraq and more intensive efforts to ensure peace between the parties concerned.

II. Draft order

1. The Assembly refers to its Recommendation 1377 (1998) on the humanitarian situation of the Kurdish refugees and displaced persons in South-East Turkey and North Iraq.

2. The Assembly considers that it should play a more prominent role in promoting peace and reconciliation in the Kurdish regions of south-eastern Turkey and elsewhere. For this purpose, it instructs the appropriate committees to study the question more actively within their own areas of competence, and to organise an international parliamentary conference on the Kurdish question in all its aspects with the participation of all parties concerned.

3. The Assembly instructs its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe to study the issue of the Kurdish minority in the framework of the monitoring procedure concerning Turkey.

III Explanatory memorandum by Mrs Vermot-Mangold

1. Introduction

1. The Parliamentary Assembly has followed the humanitarian situation of refugees and displaced persons of Kurdish origin with anxiety for many years now. It has adopted a number of texts relating to the subject, in particular Recommendation 1150 (1991) on the situation of the Iraqi Kurdish population and other persecuted minorities and Resolution 1022 (1994) on the humanitarian situation and needs of the displaced Iraqi Kurdish population. Moreover, in Order No 460 (1991), the Assembly instructed its Committee on Migration, Refugees and Demography to follow closely developments in the Iraqi Kurdish refugees' situation.

2. In addition, on 4 May 1992 the Committee on Migration, Refugees and Demography was seized of a motion for a resolution on the situation of the Kurds, which referred directly to the situation in North Iraq and in South-East Turkey. In the preparation of the present report, the Rapporteur visited Geneva on 20-21 November 1996 for meetings with the humanitarian organisations concerned (UNHCR, ICRC, IFRC, UNICEF and the UN Human Rights Commission).

3. The Rapporteur's intention was to visit the region concerned. On her proposal, on 29 January 1997 the Committee on Migration, Refugees and Demography set up an ad hoc committee for a fact-finding mission to Turkey and Iraq, but the Bureau did not authorise the visit.

4. In order to gather more information, the Sub-Committee on Refugees organised a parliamentary hearing on 17 November 1997 with the participation of representatives of intergovernmental and non-governmental organisations operating in the region. Unfortunately the Turkish delegation to the Committee did not attend. The fact that the Turkish Government did not reply to the invitation sent to it demonstrates its lack of consideration for the Committee.

5. During the January 1998 part session of the Assembly, Mrs Aguiar, the then Chairperson of the Committee on Migration, Refugees and Demography, and others, including the Rapporteur, reacting to the increasing number of arrivals in Italy and Greece of migrants and asylum-seekers of Kurdish origin, requested a debate under urgent procedure on the influx of migrants and asylum-seekers of Kurdish origin in Europe. Since this request was rejected by the Assembly, the Committee subsequently agreed that the Rapporteur should also cover this aspect in her report on the humanitarian situation of the Kurdish refugees and displaced persons.

6. Finally, it should be noted that a monitoring procedure in respect of Turkey, under Order No 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, was opened in April 1996 on the basis of Assembly Recommendation 1298 (1996) on Turkey's respect of commitments to constitutional and legislative reforms, and that the Committee on the Honouring of obligations and commitments by member states of the Council of Europe is preparing a report which covers certain aspects of the Kurdish question.

7. The Rapporteur is of the opinion that the dramatic humanitarian situation of the Kurdish refugees and displaced persons in south-east Turkey and north Iraq, as well as the influx of Kurdish asylum seekers in Europe, which is one of its direct consequences, stem from the political problems in the region. Thus it proved impossible to discuss, or make recommendations on how to improve the humanitarian plight of the population concerned in abstraction from the political causes.

2. Situation in Turkey

a. Situation in the south-eastern region of the country

8. Martial law was established in the south-eastern provinces of Turkey as early as the 1970s in response to the activities of a variety of Kurdish and leftist political movements, both armed and peaceful. However, serious armed conflict in the region began in 1984, when the Kurdistan Workers' Party (PKK), attacked two police stations. The Turkish armed forces responded with repression and the establishment of the village guard system (Koruculuk).

9. The village guards are a force of approximately 50 000 ethnic Kurdish villagers armed and paid by the Government to fight the PKK. The village guard system continues to raise the most serious human rights concerns expressed on many occasions by human rights organisations including Amnesty International and Human RightsWatch. In February 1997, Mr Unal Erkan, member of the Turkish Parliament (True Path Party- DYP) and former governor of the areas of South-East Turkey under emergency rule, stated that village guards often operated outside the control of the gendarmerie, and that many villagers faced pressure to enter the system.

10. In theory becoming a village guard is voluntary, but in practice refusal is followed by reprisals by the security forces, ranging from detention of villagers(1) to forced evacuations of whole villages. On the other hand, joining the village guard system entails the risk of retaliation against the whole village by the PKK. The overwhelming majority of the Kurdish population in the region face such a dramatic alternative which allows nobody to remain neutral and uninvolved.

11. The evacuation of villages refusing to join the village guard system is carried out by the army with extreme brutality and no civilian supervision. It is frequently accompanied by the destruction of property and further violation of human rights such as sexual assault and humiliation, beatings and extrajudicial executions.

12. The Turkish authorities until recently have denied responsibility for these operations, claiming that the PKK was to blame for the destruction of villages and that individuals had left voluntarily, or under pressure from the PKK. However the complicity of the Turkish authorities was confirmed in two recent rulings of the European Court of Human Rights: on 16 September 1996 in the case of Akdivar and others vs Turkey, and on 28 November 1997 in the case of Mentes and others vs Turkey, in which Turkish security forces were found guilty of burning houses in villages in south-eastern Turkey, causing the villagers to flee.

13. In another case, that of Isiyok vs Turkey concerning the destruction of a village, both parties accepted on 31 October 1997 a so-called friendly settlement proposed by the European Commission of Human Rights, according to which the Turkish authorities paid compensation to the applicants(2).

14. Undoubtedly, the PKK has some responsibility for the burning of villages, in particular those run by village guards or refusing to support the PKK. Attacks are often targeted against those whom the PKK accuses of « cooperating with the state » such as civil servants, teachers and village guard families. According to the Amnesty International Report 1997, armed members of the PKK were responsible for more than 40 deliberate and arbitrary killings in 1996. The victims included civilians, as well as captured soldiers and village guards.

15. However, the responsibility of both parties, the PKK on the one hand, and the Turkish armed forces on the other, should be viewed in appropriate proportions. In the Rapporteur's opinion the Turkish authorities bear more blame for the uncontrolled escalation of violence in the region, first because the provocative nature of their suppression of the rights of the Kurdish minority lies at the origin of the conflict, and secondly because they have at their disposal the whole machinery of the state, which they use abusively against the Kurdish population in the region.

16. A step towards the clarification of this important question has been undertaken by the Turkish Parliament. At the request of one of its members, Mr Algan Hacaloglu of the Republican People's Party (CHP), a former state minister for human rights, the Turkish Parliament set up a Committee on Migration in 1997 to investigate the causes of displacement and to provide aid to the displaced.

17. On 28 July 1997, the Chairman of this Committee, Mr Seyit Hasim Hasimi, held a press conference in Diyarbakir. He announced that forced evacuation of villages and hamlets by the Turkish armed forces in the region had resulted in large numbers of displaced people and potential refugees. He confirmed that 364 742 inhabitants of 3 185 villages and hamlets had been forced out since 1990 in the framework of the fight against terrorism. These figures were publicly confirmed later by Mr Bülent Ecevit, Deputy Prime Minister, who said that the villages had been emptied "for security reasons". The US State Department cited 560 000 as "a credible estimate" of the number of people deprived of their homes as a result of the evacuations.

18. According to Human Rights Watch the majority of villages and hamlets in the region were forcibly emptied between 1993 and 1995. After that the large-scale evacuations ceased, but smaller operations by the Turkish armed forces continued in 1996 and 1997. The most probable reason for the lower rate of evacuations is that there are now very few « frontline » villages left outside the village guard system and the process of depopulation is virtually complete.

19. The tragic record of the region would not be complete without giving the number of people killed in the conflict, which illustrates the state of dreadful insecurity that prevails. According to Turkish military sources, some 19 000 people have been killed since the PKK began its campaign in 1984 – 3 000 members of the security forces, 11 000 « terrorists » and 5 000 civilians. In a speech in October 1995

President Demirel spoke of 20 663 dead and 13 577 injured. Kurdish sources speak of 35 000 dead, including at least 5 000 civilians.

b. Internally displaced persons of Kurdish origin and refugees from Turkey in Iraq

20. The dramatic situation in the south-eastern part of Turkey has resulted in the forced displacement of the Kurdish population within the country and outside Turkey. Exact figures for internal and external displacement are impossible to obtain, as no exhaustive statistics are held on the subject. The extent of these movements is so massive that certain human rights organisations do not hesitate to speak of a deliberate policy of dispersal of the Kurdish population carried out by the Turkish authorities.

21. Estimates of the number of internally displaced persons of Kurdish origin in Turkey range, depending on the source, from 370 000 to 10 million. The big discrepancy results from the difficulty to differentiate between natural migration movements which may be observed in many countries and which have mainly economic causes (eg rural depopulation), and forced displacement. Whereas the Kurdish human rights organisations have a tendency to include all people of Kurdish origin living outside south-east Turkey in the category of forcibly displaced persons, the Turkish authorities limit this number to dislodged inhabitants of destroyed villages and hamlets. The exact definition of a displaced person with regard to the Kurdish population is very difficult to establish. Individual decisions on migration are often based on a number of factors. The armed conflict, general insecurity in the region, economic instability: all these factors contribute to the depopulation of the region, and it is nearly impossible, given the lack of reliable statistics, to distinguish between forcibly displaced population and voluntary migrants who have no intention to come back.

22. According to Mr Nezan, President of the Kurdish Institute in Paris, the number of persons displaced within south-east Turkey over the last 20 years amounts to 2.5-3 million. The population of Diyarbakir, for example, rose from 380 000 in 1990 to 1 million in 1996. Concerning displacement throughout the rest of Turkey, the figure is approximately 8 million, of whom some 3 million are in Istanbul alone.

23. The majority of the displaced rural population of Kurdish origin now live in urban centres in dramatic conditions and extreme poverty, creating specific integration problems for local communities. The main problem is usually a total lack of financial resources which would enable the displaced population to lead a normal life in new surroundings. They have most often been deprived of their property for which they have received no compensation. They usually have no prospects for employment. Having no means of subsistence they are compelled to live in shanty towns with no health or social care. It is common that children are forced to work. Needless to say these disastrous living conditions have resulted in an increase in crime, in particular among young people, and growing support for radical movements.

24. According to Médecins sans Frontières, the vast majority of these displaced persons are considered a population at risk from the public health point of view. Primary health care is severely deficient with an almost complete lack of medical

services, which may be illustrated by the following statistics: while the average number of consultations per person per year in 1992 was 2.4 for the whole of Turkey, it was 0 .26 in Diyarbakir. The infant mortality rate, which was officially 60 per 1000 for the whole country in 1990, was 87 per 1000 in Diyarbakir and 98 per 1000 in Hakkari in the same year. A number of communicable diseases such as typhoid, para-typhoid, trachoma, brucellosis and amoebic dysentery are endemic throughout the region. The vaccination coverage is low and decreasing. The nutritional status of the displaced population is borderline.

25. Besides the internally displaced, there are also a number of Turkish refugees of Kurdish origin who fled to North Iraq. Following the closure for security reasons of the so-called Atrush A refugee camp, close to the Turkish border, in 1995, and of Atrush B in December 1996 due to the presence of the PKK, these refugees now find themselves in several groups.

26. One group of approximately 6 800 people who were refused asylum in Iraq, were until recently in a kind of no-man's land between the area of North Iraq controlled by the Kurdistan Democratic Party (KDP) led by Mr Barzani, staying in Ain-Sufni camp(3) under the protection of UNHCR, which provided them with basic humanitarian assistance, including food, health care, sanitation and temporary shelter. On 14 February 1997, due to the lack of security, they left the camp, leaving behind only 70 people (who were subsequently assisted by UNHCR and the local authorities to relocate to the Governorate of Dohuk). They tried once again to enter Iraqi territory, but were not admitted. At the time of drafting the present report, they were camped near the Iraqi checkpoint, in the no man's land, on the side of the road and on the road itself, surrounded by areas infested with land mines. They are provided with basic assistance by UNHCR, and awaiting the outcome of the UNHCR's negotiations both with the Iraqi Government and with the KDP's local Government in Dohuk, or some alternative solution in case the Iraqi Government sticks to its negative position.

27. It should be noted that the majority of this group are women and children and constitute a particularly vulnerable category of refugees. They are more often in danger of human rights violations including threats to their physical safety and sexual assault, and have specific health problems and needs. Therefore the greatest importance should be attached to remedying the present dramatic situation.

28. Another group of some 4 000 Turkish refugees of Kurdish origin are located in 19 settlements in Dohuk governorate, and one settlement in Erbil governorate. They have received humanitarian assistance from UNHCR which also provides assistance to the host communities in order to facilitate integration.

29. Moreover, some 1 000 refugees returned to Turkey in 1997. However, the prospects for further voluntary repatriation are very limited.

30. The security of the refugees in Northern Iraq is highly unsatisfactory, mainly because of Turkish military incursions and non-respect of the so-called « security zone » established after the 1991 Gulf War. In addition, as a result of the recent Gulf crisis, Turkey is reported to have set up a 15 km buffer zone in Northern Iraq. According to the newspaper Sabah, as many as 30 000 Turkish troops have already been sent to Iraqi Kurdistan.

31. A considerable number of Turkish citizens of Kurdish origin seek asylum in European countries. This question is examined in Section 4 below.

c. Prospects for return; position of the Turkish authorities

32. According to figures released in March 1997 by the Turkish Ministry of the Interior, approximately 20 000 internally displaced persons of Kurdish origin returned to their homes in 108 villages and 90 hamlets in the south-east region in 1996.

33. As mentioned above only some 1 000 of over 10 000 Turkish refugees of Kurdish origin at present in Iraq returned in 1997. The others are waiting for amnesty in Turkey, and for adequate reintegration assistance measures.

34. The new Prime Minister, Mr Mesut Yilmaz, who took office in July 1997, and many of his ministers have made positive statements about improving the situation. Shortly after taking up his duties, Deputy Prime Minister Bulent Ecevit led a delegation to Diyarbakir, the centre of Turkey's ethnically-Kurdish regions, to announce job creation programmes, housing for the forcibly displaced and increased education opportunities. The aim of the Turkish authorities is to establish 400 regional schools before 2000. Special premiums are paid to teachers willing to come to the region, but out of 6144 teachers designated to teach in the region in 1997, 3173 have already resigned. Since 1992, 122 teachers have been killed and 17 wounded. 2076 schools are closed because the villagers or tutors have left. 117 000 students cannot attend school.

35. All these declarations seem to point to a new policy in south-east Turkey. It should be noted, however, that already in the past, representatives of newly established governments have made promises and declarations concerning the Kurdish population, which have not been subsequently observed. The reason seems to be the lack of civil control over the army and the security forces which, in practice, constitute the only authority in the region. Therefore, it is necessary to judge the Government according to its actions.

36. For the time being however conditions in the region do not allow any large-scale returns to be envisaged. The main reason is continuing lack of security. The armed conflict in south-eastern Turkey between the security forces and the PKK is in its 14th year with both sides committing serious abuses including torture, extrajudicial killings, and indiscriminate burning of property. Although at present much of the fighting has moved to remote mountain areas or to northern Iraq, nevertheless repatriation would still mean putting lives at risk.

37. Another serious problem results from the disastrous economic and social situation of the whole region. Systematic destruction of the infrastructure, economic resources, livestock, crops, houses, tractors etc. have made large areas of the region uninhabitable. The region has always suffered from a lower level of economic and social development than other parts of the country. Before mass return could be foreseen, measures to revive the local economy would have to be undertaken.

38. In addition there is a food embargo in the province of Tunceli, and partly in Diyarbakir and Bingol provinces, that limits the amount of food villagers can purchase, allegedly to cut off the PKK's access to supplies.

39. Although the state of emergency begun in 9 south-eastern provinces in 1984 was lifted in 3 provinces in October 1997, the state of emergency decree was renewed for 4 months for all provinces in November.

40. One may consider all the problems mentioned above as symptoms of a more general political conflict. It must be remembered that a population of 13.2 million (22% of the total population in Turkey) is, despite claims to the contrary by the Turkish Government, denied the right to maintain its cultural identity and traditions, to use its language, and to develop its own links. The position of the Turkish authorities in this respect has not changed: the Turkish Constitution does not recognize distinctions as to race or ethnic origin. This attitude seems to justify the suppression of minorities' cultural expression.

41. The Constitution of Turkey prohibits the use of a «language prohibited by law» (Art. 26 and 28). In fact there are at least 13 laws which forbid the use of the Kurdish language and the expression of Kurdish culture. Articles 8 of the anti-terrorist law and 311, 312 and 159 of the Penal Code restricting freedom of opinion are in force. In particular Article 8 which outlaws advocacy of separatism continues to be used to prosecute and imprison people for peacefully expressing their opinions. Articles 168, 169 and 312 of the Turkish Penal Code are used to prosecute writers, journalists and political activists who challenge the government's policies in the south-east. Human rights defenders in the area have been tried on manifestly fabricated charges of membership of, or support for, armed opposition groups(4). Since 1995 the European Court of Human Rights has announced as many as 12 judgements regarding violations of human rights of people of Kurdish origin by the Turkish authorities.

42. The detention of 6 Kurdish members of parliament (Mr Sirri Sakik, Mr Ahmet Türk, Mr Mahmut Alinak, Mrs Leyla Zana, Mr Mehmet Hatip Dicle and Mr Orhan Dogan) is a well known fact, now being examined by the European Court of Human Rights(5).

43. All these violations constitute part of the broader question of the rule of law and human rights. They should therefore be carefully examined by the Monitoring Committee.

d. Role of the international organisations

44. The main problem encountered by the humanitarian organisations is lack of access to the south-east of Turkey. For example, Médecins sans Frontières is systematically refused the possibility to give medical assistance in the region. The International Committee of the Red Cross (ICRC) has no access to Turkey, therefore no possibility to monitor compliance with international humanitarian law or to visit detainees. At the hearing on 17 November 1997, Mr Kilic from the Red Cross of Kurdistan (not affiliated with the International Federation of Red Cross and Red

Crescent Societies) accused the Turkish Government of not admitting to the region lorries with medicines sent by this strictly humanitarian organisation.

45. Despite these difficulties a number of humanitarian organisations run projects mainly in the nutritional, health and educational fields. For instance UNICEF, in co-operation with the authorities and local civil society, has introduced income-generating projects and training programmes.

46. Other organisations assist displaced persons in other parts of the country and refugees outside Turkey (in particular in Iraq). An interesting example of such activities is the project carried out since 1994 by the Helsinki Federation for Human Rights. It aims at improving interaction and co-operation between local NGOs and those municipalities in Turkey which receive large numbers of Kurdish displaced persons, and therefore are faced with the problems of integration. These efforts have been successful to some extent, which may be illustrated by the example of an Organisation called « Help and Solidarity with the Migrants », effective in its co-operation with local authorities.

...

4. Influx of Kurdish migrants and asylum-seekers in Europe

a. Recent increases

69. For many years Turkish or Iraqi migrants of Kurdish origin have been arriving in Europe. Their number is estimated at 3 million, but precise statistical evidence is hard to come by for a number of reasons, including the fact that migration statistics are broken down by national rather than ethnic origin. A significant number of Kurdish migrants are not taken into account in any statistics because of their illegal status.

70. Over recent months several member states have reported a significant increase in the number of ethnic Kurds, mostly of Iraqi nationality, arriving as illegal migrants and asylum-seekers, and this despite the overall downward trend since the peak year 1992. Most of them transit through Turkey, and pay large sums of money to traffickers connected with organised crime rings.

...

b. Causes

76. The precise causes of the increase in influx of migrants and asylum-seekers of Kurdish origin movements are hard to pinpoint. The dramatic humanitarian situation described earlier in the report obviously constitutes an important incentive for migration. Further reasons are the lack of economic prospects and discriminatory policies in both Iraq and Turkey towards the Kurdish minority.

77. On 6 January 1998 the President of the Turkish Human Rights Association, Mr Akin Birdal, issued a statement to the effect that policies pursued over decades in Turkey had made this massive migration inevitable. The internal migration which had been experienced over the past 5-6 years had now turned abroad. Those forced to

migrate faced serious unresolved problems, with regard to accommodation, nutrition, work, health and education. The recent migrations showed that the Kurdish question had now become an international issue, rather than a problem internal to Turkey. It was a human rights problem, thus a problem for the international community.

78. Mr Kendal Nezan, Director of the Kurdish Institute in Paris, who contributed to the hearing on the humanitarian situation of the Kurdish refugees and displaced persons in South East Turkey and North Iraq organised by the Assembly's Sub-Committee on Refugees on 17 November 1997, said in an interview published in Le Monde (8 January 1998) that, given that Turkey was virtually a police state, it was inconceivable that so many Iraqi and Turkish refugees could leave Turkey without the state apparatus being accomplice to the fact, in connivance with the Turkish mafia. Not only was there money to be made through trafficking, but it fitted in perfectly with the policy of depopulating Kurdistan. This policy amounted to cultural genocide. Some 7 million out of a total Kurdish population officially estimated at 12 million Kurds in Turkey, but more likely 15 to 20 million, had been displaced. 4000 members of the intelligentsia had been assassinated and thousands more imprisoned or forced to leave.

79. The reason for the recent surge in departures from South East Turkey, according to Mr Nezan, was that the hopes for greater autonomy that its Kurdish inhabitants had pinned on the Refah (Welfare) Party, which was based on the fraternal religion of Islam, had been dashed by the resignation of the Prime Minister, Mr Erbakan, and the substantial loss of influence of the Kurdistan Workers' Party (PKK).

80. As for the Iraqi Kurds, who had left in greater numbers, they also saw no future, fearing the return of the Iraqi administration in the North, and disillusioned by the fighting between the main rival Kurdish factions and by repeated Turkish military incursions. For the most part these were young professionals. Some 6,000 had left in 1996 following the incursion into the "exclusion zone" by Iraqi forces in support of the Kurdistan Democratic Party (KDP) in their fight against the Patriotic Union of Kurdistan (PUK). A few hundred of these had worked for the United States Central Intelligence Agency, but most had simply worked for non-governmental organisations and feared being considered CIA agents.

81. The Rapporteur has received a statement on "illegal trafficking of human beings" from the Turkish Permanent Representation to the Council of Europe deploring this "morally repugnant crime" often linked to "extremist and terrorist groups", specifically to the PKK [Kurdistan Workers' Party] which, according to the statement, finances its operations through extortion, arms and drugs smuggling and trafficking in migrants. Being a Turkish national of Kurdish origin, the statement continued, was not sufficient to be considered subject to discrimination or persecution as shown by several decisions of the German Administrative Courts and the decision of the European Commission on Human Rights in the case of A.G. against Sweden (application No. 27776/95). In any case, it was difficult to verify the identity and country of origin of many of the migrants concerned. The root cause of the recent inflow was the economic situation, especially the high unemployment, in northern Iraq and southern Turkey. This was mainly attributable to the economic embargo imposed on Iraq. That their main motive was economic could be judged from the fact

that most of the migrants did not ask for political asylum. Turkey was ready to co-operate against all forms of trafficking in human beings, and had concluded security co-operation agreements with 30 countries including Italy. The problem could only be solved through dialogue and co-operation between the interested countries.

82. The Turkish Government has criticised the Italian Government for its readiness to consider asylum applications from Kurds favourably, asserting that it was thereby encouraging illegal migration for economic ends. The Italian Government responded by requesting a Turkish commitment to put an end to illegal departures and to deal with the root causes of the problem.

83. Both the Office of the United Nations High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles (ECRE) have reacted to the increased flow of Kurdish migrants expressing their concern, and calling on the states concerned to investigate asylum applications case by case.

c. Response of the European Union

84. On 12-13 December 1997, the Luxembourg European Council asked the Justice/Home Affairs Council to work out and rapidly implement an action plan in response to the massive influx of Iraqi migrants.

85. On 7 January 1998 the European Commission reviewed the situation and called on member states to step up the harmonisation of asylum procedures and to respond favourably to its proposal for a Joint Action on Temporary Protection. It noted Italy's position on asylum and current immigration law reform. It considered how best to use its technical and financial resources in such emergency situations with a view to strengthening external border controls and with regard to the delivery of humanitarian aid and measures to address the root causes of the crisis.

86. On 8 January 1998 police chiefs and senior officials from Austria, Belgium, France, Germany, Greece, Italy, the Netherlands and Turkey met in Rome and reached agreement on ways to combat illegal immigration "at preventive and repressive level". Including intensified surveillance and control of external borders and land and sea routes, thorough investigations of suspected criminal organisations involved in trafficking of migrants, and their assets, greater co-operation regarding policing of readmission agreements, more intensive collection, storage and exchange of fingerprints of illegal immigrants, increased liaison and sharing of information etc.

87. On 15 January 1998 the European Parliament adopted a Resolution on Kurdish refugees and on the position of the European Union. While expressing support for the humanitarian approach adopted by the Italian Government towards the asylum-seekers, the Parliament called among other things for a common Union policy on immigration and refugees, notably the rapid adoption of the Convention on external border controls; a Commission proposal for burden sharing; intensification of the fight against trafficking in migrants; and an international initiative to find a political solution to the Kurdish problem.

88. The Action Plan requested by the Luxembourg European Council was adopted by the General Affairs Council (Ministers of Foreign Affairs) on 26 January 1998. It contains the following main elements: improved analysis of the causes and origins of the influx, development of contacts with the Government of Turkey and with UNHCR, ensuring that humanitarian aid makes an effective contribution, effective application of asylum procedures, preventing abuse of asylum procedures, tackling the involvement of organised crime, combating illegal immigration, ensuring coherent and co-ordinated implementation, monitoring and review.

89. The 46-point Action Plan has raised some criticism from the human rights organisations pointing out that it makes no mention of obstacles encountered by asylum-seekers trying to use legitimate means to flee from persecution, such as strict visa requirements and heavy fines imposed on airlines which transport passengers without the required entry documents. Moreover the Action Plan does not mention the fact that Iraqi Kurds may not apply for refugee status in Turkey as a result of the geographical limitation to its application of the 1951 Geneva Convention and 1967 Protocol. Finally, the Action Plan does not propose alternative forms of protection for Turkish Kurds even though the Council acknowledges the causes of their flight.

90. The situation was reviewed by the Justice/Home Affairs Council on 19 March 1998, and by the General Affairs Council on 30 March. The latter agreed that overall implementation of the Action Plan was proceeding satisfactorily, and welcomed the co-operation being developed by the European Union with Turkey and with the UNHCR.

5. Conclusions

91. Concerning the situation in Turkey, recognition of the rights of the Kurdish minority is a precondition for a return to peace in the south-east of the country. The Kurdish population should have the right to use and sustain their natural language and cultural traditions which is entirely in accordance with the principles of the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages. Therefore the Turkish Government should adopt policies and take adequate measures to enable Turkish citizens of Kurdish origin to exercise their cultural and political rights as a minority.

92. Effective restoration of the rule of law in the south-east of the country is a condition without which no mass return of displaced people and refugees can be envisaged. To this end, emergency rule in the south-eastern provinces should be lifted. The authorities should ensure effective protection of villages. At the same time control over military activity should be exercised by the Government. This includes the keeping of records and observance of human rights (medical examinations, respect for rules etc), as well as prosecution of members of the armed forces for human rights violations. The village guard system should be abolished, as it is highly abusive. At present there is no civil control over it.

93. Effective measures aiming at the reconstruction and revival of the economy in the region are indispensable for mass returns. The Government's declarations in this respect are most welcome, but they must be followed by concrete action. Possible

loans from the Social Development Fund, if granted, could be used to finance the reconstruction of village housing as part of a major programme of reconstruction and investment with a view to the internationally monitored return of the Kurdish population to their homes in the South-East.

94. Measures should also be foreseen to integrate those displaced persons who wish to settle in other parts of Turkey. Villagers whose property has been damaged by the Turkish armed forces should be provided with compensation.

95. Humanitarian organisations should be granted access to the region, and provided with support from local authorities. Also the transfer of supplies for humanitarian purposes to Iraq should not be hindered.

96. The Turkish Government should lift the geographical limitation to the 1951 Geneva Convention and its 1967 Protocol. In particular no deportation of asylum-seekers should be carried out without prior consultation with UNHCR in order to find out whether the persons in question have been found to be persons of concern to UNHCR. Abolishing the 5-day-limit for making asylum applications – which may result in violations of the principle of non-refoulement – is essential.

97. An agreement between Turkey and Iraq concerning the security of refugees in North Iraq is a matter of urgency. The Turkish military incursions into the territory of Iraq should be stopped.

98. The Government of Iraq should stop all military incursions to the northern part of the country. It should also be urged to allow entry to the Kurdish refugees seeking asylum on its territory.

99. Humanitarian assistance for the population of Kurdish origin in Iraq should be stepped up, and the Government of Iraq should lift the embargo on the North, and co-operate fully in the implementation of Security Council Resolution 986 (1995) ("oil for food") ensuring that humanitarian relief also reaches the North.

100. The situation in South-East Turkey and North Iraq is a direct cause of growing numbers of migrants of Kurdish origin arriving in Europe. Although many of them undoubtedly have economic motives for leaving their countries, many are in genuine need of international protection. The Assembly must urge all member states to ensure that they adhere scrupulously to the principle of non-refoulement, as required by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In deciding to examine applications for asylum on a case-by-case basis, the Italian Government is to be congratulated on fulfilling its international commitments and acting in line with Resolution (67) 14 of the Committee of Ministers which asks the member states to "act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory".

101. In this spirit, those member states concerned are urged to offer protection to all those asylum-seekers deemed not to meet the 1951 Convention criteria for refugee status but who have been forced to flee because their lives and safety were seriously threatened.

102. The Assembly should also urge all member states to ensure that salubrious conditions are maintained in their reception facilities for refugees and asylum-seekers and that these are treated with dignity at all times.

103. As for the question of clandestine migration and trafficking, the Parliamentary Assembly in its Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants called on the Committee of Ministers to draw up a Convention designed to address the problem of clandestine migration. However, the Committee of Ministers replied that such matters were best dealt with by others. No other body has since undertaken this work in the wider Europe, and it is time for it to start.

104. While the European Parliament's Resolution on the Kurdish refugees and on the policy of the European adopted on 15 January 1998 is to be welcomed, all steps to harmonise migration and refugee policies within the Union should be carefully coordinated with third European countries on a multilateral basis in the framework of the Council of Europe. The European Union's Action Plan adopted on 26 January 1998 is also generally welcome. However, it must not result in any attempt to prevent the departure from their countries of those who may wish to apply for asylum abroad on the grounds of well-founded fear of persecution.

105. Moreover, the strengthening of border controls in Europe must go hand in hand with the implementation of a preventive policy consisting in increasing development assistance designed to alleviate the poverty which generates migration, and in stepping up the promotion of human rights, democracy and the rule of law.

106. In this connection, the Assembly should play a more prominent role in promoting peace and reconciliation in the Kurdish regions of south-eastern Turkey and elsewhere. For this purpose, the Assembly's Committees should more actively study the question within their own areas of competence. In particular, the Monitoring Committee should continue to examine the Kurdish question in the framework of its monitoring procedure in respect of Turkey.

107. Finally, the Assembly should organise an international conference on the Kurdish question in all its aspects, from political to cultural.

APPENDIX

Dissenting opinion of the Turkish members of the Committee on Migration, Refugees and Demography - Presented by Mr Dinçer and Mr Mutman

I. Introduction

The Turkish members of the Committee on Migration, Refugees and Demography disagree with the content of the report, entitled "The humanitarian situation of the Kurdish refugees and displaced persons in South-East Turkey and North Iraq" for the following reasons:

The report deals with separate subjects at one time.

The report attaches wrong priorities to subjects which do not have relevance within the mandate specified for the study.

The report contains false elements and insufficient information.

For all these reasons the conclusions reached in the report are wrong and misleading.

II. The content of the report in general

The report is a reflection of what the rapporteur seems to have in mind with regard to Turkey. It is drafted in such a manner that it is contrary to the principle of impartiality, which should govern our work in the committee, and the requirements of objectivity and sincerity in dealing with issues entrusted to us.

The content of the report does not conform with the mandate given to prepare this study.

The mandate is based on Assembly Order No. 460 (1991), which required the monitoring of developments with regard to "the situation of the Iraqi Kurdish population and other persecuted minorities", which was felt necessary following the first Gulf crisis in 1991, which also led the Assembly to adopt two recommendations with regard to the humanitarian consequences of the Gulf crisis. These were Recommendation 1150 on the situation of the Iraqi Kurdish population and other persecuted minorities and Recommendation 1151 on the reception and settlement of refugees in Turkey.

In the follow-up to Order No. 460 (1991) the Assembly debated the issue again in January 1994 and adopted Resolution 1022 (1994) on the humanitarian situation and needs of the displaced Iraqi Kurdish population, in which along with the Kurds in northern Iraq, the Turcomans, the Assyrians and even the Marsh Arabs in the south were given due consideration.

All these Assembly texts refer only to the situation in northern Iraq, with a view to finding remedies to the humanitarian situation of the Kurds in particular, but also the Turcomans, the Assyrians and even the Marsh Arabs in the south.

The only text which tries to incorporate Turkey into the picture is a 1992 motion for a resolution tabled by Mr Eisma (and others) entitled "The situation of the Kurds". The Bureau referred this motion to the Committee on Migration, Refugees and Demography. The committee appointed Mr Eisma as rapporteur but no follow-up was given until Mrs Vermot-Mangold volunteered to take over from Mr Eisma in August 1995.

On the other hand, during the January 1998 part-session, the Assembly voted against a request for the examination under "urgent procedure" of an item entitled "Influx of migrants and asylum seekers of Kurdish origin in Europe". This request stemmed

from the arrival of two ships of migrants in Italy through illegal means in December 1997.

The Committee on Migration, Refugees and Demography, during its meeting of 29 January 1998, decided to combine this item with the results of the "hearing" held in Paris on 17 November 1997 on "the humanitarian situation of the Kurdish refugees and displaced persons in South-East Turkey and North Iraq".

Notwithstanding the importance of the problem of clandestine migration for Europe, which definitely requires the effective co-operation of all parties involved, the aforementioned events, which led the Bureau to request the Assembly to take up the issue under urgent procedure, were seized as an opportunity to justify the long-lasting efforts to bring the so-called "Kurdish question" onto the agenda.

The present report is nothing but the product of this attempt.

Apart from the introductory and the concluding parts, the report is composed of three main sections under the following headings: "Situation in Turkey" (39 paragraphs, plus 13 paragraphs which deal with Turkey in the following sections); "Situation in North Iraq" (15 paragraphs, of which 7 paragraphs are exclusively on Turkey); "Influx of Kurdish migrants and asylum seekers in Europe" (22 paragraphs, of which 6 paragraphs are exclusively on Turkey).

The above breakdown alone is sufficient to indicate that this report deals almost exclusively with Turkey.

Because of its content and the context in which it was prepared, this text cannot be accepted by the Turkish parliamentarians.

III. Comments on the report section by section

1. Introductory section

It is interesting to note that in paragraph 1, while there are references to all relevant Assembly texts, there is no mention of Assembly Recommendation 1151 on "the reception and settlement of refugees in Turkey". It should be mentioned because this recommendation recognises the efforts made by Turkey to remedy the humanitarian situation of the Kurds fleeing from northern Iraq in consequence of the Gulf crisis. The number of north Iraqis who fled to Turkey for shelter, for food and for all sorts of humanitarian protection during the first Gulf crisis was over 500 000. Turkey, with all its scarce resources and despite its geographic clause to the 1951 Geneva Convention spared no effort to remedy the humanitarian needs of these people.

It is also worth noting that all these Assembly texts date back to 1991 and were relevant to the requirements of those years. The Eisma motion as well, on which the present report mainly based itself, also dates back to 1992 and even then was not followed up although its author continued to be a member of our Assembly until 1995.

In paragraph 3 it is mentioned that the rapporteur's intention to visit "the region concerned" was not authorised by the Bureau. As a matter of fact this request was rejected by the Bureau (see meetings in January 1997 and in March 1997). This is an indication that the appropriate organs of the Assembly did not agree with the rapporteur on the appropriateness of such a visit. This visit was neither found agreeable by the Turkish parliamentarians, as long as it was meant to be a "mission". Nevertheless, there was an offer from the rapporteur's Turkish colleagues to organise a private visit to Turkey, but this was not accepted.

There is a reference in paragraph 4 to the "hearing" organised in Paris in November 1997. The reason neither the Turkish members of the committee nor a representative of the government participated in the hearing was certainly not due to lack of consideration for the committee as it is asserted in the report. It was due to the fact that the hearing was organised to serve the aims that we criticise this report for.

The majority of the non-governmental organisations invited to take part in the hearing were either those who directly advocate the so-called "Kurdish issue" and/or indirectly affiliated with the terrorist organisation PKK. It was only natural for the Turkish parliamentarians not to take part in such a forum. The President of the Assembly, Mrs Fisher, was informed of the concern of the Turkish parliamentarians before the hearing. In the Council of Europe, as the widest European organisation, we should know perfectly well what such motivations may mean to the security of our continent and to the territorial integrity of member states.

In that "hearing", as reflected in the records (document AS/PR/Ref (1997) PV 5 revised), with all due respect to the presence of some of the members of this committee, the persons and institutions who are well known for their continuing stance to openly or tacitly defend the cause of PKK terrorism, had found a free playground for themselves. Now, the present report is nothing but a duplication of the contents of the "hearing" records.

Perhaps the most critical point which is clearly seen in paragraph 7 and reflected throughout the report is that there is a constant reference to a "region", which is understood to be somewhere encompassing a part of Turkish territory and Iraq. Added to it is that the report makes a correlation between this "region" and a "political problem" or a "political cause". This is where the Turkish parliamentarians are most sensitive since such wordings may imply the questioning of the territorial integrity of a member state. (The connection of this issue with the PKK is explained in the following section.)

2. The section on the "situation in Turkey"

First and foremost it is not in conformity with the above-described mandate to allocate a whole chapter under this title.

As the report itself admits in paragraphs 6 and 43, there is a monitoring procedure going on in Turkey. The rapporteurs of the Monitoring Committee have visited Turkey three times now. Contrary to the response given (by the Bureau) to a similar request of the rapporteur of this present report, the rapporteurs of the Monitoring Committee did not face any difficulty to go to all areas they wanted to and to meet

anybody they wished to. The coverage of the Monitoring Committee is so wide that it makes this present report senseless.

Particularly in this section, and throughout the report as well, mention is made of a "Kurdish issue". Apart from Turkey's geographical proximity to the no-man's-land in northern Iraq, and the PKK's terrorist activities in this area, to talk about a "Kurdish issue" with regard to Turkey is either refusing to acknowledge the realities, or an attempt to support the cause of PKK terrorism, or both.

At the very outset of this section, in paragraph 8, there is a description of being "armed and peaceful". This description does not even deserve a comment, except that it perfectly serves as an example to indicate the general quality of the whole study.

The report underestimates the threat of PKK terrorism and instead attempts to place this terrorist organisation on an equal footing with the Turkish state.

Throughout the report there are repeated references to the PKK. However, not even with a single word does it talk about the fact that the PKK is a terrorist organisation. As a matter of fact, the rapporteur, whilst presenting her report during the meeting of our committee in Prague on 13 March 1998, clarified her position that she sees the PKK not as a terrorist organisation but as one "fighting for the Kurdish people's rights" (AS/PR (1998) PV 2). This is totally unacceptable. The report tries to introduce a political question which endangers the territorial integrity and political unity of Turkey.

What Turkey has been encountering and struggling with for years, is the question of separatist terrorism.

PKK terrorism began in 1984 not with an attack on two police stations as it is stated in the report, but with the aim of creating an independent state encompassing Turkey's south-eastern provinces. As a matter of fact the PKK was established in 1978. Its systematic campaign of terror has, since then, targeted not only the Turkish security forces, but also many innocent civilians.

The PKK is also described as a terrorist organisation by the United States and many European states such as France and Great Britain, and its activities are banned in Germany. Our Assembly debated and adopted a report in September 1997 (Doc. 7876), in which the PKK is clearly referred to as a terrorist organisation, and Turkey as among the countries which suffers from terrorism.

The PKK's strategy is based on the use of terrorism and violence for a dual purpose: to intimidate and to terrorise the local population and thereby gain some degree of support, and to deter the Turkish Government from bringing more economic and social services to the region.

As a result of the terrorist attacks of the PKK since 1984, some 25 000 people have lost their lives. More than 5 000 of them are members of the local population, including women, children and in many instances babies. The PKK kills civilians because it wants to force the local population to accept its demands.

Not only does the PKK kill innocent people, but it also attacks all kinds of civilian targets in order to make the region unliveable for those who remain alive. The PKK also destroys schools, kills teachers, set forests on fire, blows up railways and bridges, plants mines on roads, burns down construction machinery and demolishes health centres.

To finance its terrorist and propaganda activities the PKK is heavily engaged in various types of illegal undertakings, including extortion of money, arms smuggling and trafficking of narcotic drugs and human beings. The illicit activities of the PKK are mostly concentrated in some western European countries.

It is true that the south-eastern provinces of Turkey are relatively backward regions. However, Turkey is determined to resolve this problem of underdevelopment by improving the economic conditions of these provinces which are being violently exploited by the PKK. That is why the Turkish authorities have been allocating considerable sums for the development of these regions and investing in huge projects such as the South-eastern Anatolian Project (GAP). That is also why the PKK has been targeting civilians and economic and social installations. Its aim is both to terrorise the local population and to keep the region economically backward. By doing this the PKK aims to recruit more militants into its own ranks.

Many local people, as a result of the PKK's indiscriminate terrorist attacks, have moved to other regions of the country which offer better prospects. It is not possible to give the numbers of such people as there is unlimited freedom of movement within Turkey and no statistics are held on that score.

Consequently it would be extremely unjust to talk about a deliberate policy of dispersal of the local population by the Turkish authorities, as alleged in the report. To claim that there are up to 10 million internally dispersed Kurds in Turkey is simply absurd. Perhaps the most striking example to show the lack of seriousness of the report is the statement in paragraph 22 that "some three million" of our citizens of Kurdish origin, who live in Istanbul, are forcibly displaced population.

It is true that there are some cases where some villages and hamlets have been evacuated by the Turkish security forces, because they served as shelters for the PKK terrorists. But such individual cases should not be manipulated to create a false picture of the situation.

Contrary to how it is described in the report, the village guard system was established by the Turkish authorities, in co-operation with the local population, as one of the measures to counter terrorism. This system is exclusively based on voluntary participation.

It is true that we have witnessed some cross border operations by the Turkish security forces in northern Iraq. But these operations did not aim to endanger the territorial integrity of Iraq. They were exclusively carried out in self-defence against the PKK terrorists, who are known to be based there, and carrying out hit-and-run attacks and ambushes from there. Rumours about a security or buffer zone within Iraqi territory are completely unfounded. The Turkish forces have always returned to their posts in

Turkey upon the completion of their operations carried out with the limited specific aim of destroying the PKK camps and terrorists.

The report also distorts the facts about the constitutional and legal system in Turkey.

Constitutional citizenship is one of the founding principles of the Turkish nation-state and it clearly determines all the social, political and legal aspects of the state and society. The Turkish Constitution stipulates that the state and the nation are indivisible, and that all citizens, irrespective of their ethnic, racial or religious origin, are equal before the law.

The citizens living in southern-eastern provinces of Turkey are an integral part of our nation. They are the individuals of a nation which has shared and is determined to preserve the same values with respect to language, religion, culture, national identity, common history and the will for a common future.

It is of cardinal importance to distinguish between militant separatism which resorts systematically to terrorism and all kinds of organised crime and the phenomenon of Kurdish ethnicity. It is evident that not all the people of Kurdish ethnic origin are militant and seeking separation. On the contrary an overwhelming majority, widely scattered throughout Turkey, are law-abiding citizens. Most of them live in western Turkey, the economic attraction of which draws even greater numbers. This overwhelming majority is totally integrated into society and economic, social and cultural life. In Turkey there are countless citizens of all ethnic origins who have risen to the highest political positions and ranks such as cabinet ministers and members of parliament.

It is also surprising to see in the report an allegation concerning the prohibition of Kurdish language in Turkey. Presently, there are no restrictions on languages other than Turkish to be used in Turkey. It is true that following the military intervention in 1980, Law No. 2932 was enacted to prohibit the use of languages other than Turkish as the mother tongue and of activities to publicise them. That law, adopted in that exceptional period in Turkey, had even then no effect in practice. This law was repealed in 1991.

The social fabric of Turkey is a typical example of the realisation of the internationally accepted principle which stipulates that "not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities". Our citizens of Kurdish ethnic origin are not discriminated against, and they feel themselves to be part of society.

It is very important to note that in the context of the Lausanne Peace Treaty of 1923, which created the modern Turkish Republic, the minorities in Turkey are defined only in religious terms. However, thanks to the non-discriminatory stipulations of the Turkish Constitution, everyone in the country enjoys equal rights, obligations and opportunities before the law. There can be no special treatment in favour of or against any citizen and no one can claim that there is discrimination based on ethnic origins.

In fact, the people of south-eastern Anatolia, like all the other people in other regions of Turkey, actively participate in the political life of the country. They can make their

voices heard in local administration as well as the national parliament and central government through their democratically-elected representatives.

The report also gives false information about the UNHCR camps in northern Iraq.

The Atroush Camp was established by the UNHCR. However, it gradually fell into the hands of the PKK, lost its civil character and became a base of the terrorist organisation. The UNHCR accepted that Atroush had lost its character of being a refugee camp and decided to close it down on 21 January 1997.

The Turkish Government has made several announcements to the people in the Atroush Camp and to those living dispersed in the region who wish to repatriate voluntarily.

The government has recently made the same call for voluntary returns from the Ain-Sufni Camp as well. For this purpose, the Turkish Government has launched an information campaign in co-operation with the UNHCR.

The UNHCR, upon request, can easily provide all the essential information about this campaign. According to recent UNHCR statistics, since July 1996, 1 217 Turkish citizens have been voluntarily repatriated and all the necessary accommodations have been provided to them by the Turkish Government.

There are also references in this section to the work of the European Commission and the European Court of Human Rights.

The interpretation of the judgments of the European Court of Human Rights in paragraph 12 on the cases of Akdivar and others and Mentes and others is nothing but a biased attitude since it does not take into consideration the contents and the reasoning of these two judgments, which would otherwise equally lead to different conclusions. The Government of Turkey had made public its observations on the legal defects of the judgment of the European Court of Human Rights in the case of Akdivar and others which was prior to the judgment in the case of Mentes and others. The report does not bother to make any reference to the reaction of the government to the said judgments, even for the sake of pretended fairness.

In paragraph 13 the report goes further to misrepresent the process of friendly settlement envisaged by the European Convention on Human Rights. The Commission is one of the most respectable organs of the Council of Europe. In the conduct of its work, the Commission has several means at its disposal. It is therefore very disappointing to see the wrong connotation attached to the "friendly settlement" — in the case of Ysiyok and others — by implying that the government paid "compensation" to the applicants. To be accurate in legal terms, the payment made within the context of friendly settlement cannot be referred to as "compensation" because the term "compensation" may come into question only when a party to a litigation is held responsible or a violation is attributed to one side of a legal dispute. As regards a solution reached in accordance with the process of friendly settlement, none of the parties are held responsible whatsoever. There is a clear distinction between the implications of a violation as an outcome of a legal dispute and a solution reached as a result of friendly settlement.

The assertion in paragraph 41 that "since 1995 the European Court of Human Rights has announced as many as twelve judgments regarding violations of human rights of people of Kurdish origin by the Turkish authorities" is totally incorrect. First of all, the total number of the judgments in relation to the allegations arising from the incidents that took place in south-east Anatolia is four. They are the cases of Aksoy, Akdivar and others, Kaya, Aydin, and Mentes and others. It is noteworthy to state that neither the Commission of Human Rights nor the Court of Human Rights have found any indication that the alleged violations were against people of Kurdish origin. Moreover, this is a mere allegation raised by the terrorist organisation, PKK, and its affiliates which both the Commission and the Court have dismissed on every occasion.

There are other judgments of the European Commission of Human Rights which could be of relevance for this section of the report, but it is disappointing to see no reference to them.

The European Commission of Human Rights, in one of its decisions (Application No. 27776/95) (A.G. and others against Sweden), stated clearly that there is no discrimination applied against a part of Turkish citizens in Turkey. The above-mentioned decision, relating to a request for non-expulsion from Sweden to Turkey, reads as follows: "The Commission concludes that is has not been established that there are substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention in Turkey". (Article 3: "No one shall be subjected to torture or inhuman or degrading treatment or punishment".)

In another recent decision, the European Commission of Human Rights (Application No. 33124/96) (X against Netherlands) stated that the mere fact that the applicant is of Kurdish origin is not in itself sufficient ground to believe that he has reason to fear persecution. The decision stipulated that, although accepting that the applicant was politically active in the past, it cannot be said that, if expelled to Turkey, the applicant would have reason to fear persecution or would run a risk of treatment contrary to Article 3 of the Convention.

The decisions of the European Commission or Court of Human Rights also affirm that the ethnic origin of Turkish citizens is not a cause of discrimination.

Another example is a ruling of the Karlsruhe Administrative Court. According to a report published in the Süddeutsche Zeitung on 23 December 1997, the Karlsruhe Administrative Court ruled in its decisions A7K13114/95 and A7K10026/96 on 17 September 1997, that belonging to the Kurdish community was not in itself sufficient to claim refugee status and that each individual application had to be considered on its own merits. On the other hand, the Schleswig-Holstein State Administrative Court has ruled in a similar sense more recently by its decisions 5A233/94 and 5A175/96.

The Karlsruhe Administrative Court in its above-mentioned decision also stated that: "Because of their ethnic origin, the Kurdish people in Turkey have neither in the past nor today been under persecution and even pressure at the regional level. Kurdish

people in Turkey have the opportunity of moving to the western regions of the country."

As such, to claim that Turkish citizens of Kurdish origin migrate abroad because of the policies of the Turkish Government, as alleged throughout the report, is equally false. If such a claim were to be true it would be impossible to explain why so many Turkish citizens of Kurdish origin live in the western part of Turkey only because they prefer to. This fact indicates clearly that the reason for migration from the south-east of Turkey either to the west of the country or abroad is basically the economic situation which deteriorated drastically as the result of the embargo against Iraq.

3. The section on the "situation in North Iraq"

With regard to this section it is very disturbing to see the persistent criticism towards Turkey, even though this section should have been the most elaborated part if we recall the mandate given to prepare such a study.

Even in the very limited paragraphs which are devoted to the situation in northern Iraq, there are serious and important mistakes or omissions.

We in the Council of Europe should be very careful in employing certain terminology, particularly with regard to sensitive areas.

The right description for the area is either north of the 36th parallel, or northern Iraq; but definitely not "North Iraq" as stated in the report, as if we were giving it a separate country status.

A very serious point contained in paragraph 47 is the attribution of "government" status to the people living in the area. The Gulf crisis resulted in a power vacuum and instability in northern Iraq. But there has never been a reference in other international fora to a "government" status.

Another false approach is that, while talking about the population in the area the only reference is made to the "Kurds". This is another example of how we lose sight of the mandate given to us to prepare this study. Almost all the Assembly documents upon which this study should have been built refer to "Iraqi Kurdish population and other persecuted minorities", in which along with the Kurds in northern Iraq, the Turcomans, the Assyrians and even the Marsh Arabs in the south were given due consideration.

4. The section on the "influx of Kurdish migrants and asylum seekers in Europe"

The migration of "Kurds" to Europe is part of the general problem of immigration.

Global economic changes have made Europe an attractive location for movements of goods, capital and persons. People of all ethnic origins from all countries which are relatively poorer have moved to western Europe, not only from east to west, but also from south to north. Although this phenomenon is of great concern for the receiving country, it is also disturbing for the countries on the transit route. We need to pay particular attention to the countries on Europe's sea or land borders. It is worth noting

here that Spain refused entry at its borders to around 150 000 illegal migrants from North Africa in 1997. What is important here is not the ethnic origins of migrants but the phenomenon of migration itself. To reduce the question to an ethnic one will result in overlooking its socio-economic aspects or will fail to find a satisfactory response to the question as to why so many people with a wide variety of ethnic origins are migrating to western Europe.

One of the most acute problems the western European countries are facing today is the question of illegal migration. The recent incident of two ships bringing migrants to Italy through illegal means is only an example of this question.

This event was a blatant case of illegal trafficking in human beings, an extremely serious form of organised crime. It is based on the exploitation by international organised crime gangs of people's understandable desire to have a better life.

In fact, the Action Plan adopted by the General Affairs Council of the European Union on 26 January 1998 underscored this problem. According to the information furnished by the British chairmanship to the press on the Action Plan "it would seem there is an organised trafficking racket" ... "... given the extent of the current inflow of migrants and the itineraries they are taking, there is no doubt that a large part of the illegal immigration is planned and organised in advance by traffickers, which is why the Action Plan approved by the General Affairs Council provides for all the information relating to the participation of criminal organisations in this field, including the production of false documents, should be collected, analysed and duly exploited".

The Parliamentary Assembly of the Council of Europe has dealt with the same problem before. The Assembly's Recommendation 1211 (1993) reiterated that "clandestine migration is due, in particular, to the growing demand in Europe for unskilled, poorly-paid labour, and can neither resolve employment problems in western Europe nor stimulate economic growth in the less developed countries." In the same recommendation it is also stated that "faced with the current restrictions and difficulties in entering western Europe, would-be immigrants are increasingly resorting to traffickers and organised networks ...", "traffickers and organised networks are generally well-established both in countries of origin and in receiving countries: they put migrants in touch with employers offering clandestine work", "the migrants, victims of unscrupulous traffickers, are not always aware of their illegal migrant status or of the strict entry conditions in force in the host countries ...", "the trafficking and employment of clandestine migrants are often linked to other forms of international organised crime".

Illegal migration has always been a source of concern for Turkey as well. She has consistently sought multilateral co-operation against all forms of organised crime and international terrorism. She has drawn attention to their interrelation, to the funding of terrorism by organised crime like human trafficking and to the international networks of crime established in many countries under various guises.

Turkey has been subject to several migration waves during the course of history. It should be recalled that in 1988 and in 1991 more than half a million refugees from northern Iraq found shelter in Turkey. Iranian masses fleeing the newly-established

radical Islamist regime, Bulgarian Turks and Bosnians were also welcomed in Turkey.

The report talks about the geographical reservation of Turkey to the 1951 Geneva Convention. In the convention, signatory states were given the option of adhering to the convention with geographic preference. Turkey, in the light of this option, became a party to this convention with a declaration of geographic preference. It assumed responsibility only for refugees originating from Europe. The main reason for this preference is our country's geographic location. In fact, the "safe third country" concept adopted by the European Union in the 1990s made the geographical preference of Turkey all the more important.

Nevertheless, the Turkish authorities are expending every effort to fulfil their responsibilities to "temporary asylum seekers". Contrary to what is indicated in the report, asylum seekers from Turkey's eastern borders are being admitted on humanitarian grounds, and solutions to their problems are being sought in close co-operation with the UNHCR. An exclusive regulation was issued by the Turkish authorities in 1994 in order to facilitate this procedure. It is a fact that the vulnerable geographic location of Turkey leads to illegal entries from its borders with Iran and Iraq. The difficulties do not emanate from their entry into Turkey by illegal means but arise from non-compliance with this regulation.

There are several factors which make Turkey a transit route in the eyes of the migrants. The main reasons for this are: common borders (Turkey has a 378 km long border with Iraq, a 529 km long one with Iran, out of a total of 2 875 km long land borders also with Greece, Bulgaria, Syria, Nahjevan, Armenia and Georgia, as well as 6 000 km long sea shores); the geographically bridging location of Turkey between Asia and Europe; extremely liberal policies of most European countries (in this respect, Europe has become a magnet for illegal migrants who enter Turkey from neighbouring or far-away countries. Those who realise that some of their relatives and friends have been easily granted refugee status in some European countries are tempted to follow suit. These people do not mind using the illegal services of organised crime gangs as long as they are able to reach Europe and acquire refugee status there. Thus, Turkey inevitably becomes a springboard for them due to its geographic location); and last but not least, the presence of the terrorist organisation, PKK, hand-in-hand with international crime organisations engaging in trafficking in drugs and human beings.

There are some migrants who use Turkey as a transit route to western Europe, by entering Turkey ostensibly as tourists with valid passports and travel documents, and then leaving for the West. There are others who enter Turkey with the use of forged passports and visas through the legal ports of entry, and some others who arrive on Turkish soil via illegal means. No matter how they have entered the country, they almost invariably fall into the hands of the international organised crime gangs which are specialised in trafficking them to the West.

In short, on the one hand there are people originating from different countries and seeking a better life in Europe, and on the other, organised crime gangs helping them to achieve their goal. In between, Turkey becomes a transit route.

The problem should be diagnosed correctly so that the right remedies can be found. Human trafficking generates huge sums of income which attract the organised crime gangs and terrorist organisations. In other words, terrorism and organised crime work hand-in-hand. Turkey has for a long time been not only trying to explain this phenomenon to its friends in Europe, but also fighting with the organised crime gangs with all the means available to her. At the same time, she has concluded agreements with thirty-two countries, including Italy, in order to combat terrorism and organised crime. Obviously, more needs to be done in this field at both bilateral and multilateral levels.

In 1996 a total of 18 804 migrants, mainly from Iraq, Iran, Pakistan, India, Bangladesh, Syria and Rwanda, who had entered Turkey through illegal means, were apprehended by the Turkish security authorities. 67.5% of them were Iraqis. In 1997, 22 429 such persons were captured, 70.6% of them from Iraq.

There is a huge amount of evidence shared within Interpol underlining the fact that the PKK is actively involved in human trafficking as well as other organised crimes. Notwithstanding all this evidence, in the case of Ararat it is very important to note a statement issued via the Italian News Agency ANSA by ERNK, the political wing of this terrorist organisation, two days before this ship ran aground near Italian shores, saying that "a ship carrying some 800 Kurdish refugees was on its way to Italy". Thus, exactly two days before this ship was detected by the Italian authorities, the PKK had already made this incident public for the first time.

A recent and striking example of the PKK connection in human trafficking was in the "Report" programme aired by the German ARD television channel on 19 January 1998, which included statements by a gang member convicted of human trafficking. In his own words the convict said: "Our organisation is not directly linked with the PKK, but on several occasions we had to pay ransom to the PKK in order to do our job. The PKK itself is also involved in human trafficking. In Greece there is no permission to the others. My organisation can only smuggle people into Greece, but from Greece onwards it is exclusively a PKK job".

It is indeed important to recall that in the first days of the Ararat incident, there were some reports in the Italian press that the ships carrying illegal migrants were set on course by the PKK in co-operation with mafia groups. In the following days, however, the incident started to be presented to the public as a manifestation of the Kurdish problem.

Relatively low standards of living and unemployment in certain regions of Turkey initiate emigration from Turkey also, as is the case in many other countries. In other words, there are also Turkish citizens who migrate to western Europe, almost exclusively to attain a better life in economic terms. According to the figures announced by the UNHCR spokesperson in Geneva on 6 January 1998, 224 000 new asylum applications were lodged in the European Union in 1996, of which around 116 000 were lodged in Germany alone. Of this overall number, around 22 000 were Iraqis, half of whom filed applications in Germany. Around 35 000 Turkish citizens sought asylum in Western Europe in the same year.

These people try to portray themselves as genuine asylum seekers so as to obtain refugee status. In most cases, declaring that they are Kurds is sufficient to obtain this status. Such policies on the part of some European countries obviously encourage other economically deprived people to follow suit and illegally migrate to those countries. So long as such refugee policies are in force, the waves of people flowing into Europe will not cease. It is an open secret that many of these people, once they have obtained refugee status, visit Turkish consular missions in order to obtain Turkish passports.

As to the Ararat and Cometa incidents, it is hard to understand why the people on board have been referred to as Kurds. The Turkish citizens on board constituted a small minority and the rest were composed of Iraqis, Sri Lankans, Bangladeshis, Pakistanis, Iranians, Afghanis and Azerbaijanis. If one assumes that all the people coming from Iraq were of Kurdish origin, the percentages would still be too low for the event to be regarded as "influx of Kurdish refugees".

Besides, those who are coming from northern Iraq are not necessarily of Kurdish origin.

As a matter of fact, on 9 February 1998 the Turkish gendarmerie captured eighty-six Iraqis and three Sri Lankans in Marmaris, Mugla district, aiming at fleeing to Greece and then to other western European countries through illegal means. The gendarmerie found out that all of these Iraqis were of Turkmen origin. Or is there also an assumption that all those Turkish citizens were Kurds, so as to present the problem as a political one?

IV. Why we oppose the present report

The concern of the Bureau to request the inclusion on the agenda of the January part-session of the Parliamentary Assembly of an item dealing with the recent flow of migration to Europe was justifiable as long as it was meant to look for remedies to the problem of illegal migration.

The real issue is the urgent need for effective co-operation among the countries who directly or indirectly suffer from the illegal flow of migration. We should not lose sight of the fact that this co-operation cannot be realised without the effective participation of all countries involved, including Turkey.

We need a clear definition of what we are aiming at. The report is uncertain whether the main concern can be described in "humanitarian" terms. As a matter of fact, the inclinations seem to be rather "political" in most parts of the document. As such, it is a misrepresentation, is partially and totally misleading, and is thus totally unacceptable.

Last year, during the September part-session, our Assembly debated and adopted a report prepared by Mr López Henarez, with regard to co-operation in the fight against terrorism, in which we once more reiterated our "forceful and unreserved condemnation of acts of terrorism ...". This report clearly referred to the PKK as a terrorist organisation, and Turkey as among the countries which suffers from terrorism.

We are all here to pursue the aim of the Council of Europe, which is to achieve greater unity among us for the purpose of safeguarding and realising the ideals and principles which are our common heritage and facilitating our economic and social progress. No one can argue that supporting the cause of terrorism is among the ideals and principles referred to in Article 1 of the Statute of the Council of Europe.

Note: 1 For example in January 1997 there were reports of large-scale detentions by the gendarmerie in the Lice district of Diyarbakir based on the refusal of villagers to become village guards (1997 Human Rights Watch Report). Journalists and human rights monitors were not permitted to enter the village.

Note: 2 Currently the UK-based Kurdish Human Rights Project has assisted over 50 applicants in their applications to the European Commission of Human Rights.

Note: 3 Sometimes referred to as Ninive or Ninova Camp

Note: 4 eg. Dr Seyfettin Kizilkan, President of Diyarbakir Medical Association, or Sanar Yurdatapan, spokesman for the organisation promoting reconciliation in the south-east « Together in Peace » , charged under Art.169 with supporting the PKK.

Note: 5 On 26 November 1997 the Court decided that the Turkish authorities had violated Articles 5.3, 5.4 and 5.5 of the European Convention relating to the excessive length of detention pending trial.

Reporting committee: Committee on Migration, Refugees and Demography. Budgetary implications for the Assembly: taken into account in the budgetary appropriations of the Assembly. Reference to committee: Order No. 460 (1991), Doc. 6604 and Reference No. 1785 of 4 May 1992.

Draft recommendation and draft order adopted by the committee on 29 May 1998 with respectively 11 votes in favour, 5 votes against and 0 abstentions and 10 votes in favour, 3 votes against and 3 abstentions. Members of the committee : Mr Díaz de Mera (Chairman), Mr Iwiñski, (Vice-Chairman), Mrs Aguiar, MM. Akselsen, Amoruso, Andres, Árnason, Mrs Arnold, MM. Atkinson, Aushev, Beaufays, Billing, Bogomolov, van den Bos, Brancati, Mrs Brasseur, Mrs Bušiæ, MM. Cardona, Christodoulides, Chyzh, Clerfayt, Connor, Debarge, Dinçer, Mrs Fehr (Alternate: Mrs Vermot-Mangold), MM. Filimonov, Fuhrmann, Mrs Garajová, MM. Gremetz, Jakic, Mrs Johansson, Lord Judd, MM. Junghanns, Kalus, Kozlowski, Kukk, Mrs Kušnere, Mr Laakso, Mrs Langthaler, MM. Lauricella, Laurinkus, Làzàrescu, Le Jeune, Liapis (Alternate: Korakas, Vice-Chairman), Loukota, Luís, Melo, Mészáros, Micheloyiannis, Minkov, Molnár, Mutman, Rakhansky (Alternate: Khunov), Ruffy, von Schmude, Sincai, Mrs Soutendijk-van Appeldoorn, MM. Tahir, Vangelov (Alternate: Tripunovski), Wray (Alternate: Lord Ponsonby), N¼ (Alternate: Mrs Guirado, Vice-Chairperson).

N.B. The names of those members present at the meeting are printed in italics. Secretaries of the committee: MM. Newman and Adelsbach.

Humanitarian Situation of the Kurdish Refugees and Displaced Persons in South-East Turkey and North Iraq

Recommendation 1377 (1998)[1]

1. The parliamentary Assembly recalls and reaffirms its Recommendation 1150 (1991) on the situation of the Iraq Kurdish population and other persecuted minorities, Recommendation 1151 (1991) on the reception and settlement of refugees in Turkey, Resolution 1022 (1994) on the humanitarian situation and needs of the displaced Iraqi Kurdish population, Recommendation 1348 (1997) on the temporary protection of persons forced to flee their country, Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants and Recommendation 1306 (1996) on migration from the developing countries to the European industrialised countries.

2. The Assembly notes that one of the acute problems that most of the member countries of the Council of Europe are facing today is the general question of clandestine migration due to the social, economic and demographic differences between the developing and the industrialised countries and also to humanitarian causes in the regions concerned.

3. The Assembly notes with great anxiety the precarious humanitarian situation of the people of Kurdish and other origins in northern Iraq. The lack of security and difficult economic and social situation in these regions have resulted in large-scale internal and external population displacement and movements.

4. The Assembly also notes with great concern the impact on the humanitarian situation in the south-eastern provinces of Turkey as a result of the on-going armed clashes and the rule of emergency.

5. The Assembly strongly condemns the violence and terrorism perpetrated by the Kurdistan Workers' Party (PKK), which has contributed to population displacement and movements, and urges this organisation to stop all armed activities. The Assembly also condemns the evacuation and burning of villages by the Turkish armed forces.

6. The Assembly is concerned that the number of asylum-seekers and illegal migrants of Kurdish origin has increased in certain European countries.

7. The Assembly condemns the armed confrontation between the various Kurdish political organisations which are exploiting the Kurdish population for their own ends and preventing more effective provision and distribution of humanitarian aid.

8. The Assembly considers that the scale of the humanitarian plight of the population of the region fully justifies the involvement of the Council of Europe and of other relevant international organisations, and that all governments concerned should be urged to take effective steps to improve the situation, and, in the case of Turkey, to comply fully with the Council of Europe's principles.

9. The Assembly underlines once more with great concern that the problem of illegal trafficking in human beings also stirs up racism, xenophobia and intolerance.

10. The Assembly stresses once more that although this phenomenon is of great concern for receiving countries, it is also disturbing for the countries on the transit route.

11. The Assembly stresses the fact that any criticism addressed to a member state such as Turkey is made in a constructive spirit, emphasising the importance of Turkish participation alongside European states and the need to reconcile absolute respect for its territorial integrity and respect for minority rights.

12. The Assembly welcomes in particular the activities of Turkish organisations and parties working in defence of human rights and promoting dialogue, since the focus must be on domestic solutions and agreement between all interested parties.

13. The Parliamentary Assembly therefore recommends that the Committee of Ministers:

i. invite Turkey to take steps to dialogue and reconciliation in the provinces of south-eastern Turkey inhabited mainly by Kurdish people through appropriate action and programme of confidence-building measures including full protection of the civil population and care in the deployment of armed forces;

ii. instruct its appropriate committees to intensify their efforts to remedy the concrete problems connected with migration movements of Kurds;

iii. draw up a series of measures designed to combat the conditions which foster clandestine migration in all its forms, with provision for penalties for traffickers and employers who exploit illegal immigrants, in consultation with the Budapest Group;

iv invite Turkey:

a. to find a non-military solution for the existing problems in the south-eastern provinces;

b. to protect the civilian population of the regions concerned against any kind of armed violence;

c. to expedite and intensify its efforts to promote the economic and social development and reconstruction of the south-eastern provinces;

d. to sign and ratify the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages and apply its provisions to the Kurds;

e. to clear up the fate of the missing persons;

f. to adopt policies and take adequate measures to enable Turkish citizens of Kurdish origin to exercise their cultural and political rights;

g. to restore the rule of law in the south-east of the country, and in particular to lift emergency rule in the south-eastern provinces, to ensure effective protection of villages, to exercise civilian control over military activity in the region including the keeping of records and observance of human rights, and to prosecute anyone who violates human rights;

h. to abolish the village guard system;

i. to undertake additional effective measures aimed at the reconstruction and revival of the economy in the south-eastern provinces;

j. to take further steps to reconstruct schools and hospitals in the area;

k. to implement, in co-operation with international humanitarian organisations, a major programme with a view to encouraging those members of the Kurdish population who so desire to return to their homes;

l. to ensure particular protection for returning women, children and elderly people;

m. to present reconstruction projects to be financed by the Council of Europe's Social Development Fund, in the framework of return programmes;

n. to adopt measures to integrate those displaced persons of Kurdish origin who wish to settle in other parts of Turkey, and provide them, as well as returnees, with compensation for damaged property,

o. to grant access to the region for international humanitarian organisations, and provide them with support from local authorities;

p. to continue to facilitate the transfer of supplies for humanitarian purposes to Iraq;

q. to lift the geographical limitation to the 1951 Convention relating to the status of refugees and its 1967 Protocol, and in particular abstain from deportation of asylum-seekers without prior consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), and abolish the 5-day limit for making asylum applications;

r. to refrain from military incursions into northern Iraq;

v. Urge the member states:

a. to encourage the strengthening of aid programmes for development in the countries of origin and also in the countries of transit with a view to providing increased economic and technical assistance for migration-related development projects;

b. to step up their humanitarian aid to northern Iraq through the appropriate agencies;

c. to adhere scrupulously to the principle of non-refoulement in accordance with their international obligations;

d. to offer temporary protection, in consultation with UNHCR, to those who do not qualify for refugee status under the 1951 Convention relating to the status of the refugees and its 1967 Protocol but who have been forced to flee because their lives or safety were endangered;

e. to ensure that all asylum-seekers are treated with dignity and sheltered in healthy conditions;

f. to continue efforts to conclude repatriation and readmission agreements with the countries of origin and with the countries of transit, provided that the people concerned are not returned against their will;

g. to prevent, through all lawful means, the setting up and activities of any association or group of individuals offering logistic, financial or propaganda support to all organisations which indulge in acts of violence and terrorism

vi. Use it s influence with the European Union:

a. to ensure that any action taken to strengthen border controls or to combat clandestine trafficking do no infringe or undermine international law on the protection of refugees;

b. to resume promised financial co-operation with a view to fostering economic development in Turkey, particularly in its south-eastern provinces, and step up its provision of humanitarian aid to northern Iraq;

vii. Set up, together with the European Union, a joint programme of co-operation with Turkey aimed at providing assistance for the promotion of cultural rights of the Kurdish population and other various groups of the local population in south-east Turkey.

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[1] Assembly debate on 25 June 1998 (22nd sitting). See Doc. 8131, report of the Committee on Migration, Refugees and Demography (rapporteur: Mrs Vermot-Mangold). Text adopted by the Assembly on 25 June 1998 (22nd sitting).

Appendix - B

APPENDIX B

Turkish Parliamentary (Temporary) Committee,

***A Report by the Parliamentary (Temporary) Committee Established for Studying and Determining Necessary Measures To the Problems of Villagers Who Emigrated Because of Village Destruction in the East and South-East,* 1998.**

A REPORT BY THE PARLIAMENTARY (TEMPORARY) COMMITTEE ESTABLISHED FOR STUDYING AND DETERMINING NECESSARY MEASURES TO THE PROBLEMS OF VILLAGERS WHO EMGRATED BECAUSE OF VILLAGE EVACUATIONS IN THE EAST AND SOUTHEAST (TRANSLATION)

I. ESTABLISHMENT OF THE COMMITTEE

Upon the initiative of CHP Deputy Algan Hacaloglu and nine other deputies, the Parliament on June 9, 1997, agreed to open a parliamentary investigation on the problems of villagers who were forced to emigrate when their homes were evacuated. The Committee consisted of 13 members. Its chairman was RP Deputy Hasim Hasimi. Hacaloglu served as Committee Spokesman.

Other members of the Committee were:

Sebgetullah Seydaoglu	(Diyarbakir-ANAP)
Saffet Kaya	(Ardahan-DYP)
Husamettin Korkutata	(Bingol-RP)
Zeki Ertugay	(Erzurum-DYP)
Cihan Yazar	(Manisa-DSP)
Ahmet Alkan	(Konya –ANAP)
Mustafa Bayram	(Van-RP)
Husnu Sivalioglu	(Balikesir-ANAP)
Huseyin Yildiz	(Mardin-RP)
Metin Isik	(Istanbul-DTP)
Erdogan Toprak	(Istanbul-DSP)

II. COMMITTEE WORK

The Committee held its first meeting on June 18, 1997. The Committee held 16 meetings. It decided to ask for information on villagers who had to leave their homes from local and state employees not only in the East and Southeast (SIC), but also from those provinces which received those villagers. The Committee visited Diyarbakir on July 25-28, 1997. During that trip members met with as many state employees and local administrators as possible, as well as with NGOs, villagers, village guards, artisans, and unionists. Excerpts from their views are contained in the following paragraphs.

III. FORCED EVACUATION

Based on official figures obtained from the State of Emergency Regional Governor's Office (OHAL) in the six provinces - Diyarbakir, Hakkari, Siirt, Sirnak, Tunceli and Van which are under OHAL, and five adjacent provinces namely Batman, Bingol, Bitlis, Mardin and Mus - 820 villages, and 2,345 hamlets were evacuated in 1993 and 1994, and 378,335 people were displaced.

Official figures on village/hamlet evacuations in nine other provinces, namely Agri, Kars, Erzurum, Erzincan, Sivas, Sanliurfa, Adiyaman, Igdir and Elazig, are 85 villages, and 178 hamlets.

Thus the total figures on evacuated villages and hamlets are 905 villages and 3,923 hamlets.

EVACUATED VILLAGES

REGION	VILLAGE	HAMLETS	TOTAL
OHAL REGION	517	1614	2131
ADJACENT PROVINCES	303	731	1034
OTHER PROVINCES	85	178	263
TOTAL	905	2523	3428

The report, in this chapter included comments by Regional Governors who served at different times, village heads (muhtars), citizens, and village guards. The delegation visited some houses as well and saw the living conditions.

In the same chapter current Regional Governor Aydin Aslan was quoted on September 2, 1997, as telling the Committee that although the Regional governor has the authority to order for the evacuation of villages out of security concerns, he did not order evacuation of a single village. Former Regional Governors Hayri Kozakcioglu (1987-1991), Unal Erkan (1992-1995) and Necati Bilican (1996-1997), too, told the Committee that they did not order for villages evacuation. Erkan said that the main reason for the exodus has been the discomfort caused by the existence of terrorism.

Former Governor of Diyarbakir Dogan Hatipoglu quoted some villagers as saying that "men in uniform" came and set their villages on fire and they saved whatever belongings they could in the given " 5 or 10 minutes". Hatipoglu noted that only the Regional Governor has the authority to evacuate villages and that his authority cannot be transferred to someone else. He added that evacuations must have occurred "with the knowledge or instructions of security forces or state officials." Hatipoglu stated that the evacuations might have been ordered by unauthorized people but added that no investigation was opened to study this.

Tunceli Mayor Mazlum Aslan was quoted as saying that villagers were given about an hour to leave their homes before the villages were set on fire. He added that 70-80% of Tunceli's 374 villages have been evacuated. Villagers deserting the province went to primarily Mersin, Istanbul, Ankara, Izmir and Bursa.

As the Committee was visiting Diyarbakir, Jandarma Commander in Kulp Captain Feramuz Kucuk told the Committee members that he believes that peace can be brought by taking economic measures. A small businessman in Lice was quoted as

asking when he would be allowed to go back to his village. He said, "Terminate arms (conflict) to comfort us. There can be no life at a place where there are guns. Unless you stop bloodshed, you cannot achieve anything. We are under arms for 15 years..."

A villager in Lice stressed that villagers cannot get along as a village and asked how would they be expected to get along if villagers from more than one village are put in the same place.

A former "muhtar" (village head) in the Dale township's Kelekci village told the Committee that they left their village in 1992 because of security concerns and added that the military set their village on fire. He wants to return to his village and his applications to various authorities were rejected. A muhtar in the Genc village of Bingol said that his village was burned in 1994 and 80% of the population went to Diyarbakir and the remaining to Adana and Bingol.

The Committee members also talked to Riza Ertas, member of the Van Provincial Assembly, said that their villages were evacuated because of terrorism but 80% were evacuated by the state. After a PKK incident near their village the Van Governor invited Ertas, whose relative in a PKK member in charge of the region, and questioned how the incident occurred when there were 20 village guards in that village. The Governor asked Ertas to tell those 20 to turn over their guns to the state. As soon as the village guards returned their guns, the military told villagers that they would set the houses on fire. He added that they started with setting Ertas' house on fire. When Ertas wanted to file a written complaint with the Van Governor's office, Deputy Governor Bestami Alkan asked Ertas not to mention the military's involvement in the fire. Upon Alkan's instructions, Ertas wrote the petition saying that the village was set on fire by terrorists.

In the section the report used excerpts form the Human Rights Report (1995) of the Human Rights Foundation. The Foundation Report stated that in 1995 village and hamlet evacuations continued although there was a significant drop compared to previous years.

It also referred to a Habitat II report by the Human Rights Association in which it is stated that the state forced its Kurdish-origin citizens to emigrate. The Association stressed that the state village evacuations were carried out as a result of its policies of obstructing logistical support for the armed illegal organization. "Partial embargo," which is allegedly implemented by military units, are among the reasons for the exodus.

The report also referred to problems created by the emigration. These were problems concerning the health, education, infrastructure services, as well as the problems faced by cities receiving refugees.

The report listed the reasons that affect health conditions negatively as: More than one family lives in the same house, developing psychological problems because of exposure to violence, malnourishment, not enough heating, lack of hygiene, lack of water, or contaminated drinking water, insufficient elimination of waste water, and garbage pollution.

Lice Subgovernor Akgun Corav was quoted as saying that there is serious health problems in 50% of those citizens who were forced to emigrate. In 33% of the families there were deaths among 0-5 years olds. About 40% of children in the East and Southeast suffer from deficiency in development. On education, the Lice Subgovernor said that the number of closed schools in the region is 3,223. About 200,000 children lack basic primary education.

On infrastructural problems, the report quoted some local officials as complaining that municipalities that receive those refugees have limited resources to shoulder the new burden. In this section the report also referred to earlier reports on the exodus prepared by different organizations. In one of these reports, by the Turkish Union of Architects and Engineers, it was stated that 32.3% of the Diyarbakir population in 1996 was looking for a job. The Union's report assessed that Diyarbakir's population increased 116% in five years and the city turned into a "village".

Salih Yildirim, an ANAP deputy from Sirnak, noted that cities, which were not very organized, to begin with, got over populated because of village evacuations. He complained that inadequate infrastructure, shanty towns and poverty turned cities into villages. Yildirim stressed that about 60% of those assigned to the region refuse to travel to the region and as a result acting state employees are carrying out the works in the name of those who are actually assigned.

Dr. Ahmet Bilgin, Metropolitan Mayor of Diyarbakir, said that more services should be provided to the people by local administrations.

IV. EVALUATING DATE

Under this sub-title the reasons for evacuating villages were listed as:

1 - Villagers left their homes both because of security and economic reasons.

2 - Armed illegal organizations evacuated villages that do not provide logistical support.

3 - Security forces evacuated some villages and hamlets.

The report stated that the Emergency Rule Regional Governor's Office evacuated villages particularly when villagers refused the village guard system, when security could not be provided or when security forces were concerned that the village might assist the PKK.

Evacuations were carried out by security units and widely used in the 1992 – 1994 period. Although it is less compared to the past, evacuations still continue today.

Since evacuations were not carried legally within the framework of the law Number 2935 (on the State of Emergency Regional Governorship Law), those who were forced to leave their villages were not provided with money or settlement as stated in Housing/Settlement Law Number 2510.

SETTLEMENT, EMPLOYMENT, EDUCATION, HEALTH, SOCIAL AND OTHER PROBLEMS

The report also studied the settlement, employment, education, health, social and other problems that refugees are facing. On settlement, the report wrote that since this influx occurred suddenly administrations were caught unprepared. Very few housing was provided in some provinces and sub-provinces with the help of the central government.

Concerning employment, the report wrote that those who emigrated tried to survive for a while by selling whatever they could bring along with themselves. But by now they sold all belongings. While some are working as street vendor, porter or guard, a great majority of them are unemployed. On unemployment, the report wrote that unemployment among these refugees is higher than the rate for the cities they move in.

On education the report stated only 52.3% of primary school-age children in Diyarbakir have access to school.

It also complained about the lack of health personnel in the region. Emigrating villages live under unhealthy conditions in very crowded places.

On the issue of those who returned to evacuated villages, the report used the official figures provided by the Regional Governor's Office dated November 11.1997. According to these figures:

Only about 6% of those refugees returned home. About 22,993 returned to 78 villages, 70 hamlets, and 3,786 houses. The official figures show that 3,313 settlements were evacuated and 401,328 people emigrated. Since a majority of those refugees are not fully confident about security situation in their villages and since their homes are ruined, they do not want to go back to the village. The report asserted that concrete implementations have not yet been initiated for ensuring and accelerating the return to villages.

OTHER SOLUTIONS PROPOSED TO THE COMMITTEE:

The report also listed the views and solution proposals of many state officials, including former Regional Governors, mayors, chairmen of major human rights organizations and local businessmen. Excerpts from this chapter follow:

- **Aydin Talay, Mayor of Van:**

" If villagers are made a center for attraction, the return to villages may accelerate... Villagers would return to their villages if security can be provided and if their agricultural and animal losses are met... (On housing) these people were left on their own..."

- **Mazlum Aslan, Mayor of Tunceli:**

" It is wrong to try to resolve the problem by force without taking economi c measures and without handling education, health and housing problems. If no solution could be achieved through this method since 1980, it shows that the diagnosis is wrong and another solution should be sought... If the states says that you can return, 70-80% of villagers would return to their homes. Because they have problems in cities and they are living under difficult conditions. They don't have any money in their pocket...

"While sending these people to their villages their houses that were burned and pulled down must be repaired. Transportation, electricity, water and telephone connection must be re-established...Unemployment insurance must be considered for those who left their villages... if these things cannot be done, then the possibilities of municipalities must be increased...If municipalities are strengthened economically, municipalities can look after these people and pay their rents, education and health expenditures..."

- **Yigit Gulaksuz, President of Mass Housing:**

" Construction and renovation credits can be provided to those who want to return to their villages. But particularly the younger generations don't want to go back... Those who agree to go back can be settled (in their villages) based on the two laws: Housing/Settlement Law and the Disasters Law. It is more natural to apply the Housing Law. While implementing this law, citizens can be asked whether they want to reside in rural or urban areas. Disasters Law can also be applied if terrorism is considered a disaster...

The problem in the region cannot be resolved without granting land to these people... Although 40% of the people in the region earn their living from agriculture, 40% of them do not own land...Animal husbandry will always have prominence in the region..."

- **Dogan Hatipoglu, Former Governor of Diyarbakir:**

" If these people will not be allowed to return to their homes because of security concerns, their land in their villages must be expropriated and their value must be paid to them...Electricity and telephone connections of the villages that were evacuated were cut. Their roads are terrible because of lack of maintenance...Animal husbandry disappeared...

Regional development plans must be implemented. A regional development authority must be established in the region. Similar implementations around the world must be studied. Such a structure can eliminate problems concerning settlement and employment..."

- **Hayri Kozakcioglu, Former Emergency Situation Region Governor:**

" A serious survey must be conducted among those who left their villages and they must be asked whether or not they want to return home... Some critical villages can be declared disaster areas and reconstructed...(State) land can be rented or allocated

to people without land. In other words, state property in the region can be used and this can be an economic contribution to these people... In order to create job opportunity for unqualified workers, the region must be afforestated...

Education opportunities must definitely be created for their children. A border school system must be established for those up to higher education level. Quotas must be installed at vocational schools for these youngsters... Opportunities must be created for those who want to remain in cities, whatever their need is, may it be credit for housing (sic), must be provided...The major problem in the region in (un)employment. Half-finished investments must be completed..."

- **M. Necati Cetinkaya, Former Emergency Situation Regional Governor:**

" I believe that as the state if we can provide security, infrastructure and restructuring in the regions, a great majority of those will go back to their villages...The state has to build houses for those villagers. I believe a blueprint must be designed taking into consideration the conditions of the region and this must be built in those villages... The state must provide the conditions for these people to live like human beings."

- **Fikret Guven, Governor of Mardin:**

"The first thing to do is to achieve a compromise...You cannot accomplish anything by regarding everybody as a terrorist... This is not a military matter, but a state issue. As the parliament you issue additional laws and let's pull the citizens to a clean environment...

You cannot declare a citizen a traitor for giving bread to the PKK only once. If you can ensure a return to villages, citizens' confidence in the state will increase... One has to convince the TGS on this issue..."

- **Necati Bilican, Former Emergency Situation Regional Governor:**

" More than 5,000 houses were built in that region...for citizens to move into. Discussing with prominent villagers, we spotted the villages that villagers may be allowed to return. We informed the government and the Prime Ministry about these villages. We wrote that it is possible to return to these villages, but these villages have needs and that we have to provide their needs like roads, water, electricity, schools, mosques etc...

The reason for not achieving the desired success in the return to villages has been the fact that villagers are not willing... Half-finished investments in the region must definitely be completed...The reason for not achieving the desired result in convincing villagers to return to their homes is that villagers are not willing...The health issue can be resolved in a short time by building health units and providing the needs of the hospitals in the region."

- **Prof. Dogu Ergil:**

"Those who want to present the Kurdish problem as a Turkish-Kurdish conflict, are mistaken. If it were such a conflict, today there would be bloodshed in the streets.

The public has common sense. They will find a way to live together in peace...Lets think how we will manage this unfortunate exodus. To begin with, these people, at one time, were producers. Currently, they are consumers economically, socially and psychologically. First, they must be made to support themselves...

According to a survey by the Turkish Union of Architects and Engineers, 80% of villagers would like to return to their homes. But according to my study these people don't want to go back to their villages. Then one has to prepare the conditions for allowing them to remain cities. Trying to make these people return to their villages is an illusion...

A settlement plan must be made with those people in mind... The greatest resource for the Southeast in animal husbandry... People are talking about distributing land. But distributing land will mean an increase in the number of villagers. Villagers must be made farmers and farmers must be industrialized...

Security is the problem of the state. It is wrong to arm people against another group of people. This will lead to animosity within the country... One must not pressure people to use arms... One should not regard Kurdishness with suspicion or a reason for division. In the study I conducted, 90% of Kurds do not want separation, but there must be respect for Kurds..."

- **Akin Birdal, Chairman of the Human Rights Association:**

"We determined three reasons for the emigration. (First,) people were forced to emigrate as a result of violence imposed by the state through its security forces. Secondly, are economic reasons basically because of a ban on putting animals out to pasture at high plateaus and hurdles in front of receiving certain basic economic needs. Thirdly, inability to provide security to people living there...

The right to live under threat in the region ...There is a Kurdish problem. We are saying that this problem is tied to the democratic and peaceful resolution of the issue. If do not accept the existence of this problem, it will not be possible to eliminate the end results of that problem..... No matter what this is called, this problem is a consequence of rejection of the identity, culture, language of the Kurdish people...

(To eliminate) the reason for those people who were forced to emigrate and eliminating the consequences of this emigration pass through a democratic and peaceful solution of the Kurdish issue..."

- **Yavuz Onen, Chairman of the Union of Chambers of Turkish Architects and Engineers:**

" First, forced emigration must be stopped... Conditions for an emergency situation must be terminated... Special Teams must immediately be withdrawn from the region because the Special Team played an enormous role in village evacuations... It is very important that the region is opened to visits and it should be made a place where one can freely wander. Thus direct and objective communication opportunity will be provided. Currently there are two sources, the state and the PKK. We have doubts

about the objectivity of reports (coming from the region). We cannot receive sound information and news…

A solution (to the evacuations) can be achieved along with the regional people… Regional people have to have confidence in the state. This issue has political dimension too. Political steps need to be taken as well…People emigrated until 1980 for economic reasons. After 1980, there was politicisation and military force…

Income (in the region) is well below world standards. In Turkey an annual income of $400 is considered famine. In the region this amount is approximately $200. Indeed there are families who survive a year with $70-80…There are regions, which were mined…These mines must be cleared…

A village wants to return, but if a neighboring village does not, it is not encouraged either. Or, they are allowed to return only if they agree to become village guards… I would like to introduce as a proposal the establishment of an Emigration Under-Secretariat or a Center to Monitor and Evaluate Emigration…But the basic thing is to resolve the security issue and enable those people to return to their homes and land. If a person feels secure when he returns, he would return home anyway."

- **Yilmaz Ensaroglu, President of MAZLUM-DER:**

"There is no emigration problem in the Southeast. Emigration is one of the results of the Southeast or terrorism issue, or no matter what you call it… We cannot take care of the emigration issue by ignoring the Southeast issue…Officials go to the region and appeal to the people to return to their homes, but before the officials leave the province a couple of villagers are evacuated sand set on fire…People are dragged into illegal activities…

In cities like Adana, Mersin and Antalya Turkish and Kurdish districts are emerging. Turks cannot enter the Kurdish district and vise versa. One should realize that with a little provocation this will lead to very serious social clashes. These people have lost not only their flour and bread but their honor as well. One cannot ignore thousands of families who make their kids beg. In other words, the incident has a very serious social-psychological dimension.

First, legal and de facto hurdles in front of free discussion and debate of this issue must be removed. Currently, Turkish public opinion does not know about the problem enough. The easiest and soundest solution is opening the ways to these people to return to their villages. In order to achieve this, these people must be provided with a guarantee that it is safe to return, their villages must be reconstructed…

If neighboring villagers in neighboring villages do not return, they don't have the courage to return either…Settlement areas where there is intense emigration must be declared disaster areas and funds must be transferred (for those areas)…A permanent committee must be established and it should be in close cooperation with NGOs, or the (current) committee must be made permanent. An Emigration Under-Secretariat or Emigration Surveillance Center must be established."

- **Abdulkadir Sari, Governor of Van:**

" The two cities in the East and Southeast that received most of those (who emigrated) are first Diyarbakir and secondly Van. Van received a lot of these people, particularly from Hakkari and that area. Although the population of Van on paper is 153,000, according to a survey we conducted the figure is 457,380. Here they come and take shelter in empty buildings, later they ask us to take care of them... We have efforts for making these people learn a craft. We give courses on (how to weave) carpets and kilims to women...

These people won't come here voluntarily. It was because of a necessity that they left their homes behind and came here. The major reason for this is terrorist incidents in the region. The second reason is the regressing animal husbandry. Meat imports killed husbandry in the region. Indeed, once security was achieved, villagers were again allowed to their livestock to higher plateaus, but then there is no more livestock left. In other words, these places must be made lucrative. Otherwise, it is not possible to overcome this emigration.

In order to ensure a return to villages, primarily security must be ensured. Secondly, his house must be provided. Thirdly, a few hamlets must be put together... Fourthly, these people must be ensured an earning... We spent TL 29.1billion in 1996 for these people in Van. In the first eight months of 1997 we provided TL 46.7..."

- **Ismail Aydin, President of the Van Chamber of Industry and Commerce (CIC):**

"Our population jumped up to 600,000-700,000 from 150,000. It is a major problem...When the environment for animal husbandry was removed, villagers came in the city. These people don't have the capital either. The only thing they could do was to be a street vendor... Initially, they had some money by selling their animals. But now that is finishing... What we expect from the government is to bring along economic measures to support the policy for returning these people to their villages... These people must be provided job opportunities where they are...

I believe one has to evaluate the incident in two phases. First, providing livable conditions in their own villages, and secondly, looking for ways whether or not we have the opportunity to take back those who emigrated. There are two basic conditions for these people to go back to their villages. One, if providing security in the villages, in other words, ensuring them to live in a secure environment. Secondly, providing them economic support..."

- **Yekta Hardaroglu, member of the Executive Board of Van CIC:**

" It would be wrong to stop border trade. Today there are 15,000 street vendors in Van... In the past, people were exporting livestock to Iran, Iraq and Saudi Arabia, but now the number of livestock dropped to 2 million from 30 million. Now we are getting livestock from Iran and Iraq illegally... Around 200 of our schools remain closed. We need about 3,000 teachers..."

- **Hasan Perihanoglu, member of the Executive Board of Van CIC:**

" The major reason for the exodus is deficiencies in state deficiencies in the fields of security, education and health. If the state can provide security, education and employment to citizens here, such exodus will stop. Neither our hospitals, nor schools, airport, nor other institutions are meeting the needs...

Villagers who would return to their homes should know that when they go back, the state will build their houses and schools and bring teachers, health services, telephone, and electricity. Such things will facilitate the return to the villages. Send us capable administrators, that is all we want."

- **Feridun Irak, member of the Executive Board of Van CIC:**

" The only way for making investment in the region lucrative is turning state subsides into attractive incentives. The state must control the subsidies that it is providing..."

- **M. Sirin Yigit, Chairman of the Diyarbakir Chamber of Commerce and Industry:**

" Rather than establishing mass housing, taking into consideration the traditional structure of the society, people must be given to liberty to settle anywhere they want. Support is definitely needed for re-settlement and economic activities. The region can be developed by taking it under a social disaster concept. Basis must be established for people to live and produce in peace...

The issue must be taken up with its economic and humanitarian dimensions... Successful administrators who know the region well must be encouraged to serve in the area... Administrators who can enable the state and the public to embrace each other must be assigned to the region."

- **Mahmut, Provincial Chairman of the Van Chamber of Civil Engineers:**

" The state knows better than us the reasons for the exodus. Here we conducted a study as the Chamber (of Civil Engineers). We brought sociologists and during a 15-day study we talked to about 150 families. We realized the plight around Van. These people don't have a house. We witnessed such things as a pregnant woman who could not go to a hospital for delivery because of lack of money. She cannot send her kids to school... It is not appropriate to say to people, 'leave your village and go to wherever you go'...

How would the citizens tell their problems, they do not speak Turkish...Those who emigrated do not have a guarantee for their future. All such things will accumulate and lead to a social explosion one day. Those who emigrated are not qualified (workers). Previously they were involved in animal husbandry and agriculture. They cannot do anything else. I believe these people must go back to their villages.

In engineering, we consider such influxes as a disaster...A special program must be applied for the region because of this disaster. Special programs must be applied

concerning industrialization and investments. Each year about 1,000 families, along with their capital, move to western Turkey..."

- **Ozcan Bayrakci, Representative of the Van Chamber of Mechanical Engineers:**

"Those who move from here to Antalya and Mersin, the local people there feel disturbed. Problems emerge. If the employment problem is resolved here, people won't go there. The state has to introduce new programs concerning subsidies."

- **Cengiz Andic, Rector of the Van "Yuzuncu Yil" (Centennial) University:**

"There has been intensive exodus into Van since 1989. This situation has brought along some problems. There are many reasons for the exodus.... The exodus brought a great burden on Van... Those who came could survive for one or two years with the money they got by selling their property, and livestock. But later they became solely consumers. They have economic hardships since they cannot find jobs. They also began to encounter social problems.

The basic supporters of the economy in the region are agriculture and animal husbandry...Those who moved here could not be involved in agriculture and animal husbandry. Their only expectation is state assistance... Although on paper Van population is 153,000, according to a study by the Governor's office the figure is 457,000... There is no industry in Van that can accommodate such a population. These people are unemployed...What is nice, is that people are asking for jobs. In other words, they do not go out and steal. This is the main reason why we have confidence in the people.

Even if there were no terrorism, the flow from rural areas to urban sites would occur, but then it would have occurred in a longer period, rather than such a short time. It will be very good to develop border trade because things produced here can be evaluated immediately, without the transportation problem."

- **Diyarbakir Democracy Platform (Excerpts from the Platform's report sent to the Committee follow):**

"The basic need of the country is a reversal in policies that have been pursued for years and achieving peace... Villages were set on fire as part of wrong policies for resolving the Kurdish problem. The village guard system, too, played a role in the current result... The problem can be resolved by creating a suitable atmosphere for making villages return to production. It is obvious that this cannot be achieved through a Village/City Project...

Villages are still being evacuated...Zivinge, village of Nusaybin, Mardin, which was evacuated in early 1994, was set on fire by military units on July 20, 1997...Necessary arrangements must be made for implementing the rights and freedoms that are brought with the international agreements that Turkey signed... Finally, one must give up artificial solutions, villagers must be allowed to be free to return to their villages in a secure and peaceful environment and their losses must be compensated."

V. HUMAN RIGHTS AND LEGAL DIMENSIONS OF THE ISSUE

The regional people pay the price of the state's struggle against terrorism in the southeast. Brutal violence, implementation of terrorist organization and unnecessary and unprincipled pressures of the security forces which reach violent dimensions form time to time, cause our citizens to lose their hopes for pursuing a humane life and alienates them. Security forces had to declare a wide geographical area as an open and hot conflict area in its fight against the separatist terrorist organization. In this wide geography, in the whole rural area, closure of hamlets and meadows to the usage of the citizens, evacuation of the villages and hamlets in the region caused suffering to 400,000 people directly and hundreds of thousands indirectly.

Unfortunately, these citizens who were forced to migrate after losing their housed in about 3,500 villages and hamlets of 11 provinces, were neglected for years and they have been suffering for many years.

Although every government promised to implement support and repair projects, particularly the "Return to Village" project, these promises were forgotten and the projects were shelved.

Suffering in the region continues, implementation of State of Emergency still exists, the principle of supremacy of law could not be activated, arbitrary implementations in the field of administrative and security activities could not be prevented. People who come to more secure cities cannot find jobs, cannot preserve health and cannot provide education opportunities for their children.

The basic rights and freedoms of the people are being violated because the sufferings of the people who were forced to migrate and who were cut off from life were not compensated.

People, who arrived in a more secure city by leaving their villages in a very short period, cannot find adequate housing and jobs to survive, cannot protect their health and cannot provide education for their children. Thus, the people who migrated are lacking basic education, employment and housing.

5.1 The Constitutional Dimension

The sufferings faced by our citizens mean direct or indirect violation of several articles of the Constitution.

- Article 2 of the 1982 Constitution defines the Turkish Republic as "a democratic, secular and social state of law, respectful to human rights."
- Article 10 stipulates equality for the people before the law for the implementations concerning the state offices and administration.
- Article 17 states that everyone has the right to life and the right to protect and develop its material and spiritual entity.
- Article 20 is about the right to demand respect for private and family life. Privacy of an individual and family life cannot be violated. The article notes that unless there exists a decision duly passed by a judge in cases explicitly defined by law,

and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial, neither the person, the private papers, belongings of an individual shall be searched nor shall they be seized.

- Article 21 says that the domicile of an individual shall not be violated. The article stipulates that unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorized by law in cases where delayed is deemed prejudicial, no domicile may be entered or searched nor the property therein be seized.
- Article 35 states that everyone has the right to own and inherit property, these rights can only be limited by law in the public interest.
- Article 40 which is about protection of basic rights and freedoms states that everyone, whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities and notes that damages incurred by any person through unlawful treatment by holders of public office shall be compensated for by the state.
- Article 36 provides that everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure.
- Article 40 states that everyone whose constitutional rights and freedoms have been violated, has the right to request prompt access to the competent authorities.
- Although Article 42 of the constitution says that no one shall be deprived of the right to education, children of 57,314 families who were obliged to emigrate from the villages evacuated by the State of Emergency Regional Governor's Office, cannot even attend compulsory primary education.
- Article 46 says that the state and public corporations shall be entitled, where the public interest require it, to expropriate privately owned real estate wholly or n part or impose administrative servitude on it in accordance with the principles and procedures prescribed by law, provided that compensation is paid in advance.
- Article 57 of the Constitution provides that the state must take measures to meet the needs for housing within the framework of a plan which takes into account the characteristics if cities and environmental conditions and supports community housing projects.

5.2 International Law Dimension

The international law puts unavoidable and immediate responsibilities on the state. These are Universal Human Rights Charter, European Human Rights Convention for Human Rights and Basic Freedoms and European Parliament Basic Rights and Freedoms Declaration.

5.3 European Human Rights Judiciary Dimension

Our state recognized all these above mentioned charters and also recognized the right of individual application to the European Court of Human Rights. However, although Article 40 of the Constitution states that everyone whose constitutional rights and freedoms have been violated, has the right to request prompt access to the competent authorities, prompt access cannot be achieved. Articles 7 and 8 of the Government Decrees with the force of Law Numbers 425 and 430 provide that the State of Emergency Regional Governor and provincial governors cannot be sued for them using the recognized powers. The citizens cannot exercise the right of individual application against the implementations violating their rights and freedoms. For

compensation, losses should be registered by the judiciary. However, judicial officials cannot go to the villages citing security reasons. Thus this situation encourages some officials who claim to act on behalf of the state to resort to arbitrary behavior.

The MFA memoranda dated November 28, 1997 gives information about the relations of our country with the European Court of Human Rights. According to the memoranda, there are 1,800 cases opened against our country at the Court since 1987. Following is the distribution of the applications by subjects:

- Village evacuation and burning in the Southeast Anatolia	358 applications
- Torture, mystery killings and disappearances in Southeast Anatolia	114 applications
- Party closures	6 applications
- Expropriation (34 applications are about the implementation in the Southeast Anatolia)	204 applications
- Torture and long detention period	136 applications
- Freedom of expression	59 applications
- Long prosecution period	48 applications
- Disappearance, death, mystery killing	23 applications
- Applications by the state	2 applications
- Refugee applications	1 application
- Applications of Southern Cyprus Greek Cypriot Administration against our government	847 applications

The European Court of Human Rights, on November 28, 1997 announced its decision in the application of Azize Mentes, Mahile Turhalli, Suliye Turhalli and Sariye Uvat. The claims on which the application was based on the inviolability of a domicile, which was safeguarded by article 8 of the European Convention on Human Rights and also articles 5, 6, 13, 14 and 18. The Court stated that it cannot issue a decision for financial and psychological compensation and invited both the Government of Turkey

and the applicants to testify for the compensation within three months. The Court also ordered that the applicants' court expenses be paid by Turkey.

5.4 Legal Aspects of the Issue

Village evacuation implementations lack legal grounds. Although Article 9 of the State of Emergency Law Number 2935, Article 4 of the Government Decree dated July 14, 1987 and Number 285 on the creation of State of Emergency Regional Governorship, all governors who served as State Regional Governors stated that they had never exercised the village evacuation authority. Research in the archives of the State of Emergency Regional Governor's Office by the current State of Emergency Regional Governor showed that there is no indication that the governors exercised this authority.

In the village evacuations, people leave their villages involuntarily. This means violation of the right to own and inherit property. No judicial or administrative investigation are being conducted vis a vis the village burning claims. Those who had losses cannot exercise their right to seek compensation within the framework of law.

The State of Emergency Regional Governor's Office announced that only 148 out of 3,313 evacuated settlement places are safe and the people can return to their settlements. The state should compensate losses of the hundreds of thousands of people who are not allowed to return to their homes.

People who evacuated their settlement areas either due to PKK threats, or due to security operations or due to unofficial evacuation implementation by the security units, have moved to the closest place or to a place where their relatives live. However, they could not establish a healthy settlement and could not find any jobs. It is a primary duty of the state to provide housing, employment, health and education services to these people since the state is in charge of providing security to its citizens. If these are not provided, it would mean violation of basic rights safeguarded by the Constitution. As long as the state does not compensate the losses of these people, it will face this problem in the fields of both internal legislation and international law, it will face sanctions and hardship.

VI. SOLUTION PROPOSALS FORESEEN IN THE GOVERNMENT PROGRAMS

The report carried excerpts from programs of seven governments established between the dates of November 19, 1991 and July 7, 1997 in which projects, such as the southeast renovation project, promised a solution to the difficulties faced by the regional people and also ideas to end the terrorism in the region.

VII. IMPLEMENTATIONS OF THE STATE ON THIS ISSUE

Offices of governors, sub-governors, municipalities and some NGOs are assisting those who migrate from the evacuated settlements. However, although these works are useful and necessary, they are far from being sufficient. The Emergency Regional Governor's Office sent the Committee a report dated November 11, 1997 saying that a total of 5,524 settlements were constructed in Diyarbakir province, Kulp township, Bingol province, Solhan and Genc townships, Hizan township of Bitlis, Sirnak province, Yuksekova and Semdinli townships, Pertek and Ovacik townships of Tunceli and Van province. Moreover, the Turkish Union of Chambers and Stock Markets, with the contribution of State of Emergency Regional Governor's Office, constructed 258 settlements in Van.

In 1996, a total of TL 490 billion was sent to the provincial governors in the region to be distributed for those who can return to their villages so that they can use it in the repair work of their houses. Settlements in Diyarbakir and Mus-Yenikent, which are used in cases of disaster were allocated for the immigrants. Works are underway for the construction 2,800 settlements by the regional governor's office but necessary funds were not allocated yet. The municipalities are the bodies that suffer most from the migration. As the resources of the local administrations are limited, mostly food and clothing are provided and partial assistance made for health and settlement needs. A clinic established by Goc-Der (Solidarity and Assistance Association for Migrants) which was established in Mersin provides medical examination and medicine for immigrants.

TABLE VIII

Province	Houses Constructed	Cost (Million TL)
Diyarbakir	693	86.250
Hakkari	932	46.360
Sirnak	2767	154.413
Tunceli	175	5837
Van	152	12.850
Bingol	258	26.750
Bitlis	62	3920
Mus	465	23.250
Mardin	20	7800
Total	**5,524**	**367.430**

VIII. CONCLUSION AND SUGGESTIONS OF THE COMMISSION

8.1 General Findings

Migration is one of the basic parameters affecting the population structure and population process. Migration is a population movement. It is individuals', families', groups', communities' or tribes' going to other places by leaving their hometowns permanently or temporarily. Migration can be classified as domestic migration and

external migration. The classification of migration based on the amount of population changing their location can be done as: massive migration and individual or family migration.

It is estimated that between the years of 1771 and 1989 the number of people who were forced to migrate to the Ottoman Empire and Turkey from Crimea, northern Caucasus, Azerbaijan, Greece, Bulgaria, Romania, Yugoslavia, Cyprus, eastern Turkistan and Afghanistan is about 8,000,000. Within the last 15 year period, the total number of people who were involved in domestic migration is estimated to be 3,000,000. This figure shows the dimensions and urgency of the problem.

Surveys conducted by sociologists in the Cukurova region showed that there are two reasons behind the fact of migration:

a) In our country the administrative and the political authorities evacuate the villages and hamlets in the East and the Southeast by citing the reason of public security.
b) The existence of military conflict and the social, economic and psychological conditions which emerge as a result of these clashes.

Aside from the above mentioned reasons, the other reasons are:

1) Implementation of State of Emergency and the implementations of the State of Emergency which became oppressive.
2) Implementation of the prohibition on going to the highlands.
3) High risk on life security in rural areas as a result of clashes.
4) The non-confidence medium and the desire to get away form the atmosphere of violence.
5) Concerns of the heads of families about the future of their children.
6) Disturbance of economic functioning of the families and facilities as a result of the conflictual atmosphere.
7) Disturbances on special team and village guard system.
8) Pressures imposed by armed illegal organizations on villages and hamlets which are not willing to or which does not support them.
9) Implementation of food embargo in many regions with the concern that the armed illegal organization would possess them.
10) Existence of political mystery killings.

The evacuation of many villages and hamlets within the framework of an exaggerated security concept, was not done in compliance with the authorities recognized by the State of Emergency Law.

Since the village evacuations were not done within a legal framework, the state did not assume responsibility in settling the people who were evacuated in safe places and in meeting their needs.

In brief, the efforts of the state in overcoming the suffering of the people who were forced to leave their villages and hamlets were not sufficient and the basic human rights of these people such as the rights to life, housing, employment, to own property, health, education and free movement were violated.

Those who were obliged to migrate took refuge primarily at the houses of their relatives at the closest townships or provinces or at social installations such as parks or at construction sites.

In some cities such as Van, Diyarbakir and Sirnak some families were settled at the houses constructed by the governor's offices. However, the majority of the people who are subject to compulsory migration still could not be settled in adequate housing.

Since this migration had happened forcibly, suddenly and en masse, the cities could not assimilate the migrants. On the contrary, many cities became like villages. In Diyarbakir, Van, Sanliurfa and many other cities, shanty towns were erected and this process continues. The state and the local administrations remained incapable of administering the migration

The majority of the people also lack sufficient food, health services, education and employment opportunities. Contagious diseases and other health problems are widespread among these people and these problems are being carried out to the other regions of the country.

People who immigrate to cities fall in the trap of field gangs and the state lands are being looted. This is a major problem for both the migrating people and the state.

Unemployed migrant youngsters get involved in illegal business and fall in the trap of criminal organizations and, naturally, become an element of the swamp of terrorism.

Ghettos are being established in the cities. This creation will cause social problems in the future. Shanty houses are being constructed in a very fast manner, control over the constructions cannot be established, and the constructions will lack the infrastructural services provided by the city. In the end these cities become villages.

Local administrations are not provided with the resources to cope with the needs of the immigrants whose numbers increase grossly.

No serious study was conducted on the migrating people. The state did not determine the reasons of the migration and the needs and problems of the people.

Housing, food, health, education and other needs of the migrants were not handled by the state.

Children of the immigrant families cannot benefit from educational opportunities and the educational infrastructure, in the places where migration rate is high, cannot meet the needs and the quality of education declines since the number of students per class increases.

Ties of the migrating people to their houses, fields and gardens in their villages are cut off. They are not allowed to harvest their products or collect honey from their hives and cut their wood.

Evacuation of the settlement places in such a way caused great losses in the regional economy. The agricultural and animal husbandry products of the region dropped drastically. People who were producers became consumers in big cities.

Immigrants did not take the government's project of "return to the village" seriously since the project is based on voluntary action rather than state initiative and it was not implemented with the support of the state. The officials determined that only 200 locations are safe. Villagers are obliged to become village guards as a condition to the return to their villages.

It is not possible to provide security only with military measures. The lack of confidence of the regional people should be eased, they should be provided with food, jobs and credibility, their rights should be safeguarded under general principles of democracy, their identities and humane honor should be respected.

The struggle against terrorism and protection of the unity of the country is the primary duty of the state however, protection of rights of the people living in the region is also the primary duty of the state as well.

8.2 General principles to be followed to resolve the problems

1. Evacuated villages should be determined and the properties at places to where return is not possible should be appropriated and the prices should be paid to owners, supremacy of law should be established.

2. Evacuated villages should be taken within the framework of disaster area concept and damages should be repaired as soon as possible so that the villages become places fit for habitation. The state should provide infrastructure and installations such as mosques and schools.

3. Those who do not want to return to their villages should be determined and their housing, employment, health and education problems where they live should be solved.

4. Local administrations and NGOs should be put into circuit in solving the problems and contribution of migrants should be received.

5. The project of return to villages should be encouraged by the state and implementation should be done in a democratic way.

6. A mobilization should be started in the region on education.

7. Health services should be activated.

8. Social services should be provided to the people who migrate to cities in order to overcome the psychosomatic affects of armed struggle in the region.

9. Measures should be taken to improve animal husbandry and credit opportunities should be extended to the people.

10. The forests are disappearing. In order to prevent an ecological disaster, trees should be planted.

11. The regional people faced multi-dimensional damage due to the struggle against the illegal armed organization. Economic, political and social measures should be implemented immediately in order to create an atmosphere of confidence.

12. Knowledge, experienced public officials with affection should be assigned to the region in order to build confidence. Implementations preventing Kurdish origin citizens from becoming administrators in public offices in the region should be stopped.

13. GAP Administration and Mass Housing Administration should assume duty in organizing services. A permanent commission should be established in parliament to follow migration and inform the parliament about the developments.

8.3 Special Policies for Resolving Problems

Return to Village Project:

It is the most natural right for someone to live in his/her own village and this right stems from the Constitution and International Human Rights Conventions to which Turkey is a signatory. For this reason, the Return to Village Project, which was outlined in 1995, should be implemented starting from the safe regions and the violation of life-housing-work health-education rights of the people should be stopped.

A. General principles

1. People should not be forced to return to their villages.

2. The state is obliged to trust its citizens, it should not regard the people as potential criminals. For this reason, the villagers, not the state should determine which village should be re-settled. The duty of the security forces is to provide security in the villages.

3. Settlement in the hamlets with 10-15 houses should not be encouraged, however, those who want to return to their hamlets should be provided with assistance.

4. People who return to their villages should not be forced to become village Guards. The project should be implemented in a transparent and participatory way.

5. This problem closely concerns about more than 400,000 people who had evacuated about 3,428 settlement places including 905 villages and 2,523 hamlets.

The project should be implemented and coordinated by a "Permanent Committee," which will be established under the chairmanship of the Prime Ministry Under-secretariat and with the participation of representatives from the:

Finance Ministry
Treasury U/S
Public Works Ministry
Interior Ministry
State Planning Organization
National Education Ministry
Health Ministry
Agricultural Ministry
Forestry Ministry
Labor Ministry
Rural Affairs Directorate General
Social Services and Child Protection Institution
Ziraat and Halk Banks
One headman from every province selected by village headmen
Union of Turkish Chambers of Architects and Engineers
Turkish Medical Doctors Union
Turkish Bar Association
Industry and Trade Chambers
Chamber of Agriculture
Human Rights Association
Human Rights Foundation

B. Support policies to be provided by the public sector

Every family to return to the villages should benefit from low interest rate credit opportunities. Equipment necessary to construct a decent house should be provided to the families of no cost. Two cows and 15 sheep should be granted to every family. Low interest rate animal husbandry credit should be given to villagers returning to their villages. Local productions should be encouraged and necessary equipment should be provided. Schools and health units in the villages should be repaired.

Projects for citizens who are not included in the "Return to Village" project:

(a) Central Village Project

The issue of gathering two or three villages around one of those villages or gathering them at another location suitable for all villages concerned due to socio-economic reasons, has been discussed for many years. However, such an implementation must be done after serious studies.

(b) Farm Project

This project was first introduced as the "Rural Area Settlement Project" on 1995 by the Public Partnership Administration. It was independent from the "Return to Village" and "Central Village" projects and it was presented as the only option for the evacuated villages and hamlets. With such a presentation, this project was evaluated

as an implementation of "compulsory settlement." For this reason the European Council Social Development Fund rejected the credit request in 1995. The project can only be useful if it can be activated together with animal husbandry, green house projects and house economics and only then our citizens who were cut off from their villages can have a qualified and productive life.

CENTERS OF ATTRACTION DETERMINED BY EMERGENCY SITUATION REGIONAL GOVERNOR'S OFFICE

PROVINCE	SETTLEMENT PLACES THAT ARE POTENTIAL ATTRACTION CENTERS
Batman	Kuyubasi Binatli Demirbilek Besiri Isikveren
Bingol	Ilicalar Sancak Genc Sevri
Bitlis	Yolalan Ahlat Ovakisla Mutki Meydan
Diyarbakir	Bismil Tepe Dicle Kocaalan Egil Kalkan Ergani Solen Silvan Bagdere
Hakkari	Gecimli Yuksekova Esendere Cukurca Cigli

Mardin	Dargecit
	Ortaca
	Nusaybin
	Girmeli
	Derik
	Derinsu
Mus	Kizilagac
	Ucevler
	Varto
	Caylak
Siirt	Baykan
	Ziyaret
	Eruh
	Baggozu
	Bilgili
Sirnak	Akcay
	Kumcati
	Uludere
	Ortabag
	Guclukonak
	Findik
Tunceli	Cicekli
	Pulumur
	Hasangazi
	Mazgirt
	Akpazar
Van	Baskale
	Albayrak
	Catak
	Buyukagac
	Gevas
	Aladuz
	Gurpinar
	Kirkgecit
	Yalinca

(c) Projects on Settlement in Cities

It is one of the basic duties of the state to provide its citizens the settlement opportunity in the cities if they do not want to return to their villages or hamlets. In this case two types of projects can be considered:

i. Mass housing projects with the city or in its periphery

In the past, Mass Administration realized three projects in Diyarbakir, Sirnak and Hakkari. However, immigrants could not benefit from it as speculators possessed most of the houses due to their cheap prices. The Mass Housing Administration should facilitate its means to meet the needs of the people in the region with the credit it obtained from the World Bank.

ii. Temporary Social Housing Projects to be Established in the Periphery

The infrastructure problems of the temporary housing areas still exist. The small settlement units do not meet the needs of crowded families. There is no need to continue with this project since the houses are not appropriate to live in.

8.4 General Policies

The state approached the lack of internal peace as a security problem until now and it did not put the democratic rights, supremacy of law, equality, culture, socio-economic development dimensions on the agenda. Such an approach carried the problem to an unsolvable level and it became a source for all domestic and external problems. For this reason:

A. Giving Priority to the Civilian Conscience

a. The solution should be created within the framework of the TGNA. Responsibility of a solution rests with political cadres.

b. A solution should be discussed at platforms where all civilian organizations and all social levels are represented in a free way.

B. Peace Project

a. An atmosphere of peace, solidarity and tolerance should be established among our people from every region of the country, from every ethnic origin and from every cultural group, without making concessions for armed illegal organizations.

b. The group which flares up the conflict and which benefits from this conflictual atmosphere should be closed.

c. A legal arrangement foreseeing the pardoning of those arrested and convicted for expression of thought and sheltering (organization members) should be issued.

C. Democratization Project

a. Provisions of international charters to which we are a signatory, should be transferred to domestic laws. The Constitution should have articles that contradict the principles of pluralist, participatory and pro-freedom democracy repealed.

b. Implementation of State of Emergency should be ended

c. All violations of basic rights and freedoms should be prevented.

d. Channels for people to seek their rights should be opened.

e. Necessary arrangements should be made in the Criminal Trial Procedure Law in order to allow immediate attorney access for the detainees for crimes which fall under the jurisdiction of State Security Courts.

f. Necessary sensitivity and efforts should be exerted to bring light to the mystery killings.

g. The village guard system should be dissolved under the umbrella of temporary employment project.

h. The lobby, which benefits from the conflict should be closed.

i. The special team functioning in the region should be withdrawn and rehabilitated.

j. All legal, social and institutional barriers in front of ethnic, belief and origin differences should be removed and Kurdish identity should be recognized within this framework. Our citizens should be able to educate in their mother tongue including in Kurdish at private schools and for them to be able to establish their own private radio and television.

D. Regional socio-economic project

a. GAP should be finalised as soon as possible as an social and economic integrated development project.

b. The Eastern Anatolia Social and Economic integrated Development Project (DAP) should be activated as soon as possible.

c. The GAP region and Southeast border area should be cleaned off from mines and it should be opened for the use of the agricultural needs of the people.

d. The "Rural Area Productive Employment Project", which is a temporary employment project should be implemented.

e. A State Ministry should implement the "Production Rehabilitation Project" as soon as possible in order to put the ineffective Public and Private Sector industrial installations into operation.

f. Industrialists and entrepreneurs who will invest in the region should be provided opportunities.

g. Vocational school projects should be activated.

h. The public sector should not hesitate to implement projects, which would increase employment opportunities in the region.

i. Border trade should be facilitated and the mafia type of connections should be cut off.

j. Local administrations in the region should be audited financially and the gaps in their budgets should be covered by treasury resources.

k. Unemployment insurance should be started from the region first and the regional people should be covered by social security umbrella.

l. Quotas in university entrance exams should be recognized in the provinces so that the imbalance among the regions will be removed.

The Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in Britain. KHRP is a registered charity. It is committed to protecting the human rights of all persons living within the Kurdish areas, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include people of Kurdish and non-Kurdish origin.

AIMS

- To promote awareness of the situation of the Kurds in Iran, Iraq, Syria, Turkey and the countries of the former Soviet Union
- To bring an end to the violation of the rights of the Kurds in these countries and of Kurds and non-Kurds in predominantly Kurdish areas
- To promote the protection of human rights of Kurdish people everywhere

METHODS

- Monitoring legislation including emergency legislation and its application
- Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey, and in the countries of the former Soviet Union by, amongst other methods, sending trial observers and engaging in fact-finding missions
- Using such reports to promote awareness of the plight of the Kurds on the part of committees established under human rights treaties to monitor compliance of states
- Using such reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations
- Liaison with other independent human rights organisations working in the same field and co-operating with lawyers, journalists and others concerned with human rights
- Assisting individuals with their applications before the European Commission and Court of Human Rights
- Offering assistance to indigenous human rights groups and lawyers in the form of advice and training seminars on international human rights mechanisms