KHRP

Kurdish Human Rights Project

CASES AGAINST TURKEY

DECLARED ADMISSIBLE

BY THE

EUROPEAN COMMISSION AND COURT OF HUMAN RIGHTS

Part of a series of cases brought by KHRP on behalf of applicants from the Kurdish regions

Volume 7
December 2000

Suite 319
Linen Hall
162-168 Regent Street
London W1R 5TB
Tel: 020 7287 2772
Fax: 020 7734 4927
Email:
khrp@khrp.demon.co.uk

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The legal team of the Kurdish Human Rights Project consists of:

In Turkey: Emin Aktar, Cihan Aydin, Osman Baydemir, Orhan Kemal Cengiz, Tahir Elci, Osman Ergi, Metin Kilavuz, Mahmut Sakar, Kenan Sidar, Sezgin Tanrikulu, Sinan Tanrikulu and Reyhan Yalcindag.

In Britain: David Anderson QC; Michael Birnbaum QC; Professor Bill Bowring; Professor Kevin Boyle; Louise Christian, solicitor; Andrew Collender QC; Fiona Darroch, barrister; Tim Eicke, barrister; Ben Emmerson QC; Joanna Evans, barrister; Tony Fisher, solicitor; Edward Grieves, barrister; John Guess; Matthew Happold, Lecturer in Law; Professor Françoise Hampson; Gill Higgins, barrister; Murray Hunt, barrister; Philip Kirkpatrick, solicitor; Philip Leach, solicitor and KHRP Legal Director; Professor Sheldon Leader; Fiona McKay, solicitor; KHRP Deputy Director; Mark Muller, barrister; Caroline Nolan, solicitor; Mark O'Connor, barrister; Tim Otty, barrister; Gita Parihar, solicitor; Rajesh Rai, barrister; Aisling Reidy, barrister; Paul Richmond; Michael Rollason, barrister; Jessica Simor, barrister; Keir Starmer, barrister; Nicholas Stewart QC; Jemima Stratford. Barrister; Alice Faure Walker, solicitor and former KHRP Deputy Director; Colin Wells, barrister; and Chris William, barrister.

In Norway: Arild Humlen, Jon Rud, Ola Maeland, Ovind Ostberg and Knut Rognlien (Norwegian Bar Association).

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This report was compiled by Paul Richmond and edited by the Kurdish Human Rights Project.

Editorial Team
Kerim Yildiz Sally Eberhardt
Fiona McKay Nusrat Chagtai
Philip Leach

For further information on the cases, please contact the Kurdish Human Rights Project, Suite 319, Linen Hall, 162-168 Regent Street, London W1R 5TB, England. Telephone: +44 20 7287 2772 Facsimile: +44 20 7734 4927 E-mail: khrp@khrp.demom.co.uk Website: http://www.khrp.org

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KHRP Cases against Turkey declared Admissible by the European Commission and Court of Human Rights

Volume 7
December 2000

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1. INTRODUCTION BY THE EXECUTIVE DIRECTOR

The year 1999 and the early months of 2000 saw an acceleration of KHRP cases working their way through the Strasbourg system. From the beginning of 1999 through March of 2000, admissibility decisions were made in twelve KHRP cases. This volume reproduces these twelve admissibility decisions, plus an earlier decision from 30 June 1997 which was not included in earlier volumes.

This volume also contains an update on other KHRP-assisted cases and tracks their progress through the Strasbourg system. This includes descriptions of decisions of the Commission on Human Rights on the merits, cases referred to the European Court of Human Rights and hearings attended by the KHRP legal team. Also included are a summary of judgments handed down in nine KHRP cases during the period, among them two key freedom of expression judgments (*Özgür Gündem v. Turkey*, *Kilic v. Turkey*) which have struck deep at the heart of the Turkish legal system.

A comprehensive schedule of all KHRP cases to July 2000, together with extensive analysis, is included in KHRP's publication *Turkey and the European Convention on Human Rights: A Report on the Litigation Programme of the Kurdish Human Rights Project* by Carla Buckley, available from KHRP.

These cases are brought as part of KHRP's Litigation and Training project, which since 1992 has assisted over 400 applicants to bring their cases to the European Commission and Court of Human Rights against Turkey in respect of violations of the Convention. This case report is part of a series entitled Cases Against Turkey Declared Admissible,[1] and KHRP also publishes a separate series of judgments of the Court in addition to analytical and thematic reports.[2]

The judgments of the European Court represent the end of a long road for the applicants in all cases. These judgments are an important vindication of the rights of the individual applicants who persisted in seeking justice before the Strasbourg organs often in the face of pressure and intimidation from Turkish authorities. Just as significant is the effect of these judgments more generally on the overall human rights situation in Turkey. One of the important results of the judgments has been to create greater international awareness of the human rights situation in Turkey and also to stimulate debate on the ground regarding the issues surrounding the applicants' complaints. However, the full impact of the cases will only become clear over time and will require careful monitoring.

As can be seen in the chart summarising the European Convention process, which is contained in Appendix A of this report, the first important decision reached in each case is the finding as to the admissibility of each complaint. This volume contains 13 cases, which have been declared admissible or partially admissible by the Commission and Court from the beginning of 1999 to the end of March 2000. It also contains updates on other KHRP cases and on cases not assisted by KHRP, in Appendices C, D and E, and in

[1] Volumes 1-6 are available from KHRP
[2] See List of Publications available from KHRP

Appendix A, an outline of the new system and procedure at the European Court of Human Rights under Protocol 11, in effect since 1 November 1998.

The finding of admissibility is important, not least because it allows the case to proceed for fuller consideration by the European Court; but especially because by finding the case admissible the Commission or Court is saying that the allegations made are not "manifestly ill-founded". In addition, before an application is declared admissible, applicants must show that they have exhausted all available domestic remedies, or, alternatively, that the available remedies were ineffective.

The ineffectiveness of domestic remedies is one of the key complaints in each of the cases included in this volume. It is argued not only as a procedural issue so as to permit a finding of admissibility, but also as a substantive complaint. The failure to provide a system which punishes those responsible for torture, unlawful killings and the wanton destruction of homes and communities and the failure to provide a remedy are violations in themselves and constitute serious problems which must be overcome if Turkey's human rights situation is to improve.

Despite signs of improvement in the law in Turkey, gross violations of rights continue to occur as a matter of practice in Southeast Turkey. The Kurdish Human Rights Project will continue to assist individuals who wish to pursue their cases before the European Court of Human Rights as a means of promoting the rule of law and ensuring accountability of state agents in Turkey.

Finally, the Kurdish Human Rights Project wishes to thank the many individuals and organisations who, through their support and assistance, have made this work possible, Paul Richmond and Nusrat Chagtai who drafted this report, and the funders without whose generosity our achievements would not be possible.

Kerim Yildiz
Executive Director
December 2000

2. KHRP CASES DECLARED ADMISSIBLE BY THE EUROPEAN COMMISSION AND COURT OF HUMAN RIGHTS

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The Wider Significance of the Admissibility Decisions in this Volume

Three of the cases reported in this volume concern the ill-treatment and/or killing of HADEP representatives in Adana in 1994-1995. *Abdülsamet Yaman* complains that he was arrested and tortured by the police in 1995. *Hacı Sait Macir* was shot dead at his Adana café on 30 December 1994/1 January 1995. Both were provincial HADEP leaders. The applicant in a third case, *Ahmet Dizman*, had been an eyewitness to the killing of HADEP leaders Rehib Çabuk and Sefer Cerf in Adana in October 1994. Two days later Dizman himself was abducted and beaten by police officers. A fourth case, *Binbay*,

concerns the alleged ill-treatment by the police of a former president of the Van branch of the Human Rights Association of Turkey.

The resolution of a number of these cases is likely to turn on the Court's developing caselaw in relation to ill-treatment and deaths in custody. The family of *Aydin Kişmir* complains that he was tortured and killed in police custody. However, the authorities claim that on his arrest he tried to escape and tripped and fell against a wall. The autopsy report in the case records that Aydin Kişmir died of asphyxia. The European Court now consistently applies the principle that an individual in police custody is in a vulnerable position and where s/he is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury. For example, in the recent judgement of *Velikova v Bulgaria*, Judgment of 18 May 2000, the Court emphasised that:

"Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation" (para. 70).

Other cases in this volume relate to the legality and proportionality of security force operations. *Murat Akman* was shot dead in his home by police officers during house to house searches following an armed attack on Savur in 1997. The police claim that they acted in self-defence, but the Akman family deny that anyone in their house was armed. The Court's assessment of this case is likely to depend upon its analysis of whether the use of force was absolutely necessary and of the conduct and planning of the police operation. This latter issue was first considered by the European Court in the case of *McCann v UK* (1995) 21 EHRR 97, which concerned the fatal shooting by British SAS officers of three members of an IRA Active Service Unit in Gibraltar. In the recent case of *Gül v Turkey*, Judgment of 14 December 2000, the Court found that the fact that the police had opened fire in a residential district to be grossly disproportionate. The Court in that case disbelieved that the victim who had been shot by the police had himself fired a shot: the lack of proper recording of the alleged finding of guns and a cartridge was found to remove the credibility of the police evidence. The Court in *Gül* also found various failings in the investigation of the incident: there was no attempt to find the bullet allegedly fired by the victim; there was no proper recording of findings; there was no photograph of the weapons at the location; there was no testing of the victim's hands for traces; and the gun was not tested for fingerprints.

Both the treatment of suspects in custody and the conduct and planning of the Gendarmerie operation is in issue in *Yasin Ateş v Turkey*. Kadri Ateş, from Diyarbakir, died in June 1995 after being arrested by the police. His family argue that he was killed in police custody, but the Government states that he was taken to a police ambush of PKK activists where he was caught in the cross-fire.

This volume also includes a series of cases in which applicants' relatives have 'disappeared' and have still not been found years later. The case of *Hüseyin Toğcu*

concerns the 'disappearance' of Ender Toğcu in Diyarbakir in November 1994. His brother reported having heard the voice and screams of Ender Toğcu in custody. In *Haran*, the applicant's husband had 'disappeared' in Diyarbakir in December 1994, and in *T.A. and M.A.*, the applicant's brother was abducted and 'disappeared' from Bismil in August 1994. Amongst other issues raised by a case of 'disappearance', the Court has recently followed the jurisprudence of the Inter-American Court of Human Rights in finding that the right to life (Article 2) is in issue (*Timurtaş v Turkey*, Judgment of 13 June 2000). Whether or not there will be a breach of the right to life may depend upon the extent of the evidence that the victim had at any point been held in state custody and the length of time which had passed since the victim's 'disappearance'.

A number of the cases reported in this volume concern killings by unknown perpetrators, such as *Ekinci*, *Dündar* and *Çelikbilek*. In considering the Article 2 (right to life) issues in these cases, the extent of any investigations carried out by the responsible authorities is likely to be critical.

In several cases, the Court has re-confirmed a number of its consistent findings in relation to the exhaustion of domestic remedies in Turkey. For example, it is not necessary for a criminal complaint to have been lodged by the applicant if a criminal investigation was in any event opened *ex officio* (*Macir, Ateş, Çelikbilek, Dündar, Ekinci*), and where a Provincial Administration Council makes a decision exonerating the security forces, this will prevent any civil or adminsitative actions being brought on the victim's behalf (*Akman*). The Court has also reiterated its previous decisions that civil proceedings cannot represent an effective remedy in a case concerning the responsibility of unknown state agents, as to succeed in a civil action it is necessary to identify the person believed to have committed the tort (*Yaman, Kişmir, Dizman, Dündar, Haran*). Furthermore, in cases raising complaints under Articles 2 and 2 of the Convention, administrative law proceedings will not be effective as they provide a remedy based on the strict liability of the state, and would not lead to the identification and punishment of those responsible (*Yaman, Kişmir, Dizman, Dündar, Ekinci, Haran*).

As regards other procedural matters raised by the cases reported in this volume, the Court has confirmed that the widow and the brother of a person killed in unproven circumstances could properly claim to be a 'victim' of a violation of the European Convention (*Ekinci* and *Çelikbilek*, respectively) . In *Dündar*, the Court found that where a potential remedy, such as a criminal investigation, becomes ineffective, the six months period laid down for lodging an application with the European Court will only start to run from the time when the applicant's allegations are definitely rejected by the national authorities or when it becomes clear that the remedies are ineffective.

In two of these cases, the European Court has subsequently decided that it will hold fact-finding hearings in Turkey (*Akman* and *Binbay*). Judgments in most of the cases reported in this volume are expected

The Strasbourg System and the Admissibility Stage

The year 1998 saw the introduction of major changes to the machinery of the European Convention on Human Rights, with the coming into force of Protocol 11 to the Convention in November 1998. The new system is described in Appendix A. In turn, 1999 was the first full year of the new full-time Court, which published its first judgments in January 1999.

Prior to November 1998, a case in Strasbourg was examined in two stages. The European Commission on Human Rights would deal with preliminary matters, including the question of whether or not domestic remedies had been exhausted, and issues of fact. The Commission would then prepare a report and, if appropriate, the case would be referred to the European Court, which would ultimately issue judgment. Protocol 11 essentially initiated a merger of the two bodies. The European Commission and the 'old' European Court were replaced by a new European Court of Human Rights which deals with cases from start to finish. The period from November 1998 until November 1999 was a transitional one: the Commission continued to deal with the cases which it had previously declared to be admissible, in order to transfer them to the Court before the Commission ceased to exist. All other cases, however, including all new applications, are now dealt with directly by the new Court.

Most cases dealt with by the KHRP throughout 1999 and 2000 were originally initiated under the pre-Protocol 11 Commission and Court procedure. However, all new cases brought in 1999 and 2000 were introduced under the new system. Of the admissibility decisions covered in this Report, only the first, T.A. & M.A. v. Turkey, was decided by the Commission, while the remainder were decisions of the Court.

As of 31st March 2000, the European Commission and Court of Human Rights had declared admissible 81 cases assisted by the KHRP. The Commission and Court had also found fifteen cases inadmissible.[3]

Between the beginning of 1999 and March 2000[4], the following decisions on admissibility have been delivered by the Court in cases assisted by the KHRP:[5]

8 June 1999	**Ulku EKINCI v. Turkey:** application declared admissible.
22 June 1999	**Abdurrahman CELIKBILEK v. Turkey:** application declared admissible.
22 June 1999	**Nesime HARAN v. Turkey:** application declared admissible.
24 August 1999	**Zubeyir DUNDAR v. Turkey:** application declared partially admissible and partially inadmissible.
14 September 1999	**Huseyin TOGCU v. Turkey:** application declared admissible.

[3] For a full description and analysis of all KHRP's cases see *Turkey and the European Convention on Human Rights: A Report on the Litigation Programme of the Kurdish Human Rights Project* by Carla Buckley, July 2000, available from KHRP.

[4] See Volumes 1, 2, 3, 4, 5 and 6 for admissibility decisions delivered prior to this date.

[5] Those declared admissible are included in this volume, while those declared inadmissible will be included in KHRP's separate series of Cases Declared Inadmissible.

21 September 1999	**Faysal AKMAN v. Turkey:** application declared admissible.
19 October 1999	**Yasin ATES v. Turkey:** application declared admissible.
9 November 1999	**Enver UYKUR v. Turkey:** application declared inadmissible.
14 December 1999	**Hayriye KISMIR v. Turkey:** application declared admissible.
14 December 1999	**Abdulsamet YAMAN v. Turkey:** application declared partially admissible and partially inadmissible.
18 January 2000	**Ahmet DIZMAN v. Turkey:** application declared admissible.
3 February 2000	**Yavuz BINBAY v. Turkey:** application declared admissible.
28 March 2000	**Beyaz MACIR v. Turkey:** application declared admissible.

Once an application has been brought before the European Court of Human Rights, the Court's first task is to declare whether the application meets the requirements as to admissibility contained in Articles 25, 26 and 27 of the European Convention.

Once the complaint is submitted, it is assigned to a Rapporteur to decide on admissibility. The Rapporteur carries out an initial assessment upon which the Court makes its decision. The Court may send a summary of the allegations to the Government, inviting them to respond i.e. to *Communicate the Application.* This is an important stage at which most applications are rejected. The parties concerned are often invited to supply information or their *Observations* on admissibility and merits i.e. to *Communicate the Application* to which the other side can *Reply.* Both sides may offer further information and parties may be asked to submit observations at an oral hearing where they can be questioned.

If the Court believes there is a case to answer, they declare the case 'admissible' and proceed to investigate the case itself. If a petition is rejected at this stage, the decision of the Court is final and there is no right of appeal against it.

A summary of the cases which were declared fully or partially admissible together with the text of the admissibility decisions of the Court follow.

T.A. & M.A. v. Turkey
Application No. 26307/95

Declared admissible 30 June 1997

Issue:
Disappearance, detention and torture/Ambar village, Bismir-Diyarbakir/August 1994

The applicant's allegations:
On 20 August 1994, two individuals, probably plain-clothes policemen, went to the village of Ambar, where M.A. lived. At that time, M.A. was working in the fields. The two individuals asked M.A. to accompany them in order to help them find an address. When M.A. refused to get into their car, they threatened him with their weapons, seized his identity an unknown destination. M.A.'s family were informed by the authorities that no person under the name card, tied his arms, blindfolded him and punched him. They then made him get into their car and drove towards M.A. was in custody in the police premises in Bismil. However, a detainee in the Bismil police premises subsequently contacted M.A.'s family and informed them that M.A. had in fact been in custody in the same premises as him at that time and had been subjected to torture. On 29 August 1994, M.A.'s mother presented a case to the public prosecutor's office in order to be informed as to the date when her son would be released. This application was renewed on 19 October 1994. On 29 November 1994 and 19 January 1995, the applicant petitioned the Diyarbakir State Security Court in order to find out where his brother was. On 26 and 27 June 1995, the applicant presented his case to the Minister for Human Rights and the Minister of Justice in an attempt to find out where his brother was and when he was going to be released. On 5 October 1995, a person with the code name "Murat", contacted the family asking them to keep the abduction of M.A. a secret. He informed the family that M.A. would be working as an agent. This message was repeated on 10 October 1995. On 25 October 1995, the applicant's sister named three persons who could have been responsible for the abduction of her brother, namely, I.C., captain of the gendarmerie, A.K. sub-officer of the gendarmerie, and H.A., repentant of the PKK. On 17 June 1996, the public prosecutor of Bismil, having declined jurisdiction, sent the case file back to the counsel of administration in Diyarbakir.

The Government's response:
State agents have not been implicated in the disappearance, torture and detention of M.A. In this region of Turkey, armed gangs of terrorists carry out abductions. Following the case presented by M.A.'s mother, on 29 August 1994, the public prosecutor opened a preliminary inquiry. On 2 September 1994, the mother, the wife and the son of M.A. and another person, I.E., who was found on the scene at the time of the incident, were heard by the public prosecutor of Bismil. On 15 March 1995, the public prosecutor of Bismil sent a letter to the police officer of the gendarmerie requesting information on the alleged abduction of M.A. On 8 September 1995, the mother, the wife and the son of M.A. and I.E. made statements to the police officer of the gendarmerie of Diyarbakir. I.E. explained that two armed plain-clothes policemen, who were unknown to them, forced them to get in the car. He refused to obey them, whereas M.A. got in the car without

showing resistance. On 25 October 1995, I.E. made another statement in which he explained that the captain, I.C., and the sergeant, A.K., were not implicated in this case.

The Complaints under the European Convention:
The applicant did not invoke any specific articles of the Convention but complained about:

- The irregular and excessive detention of M.A. in the premises of the gendarmerie of Bismil.
- The torture and ill-treatment M.A. was subjected to at the time of his custody and that persons responsible for M.A.'s medical care did not give him the necessary medical care.
- The fact that since M.A.'s arrest, he was deprived of legal assistance and of any contact with his family. He points out that it was not possible to obtain any information concerning the release of his brother.

The Commission's decision:
The Commission found that the applicant had submitted the matters complained of to the appropriate and competent authorities and he was not obliged to exercise other means of resort in this respect. The Commission also rejected the government's proposition that the case was introduced for the purposes of political propaganda. Regarding the substance of the applicant's complaints, the Commission considered that as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

COMMISSION EUROPÉENNE DES DROITS DE L'HOMME
DÉCISION
SUR LA RECEVABILITÉ

de la requête N° 26307/95
présentée par T.A. et M.A.
contre la Turquie

La Commission européenne des Droits de l'Homme, siégeant en chambre du conseil le 30 juin 1997 en présence de

M. S. TRECHSEL, Président
Mme G.H. THUNE
Mme J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mme M. HION
MM. R. NICOLINI
A. ARABADJIEV

M. H.C. KRÜGER, Secrétaire de la Commission ;

Vu l'article 25 de la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales ;

Vu la requête introduite le 29 octobre 1994 par T. A. et M. A. contre la Turquie et enregistrée le 26 janvier 1995 sous le N° de dossier 26307/95 ;

Vu es rapports prévus à l'article 47 du Règlement intérieur de la Commission ;

Vu les observations présentées par le Gouvernement défendeur le 21 décembre 1995 et les observations en réponse présentées par le requérant le 20 mars 1996 ;

Après avoir délibéré,

Rend la décision suivante :

EN FAIT

Le requérant, T.A., ressortissant turc, est né en 1970 et réside à Skarpnäck (Suède). Il déclare présenter la requête au nom de son frère, M. A., et en son propre nom.

Les faits de la cause, tels qu'ils ont été exposés par les parties, peuvent se résumer comme suit.

Le requérant présente les faits comme suit.

Le 20 août 1994, deux personnes, probablement des policiers en civil, se rendirent dans une voiture blanche sans plaque d'immatriculation au village d'Ambar (Bismil-Diyarbakir), où habitait M.A. Celui-ci travaillait à ce moment-là dans les champs. Les deux personnes lui demandèrent de les accompagner afin de les aider à trouver une adresse. M. A. ayant refusé de monter dans leur voiture, ils le menacèrent avec leurs armes, confisquèrent sa carte d'identité, lièrent ses mains, bandèrent ses yeux et lui donnèrent des coups de poing. Ils firent ensuite monter M.A. dans la voiture et partirent vers une destination inconnue.

La famille de M.A., supposant que celui-ci avait été placé en garde à vue, fit plusieurs démarches auprès du Commandement de la gendarmerie du district de Bismil afin d'obtenir des renseignements quant à son sort. Toutefois, les autorités leur indiquèrent qu'aucune personne du nom de M.A. n'était gardé à vue dans les locaux des forces de l'ordre.

Une personne, qui avait été placée en garde à vue dans les locaux du Commandement de la gendarmerie de Bismil, contacta la famille de M. A. et les informa avoir vu ce dernier placé en garde à vue dans les mêmes locaux et précisa qu'il avait été soumis à la torture et que son état de santé s'avérait inquiétant.

Le 29 août 1994, la mère de M.A. présenta une requête au parquet de Bismil afin de demander à être informé du sort de son fils. Le 19 octobre 1994, elle renouvela sa demande.

Les 29 novembre 1994 et 19 janvier 1995, le requérant demanda par écrit au procureur de la République près la cour de sûreté de Diyarbakir où se trouvait son frère.

Les 26 et 27 juin 1995, le requérant présenta des requêtes au Ministère des Droits de l'Homme et au Ministère de la Justice afin de connaître le sort de son frère et de savoir où il se trouvait.

Le 24 août 1995, le Ministère de la Justice demanda au requérant des renseignements supplémentaires concernant l'affaire, demande à laquelle le requérant répondit le 30 août 1995.

Le 5 octobre 1995, une personne du code nom "Murat", prétendument envoyé par le Commandement de la brigade de Diyarbakir, aurait contacté la famille en leur demandant de tenir au secret l'enlèvement de M.A. Il aurait informé la famille que M.A. travaillerait comme agent et aurait demandé au requérant ainsi qu'à un autre membre de la famille d'agir comme lui. Cette personne aurait réitéré son message le 10 octobre 1995.

Le 25 octobre 1995, la soeur du requérant fut entendue par le Commandement de la gendarmerie du district de Bismil. Elle indiqua le nom de trois personnes qui auraient été responsables de l'enlèvement de son frère, à savoir i. C., capitaine de la gendarmerie, A. K., sous-officier à la gendarmerie, et H. A., repenti du PKK. Le 30 octobre 1995, une descente aurait été effectuée au domicile de la soeur du requérant et le 19 décembre 1995, le fils de cette dernière, âgé de douze ans, aurait failli être enlevé.

Par lettre du 10 janvier 1997, le requérant a informé la Commission que le 17 juin 1996, le procureur de la République de Bismil s'était déclaré incompétent et avait renvoyé le dossier d'enquête entamée à l'encontre des trois personnes mises en cause par les proches de M.A. au conseil d'administration du département de Diyarbakir.

Le Gouvernement expose les faits de la cause de la manière suivante.

A la suite de la requête présentée par la mère de M.A. le 29 août 1995, le procureur de la République a ouvert une enquête préliminaire. Le 2 septembre 1994, la mère, la femme, le fils de M. A. et une autre personne, i.E., qui se trouvait sur les lieux lors de l'incident, furent entendus par le procureur de la République de Bismil.

Le 15 mars 1995, le procureur de la République de Bismil adressa un courrier au Commandement de la gendarmerie demandant des renseignements sur le prétendu enlèvement de M. A.

Le 8 septembre 1995, la mère, la femme, le fils de M.A. et i.E. firent des dépositions au Commandement de la gendarmerie de Diyarbakir. i.E. exposa que deux personnes armées, en tenue civile et qui leur étaient inconnues, les avaient forcés de monter dans une voiture. Il avait refusé de leur obéir, alors que M.A. sans montrer de résistance serait monté dans la voiture. Le 25 octobre 1995, i.E. fit une autre déposition devant le notaire dans laquelle il exposait que le capitaine i.C. et le sergent A.K. n'étaient pas impliqués dans cette affaire.

Le Gouvernement fournit les copies des registres de garde à vue du Commandement de la gendarmerie du district de Bismil qui ne contenaient aucune trace du maintien en détention de M.A.

GRIEFS

Le requérant se plaint de l'irrégularité et de la durée excessive de la détention de M.A. dans les locaux du Commandement de la

gendarmerie de Bismil.

Il se plaint également de mauvais traitements, voire des actes de torture, auxquels M.A. aurait été soumis lors de sa garde à vue. Il prétend en outre que les personnes responsables de la détention de M.A. ne lui ont pas donné les soins médicaux nécessaires.

Le requérant se plaint enfin de ce que M. A., depuis son arrestation, est privé de l'assistance d'un avocat ainsi que de tout contact avec les membres de sa famille. Il fait valoir qu'aucun renseignement n'a pu être obtenu sur le sort de son frère.

Le requérant n'invoque, à ces égards, aucune disposition spécifique de la Convention.

PROCEDURE DEVANT LA COMMISSION

La requête a été introduite le 29 octobre 1994 et enregistrée le 26 janvier 1995.

Le 4 septembre 1995, la Commission a décidé de porter la requête à la connaissance du Gouvernement défendeur, en l'invitant à présenter par écrit ses observations sur la recevabilité et le bien-fondé de la requête.

Le Gouvernement a présenté ses observations le 21 décembre 1995 et le requérant y a répondu le 20 mars 1996

EN DROIT

Le requérant se plaint de la disparition de son frère à la suite de son arrestation. Il se plaint à cet égard de l'irrégularité et de la durée excessive de la détention de M.A. dans les locaux du Commandement de la gendarmerie de Bismil.

Il se plaint également de mauvais traitements, voire des actes de torture, auxquels M.A. aurait été soumis lors de sa garde à vue.

Le requérant se plaint enfin de ce que M. A., depuis son arrestation, est privé de l'assistance d'un avocat ainsi que de tout contact avec les membres de sa famille.

Le Gouvernement soutient que la requête est irrecevable pour les raisons suivantes :

i. le requérant n'a pas épuisé les voies de recours internes;

ii. il s'agit d'un abus du droit de recours.

Epuisement des voies de recours internes

Le Gouvernement soutient que la requête est irrecevable, le requérant n'ayant pas épuisé les voies de recours internes avant de saisir la Commission. Il fait valoir que les proches du requérant ont saisi les autorités et l'investigation relative à la disparition du M.A. est toujours en cours.

Le requérant conteste cette thèse. Il met particulièrement l'accent sur le fait qu'il a lui-même saisi plusieurs fois les autorités administratives et judiciaires et que toutes ses demandes sont restées sans réponse. Quant à la procédure entamée à l'encontre des présumés responsables de l'arrestation de M.A. suite à la plainte pénale de ses proches, le requérant fait valoir que le procureur de la République de Bismil se déclarant incompétent a renvoyé le dossier devant le conseil d'administration de Diyarbakir.

Le requérant soutient qu'il existe une pratique administrative de mauvais traitements et tortures et de non-respect de la règle de la Convention qui exige l'octroi de recours internes efficaces.

Selon l'article 26 (art. 26) de la Convention, la Commission ne peut examiner un grief "qu'après l'épuisement des voies de recours internes, tel qu'il est entendu selon les principes de droit international généralement reconnus...". Selon la jurisprudence de la Commission, un requérant est tenu de faire "un usage normal" des recours vraisemblablement efficaces et suffisants pour porter remède à ses griefs. La Commission rappelle que les voies de recours indiquées par le Gouvernement doivent exister avec un degré suffisant de certitude, en pratique et en théorie, sans quoi leur manque l'accessibilité et l'efficacité voulues et qu'il incombe à l'Etat défendeur de démontrer que ces diverses conditions se trouvent réunies (Cour eur. D.H., arrêt De Jong, Baljet et Van den Brink du 22 mai 1984, série A n° 77, par. 39, et Nos. 14116/88, 14117/88, Sargin et Yagci c/Turquie, déc. 11.05.89, D.R. 61 p. 250, 262).

La Commission constate, au vu des informations communiquées par le requérant, que celui-ci a adressé plusieurs lettres aux autorités judiciaires et administratives qui sont restées sans réponse.

La Commission relève en outre que les membres de la famille du requérant ont saisi le procureur de la République de Bismil, qui a porté l'affaire à l'attention du Commandement de la gendarmerie du district de Bismil. Quant à l'investigation entamée à l'encontre des présumés responsables de l'arrestation de M.A., elle observe à cet égard que le 17 juin 1996, le procureur de la République de Bismil, se déclarant incompétent, a renvoyé le dossier devant le conseil d'administration du département de Diyarbakir. Au vu des pièces du dossier, la Commission estime que cette enquête ne peut pas être considérée comme un recours effectif au sens de l'article 26 (art. 26) de la Convention.

Dans ces conditions, la Commission est convaincue que l'on peut considérer, dans les circonstances de l'espèce, que le requérant a saisi les autorités appropriées et compétentes et que l'article 26 (art. 26) de la Convention ne l'oblige pas à exercer d'autres voies de recours à cet égard (cf., N° 20764/92, Ertak c/Turquie, déc. 4.12.95, N° 24276/94, Kurt c/Turquie, déc. 22.5.95, D.R. 81, p. 112).

La Commission conclut que l'on peut considérer que le requérant a rempli la condition relative à l'épuisement des voies de recours internes posée par l'article 26 (art. 26) de la Convention et, dès lors, que la requête ne saurait être rejetée, en application de l'article 27 par. 3 (art. 27-3) de la Convention.

Abus de droit de recours

Selon le Gouvernement, la requête qui est dénuée de fondement, a été introduite à des fins de propagande politique contre le Gouvernement turc. Il s'agit par conséquent d'un abus du droit de recours qui discrédite le caractère juridique des mécanismes de contrôle de la Convention.

Le requétant rejette l'argument du Gouvernement.

La Commission estime que l'argument du Gouvernement ne pourrait être retenu que si la requête se fondait manifestement sur des faits erronés. Or, cela est loin d'être evident à ce stade de la procédure. Partant il est impossible de rejeter la requête pour ce motif.

Sur le bien-fondé

Le Gouvernement, qui réfute l'allégation selon laquelle M.A. est détenu depuis 20 août 1994, déclare que les témoignages de membres de la famille de M.A. et du villageois qui était présent sur les lieux lors de l'incident, I.E., démontrent que les agents de l'Etat n'ont pas été impliqués dans l'affaire. Selon le Gouvernement, dans cette région de la Turquie des groupes armés de l'organisation terroriste procèdent à des enlèvements d'hommes.

Le requérant maintient sa version des faits.

La Commission a procédé à un examen préliminaire des arguments des parties à la lumière de la jurisprudence des organes de la Convention. Elle estime que la requête soulève des questions de fait et de droit, notamment en ce qui concerne le respect des articles 2, 3, 5, 6 et 8 (art. 2, 3, 5, 6, 8) de la Convention, qui ne peuvent être résolues à ce stade de l'examen de la requête, mais nécessitent un examen au fond. La requête ne saurait dès lors être déclarée manifestement mal fondée, en application de l'article 27 par. 2 (art. 27-2) de la Convention.

La Commission constate en outre que la requête ne se heurte à aucun autre motif d'irrecevabilité.

Par ces motifs, la Commission, à l'unanimité,

DECLARE LA REQUETE RECEVABLE, tous moyens de fond réservés.

H.C. KRÜGER Secrétaire de la Commission	S. TRECHSEL Président de la Commission

TRANSLATION

ON THE ADMISSIBILITY
OF THE CASE No 26307/95 presented by T.A. and M.A. v Turkey

The European Commission on Human Rights on 30 June 1997, in view of Article 25 of the Convention for the Protection of Human Rights and Fundamental Liberties; in view of the case introduced on 29 October 1994 by T.A. and M.A. v Turkey and registered on 26 January 1995 under the document No 26307/95; in view of Article 47 of the domestic regulation of the Commission; in view of the observations presented by the defendant Government on 21 December 1995 and the observations in response presented by the applicant on 20 March 1996, declares the above case admissible.

AS TO THE FACTS:

The applicant, T.A., Turkish national, was born in 1970 and lives in Skarpnäck, Sweden. He presents the case under the name of his brother, M.A. and his own name.

The facts of the case, as they were explained by the parties, can be summarised as follows.

The applicant presents the facts as follows.

On 20 August 1994, two individuals, probably plain-clothes policemen, went in a white car, without registration licence, to the village of Ambar (Bismir-Diyarbakir), where M.A. lived. At the time, the latter was working in the fields. The two individuals asked him to accompany them in order to help them to find an address. When M.A. refused to get in their car, they threatened him with their weapons, seized his identity card, tied up his arms, blindfolded him and punched him. They then made him get in the car and drove towards an unknown destination.

The family of M.A., presuming that he was put in custody, approached the police officer of the gendarmerie of the district of Bismil in order to obtain information with regard to his release. However, the authorities indicated to them that no person under the name of M.A. was kept in custody at the police premises.

A person, who was placed in custody at the police premises of Bismil, contacted M.A.'s family and informed them that M.A. was kept in custody in the same premises and specified that he was subjected to torture and that his health condition showed to be worrying.

On 29 August 1994, M.A.'s mother presented a case to the public prosecutor's office in order to be informed about his son's release. On 19 October 1994, she renewed her application.

On 29 November 1994 and 19 January 1995, the applicant asked in writing the public prosecutor before the security court of Dikyarbakir where his brother was.

On 26 and 27 June 1995, the applicant presented the cases to the Minister of Human Rights and to the Minister of Justice so as to find out where his brother was and when he was going to be released.

On 24 August 1995, the Minister of Justice asked the applicant supplementary information concerning the case; the applicant responded to the request on 30 August 1995.

On 5 October 1995, a person with the code name "Murat", allegedly sent by the squad of Diyarbakir, contacted the family asking them to keep the abduction of M.A. a secret. He informed the family that M.A. would be working as an agent and requested the applicant that another member of the family should work as M.A. This person repeated his message on 10 October 1995.

On 25 October 1995, the applicant's sister was heard by the police officer of the district of Bismil. She indicated the name of the three persons who could have been responsible for the abduction of his brother, namely I.C., captain of the gendarmerie, A.K., sub- officer at the gendarmerie, and H.A.,

repentant of PKK. On 19 December 1995, the son of the applicant's sister, twelve years of age, was almost abducted.

The applicant, by a letter on 10 January 1997, informed the Commission that on 17 June 1996, the public prosecutor of Bismil had declined jurisdiction and had returned the file of inquiry initiated against the three persons implicated by the relatives of M.A. to the counsel of the department of administration of Diyarbakir.

The Government explains the facts of the case in the following way.

Following the case presented by M.A.'s mother, on 29 August 1995, the public prosecutor opened a preliminary inquiry. On 2 September 1994, the mother, the wife and the son of M.A. and another person, I.E., who was found on the scene at the time of the accident, were heard by the public prosecutor of Bismil.

On 15 March 1995, the public prosecutor of Bismil sent a letter to the police officer of the gendarmerie requesting information on the alleged abduction of M.A.

On 8 September 1995, the mother, the wife and the son of M.A. and I.E. made statements to the police officer of the gendarmerie of Diyarbakir. I.E., explaining that two armed plain-clothes policemen, who were unknown to them, forced them to get in the car. He refused to obey them, whereas M.A. without showing resistance had got in the car. On 25 October 1995, I.E., made another statement to the lawyer in which he explained that the captain I.C. and the sergeant A.K. were not implicated in this case.

The Government provided copies of register of custody by the gendarmerie of Bismil which contained no sign of upholding M.A.'s detention.

COMPLAINTS

The applicant complains about the irregularity and the excessive detention of M.A. in the premises of the gendarmerie of Bismil.

He also complains about the ill treatment, indeed the acts of torture, to which he was subjected at the time of his custody. Moreover, he alleges that the persons responsible for M.A.'s detention did not give him the necessary medical care.

The applicant finally complains of the fact that since M.A.'s arrest, he was deprived of a lawyer's assistance and of any contact with his family. He points out that no information was possible to be obtained concerning the release of his brother.

The applicant invokes in these respects no specific provision of the Convention.

PROCEDURE BEFORE THE COMMISSION

The case was introduced on 29 October 1994 and registered on 26 January 1995.

On 4 September 1995, the Commission decided to bring the case to the knowledge of the defendant Government, inviting them to present in writing their observations on the admissibility and the merits of the case.

The Government presented their observations on 21 December 1995 and the applicant responded to them on 20 March 1996.

AS TO THE LAW

The applicant complains about the disappearance of his brother following his arrest. He complains in this respect about the irregularity and the excessive duration of M.A.'s detention in the premises of the gendarmerie of Bismil.

He also complains about the ill-treatment, indeed the acts of torture, to which M.A. was subjected at the time of his custody.

The applicant finally complains about the fact that, since M.A.'s arrest, he was deprived of a lawyer's assistance as well as any contact with his family.

The Government maintains that the case is inadmissible for the following reasons:

i. the applicant did not exhaust the means of domestic remedies;

ii. the case involves a breach of domestic remedies

The Government maintain that the case is inadmissible, since the applicant had not exhausted the domestic remedies before he submitted the matter to the Commission. They point out that the relatives of the applicant referred the matter to the authorities and the investigation concerning the disappearance of M.A. is always pending.

The applicant disputes this position. He particularly emphasises the fact that he submitted the matter several times to the administrative and judicial authorities and all his requests remained unanswered. With regard to the procedure initiated against the alleged responsible for M.A.'s arrest following the criminal complaint of his relatives, the applicant points out that the public prosecutor of Bismil declining jurisdiction, returned the file before the counsel of administration of Diyarbakir.

The applicant supports the view that there is an administrative practice of ill-treatment and torture and non-respect of the rule of the Convention which requires efficient domestic remedies.

According to Article 26 of the Convention, the Commission can not examine a complain "that after the exhaustion of means of domestic remedies, as it is understood according to the generally recognised principles of international law...". According to the Commission's jurisprudence, an applicant is expected to make "a normal use" of probably efficient and sufficient resorts in order to bring remedy to his complaints. The Commission reminds that the means of resort indicated by the Government must exist with a degree of sufficient certitude, in practice and in theory, without lacking the desired accessibility and effectiveness; further the Commission lies the onus on the defendant state to prove that the various conditions are found together (European Court of Human Rights, case De Jong, Baljet and Van den Brink on 22 May 1984, Series A no 77, par. 39, and nos 114117/88, Sargin and Yagci c/Turkey, decl. 11. 05.89, p.250, 262).

Moreover, the Commission notes, in view of the information communicated by the applicant, that he sent various letters to the judicial and administrative authorities which remained unanswered.

Furthermore, the Commission reveals that the members of the applicant submitted to the public prosecutor of Bismil, who brought the case to the attention of the police officer of the gendarmerie of Bismil. With regard to the investigation instituted against the alleged responsible of M.A.'s arrest, the Commission observes in this respect that on 17 July 1996, the public prosecutor of Bismil, having declined jurisdiction, sent back the file to the counsel of administration of Diyarbakir. In view of the content of the file, the Commission assesses that this inquiry cannot be considered as an effective resort within the meaning of Article 26 of the Convention.

Under these conditions, the Commission is convinced to consider, under the circumstances of the kind, that the applicant submitted the matter to the appropriate and competent authorities and that Article 26 of the Convention does not oblige him to exercise other means of resort in this respect (cf, no 20764/92, Ertak c Turkey, decl. 4.12.95, no 24276/94, Kurt v Turkey, decl. 22.5. 95, D.R. 81, p.112).

The Commission considers that the condition was fulfilled by the applicant, in relation to the exhaustion of means of domestic remedies laid down by Article 26 of the Convention and concludes that , from that moment, the case should not be rejected applying Article 27 par.3 of the Convention.

Breach of the right to remedies

According to the Government, the case which is unfounded, was introduced for the purposes of political propaganda against the Turkish Government. Consequently it involves breach of the right to remedies, which undermines the judicial character of the mechanisms according to which the Convention provides control.

The applicant rejects the argument by the Government.

The Commission assesses that the Government's argument could only be accepted if the case was evidently founded on erroneous facts. Yet this is far from being evident at this stage of the procedure. Hence it is impossible to reject the case for this reason.

On the merits

The Government, who refuses the allegation according to which M.A. has been detained since 20 August 1994, declares that the testimonies by the members of M.A.'s family and by the villagers who were present on the premises at the time of the accident, I.E., prove that the state agents were not implied in this case. According to the Government, in this region of Turkey, armed groups of terrorists carry out abductions.

The applicant maintains his version of the facts.

The Commission proceeded to a preliminary examination of the arguments by the parties in the light of the jurisprudence of the organs of the Convention. The Commission assesses that the case reveals questions of fact and law, particularly concerning the respect of Articles 2, 3, 5, 6 and 8 of the Convention, which can not be resolved at this stage of the examination of the case, but they require an examination of the merits. The case should not, from this moment, be declared evidently ill-founded applying Article 27 par.2 of the Convention.

The Commission moreover notes that the case does not come up against any other reason of inadmissibility.

For these reasons the Commission unanimously

DECLARES THE CASE ADMISSIBLE, all means of the merits reserved.

H.C.KRÜGER
Secretary of the Commission

S. TRECHSEL
President of the Commission

Faysal AKMAN v. Turkey
Application No. 37453/97

Declared admissible 21 September 1999

Issue:
Extra-judicial killing/Savur town/January 1997

The applicant's allegations:
From about 10 p.m. on 19 January 1997 until about 3.30 a.m. on 20 January 1997 there was the sound of gunfire in the centre of Savur. At about 6 a.m., five members of the security forces entered the applicant's house. The house was searched. At the request of one of the security force members, the applicant called his son, Murat, to come out of his bedroom. Murat came out of his bedroom holding his identity card in his hand. A member of the security forces took the card, threw it on the floor, and then started to shoot at Murat using an automatic rifle. The applicant and other family members were kept together in another room while the shooting continued. Subsequently, the applicant was allowed to go into the room where the body of his son lay. He saw his son's body with an automatic rifle and bullet magazines lying on it. An investigation was conducted into the death of Murat Akman. On 24 December 1997, the Mardin Provincial Administrative Council ruled that the security forces had been justified in killing Murat Akman and that there was insufficient evidence to bring charges against the accused police officers.

The Government's response:
On 19 January 1997, a group of terrorists went to Savur and attacked the police station, the school staff room, the homes of civil servants and gendarme sentry posts. A police officer and a gendarme were killed during the attack. A police officer, a gendarme and three civilians were also injured. The confrontation ended in the early hours of 20 January 1997 after reinforcements were brought in from Mardin. House searches were subsequently conducted since the security forces had come under fire from houses in the town. During the search of the applicant's house, the security forces were fired on from a bedroom in the upper part of the house, which was dark. They were obliged to return fire. When the shooting stopped, the security forces went into the bedroom and found the body of Murat Akman. There was a loaded Kalachnikov rifle close to the deceased's right hand. Three full cartridges and several empty bullets were found beside his body.

The Complaints under the European Convention:
The applicant complains of violations of Article 2 and of Article 6 taken together with Article 13, as well as of Articles 8, 14 and 18.

- Article 2 (right to life): applicant's son was a victim of extra-judicial execution; no effective investigation carried out into the circumstances of his death; administrative practice of unlawful killings by the security forces in Southeast Turkey.
- Article 6 (right of access to court) taken together with Article 13 (right to an effective remedy): lack of any effective investigation into death of applicant's son depriving

applicant of his right of access to a court to claim compensation, as well as an effective remedy.

- Article 8 (right to family life): intentional killing of applicant's son in his home and in front of his family.
- Article 14 (prohibition on discrimination): discrimination against the applicant and his son on account of their Kurdish origin.
- Article 18 (prohibition on abuse of power): State pursues a policy of unlawful killing of individuals in Southeast Turkey.

The Court's decision:

The Court found that the applicant had exhausted domestic remedies. The criminal proceedings initiated by the Public Prosecutor were effectively brought to an end by the Administrative Council's decision exonerating the actions of the security forces. Also, the decision that the security forces had been justified in killing Murat Akman excluded any possibility open to the applicant to pursue a remedy in damages under civil or administrative law. Regarding the substance of the applicant's complaints, the Court considered that as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 70

applicant of his right of access to a court to claim compensation, as well as an effective remedy.

- Article 8 (right to family life): intentional killing of applicant's son in his home and in front of his family.
- Article 14 (prohibition on discrimination): discrimination against the applicant and his son on account of their Kurdish origin.
- Article 18 (prohibition on abuse of power): State pursues a policy of unlawful killing of individuals in Southeast Turkey.

The Court's decision:
The Court found that the applicant had exhausted domestic remedies. The criminal proceedings initiated by the Public Prosecutor were effectively brought to an end by the Administrative Council's decision exonerating the actions of the security forces. Also, the decision that the security forces had been justified in killing Murat Akman excluded any possibility open to the applicant to pursue a remedy in damages under civil or administrative law. Regarding the substance of the applicant's complaints, the Court considered that as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 70

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37453/97
by Faysal AKMAN
against Turkey

The European Court of Human Rights (First Section) sitting on 21 September 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, *ad hoc Judge*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 July 1997 by Faysal Akman against Turkey and registered on 22 August 1997 under file no. 37453/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 13 January 1999 and the observations in reply submitted by the applicant on 16 March 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish national of Kurdish origin, was born in 1956 and lives in Savur (Mardin). He is the father of Murat Akman, who was killed on 20 January 1997 in circumstances which gave rise to the applicant's application to the Court. The application is brought on behalf of the applicant's deceased son and his surviving family.

The applicant is represented before the Court by Mr Mahmut Sakar and Mr Osman Baydemir, lawyers practising in Diyarbakır, and Mr Nicholas Stewart QC, Mr Andrew Collender QC, Ms Louise Christian and Ms Caroline Nolan, lawyers practising in London.

A. Particular circumstances of the case

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

1. Facts submitted by the applicant

From about 10 p.m. on 19 January 1997 until about 3.30 a.m. on 20 January 1997 there was the sound of gunfire in the centre of Savur, a town inhabited by about 15 Kurdish families, the remaining inhabitants being Turkish citizens of Arabic origin. At about 6 a.m. there was a knock on the door of the applicant's house accompanied by a shout: "We are the police, open the door!" The applicant opened the door and five members of the security forces entered the house. Three of them were wearing special operations team uniforms, and one a police uniform. They were led by a chief superintendent, Ömer Yüce, who was wearing plain clothes.

The house was searched. At the request of one of the security force members, the applicant called his son, Murat, to come out of the bedroom which he shared with his common law wife, Şemse.

Murat came out of his bedroom holding his identity card in his hand. A member of the security forces took the card, looked at it and threw it on the floor. He then started to shoot at Murat using an automatic rifle. The applicant, who at this time was being restrained, was taken to another room. The sound of shooting continued. The applicant and the other family members except for Şemse were kept together in the same room. The telephone was cut off. At the request of the applicant, Şemse, who had been taken out of the house, was brought into the room. She said that Murat was dead.

Subsequently, the applicant was allowed to go to the room where the body of his son lay. He saw the body with an automatic rifle and bullet magazines lying on it. There were marks of gunfire on the walls of the room. Money (5,000 German marks) and a ring had been removed from his son's body. The regular police officers who arrived at the house after the incident told the applicant that it was not them but another team which had been involved in the shooting.

The Public Prosecutor went to the house together with a doctor. Statements were taken from the applicant, his other son, Salih, and from Şemse.

After the killing of his son, the applicant left Savur and moved to Mardin because he feared for his safety and that of the remaining family members.

On an unspecified date the applicant filed a complaint with the Chief Public Prosecutor of Savur. The applicant met with the Prosecutor who told him that the file was being sent to the State Security Court of Diyarbakır.

According to the applicant, he is not aware of any investigation having been initiated in respect of the conduct of the security forces at his house on 20 January 1997. In his opinion, no statements have been taken from the members of the security forces whom he alleges were involved in the death of his son, nor has any action been taken against them. The applicant states that he has seen the same members of the security forces walking about freely and on duty.

2. Facts submitted by the Government

On 19 January 1997, around 10.30 p.m., a group of terrorists went to Savur and attacked the police station, the school staff room, the homes of civil servants and gendarme sentry posts. A police officer and a gendarme were killed during the attack. A police officer, a gendarme and three civilians were also injured. Reinforcements had to be brought in from Mardin. Following their arrival, the confrontation ended around 2 a.m. on 20 January 1997.

House searches were subsequently conducted since the security forces had come under fire from houses in the town. Around 5 a.m. the applicant's house was searched. During the search, the security forces were fired on from a bedroom in the upper part of the house which was dark. They were obliged to return fire. When the shooting stopped, the security forces went into the bedroom and found the body of Murat Akman. There was a loaded Kalachnikov rifle close to the deceased's right hand. Three full cartridges and several empty bullets were found beside his body. The Public Prosecutor confirmed these details when he was summoned to the house.

On 27 January 1997 the Public Prosecutor of Savur issued a decision of non-jurisdiction in respect of the alleged unlawful killing of Murat Akman for reasons of competence in favour of the Public Prosecutor's Office at the Diyarbakır State Security Court.

On 2 April 1997 the Office of the Public Prosecutor of Savur decided that it had no jurisdiction in respect of the murder of the gendarme and the police officer and the damage caused to public buildings and sent the file to the Office of the Public Prosecutor at the Diyarbakır State Security Court, which decided to join it to another file dealing with the same matter.

As to the complaint introduced against the members of the security forces who had taken part in the search operation on the applicant's house, the Savur Public Prosecutor issued a decision of non-jurisdiction and on 4 July 1997 forwarded the file to the local administrative council of Savur in accordance with the law governing proceedings against civil servants. On 24 December 1997 the local administrative council issued a decision of non-jurisdiction.

3. Investigative measures taken by the authorities

(a) The police reports drawn up at the scene of the incident

On 20 January 1997 a seizure report (*Zapt Etme Tutanağı*) was drafted by a commanding officer (*komiser*) and two police officers, none of whom had been involved in the incident which led to the shooting of Murat Akman. Also on the same day an incident report (*Olay Tutanağı*) was drafted by four other high-ranking police officers. These reports stated, *inter alia*, that in the early hours of 20 January 1997 planned house searches were conducted in Savur in order to locate PKK terrorists who might have been involved in the attacks which took place the previous night. According to the seizure report, the police officers examined and seized the Kalachnikov rifle and the ammunition which, in their opinion, Murat Akman had used against the house search team. According to the incident report, the early morning house searches conducted in Savur resulted in eight suspects being detained and brought to the county security department.

(b) The report on the examination of the deceased's body and the autopsy report

In the early hours of 20 January 1997 the Savur Public Prosecutor and a doctor went to the scene of the incident. The Public Prosecutor conducted a forensic examination of the scene and of the corpse. He ordered a police officer to take measurements in the house and to draw up a sketch of the scene (*kroki*). The applicant was briefly called into the room to identify Murat Akman. The Public Prosecutor then drafted the first part of a report to which the autopsy report was later added. The Public Prosecutor described in his report, *inter alia,* the room, the details of the Kalachnikov rifle, the bullets spent and unspent as well as the bullet marks on the walls of the room. The report did not specifically identify the bullets fired by the members of the special operations team.

The doctor was subsequently called into the room where the body lay. He was neither a specialist nor a pathologist. At the material time there were no other more qualified doctors in Savur. He conducted an external autopsy at the scene of the incident. He stated that he agreed with the findings of the Public Prosecutor with regard to the latter's external examination of the deceased. He repeated the same findings in his own words.

According to the examination of the deceased and autopsy report (*Ölü Muayene ve Otopsi Tutanağı*) of 20 January 1997, one bullet had struck Murat Akman in the head and exited, causing parts of his brain to come out of his skull and stick to his hair. No other external wounds were found on his body. According to the doctor, Murat Akman died as a result of the loss of blood. As the cause of death was clear, the doctor did not find it necessary to conduct a classical autopsy. The report containing the forensic examination of the body and autopsy findings was signed, *inter alia*, by the Public Prosecutor and the doctor.

(c) Statements taken from Murat Akman's family

On 20 January 1997 the Savur Public Prosecutor took the statements of the applicant, his other son Salih and Murat Akman's common law wife, Şemse, at the scene of the incident. These statements have not been submitted to the Court.

(d) Decision of non-jurisdiction of the Savur Public Prosecutor

On 27 January 1997 the Office of the Savur Public Prosecutor issued a decision of non-jurisdiction (*Görevsizlik Kararı*) in respect of the "deceased-accused Murat Akman with regard to his armed combat against the security forces in pursuit of ideological aims". In his decision the Public Prosecutor noted that the relatives of Murat Akman had alleged that he was unlawfully killed by members of the security forces and that the investigation of that complaint fell to the Office of the Public Prosecutor of the Diyarbakır State Security Court. For that reason the file was transferred to the latter Office.

(e) Decisions of the Public Prosecutor of the Diyarbakır State Security Court

On 10 March 1997 the Office of the Public Prosecutor of the Diyarbakır State Security Court decided that there was no need to investigate the death of Murat Akman. On the same day the Office issued a supplementary decision (*Ek Görevsizlik Kararı*) stating that it had no jurisdiction to bring charges against the members of the security forces who had allegedly killed Murat Akman. The file was therefore transferred back to the Office of the Public Prosecutor of Savur.

(f) Statements given by the members of the special operations team

On 28 May 1997 the Savur Public Prosecutor took the statements of three police officers who had fired at Murat Akman on 20 January 1997. No statement was taken from the team commander.

The police officers stated in similar and consistent language that as they entered the dark interior of the house, they heard the sound of a gun being prepared for firing. They affirmed that the commanding officer shouted: "We are the police, who is there?" Single shots were fired followed by automatic gunfire. The police officers stated that they returned fire. They added that after a while the firing from the inside stopped. They further added that when they entered the room from where the shooting had come, they found Murat Akman dead on the floor with a Kalachnikov rifle next to him. According to the three police officers, they had already conducted two house searches by that stage and, after informing the regular police of this incident, carried on with other planned house searches. They denied the applicant's accusation that they unlawfully killed Murat Akman and manipulated the evidence by placing a Kalachnikov rifle next to his body.

(g) Decision of non-jurisdiction of the Savur Public Prosecutor

On 4 July 1997 the Office of the Public Prosecutor of Savur issued a decision of non-jurisdiction (*Görevsizlik Kararı*) with regard to the team commander and the three police officers. According to that decision, *inter alia*, the accused officers as well as other members of the security forces who had taken part in the operation had been heard as witnesses and had stated that the armed clash had been caused by Murat Akman's resistance (***karşılık vermesi***). The decision further stated that at the time of the incident the accused officers were on duty. As such, the acts alleged against them were committed in the course of their administrative duties. The Public Prosecutor found that a criminal investigation could be initiated against the accused civil servants only if the competent administrative council considered it necessary. The investigation file was therefore transferred to the Mardin Provincial Administrative Council for further investigation.

(h) Decision of the Mardin Provincial Administrative Council not to prosecute the members of the search team

On 24 December 1997 the Mardin Provincial Administrative Council, with reference to the investigation file, stated that Murat Akman had opened fire on the accused officers who had entered his house in the context of a planned house search. According to the Administrative Council, the accused had acted in accordance with domestic law and were justified in resorting to the use of their weapons, having regard to the situation which confronted them. The accused did not unlawfully kill Murat Akman either with respect to their intention at the time or their conduct. The Administrative Council found that the evidence as it stood was not sufficient to authorise the bringing of charges against the accused police officers (*men'i muhakeme*).

B. Relevant domestic law

1. Criminal prosecutions

Under the Criminal Code all forms of homicide (Articles 448 to 455) and attempted homicide (Articles 61 and 62) constitute criminal offences. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or members of the security forces as well as to Public Prosecutors' offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

If there is evidence to suggest that a death is not due to natural causes, members of the security forces who have been informed of that fact are required to advise the Public Prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public official who fails to report to the police or a Public Prosecutor's office an offence of which he has become aware in the course of his duty is liable to imprisonment.

A Public Prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 of the Code of Criminal Procedure).

If the suspected offender is a civil servant and if the offence was committed during the performance of his duties, the preliminary investigation of the case is governed by the Law of 1914 on the prosecution of civil servants, which restricts the Public Prosecutor's jurisdiction *ratione personae* at that stage of the proceedings. In such cases it is for the relevant local Administrative Council (for the district or province, depending on the suspect's status), which is chaired by the governor, to conduct the preliminary investigation and, consequently, to decide whether to prosecute. Once a decision to prosecute has been taken, it is for the Public Prosecutor to investigate the case.

An appeal to the Supreme Administrative Court lies against a decision of the Council. If a decision not to prosecute is taken, the case is automatically referred to that court.

By virtue of Article 4, paragraph (i), of Legislative Decree no. 285 of 10 July 1987 on the authority of the governor of a state of emergency region, the 1914 Law also applies to members of the security forces who come under the governor's authority.

If the suspect is a member of the armed forces, the applicable law is determined by the nature of the offence. Thus if it is a "military offence" under the Military Criminal Code (Law no. 1632), the criminal proceedings are in principle conducted in accordance with Law no. 353 on the establishment of courts martial and their rules of procedure. Where a member of the armed forces has been accused of an ordinary offence, it is normally the provisions of the Code of Criminal Procedure which apply (see Article 145 § 1 of the Constitution and sections 9-14 of Law no. 353).

The Military Criminal Code makes it a military offence for a member of the armed forces to endanger a person's life by disobeying an order (Article 89). In such cases civilian complainants may lodge their complaints with the authorities referred to in the Code of Criminal Procedure or with the offender's superior.

2. Circumstances entitling the security forces to open fire

Pursuant to Article 23 of Decree no. 285 (instituting the state of emergency), security forces, special forces on duty and members of the armed forces are, in the circumstances stipulated in the relevant Act, empowered to use their weapons when carrying out their duties. The security forces thus empowered may open fire and shoot at a person if a command to surrender is not accepted, is disobeyed or met with counter-fire or if they have to act in self-defence.

The plea of self-defence is enacted in Article 49 of the Turkish Criminal Code which, in so far as relevant, provides:

"No punishment shall be imposed if the perpetrator acted ...

(2) in immediate necessity to repel an unjust assault against his own or another's person or chastity."

3. Civil and administrative liability arising out of criminal offences

Under section 13 of Law no. 2577 on administrative procedure, anyone who sustains damage as a result of an act by the authorities may, within one year after the alleged act was committed, claim compensation from them. If the claim is rejected in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

Article 125 §§ 1 and 7 of the Constitution provides:

"All acts or decisions of the authorities shall be subject to judicial review...

...

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

That provision establishes the State's strict liability, which comes into play if it is shown that in the circumstances of a particular case the State has failed in its obligation to maintain public order, ensure public safety or protect people's lives or property, without it being necessary to show a tortious act attributable to the authorities. Under these rules, the authorities may therefore be held liable to compensate anyone who has sustained loss as a result of acts committed by unidentified persons.

Article 8 of Legislative Decree no. 430 of 16 December 1990 specifies in this connection:

> "No criminal, financial or legal liability may be asserted against ... the governor of a state of emergency region or by provincial governors in that region in respect of decisions taken, or acts performed, by them in the exercise of the powers conferred on them by this legislative decree, and no application shall be made to any judicial authority to that end. This is without prejudice to the rights of individuals to claim reparation from the State for damage which they have been caused without justification."

Additional section 1 of Law no. 2935 of 25 October 1983 on the state of emergency provides:

> "... actions for damages in respect of the exercise of powers conferred by this statute shall be brought against the administrative authorities in the administrative courts."

Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages for pecuniary loss (Articles 41-46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal court on the issue of the defendant's guilt (Article 53).

However, under section 13 of Law no. 657 on State employees, anyone who has sustained loss as a result of an act done in the performance of duties governed by public law may, in principle, only bring an action against the authority by whom the civil servant concerned is employed and not directly against the civil servant (see Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. When an act is found to be illegal or tortious and, consequently, is no longer an "administrative" act or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

COMPLAINTS

The applicant alleges a violation of Article 2 and of Article 6 taken together with Article 13 of the Convention, as well as of Articles 8, 14 and 18 of the Convention.

He complains firstly that his son was a victim of an extra-judicial execution and that no effective investigation has been carried out into the circumstances surrounding his death. He maintains that there is an administrative practice of unlawful killings by the security forces. He invokes Article 2 in this connection.

He further contends that the lack of any effective investigation into the death of his son deprived him of his right of access to a court to claim compensation as well as an effective remedy. He relies on Article 6 taken together with Article 13 of the Convention.

The applicant also alleges that the killing of his son in his home and in front of his family violated Article 8 of the Convention, that the respondent State has unjustifiably discriminated against him and his son on account of their Kurdish origin in breach of Article 14 of the Convention, and that the respondent State pursue a policy of unlawful killing of individuals in south-east Turkey, in violation of Article 18 of the Convention.

PROCEDURE

The application was introduced on 8 July 1997 and registered on 22 August 1997.

On 29 June 1998 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 13 January 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 16 and 18 March 1999, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

A. As to whether the applicant has exhausted domestic remedies (Article 35 § 1 of the Convention)

The Government maintained that the applicant has not exhausted domestic remedies as required under Article 35 § 1 of the Convention and for that reason his application should be declared inadmissible. With reference to Articles 125 and 129 of the Constitution and the detailed provisions of Law no. 2577 on administrative procedure, the Government submitted that the authorities were obliged in accordance with the theory of social risk to compensate any victim of a failure by the State to maintain public order and security or to protect life or property. Thus, it was open to the applicant to sue the administration for damages in respect of the subject matter of his application to the Court. However, he failed to do so.

The Government further asserted than the applicant could also have sought reparation for the harm he allegedly suffered by instituting a civil action against those whom he held responsible for the harm suffered. This remedy was not pursued.

In addition, the Government pointed out that members of the security forces may be prosecuted under Article 89 of the Military Criminal Code in circumstances where they have failed to respect orders and have committed offences against the person or property. A victim could lodge a complaint against the culprit with the competent authorities referred to in the

Code of Criminal Procedure or with the culprit's superior officer. The Government stressed in this connection that the applicant had never brought a complaint under either Articles 151 and 153 of the Code of Criminal Procedure or sections 93 and 95 of Law no. 353 on the establishment of courts martial and their rules of procedure. Furthermore, an appeal may be taken against a decision not to prosecute a suspect by virtue of Article 165 of the Code of Criminal Procedure.

The Government also observed that the applicant failed to avail himself of the remedies provided for in the Code of Obligations. At no stage did he sue the authorities for damages in respect of the illegal act which he imputed to the security forces.

Having regard to the above considerations the Government insisted that the application should be rejected for failure to exhaust domestic remedies.

The applicant replied with reference to the Court's Akdivar and Others v. Turkey judgment of 16 September 1996 (*Reports of Judgments and Decisions* 1996-IV), that he should be considered absolved from invoking any of the remedies referred to by the Government since their effectiveness was contingent on the conduct of a proper and effective investigation into the circumstances surrounding the death of Murat Akman. Although the Public Prosecutor of Savur knew early on of the killing and had taken statements from the deceased's family, no investigation had been carried out and there was no likelihood of one being carried out in the future. In this latter regard, the applicant drew attention to the fact that the Convention institutions had repeatedly found in applications against the respondent State concerning alleged destruction by the security forces of villages in south-east Turkey that the authorities had failed to carry out an effective investigation into the circumstances or brought proceedings against members of the security forces alleged to be responsible. In the instant case, the security forces were embittered over losing two of their members and took their revenge on the applicant's family. The investigation into the death of his son had not progressed and inevitably gave rise to the decision of the Mardin Provincial Administrative Council that there was no evidence on which to lay charges against the police officers involved in the shooting incident.

The applicant also drew attention to the fact that the Mardin Provincial Administrative Council which issued the decision not to prosecute the accused police officers was composed of State officials and that the Public Prosecutor had surrendered his investigative powers to a non-independent authority. He contended that there is no investigation pending before the Diyarbakır State Security Court, contrary to what the Government alleged. On the other hand, the decision of the Mardin Provincial Administrative Council is awaiting approval by the Council of State.

The applicant concluded by affirming that the remedies relied on by the Government were illusory, ineffective and inadequate to redress his grievances.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and

in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the Tanrikulu v. Turkey judgment of 8 July 1999, to be published in *Reports of Judgments and Decisions* 1999, § 76; and the above-mentioned Akdivar and Others judgment, p. 1210, §§ 65-67).

The Court notes the Government's assertion regarding the availability in domestic law of a range of civil, administrative and criminal law remedies against illegal and criminal acts attributable to members of the security forces. It further notes that the applicant's complaint is directed against known members of the special operations team who searched his home on 20 January 1997 and who, according to the Government's account, shot dead Murat Akman in an act of self defence.

The Court stresses that remedies aimed at securing financial compensation before the civil or administrative courts for the family of a victim of an alleged unlawful killing by the security forces are subsidiary to the authorities' primary obligation to conduct an effective investigation into that allegation. If this were not the case, a Contracting State would escape its procedural obligation under Article 2 to protect the right to life simply by paying compensation to victims (see *mutatis mutandis* the above-mentioned Tanrikulu judgment, § 79; and the Aytekin v. Turkey judgment of 23 September 1998, *Reports* 1998-VII, p. 2828, § 84).

The Court observes that the Public Prosecutor of Savur conducted an investigation into the death of Murat Akman and took statements from the applicant and other members of the deceased's family. On 4 July 1997 he relinquished jurisdiction in favour of the Mardin Provincial Administrative Council which in turn ruled on 24 December 1997 that the security forces had been justified in killing Murat Akman in the circumstances which confronted them at the applicant's home. Although the Government have drawn attention to the fact that there are proceedings pending before the Diyarbakır State Security Court it would appear from the case file that these proceedings do not bear on the applicant's complaint but on the circumstances surrounding the deaths of the police officer and the gendarme during the clash with the PKK. In the Court's opinion the decision taken by the Mardin Provincial Administrative Council on 24 December 1997 effectively brought the investigation to an end. It would also add that that decision, exonerating as it did the actions of the security forces, excluded any possibility open to the applicant to pursue a remedy in damages in civil or administrative law. In these circumstances it must be concluded that the applicant was not required to exhaust any of the other remedies referred to by the Government.

For the above reasons the Court rejects the Government's contention.

B. As to the merits of the applicant's allegations

1. Article 2 of the Convention

The applicant states that Murat Akman was unlawfully killed by the security forces and that the authorities failed to investigate the circumstances of his death. The respondent State is therefore in breach of its substantive and procedural obligations under 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."

The applicant submits that there was an administrative practice of unlawful killing in south-east Turkey which amounted to an aggravated breach of Article 2. He argues that Murat Akman died as a result of an intentional use of force in the context of a planned and organised operation. He was unarmed at the time. The circumstances surrounding his killing were consistent with many other such attacks against life and formed part of a pattern of incidents which were condoned by the authorities.

The Government state in repy that the Diyarbakır State Security Court is still seized of the murder of Murat Akman. Accordingly, and with reference to the principle of subsidiarity, they maintain that the Court is not competent to examine the complaint.

The applicant asserts that there is no investigation currently pending before the Diyarbakır State Security Court into his complaint that Murat Akman was unlawfully killed by the security forces. On the other hand, the decision of the Mardin Provincial Administrative Council finding that there was insufficient evidence on which to lay charges against the accused police officers was awaiting approval before the Supreme Administrative Court.

2. Article 6 of the Convention

The applicant asserts that no criminal proceedings had been taken against the members of the security forces responsible for the death of Murat Akman, with the result that any prospects of bringing a civil action against the culprits had been seriously prejudiced. In his view this state of affairs gave rise to breach of Article 6 of the Convention, which provides as relevant:

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

The Government aver that it is not open to the applicant to complain under Article 6 of the Convention that the authorities have failed to carry out an adequate investigation into the circumstances surrounding the death of Murat Akman. They reiterate in this regard that an investigation was initiated into the death of Murat Akman and that the proceedings are still pending before the Diyarbakır State Security Court.

3. Article 8 of the Convention

The applicant contends that the intentional killing of Murat Akman in his home and in front of his family violated Article 8 of the Convention, which provides as relevant:

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

The Government reiterate that there was an on-going investigation into the death of the applicant's son and that the authorities could not be held directly responsible for any interference with Murat Akman's right to respect for his family life.

4. Article 13 of the Convention

The applicant maintains that the authorities' failure to carry out an effective investigation into the death of Murat Akman gave rise to a breach of Article 13, which states:

> "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."

For the reasons given in support of their objection to the admissibility to the application, the Government stress that the applicant had an effective range of remedies which satisfied the requirements of Article 13 of the Convention.

5. Article 14 of the Convention

The applicant states that he is and his deceased son was a victim of discrimination in breach of Article 14 of the Convention, which provides:

> "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."

In the applicant's submission both he and his deceased son were of Kurdish origin and on that account they were perceived by the authorities to be "terrorists" or "collaborators with terrorists". He contended that his son was killed because of the discriminatory practice of treating all Kurds as holding certain opinions and beliefs. The applicant contended that his son had no connection with any illegal organisation and had completed his military service shortly before his death. In the applicant's submission the fifteen Kurdish families living in Savur are persecuted after every incident involving the security forces in the vicinity.

The Government refute the applicant's claim. They state that by virtue of Article 10 of the Constitution, all Turkish citizens are equal before the law regardless of language, race, colour, sex, political opinion, religious or other belief. In their submission, the applicant has not substantiated that either he or his deceased son were discriminated against on account of their ethnic origin and for that reason the complaint under this head should be declared inadmissible as being manifestly ill-founded.

6. Article 18 of the Convention

The applicant complains that the respondent State pursue a policy of restricting the rights laid down in the Convention in a manner which was incompatible with the limitations which the Convention prescribed in respect of those rights. He invokes Article 18 of the Convention in this respect, which provides:

> "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."

The Government state in reply that the applicant had failed to substantiate that the authorities were pursuing any policy of the kind described.

7. Conclusion

The Court 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 Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Yasin ATES v. Turkey
Application No. 30949/96

Declared admissible 19 October 1999

Issue:
Extra-judicial killing/Diyarbakir/June 1995

The applicant's allegations:
On 13 June 1995, Kadri Ates, the applicant's son, together with a colleague (Burhan Afsin), relatives (Vehbi Demir and Kemal Ates) and another man (Memduh Cetin) set off for the Kulp District in a lorry. At about 8.00 a.m., the vehicle was stopped by policemen. Subsequently, having been ordered back to Diyarbakir, Kadri Ates and Vehbi Demir were ordered to accompany two armed police officers to their car. They were blindfolded and questioned about the presence of "Mekap shoes" in their lorry, a brand of sports shoe used by the PKK. The officers asked them where they were taking these shoes. Kadri Ates told them that he was taking them to the mountains. The officers then proceeded to punch Kadri Ates. The two men were taken to the Riot Police Directorate. They were taken to a cell in which Vehbi Denir was handcuffed to the door while still blindfolded. He then heard officers telling Kadri Ates to strip. Thereafter, Vehbi Denir heard Kadri Ates' screams and cries that continued for two to four hours. On the fifteenth day of custody, Vehbi Demir was taken for interrogation and subjected to beating during which he continued to deny all accusations. His interrogators told him that they had killed Kadri Ates. On 20 June 1995, seven days after Kadri Ates was detained, the applicant was informed by both the Diyarbakir State Security Court and the Diyarbakir Security Directorate that his son was not in custody. He was then referred to the Lice State Prosecutor who informed him that his son had died in a clash between security forces and the PKK. The Lice Public Prosecutor commenced an *ex officio* investigation in order to clarify the circumstances of the death of Kadri Ates. The investigation was still pending at the time of the Court's decision, over four years later.

The Government's response:
Kadri Ates confessed that he was carrying supplies to PKK militants in the mountains and that he was going to hand them over at the Aksu petrol station. While the other passengers in the lorry were taken to Diyarbakir for interrogation, Kadri Ates was handed over by the Gendarmerie to the Security Special Action Team to voluntarily help to set an ambush at the petrol station. Five PKK members arrived at the petrol station. An armed clash started between the security forces and the PKK members. Kadri Ates, who tried to escape from the security forces during this armed clash, was caught in the crossfire and shot dead.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 5, 6, 13 and 14:

- Article 2 (right to life): killing of applicant's son in custody under torture; disproportionate use of force; inadequate protection of right to life in domestic law; failure to initiate proceedings against those responsible for deaths.

- Article 3 (prohibition of ill-treatment): acts of torture inflicted on applicant's son; applicant's son held in conditions of detention which constitute at least inhuman treatment.
- Article 5 (right to liberty and security of person): applicant's son detained in circumstances incompatible with the requirements of Article 5 §§ 1 (c), 3, 4 and 5.
- Article 6 (right of access to court): failure to investigate and/or initiate proceedings before an independent and impartial tribunal against those responsible for killing of applicant's son; applicant precluded from bringing any civil proceedings before a court.
- Article 13 (right to an effective remedy): unable to have access to an independent authority which could offer a remedy; lack of any independent national authority before which complaints can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): discrimination against applicant in the enjoyment of his rights under Articles 2, 3, 6 and 13.

The Court's decision:
The Court found that since a criminal investigation into the killing of the applicant's son had been opened *ex officio*, the applicant was not required to file a criminal complaint in order to exhaust his domestic remedies. Regarding the substance of the applicant's complaints, the Court considered that as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 71

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30949/96
by Yasin ATES
against Turkey

The European Court of Human Rights (First Section) sitting on 19 October 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *judges*,
Mr. F. Gölcüklü, *ad hoc judge*,

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 December 1995 by Yasin Ates against Turkey and registered on 3 April 1996 under file no. 30949/96;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 18 July 1997 and the observations in reply submitted by the applicant on 9 October 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, was born in 1931 and resides in the district of Kulp near Diyarbakir. He is applying to the Court on behalf of himself and his deceased son, Kadri Ates, born in 1966. The applicant is represented before the Court by Mr Kevin Boyle and Ms Françoise Hampson, both university teachers at the University of Essex.

The facts of the present case, as submitted by the parties, may be summarised as follows.

A. Particular Circumstances of the Case

The applicant states as follows.

The applicant's son lived in Diyarbakir where he worked with Zahit Trade, which sold foodstuff wholesale to small businesses and security and military establishments in the region.

On 13 June 1995 at about 6 a.m. Kadri Ates (K.A.), together with his colleague, Burhan Afsin (B.A.) set off for the Kulp district in a lorry, registration number 06 ERS 042, which belonged to Zahit Trade. They were accompanied by K.A.'s relative, Vehbi Demir (V.D.), his paternal uncle Kemal Ates (Ke.A) and a man called Memduh Çetin (M.C.). At Seyrantepe, Ke.A. disembarked from the vehicle due to overcrowding and continued his journey in another vehicle.

At about 8.00 a.m., one kilometre before the Lice-Kulp fork, the vehicle was stopped by policemen. The policemen carried out an identity check on the occupants. The policemen ordered M.C. and B.A. to get out of the lorry and took them by police minibus to the police point at the entrance to Lice district. K.A. and V.D. followed them in the truck.

The four men waited at the police point in Lice without receiving an explanation concerning the reason for their detention. More officers arrived and they were told that they would be taken back to Diyarbakir to the Financial Branch of the Police as there was a problem concerning some cheques. K.A. was placed into the back of a Renault car between two police officers. The other three were ordered to drive the lorry back to Diyarbakir, in front of the Renault.

The vehicles then stopped at the Regional Traffic Directorate, Diyarbakir. Ten to fifteen minutes after their arrival, two police officers from a car which had arrived later entered the hall carrying firearms and ordered K.A. and V.D. to come with them to the car, whereupon they were blindfolded. In the car they were questioned about "Mekap shoes", which is known as a brand of sports shoes used by the PKK and which were found in the lorry. The officer asked them as to where they were taking these shoes. K.A. told him that he was taking them to the mountains. The officer then proceeded to punch K.A.

The car stopped outside the Riot Police Directorate. They were taken to a cell in which V.D. was handcuffed to the door of the cell while still blindfolded. He then heard the officers telling K.A. to strip.

Thereafter, V.D. heard K.A.'s screams and cries that continued for two to four hours.

On the fifteenth day of custody, V.D. was taken for interrogation and subjected to beating during which he continued to deny all accusations. His interrogators told him that they had killed K.A.

On 20 June 1995, seven days after K.A. was detained, the applicant applied to the State Security Court of Diyarbakir for information concerning the detention of his son. He was informed that his son was not in custody and was referred to the Diyarbakir Security Directorate who reiterated that his son was not in custody. He was then referred to the Lice State Prosecutor who informed him that K.A. had died in a clash between security forces and the PKK. The applicant later exhumed his son's body from the Lice cemetery and buried him in the Kulp district.

On 30 June 1995 V.D., M.C. and B.A. were brought before the State Security Court. V.D. and M.C. were released and B.A. was remanded in custody.

The respondent Government state that the information obtained from the Turkish authorities contradicts the applicant's allegations and make the following submissions.

On 13 June 1995 the Diyarbakir Security Department was informed that K. A., M.Ç., V.D. and B.A., would be travelling in a lorry, plate number 34 ERS 82, in order to hand over some logistical supplies to PKK members. The same day at about 7.45 p.m. these four men were observed along the Bingöl road in an Isuzu lorry, with plate number 34 ERS 82. An identity check was carried out on all passengers and various items of equipment were found in the lorry. In his interrogation, K.A. confessed that they were carrying supplies to the PKK members and that they were going to hand them over at the Aksu petrol station. According to the official Incident and Apprehension Report dated 14 June 1995, these people were detained for suspected participation in terrorist activity, consisting in dropping off supplies to PKK members at the Aksu petrol station between the Lice turn-off and Dura Gendarme Station at about 9.00 p.m.

The report further stated that V.D., M.C. and B.A. were taken to Diyarbakir for interrogation while K.A. was handed over by the Gendarmerie to the Security Special Action Teams to voluntarily help to set an ambush at the said petrol station. The Government refers at this point to the custody record, which contains no mention of K.A.

According to the Government, at about 11.45 p.m., five PKK members arrived at the said petrol station. Subsequently, an armed clash started between the security forces and the PKK members. This armed clash continued for half an hour.

K.A., who tried to escape from the security forces during this armed clash, was caught in the cross-line and shot dead. Two other terrorists were also shot while the others escaped.

Immediately after the incident, the Lice Gendarme Commander commenced an investigation.

On 14 June 1995 an autopsy was conducted on these three bodies. The autopsy report indicated that the third person, later identified as K.A., died as the result of acute loss of blood caused by firearm injuries.

On 21 June 1995 the applicant, who applied to the Lice Public Prosecutor for information about his son, identified the third body on the photographs as his son.

The Lice Public Prosecutor commenced an ex officio investigation under file no. 1995/33 in order to clarify the circumstances of the death of K.A. This investigation is still pending.

The public prosecutor, attached to the Diyarbakir State Security Court, started criminal proceedings in the Diyarbakir State Security Court against B.A. and V.D., who were travelling with the applicant's son in the same lorry. On 16 November 1995 they were acquitted of the charges against them.

B. RELEVANT DOMESTIC LAW AND PRACTICE

Criminal Law Procedures:

Under the Turkish Criminal Code all forms of homicide (Articles 448 and 455) and attempted homicide (Articles 61 and 62) constitute criminal offences. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 and 153 of the Turkish Criminal Procedure Code. Offences may be reported to the authorities or to members of the security forces as well as to the public prosecutor's offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

If there is evidence to suggest that the death is not due to natural causes, members of the security forces who have been informed of the fact are required to advise the public prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the course of his duty is liable to imprisonment.

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution.

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 5, 6, 13 and 14 of the Convention.

As to Article 2, the applicant submits that his son, K.A., did not die in a clash but was killed in custody under torture by the security forces. He also complains that his son was deprived of his life by use of force disproportionate to any lawful ground justifying the use of force and more than absolutely necessary to achieve any legitimate purpose under this provision.

He further submits that there was inadequate protection of the right to life in domestic law and failure to protect or adequately to protect the right to life by initiating proceedings to determine whether or not those responsible for deaths acted lawfully.

As to Article 3, the applicant maintains that particular acts of torture were inflicted on his son and that his son was held in conditions of detention, which constitute at least inhuman treatment.

As to Article 5, the applicant alleges that his son was detained in circumstances incompatible with the requirements of Article 5 §§ 1 (c), 3, 4 and 5 of the Convention.

As to Article 6, the applicant claims that there was a failure to investigate and/or initiate proceedings before an independent and impartial tribunal against those responsible for the killing of his son. He also claims to have been precluded from bringing any civil proceedings before a court.

As to Article 13, he submits that he was unable to have access to an independent authority, which could offer him a remedy for the serious violations he and his son have suffered. He further submits that there is lack of any independent national authority before which these complaints can be brought with any prospect of success.

As to Article 14, the applicant complains of discrimination in the enjoyment of his rights under Articles 2, 3, 6 and 13. In particular, he alleges that only Turkish citizens of Kurdish origin are subjected to unlawful killings. He also complains that the breakdown of the investigation and prosecution system in respect of the security forces only arises on a systematic basis in south-east Turkey and in relation to Turkish citizens of Kurdish origin.

PROCEDURE BEFORE THE COURT

The application was introduced on 13 December 1995 and registered on 3 April 1996.

On 6 March 1997 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 18 July 1997, after an extension of the time-limit. The applicant replied on 9 October 1997.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant alleges that his son died as a result of ill-treatment in custody. He invokes Articles 2 (the right to life), Article 3 (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 13 (the right to effective national remedies for Convention breaches) and Article 14 (prohibition on discrimination).

Exhaustion of domestic remedies

The Government argue that the application is inadmissible since the applicant has failed to exhaust domestic remedies as required by Article 35 of the Convention before

lodging an application with the Court. They contend that the applicant did not file a criminal complaint with the Public Prosecutor concerning his allegations.

The applicant maintains that 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. He refers to an administrative practice of unlawful killings and of not respecting the requirement under the Convention of the provision of effective domestic remedies.

The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (Yasa v. Turkey judgment of 2 September 1998, *Reports of judgments and decisions* 98, No.88, §§ 71).

In so far as the Government argue that the applicant failed to file a criminal complaint, the Court notes that under Turkish law, this is not a condition *sine qua non* for the opening of a criminal investigation of a suspected unlawful killing. It appears that, in the present case, the criminal investigation of the killing of the applicant's son was in fact opened *ex officio*. The Court is, therefore, of the opinion that the applicant was not required to make a further explicit request to this effect by filing a criminal complaint as this would not lead to any different result in this respect (see, *mutatis mutandis*, the Ogur v. Turkey judgment of 20 May 199, cited above, §67).

The Court concludes that the applicant should be considered to have complied with the exhaustion of domestic remedies rule laid down in Article 35 of the Convention. Consequently, the application cannot be rejected for non-exhaustion of domestic remedies under Article 35 para.1 of the Convention.

As regards the merits

The Government submit that the applicant's complaints were unsubstantiated. They contend, referring to the custody records, that Kadri Ates was not taken into custody but was killed during an armed clash between the PKK and the security forces. The Government add that Kadir Ates had connections with PKK and that he had clearly told the police officers that he was conveying shoes to the PKK militants in the mountains.

The applicant maintains his version of the events. He contends that his son was arrested at around 8.30 a.m., not at 7.35 p.m. as alleged by the Government.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this 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. Consequently, this complaint cannot be declared manifestly ill-founded within the

meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Abdurrahman CELIKBILEK v. Turkey
Application No. 27693/95

Declared admissible 22 June 1999

Issue:
Death in custody/Diyarbakir/December 1994

The applicant's allegations:
On 14 December 1994, the applicant's brother, Abdulkadir Celikbilek, went to the Esnaflar Café in the centre of Diyarbakir. About ten minutes after his arrival, a car with four plain-clothes policemen stopped in front of the café. Two policemen carrying arms entered the café. When, at some point in time, the applicant's brother was leaving the café, the two policemen also left. Outside the café the two policemen took Abdulkadir Celikbilek by the arms and forced him to get into the car. This was seen by all persons present in the café. The car left in the direction of the Security Headquarters. On 21 December 1994, Abdulkadir Celikbilek's dead body, which showed signs of heavy torture, was found lying on top of a rubbish heap next to the Mardin Kapi cemetery. Despite his requests, the applicant was not provided with copies of any document relating to the investigation into his brother's death.

The Government's response:
There is no support for the contention that the victim was taken away by plain-clothes policemen or that he was killed by State agents. Given the victim's criminal record, it cannot be excluded that his killing constituted a settling of accounts by common criminals. The prosecution authorities of Diyarbakir have conducted a meticulous preliminary criminal investigation and continue to do so.

The complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 6 and 14:

- Article 2 (right to life): killing of applicant's brother by State agents in a situation not falling within the exceptions contained in this provision of the Convention; no adequate and effective investigation of the killing aimed at the identification of the perpetrator(s).
- Article 3 (prohibition of ill-treatment): killing of applicant's brother has caused him grief and torment amounting to inhuman treatment.
- Article 6 (right of access to court): inadequate criminal investigation means that applicant has no access to court in that he cannot bring civil proceedings against the perpetrators, who have remained unidentified.
- Article 14 (prohibition on discrimination): discrimination on grounds of race or ethnic origin in enjoyment of applicant's rights guaranteed by Articles 2, 3 and 6 of the Convention.

The Court's decision:
The Court found that a criminal investigation into the killing of the applicant's husband was in fact opened. The applicant was not therefore required to make a further explicit

request to this effect by filing a criminal complaint himself in order to exhaust his domestic remedies. The Court was of the opinion that the question of whether or not the criminal investigation could be regarded as adequate and effective was a matter to be considered in the examination of the merits of the case. Regarding the substance of the applicant's complaints, the Court considered that as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 72

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27693/95
by Abdurrahman ÇELİKBİLEK
against Turkey

The European Court of Human Rights (First Section) sitting on 22 June 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr L. Ferrari Bravo,
Mr B. Zupančič,
Mr T. Pantiru, *Substitute Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 May 1995 by Abdurrahman ÇELİKBİLEK against Turkey and registered on 26 June 1995 under file no. 27693/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national of Kurdish origin, born in 1951, and resides in the village of Tepecik (Diyarbakır). He is represented by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex (United Kingdom). The applicant brings this case on his own account and on behalf of his deceased brother Abdülkadir Çelikbilek

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

A. Particular circumstances of the case

As the facts are disputed between the parties, the facts as submitted by each party are set out separately.

The applicant states that the following occurred.

On 9 June 1994, the applicant's brother Abdülkadir Çelikbilek gave a statement to the public prosecutor nr. 23832 at the State Security Court in Diyarbakır in which he declared, *inter alia*, that he had heard that, in the course of the military operation conducted on 8 June 1994 at about 21.30 hours, Ms Ambara Yılmaz had fallen from the roof of a three story house. The applicant's brother further stated that he had heard that Ms Yılmaz' husband Fethi Yaşar was a PKK member and that Mr Yaşar was currently serving a thirty-six years' prison sentence in the Antep prison. The applicant's brother also said that he was not aware of any links between Ms Yılmaz and the PKK.

According to the applicant, his brother was followed on several occasions after having given this statement. About one month before 14 December 1994, the wife of Abdülkadir Çelikbilek, Aynur, was visited by two policemen who asked her questions about her husband's whereabouts.

On 14 December 1994, at about 11.00 hours, the applicant's brother Abdülkadir went to the Esnaflar Cafe in the centre of Diyarbakır. About ten minutes after his arrival, a white Renault car with four plain-clothes policemen stopped in front of the café. It is common knowledge in South East Turkey that this kind of car is used by plain-clothes police. Two policemen stayed in the car while the two others entered the cafe. The latter two policemen were the same as the ones who had previously questioned Aynur about her husband's whereabouts. It was obvious that the two persons were policemen, as they were armed. Only members of the security forces can enter a cafe in Diyarbakır carrying arms. When, at some point in time, the applicant's brother was leaving the café, the two policemen also left the café. Outside the café the two policemen took Abdülkadir by the arms and forced him to get into the white Renault. This was seen by all persons present in the café. The car left in the direction of the Security Headquarters.

On 21 December 1994, the applicant's brother was found dead. On the same day, the applicant gave a statement in the Mardin Kapı Police Station, in which he declared, *inter alia*:

> "When I learned that my brother Abdülkadir had not returned home on 14 December 1994, I made my own investigation. On 15 December 1994, I went to the cafe in İnönü street where my brother and I usually hang out. I found out that, on 14 December 1994,

while my brother was sitting in the cafe, four persons entered the café and left with my brother and that they got into an unmarked white Renault car that was waiting in front of the cafe. This is what I heard and I do not know to what extent this information is true."

On 15 December 1994, the applicant went to the Diyarbakır Branch of the Human Rights Association in order to inform them of the incident. He was advised to file a petition with the Office of the prosecutor at the State Security Court. The applicant went to the Office of the prosecutor at the State Security Court in order to file a petition. However, the police at the door of the Court building told him that his brother's name was not on their list. The applicant returned to the State Security Court several times during the following days, but was unable to find out anything about his brother.

On 21 December 1994, at around 07.30 hours, three police officers came to the applicant's home and told him that his brother was wounded and had been admitted to hospital. When the police officers took the applicant to their car, he was told that his brother's body had been found next to the Mardin Kapı cemetery in Diyarbakır. The applicant went with the police officers to the place where his brother's body had been found. There, the police searched him. They took his petition to the prosecutor at the State Security Court from the pocket of his jacket. Despite his request, the police officers refused to give it back to him. The applicant is of the opinion that the police refused to return his petition in order to weaken any case he might bring against the Turkish authorities.

The body of the applicant's brother was lying on top of the rubbish heap near the Mardin Kapı cemetery. Marks of torture could be seen all over the body. It looked as if the skin on the soles of his feet had been pulled off with pincers. His arms, legs and head looked as if they had been skewered on a thick skewer. His whole body was black and blue and there were marks on his throat.

After the police had shown the applicant the body of his brother, they took him in their car to his brother's house, where the police conducted a house search. During this search, the applicant heard on the police radio that the prosecutor was about to go and see the body of his brother. The police interrupted their search in order to join the prosecutor. They took the applicant with them. The prosecutor did not put any questions to the applicant. The police recorded the location of the body and subsequently took the body to the State Hospital morgue. Also the applicant was taken to the morgue in a police car. On the way to the morgue a police officer in the car told the applicant that all villagers of Tepecik would die on the streets in the same manner.

In the morgue, some other police officers told the applicant that village guards had burned the village of Tepecik and that these village guards had probably killed his brother. The applicant replied that he did not believe that village guards had killed his brother and added that, if village guards had killed his brother, they must have been helped by the police. The police officers replied that Leyla, the daughter of applicant's brother, was of the opinion that the police had killed his father. When the applicant was asked whether he shared Leyla's opinion, he said that he did.

In the morgue, an autopsy of the body of the applicant's brother was conducted. The applicant asked the doctor about the marks around his brother's throat. The doctor told him that something must have been passed around his brother's neck after his death and that his body must have been dragged along by it. After the autopsy, the body was released for burial.

While the applicant was at the morgue, another group of police officers had returned to the house of the applicant's brother in order to finish the house search. These policemen told Leyla that her father had told the police that he had a package, which was likely to contain a firearm, and they asked her to give this package to them. According to the applicant this question indicates that the security forces had in fact apprehended his brother and that they had interrogated, tortured and killed him.

To date and despite his requests, the applicant has not been provided with a copy of the autopsy report or any other document in relation to the investigation into his brother's death.

The applicant submits that he is convinced that his brother has been tortured in custody. He explains that, some time before the events at issue, his oldest son Fesih had joined the PKK. The applicant had managed to keep this a secret. However, ten days after the death of his brother, a person, who introduced himself as Cevat from the organisation "Struggle with Terrorism", came to the applicant's home. Cevat told the applicant that his son had joined the PKK and asked the applicant to inform the security forces when his son would come home. The applicant is convinced that his brother must have told the security forces about Fesih while he was under torture.

The Government state as follows.

On 21 December 1994, at around 07.30 hours, the Mardin Kapı Police Station was informed by passers-by that a person was lying near the Mardin Kapı cemetery on Benüsen road. Acting on that information, police officers found a dead body, the hands of which had been tied behind the back, lying on the top of rubbish heap near the cemetery. The police found an identity card on the body in the name of Abdülkadir Çelikbilek.

After having been informed by the police, the public prosecutor in charge, Mr Mehmet Tiftikçi, and a medical doctor, Mr Lokman Yavuz, arrived at the scene. Footprints were found, which could not be analysed as these prints were indistinguishable. There were no traces of any fight. Wheel traces were found and analysed. However, these were found to have been made after the discovery of the body. After an incident report had been written and a sketch map had been drawn of the location of the body, it was brought to the morgue.

On the basis of the identity card found on the body, the victim's family was contacted. His brother, Abdurrahman Çelikbilek, was brought to the morgue where he identified the body as that of his brother Abdülkadir and where subsequently an autopsy was carried out.

In the autopsy report it is stated that there were numerous different shaped red, purple and yellow coloured ecchymosis on the body. According to this report, the red ecchymosis occurred just before death, the purple ones 3 or 6 days before death and the yellow ones 12 days before death occurred or even earlier than that. The autopsy report concludes that Abdülkadir Çelikbilek, after having severely beaten, had been strangled by mechanical means and that he had died between 10 and 15 hours prior to the autopsy.

According to their statements taken on 21 December 1994, the applicant and the victim's wife, Aynur Çelikbilek, did not know nor did they have any idea as to who might have killed Abdülkadir Çelikbilek. They stated that they had no enemies at all. The applicant further declared that, insofar as he knew, his brother had been detained for trafficking arms after the coup d'etat of 12 September 1980 and, in her statement, the victim's widow also stated that she wished to file a complaint against the person(s) who had killed her husband. Her criminal complaint was formally registered on 28 December 1994.

The public prosecutor opened an investigation under the file no. 1994/9249, which is currently still pending. The public prosecutor has requested the police authorities to be kept informed on a regular basis about this investigation.

According to the Government there is no evidence that Abdülkadir Çelikbilek has been killed by the security forces. In fact, his criminal record discloses that several criminal investigations have been opened against him in the past for narcotics offences, for having been involved in the creation of a drug trafficking organisation and for counterfeit activities. On 5 November 1986, he was arrested and detained in relation to charges of involvement in the creation of a drug trafficking organisation and possession of heroin.

The Government further submit that, according to information supplied by the Ministry of the Interior, investigations have been opened against the applicant himself for membership of the PKK and that it had been established that his son Fetih was active in the armed branch of the PKK. The police had already been informed that Fetih was an active member of the PKK. Moreover, the applicant has been questioned and detained on remand in the course of an operation conducted against the PKK on 3 July 1996 and, on 24 July 1996, proceedings were brought against him for membership of the PKK. The State Security Court in Diyarbakır has ordered his detention in relation to these proceedings

B. Relevant domestic law and practice

Criminal law and procedures

The Turkish Criminal Code (*Türk Ceza Kanunu*), as regards unlawful killings, has provisions dealing with unintentional homicide (Articles 452 and 459), murder (Articles 448) and aggravated murder (Article 450).

Pursuant to Articles 151 and 153 of the Turkish Code of Criminal Procedure (*Türk Ceza Muhakemeleri Usulü Kanunu*; hereinafter referred to as "CCP"), complaints in respect of these offences may be lodged with the public prosecutor. The complaint may be made in writing or orally. In the latter case, such a complaint must be recorded in writing (Article 151 CCP). The public prosecutor and the police have a duty to investigate crimes reported to them (Article 153 CCP).

If there is evidence to suggest that a deceased has not died of natural causes, the police officers or other public officials who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152 CCP).

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP).

The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention that the Turkish authorities have failed to protect the right to life of his brother Abdülkadir Çelikbilek in that he was killed by State agents in a situation not falling within the exceptions contained in this provision of the Convention. He further complains under Article 2 that no adequate and effective investigation of the killing of his brother aimed at the identification of the perpetrator(s) has taken place.

2. The applicant complains under Article 3 of the Convention that the killing of his brother has caused him grief and torment amounting to inhuman treatment.

3. The applicant complains under Article 6 of the Convention that, as a result of the inadequate criminal investigation of the killing of Abdülkadir Çelikbilek, he has no access to court in that he cannot bring civil proceedings against the perpetrators, who have remained unidentified.

4. The applicant complains under Article 14 of the Convention that, being or Kurdish origin, he is discriminated against on grounds of race or ethnic origin in the enjoyment of his rights guaranteed by Articles 2, 3 and 6 of the Convention.

PROCEEDINGS BEFORE THE COURT

The application was introduced on 13 June 1995 and registered on 26 June 1995.

On 3 December 1995, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 22 July 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 27 November 1996, also after an extension of the time-limit. On 14 November 1996, the Government submitted additional information.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of the killing of his brother. He invokes Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 6 (the right of access to court) and Article 14 (prohibition on discrimination) of the Convention.

Article 34 of the Convention

The Government submit that the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention. The Government point out that the victim's widow, Ms Aynur Çelikbilek, declared in her statement on 21 December 1994 that she wished to file a complaint against the perpetrator(s) for the killing of her husband. By making this complaint, she made it clear that she considers herself to a victim of the killing of her husband and thus holding a legitimate interest, whereas the applicant did not lodge any complaints against the perpetrator(s) of the killing of his brother with the domestic authorities.

The applicant refutes the Government's argument on this point. He submits that he is not only a direct relative of the victim and on that basis can claim to be a victim within the meaning of Article 34 of the Convention, but moreover that he has taken the initiative in the investigation of the killing of his brother by filing a petition with the State Security Court.

The Court is of the opinion that the applicant, in his capacity of a brother affected by the death of Abdülkadir Çelikbilek, may claim to be a victim within the meaning of Article 34 of the Convention as regards the killing of his brother (cf. Eur. Comm. HR, No. 21788/93, Dec. 31.8.94, D.R. 79, p. 54; and No. 9833/82, Dec. 7.3.85, D.R. 42, p. 53).

Article 35 of the Convention

Although the Government have not explicitly referred to the requirements under Article 35 of the Convention, they do argue that the application should be declared inadmissible given the fact that domestic proceedings have been initiated but that these remedies have not yet been exhausted in that the criminal investigation of the killing at issue is still ongoing.

The applicant submits that the criminal investigation cannot be regarded as adequate or effective. In his opinion the criminal investigation of the killing of his brother only constitutes a pro forma investigation which is not seriously pursued. Possibly relevant evidence has not been taken and possible leads have not been explored. In his opinion, it would be unrealistic to await with applying to the Court until the prosecution of the offence at issue becomes statute-barred, i.e. in 2014. As the investigation at issue cannot be regarded as actively pursued, the applicant argues that he should be exempted from pursuing further remedies for the purpose of Article 35 of the Convention.

The Court considers that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges applicants to use first the remedies referred that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (cf. Eur. Court HR, Yaşa v. Turkey judgment of 2 September 1998, to be published in *Reports on Judgments and Decisions* 1998, No. 88, § 71).

Insofar as the applicant has failed to file a criminal complaint, the Court notes that, under Turkish law, this is not a condition *sine qua non* for the opening of a criminal investigation of a suspected unlawful killing. It appears that, in the present case, the criminal investigation of the killing of the applicant's husband was in fact opened on 21 December 1994. The Court is, therefore, of the opinion that the applicant was not required to make an explicit request to open a criminal investigation by filing a criminal complaint himself as this would not lead to any different result in this respect.

As regards the question whether this criminal investigation can be regarded as adequate and effective, the Court is of the opinion that this element is to be considered in its examination of the merits of the case.

As regards the merits

The Government submit that there is no support for the applicant's contention that his brother has been taken away from the café by plain-clothes policemen or that he has been killed by State agents. Referring to the victim's criminal records, the Government submit that it is not to be excluded that the killing of the applicant's brother constituted a settling of accounts by common criminals. According to the Government, the prosecution authorities of Diyarbakır have conducted a meticulous preliminary criminal investigation and continue to do so. The police authorities regularly keep the public prosecutor informed about this investigation.

The applicant refutes the Government's submissions and maintains his account of events and arguments as to the effectiveness of the investigation of the killing of his brother.

The Court considers, in the light of the parties' submissions, that the cases raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of merits of the application as a whole. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

JOINS TO THE MERITS THE QUESTION CONCERNING THE EFFECTIVENESS OF THE CRIMINAL INVESTIGATION AT ISSUE,
and

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Zubeyir DUNDAR v. Turkey
Application No. 26972/95

Declared admissible 24 August 1999

Issue:
Extra-judicial killing/Sulak village/September 1992

The applicant's allegations:
The applicant's son, Mesut Dundar, suffered from meningitis in his childhood and remained mentally handicapped. On 1 December 1989, criminal proceedings were instituted against Mesut Dundar for raping a nine-year-old child. On 17 December 1991, the Midyat Assize Court held that, as Mesut was mentally handicapped, he could not be held legally liable for his acts. Consequently, the court ordered Mesut to be kept under medical control at a mental institution until his recovery. In July 1992, police officers raided the applicant's home saying that they would take Mesut to Elazig Mental Hospital for treatment. They took the applicant and Mesut to the Security Headquarters and alleged that Mesut had been swearing at the police and special teams. Mesut escaped from hospital a few days later. The police officers took the applicant around Cizre town and neighbouring villages for three days to find Mesut. The applicant was released at the end of the third day, but only when he promised that if he saw Mesut he would bring him in himself. Mesut did not return home, although he telephoned once in order to speak to his mother. The police often came to the house to ask about Mesut's whereabouts. After some time Mesut no longer telephoned and the police no longer came to the applicant's house. The applicant began to suspect that the police had caught Mesut but the police said that they had not taken Mesut into custody. On 7 September 1992, the Mayor of Sulak found the dead body of Mesut on the road. Immediately afterwards the public prosecutor and gendarme units arrived on the scene. The body of Mesut was dragged for 100 metres behind an armoured vehicle. When it was understood that there were no explosives on the body, an on-the-spot autopsy was carried out which established that the deceased had been strangled to death. When later washing the body, the applicant saw that the whole of Mesut's rib cage, the ribs, the throat and neck were covered in bruises, his face and eyes were dirty with mud and there were red spots and bruises in 34 places on his neck. The public prosecutor commenced an investigation into the death of the applicant's son which, two years later, was still at the inquiry stage.

The Government's response:
The applicant's allegations are unsubstantiated. The applicant has not produced anything capable of explaining how responsibility for the alleged events could be attributed to the security forces. The applicant's son was not taken into police custody, but to a mental hospital for medical treatment. A preliminary investigation was commenced immediately after the body was found. The investigation is still pending, however, and the perpetrators have not yet been apprehended. The public prosecutor receives follow-up reports regularly, however, there exists no new evidence. The dragging of Mesut's body was a precaution taken by the public prosecutor who suspected a possible booby-trap.

The Complaint's under the European Convention:
The applicant complains of violations of Articles 2, 3, 6, 13 and 14:

- Article 2 (right to life): applicant's son unlawfully killed by agents of the State while in detention; no adequate investigation into killing of applicant's son; lack of any effective system for ensuring protection of right to life.
- Article 3 (prohibition of ill-treatment): killing of applicant's son and inability to discover the circumstances in which his son was killed; treatment which his son's body was subjected to amounts to inhuman and degrading treatment.
- Article 6 (right of access to court): inadequacy of preliminary investigation carried out by the domestic authorities thwarted criminal proceedings, in which the fact of the murder of the applicant's son would have been established; without such proceedings applicant is prevented from pursuing a civil claim for compensation.
- Article 13 (right to an effective remedy): lack of any authority before which applicant's complaints can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): discrimination in enjoyment of applicant's rights under articles 2, 3, 6 and 13 of the Convention due to his Kurdish ethnic origin.

The Court's decision:
The Court found that since a criminal investigation had been opened *ex officio*, the applicant was not required to make a further explicit request to the same effect. The Court determined that it could not rule on whether or not the criminal investigation was effective as this question was closely linked to the substance of the applicant's complaints. The applicant was not required to bring civil or administrative proceedings against the government in order to exhaust domestic remedies. The complaint was introduced within the six-month time-limit as it was not unreasonable for the applicant to await the results of the criminal investigation by the competent domestic authorities and only file his application when he considered that this investigation had become ineffective. As to the substance of the applicant's complaints, the Court declared inadmissible the applicant's complaints as regards the treatment to which his son's dead body was subject. The Court recalled that in order for treatment to be "degrading" under Article 3, the humiliation or debasement must be of a particular intensity. The Court considered that the dragging of the applicant's son's dead body was a precautionary step to avoid a possible booby trap and that there was no factual basis to support the assertion that the measure was a deliberate attempt to humiliate the applicant or to mistreat or show disrespect for the corpse of the victim. Regarding the remainder of the complaints, however, the Court considered that as they raised complex issues of law and fact, they could not be rejected as manifestly ill-founded. Case declared partially admissible.

Decision 73

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 26972/95
by Zübeyir DÜNDAR
against Turkey

The European Court of Human Rights (First Section) sitting on 24 August 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 March 1995 by Zübeyir Dündar against Turkey and registered on 4 April 1995 under file no. 26972/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 13 May 1996 and the observations in reply submitted by the applicant on 8 July 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1940 and resident in Cizre. He is represented before the Court by Professor Kevin Boyle and Ms. Françoise Hampson, lecturers at the University of Essex, England.

The facts of the present case, as submitted by the parties, may be summarised as follows.

A. PARTICULAR CIRCUMSTANCES OF THE CASE

The applicant's son, Mesut Dündar, was born in 1972. He suffered from meningitis in his childhood and remained mentally handicapped.

On 1 December 1989 criminal proceedings were instituted against Mesut together with T.M. in the Midyat Assize Court for raping a nine-year-old child. They were charged under Article 414 of the Turkish Criminal Code. The same day Mesut was placed in detention on remand. On 15 October 1990 he was released pending trial.

In its report dated 25 October 1991, the Forensic Institute stated that Mesut's intelligence was at "imbecility" stage and that this condition was the cause of his act against a nine-year-old child. It was further explained in the report that Mesut was afflicted with a mental disease, resulting in complete loss of consciousness and of freedom of action at the time of the crime.

On 17 December 1991 the Midyat Assize Court held that, as Mesut was mentally handicapped, he did not have legal liability for his acts pursuant to Article 46 of the Turkish Criminal Code. Consequently the court ordered Mesut to be kept under medical control at a mental institution for at least one-year until his recovery. On 27 May 1992 the Court of Cassation upheld this decision.

In July 1992, police officers from Cizre Security Headquarters raided the applicant's home saying they would take Mesut to Elazığ Mental Hospital for treatment. They took the applicant and Mesut to the Security Headquarters and alleged that Mesut had been swearing at the police and the special teams. The police said to the applicant "Your son is mad, we shall take him to the Elazığ Mental Hospital." According to the applicant, Mesut escaped from the hospital a few days later. At this point the Government submit that the circumstances of Mesut's escape from the hospital are not clear.

Thereupon the police officers took the applicant around Cizre town centre and neighbouring villages for three days trying to find Mesut. The applicant was released at the end of the third day, but only when he promised that if he saw Mesut he would bring him in himself.

Mesut did not return home. He stayed with friends and telephoned the applicant's house once in order to speak to his mother. The police often came to the house to ask about Mesut's whereabouts.

After some time Mesut no longer telephoned and the police no longer came to the applicant's house. The applicant therefore began to suspect that the police had caught Mesut. The applicant went to the police who replied that they had not taken Mesut into custody.

On 7 September 1992 the village Mayor of Sulak found the dead body of Mesut on the road and informed the police. Immediately afterwards the public prosecutor and the gendarme units arrived at the scene of the crime. The body of Mesut was dragged for 100 metres behind an armoured vehicle by the soldiers. According to the Government, this was a precaution taken by the public prosecutor who suspected a possible booby-trap. When it was understood that there were no explosives on the body, an on-the-spot autopsy was carried out immediately which established that the deceased had been strangled to death.

When the applicant's family went to the hospital, a plainclothes police officer directed them to the Prosecutor. The Prosecutor showed them Mesut's identity card and photograph. He asked them to sign a report in order to identify Mesut and then handed the body over at the hospital. While washing the body the applicant saw that the whole of Mesut's rib cage, the ribs, the throat and neck were covered in bruises, his face and eyes were dirty with mud and there were red spots and bruises in 34 places on his neck.

On 8 September 1992 the Cizre Gendarme Headquarter submitted an incident report to the public prosecutor, in which he stated that a dead body, later identified as Mesut Dündar, was found on the road in the surroundings of Sulak village. He explained that the cause of death was strangulation and the perpetrators of the crime were unknown.

The public prosecutor commenced a preliminary investigation into the death of applicant's son.

Following interrogation by the police about the death of his son, the applicant went to see the prosecutor to find out what had happened. According to the applicant, the public prosecutor told him that his son had been strangled. However, the prosecutor did not take the applicant's statement or ask him if he wished to take legal proceedings. In their observations, the Government reject this allegation and maintain that on 7 October 1992 the Cizre Public Prosecutor took the applicant's statement in which the applicant maintained that his son had been mentally handicapped and that he had no allegations against anyone.

In October 1992 the State of Emergency Area Governor's Office issued a press release as follows:

"The Village Mayor of Sulak reported on 7 September 1992 that a male body had been found on the road to Sulak, and the Chief Public Prosecutor went to the scene of the incident accompanied by a doctor, security forces and a reporter. It was not clear whether the body was that of Mesut...

It is understood, as explained in the Cizre Chief Public Prosecutor's Preliminary Report No. 1992/466, that when the authorities arrived at the scene of the incident, a male body was found lying face down on the road to the village. In order to identify the person, it was necessary to turn the body over. As there was suspicion of a booby-trap, the body was tied to a vehicle belonging to the security forces and dragged for a hundred metres. When it was discovered that there was no explosive substance on the body, the autopsy was carried out establishing that the person had not been killed with a firearm but by strangulation."

On 13 September 1994, the applicant and his family lodged a petition with the Cizre State Prosecutor to find out whether the investigation was on-going and what stage it had reached. They were told that the file had been transferred to Diyarbakır.

On 16 September 1994 some friends of the applicant pursued the inquiry with the aim of verifying the answers given to the applicant and they were told definitively that the case was still pending at the inquiry stage. They were also told that the files were in Cizre and not in Diyarbakır, as previously stated to the applicant. The applicant has not been able to get a copy of any signed document from the authorities.

The Government submit that the preliminary investigation is still pending. The public prosecutor receives follow-up reports regularly; however, there exists no new evidence. The Government contend that pursuant to Article 102 of the Turkish Criminal Code a preliminary investigation can be carried out until the expiry of the statutory period, which in the instant case is 15 years.

B. RELEVANT DOMESTIC LAW AND PRACTICE

Criminal Law Procedures:

Under the Turkish Criminal Code all forms of homicide (Articles 448 and 455) and attempted homicide (Articles 61 and 62) constitute criminal offences. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 and 153 of the Turkish Criminal Procedure Code. Offences may be reported to the authorities or members of the security forces as well as to the public prosecutor's offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

If there is evidence to suggest that the death is not due to natural causes, members of the security forces who have been informed of the fact are required to advise the public prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the course of his duty is liable to imprisonment.

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution.

Administrative liability

Article 125 of the Turkish Constitution provides:

< 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."

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."

Civil action for damages:

Pursuant to Article 41 of the Turkish Civil Code, anyone who suffers damage as a result of an illegal act or tort may bring a civil action seeking reparation for pecuniary damage (Articles 41-46) and non-pecuniary damage. The civil courts are not bound by either the findings or the verdict of the criminal court of the issue of the defendant's guilt (Article 53).

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 13 and 14 of the Convention.

1) The applicant alleges under Article 2 of the Convention that his son was unlawfully killed by agents of the state while in detention. He further submits under Article 2 that there has been no adequate investigation into the killing of his son and the lack of any effective system for ensuring protection of the right to life.

2) The applicant alleges under Article 3 of the Convention that the killing of his son and the inability to discover the circumstances in which his son was killed constitutes a violation of this Article.

3) He further complains of the treatment which his son's dead body was subjected to. He invokes that this treatment amounts to inhuman and degrading treatment under Article 3 of the Convention.

4) The applicant submits under Article 6 that the inadequacy of the preliminary investigation carried out by the domestic authorities thwarted criminal proceedings, in which the facts of his son's murder would have been established. He asserts that without such proceedings he is prevented from pursuing a civil claim for compensation.

5) Under Article 13, the applicant complains of the lack of any authority before which his complaints can be brought with any prospect of success.

6) The applicant also complains under Article 14 of discrimination in the enjoyment of his rights under Articles 2, 3, 6 and 13 of the Convention due to his Kurdish ethnic origin.

PROCEDURE

The application was introduced on 3 March 1995 and registered on 4 April 1995.

On 3 December 1995, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 13 May 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 8 July 1996.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of the killing of his son. He invokes Article 2 (the right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 6 (the right of access to court), Article 13 (the right to an effective remedy) and Article 14 (prohibition on discrimination) of the Convention.

Exhaustion of domestic remedies:

The Government maintain that the application is inadmissible as the applicant has failed to exhaust domestic remedies within the meaning of Article 35 of the Convention. In this regard they submit that the preliminary investigation, which was initiated by the public prosecutor after the death of the applicant's son, is still pending. They further state that the applicant did not file a complaint with the public prosecutor. They also maintain that in so far as he is convinced that the state was responsible for the death of his son, the applicant should have initiated administrative proceedings that are available under Turkish law and which are effective. Moreover it is also possible to take civil proceedings seeking compensation.

The applicant responds that the pending criminal investigation cannot be regarded as adequate or effective. As regards the administrative and civil remedies suggested by the Government, the applicant submits that these remedies cannot be regarded as effective in his situation.

As regards the pending criminal investigation, the Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges applicants to first use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate and ineffective. (see Eur. Court HR, Yaşa v. Turkey judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998, No. 88, § 71).

In so far as the Government argue that the applicant failed to file a criminal complaint, the Court notes that under Turkish law, this is not a condition *sine qua non* for the opening of a criminal investigation of a suspected unlawful killing. It appears that, in the present case, the criminal investigation of the killing of the applicant's son was in fact opened

ex officio. The Court is, therefore, of the opinion that the applicant was not required to make a further explicit request to this effect by filing a criminal complaint as this would not lead to any different result in this respect (see, *mutatis mutandis*, the Oğur v. Turkey judgment of 20 May 199, cited above, §67).

The Court further notes that there was a pending inquiry into the events of the present case. In assessing the effectiveness of the inquiry, the Court accepts that regard must be had to the time element involved in the present case, which is a central part of the applicant's complaint (see, *mutatis mutandis*, the Yaşa v. Turkey judgment of 2 September 1998, cited above, §115).

The question arises whether or not the criminal investigation at issue can be still regarded as effective for the purposes of the Convention. The Court considers that this question cannot be answered at this stage of the proceedings, it being closely linked to the substance of the applicant's complaints.

As regards the civil and administrative remedies referred to by the Government, the Court points out that in its judgment of 20 May 1999 in the case of Oğur v. Turkey, it held that the applicant was not required to bring the civil and administrative proceedings as those relied on by the Government in the instant case. It noted first of all, that a plaintiff in a civil action for redress concerning damage sustained through illegal acts or patently unlawful conduct on the part of State agents had, in addition to establishing a causal link between the tort and the damage he had sustained, to identify the person believed to have committed the tort. In the instant case, however, those responsible for acts complained of by the applicant remained unknown.

Secondly, as regards the administrative-law action provided in Article 125 of the Constitution, the Court noted that this was a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification was not, by definition, a prerequisite to bringing such an action. However, the investigation, which the Contracting States were obliged by Articles 2 or 13 of the Convention to conduct in cases of fatal assault, had to be able to lead to the identification and punishment of those responsible. That obligation accordingly could not be satisfied merely by awarding damages. Otherwise, if an action based on the state's strict liability were to be considered a legal action that had to be exhausted in respect of complaints under Articles 2 or 13, the State's obligation to seek those guilty of fatal assault might thereby disappear (see the Oğur v. Turkey judgment cited above, § 66).

The Court sees no reason to depart from those conclusions in the instant case and consequently it concludes that the applicant was not required to bring the civil and administrative proceedings suggested by the Government.

The Court considers, in the light of the foregoing, that the Government's submission that the applicant has failed to exhaust domestic remedies cannot be upheld.

Six-months rule:

The respondent Government submit that the application was not filed within the period of six months as required by Article 35 of the Convention. They point out that the

applicant's son was found dead on 7 September 1992, whereas the application was introduced on 3 March 1995.

The applicant responds that he waited for the result of the national investigation. He submits that as the pending investigation was neither effective nor adequate, he decided to lodge this application with the Court.

The Court recalls in the first place that a criminal investigation may constitute an effective remedy in respect of the allegations of killing by State agents (see the Aytekin v. Turkey judgment of 23 September 1998, Reports 1998-VII, No. 92, p. ... , § 83). However, this remedy may become ineffective under special circumstances, such as the excessive length of the investigation (see, *mutatis mutandis*, the Yaşa v. Turkey judgment, cited above, §115).

The Court considers that the six months period may be calculated from the time when the applicant's allegations are definitively rejected by the national authorities or when it becomes clear that the remedies are ineffective because of the existence of special circumstances.

In the present case, following the killing of the applicant's son, a criminal investigation was initiated. The Government note in their written observations that this investigation is still pending. In this connection, it was not unreasonable for the applicant to await the results of the criminal investigation by the competent domestic authorities and to file his application under the Convention only when he considered that this investigation had become ineffective.

In these circumstances, the Court considers that the application was introduced within the six-month time-limit as required by the Convention.

As regards the merits of the complaints:

1) The applicant alleges under Article 2 of the Convention that his son was unlawfully killed by the agents of the state while in detention. He further submits under Article 2 that there has been no adequate investigation into the killing of his son and the lack of any effective system for ensuring protection of the right to life.

The Government maintain that the applicant's allegations were unsubstantiated and that the file produced by him did not contain anything capable of explaining how responsibility for the alleged events could be attributed to security forces. They submit that the applicant's son was not taken into police custody, but to a mental hospital for medical treatment. In this respect they refer to the criminal proceedings instituted against the applicant's son in the Midyat Assize Court for raping a nine-year-old child. During these proceedings it was established that Mesut was mentally handicapped and did not have legal liability for his acts. Accordingly, the court had ordered Mesut to be kept under medical control.

The Government further state that the Cizre Public Prosecutor commenced a preliminary investigation immediately after the body was found. They submit that the investigation is still pending, however, the perpetrators have not yet been apprehended. The Government state that following the communication of the application, the public prosecutor

expanded the investigation in the light of the applicant's allegations as regards the killing of his son by security forces. They further maintain that pursuant to Article 102 of the Turkish Criminal Code a preliminary investigation can be carried out until the expiry of the statutory period, which in the instant case is 15 years.

The applicant maintains his account of events.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

2) The applicant alleges under Article 3 of the Convention that the killing of his son and the inability to discover the circumstances in which his son was killed constitutes a violation of this Article.

The Government deny that there is any substantiation of the applicant's allegations.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

3) The applicant further complains of the treatment, which his son's dead body was subjected to. He alleges that he is a victim of a violation of Article 3 in that this treatment amounts to inhuman and degrading treatment.

However, the Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case (see, for example, the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 39, § 100 and p. 49, §§ 108-09, the Ireland v. the United Kingdom judgment of 18 January 1978, series A, No. 25, p. 65, §162). The Court further recalls that in order for treatment to be "degrading", the humiliation or debasement accompanying it must be of a particular intensity. The assessment of such intensity is necessarily relative: it depends on all the circumstances of the case, including the nature and the context of the treatment concerned (see, for example, Nos. 14116/88 and 14117/88 Sargın and Yağcı v. Turkey, dec. 17 January 1991,p.75, § 456).

The Court considers that the dragging of the dead body of the applicant's son by an armoured vehicle was a precautionary step taken by the public prosecutor to avoid a possible booby-trap. There is no factual basis to support the assertion that the measure was a deliberate attempt to humiliate or degrade the applicant or to mistreat or show disrespect for the corpse of the victim.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 of the Convention.

4) The applicant submits under Article 6 of the Convention that the inadequacy of the investigation carried out by the domestic authorities prevented criminal proceedings from taking place, in which the facts of his son's murder would have been established. He asserts that without such proceedings he is prevented from pursuing a civil claim for compensation. The applicant further complains of the lack of any authority before which his complaints can be brought with any prospect of success. In this regard, he invokes Article 13 of the Convention.

The Government contend that there are several effective domestic remedies at the applicant's disposal. They argue that domestic criminal, civil and administrative laws provide the applicant with adequate means of redress in respect of his complaints.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

6) The applicant further complains, under Article 14 of the Convention, of discrimination in the enjoyment of his rights under Articles 2, 3, 6 and 13 of the Convention due to his ethnic origin.

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

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

DECLARES INADMISSIBLE, the applicant's complaints as regards the treatment which his son's dead body was subjected to;

DECLARES ADMISSIBLE, without prejudging the merits, the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President

Ulku EKINCI v. Turkey
Application No. 27602/95

Declared admissible 8 June 1999

Issue:
Extra-judicial killing/E-90 TEM Highway, outskirts of Ankara/February 1994

The applicant's allegations:
On 24 February 1994, Yusuf Ekinci, a practising lawyer, failed to return home after leaving his office in central Ankara. Early on 25 February 1994, the applicant, Mr. Ekinci's wife, received three anonymous telephone calls. Later that day, road workers found Yusuf Ekinci's dead body along the E-90 TEM Highway on the outskirts of Ankara. An autopsy carried out the following day concluded that he had died of bullet wounds. The circumstances of the killing indicated that the Turkish State had been in some way involved in the Yusuf Ekinci's death. The buttons on his coat were done up, which he would only do as a mark of respect or when talking to the police and he was killed by an Uzi weapon, which is generally used by the security forces. His identity documents, a small quantity of cash, and his spectacles were not found. One year later, the official investigation into the killing still had not resulted in any new information.

The Government's response:
A criminal investigation was opened *ex officio*, in the course of which various effective investigative measures were taken in a diligent manner in order to identify the perpetrators. All possible leads have been followed up. These criminal proceedings are still pending as, so far, no final judgement has been handed down.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 6, 13 and 14:

- Article 2 (right to life): killing of applicant's husband in circumstances which indicate that the Turkish State has been in some way involved in the killing; no adequate investigation into killing of applicant's husband; lack of any effective system to ensure protection of right to life in domestic law.
- Article 3 (prohibition of ill-treatment): killing of applicant's husband and continuing failure of authorities to identify and prosecute perpetrators has caused applicant great emotional pain and distress.
- Article 6 (right of access to court): failure to initiate criminal proceedings against those responsible for the killing of applicant's husband has left applicant unable to bring civil proceedings.
- Article 13 (right to effective remedies): lack of any independent national authority before which complaints can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): discrimination on grounds of race or ethnic origin in the enjoyment of applicant's rights under Articles 2, 3 and 6 of the Convention and Article 1 of Protocol No.1.

The Court's decision:
The Court found that the applicant was not required to file a criminal complaint as a criminal investigation had in fact been opened *ex officio*. The applicant was not required to pursue any additional civil or administrative remedy. The Court considered that it could not address the effectiveness of the criminal investigation as this was closely linked with the substance of the applicant's complaints. The application was brought within the six-month time limit as that period started to run from the date the applicant started to doubt the effectiveness of the investigation rather than the date of her husband's death. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 74

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27602/95
by Ülkü EKİNCİ
against Turkey

The European Court of Human Rights (First Section) sitting on 8 June 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, *Judge ad hoc*

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 May 1995 by Ülkü Ekinci against Turkey and registered on 13 June 1995 under file no. 27602/95;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 14 May 1996 and 5 July 1996 and the observations in reply submitted by the applicant on 25 July 1996 as well as the additional observations submitted by the Government on 3 October 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national of Kurdish origin, born in 1946 and resident in Ankara. She is a lawyer and the widow of Yusuf Ekinci, an intellectual of Kurdish origin who was born in Lice in the Diyarbakır District. The applicant is represented by Mr Sedat Aslantaş, a lawyer practising in Ankara, and by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex, England.

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

A. Particular circumstances of the case

The applicant's husband Yusuf Ekinci, was a practising lawyer and a member of the Ankara Bar. His professional practice was limited to compensation cases. During his studies, he was working for the Turkish Workers Party (*Türkiye İşçi Partisi*) and was a member of the Eastern Revolutionary Cultural Grouping (*Dogu Devrimci Kültür Ocaklari*). On this account, he was arrested in May 1971, spent six months in prison, but was finally acquitted. He took no active part in politics since that time.

On 24 February 1994, at about 18.30 hours, the applicant's husband left his office in the central part of Ankara in order to drive in his private car to his home located in a different part of town. Before he left his office, he had spoken to several persons, including the applicant who had telephoned him at about 17.00 hours. He gave his office assistant a lift and dropped this assistant somewhere on the way as he had just enough petrol to get home.

When Yusuf Ekinci failed to return home, the applicant and Yusuf Ekinci's assistant inquired at local hospitals and police stations in the course of the evening, but they could not obtain any information about his whereabouts. The applicant was concerned that her husband had met the same fate as Behçet Cantürk from Lice, who had disappeared a month previously, and whose body had been found soon after: he had been savagely murdered. Therefore, at about midnight, she telephoned Mehmet Kahraman, the State Minister responsible for Human Rights, and a friend of the family, and asked him for help. The first thing Mr Kahraman said was "This cannot be done to Yusuf ...". These words frightened the applicant even more.

On 25 February 1994, at about 02.00 and 07.30 hours respectively, the applicant received two anonymous telephone calls. Nothing was said on the other side of the line. During the second call, the applicant could hear the sound of typewriters. At about 9.30 hours the telephone rang again. When the applicant answered, a woman said, "I am the depths of Hell", and then put down the receiver.

Later that day, at about 13.30 hours, road workers found the dead body of Yusuf Ekinci along the E-90 TEM highway at the outskirts of Ankara, i.e. 1.5 km from the Doktorlar Sitesi neighbourhood and 1 km in the direction of Eskişehir and informed the police. Yusuf Ekinci had been shot and killed. His car was found at a distance of 1 to 2 km from the place where his body was found. The car's petrol tank was found empty. In the police report dated 26 February 1994 on the finding of the body, it is recorded that no weapon and no empty cartridges were found near or in a diameter of 500 metres from the body. However, on a sketch map drafted by a police officer and dated 25 February 1994, it is recorded that eight bullets were found directly next to the head of Yusuf Ekinci.

When the body of Yusuf Ekinci was found, the buttons on his coat were done up. His identity documents, a small quantity of cash, and his spectacles were not found. The police returned his ring and a valuable Pierre Cardin watch to the applicant.

An autopsy on Yusuf Ekinci was carried out on 26 February 1994. It was concluded that he had died of bullet wounds. The autopsy report does not include an indication of the estimated time of death. In the autopsy report, 11 bullet entry wounds, 7 bullet exit wounds and one bullet graze wound were recorded. In the course of the autopsy two deformed bullets and two bullets which had not been deformed were removed from his body. These bullets were described as having blue painted tips and a diameter of probably 9mm. The bullets were given to the prosecutor in whose presence the autopsy was conducted.

In a ballistics report of the Central Criminal Police Laboratory (*Merkez Kriminal Polis Laboratuari*) of Ankara dated 28 February 1994, it is recorded that six Parrabellum type bullets of 9 mm calibre as well as three outer layers of the same type and calibre bullets were submitted for a ballistics examination in relation to the killing of Yusuf Ekinci. As to the findings of the examination, the report states all bullets examined have been fired from the same weapon, that these bullets bear no resemblance with any other bullets examined previously by the Laboratory and that it cannot be excluded but equally not said with absolute certainty, given the lack of adequate comparison material, that these bullets had been fired from a Uzi weapon of Israeli make. The bullets, however, were found to be of Israeli make.

On 28 February 1994, the public prosecutor in charge of the investigation informed the National Turkish Bank Association that Yusuf Ekinci had been killed and that his bank accounts should be examined. The prosecutor requested the Bank Association to do the necessary in this respect without giving any further specification.

By letter of 3 March 1994, the police informed the prosecutor in charge of the investigation that Yusuf Ekinci had a safe deposit box at the İş Bank and requested the prosecutor to seek judicial permission to open this box and to verify its contents. On 4 March 1994, the prosecutor recorded that this request had been turned down.

By letter of 9 March 1994, the National Turkish Bank Association replied to the prosecutor informing the latter that, pursuant to Article 83 of the Act on Banking (*Bankalar Kanunu*), information about private bank accounts is secret and that therefore the prosecutor's request of 28 February 1994 could not be met.

By letter of 16 May 1994, the public prosecutor at Gölbaşı requested the District Police Headquarters to be kept informed of any development in the investigation into the killing of the applicant's husband.

The applicant wrote two letters to the President of Turkey requesting him for an adequate investigation into the killing of her husband and to bring the perpetrators to justice. In addition she appealed for help to the Prime Minister and to the Speaker of the Grand National Assembly. These requests remained unanswered.

By letter of 8 November 1994, the applicant requested the public prosecutor in charge of the investigation to be informed about the activities undertaken in the investigation. The public prosecutor replied on the same day that the perpetrators had not yet been identified and that the investigation was ongoing without stating any further information as to the details of this investigation. Since then the applicant has not received any information about the investigation.

By letters of 25 February 1995 and 25 October 1995 and with reference to the prosecutor' letter of 16 May 1994, the Commissioner of the Gölbaşı local police station informed the District Police Headquarters that the enquiries in relation to the identification of the perpetrator(s) conducted so far had remained unsuccessful, that they were still actively searched for and that, in case they would be found, the victim's family would be notified. These letters do not contain any details about the modalities of the police investigation.

At some unspecified point in time, the Member of Parliament Mr Fikri Sağlar put questions in relation to the killing of Yusuf Ekinci to the then Prime Minister Mr Mesut Yılmaz in the course of a Parliamentary Session. Mr Sağlar mentioned that it was common knowledge that Yusuf Ekinci had been killed by a Uzi type weapon and that a number of these weapon destined for use by the police had gone missing. He enquired whether these weapons had been acquired by Turkey on the basis of a public tender, how many weapons had gone missing, who was responsible for these weapons and whether the ballistics characteristics of these weapons had ever been recorded.

In an article published in the daily newspaper "Radikal", the journalist İsmet Berkan stated that a number of persons, including Yusuf Ekinci, had been involved in drug trafficking linked with the PKK and that all these persons had died in the meantime.

B. Relevant domestic law and practice

i. Criminal law and procedures

The Turkish Criminal Code (*Türk Ceza Kanunu*), as regards unlawful killings, has provisions dealing with unintentional homicide (Articles 452 and 459), intentional homicide (Articles 448) and aggravated murder (Article 450).

Pursuant to Articles 151 and 153 of the Turkish Code of Criminal Procedure (*Türk Ceza Muhakemeleri Usulü Kanunu*; hereinafter referred to as "CCP"), complaints in respect of these offences may be lodged with the public prosecutor. The complaint may be made in writing or orally. In the latter case, such a complaint must be recorded in writing (Article 151 CCP). The public prosecutor and the police have a duty to investigate crimes reported to them (Article 153 CCP).

If there is evidence to suggest that a deceased has not died of natural causes, the police officers or other public officials who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152 CCP). Pursuant to Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the exercise of his duty shall be liable to imprisonment.

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP). The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

Insofar as a criminal complaint has been lodged, a complainant may file an appeal against the decision of the public prosecutor not to institute criminal proceedings. This appeal must be lodged within fifteen days after notification of this decision to the complainant (Article 165 CCP).

ii. Administrative liability

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

<Translation

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

...

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

This provision is not subject to any restriction even in a state of emergency or war. the second paragraph does not 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.

iii. Civil action for damages

Pursuant to Article 41 of the Civil Code, anyone who suffers damage as result of an illegal act or tort act may bring a civil action seeking reparation for pecuniary damage (Articles 41-46) and non-pecuniary damage. The civil courts are not bound by either the findings or the verdict of the criminal court of the issue of the defendant's guilt (Article 53).

COMPLAINTS

The applicant complains under Article 2 of the Convention that her husband has been killed. She submits that the circumstances in which her husband was killed indicate that the Turkish State has been in some way or another involved in this killing. She submits that, when he was found, her husband's coat had been buttoned up, which he would only do as a mark of respect or when talking to the police. Moreover, he was killed by a Uzi weapon, which is generally used by the security forces. She further submits that, in an article published in the daily newspaper Özgür Gündem on 11 April 1994, it is stated that Ms Süheyla Aydin, whose husband Necati Aydin had been abducted and killed, had said that,

when she and her husband had been detained in Diyarbakır before her husband's death, a member of the security forces in Diyarbakır had told her "Even if your spouse Necati Aydin escapes trial, he cannot escape us. He too will be killed like Advocate Yusuf Ekinci form Lice and his body thrown onto the road.".

She further complains under Article 2 of the Convention that there has been no adequate investigation into the killing of her husband and of the lack of any effective system to ensure protection of the right to life in domestic law.

The applicant complains under Article 3 of the Convention that the killing of her husband and the continuing failure of the authorities to identify and prosecute the perpetrators caused her great emotional pain and distress.

The applicant complains under Article 6 of the Convention that as a result of the failure to initiate criminal proceedings against those responsible for the killing of Yusuf Ekinci she cannot bring civil proceedings.

The applicant complains under Article 13 of the Convention of the lack of any independent national authority before which complaints can be brought with any prospect of success.

The applicant finally complains under Article 14 of the Convention of discrimination on grounds of race or ethnic origin in the enjoyment of the rights guaranteed by Articles 2, 3 and 6 of the Convention and Article 1 of Protocol No. 1.

PROCEEDINGS BEFORE THE COURT

The application was introduced on 4 May 1995 and registered on 13 June 1995.

On 3 December 1995, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 14 May 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 25 July 1996, also after an extension of the time-limit. On 3 October 1996, the Government submitted additional observations.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of the killing of her husband. She invokes Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 6 (the right of access to court), Article 13 (the right to an effective remedy for Convention breaches) and Article 14 (prohibition on discrimination) of the Convention.

Article 34 of the Convention

Apart from her complaint under Article 2 of the Convention in her capacity as the widow of the victim of the killing at issue, the Government submit that the applicant cannot claim to be a victim with the meaning of Article 34 of the Convention as regards her complaints under Articles 3, 6, 13 and 14 of the Convention in that she lacks the required sufficient legal interest.

The applicant submits that, apart from the fact that she has brought the application also on behalf of her husband, she is a direct victim for the purposes of the Convention as regards her complaints under Articles 3, 6 and 13 of the Convention.

The Court accepts that the applicant, as the widow of Yusuf Ekinci, can legitimately claim to be a victim within the meaning of Article 34 of the Convention as regards the killing of her husband (cf. Eur. Court HR, Yaşa v. Turkey judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998, No. 88, § 66). It is further of the opinion that the applicant can also claim to be a victim as to the other alleged violations of the Convention.

Article 35 of the Convention

The Government submit that the applicant has not exhausted domestic remedies within the meaning of Article 35 of the Convention. She has not filed any criminal complaint with the prosecution authorities in relation to the killing of her husband. She had further not brought any of the ordinary civil or administrative proceedings that are available under Turkish law and which are effective. As the applicant is convinced that the State is responsible for the killing of her husband, she could have taken administrative proceedings. The Government submit various examples of cases in which administrative courts have awarded compensation to the families of the persons having died at the hands of the State officials. Moreover, in cases where the administration has exceeded its powers, it is possible to take civil proceedings seeking compensation. The Government submit that it is rather striking that the applicant, being a lawyer, has not availed herself of any of these possibilities.

The Government argue that a criminal investigation has in fact been opened *ex offico*, in the course of which various effective investigative measures have been taken in a diligent manner in order to identify the perpetrators. According to the Government all possible leads have been followed up. These criminal proceedings are still pending as, so far, no final judgment has been handed down.

In case it would be found that the above remedies cannot be regarded as effective, the Government submit that the application has been lodged out of time in that Yusuf Ekinci was murdered in February 1994 whereas the applicant only applied to the Court on 4 May 1995, which is more than six months later.

The applicant submits that the criminal investigation cannot be regarded as adequate or effective. The killing of her husband concerns one of the many so-called "unknown perpetrator" killings. In general the victims of such killings have been prominent Kurdish persons. Despite that it is widely believed, that the Turkish State is responsible for such killings, it appears that the investigation of the killing of her husband has not explored this possibility but has only focused on his family, friends and professional contacts and his professional activities. Moreover, apart from a sketch map of the scene of the crime, an autopsy report and a ballistics examination report, there is no evidence provided of what actual steps, if any, have been taken in this investigation. The information provided by the Government appear to indicate only a pro forma investigation rather than an actively pursued criminal investigation.

As regards the administrative and civil remedies suggested by the Government, the applicant submits that also these remedies cannot be regarded as effective in her situation.

As to the Government's argument that the application has been filed out of time, the applicant submits that, before applying to the European Commission of Human Rights in May 1995, she has first attempted to obtain information from the competent public prosecutor about the criminal investigation. She had further petitioned the President of Turkey, the Prime Minister and the Speaker of the Grand National Assembly in relation to the lack of an effective investigation of the killing of her husband. When it was clear to her that these efforts remained without effect, she decided to file an application with the European Commission of Human Rights.

The Court considers that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges applicants to use first the remedies referred that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (cf. Eur. Court HR, Yaşa v. Turkey judgment of 2 September 1998, to be published in *Reports on Judgments and Decisions* 1998, No. 88, § 71).

As regards a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on part of State agents, the Court recalls that a plaintiff to such an action must, in addition to establishing a causal link between the tort and the damage he has sustained, identify the person believed to have committed the tort (cf. Eur. Court HR, Yaşa v. Turkey judgment, loc. cit. § 73). In the instant case, however, it appears that it is still unknown who was responsible for the killing of the applicant's husband.

As to an action in administrative law under Article 125 of the Constitution based on the authorities' strict liability, the Court recalls that this remedy cannot be regarded as sufficient for a Contracting State's obligations under Articles 2 and 13 of the Convention in cases like the present one, in that this administrative remedy is aimed at awarding damages rather than seeking those guilty of fatal assault (cf. Eur. Court HR, Yaşa v. Turkey judgment, loc. cit., para. 74).

Consequently, the Court is of the opinion that the applicant was not required to bring the civil and administrative proceedings suggested by the Government.

As regards the fact that the applicant had failed to file a criminal complaint, the Court notes that, under Turkish law, this is not a condition *sine qua non* for the opening of a criminal investigation of a suspected unlawful killing. It appears that, in the present case, the criminal investigation of the killing of the applicant's husband was in fact opened *ex officio*. The Court is, therefore, of the opinion that the applicant was not required to make a further explicit request to this effect by filing a criminal complaint as this would not lead to any different result in this respect.

The question arises whether or not the criminal investigation at issue can be regarded as effective for the purposes of the Convention. The Court considers that this question cannot be answered at this stage of the proceedings, it being closely linked with the substance of the applicant's complaints.

Insofar as the Government argues that the application has been filed out of time in that it was introduced more than six months after the killing of the applicant's husband, the Court reiterates that where no domestic remedy is available the six months' time-limit contained in Article 35 § 1 of the Convention in principle runs from the date of the act complained of in the application (cf. Eur. Comm. HR, No. 23413/94, Dec. 28.11.95, D.R. 83, p. 31).

However, special considerations could apply in exceptional cases where applicants first avail themselves of a domestic remedy and only at a later stage become aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (cf. Eur. Comm. HR, No 23654/94, Dec. 15.5.95, D.R. 81, p. 76).

In the present case, it appears that immediately following the killing of the applicant's husband, certain investigative steps were in fact taken, which including the drawing of a sketch map of the manner in which the applicant's husband was found, the carrying out of an autopsy, the commissioning of a ballistics report and the taking of statements of various persons.

However, apart from these initial measures, it does not appear that the investigation was actively pursued after May 1994. In this connection, the Court observes that no further attempts appear to have been made to obtain an insight into the business activities and financial dealings of the applicant's husband. It does not strike the Court as unreasonable for the applicant, in a first phase, to await the results of the criminal investigation by the competent domestic authorities.

It further appears that, only after having received an unsatisfactory answer from the public prosecutor responsible for the investigation on her question which steps had been taken in the investigation, that the applicant started to doubt the effectiveness of this investigation and decided to file an application under the Convention. In these circumstances, the Court accepts that the six months' time-limit within the meaning of Article 35 § 1 of the Convention started to run as from 8 November 1994 at the earliest and, consequently, that the application has been brought within this time-limit.

As regards the substance of the applicant's complaints, the Court 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 Court concludes, therefore, that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

JOINS TO THE MERITS THE QUESTION CONCERNING THE EFFECTIVENESS OF THE CRIMINAL INVESTIGATION AT ISSUE,
and

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Nesime HARAN v. Turkey
Application No. 28299/95

Declared admissible 22 June 1999

Issue:
Disappearance/Diyarbakir/December 1994

The applicant's allegations:
Sometime prior to May 1994, a brother and paternal cousin of the applicant joined the PKK. At that time the applicant and her husband, Ihsan Haran, approached the Lice Prosecutor's Office and told the prosecutor that they were not responsible for anything the brother and cousin did. On 24 December 1994, Ihsan Haran left home as usual to go to work. However, he did not return. Three days later the applicant was informed that her husband had been taken away by uniformed police officers following an identification check at the site where he had been working. For a month the applicant attempted to petition the State Security Court prosecutor in order to ascertain her husband's whereabouts. However, police outside the building prevented her from seeing the prosecutor. The applicant then went to various prisons to find out whether anyone had seen Ihsan Haran in custody. One prisoner stated that he had seen him in custody. On 1 February 1995, the brothers of Ihsan Haran, as well as his paternal cousin, were taken into custody. At the time of the Court's decision nothing had been learnt of the whereabouts of Ihsan Haran.

The Government's response:
The applicant has submitted no evidence in support of her allegations. Her husband's disappearance was not brought to the attention of the authorities at the time. On 22 May 1996, the General Directorate of Security of the Ministry of Foreign Affairs informed the Ministry of Affairs that an investigation had been conducted into the applicant's allegations before the Commission. They found no record that Ihsan Haran had been taken into custody between 24 December 1994 and 1 February 1995. Ihsan Haran was found to have no criminal record.

The Complaint's under the European Convention:
The applicant complains of violations of Articles 2, 3, 5, 13, 14 and 18:

- Article 2 (right to life): substantial risk that applicant's husband has been secretly detained by agents of the State, and there exists a high incidence of deaths in custody; lack of adequate protection of right to life in domestic law.
- Article 3 (prohibition of ill-treatment): applicant's inability to discover what has happened to her husband has caused her anguish.
- Article 5 (right to liberty and security of the person): applicant's husband has been unlawfully detained; applicant's husband not informed of reasons for arrest; applicant's husband not brought before a judicial authority within a reasonable time; not able to bring proceedings to determine the lawfulness of detention.
- Article 13 (right to effective remedies): lack of an independent national authority before which these complaints can be brought with some prospect of success.

- Article 14 (prohibition on discrimination): discrimination on grounds of race or ethnic origin in the enjoyment of applicant's rights guaranteed by Articles 2, 3 and 5 of the Convention.
- Article 18 (prohibition on abuse of power): the above interference in the exercise of the Convention rights is not designed to secure any of the aims permitted under the Convention.

The Court's decision:
The Court found that the applicant's unsuccessful attempts to petition the prosecutor were sufficient to exhaust domestic remedies. She was not required to seek a civil or administrative remedy where there had been no investigation to determine the facts of her husband's disappearance. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 75

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28299/95
by Nesime HARAN
against Turkey

The European Court of Human Rights (First Section) sitting on 22 June 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr B. Zupančič,
Mr T. Pantiru,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, *ad hoc Judge,*

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 June 1995 by Nesime Haran against Turkey and registered on 24 August 1995 under file no. 28229/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 30 September 1996 and the observations in reply submitted by the applicant on 29 November 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national of Kurdish origin, born in 1971 and living at Arikli village in Lice in Turkey. She is the wife of Ihsan Haran, who disappeared in Diyarbakir in Turkey on 24 December 1994. She is represented before the Court by Professor Kevin Boyle and Ms. Francoise Hampson, both of the University of Essex, England.

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

Sometime prior to May 1994 a brother and a paternal cousin of the applicant joined the PKK. At that time the applicant and Ihsan Haran approached the Lice Prosecutor's Office and told the prosecutor that they were not in the least responsible for anything the brother and cousin did and that the brother and cousin had become involved in the PKK without the knowledge of the applicant or Ihsan Haran. The prosecutor said he did not intend to open any kind of case against the applicant or Ihsan Haran because of these events.

In any event, when soldiers would come to Arikli village, where the applicant and her husband lived, Ihsan Haran would go to the forest and hide. He would return to work only after the soldiers had left.

On 12 May 1994 security forces came to Arikli. They collected the villagers into the village square and set all the houses on fire. The applicant and her husband were forced to leave the village with their children Cigerxwun (five years old), Azad (four years old) and Bermal (11 months old) and travel to Diyarbakir where they stayed with relatives.

After some time Ihsan Haran found work in the construction business and the family rented a house.

When Ihsan Haran ran out of work in Diyarbakir, he went to Istanbul. After a while he returned to Diyarbakir to work on the construction of the Diyarbakir underground market. He worked there for eight days.

On 24 December 1994 he left home as usual to go to work. However, he did not return. Three days passed. The applicant and other members of the family did not find this unusual because, if there was extra work, Ihsan Haran would remain at the workplace and not return home.

On 27 December 1994 another villager from Arikli, Fahri Hazar, aged 40, came to the applicant's house and told her that on the morning of 24 December 1994 an identification check was carried out by uniformed police officers at the site where Ihsan Haran had been working. While checking Ihsan Haran's identification document, they started arguing amongst themselves. This lasted for some 10 minutes and then the police officers took Ihsan Haran away.

Being convinced that her husband was in the custody of the Turkish security forces the applicant went to the State Security Court with a petition seeking to ascertain her husband's whereabouts. However, the police outside the building prevented her and her family from seeing the prosecutor. The applicant and her family continued trying to petition the prosecutor for a month but were obstructed by the police.

The applicant then went to various prisons to find out whether anyone had seen the applicant in custody. One person, who has asked not to be named, said that he saw Ihsan Haran in custody. At present this person is in Dormitory 31 at Diyarbakir E-type prison.

On 1 February 1995 the brothers of Ihsan Haran, Abdullah (20 years old) and Seythan (15 years old), as well as his paternal cousin were taken into custody. Until today nothing has been learnt of the whereabouts of Ihsan Haran.

On 22 May 1996 the General Directorate of Security of the Ministry of Foreign Affairs informed the Ministry of Foreign Affairs that an investigation had been conducted into the applicant's allegations before the Commission. They found no record that Ihsan Haran had been taken into custody between 24 December 1994 and 1 February 1995. Ihsan Haran was found to have no criminal record.

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 5, 13, 14 and 18 of the Convention.

As to Article 2, the applicant states that there is a substantial risk that her husband has been secretly detained by the agents of the State, and there exists a high incidence of deaths in custody. She also complains of the lack of adequate protection of the right to life in domestic law.

As to Article 3, the applicant refers to her anguish arising out of her inability to discover what has happened to her husband.

As to Article 5, the applicant complains of her husband's unlawful detention, of not being informed of the reasons for his arrest, of her husband not being brought before a judicial authority within a reasonable time and of not being able to bring proceedings to determine the lawfulness of his detention.

As to Article 13, the applicant refers to the lack of an independent national authority before which these complaints can be brought with some prospect of success.

As to Article 14, in conjunction with Articles 2, 3 and 5, the applicant refers to an administrative practice of discrimination on grounds of ethnic origin.

As to Article 18, the applicant complains that the above interference in the exercise of the Convention rights is not designed to secure any of the aims permitted under the Convention.

PROCEDURE

The application was introduced on 22 June 1995 and registered on 24 August 1995.

On 26 February 1996, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 30 September 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 29 November 1996.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of violations of Articles 2, 3, 5, 13, 14 and 18 of the Convention in connection with the disappearance of her husband after he had been taken into custody. The relevant parts of these provisions provide as follows:

Article 2 of the Convention 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.

..."

Article 3 provides:

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

Article 5 provides:

"1. 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:

a. the lawful detention of a person after conviction by a competent court;

...

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;

..."

Article 13 provides:

"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."

Article 14 provides:

"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 provides:

"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."

The respondent Government argue that the applicant has not exhausted domestic remedies. They submit that she could have had criminal proceedings instituted against the military or police authorities which would have been accountable for her husband's detention in accordance with domestic law. She could have also lodged a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents. Under Turkish law the civil action does not depend on the outcome of the criminal proceedings and the procedural requirements are less strict. Alternatively, the applicant could have instituted administrative proceedings under Article 125 of the Constitution and under law No. 2935 and legislative decree No. 430. The Government submit that the applicant has not shown that there exists an administrative practice because of which she would have been dispensed from exhausting domestic remedies.

The Government further submit that, even assuming that domestic remedies were not effective, the applicant did not complain about the events of 12 May 1994 within the six-month period of Article 35 § 1 of the Convention.

As regards the substance of the applicant's complaints, the Government submit that the applicant has submitted no evidence in support of her allegations. Her husband's disappearance was not brought to the attention of the authorities at the time. The latter were first informed of her complaints when the application was communicated to them by the Commission. He General Directorate of Security of the Ministry of Interior Affairs conducted an inquiry which established that the applicant was not in custody on 24 December 1994. The Government deny the existence of discrimination against one or the other part of the Turkish population.

The applicant contends that her complaints concern exclusively the disappearance of her husband on 24 December 1994. The complaints concerning the destruction of Arikli village form the basis of application No. 25754/94 which was declared admissible on 26 February 1996. It follows that the applicant has not been submitted outside the six-month period of Article 35 § 1 of the Convention.

Moreover, the applicant submits that domestic remedies are illusory, inadequate and ineffective in this kind of case. In any event, the applicant denies that she has not tried to exhaust domestic remedies. For a month she had been trying unsuccessfully to petition the prosecutor. Given the nature of her complaints, this was the appropriate remedy for her to exhaust. It is a fallacy to talk of seeking a civil remedy where there has been no investigation to determine the facts of her husband's disappearance. Moreover, the primary remedy in this type of situation is for the applicant to be told of the fate of her husband. Monetary compensation can only be appropriate in addition to this as recognition of her suffering. In any event, after the Commission communicated the case to the Turkish authorities, the latter issued a denial

without carrying out an effective investigation. There is, therefore, no reason to believe that any further attempts within Turkey to exhaust domestic remedies for a complaint of this nature would have elicited a more pro-active response from the authorities.

As regards the substance of the complaints, the applicant submits that her allegations are borne out by eyewitness testimony. She also refers to the fact that her husband's two brothers were taken into custody, something about which the Government do not make nay comments. No weight should be attached to the letter of 22 May 1996 by the General Directorate of Security of the Ministry of Interior Affairs because the inquiry was very perfunctory. Moreover, there exist other cases of disappeared persons in which the Court found against Turkey, although the Government had denied that the persons concerned had been taken into custody.

The Court recalls that in a number of cases involving allegations of murder by security forces it held that the applicants were not required to bring the same civil and administrative remedies as those relied on by the Government in the present case for the following reasons. In a civil action for damages it was necessary to identify the person believed to have committed the tort and those responsible for the acts complained of remained unknown. The administrative action under Article 125 of the Constitution was based on strict liability of the State and in cases of alleged murder the Convention required that those responsible should be identified and punished (see Eur. Court HR, Ogur v. Turkey judgment of 20 May 1999, to be published in Reports of Judgments and Decisions, § 66; Yasa v. Turkey judgment of 2 September 1998, Reports 1998-VI, p. 2432, § 75). The Court considers that the same conclusions should be reached in the present case which concerns the alleged disappearance of a person after he had been taken into police custody. It follows that the applicant was not required to institute civil proceedings for damages or administrative proceedings under Article 125 of the Constitution.

On the contrary, the Court considers that a complaint to the prosecutor could in principle provide redress for the kind of violations alleged by the applicant. The Court notes in this connection that the Government do not dispute the applicant's allegation that she repeatedly tried to lodge a petition with the prosecutor but was prevented by the police from seeing him. It is true that the applicant could have lodged such a petition in writing. However, the Court recalls that, when the application was communicated to the respondent Government, the inquiry that was conducted was limited to checking custody and criminal records, although the applicant had referred to two witnesses. The Court considers that the authorities' reaction to the present case is not to be seen in isolation but in the context of their general reluctance to deal with allegations of involvement of security forces and other State agents in unlawful conduct in particular in the south-east of Turkey (see, inter alia, Eur. Court HR, Aksoy v. Turkey judgment of 18 December 1996, Reports 1996-VI, p. 2287, § 99; Kaya v. Turkey judgment of 19 February 1998, Reports 1998-I, p. 331, § 108; Tekin v. Turkey judgment of 9 June 1998, Reports 1998-IV, p. 1520, § 67; Selcuk and Asker v. Turkey judgment of 24 April 1998, Reports 1998-II, p. 913, § 97; Kurt v. Turkey judgment of 25 May 1998, Reports 1998-III, p. 1190, § 142; Gulec v. Turkey judgment of 27 July 1998, Reports 1998-IV, p. 1733, § 82; Ergi v. Turkey judgment of 28 July 1998, Reports 1998-IV, p. 1782, § 98; Yasa v. Turkey judgment of 2 September 1998, *op. cit.*, p. 2442, § 115; Ogur v. Turkey judgment of 20 May 1999, *op. cit.*, § 93). Having regard to all the above circumstances, the Court considers that the applicant could have reasonably believed that lodging a written petition with the prosecutor would not have provided her with an effective remedy in respect of her complaints concerning the disappearance of her husband after he had been taken into police custody. It follows that the applicant can be dispensed from exhausting this remedy and that she has

complied with the obligation to exhaust domestic remedies under Article 35 § 1 of the Convention.

The Court also notes that the applicant was first apprised of her husband's disappearance on 27 December 1994 and that she had been trying to see the prosecutor for a month after that. The application was lodged before the Commission on 22 June 1995. It follows that the six-month rule in Article 35 § 1 has been respected.

Having examined the parties' remaining observations, the Court considers that the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Hayriye KISMIR v. Turkey
Application No. 27306/95

Declared admissible 14 December 1999

Issue:
Torture and extra-judicial killing/Diyarbakir/October 1994

The applicant's allegations:
On or about 6 October 1994, Aydin Kismir, Irfan Kismir and Turan Kismir, the applicant's sons, together with two other relatives by the name of Baris Kalkan and Yilmaz Kalkan were detained by police officers and taken to the Diyarbakir Police Academy. Aydin Kismir was taken away to be tortured. He was heard to scream constantly that his arm was going to break off and that he could neither clap his hands nor walk. The police officers were heard to threaten Aydin, telling him that death would not be easy. Aydin was seen being taken away by the policemen, who were holding him from his arms and dragging him along the ground. On 8 October 1994, Yilmaz and Irfan were released. Yilmaz told the applicant that Aydin was in custody and was being very badly tortured. That same day the applicant applied to the State Security Court Public Prosecutor for information about her son. On 10 October 1994, the prosecutor acknowledged that her son was in police custody. On 11 October 1994, the police went to the applicant's house and told neighbours that she had to go and pick up Aydin's body. At the hospital, the police first denied that they had Aydin's body. Two hours later they acknowledged that Aydin's body was at the morgue but the applicant's request to see her son was refused. The Prosecutor at the hospital told a relative of the applicant that Aydin had thrown himself from the seventh floor.

The Government's response:
Aydin Kismir was arrested for collaborating with the PKK. During arrest he tried to escape but lost his balance and fell down the stairs, hitting a wall. Immediately after his arrest he was taken to hospital where his wounds were attended to. According to the medical report he had two wounds, one on the right eye and another on a right foot toe. The doctor stated that the wounds were not of a serious nature. Later the same day, Aydin was again taken to the hospital for treatment of a bleeding wound in the head. The doctor stated Aydin Kismir did not need hospitalisation and gave him medication. Aydin was put in a cell without being interrogated. The police gave Aydin his medication regularly. In the early hours of 11 October 1994, Aydin Kismir's condition deteriorated. He died as he was being taken to hospital. The autopsy report concluded that Aydin Kismir's death occurred due to asphyxia. A subsequent medical report ruled out the possibility of any respiratory insufficiency being due to the actions of the custodians. On 7 November 1995, the Diyarbakir Public Prosecutor gave a decision of non-prosecution as he concluded that there had been no ill-treatment or torture. Following a further investigation into the death of Aydin Kismir, he gave a further decision of non-prosecution on 19 December 1996. The decision was served on the applicant on 27 January 1997.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 6, 13 and 14:

- Article 2 (right to life): death of applicant's son in custody in circumstances suggesting that he died under or as a result of torture; lack of any effective system for ensuring protection of right to life; inadequate protection of right to life in domestic law.
- Article 3 (prohibition on ill-treatment): applicant's son was tortured in custody and died under or as a result of torture.
- Article 6 (right of access to a court): applicant not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against persons responsible for treatment to which her son was subjected.
- Article 13 (right to an effective remedy): lack of any independent national authority before which these complaints can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): administrative practice of discrimination on grounds of ethnic origin in the enjoyment of applicant's rights guaranteed by Articles 2, 3 and 13 of the Convention.

The Court's decision:
The Court found that the applicant was not required to pursue any civil or administrative remedy in order to exhaust domestic remedies. As to whether the applicant should have challenged the public prosecutor's decision of non-prosecution, the Court concluded that since this raised issues that were closely linked to those raised by the applicant's complaints under Articles 2 and 13, the matter would be joined to the merits. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 6, 13 and 14:

- Article 2 (right to life): death of applicant's son in custody in circumstances suggesting that he died under or as a result of torture; lack of any effective system for ensuring protection of right to life; inadequate protection of right to life in domestic law.
- Article 3 (prohibition on ill-treatment): applicant's son was tortured in custody and died under or as a result of torture.
- Article 6 (right of access to a court): applicant not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against persons responsible for treatment to which her son was subjected.
- Article 13 (right to an effective remedy): lack of any independent national authority before which these complaints can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): administrative practice of discrimination on grounds of ethnic origin in the enjoyment of applicant's rights guaranteed by Articles 2, 3 and 13 of the Convention.

The Court's decision:
The Court found that the applicant was not required to pursue any civil or administrative remedy in order to exhaust domestic remedies. As to whether the applicant should have challenged the public prosecutor's decision of non-prosecution, the Court concluded that since this raised issues that were closely linked to those raised by the applicant's complaints under Articles 2 and 13, the matter would be joined to the merits. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27306/95
by Hayriye KİŞMİR
against Turkey

The European Court of Human Rights (First Section) sitting on 14 December 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *judges*,
Mr B. Zupančič,
Mr F. Gölcüklü, *ad hoc judge*

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 March 1995 by Hayriye Kişmir against Turkey and registered on 12 May 1995 under file no. 27306/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

– the Commission's decision, of 15 September 1995, to communicate the application;

– the observations submitted by the respondent Government on 14 February 1996 and the observations in reply submitted by the applicant on 3 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, who was born in 1948, is a Turkish national and she resides in Diyarbakır.

She is represented before the Court by Mr Kevin Boyle and Ms Françoise Hampson, both university teachers at the University of Essex, England.

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

A. Particular circumstances of the case

The applicant gives the following account.

On 6 October 1994 at about 1.30 a.m., seven police officers from the Diyarbakır Security Directorate, who were looking for the applicant's son Aydın Kişmir, came to the applicant's house in Diyarbakır. The police officers questioned the applicant about her son's whereabouts. Aydın had previously been taken into police custody on 26 August 1993, placed in detention on remand 8 September 1993 and released on 10 November 1993. Therefore, as he was afraid to find himself in the hands of the police once again, he was hiding at his relative Barış's house in Diyarbakır. Bearing all this in mind, the applicant's mother told the police officers that Aydın had gone to İstanbul.

The police officers further questioned the applicant's two other sons, İrfan and Turan, who also confirmed that their brother was in İstanbul. The officers conducted a search in the house and allegedly took a certain amount of German marks. Five of the police officers left, taking İrfan and Turan with them, whereas two others stayed and continued to question the applicant and her daughter, Saniye, until morning.

At about 7 a.m. on the same day, there was a change of shift. That morning the applicant's husband, Mersin, returned home. The police stayed for two days and two nights, changing shifts at 8 a.m. and 8 p.m. After the second day, the police forced the applicant's husband to sign a paper.

The police officers took İrfan and Turan to the Police Academy where they were questioned about Aydın for an hour and a half. Thereafter İrfan and Turan were taken to Diyarbakır State Hospital to be examined by a doctor. From the hospital they were brought back to the Police Academy and again interrogated about Aydın.

The police asked İrfan about his relative, Barış. İrfan informed them that he knew Barış, who was both a childhood friend of Aydın's and a relative, and gave his address. Consequently, the police went to Barış's house, taking İrfan with them.

On the morning of 6 October 1994, Barış's mother (E.K.) warned Aydın when she saw the police vehicles in front of the door. Aydın and Barış tried to run away but were caught while they were going up onto the roof. As the police were taking Aydın, Barış and Barış's brother, Yılmaz, downstairs, Aydın once again attempted to escape. Yılmaz and Barış heard one of the police officers say that he was going to kill Aydın, but the other officers stated that they needed Aydın for interrogation. Aydın was caught in the doorway and made

to lie face down. He was handcuffed and a gun was held to his head. According to İrfan, Aydın was beaten. Yılmaz states that Aydın's head was bleeding and he was shouting.

Thereafter, Barış and Yılmaz were put in one vehicle and Aydın in another and they were taken to the Police Academy. After ten minutes, they were taken to the State Hospital for a medical control. They were then put back into the vehicle. Yılmaz and Barış were in the back seat. Yılmaz heard the two policemen sitting in the front saying "Aydın told the doctors at the hospital that he had been tortured and that he was going to be killed. Let him come to the 'camp'. We'll show him that death will not be that easy." Yılmaz, Barış and Aydın entered to the Police Academy together. İrfan was also brought back to the Police Academy. Later, he realised that Aydın had joined them. İrfan states that as soon as the police officers brought Aydın, he was taken for torture. İrfan heard Aydın scream that his arm was going to break off and that he could neither clap his hands nor was he able to walk. The rest of the time Aydın was constantly screaming and saying that he was innocent.

Barış and Yılmaz were put into different cells. Yılmaz was in cell no. 13 where he could hear Aydın screaming. Yılmaz was later moved into cell no. 8, from where he could hear most of the conversations between the police officers and Aydın. He heard the police officers threaten Aydın, telling him that death would not be easy. Aydın was saying that he was innocent, that he could not walk or clap his hands. The torture lasted about one hour. Yılmaz, looking through the grill in the door, saw that Aydın was being taken away by the policemen, who were holding him from his arms and dragging him along the ground.

On 7 October 1994 Yılmaz was taken to the interrogation room. He was asked if Aydın was a member of the organisation (i.e. the PKK). He was further questioned about Barış's relationship with Aydın and the reason why Barış's family let Aydın stay in their house.

On 8 October 1994 Yılmaz signed a statement of 7 pages, which the police had drawn up. He does not know what they contained. He was taken to Diyarbakır State Hospital and was forced to tell the doctor that he had not been tortured. He was released after the medical examination. İrfan was also released on 8 October 1994, following a medical examination.

When İrfan returned home, he and Yılmaz told the applicant that Aydın was in custody and he was being very badly tortured. The applicant went to the Human Rights Association (IHD) for help and on 8 October 1994 he applied to the Public Prosecutor attached to the State Security Court for information. The prosecutor acknowledged on 10 October 1994 that the applicant's son was under police custody.

On 11 October 1994 at about 6 p.m., the police went to the applicant's house and thereafter to Barış's house. They told the neighbours that Barış was in a coma, and that the applicant had to go and pick up Aydın's body. On the morning of 12 October 1994 the neighbours informed the applicant and she went to the hospital. The police first denied any knowledge. She was about to go home when her brother-in-law, Ahmet, arrived, saying that the police had told him that Aydın's body was at the morgue. The police at the hospital continued to deny that they had Aydın's body. Two hours later they acknowledged that Aydın's body was indeed at the morgue. However, the applicant's request to see his son was refused. The Prosecutor at the hospital told the applicant's relative Ahmet that Aydın had thrown himself from the seventh floor and asked Ahmet whether he wanted to prosecute. Ahmet told the public prosecutor that there was no use in filing a complaint as Aydın had

been killed by the police who then tried to cover up his death by saying that he had thrown himself from the seventh floor.

Aydın's burial certificate states that Aydın had been reported dead on 12 October 1994. The necessary forensic and medical examination of the body and the autopsy were performed on 13 October 1994. When the applicant requested a copy of the autopsy report, she was told that all documents had been sent to Ankara. On 13 October Aydın was buried.

The respondent Government make the following submissions.

The Government do not dispute the facts submitted by the applicant up until the detention of Aydın Kişmir.

On 6 October 1994 Aydın Kişmir was arrested in Diyarbakır along with Barış Kalkan, Mehmet Şirin Demir, Turan Kişmir, Behçet Ekinci, İrfan Kişmir and Yılmaz Kalkan for collaborating with the PKK.

When the policemen entered Barış Kalkan's flat to arrest Aydın Kişmir, Aydın tried to escape but lost his balance and fell down the stairs, hitting a wall. He was arrested in the entrance of the building. A false identity card was found on him.

Immediately after his arrest, he was taken to Diyarbakır State Hospital to have his wounds attended to. According to the medical report he had two wounds, one on the right eye and another on the right foot toe. The doctor stated that the wounds were not of a dangerous nature. Later the same day, Aydın Kişmir was again taken to the Diyarbakır State Hospital for treatment of a bleeding wound in the head, a 6 cm. long laceration in the occipital area. The doctor stated that Aydın Kişmir did not need hospitalisation and gave him medication.

Thereafter the applicant's son was taken to the police headquarters and put in a cell, without being interrogated. According to the statement of Ramazan Kutlu, a detainee from the same cell with Aydın Kişmir, the police gave Aydın his medication regularly. In the early hours of 11 October 1994 Aydın Kişmir's condition deteriorated. He died as he was being taken to the hospital.

On 12 October 1994 an autopsy was conducted in Diyarbakır. The autopsy report stated that Aydın Kişmir's death had occurred due to asphyxia. As the cause of asphyxia could not be identified, certain dissections of body parts were sent to the Forensic Institute Directorate in İstanbul for further forensic investigation. According to the report of the Chemical Analysis Section of the Institute, dated 7 December 1994, no toxicological evidence was detected on any of the body parts sent. On 12 December 1994 a second report was prepared by the hystopathological laboratory stated that no peculiarities were detected on any of the body parts that are sent for investigation. Subsequently, on 25 January 1995, a final report was issued by the First Committee of Experts of the Ministry of Justice, Directorate of Forensic Medicine, which reads as follows:

> "1. External examination and autopsy did not yield traces of any trauma or concussion other than skin lacerations on the top of the head, on the side of right eye-brow and on the great toe; therefore the death could not have resulted by any such action;

2. No toxicological traces were detected in the organs, which leaves out the possibility of toxic death;

3. Although cyanosis in the face, lips and finger nail beds and sub-pleural bleeding in the lungs point to asphyxia, no traces of any tissue damage at and around the neck or of any damage due to pressure in the abdominal and chest region have been found; it is therefore concluded that death was not a result of mechanical asphyxiation;

4. Since a high rate of oedema is detected in the lungs and the brain, and ulcer formation and bleeding is observed in the stomach, the cause of death is considered to be the general condition of anoxia and that the asphyxia findings are based on lung oedema resulting in insufficient aspiration;

It is unanimously concluded that death occurred due to respiratory insufficiency."

On 7 November 1995 the Diyarbakır Public Prosecutor gave a decision of non-prosecution as he concluded that there had been no ill-treatment or torture.

The Diyarbakır Public Prosecutor conducted a further investigation into the death of Aydın Kişmir and on 19 December 1996 he gave a decision of non-prosecution once again. This decision was served on the applicant on 27 January 1997.

The applicant further submitted an expert report, from a British doctor, which states that Aydın Kişmir's death could in fact be due to the action of the custodians, as asphyxial death may occur without leaving specific external injuries.

B. Relevant domestic law and practice

Criminal procedures

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture and Article 245 in respect of ill-treatment inflicted by civil servants). As regards unlawful killings, there are provisions dealing with manslaughter (Articles 452, 459) and murder (Articles 448, 450).

In general, in respect of criminal offences, complaints may be lodged, pursuant to Articles 151 and 153 of the 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 not to institute criminal proceedings.

Constitutional Provisions

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."

Civil and administrative procedures

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."

Any illegal act by civil servants, be it a crime or a tort, which causes material or non-material damage may be the subject of a claim for compensation before the ordinary civil courts and the administrative courts.

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 13 and 14 of the Convention.

As to Article 2, the applicant refers to the death of her son in custody, in circumstances suggesting that he died under or as a result of torture. She alleges that the Government failed to protect her son's right to life. She further refers to the lack of any effective system for ensuring protection of the right to life and to the inadequate protection of the right to life in domestic law.

As to Article 3, the applicant alleges that her son was tortured in custody and died under or as a result of torture.

As to Article 6, the applicant submits that she was not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against the persons responsible for the treatment to which her son was subjected.

As to Article 13, the applicant complains of the lack of any independent national authority before which these complaints can be brought with any prospect of success.

As to Article 14, in conjunction with Articles 2, 3 and 13 she complains of an administrative practice of discrimination on grounds of ethnic origin.

PROCEEDINGS BEFORE THE COURT

The application was introduced on 31 March 1995 and registered on 12 May 1995.

On 15 September 1995 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 14 February 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 3 April 1996, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of the death of his son while he was in police custody. He invokes Article 2 (the right to life), Article 3 (the prohibition on inhuman and degrading treatment), Article 6 (the right to fair trial), Article 13 (the right to effective national remedies for Convention breaches) and Article 14 (the prohibition on discrimination) of the Convention.

Preliminary Objections:

The Government maintain that the application is inadmissible as the applicant has failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention. In this regard they submit that the applicant did not challenge the public prosecutor's decision of non-prosecution. They further submit that in so far as the applicant is convinced that the state was responsible for the death of her son, the applicant should have initiated administrative proceedings that are available under Turkish law and which are effective. Moreover, they state that it is also possible to take civil proceedings seeking compensation.

The applicant responds that pursuant to Article 165 of the Turkish Criminal Procedure Code, the request to challenge a decision of non-prosecution should be accompanied by proof and facts, which justify the opening of prosecution. They submit that this was difficult in their case as the applicant was denied access to the autopsy report. They further maintain that a challenge to a decision of non-prosecution offers no prospect of success. As regards the civil and administrative remedies referred to by the Government, the applicant submits that these remedies cannot be regarded as effective in her situation.

As regards the civil and administrative remedies referred to by the Government, the Court points out that in its judgment of 20 May 1999 in the case of Oğur v. Turkey, it held that the applicant was not required to bring the civil and administrative proceedings as those relied on by the Government in the instant case. It noted first of all, that a plaintiff in a civil action for redress concerning damage sustained through illegal acts or patently unlawful conduct on the part of State agents had, in addition to establishing a causal link between the tort and the damage he had sustained, to identify the person believed to have committed the tort. In the instant case, however, those responsible for acts complained of by the applicant remained unknown.

Secondly, as regards the administrative-law action provided in Article 125 of the Constitution, the Court noted that this was a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification was not, by definition, a prerequisite to bringing such an action. However, the investigation, which the Contracting States were obliged by Articles 2 or 13 of the Convention to conduct in cases of fatal assault, had to be able to lead to the identification and punishment of those responsible.

That obligation accordingly could not be satisfied merely by awarding damages. Otherwise, if an action based on the state's strict liability were to be considered a legal action that had to be exhausted in respect of complaints under Articles 2 or 13, the State's obligation to seek those guilty of fatal assault might thereby disappear (see the Oğur v. Turkey judgment cited above, § 66).

The Court sees no reason to depart from those conclusions in the instant case and consequently it concludes that the applicant was not required to bring the civil and administrative proceedings suggested by the Government.

The Court further considers that the Government's preliminary objection as to the criminal procedure raises issues that are closely linked to those raised by the applicant's complaints under Articles 2 and 13 of the Convention (see the Yaşa v. Turkey judgment of 2 September 1998, Reports 1998-VI, no. 88, § 78).

Consequently, the Court dismisses the Government's preliminary objection in so far as it relates to the civil and administrative remedies relied on. It joins the preliminary objection concerning remedies in criminal law to the merits.

As regards the merits of the complaints:

The applicant alleges that his son was killed as a result of torture under police custody. She further complains of the lack of any independent and national authority before which these complaints can be brought with any prospect of success and discrimination in the enjoyment of her Convention rights. She also submits that she was not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against the persons responsible for the treatment to which her son was subjected. In this respect, she invokes Articles 2, 3, 6, 13 and 14 of the Convention.

The Government deny all the allegations concerning the ill-treatment and torture of the applicant's son. They contend that the applicant's son had died because of natural causes while he was in police detention.

The applicant maintains her account of events.

The Court 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 Court concludes therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

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

Michael O'Boyle
Registrar

Josep Casadevall
President

Huseyin TOGCU v. Turkey
Application No. 27601/95

Declared admissible 14 September 1999

Issue:
Disappearance/Diyarbakir/November 1994

The applicant's allegations:
The applicant's son, Ender Togcu, was the manager of the Sento Hotel and the Arzu Club in Diyarbakir. He had no relations with the PKK or other similar organisations. On or about 29 November 1994, the wife of Ender Togcu was giving birth in the Diyarbakir Hospital. At about 3 p.m., Ender Togcu left his elder brother, Ali Togcu, in order to visit his wife in hospital. However, Ender never arrived at the hospital and he has never been seen since. On the same day, at about 10:30 p.m., a group of seven or eight plain-clothes police officers came to the applicant's house and beat the applicant and his younger son. The police officers told the applicant that Ender was in their hands and that they would give his body to the applicant in three days time. Ali Togcu was subsequently arrested and placed in detention. While in detention, Ali Togcu clearly heard the voice and screams of his brother Ender. Ali Togcu was released after having spent three days in detention. On the day of his release, police officers informed Ali Togcu that his brother was in their hands and that he would be released after interrogation. The applicant and his family submitted petitions to the Diyarbakir State Security Court. On each occasion the court officials wrote a note at the foot of the petition stating that the name of Ender Togcu was not found in the preliminary apprehension records.

The Government's response:
On 4 July 1995, in the context of an investigation into the involvement of the applicant and his son, Ali Togcu, with illegal organisations, the applicant and Ali were arrested and detained. The applicant and his son Ali were released on 8 July 1995 for lack of evidence of any relations with any illegal organisations. On 27 June 1996, the public prosecutor at the Diyarbakir State Security Court commented that there was no preliminary investigation record concerning Ender Togcu. On 6 November 1996, the Diyarbakir Chief Public Prosecutor issued a decision not to take any proceedings against the Anti-Terror Branch on the basis of the applicant's complaint about the disappearance of his son Ender. The reason stated in the decision not to take any proceedings was that the Anti-Terror Branch had informed the public prosecutor on 16 October 1996 that the applicant's son Ender had not been taken into custody on 29 November 1994.

The Complaints under the European Convention:
The applicants complains of violations of Articles 2, 3, 5, 13, 14 and 18:

- Article 2 (right to life): applicant's son secretly detained by agents of the State; lack of any effective system for ensuring protection of right to life in domestic law.
- Article 3 (prohibition on ill-treatment): applicant's inability to discover what has happened to his son and discrimination he suffered on grounds of race or ethnic

origin, in relation to both himself and his son, has caused him agony amounting to inhuman treatment.

- Article 5 (right to liberty and security of the person): unlawful detention of applicant's son; absence of any information as to the reasons for applicant's son's detention; applicant's son not brought before a judicial authority within a reasonable time; applicant or his son not been able to bring proceedings to determine the unlawfulness of his son's detention.
- Article 13 (right to an effective remedy): lack of any independent national authority before which complaints under the Convention can be brought with any prospect of success.
- Article 14 (prohibition on discrimination): administrative practice of discrimination on grounds of race or ethnic origin in the enjoyment of applicant's rights guaranteed by Articles 2, 3 and 5 of the Convention.
- Article 18 (limitation on use or restrictions on rights): violations of applicant's rights under the Convention are not designed to secure the ends permitted under the Convention.

The Court's decision:
No argument was raised as to the requirement of exhaustion of domestic remedies. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 77

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27601/95
by Hüseyin TOĞCU
against Turkey

The European Court of Human Rights (First Section) sitting on 14 September 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, *Ad hoc Judge*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 May 1995 by Hüseyin Toğcu against Turkey and registered on 13 June 1995 under file no. 27601/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 5 August 1996 and the observations in reply submitted by the applicant on 5 September 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen of Kurdish origin, born in 1944, and resides at Diyarbakır. He is represented before the Commission by Professor Kevin Boyle and Ms Françoise Hampson, both university teachers at the University of Essex, England.

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

A. Particular circumstances of the case

As the facts are disputed between the parties, the facts as submitted by each party are set out separately.

1. The applicant states that the following occurred.

The applicant's son, Ender Toğcu, was the manager of the Sento Hotel and the Arzu Club in Diyarbakır. He had no relations with the PKK or other similar organisations.

On or about 29 November 1994 the wife of Ender Toğcu, was giving birth in the Diyarbakır Hospital. At about 3 p.m., Ender Toğcu left his older brother Ali Toğcu in order to visit his wife in hospital. However, Ender never arrived at the hospital and he has never been seen since.

On the same day, at about 10.30 p.m., a group of seven or eight plain clothes police officers came to the applicant's house and, without warning or explanation, beat the applicant and his younger son. The police officers asked where Ender Toğcu was. Being terrified, the applicant lied when he told them that Ender had gone to Kayseri three days earlier. The police officers then told the applicant that Ender was in fact in their hands and that they would give his body to the applicant in three days.

After the police officers had left the applicant's house, they went to a neighbour of the applicant to ask if he knew the whereabouts of Ender Toğcu. When the neighbour replied that he did not know Ender or where he was, the police replied that he had failed to report for military service and that they were looking for him. However, Ender had already done his military service.

The same police officers subsequently went to the house of Ali Toğcu and asked him also if he knew the whereabouts of Ender. Ali replied that Ender had left at about 3 p.m. and that he had not seen him since. The police officers then arrested Ali and brought him to the applicant's house. They told the applicant that there was a firearm in his house and asked him to surrender it to them. Then they went into the applicant's firewood storehouse and came out with a firearm. The police officer told the applicant that Ender had told them where the firearm was. The police officers drew up a report and told the applicant to sign it. They left the applicant's house at about midnight.

On 30 November 1994, in a cafeteria, police officers of the Çarşı police station asked Ali Toğcu again whether he knew where Ender was. After Ali had replied that he did not know, the police officers told him that the police had caught Ender and that he had a list on him with prices of items like walkie-talkies and batteries. The police officers then arrested Ali and placed him in detention.

While in detention, Ali Toğcu clearly heard the voice and screams of his brother Ender. Ali Toğcu was released after having spent three days in detention.

On the day Ali Toğcu was released from custody, he made verbal inquiries about his brother Ender at the Çarşı Police Station. The police officers there replied that his brother was in their hands and assured Ali that Ender would be released after interrogation.

At some unspecified point in time, Ali Toğcu made further verbal inquiries about Ender with the Chief Commissioner at the Homicide Department. At that occasion Ali had taken with him a photograph of Ender Toğcu, a photocopy of his identity card and the applicant's private telephone number. These inquiries remained without any results.

The applicant himself filed petitions to the Diyarbakır State Security Court every month. However, on each such occasion the court officials wrote a note at the foot of the petition stating that the name of Ender Toğcu did not figure in their records.

On 6 April 1995 the applicant's wife, Saliye Toğcu, made a written petition to the Office of the public prosecutor at the State Security Court of Diyarbakır. In this petition she stated that her son Ender had been taken into custody on 29 November 1994 in central Diyarbakır and that plain clothes policemen, who had conducted a search in the family's house, had told them that Ender was in their hands. She further stated in her petition that, since then, she had received no news from her son and that she did not know where he was.

At the foot of Saliye Toğcu's petition to the public prosecutor it is noted in a different handwriting that the name of Ender Toğcu was not found in the preliminary apprehension records.

2. The Government state as follows.

On 4 July 1995, in the context of an investigation into involvement of the applicant and his son Ali Toğcu with illegal organisations, the applicant and Ali were arrested and detained after their respective homes had been searched. Nothing was found in or taken from these homes by the police. The applicant and his son Ali were released on 8 July 1995 for lack of evidence of any relations with any illegal organisations.

On 1 February 1996 the Diyarbakır Police Headquarters sent a letter to the Office of the Chief public prosecutor of Diyarbakır, which in so far as relevant states:

<Translation>

> " In the course of an investigation concerning illegal organisations conducted by our department, Hüseyin and Ali Toğcu have been arrested on 04.07.1995. In this investigation no clear evidence has been found that they do have any connections with illegal organisations. They were further not listed in any list of wanted persons. After having been provided with their medical reports on 08.07.1995, they were released in accordance with a verbal order of the Office of the public prosecutor at the State Security Court. There is no record concerning regarding Ender Toğcu and the above mentioned [persons, Ali and Hüseyin] were not detained on 29.10.1994. ... The above mentioned Hüseyin and Ali Toğcu were taken into custody on 04.07.1995 and copies of the documents concerning their release on 08.07.1995 are attached to this letter."

By a letter of 25 June 1996 the Diyarbakır public prosecutor nr. 21761, referring to the application filed by Hüseyin Toğcu with the European Commission of Human Rights, inquired with the Office of the public prosecutor at the Diyarbakır State Security Court whether there was a preliminary investigation file registered at this Office concerning Ender Toğcu. The Diyarbakır public prosecutor also asked whether the applicant's son had been taken into custody and if he had any relations with PKK or any other similar illegal organisations.

On 27 June 1996 the public prosecutor at the Diyarbakır State Security Court replied that there had been no preliminary investigation record concerning Ender Toğcu.

On 10 July 1996 the public prosecutor nr. 21761 ordered the Diyarbakır Public Order Department to ensure the applicant's appearance at the Office of the public prosecutor. On 19 July 1996 the applicant gave a statement to the public prosecutor nr. 21761, which reads as follows:

<Translation>

"I have filed an application with the European Commission of Human Rights concerning the disappearance of my son, Önder[1] Toğcu, in 1994. On 29 November 1994 I was taken into custody together with my sons Önder and Ali by the anti-terror branch. I remained in custody for one week. Ali was taken into custody twice. One time he remained for three days and the other one he remained for one week in custody. The policemen, alleging that Önder had a gun, came to our house. This gun was given to them in the firewood storehouse. My son Önder could not be found after he had had been taken into custody on 29 November 1994. We could not obtain any information about his whereabouts although we did apply with the Diyarbakır State Security Court Prosecutor's Office, the Anti-Terror Branch and other authorities. My son Önder is still missing. My son was taken into custody on charges of membership of the illegal PKK organisation. Önder's wife was in the hospital giving birth. When he returned back home after his visit to the hospital, he was taken by plain-clothes policemen. They said that we could find his body in Fiskaya in three days. Önder Toğcu is 26 years old and in a religious ceremony has married Güler Toğcu. He has one daughter. The Anti-Terror Branch did not accept that my son has been taken into custody. I am worried about my son's life. Even though we applied to many authorities, we obtained no results. I applied to the Human Rights Association. They have taken my statement and that statement is correct. In relation to the disappearance of my son and his being taken to custody, I wish to file a complaint against the Anti-Terror Branch. I could not find my son although I have conducted a search in prisons and have placed announcements in the newspapers. The Anti-Terror Branch alleges that my son has gone to the mountains. If this allegation is true, let's make a search in the mountains. I want the body of my son to be given to me."

On 6 November 1996, in accordance with Article 164 of the Turkish Code of Criminal Procedure (*Türk Ceza Muhakemeleri Usulü Kanunu*; hereinafter referred to as "CCP"), the Diyarbakır Chief public prosecutor Abdullah Kocatepe issued a decision not to take any proceedings (*takipsizlik kararı*) against the Anti-Terror Branch on basis of the applicant's complaint about the disappearance of his son Ender. In this decision the public prosecutor

[1] In this statement the applicant's son name is spelled "Önder".

referred to the application filed by the applicant with the European Commission of Human Rights. The reason stated in his decision not to take any proceedings was that the Anti-Terror Branch had informed him on 16 October 1996 that the applicant's son Ender had not been taken into custody on 29 November 1994.

B. Relevant domestic law and practice

As only limited details have been submitted on domestic legal provisions which have a bearing on the circumstances of this case, the Court has had regard to the overview of domestic law derived from previous submissions in other cases, in particular the Kurt v. Turkey judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1169-70, §§ 56-62, Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1512-13, §§ 25-29, and Çakıcı v. Turkey judgment of 8 July 1999.

a. State of emergency

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, according to the Government, claimed the lives of thousands of civilians and members of the security forces.

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

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

<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."

b. Constitutional provisions on administrative liability

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

<Translation>

"All acts and decisions of the administration are subject to judicial review ...

...

The administration shall be liable to make reparation for any damage caused by its own acts and measures."

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

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

c. Criminal law and procedure

The Turkish Criminal Code (*Türk Ceza Kanunu*) 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 issue threats (Article 191);
– to subject an individual to torture or ill-treatment (Articles 243 and 245);
– to commit unintentional homicide (Articles 452, 459), intentional homicide (Article 448) and murder (Article 450).

For all these offences complaints may be lodged, pursuant to Articles 151 and 153 CCP, with the public prosecutor or the local administrative authorities. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP).

A public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient (Article 164 CCP).

Insofar as a criminal complaint has been lodged, a complainant may file an appeal with Assize Court (*Ağır Ceza Mahkemesi*) against the decision of the public prosecutor not to institute criminal proceedings. This appeal must be lodged within fifteen days after notification of this decision to the complainant (Article 165 CCP).

d. Civil-law provisions

Any illegal act by police officers or other civil servants, be it a crime or a tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts. Pursuant to Article 41 of the Code of Obligations (*Borçlar Kanunu*), an injured person may file a claim for compensation against an alleged perpetrator who has caused damage in an unlawful manner whether wilfully, negligently or imprudently. Pecuniary loss may be compensated by the civil courts pursuant to Article 46 of the Code of Obligations and non-pecuniary or moral damages awarded under Article 47.

e. Impact of Decree no. 285

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

The public prosecutor is also deprived of jurisdiction with regard to offences alleged against members of the security forces in the state of emergency region. Decree no. 285, Article 4 § i, provides that all security forces under the command of the regional governor shall be subject, in respect of acts performed in the course of their duties, to the Law of 1914 on the prosecution of civil servants. Thus, any prosecutor who receives a complaint alleging a criminal act by a member of the security forces committed in the context of the exercise of official duties must issue a decision of lack of jurisdiction (*görevsizlik kararı*) and transfer the case to the District Administrative Council (*İlçe İdare Kurulu*). These councils are made up of civil servants, chaired by the governor. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention that Ender Toğcu has been secretly detained by the agents of the State. He further claims under Article 2 of a lack of any effective system for ensuring protection of the right to life in domestic law.

2. The applicant complains under Article 3 of the Convention that his inability to discover what has happened to his son and the discrimination he suffered on grounds of race or ethnic origin, in relation to both himself and his son, has caused him agony amounting to inhuman treatment.

3. The applicant complains under Article 5 of the Convention of his son's apparent unlawful detention, of the absence of any information as to the reasons for his son's detention. He further complains that his son has not been brought before a judicial authority within a reasonable time and that he or his son have not been able to bring proceedings to determine the unlawfulness of his son's detention.

4. The applicant complains under Article 13 of the Convention of the lack of any independent national authority before which the complaints under the Convention can be brought with any prospect of success.

5. The applicant complains under Article 14 of the Convention in conjunction with Articles 2, 3 and 5 of an administrative practice of discrimination on grounds of race or ethnic origin.

6. The applicant finally complains under Article 18 of the Convention that the violations of his rights under the Convention complained of are not designed to secure the ends permitted under the Convention.

PROCEDURE

The application was introduced on 25 May 1995 and registered on 13 June 1995.

On 3 December 1995 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 5 August 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 5 September 1996.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of the disappearance of his son. He invokes Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 5 (the right to liberty and security), Article 13 (the right to an effective remedy for Convention breaches) and Article 14 (prohibition of discrimination) of the Convention. The applicant also relies on Article 18 (limitation on use or restrictions on rights) of the Convention.

Article 35 § 1 of the Convention

The parties have not raised any arguments relating to the requirements referred to in Article 35 § 1 of the Convention. The Government have not contested that the applicant has satisfied the exhaustion of domestic remedies requirement set out in Article 35 § 1 of the Convention.

As regards the merits

The Government submit that the applicant's allegations are not supported by the facts of the case. Nobody has in fact seen the applicant's son being apprehended by the police. Moreover, the custody records of the Çarşı Police Station between 15 November 1994 and 15 December 1994 and custody records of the Diyarbakır Anti-Terror branch between 27 November 1994 and 1 December 1994 indicate that Ender Toğcu was not detained there.

The Government explain that any person detained is always registered in the detention centre registration book. This has become a strict practice in general and especially in the south-eastern part of Turkey and also in Diyarbakır as allegations concerning disappearance during custody have been the main subject of terrorist propaganda in recent years.

According to the Government it is unlikely that police officers would have told the applicant that his son was "in their hands" and "we are going to hand his body to you in three days..." and thus declare the acceptance of a crime. According to the Government it cannot be excluded that the aim of the application is simply to dishonour the security forces dealing with terrorists and terrorism and that most disappearance cases in South-east Turkey turn out to be

the result of intentional joining of the PKK. The Government further submit that, in July 1995, both the applicant and his son Ali have been the object of an investigation into possible links with illegal organisations in the course of which they have been detained and their respective homes searched.

The applicant maintains his version of events and submits not to understand the Government's argument that his son Ali was not detained on 29 or 30 October 1994 and could therefore not have heard the screams of his brother Ender, since Ali was not detained on these dates but on 30 November 1994.

The applicant submits that the Government appears to concede that nothing whatever has been done by the authorities to investigate the disappearance of Ender or to respond to the applicant's petitions to the Office of the public prosecutor at the Diyarbakır State Security Court. The applicant argues that this constitutes an indication of the Government's complicity or acquiescence in the disappearance of his son Ender. He further refutes the Government's indirect and fully unsubstantiated allegation that Ender would have joined the PKK.

The Court 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 merits of the application as a whole. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Abdulsamet YAMAN v. Turkey
Application No. 32446/96

Declared admissible 14 December 1999

Issue:
Torture/Adana/ July 1995

The applicant's allegations:
On 3 July 1995, in the city of Adana, the applicant was put into a car and blindfolded by persons apparently working for the Security Directorate. In the car he was subjected to beating and death threats. Still blindfolded, he was eventually taken into a building which he later understood to be the building of the Security Directorate. In this building, the applicant was stripped naked and put under cold water. He was suspended by his arms from pipes hanging from the ceiling and made to stand on a chair while electric cables were attached to his genitals. The chair was then pulled away and he was left in suspension while electric shocks were administered. From time to time the shocks were stopped and his testicles were squeezed. The applicant was interrogated about his work, his connections with the PKK and why he had assisted torture victims in appealing to the European Commission on Human Rights. He was detained for a period of nine days and his family was not informed of his detention. On 11 July 1995, the applicant was brought before a public prosecutor and investigating judge. He denied the statements that had been taken from him at the Security Directorate but was remanded in custody. On the way from the court to the prison he was beaten up by the policemen using their rifle butts, boots and truncheons. On 12, 13 and 14 July 1995, the applicant requested hospital treatment and the provision of a medical report from the Forensic Medical Institute. No action was taken.

The Government's response:
The applicant was arrested on 3 July 1995 in connection with an operation conducted by the Adana Security Directorate against the PKK. The applicant's name had been given by the PKK's political supervisor for the Adana region. Among the documents seized during that operation, two were established by the forensic laboratory to have been hand-written by the applicant. The applicant was brought before the public prosecutor and investigating judge. On the same day, he was placed in detention on remand. It was established during the evaluation of the evidence that the applicant had personally participated in the preparation of the documents seized during the operation. The case-file was transferred to the Konya State Security Court Public Prosecutor, who commenced criminal proceedings against the applicant. On 20 January 1995, the applicant filed a complaint alleging that he had been tortured while he was held in police custody. On 20 December 1995, the Adana Public Prosecutor gave a decision of non-prosecution, as there was no sufficient evidence to file a criminal complaint against the police officers.

The Complaints under the European Convention:
The applicant complains of violations of Articles 3, 5, 6, 10, 11, 13, 14, 18 and 25 (now 34)):

- Article 3 (prohibition on ill-treatment): applicant subjected to physical and mental torture during detention.
- Article 5 (right to liberty and security of the person): applicant unlawfully arrested and detained; not informed of reasons for his arrest or of any formal charges against him; not permitted to take proceedings to determine lawfulness of his detention; nine days of police custody not strictly required by exigencies of situation; not granted right to compensation.
- Article 6 (right of access to a court): applicant deprived of right to have his civil rights determined in a fair and public hearing; because torture is systematically applied and condoned by the authorities, any claim that he might have for compensation is illusory; failure to investigate and bring criminal proceedings against those guilty of torture also indicates that his civil claim will not receive a fair treatment by courts.
- Article 10 (right to freedom of expression): applicant arrested and detained in order to dissuade him from continuing his political activities, which included oral and written dissemination of his party's (HADEP) political objective.
- Article 11 (right to freedom of association): another purpose of treatment he was subjected to was to make him refrain from further activities of HADEP; he has been deprived of his right to be an official of HADEP without fear of persecution by public authorities.
- Article 13 (right to an effective remedy): no effective remedies in respect of matters complained of.
- Article 14 (prohibition on discrimination): applicant detained and tortured because of his ethnic origin and affiliation to HADEP, since HADEP is perceived as the main political party for the Kurds and as a tool of the PKK.
- Article 18 (limitation on use or restrictions on rights): the Respondent State is seeking to restrict the applicant in the exercise of his rights and freedoms, beyond the purpose for which the restrictions in the Convention have been prescribed.
- Article 25 (now 34) (right of individual petition): applicant subjected to torture because he had assisted clients in bringing cases before the Commission.

The Court's decision:
The Court found that the applicant was not required to bring civil or administrative proceedings in order to exhaust his domestic remedies. As to the substance of the applicant's complaints, the Court declared inadmissible the applicant's complaints as to the lawfulness of his arrest, the failure of authorities to inform him about the reasons for his arrest and his right to freedom of expression and association, and alleged interference with the effective exercise of his individual application. The remainder of the application raised complex issues of law and fact and so could not be rejected as manifestly ill-founded. Case declared partially admissible.

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32446/96
by Abdülsamet YAMAN
against Turkey

The European Court of Human Rights (First Section) sitting on 14 December 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste,
Mr B. Zupančič ,*judges*,
Mr F. Gölcüklü, *ad hoc judge*

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 January 1996 by Abdülsamet Yaman against Turkey and registered on 30 July 1996 under file no. 32446/96;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 28 July 1997 and the observations in reply submitted by the applicant on 22 September 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, who was born in 1964, is a Turkish national and he is currently detained in the Konya Prison. He was the former provincial leader of the pro-Kurdish political party HADEP (People's Democracy Party) in Adana.

He is represented before the Court by Mr Jon Rud, a lawyer practising in Oslo (Norway).

The facts of the present case, as submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

The applicant states as follows.

On 3 July 1995 in the city of Adana, the applicant was put into a car and blindfolded by persons apparently working for the Security Directorate. In the car he was subjected to beating and threats such as "if you do not reply to our questions correctly, we will kill you...". He was driven around for quite some time and, still blindfolded, taken into a building, which he later understood to be the building of the Security Directorate.

In this building, the applicant was stripped naked and put under cold water. He was suspended by the arms onto pipes hanging from the ceiling and made to stand on a chair. Electric cables were attached onto his body, principally to his sexual organs. The chair was then pulled away and he was left in suspension while electric shocks were administered. From time to time the shocks were stopped and his testicles were squeezed. The applicant was interrogated about his work and his connections with the PKK. He was further questioned as to why he had assisted torture victims in appealing to the European Commission of Human Rights.

The applicant was detained in the Security Directorate building for a period of nine days and his family was not informed of his detention. The interrogation under torture continued during this period.

On 11 July 1995 the applicant was examined by the Forensic Medicine Institute's medical expert. The applicant states that, as a result of the torture, his left arm was not functioning, one of his ribs was broken and there were wounds on various parts of his body as a result of the hanging. The forensic medical expert's report stated the following: "On the right knee of the person and inside both wrists, 4 by 3 cm superficial crust wounds (scabs) were identified and the person described numbness in his left arm and a feeling of pain in the right of his chest."

The same day the applicant was brought before the public prosecutor and the Adana Magistrate's Court in Criminal Matters. Before the court, the applicant denied his statements that had been taken at the Security Directorate. The same day he was placed in detention on remand. On the way from the court to the prison he was beaten up by the policemen using rifle butts, boots and truncheons.

On 12 July 1995 the applicant was brought to the sick bay of the prison and examined by Dr. H.Ö., who advised him to obtain permission from the prison authorities to be transferred to a hospital for treatment.

On 12, 13 and 14 July 1995 the applicant requested permission for treatment at the hospital. He further requested the prison administration and the Public Prosecutor to provide a report from the Forensic Medicine Institute. However, no action was taken.

Furthermore, the prison administration did not permit the applicant to see a doctor from the Turkish Human Rights Foundation, who had come to the prison to determine the applicant's situation.

The Government submit as follows.

The Government maintain that the applicant was arrested on 3 July 1995 in connection with an operation conducted by the Adana Security Directorate against the PKK. The applicant's name had been given by the PKK's political supervisor for the Adana region. Among the documents seized during that operation, two were established by the forensic laboratory to have been hand-written by the applicant. The Government submit that the applicant was brought before the public prosecutor and the investigating judge on 11 July 1995. On the same day he was placed in detention on remand. According to the Government, it was established during the evaluation of the evidence that the applicant had personally participated in the preparation of the documents seized during the operation.

Following the Adana Public Prosecutor's decision of non-jurisdiction, the case-file was transferred to the Konya State Security Court Public Prosecutor, who commenced criminal proceedings against the applicant along with 27 defendants.

On 19 September 1995, in the first hearing before the Konya State Security Court, the applicant denied all the charges against him. He further refused his statement taken by the police alleging that it had been taken under torture. The applicant referred to the medical report prepared on 11 July 1995 by the Forensic Institute Adana Branch and claimed that these findings proved that he had been tortured.

In the meantime, on 20 January [July] 1995, the applicant filed a complaint with the Adana Public Prosecutor and alleged that he had been tortured while he was held in police custody. The Public Prosecutor took oral statements from the applicant and the two police officers H. S. and İ.Y., who had been working in the Anti-terrorism Branch of Adana Security Directorate at the time of the events. The two police officers denied the allegations and stated that the applicant had been interrogated in the light of the evidence before them. The public prosecutor also requested a copy of the prison doctor's registry concerning the applicant's medical examination. On 20 December 1995 the public prosecutor gave a decision of non-prosecution, as there was no sufficient evidence to file a criminal complaint against the police officers.

On 5 January 1998 the Government stated that in 1997 the Adana Public Prosecutor recommenced an investigation into the applicant's allegations about torture.

The applicant is currently detained in the Konya prison and the criminal proceedings against him are still pending before the Konya State Security Court.

B. Relevant domestic law and practice

Constitutional provisions:

Article 17 of the Turkish Constitution provides:

"...No one shall be subjected to torture or ill-treatment; no one shall be subjected to any penalty or treatment incompatible with human dignity...."

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 for damage caused by its own acts and measures."

Criminal law and procedure:

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture and Article 245 in respect of ill-treatment, inflicted by civil servants).

In general, in respect of criminal offences, complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the local 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 not to institute criminal proceedings.

Under section 128 of the Code of Criminal Procedure, an arrested person must be brought before a judge within twenty four hours or, where the offence has been committed by more than one person, within four days.

Section 30 of Law No. 3842 published on 1 December 1992 provided that, with regard to offences within the jurisdiction of the state security courts - including those mentioned in paragraph 29 above - any arrested person had to be brought before a judge within forty-eight hours at the latest, or, in the case of offences committed by more than one person, within fifteen days. In provinces where a state of emergency had been declared, these time-limits could be extended to four days and thirty days respectively (by Act No. 4229, which was promulgated on 6 March 1997 detentions periods have been amended).

A state of emergency was in force in the following provinces: Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Mardin, Siirt, Şırnak, Tunceli and Van.

Civil action for damages:

Under the Turkish Code of Obligations, anyone who suffers damage as a result of an illegal act or tort may bring a civil action seeking reparation for pecuniary damage (Articles 41-46) and non-pecuniary damage (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal court of the issue of the defendant's guilt (Article 53).

Section 1 of Law No. 466 on the payment of compensation to persons arrested or detained provides:

"Compensation shall be paid by the State in respect of all damage sustained by persons

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being released or detained in accordance with the law, are not subsequently committed for trial..., or are acquitted or discharged after standing trial;

or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only."

COMPLAINTS

The applicant complains of violations of Articles 3, 5, 6, 10, 11, 13, 14, 18 and 25 (now 34) of the Convention.

As to Article 3, the applicant alleges that during his detention which lasted nine days at the Security Directorate of Adana, he was physically and mentally subjected to torture. He claims that he was stripped naked and put under cold water. He further complains that he was suspended by the arms, given electric shocks and beaten during his interrogation. He states that his request to receive treatment for injury resulting from torture was rejected without any written reply or justification.

As to Article 5, the applicant alleges that he was unlawfully arrested and detained (para.1). He alleges that he was subjected to arrest and torture, because he had assisted torture victims in filing complaints with the Court. He also states that he was not informed of the reasons for his arrest or of any formal charges against him (para.2) and he was not permitted to take proceedings to determine the lawfulness of his detention (para.4). He further complains that nine days of police custody was not strictly required by the exigencies of the situation

(para. 3). The applicant also maintains that he was not granted the right to compensation (para. 5).

As to Article 6, the applicant complains that he has been deprived of his right to have his civil rights determined in a fair and public hearing. He also claims that because torture is systematically applied and condoned by the authorities, any claim that he might have for compensation is illusory. The applicant further maintains that the failure to investigate and bring criminal proceedings against those guilty of the torture also indicates that his civil claim will not receive a fair treatment by the courts.

As to Article 10, the applicant complains that he was arrested and detained in order to dissuade him from continuing his political activities, which included the oral and written dissemination of his party's (HADEP) political objectives.

As to Article 11, the applicant submits that another purpose of the treatment he was subjected to was to make him refrain from further activities of HADEP. He complains further that he has been deprived of his right to freedom of association, in this case the right to be an official of HADEP, without fear of persecution by public authorities.

As to Article 13, the applicant alleges that he has no effective remedies in respect of the matters complained of.

As to Article 14, he maintains that he was detained and tortured because of his ethnic origin and his affiliation to HADEP, since HADEP is perceived as the main political party for the Kurds and as a tool of the PKK.

As to Article 18, the applicant submits that the Respondent State is seeking to restrict him in the exercise of his rights and freedoms, beyond the purpose for which the restrictions in the Convention have been prescribed.

As to Article 25 (now 34), the applicant alleges that the torture to which he was subjected to was inflicted because he had assisted clients in bringing cases before the Commission.

PROCEDURE

The application was introduced on 3 January 1996 and registered on 30 July 1996.

On 6 March 1997 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 28 July 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 22 September 1997.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains of ill-treatment in police custody. He invokes Article 3 (prohibition of inhuman and degrading treatment), Article 5 (the right to liberty and security), Article 6 (the right of access to court), Article 10 (freedom of expression), Article 11 (the freedom of association), Article 13 (the right to an effective remedy), Article 14 (prohibition on discrimination) and Article 18 (the limitation on use of restrictions on rights) of the Convention.

Exhaustion of domestic remedies:

The Government maintain that the application is inadmissible as the applicant has failed to exhaust domestic remedies, within the meaning of Article 35 of the Convention. In this regard, they rely on the applicant's failure to avail himself of the various civil and administrative remedies in Turkish law.

As to Article 3 of the Convention

The Government assert that the applicant could have sought reparation for the harm he allegedly suffered by instituting a civil law action in the civil law or administrative courts. In order to demonstrate the effectiveness of the compensation proceedings before the civil courts, the Government refer to a decision of the Court of Cassation that they supplied to the Court.

The applicant replied that he should be considered as absolved from invoking any of the remedies referred to by the Government since these remedies cannot be regarded as effective in his situation.

As regards the civil and administrative remedies referred to by the Government, the Court points out that in the Oğur v. Turkey judgment of 20 May 1999, (Reports 1999- , no. .. , p. ..., § 66), it held that the applicant was not required to bring the civil and the administrative proceedings as those relied on by the Government in the instant case. It noted first of all that, a plaintiff in a civil action for redress, concerning damage sustained through illegal acts or patently unlawful conduct on the part of State agents had, in addition to establishing a casual link between the tort and the damage he had sustained, to identify the person believed to have committed the tort. In the instant case, however, those responsible for acts complained of by the applicant remained unknown.

Secondly, as regards the administrative-law action provided in Article 125 of the Constitution, the Court noted that this was a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification was not, by definition, a prerequisite to bringing such an action. However, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the state unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms in the Convention", requires by implication that there should be an effective official investigation. This obligation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading

treatment and punishment, despite its fundamental importance would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see Assenov v. Bulgaria, judgment of 28 October 1998, Reports, 1998-VIII, No. 96, p. 3290, § 102). The Court sees no reason to depart from those conclusions in the instant case and consequently it concludes that the applicant was not required to bring the civil and administrative proceedings suggested by the Government.

The Court considers, in the light of the foregoing, that the Government's preliminary objections in this respect cannot be upheld.

As to Article 5 of the Convention:

The Government point out to the pending criminal proceedings against the applicant before the Konya State Security Court. They maintain that if at the end of these proceedings the applicant is acquitted of the charges against him, he may request compensation using the procedure laid down in Law no. 466 for those who had been unlawfully deprived of their liberty.

The applicant contends that this remedy is ineffective and inadequate in his case because damages under the said law are only awarded in respect of detention where the case has been determined. The applicant maintains under Article 5 § 5 of the Convention that he has no right to compensation for the excessive length of his police custody as his detention was lawful according to domestic law.

The Court recalls that, in earlier cases based on similar facts, the Convention organs, as part of their consideration of the question whether the domestic remedies had been exhausted, noted that there was no adequate and effective means of testing the lawfulness of detention in police custody against Article 5 of the Convention in the proceedings before a State Security Court (Sakık and Others v. Turkey, judgment of 26 November 1997, Reports 1997-VII, p. 2626, § 60; Commission's Report of 23 May 1996, p. 2637, § 73).

The Court considers that this finding can be applied to the present case as at the material time the length of detention in police custody could be extended to 15 days by order of the prosecution in the proceedings before the State Security Courts. The length of detention in police custody being challenged by the applicant did not therefore exceed the maximum time-limit provided for in the domestic law. The Court notes that according to Law No. 466, cited by the Government, an action against the authorities can only be brought for damage suffered as a result of unlawful deprivation of liberty. Consequently, since the applicant's detention was neither unlawful nor unjustified under Turkish law, he has no right to compensation under the provisions of Law No. 466.

The Court considers, in the light of the foregoing, that the Government's submission that the applicant has failed to exhaust domestic remedies cannot be upheld.

As to the substance of the complaints:

1. The applicant alleges that during his police custody that lasted nine days at the Security Directorate of Adana, he was physically and mentally subjected to torture. He claims that he

was stripped naked and put under cold water. He further complains that he was suspended by the arms, given electric shocks and beaten during his interrogation. He states that his request to receive treatment for injury resulting from torture was rejected without any written reply or justification.

The Government state that the injuries that were observed on the applicant's body does not suffice to prove that the applicant had been tortured whilst he was in custody. They further submit that these allegations are insincere and is part of a scenario applied by the terrorist organisation to dishonour the active forces struggling against terrorism. Accordingly, the Government conclude that there exists no violation of Article 3 of the Convention.

The applicant maintains his account of events.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant firstly alleges under Article 5 of the Convention that he was unlawfully arrested. He further invokes that he was subjected to arrest because he had assisted torture victims in filing complaints with the Court.

The Government note that the applicant was arrested in connection with an operation, which was conducted by the Adana Security Directorate against the activities of the PKK. The applicant's name was given by the PKK.'s political supervisor for the Adana region. Among the documents seized during that operation, two were established by the forensic laboratory to have been hand-written by the applicant. Accordingly, the Government claim that they had reasonable suspicion to arrest the applicant.

The applicant does not reply to this point.

The Court recalls that reasonable suspicion as provided for in this provision of the Convention does not mean that the suspect's guilt must be established and proved at the time of the arrest (see, for example, Eur. Court H.R., Brogan and Others v. the United Kingdom judgment of 29 November 1988, Series A no. 145-B, p. 29, § 51).

The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see, inter alia, Eur. Court H.R., Murray v. the United Kingdom judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

However, for there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see Eur. Court H.R., Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

In the instant case, the applicant was placed in police custody on suspicion of involvement in the illegal activities of the PKK. Following his arrest, the applicant was brought before a judge within nine days, that is, within the time-limit laid down in Turkish legislation on the procedure to be followed in criminal proceedings before State Security Courts for offences carried out by persons acting in concert. The same day the applicant was placed in detention on remand and subsequently the Konya Public Prosecutor instituted criminal proceedings against the applicant for being involved in the activities of the PKK.

Accordingly, the Court considers that the applicant can be considered as having been arrested and detained on the basis of "reasonable suspicion" of having committed a criminal offence within the meaning of Article 5 § 1 (c) of the Convention. The Court further observes that the length of the applicant's detention in police custody did not exceed the maximum time-limit provided for in the domestic law.

In the light of the foregoing, this part of the application must be rejected for being manifestly ill-founded within the meaning of Article 35 of the Convention.

3. The applicant also maintains under Article 5 § 2 of the Convention that he was not informed of the reasons for his arrest or of any formal charges against him.

The Court notes that when the policemen arrested the applicant, he was questioned mainly about his link and suspected activities with the PKK. Therefore, the applicant was aware of the matter at least in broad terms. Bearing all this in mind, the Court finds that the facts of the case do not disclose any appearance of a violation of Article 5 § 2 of the Convention (*mutandis mutandis* No.8828/79, Dec. 5.10. 1982, D.R. 30 p. 93).

It follows that this part of the application must also be dismissed as being manifestly ill-founded within the meaning of Article 35 of the Convention.

4. The applicant also complains under Article 5 § 3 of the Convention that he was kept in police custody for nine days without being brought before a judge.

The respondent Government base their first objection on Article 15 of the Convention. They recall their derogation of 5 May 1992, with regard to the matters complained of under Article 5 of the Convention. They argue that it is absolutely essential that they derogate from the procedural guarantees governing the detention of persons belonging to terrorist armed groups and that, on the facts, it is impossible to provide court supervision in accordance with Article 5 of the Convention owing to the difficulties inherent in investigating and suppressing terrorist criminal activities.

The Government consider that the measures taken against the applicant are, in keeping with the national authorities' concern to fight terrorism, under the legislation pertaining to states of emergency. They observe in this respect that the applicant's arrest was based on the existence of reasonable grounds for suspecting him of having committed an offence.

As regards the length of the applicant's police custody, the Government observe that under Article 30 of Law No. 3842, persons arrested for an offence triable by the State Security Courts must be brought before a judge within 48 hours at the latest, but that this

period was increased to 15 days for collective offences, as was the case here, where the nature of the charges laid against the applicant require that he be detained for a longer time.

The Government thus consider that the custodial measure was ordered by a competent authority and was enforced by that authority in accordance with the requirements laid down by law. They conclude that, under domestic law, the national authorities did not in any way exceed the margin of appreciation accorded to governments under the Convention and that the measures in question were not in any way disproportionate.

The respondent Government finally point out that the custody periods were shortened by Law No. 4229 of 12 March 1997, which amended Law No. 2845. In this respect, they state that persons arrested for collective offences must be brought before a judge within 48 hours. This period can be prolonged up to four days by the written order of the public prosecutor owing to the difficulties in collecting evidence or to the number of perpetrators, or for similar causes. If the investigation is not concluded within this period, it can be prolonged for up to seven days upon the request of the public prosecutor and the decision of the judge.

The applicant disputes these arguments. He argues that the length of his detention in custody was excessive and unreasonable and contrary to the Convention and to the established case-law of the Convention organs. He refers in this regard to the judgment of the Court in the case of Sakık and Others v. Turkey (judgment of 26 November 1997, Reports 1997-VII) according to which detention in police custody which lasts more than four days without judicial control falls outside the strict time constraints as laid down by Article 5 § 3 of the Convention.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

5. The applicant maintains under Article 5 § 4 of the Convention that there are no remedies in domestic law to challenge the lawfulness of his detention in police custody. He affirms that the domestic law itself is contrary to the Convention.

The applicant further submits under Article 5 § 5 of the Convention that he has no right to compensation for the excessive length of his police custody as his detention was lawful according to domestic law.

The Government state that, in cases of illegal detention, a request for compensation can be submitted within three months following the final decision of the trial court under the terms of Law No. 466 on compensation payable to persons unlawfully arrested or detained.

They add that, since the applicant has failed to invoke Law No. 466, the application is manifestly ill-founded.

The applicant disputes the Government's arguments. He recalls that his complaint relates to the length of his police custody and its unlawful nature. He submits that a long period of custody by order of the Public Prosecutor is authorised under domestic law and accordingly there could be no claim for compensation in this respect.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

6. The applicant further alleges under Article 6 of the Convention that he has been deprived of his right to have his civil rights determined in a fair and public hearing. He also claims that because torture is systematically applied and condoned by the authorities, any claim that he might have for compensation is illusory. The applicant further maintains that the failure to investigate and bring criminal proceedings against those guilty of the torture also indicates that his civil claim will not receive a fair treatment by the courts. The applicant also complains under Article 13 that he has no effective remedies in respect of the matters complained of.

The Government maintain that there are several effective domestic remedies at the applicant's disposal. They argue that domestic criminal, civil and administrative laws provide the applicant with adequate means of redress in respect of his complaints.

The Court recalls that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect (see, for example, the Aydın v. Turkey judgment of 25 September 1997, Reports 1997 - VI, p. 1894, § 99). Furthermore, Article 6 § 1 applies to a civil claim for compensation in respect of ill-treatment allegedly committed by State officials (see, for example, the Aksoy judgment of 18 December 1996, Reports 1996-VI, no. 26, p. 2285, § 92).

In the instant case, the Court observes that the applicant has never instituted proceedings before either the civil or administrative courts to seek compensation in respect of the suffering to which he was subjected in custody.

It appears to the Court that the essence of the applicant's complaint under Article 6 § 1 of the Convention is the failure of the public prosecutor to conduct an effective investigation, which, if not giving rise to a prosecution, at the very least would prove that he had suffered harm while in custody, thus enhancing the prospects of success of his claim for compensation.

The Court recalls that in the case of Aksoy v. Turkey, cited above, it considered that since the applicant had not actually brought a civil claim for damage, it was more appropriate to examine this complaint in relation to the more general obligations on States under Article 13 to provide an effective remedy in respect of violations of the Convention. The Court, noting that the nature of the complaint under Article 6 § 1 of the Convention in the present case is comparable to the complaint in the Aksoy case, finds that there are no reasons to reach a different conclusion.

The Court considers therefore that it is appropriate to examine this complaint in relation to the general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

7. The applicant also submits that he was arrested and detained in order to dissuade him from continuing his political activities, which included the oral and written dissemination of the political objectives of his party (HADEP). He also maintains that another purpose of the treatment he was subjected to was to make him refrain from further activities of HADEP. He complains further that he has been deprived of his right to freedom of association, in this case the right to be an official of HADEP, without fear of persecution by public authorities. In this respect he invokes Articles 10 and 11 of the Convention.

The Court first notes that the applicant was arrested for collaborating with the PKK. It follows that he cannot be considered to have been ill-treated or detained merely for his opinions. In this respect, his complaint is therefore unsupported by the facts of the case.

Consequently, this part of the application is manifestly ill-founded within the meaning of Article 35 of the Convention.

8. As to Article 14, the applicant maintains that he was detained and tortured because of his ethnic origin and his affiliation to HADEP, since HADEP is perceived as the main political party for the Kurds and as a tool of the PKK. As to Article 18, he further submits that the Respondent State is seeking to restrict him in the exercise of his rights and freedoms, beyond the purpose for which the restrictions in the Convention have been prescribed.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

9. The applicant alleges that the torture to which he was subjected to was inflicted because he had assisted clients in bringing cases before the Commission. In this respect, he invokes Article 34 (former Article 25) of the Convention.

The Court notes that the applicant has not substantiated his complaint as regards an interference with his right of individual petition. Therefore, the Court considers that the applicant's complaints do not disclose any appearance of a violation of this provision.

It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES INADMISSIBLE the applicant's complaints as to the lawfulness of his arrest; the failure of authorities to inform him about the reasons of his arrest and his right to freedom of expression and association, and alleged interference with the effective exercise of his individual application.

DECLARES ADMISSIBLE, the remainder of the application.

Michael O'Boyle
Registrar

Josep Casadevall
President

Yavuz BINBAY v. Turkey
Application No. 24922/94

Declared admissible 3 February 2000

Issue:
Threats to life, detention and ill-treatment/Van/March 1992-August 1994

The applicant's allegations:
The applicant is a shopkeeper, a former president of the Van Branch of the Human Rights Association and a member of the National Management Committee of the Association. He complains of having suffered systematic and persistent persecution and intimidation at the hands of the authorities. On 21 March 1992, police officers attacked the applicant with their fists and truncheons and kicked him when he fell, causing him injuries to the chest and head. The injuries were life-threatening and required him to remain in hospital for nine days. Following his discharge from hospital, the applicant was remanded in custody and sent to prison. On the same day, 21 March 1992, police officers raided the applicant's shop premises, damaging and looting goods within it. The applicant was prosecuted for public order offences and although eventually acquitted, remained in prison for three and a half months, during which time he was tortured. On 30 August 1992, the applicant's car was damaged while parked opposite his house in Van. The applicant has been unjustifiably deprived of his liberty on three occasions - on 5 November 1993 he was taken into custody for two days, on 11 November 1993 he was taken into custody for one day and on 13 January 1994 he was taken into custody for a further two days. While in detention, the applicant was continually threatened and severe psychological pressure was applied to him. Following his release, the applicant received frequent threatening telephone calls in which he was told that he must leave Van or be killed. On 11 February 1994, he felt a sharp pain in his back while walking in the corridor outside his office. When he recovered consciousness he found himself in a lift-shaft suffering from numerous fractured bones. Following his discharge from hospital, he continued to receive telephone calls threatening him to the effect that although he had escaped on this occasion, he would not be able to do so next time.

The Government's response:
On 21 March 1992, illegal demonstrations were organised in Van which turned to violence. Buildings and properties were damaged and shops were looted. The applicant was leading the demonstrators and inciting them to violence. He took shelter in the People's Labour Party building. When he emerged from the building in order to talk to police, he was injured by stones which were thrown at him. The police had to rescue the applicant and take him to hospital where he was treated for nine days. On being discharged from hospital, the applicant was charged with organising an illegal demonstration. He was detained on remand and released from prison in mid-July 1992. On 4 March, 1994 the Diyarbakir State Security Court acquitted the applicant for lack of evidence. As to the lift-shaft incident of 11 February 1994, the Government draws attention to the fact that the police questioned the applicant on two occasions about this event but he refused to provide them with any information. Accordingly, the police were

unable to make any progress in their investigation. The Government dispute that the applicant was ever taken into custody on 5 and 11 November 1993. They acknowledge that the applicant was held in custody for one day on 13 January 1994 but state that he was not ill-treated.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 5, 6, 8, 10, 13, 14, 18 and Article 1 of Protocol No.1:

- Article 2 (right to life): with reference to two serious and life-threatening injuries which he suffered in two separate incidents, authorities failed to protect applicant's right to life and to identify and prosecute the culprits.
- Article 3 (prohibition on ill-treatment): applicant beaten on 21 March 1993, psychological ill-treatment while in detention on separate occasions in 1993 and 1994, injuries sustained in February 1994.
- Article 5 (right to liberty and security of person): applicant detained in police custody without justification on frequent occasions.
- Article 6 (right of access to a court): failure of authorities to take proceedings against those responsible for applicant's personal injuries and damage to his property makes it impossible for him to institute civil proceedings to obtain compensation.
- Article 8 (right to family life): effect of persistent threatening telephone calls.
- Article 10 (right to freedom of expression): climate of harassment has been deliberately intended to force applicant to refrain from exercise of his right to hold opinions and to receive and impart information.
- Article 13 (right to an effective remedy): no effective remedy in respect of above complaints.
- Article 14 (prohibition on discrimination): responsibility of authorities is engaged on account of fact that applicant is of Kurdish origin.
- Article 18 (prohibition on abuse of power): injuries and damage sustained by applicant are part of a State-authorised practice.
- Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions): damage caused to applicant's shop and car engages responsibility of authorities.

The Court's decision:
The Court found that the Government's objections as to the admissibility of the applicant's complaints, based upon alleged non-exhaustion and non-compliance with the six-month rule, could only properly be answered in the light of an examination of the merits of the various individual complaints. For this reason, the Court joined to the merits the Government's preliminary objections. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 24922/94
by Yavuz BİNBAY
against Turkey

The European Court of Human Rights (Second Section) sitting on 3 February 2000 as a Chamber composed of

Mr C.L. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr G. Bonello,
Mr P. Lorenzen,
Mr A.B. Baka, *judges*,
Mr F. Gölcüklü, *ad hoc judge*,

and Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 August 1994 by Yavuz Binbay against Turkey and registered on 18 August 1994 under file no. 24922/94;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 10 February 1997 and the observations in reply submitted by the applicant on 18 April 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1956 and living in Van.

He is represented before the Court by Mr Kevin Boyle and Ms Françoise Hampson, both law professors at the University of Essex, England.

A. Particular circumstances of the case

The facts of the case, as submitted by the parties, are disputed and may be summarised as follows.

The applicant

The applicant is a shopkeeper, a former president of the Van Branch of the Human Rights Association and a member of the National Management Committee of the Association.

On 21 March 1992, during the Newroz Festival, the applicant was present as an observer at the Peoples Labour Party ("HEP") building in Van in his capacity as an officer of the Human Rights Association. Incidents occurred during the festival involving the police which led to a curfew being imposed. As a result, many people were stranded inside the HEP building.

The applicant was anxious that the people inside, particularly the elderly and children, should be able to go home safely and went outside to speak to the police chief and governor. Someone shouted "Here comes Yavuz Binbay – kill him!". The applicant called out to the Deputy Chief of Police, whom he knew, to protect him, but the Deputy Chief did nothing. Police officers then attacked the applicant with their fists and truncheons and kicked him when he fell, causing him injuries to the chest and to the head. The injuries were life-threatening and required him to remain in hospital for nine days.

Following his discharge from hospital, the applicant was remanded in custody and sent to prison.

On the same day, 21 March 1992, police officers went to the applicant's shop premises in the Ozel Idare shopping arcade. The arcade watchman, Resat Yurdakil, was threatened and made to leave the area. Between 11.30 p.m. and 12 a.m. the applicant's shop was raided, the only shop out of 22 on the same floor to be raided, and electrical equipment and household consumer goods were damaged or stolen. On 23 March 1992 the applicant wrote to the Van first instance court requesting that an assessment be made of the damage to enable him to secure his rights. An assessment was carried out by an expert who estimated the loss at TRL 182,002, 000. The Van Directorate of Public Works and Housing wrote to the applicant on 23 September 1992 informing him that his application for compensation had been rejected. The applicant submitted a petition to the Van Administrative Court in which he maintained that his claim should be accepted since the authorities had failed to take sufficient measures to protect property on the day in question. The applicant states that the court rejected his claim.

The applicant states that he complained about the beating he received as well as the damage to his property, but was himself prosecuted for public order offences. He remained in prison for 3 1/2 months, during which time he was tortured. According to a report prepared by Maître William Bourdon, of the Fédération Internationale des Ligues des Droits de l'Homme, who observed the applicant's trial at the State Security Court at Diyarbakır on 5 and 7 July 1992, there were a number of serious violations of basic human rights standards in relation to the trial. Following Maître Bourdon's intervention, all the accused were released and the trial was adjourned *sine die*. The applicant was eventually acquitted on 4 March 1994 for lack of evidence.

On 30 August 1992 while the applicant was in Ankara for a National Executive Committee meeting of the Human Rights Association, his car was damaged while parked opposite his house in Van. Damage to the amount of TRL 9,500,000 was done to the car. A vehicle witness and damage assessment report was draw up by police officers on 31 August 1992. The applicant maintains that his applications concerning the damage to his car have received no response.

The applicant states that, despite being released, he continued to suffer persecution and intimidation at the hands of the Turkish Government. On 5 November 1993 he was taken into custody for two days. On 11 November 1993 he was taken into custody for one day. On 13 January 1994 he was taken into custody for two days. Although he was not physically tortured on these occasions, the applicant states that he was continually threatened and severe psychological pressure was applied to him.

In particular, on 13 January 1994 the applicant's family were told that he was not in custody and the authorities only admitted that he was in custody a day later. The applicant submits that this tactic was deliberately designed to terrify and intimidate the applicant's family. It was subsequently alleged that he was in custody because someone had made a statement about him and a case was brought against him in Diyarbakır.

The applicant and his family have for the past years received frequent threatening telephone calls. Offensive and abusive language is always used. The applicant is usually told that he must leave Van or be killed. His wife has developed a psychological disorder as a result of hearing such calls.

In late January 1994, while the applicant was in Ankara, two men describing themselves as policemen came to his shop, asked his employees about him and told them that they wanted to question him. When he returned to Van, the applicant applied on 1 February 1994 to the Public Prosecutor asking whether he was required to answer questions, but was given a written statement that he was not required to attend for further questioning. The applicant submits that this is a further example of systematic and persistent attempts by the authorities to persecute and intimidate him. From about 8 February 1994 onwards the threatening telephone calls increased to about 3 a day; on each occasion the applicant was told that he would be killed.

On 11 February 1994 the applicant had arranged to meet a friend, Cetin Zihrli, at his office. On his way to the meeting, the applicant became aware that two people were following him. On arrival at his friend's office, the applicant first looked out of the window, but could see nothing suspicious. He decided to check the corridor outside the office. While he was walking in the middle of the corridor he felt a sharp pain in his back. When he

recovered consciousness, he found himself in the lift-shaft. Although the applicant can remember that he did not turn or trip, he has no recollection as to how he fell into the lift-shaft.

The applicant suffered an undisplaced fracture of the first lumber vertebrae, a fracture of the left ischium and pubic ramus. He also suffered three fractures of the left distal radius.

While the applicant was in intensive care he was interviewed by members of the State anti-terrorist squad, who persistently asked him whether he recognised the people who pushed him, even though the applicant insisted that he could not remember. The applicant submits that in the circumstances it is highly likely that the Turkish Government or its agents caused or directed his fall into the lift-shaft; alternatively, the Turkish Government, which was taking a particular interest in the applicant, failed to take proper steps to protect him from such harm, or acquiesced in it.

Following his discharge from hospital the applicant has continued to receive telephone calls to the effect that he had escaped this time, but would not be able to next time. He still has broken bones in his hands, and his back pains are continuing. He has been unable to work since.

The Government

The Government, with reference to the events in Van on 21 March 1992, state that illegal demonstrations were organised on that day. Those demonstrations turned to violence and two police officers were killed, twenty-three persons including ten police officers were injured and severe damage was caused to buildings and property. Three hundred shops were looted.

The Government point to the fact that a member of the Administrative Board of HEP, Arif Acar, stated to the police when he was taken into custody that the applicant and HEP members were leading the demonstrators and inciting them to violence. Furthermore, in the applicant's statement taken on 26 March 1992 he described how damage resulted from the acts of aggression of the demonstrators.

The applicant and other demonstrators took shelter in the HEP headquarters. The crowds outside the building defied an official warning that a curfew would be imposed and continued to attack the police. The applicant emerged from the building to talk to the police. However he was injured when stones were thrown at him. The police had to rescue him and take him to hospital where he was treated for nine days. On being discharged from hospital the applicant was brought before a judge on 31 March 1992 and charged with, *inter alia*, organising the illegal demonstration. He was detained on remand and released from prison in mid-July 1992. On 4 March 1994 the Diyarbakır State Security Court acquitted the applicant for lack of evidence.

As to the lift-shaft incident of 11 February 1994, the Government draw attention to the fact that the police questioned the applicant on two occasions about this event but he refused to provide them with any information. Accordingly, the police were unable to make any progress in their investigation.

The Government dispute that the applicant was ever taken into custody on 5 and 11 November 1993. They acknowledge that the applicant was held in custody for one day on 13 January 1994 on the authorisation of the Office of the Public Prosecutor attached to Diyarbakır State Security Court. The Government state that the applicant was not ill-treated on that occasion. They aver that the applicant was brought before the Van Public Prosecutor, made a statement and was released from custody on 14 January 1994.

B. Relevant domestic law

The Turkish Criminal Code makes it a criminal offence:

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

(b) to issue threats (Article 191),

(c) to subject an individual to torture or ill-treatment (Articles 243 and 245).

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.

The public prosecutor is deprived of jurisdiction with regard to offences alleged against members of the security forces in the state of emergency region. Decree no. 285, Article 4 § 1, provides that all security forces under the command of the regional governor shall be subject, in respect of acts performed in the course of their duties, to the Law on the Prosecution of Civil Servants. Thus, any public prosecutor who receives a complaint alleging a criminal act by a member of the security forces must make a decision of non-jurisdiction and transfer the file to the Administrative Council. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court.

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."

The above provision is not subject to any restrictions even in a state of emergency or war. The second paragraph 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.

COMPLAINTS

The applicant complains under Article 2 of the Convention. He states with reference to the two serious and life-threatening injuries which he suffered in two separate incidents that the authorities failed to protect his right to life and to identify and prosecute the culprits.

The applicant also invokes Article 3 of the Convention in respect of the beating he received on 21 March 1992, the psychological ill-treatment he experienced while in detention on separate occasions in 1993 and 1994 and the injuries sustained in February 1994.

The applicant further relies on Article 5 § 1 of the Convention on account of the frequent occasions he was detained in police custody without justification.

In addition, the applicant invokes Article 6 of the Convention. He claims that the authorities failed to take proceedings against those responsible for his personal injuries and the damage to his property. This failure, he submits, makes it impossible for him to institute civil proceedings to obtain compensation.

Furthermore, the applicant refers to the effect which the persistent threatening telephone calls have on the enjoyment of his right to the respect for his home and family life, in breach of Article 8 of the Convention and maintains that the climate of harassment has been deliberately intended to force him to refrain from the exercise of his right to hold opinions and to receive and impart information, in contravention of Article 10 of the Convention.

The applicant states that he has no effective remedy in respect of the above complaints and is thus a victim of a breach of Article 13 of the Convention.

The applicant contends also that the damage caused to his shop and car engages the responsibility of the authorities under Article 1 of Protocol No. 1 to the Convention.

The applicant submits that that the responsibility of the authorities is also engaged under Article 14 separately and taken together with the above mentioned Articles of the Convention on account of the fact that he is of Kurdish origin.

In conclusion, the applicant relies on Article 18 of the Convention in support of his submission that the injuries and damage which he has sustained are part of a State-authorised practice.

PROCEDURE

The application was introduced on 11 August 1994 and registered on 18 August 1994.

On 2 September 1996 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 10 February 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 18 April 1997.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains under Articles 2, 3, 5, 6, 8, 10, 13 and Article 1 of Protocol No. 1 to the Convention as well as under Article 14 taken together with these Articles. He also invokes Article 18 of the Convention.

The Government's preliminary objections

1. *Non-exhaustion*

The Government state in reply that the applicant has failed to exhaust domestic remedies in respect of these complaints and on that account his application should be ruled inadmissible under Article 35 § 1 of the Convention.

The Government draw attention to the fact that the applicant never lodged a complaint with the public prosecutor that he had been ill-treated by the police on 21 March 1992. In fact the applicant owed his life to the police since it was they who transported him to hospital. Furthermore, when the applicant was questioned about the lift-shaft incident which occurred on 11 February 1994 he stated that he could not recall who was responsible and indicated that he had no complaint to make. He never filed a complaint with the public prosecutor in connection with this incident.

The Government further contend that it would have been open to the applicant to file a complaint under Article 547 of the Penal Code with the public prosecutor that his family were receiving threatening phone calls. He failed to do so.

The Government also state that in his petition of 23 March 1992 to the Van first instance court, the applicant requested an expert assessment report of the material damage he sustained to enable him to assert his rights to compensation. However, the applicant never took any steps thereafter to seek compensation. In the Government's submission the applicant, by his own admission, by-passed domestic administrative law proceedings and applied directly to the Commission in order to expedite the examination of his complaint. In these circumstances he must be taken to have failed to comply with the non-exhaustion rule in Article 35 § 1 of the Convention.

The applicant affirms that domestic remedies in south-east Turkey are ineffective. He states that on each occasion when he or his property had been attacked he tried to avail himself of domestic remedies, either by raising his complaint with the authorities or by seeking compensation. His attempts proved futile.

The applicant submits that he was in no position to file a complaint in respect of the assault carried out on him on 21 March 1992 since he was hospitalised for nine days and was then remanded in custody by the domestic court without any statement having been taken from him. He further maintains that on 9 April 1992 he lodged a complaint with the public prosecutor about the treatment which he suffered at the hands of the police. However he was

informed that on 28 April 1992 that the public prosecutor had declined jurisdiction. He states that in a statement to the police dated 26 March 1992 he declared that he had been attacked by police officers on the day in question and he repeated this assertion at his trial. However no follow-up was ever given to his complaint by the authorities despite the fact that the assault had been witnessed by several police officers on the day in question.

As to the further assault carried out on him on 11 February 1994, the applicant contends that the police questioned him twice about the incident when he was in an emergency ward in hospital. Since the police knew that he had been attacked it was incumbent on them to inform the public prosecutor of the crime and to initiate an investigation. Furthermore, the police made no effort to interview him when he had recovered from his injuries; nor did they take any measures to find possible witnesses to the incident. The applicant states that in view of this inactivity, and given the absence of any follow-up investigation into the assault on him by the police on 21 March 1992, any attempt on his part to invoke remedies would have been futile. In the applicant's submission, the attacks on his life are part of an orchestrated official campaign to eliminate prominent Kurdish figures active in the Human Rights Association or DEP/HADEP, a campaign which is characterised by the absence of any effective investigations into the victims' killings.

The applicant also repudiates the Government's claim that he did not follow up his application for compensation in respect of the damage caused to his property on 21 March 1992. He states that he applied to the Van Public Works and Housing Directorate on 21 July 1992 and then to the Van Administrative Court on the basis of the damages assessment report which he had obtained. Compensation was refused. Furthermore, his spouse made an official complaint concerning the damage to his car. However the authorities did not respond to the complaint. The applicant also refutes the Government's suggestion that he should have lodged an official complaint in respect of the threatening phone calls made to his home. In his opinion any such complaint would have proved worthless given that agents of the State were behind the calls and having regard to the lack of vigour with which the authorities had dealt with his other complaints.

2. *Six months*

The Government maintain that the applicant's complaints are time-barred under Article 35 § 1 of the Convention. They maintain than a period of more that six months elapsed from the date of the events giving rise to the application and the date of introduction of the application (11 August 1994). As regards certain complaints the time lapse was of the order of two to two and a half years.

The applicant concedes that, with the exception of the attack which took place on 11 February 1994 and the threatening phone calls, all other incidents occurred more than six months prior to the date of introduction of his application. However he submits that he is the victim of a pattern of events which engage the responsibility of the State or its officials, the recent event being the attack on his life on 11 February 1994. Having regard to the on-going and consistent nature of the acts directed against his life and personal security, the applicant maintains that time should be taken to run as of 11 February 1994. On that account it must be concluded that his application has been brought within the six month rule.

The Court's conclusion

The Court observes that the essence of the applicant's complaints is that he is the victim of a sustained campaign of intimidation and harassment which began with the alleged attack by police officers on his life on 21 March 1992 and which has continued up until the date of the introduction of the applicant's application on 11 August 1994. The applicant maintains that his application should not be defeated on either of the grounds advanced by the Government since the authorities of the respondent State are behind the separate attacks on his person and property, have unjustifiably deprived him of his liberty on three occasions and have failed to act on the complaints which he has lodged with them. The applicant highlights in particular the lack of any effective official investigation into the assault on his person which took place on 21 March 1992 and 11 February 1994 that the pursuit of domestic remedies to seek redress for his complaints would be futile.

In the Court's opinion, and having regard to the nature of the applicant's submissions, the Government's objections to the admissibility of the applicant's complaints can only be properly answered in the light of an examination of the merits of the various individual complaints. For this reason the Court joins to the merits the Government's preliminary objections.

Merits

1. The applicant asserts the facts of the case disclose a violation of his rights under Articles 2 and 3 of the Convention, which provide respectively:

Article 2:

"1. Everyone's right to life shall be protected by law."

Article 3:

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

The applicant does not dispute that the intervention of the Chief of Police probably saved his life on 21 March 1992. However he states that the Chief of Police intervened in order to stop the police from beating him further. In the applicant's submission, it is significant that the Chief of Police was later moved to a desk job in Ankara. The applicant also notes that there is a contradiction in the Government's account of the incident, namely if he were supposedly inciting the demonstrators to violence why should they attack him? He also draws attention to the fact that he was surrounded by police officers at the time which would have made it impossible for the demonstrators to assault him. The applicant maintains in addition that the police must have known the identity of his assailants. However they have never held anyone responsible for the attack.

The applicant states that no reliance can be placed on Arif Acar's statement since the latter subsequently retracted it and pleaded in court that the statement had been obtained under duress.

The applicant also maintains that the attack on his life on 11 February 1994 is the work of the authorities. He states that his conclusion is confirmed by the fact that the attack occurred after he had been detained on three occasions and repeatedly threatened over the telephone. In support of this allegation the applicant also relies on the confession of a certain Murat Demir on Turkish television that the latter had received an order to kill him. The applicant also finds it significant that members of the anti-terror squad came to the hospital to interview him. The applicant repeats his assertion that the authorities made no attempt to investigate the incident and that they have no intention of finding the culprits.

The Government reiterate their view that the police saved the applicant's life during the incident which occurred in Van on 21 March 1992. The applicant in fact confirmed this in his statement dated 26 March 1992. Furthermore, the applicant refused to provide the police with any information as to the circumstances surrounding the assault on him on 11 February 1994. In the Government's submission the applicant's lack of co-operation limited the possibilities for tracing his assailants.

For the above reasons the Government contend that the applicant's complaints under Articles 2 and 3 of the Convention are manifestly ill-founded.

2. The applicant invokes Article 5 of the Convention, which provides as relevant:

> "1. 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: ..."

The applicant states that Nazmi Gur, the Deputy Secretary General of the Human Rights Association in Ankara, was an eye witness to his detention on 5 and 11 November 1993. He further contends that his detention on 13 January 1994 was arbitrary. He states that on each occasion he was detained he was subjected to threats and psychological pressure.

The Government deny that the applicant was taken into custody on 5 and 11 November 1993 as alleged. On the one occasion when he was taken into custody in accordance with correct procedures, namely on 13 January 1994, he was released the following day without harm.

3. The applicant alleges that there has been a violation of Article 6 of the Convention, which provides as relevant:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ..."

In the applicant's submission the absence of any official investigation into the attacks on his life and property made it impossible to institute compensation proceedings and thus denied him access to a court.

The Government reiterate that the applicant never availed himself of domestic remedies in respect of his claims for pecuniary and non-pecuniary damage.

4. The applicant invokes Article 8 of the Convention which provides as relevant:

"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 applicant holds the authorities responsible for the threatening phone calls which he and his wife have received at their home.

The Government reiterate their view that the applicant failed to file a complaint under Article 547 of the Penal Code with the public prosecutor that his family were receiving threatening phone calls. Furthermore, they claim that the alleged harassment is the act of an individual which cannot be imputed to the State or its officials.

5. The applicant invokes Article 10 of the Convention, which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The applicant claims that the unlawful conduct of the authorities is intended to prevent him, a member of Human Rights Association, from expressing and imparting views, opinions, information and ideas.

The Government repudiate the applicant's assertions.

6. The applicant invokes Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The applicant states that the continuous nature of the attacks establish the absence of any effective remedies which would allow him to put an end to the pattern or have the perpetrators identified.

The Government refute this contention and refer to their arguments on the applicant's failure to exhaust effective domestic remedies.

7. The applicant invokes Article 14 of the Convention, which states:

> "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."

In the applicant's submission he is being targeted by the authorities on account of his position as a human rights activist and his political opinions as a Kurd. He maintains with reference to his complaints under Articles 2, 3 5, 6, 8, 10 and 13 of the Convention and Article 1 of Protocol No. 1 thereof that only persons of Kurdish origin are subjected to such violations of their Convention rights and that there is an administrative practice of violation of Article 14

The Government rejects these allegations.

8. The applicant complains that the acts of which he a victim establish a breach of Article 18 of the Convention, which reads:

> "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."

In the Government's submission the applicant's allegation are without any foundation.

9. The applicant relies on Article 1 of Protocol No. 1 to the Convention, which provides as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law...".

The applicant contends that his shop was the only one of twenty-two shops on the same floor and twenty-four on the lower floor which were damaged on the night of 21 March 1992 during the curfew and after the police had forced the night watchman to leave the vicinity. The applicant submits that his shop had been deliberately targeted by the police. Furthermore his car was deliberately damaged on 30 August 1993 and no follow-up has been given to his spouse's formal complaint.

The Government state that in his petition of 23 March 1992 to the Van first instance court, the applicant requested an expert assessment report of the damage he sustained to enable him to assert his rights to compensation. However, the applicant never took any steps thereafter to seek compensation. In the Government's submission the applicant by his own admission by-passed domestic administrative law proceedings and applied directly to the Commission in order to expedite consideration of his complaint. In these circumstances he

must be taken to have failed to comply with the non-exhaustion rule in Article 35 § 1 of the Convention.

The Government reject the applicant's claim that State officials deliberately damaged either his property or car. They contend that the applicant's shop, along with three hundred other shops, were looted or damaged by demonstrators in Van on 21 March 1992, not on the previous day as the applicant tried to maintain in his application. The exact date of the damage of the damage to his shop was in fact confirmed in the report prepared by the expert, Ibrahim Şahin. As to the damage caused to the applicant's car, the Government assert that there is no concrete evidence which links State officials to the incident and the absence of witnesses or other clues has prevented the authorities from finding those responsible for the damage.

The Court's conclusion on the above complaints

The Court considers, in the light of the parties' submissions, that the above-mentioned complaints 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. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, by a majority,

DECIDES TO JOIN TO THE MERITS the Government's preliminary objections;

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

Erik Fribergh
Registrar

Christos Rozakis
President

Ahmet DIZMAN v. Turkey
Application No. 27309/95

Declared admissible 18 January 2000

Issue:
Torture; cruel and inhuman treatment/Adana/October 1994

The applicant's allegations:
On 3 October 1994, Rehib Cabuk and Sefer Cerf were killed in Adana. They were respectively the district leader and administrative board member of HADEP (People's Democracy Party), a pro-Kurdish political party. The applicant was a witness to the killing and attended their funeral on 4 October 1994. On 5 October 1994, while the applicant was in the Erzurumlular Café in Adana, two persons who later identified themselves as policemen entered the café. Both had pistols tucked into their waistbands. The applicant believes that that they were from the anti-terrorism branch of the police. They told the applicant to come with them. He was put into a car in which two other armed police officers were waiting. The car drove in the direction of Kabaktepe and stopped in a deserted field. The applicant was taken out of the car. As soon as he got out, the police officers started to punch and kick him and beat him with the butts of their guns. The applicant sustained a broken jaw in the attack. The police officers told the applicant that they had seen him at the funeral the day before. They threatened that if he continued to be involved in such activities, his end would be like those of the dead HADEP members. They also forced him to report the activities of local shopkeepers who were allegedly selling the newspaper *Ozgur Ulke*. The applicant was threatened that if he did not regularly report the political activities of these shopkeepers, he would be killed. The applicant subsequently requested that criminal proceedings be initiated against the responsible police officers. He received no reply and is not aware of any proceedings having been initiated against the accused police officers.

The Government's response:
On 10 October 1994, an investigation was commenced into the applicant's allegations about ill-treatment. A medical report mentions only the applicant's broken left jawbone without finding any other visible signs of injury. This is not sufficient to conclude that the applicant has been beaten. Nevertheless, criminal proceedings were eventually initiated against the accused police officers in the Adana Criminal Court and, on 29 December 1997, the police officers were acquitted of the charges against them. In the meantime, the Adana Police Disciplinary Council initiated proceedings against the accused police officers. In a hearing before the Council, the police officers stated that they had questioned the applicant during a search conducted in the café and maintained that they had not taken him away for interrogation. On 7 December 1994, the Disciplinary Council held that it was not possible to sentence the accused police officers for the alleged offences on the basis of the evidence in the case file.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 5, 6, 13 and 14:

- Article 2 (right to life): threats made to applicant's life by agents of the State while he was arrested; lack of any effective system for ensuring protection of applicant's right to life.
- Article 3 (prohibition on ill-treatment): applicant was arrested and taken to a deserted place where he was subjected to inhuman and degrading treatment by plain-clothes police officers.
- Article 5 (right to liberty and security): applicant was arrested in circumstances that cannot be justified; applicant not given any reason for his arrest; arrest not lawful; no means of receiving compensation for his illegal arrest unless public prosecutor brings criminal proceedings against police officers responsible for treatment to which he was subjected.
- Article 6 (right of access to a court): applicant not allowed to initiate civil proceedings before an independent and impartial tribunal in absence of prosecution brought against persons responsible for treatment to which he was subjected.
- Article 13 (right to an effective remedy): lack of any independent national authority before which applicant's complaint can be brought with any prospect of a fair treatment or success.
- Article 14 (prohibition on discrimination): discrimination on grounds of ethnic origin and political activities, in the enjoyment of applicant's rights under Articles 2, 3, 5, and 6.

The Court's decision:
Regarding the exhaustion of domestic remedies, the Court found that the criminal proceedings referred to by the government terminated on 29 December 1997 with the final decision of the Adana Criminal Court. Further, the applicant was not required to bring civil or administrative proceedings. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 80

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27309/95
by Ahmet DİZMAN
against Turkey

The European Court of Human Rights (First Section) sitting on 18 January 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr R. Maruste, *judges*,

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 March 1995 by Ahmet Dizman against Turkey and registered on 12 May 1995 under file no. 27309/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 16 April 1996 and the observations in reply submitted by the applicant on 7 June 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1969 and living in Adana (Turkey).

He is represented before the Court by Professor Kevin Boyle and Ms Françoise Hampson, both university teachers at the University of Essex.

A. Particular circumstances of the case

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

The applicant gives the following account.

On 3 October 1994 Rehib Çabuk and Sefer Cerf were killed in Adana. They were respectively the district leader and administrative board member of HADEP (*Halkın Demokrasi Partisi- People's Democracy Party*), a pro-kurdish political party. The applicant was a witness to the killing and attended their funeral on 4 October 1994.

On 5 October 1994, at about 11 a.m., while the applicant was reading a newspaper in the Erzurumlular Café in the Mutlu neighbourhood in Adana, two persons, who later identified themselves as policemen, entered the café. Both had pistols tucked into their waistbands. The applicant believes that they were from the anti-terrorism branch of the police. They told the applicant to come with them. He was put in a white car (Renault-Toros model) with registration number 01 HC 644, parked opposite the café. In the car there were two other police officers, armed with MP-5 automatic weapons. The applicant's elder brother, who was also in the café, asked the police officers why they were taking his brother away. The police stated that they wished to ask him a few questions and would return him to the café.

The car drove in the direction of Kabaktepe and stopped in a deserted field. The applicant was taken out of the car. As soon as he got out, the police officers started to punch and kick him and to beat him with the butt of their guns. The police officers told the applicant that they had seen him at the funeral of Sefer Cerf and Rehib Çabuk the day before. They threatened him that if he continued to be involved in such activities, his end would be like those of the dead HADEP members.

The police officers questioned the applicant about some local people. They forced the applicant to report the activities of local shopkeepers, who were allegedly selling the newspaper "Özgür Ülke" and collecting money, presumably for the PKK. The applicant was threatened that if he did not report about the political activities of these shopkeepers regularly, he would be killed. During this time, he was continuously beaten by the officers.

The applicant denied that he was involved in such activities and protested that they had no reason to treat him like a criminal. He was then put into the car and driven towards the town. Before releasing him, the officers gave an address to the applicant and ordered him to be there on the following Friday evening.

When the applicant reached home, his relatives took him to the hospital.

In a report dated 7 October 1994, the Adana Forensic Medical Institution found that the applicant's left jawbone had been broken. The report concluded that the fracture did not constitute a danger to life but would prevent him from carrying out his work for twenty-five days.

On the same day the applicant filed a criminal complaint with the Adana Public Prosecutor and requested to initiate criminal proceedings against the responsible police officers. He gave a detailed account of the incident and described the features of the officers. He received no reply to his request and is not aware of any proceedings that may have been initiated against the accused police officers.

The Government submit the following.

On 10 October 1994 the Adana Public Prosecutor commenced an investigation into the applicant's allegations about ill-treatment. A medical report was issued on 7 October 1994 which mentions only the applicant's broken left jawbone without finding any other visible signs of injury or ecchymosis. The Government contend that it is not sufficient to conclude from this report that the applicant had been beaten. In this regard they draw attention to the fact that the applicant, despite a broken jaw, went to see a doctor two days after the incident, a fact which they find bewildering.

On 30 April 1999 the Government informed the Court that pursuant to the Act on the Procedure for the Prosecution of the Civil Servants, the public prosecutor declared lack of jurisdiction and transferred the case-file to the Adana Administrative Council. On 24 November 1994 the Adana Administrative Council found that there was not enough evidence to initiate criminal proceedings against the allegedly accused police officers and consequently refused to do so. The decision of the Adana Administrative Council was automatically transferred to the Supreme Administrative Council and, on 31 May 1996, the Supreme Administrative Council quashed the decision of the Administrative Council. Criminal proceedings were then initiated against the accused police officers in the Adana Criminal Court and, on 29 December 1997, the police officers were acquitted of the charges against them.

In the meantime, the Adana Police Disciplinary Council initiated proceedings against the accused police officers. In a hearing before the Council, the police officers stated that they had questioned the applicant during a search conducted in the café and maintained that they had not taken him away for interrogation. On 7 December 1994 the Disciplinary Council held that it was not possible to sentence the accused police officers for the alleged offence on the basis of the evidence in the case file.

B. Relevant domestic law and practice

Constitutional Provisions

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."

Criminal procedures

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture and Article 245 in respect of ill-treatment, inflicted by civil servants).

For criminal 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 within fifteen days of being notified (Article 165 of the Code of Criminal Procedure).

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 local council decisions may be appealed to the State Council; a refusal to prosecute is subject to an automatic appeal of this kind.

Civil and administrative procedures

Under Section 1 of Law no. 466, a person who has been wrongfully held in police custody may apply to the local assize court for compensation within three months of a decision to drop the charges against him.

Furthermore, any illegal act by a civil servant, whether a crime or a tort, which causes pecuniary or non-pecuniary damage may be subject of a claim for compensation before the ordinary civil courts.

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

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 5, 6, 13 and 14 of the Convention.

As to Article 2, the applicant complains that the threats made to his life by the agents of the state while he was arrested and the lack of any effective system for ensuring the protection of his right to life constitute a violation of the obligation to protect the right to life.

As to Article 3, the applicant alleges that he was arrested and taken to a deserted place, where he was subjected to inhuman and degrading treatment by plain-clothes police officers. In this respect, the applicant submits a medical report issued by the Adana Forensic Institute, which states that the applicant's left jaw-bone was broken and that his injuries would prevent him from work for twenty-five days.

As to Article 5, he alleges that he was arrested in circumstances that cannot be justified. He also asserts he was not given any reason for his arrest and maintains that his arrest was not lawful. He further alleges that he has no means of receiving compensation for his illegal arrest unless the public prosecutor brings criminal proceedings against the police officers responsible for the treatment to which he was subjected.

As to Article 6, the applicant further maintains that his right of access to a court was breached. In this respect, he submits that he was not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against the persons responsible for the treatment to which he was subjected.

As to Article 13, he complains of the lack of any independent national authority before which his complaint can be brought with any prospect of a fair treatment or success.

As to Article 14, the applicant complains of discrimination on the grounds of ethnic origin and political activities, in the enjoyment of his rights under Articles 2, 3, 5 and 6 of the Convention.

PROCEDURE

The application was introduced on 31 March 1995 and registered on 12 May 1995.

On 15 September 1995 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 16 April 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 7 June 1996, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant makes complaints in respect of his arrest, alleging, inter alia, that he was ill-treated. He invokes Article 2 (right to life), Article 3 (prohibition on inhuman and degrading treatment), Article 5 (right to liberty), Article 6 (right of access to court), Article 13 (right to effective national remedies for Convention breaches) and Article 14 (prohibition on discrimination).

Exhaustion of domestic remedies:

The Government maintain that the application is inadmissible as the applicant has failed to exhaust domestic remedies before lodging an application with the Court. In this regard, the Government first refer to the pending investigation of the public prosecutor about the applicant's allegations about ill-treatment. They further assert that the applicant could

have sought reparation for the harm he allegedly suffered by instituting a civil law action in the civil or administrative courts.

The applicant replies that the administrative and civil remedies suggested by the Government cannot be regarded as effective in his situation.

The Court observes that on 30 April 1999 the Government informed the Court that the Adana Public Prosecutor declared lack of jurisdiction and transferred the case-file to the Adana Administrative Council for investigation. The Government further stated that on 24 November 1994 the Adana Administrative Council issued a discontinuation order on the ground that the evidence in the case-file did not suffice to initiate criminal proceedings against the accused police officers. The Court was also informed that on 31 May 1996 the Supreme Administrative Court had quashed the decision of the Administrative Court and that criminal proceedings were initiated against the accused police officers in the Adana Criminal Court. The Court further found out that on 29 December 1997 the Adana Criminal Court had delivered its judgment and acquitted the police officers of the charges against them.

In these circumstances, the Court finds that the criminal proceedings that are referred to by the Government are terminated on 29 December 1997 with the final decision of the Adana Criminal Court.

As regards the civil and administrative remedies referred to by the Government, the Court points out that in its judgment of 20 May 1999 in the case of Oğur v. Turkey, it held that the applicant was not required to bring the civil and the administrative proceedings as those relied on by the Government in the instant case see (Oğur v. Turkey, judgment of 20 May 1999, § 69). It noted first of all that, a plaintiff in a civil action for redress. concerning damage sustained through illegal acts or patently unlawful conduct on the part of State agents had, in addition to establishing a casual link between the tort and the damage he had sustained, to identify the person believed to have committed the tort. In the instant case, however, those responsible for acts complained of by the applicant remained unknown.

Secondly, as regards the administrative-law action provided in Article 125 of the Constitution, the Court noted that this was a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification was not, by definition, a prerequisite to bringing such an action. Where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the state unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms in the Convention", requires by implication that there should be an effective official investigation. This obligation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see Assenov v. Bulgaria, judgment of 28 October 1998, Reports, 1998-VIII, No. 96, p. 3290, § 102). The Court sees no reason to depart from those conclusions in the instant case and consequently it concludes that the applicant was not required to bring the civil and administrative proceedings suggested by the Government.

The Court considers, in the light of the foregoing, that the Government's submission that the applicant has failed to exhaust domestic remedies cannot be upheld.

Merits:

1. The applicant submits under Article 2 of the Convention that the threats made to his life by the agents of the state while he was arrested and the lack of any effective system ensuring the protection of his right to life constitute a violation of Article 2 of the Convention. In their observations the Government did not comment on this complaint.

The applicant alleges under Article 3 of the Convention that he was arrested and taken to a deserted place, where he was subjected to inhuman and degrading treatment by plain-clothes police officers. In this respect, the applicant submits a medical report issued by the Adana Forensic Institute, which states that the applicant's left jaw-bone was broken and that his injuries would prevent him from working for twenty-five days.

The Government state that the injuries that were observed on the applicant's body did not suffice to conclude that the applicant had been beaten. In this regard they point out that the applicant, despite his broken jaw, had gone to see a medical doctor two days after the incident, which they find bewildering. They also state that the applicant's allegations were not accurate as the medical report mentions only the applicant's broken left jawbone without finding any other visible signs of injury or ecchymosis.

The applicant maintains his account of events.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant alleges under Article 5 of the Convention that he was arrested in circumstances that cannot be justified. He also asserts he was not given any reason for his arrest and maintains that his arrest was not lawful. He further alleges that he has no means of receiving compensation for his illegal arrest unless the public prosecutor brings criminal proceedings against the police officers responsible for the treatment to which he was subjected.

The Government do not comment on this complaint.

The applicant maintains his account of events.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

3. The applicant further maintains under Article 6 of the Convention that his right of access to a court was breached. In this respect, he submits that he was not allowed to initiate civil proceedings before an independent and impartial tribunal in the absence of prosecution brought against the persons responsible for the treatment to which he was subjected. The applicant further complains of lack of any independent national authority before which, his complaint can be brought with any prospect of a fair treatment or success. The applicant also complains under Article 13 that he has no effective remedies in respect of the matters complained of.

The Government further maintain that there are several effective domestic remedies at the applicant's disposal. They argue that domestic criminal, civil and administrative laws provide the applicant with adequate means of redress in respect of his complaints.

The Court recalls that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect (see, for example, the Aydın v. Turkey judgment of 25 September 1997, Reports 1997 - VI, p. 1894, § 99). Furthermore, Article 6 § 1 applies to a civil claim for compensation in respect of ill-treatment allegedly committed by State officials (see, for example, the Aksoy judgment of 18 December 1996, Reports 1996-VI, no. 26, p. 2285, § 92).

In the instant case, the Court observes that the applicant has never instituted proceedings before either the civil or administrative courts to seek compensation in respect of the suffering to which he was subjected to by the police officers.

It appears to the Court that the essence of the applicant's complaint under Article 6 § 1 of the Convention is the failure of the national authorities to conduct an effective investigation. The Court recalls that in the case of Aksoy v. Turkey, cited above, it considered that since the applicant had not actually brought a civil claim for damage, it was more appropriate to examine this complaint in relation to the more general obligations on States under Article 13 to provide an effective remedy in respect of violations of the Convention. The Court, noting that the nature of the complaint under Article 6 § 1 of the Convention in the present case is comparable to the complaint in the Aksoy case, finds that there are no reasons to reach a different conclusion.

The Court considers therefore that it is appropriate to examine this complaint in relation to the general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

4. The applicant alleges under Article 14 of the Convention of discrimination on the grounds of ethnic origin and political opinion, in the enjoyment of his rights under Articles 2, 3, 5 and 6 of the Convention.

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

The applicant maintains his account of events.

In the light of the Court's established case-law and the parties' submissions, the Court considers that this part of the application 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. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, by a majority,

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

Michael O'Boyle
Registrar

Elisabeth Palm
President

Beyaz MACIR v. Turkey
Application No. 28516/95

Declared admissible 28 March 2000

Issue:
Extra-judicial killing/Adana/December 1994

The applicant's allegations:
The applicant's husband, Haci Sait Macir, was a member of the provincial committee of HADEP (People's Democracy Party). He was also the owner of the Guneydogu Café in the Yuregir district of Adana. On 3 October 1994, the president of the provincial committee of HADEP, Rebih Cabuk, and a member of the same committee, Sefer Cerf, were shot dead in front of the Guneydogu Café. The applicant's husband witnessed these killings and was taken to the police station to give a statement. He was threatened by the police officers and was asked about his association with Rebih Cabuk and Sefer Cerf. After this event he was continuously subjected to police harassment. The police closed his café for three days without giving any grounds for the closure. On 5 October 1994, Ahmet Dizman, who was also at the Guneydogu Café at the time of the killings, was abducted from the Erzurumlular Café by plain-clothes policemen. He was taken to a deserted field and was subjected to a beating in which his jaw was broken. During this incident the police asked him if he knew Sait Macir. Ahmet Dizman's abductors told him that they would kill Sait Macir. On 30 December 1994, the applicant's husband was shot in front of the Guneydogu Café. He was taken to hospital where he died on 1 January 1995. As of 19 June 1996, the ongoing investigation had not yet resulted in the perpetrators being identified.

The Government's response:
There is no support for the applicant's contention that her husband has been killed by State agents. The prosecution authorities have conducted a meticulous preliminary criminal investigation and continue to do so.

The Complaints under the European Convention:
The applicant complains of violations of Articles 2, 3, 6, 8, 10 and 14:

- Article 2 (right to life): applicant's husband killed by undercover agents of State; lack of adequate protection for right to life.
- Article 3 (prohibition on ill-treatment): applicant subjected to discrimination on grounds of language and ethnic origin.
- Article 6 (right of access to a court): failure to initiate proceedings before an independent and impartial tribunal against those responsible for killing.
- Article 8 (right to family life): family life destroyed as a result of killing of applicant's spouse.
- Article 11 (freedom of association): applicant's husband killed because he was a member of HADEP party; life threatening policy of intimidation directed at members of HADEP and other organisations viewed to be pro-Kurdish.

- Article 13 (right to an effective remedy): no independent national authority before which applicant could bring her complaints with any prospect of success.
- Article 14 (prohibition on discrimination): in conjunction with Articles 2, 6 and 13 that there exists an administrative practice of discrimination based on race and ethnic origin; in conjunction with Article 2 on ground of discrimination based on political opinion.

The Court's decision:
The Court found that, in order to exhaust domestic remedies, the applicant was not required to file a criminal complaint herself as a criminal investigation into the killing of her husband had, in fact, been opened *ex officio*, on 2 January 1994. As regards the question whether this criminal investigation could be regarded as adequate and effective, the Court was of the opinion that this element will be considered in its examination of the merits of the case. For this reason, the Court joined to the merits the question concerning the effectiveness of the criminal investigation at issue. Regarding the substance of the applicant's complaints, the Court considered that, as the case raised complex issues of law and fact, it could not be rejected as manifestly ill-founded. Case declared admissible.

Decision 81

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28516/95
by Beyaz MACİR
against Turkey

The European Court of Human Rights (First Section), sitting on 28 March 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr B. Zupančič,
Mr T. Panţîru,
Mr R. Maruste, *judges*,
Mr F. Gölcüklü, ad hoc *judge*,
and Mr E. Fribergh, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 30 June 1995 and registered on 12 September 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Turkish citizen of Kurdish origin who resides in Adana, Turkey. She is represented before the Court by Professor Kevin Boyle and Ms. Francoise Hampson, both University teachers at the University of Essex, England.

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

A. Particular circumstances of the case

The applicant's husband, Hacı Sait Macir, was a former HEP (*Halkın Emek Partisi*-People's Labour Party) and DEP (*Demokrasi Partisi*-Democracy Party) delegate. At the material time he was a member of the provincial committee of HADEP (*Halkın Demokrasi Partisi*-People's Democracy Party) and was the president of the Mutlu neighbourhood commission. He was also the owner of the Güneydoğu cafe in Yüreğir district of Adana.

On 3 October 1994 the president of the provincial committee of HADEP, Rebih Çabuk and a member of the same committee, Sefer Cerf were shot dead in front of the Güneydoğu cafe. The applicant's husband witnessed these killings.

On the same day the applicant's husband was taken to the police station to give a statement. He stated that on 3 October 1994, at 9:00 a.m. he saw Sefer Cerf collapsed after he was shot and that he did not see the identity of the two gunmen who ran away immediately. The applicant alleges that his husband was taken to the police station under the impression to give a statement. However, he was threatened by the police officers and was asked about his association and friendship with Rebih Çabuk and Sefer Cerf. The applicant also alleges that her husband was continuously subjected to harassment after this event and that the police closed the Güneydoğu cafe for three days without giving any grounds for the closure.

On 5 October 1994, Ahmet Dizman, who was at the Güneydoğu Cafe at the time Rebih Çabuk and Sefer Cerf were killed and took Rebih Çabuk to the hospital in his car, was abducted from the Erzurumlular cafe by plain-clothes policemen. He was taken to a deserted field and was beaten as a result of which he sustained a broken jaw. During this incident the police asked him if he knew Sait Macir. His abductors told Ahmet Dizman that they would kill Sait Macir (Ahmet Dizmen has already introduced an application with the Commission No. 27309/95).

In a record of investigation into the killing of Rebih Çabuk and Sefer Cerf dated 10 October 1994, the applicant's husband appears among the witnesses who had given statements to the police.

On 30 December 1994 the applicant's husband was shot before the Güneydoğu cafe. He was taken to hospital where he died on 1 January 1995.

In a police report dated 30 December 1994 it is recorded that one empty cartridge of 38 calibre was found where the applicant's husband was shot. A sketch map of the crime scene was also attached to this document.

On 30 December 1994 two eyewitnesses Ahmet Sarıkaya and Bilal Ünver gave statements to the police. They stated that they drove the applicant's husband to the hospital and that they did not see the identity of the gunmen.

On 2 January 1995 the applicant was invited to the hospital in order to identify her husband's body. In the hospital the applicant gave a statement to the Adana public prosecutor Vahit Civelek. She stated that her husband had no enemies and that she did not know who could have killed him.

A preliminary autopsy on Sait Macir was carried out on 2 January 1995. It was concluded that he died as a result of gunshot wounds. Blood and organ samples were taken from the body for toxicological examination.

On the same day Mr Civelek requested the Adana Forensic Medicine Institution the final autopsy examination be conducted on Sait Macir.

By a letter dated 9 January 1995, with reference to the findings of the ballistic examination of 10 January 1995[1], the Adana Police Headquarters informed the office of the Adana public prosecutor that the perpetrators into the killing of Sait Macir were unidentified.

In a ballistic report of Criminal Police Laboratory of Adana dated 10 January 1995, it is recorded that one cartridge was submitted for ballistic examination in relation to the killing of Sait Macir. As to the findings of the examination, the report states that the examined cartridge was a Makarov type of 9 mm and 38 calibre. The cartridge bore no resemblance with any other cartridges from other incidents of unknown perpetrator killings examined previously by the laboratory.

On 17 January 1994 the Adana Forensic Medicine Institution concluded the toxicological examination. No alcohol or toxic material was found in the blood samples.

On 18 January 1995 the Adana public prosecutor Vahit Civelek issued a decision of lack of jurisdiction (*görevsizlik kararı*). The prosecutor decided that, having regard to the evidence in the case file, Sait Macir had been killed by the terrorists. The matter, therefore, would fall within the jurisdiction of Konya State Security Court (*Konya Devlet Güvenlik Mahkemesi*) pursuant to Law no. 3713. The prosecutor decided that the case file be transferred to the office of the public prosecutor in the Konya State Security Court.

On 24 January 1995 the Adana Forensic Medicine Institute (*Adana Adli Tıp Kurumu*) concluded the final autopsy report on Sait Macir. In this report it is recorded that Sait Macir had died as a result of gunshot wounds.

On 27 January 1995 the Konya State Security Court prosecutor issued a decision of lack of jurisdiction (*görevsizlik kararı*). The prosecutor stated that there existed no evidence to substantiate that Sait Macir had been killed by a terrorist organisation or for any ideological purposes. Therefore, the prosecutor decided to transfer the case file to the office of the Adana public prosecutor, as the matter did not fall within the jurisdiction of his office.

[1] The letter is dated 9 January 1995 although it refers to the ballistic examination of 10 January 1995.

By a letter of 22 February 1995 the Adana public prosecutor requested the Adana Police Headquarters to be kept informed of the developments in the investigation into the killing of the applicant's husband in every three months.

In a letter dated 20 July 1995 the Adana Police Headquarters informed the office of Adana public prosecutor that the investigation as to the killing of the applicant's husband was still ongoing and the perpetrators had not been identified.

On 15 February 1996 the Adana public prosecutor requested the Adana Police Headquarters to be kept informed of the developments in the investigation into the killing of the applicant's husband in every three months until the end of the statutory prescription period, namely 20 December 2014.

By a letter of 19 June 1996 the Adana public prosecutor requested the Adana Police Headquarters the presence of the two eyewitnesses, Ahmet Sarıkaya and Bilal Ünver before his office in the investigation of killing of Sait Macir.

On the same date the Adana public prosecutor requested the Adana Police Headquarters the recent developments in the investigation into the killing of the applicant's husband be submitted to his office and inquired whether the perpetrators had been identified.

B. Relevant domestic law and practice

i. Criminal law and procedures

The Turkish Criminal Code (*Türk Ceza Kanunu*), as regards unlawful killings, has provisions dealing with unintentional homicide (Articles 452 and 459), intentional homicide (Articles 448) and aggravated murder (Article 450).

Pursuant to Articles 151 and 153 of the Turkish Code of Criminal Procedure (*Türk Ceza Muhakemeleri Usulü Kanunu*; hereinafter referred to as "CCP"), complaints in respect of these offences may be lodged with the public prosecutor. The complaint may be made in writing or orally. In the latter case, such a complaint must be recorded in writing (Article 151 CCP). The public prosecutor and the police have a duty to investigate crimes reported to them (Article 153 CCP).

If there is evidence to suggest that a deceased has not died of natural causes, the police officers or other public officials who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152 CCP). Pursuant to Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the exercise of his duty shall be liable to imprisonment.

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP). The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the

public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

Insofar as a criminal complaint has been lodged, a complainant may file an appeal against the decision of the public prosecutor not to institute criminal proceedings. This appeal must be lodged within fifteen days after notification of this decision to the complainant (Article 165 CCP).

ii. Administrative liability

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

<Translation>

"All acts and decisions of the administration are subject to judicial review ...

...

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

This provision is not subject to any restriction even in a state of emergency or war. The second paragraph does not 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.

iii. Civil action for damages

Pursuant to Article 41 of the Civil Code, anyone who suffers damage as result of an illegal act or tort act may bring a civil action seeking reparation for pecuniary damage (Articles 41-46) and non-pecuniary damage. The civil courts are not bound by either the findings or the verdict of the criminal court of the issue of the defendant's guilt (Article 53).

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 8, 10 and 14 of the Convention.

The applicant complains under Article 2 of the Convention that her husband was killed by undercover agents of the State. She points out that her husband had been detained and threatened by the police on previous occasions and that her husband was the forth HADEP member to be killed in Adana in a period of three months with some indications of State involvement. She alleges that her husband was deprived of an adequate protection of his right to life.

The applicant complains under Article 3 of the Convention that she was subjected to discrimination on grounds of language and ethnic origin.

The applicant complains under Article 6 of the Convention that she was denied effective access to a court. She refers to the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the killing.

The applicant complains under Article 8 of the Convention that her family life was destroyed as a result of the killing of her spouse.

The applicant complains under Article 11 of the Convention that her spouse was killed because he was a member of the legal HADEP party. She alleges that there is a life threatening policy of intimidation directed at members of HADEP and other organisations viewed to be pro-Kurdish.

The applicant complains under Article 13 of the Convention that there existed no independent national authority before which she could bring her complaints with any prospect of success.

The applicant complains under Article 14 of the Convention in conjunction with Articles 2, 6 and 13 that there existed an administrative practice of discrimination based on race and ethnic origin.

The applicant complains under Article 14 of the Convention in conjunction with Article 2 on ground of discrimination based on political opinion.

THE LAW

The applicant complains of the killing of her husband. She invokes Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 6 (the right to access to court), Article 8 (right to respect for private and family life), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the Convention.

Exhaustion of domestic remedies

The Government submit that the applicant has not exhausted domestic remedies within the meaning of Article 35 of the Convention. The Government argue that an investigation has been opened in the course of which various investigative measures have been taken in order to identify the perpetrators. This investigation is still ongoing. According to the Government the applicant lodged an application with the Commission before waiting the results of this investigation.

The applicant rejects the Government's argument that her application should be dismissed for failure to exhaust domestic remedies. She maintains that the domestic remedies are not effective to properly investigate her husband's death. The criminal investigation conducted by the domestic authorities into the killing of her husband only constitutes a pro forma one. Although there was strong evidence to suggest that her husband has been killed by the agents of the State the domestic authorities have failed to take the necessary steps to identify the perpetrators.

The applicant points out that it would be unrealistic to await the result of the investigation until the prosecution of the offence at issue becomes statute-barred, namely 20 December 2014. As the investigation at issue cannot be regarded as actively pursued, the applicant argues that she should be exempted from pursuing further remedies for the purpose of Article 35 of the Convention.

The Court considers that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges applicants to use first the remedies referred that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (cf. Eur. Court HR, Yaşa v. Turkey judgment of 2 September 1998, *Reports 1998-VI, p. 2431§ 71*).

In the present case it appears that the criminal investigation into the killing of the applicant's husband has, in fact, been opened *ex officio* on 2 January 1994. Insofar as the applicant has failed to file a criminal complaint, the Court notes that, under Turkish law, it is not a condition *sine qua nom* for the opening of a criminal investigation of a suspected unlawful killing. The Court, therefore, is of the opinion that the applicant was not required to make a request to open a criminal investigation by filing a criminal complaint herself as this would not lead to any different result in this respect.

As regards the question whether this criminal investigation can be regarded as adequate and effective, the Court is of the opinion that this element is to be considered in its examination of the merits of the case.

As regards to merits

The Government submit that there is no support for the applicant's contention that her husband has been killed by the State agents. According to the Government, the prosecution authorities have conducted a meticulous preliminary criminal investigation and continue to do so. They submit that the present application is manifestly ill-founded within the meaning of Article 35 of the Convention.

The applicant refutes the Government's submissions and maintains her account of events. She submits that there existed strong evidence to substantiate that her husband had been killed by the agents of the State.

The Court 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 merits of the application as a whole. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

JOINS TO THE MERITS THE QUESTION CONCERNING THE EFFECTIVENESS OF THE CRIMINAL INVESTIGATION AT ISSUE,

and

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

Erik Fribergh
Registrar

Elisabeth Palm
President

APPENDIX A

THE EUROPEAN COURT OF HUMAN RIGHTS:

SYSTEM AND PROCEDURE

As from 1 November 1998, Protocol 11 to the European Convention on Human Rights abolished the former two-tier system of the European Commission and Court, and created a single full-time permanent Court. This note briefly summarises the main points of the new system in Strasbourg and sets out how a case will progress through the system.

The new system under Protocol 11

- There are no changes to the substantive human rights protected by the Convention (Articles 1-18).
- The amended Convention created a new Court functioning on a permanent basis (Article 19). One judge is elected by the Parliamentary Assembly for each state party, holds office for six years and may be re-elected (Article 23).
- The Court may establish Committees of three judges which will be able unanimously to declare cases inadmissible (Article 28). Chambers of seven judges will determine the remainder of the cases (Articles 27 & 29). The national judge will be an *ex officio* member of the chamber. There is no right of appeal from an admissibility decision.
- The pre-existing admissibility criteria have been retained (Article 35). The most important of these are the requirement to exhaust all available, effective domestic remedies and the requirement to lodge a case at the European Court within six months of the final decision of the domestic courts (or within six months of the incident complained of, if there are no effective domestic remedies).
- The President of the Court may permit any Convention state or "any person concerned" (including human rights organisations) to submit written comments or take part in hearings as a 'third party' (i.e. even if the organisation is not acting for the applicant).
- New rules of the Court were adopted on 4 November 1998. The rules specify the procedure and internal workings of the Court.

How a case is handled by the European Court of Human Rights

Lodging the application with the Court

- An application can initially lodged simply by letter. There is no Court fee.

Registration and examination of the case

- The Court will open a provisional file. A Court Registry lawyer will respond with an application form and a form of authority (which should be signed by the applicant and which authorises the lawyer to act on his/her behalf).

- The application form and form of authority should be completed and returned to the Court within six weeks. Copies of all relevant documents should be lodged at the Court with the application form.

- The application is registered on receipt of the completed application form. Following registration, all documents lodged with the Court are accessible to the public (unless the Court decides otherwise).

- Once registered, an application is assigned to a Judge Rapporteur (whose identity is not disclosed to the applicant) to consider admissibility.

- The Court (in Committees of three or Chambers of seven) may declare an application inadmissible or the application may be sent to the respondent Government for a reply.

Communication of a case

- If a case is sent to the Government, the Government will be asked to reply to specific questions (copies of which are sent to the applicant) within a stipulated time.

Legal Aid

- When a case is sent to the Government, the applicant is then invited to apply for legal aid. The assessment of the applicant's financial situation is carried out by the appropriate domestic body (in Turkey, this is usually the muhtar or the local municipal authorities). The Court will send an application for legal aid to the Government to comment on.

Government's Observations

- A copy of the Government's written Observations will be sent to the applicant. The applicant may submit further written Observations in reply (within a stipulated time).

Interim Measures

- In very urgent cases, where there is an imminent threat to life or of serious injury, the Court may ask the Government to take particular action or to stop from taking certain action. For example, 'interim measures' may be applied where an applicant is threatened with expulsion to a country where there is a danger of torture or death. In that situation, the Court may ask the Government not to deport the applicant whilst the case is pending at the European Court.

Decision on admissibility

- An application may be declared inadmissible by a Committee of three judges (if unanimous). The remainder of the cases are dealt with by a Chamber of seven judges.

- The Court may hold an oral hearing to decide admissibility, although this is now rare and usually only if the case raises difficult or new issues. An application may be declared admissible/inadmissible in part.

Friendly settlement

- The friendly settlement procedure provides the Government and the applicant with an opportunity to resolve the dispute. The Court will write to the parties asking for any proposals as to settlement. The case is struck off the Court's list of cases if settlement is agreed.

Consideration of the merits

- The parties are invited to lodge final written submissions (commonly referred to as the 'Memorial'). Details of any costs or compensation which are being claimed should either be included with the Memorial or should be submitted to the Court within two months of the admissibility decision (or other stipulated time).

- The Court now decides most cases without holding a hearing. However, if there is a hearing, it takes place in public (unless there are particular reasons for the hearing to be held in private). The hearings usually take no more than two hours in total. Applicants' representatives are usually given 30 minutes to make their initial oral arguments, followed by the same period for the government's representatives. If the Court asks questions of the parties there may be a 15-20 minute adjournment, then each party may have 15-20 minutes to answer questions and reply to the other side.

Judgment

- Most judgments are issued by chambers of seven judges, but the most significant cases will be heard by a Grand Chamber of 17 judges. The Court's judgment is published several months after any hearing or after the parties' final written submissions. The Court may reach a decision unanimously or by a majority. In either case, full reasons are provided in the judgment. Individual judges may also add their dissenting judgment to the majority judgment. Within three months of a chamber judgment, any party may ask for the case to be referred to the Grand Chamber of 17 judges for a final judgment. The request is considered by a panel of five judges from the Grand Chamber. Once final, judgments are legally binding on the Government (Article 46(1)).

- The Court's primary remedy is a declaration that there has been a violation of one or more Convention rights.

- The judgment may include an award for 'just satisfaction' under Article 41 (previously Article 50). This may include compensation for both pecuniary and non-pecuniary loss, legal costs and expenses. Awards for just satisfaction may be reserved in order for the Court to receive further submissions.

- The Court will not quash decisions of the domestic authorities or courts, strike down domestic legislation or otherwise require a Government to take particular measures.

- There is no provision in the Convention for costs to be awarded against an applicant.

Supervision of enforcement of Court judgments

- Judgments are sent to the Committee of Ministers which will review at regular intervals whether the Government has complied with it (Article 46(2)).

How long will the case take?

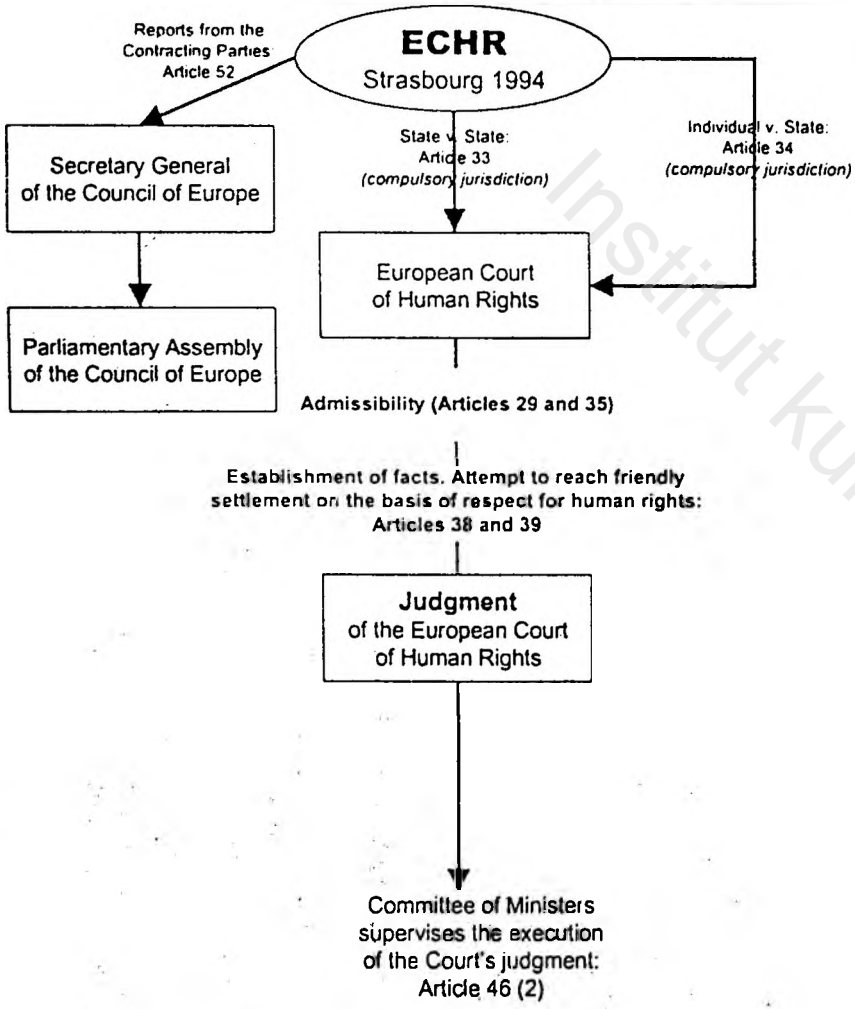
European Court cases are still taking several years to progress through the system. A case will be registered shortly after the application is lodged, but it may take more than a year for the Court even to decide whether to refer the case to the Government to reply.

Usually, it takes at least two to three years for admissibility decisions to be taken (unless there are clear reasons why the case should be declared inadmissible at the outset).

Where a case is declared admissible it is likely to take at least four to five years (from the initial introduction of the case) before the Court will produce a final judgment.

European Convention on Human Rights (ECHR)
Summary overview

New control mechanism



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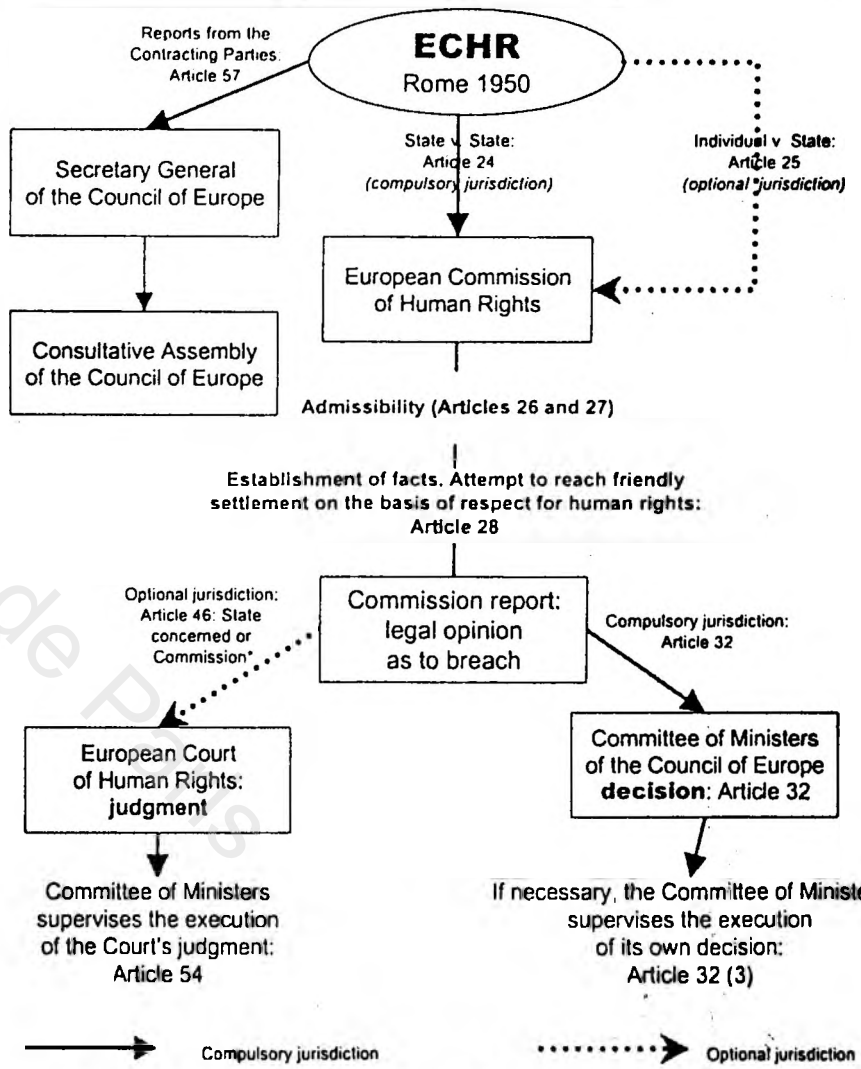

* Applicant with respect to State which ratified Protocol No 9

Concept and design P. Dziemczewski
Graphic Publications unit, Directorate of Human Rights

APPENDIX B

UPDATE ON KHRP CASES BEFORE THE EUROPEAN COMMISSION AND COURT OF HUMAN RIGHTS 8 June 1999 to March 2000

Cases dealt with from November 1998 were dealt with under the new system, introduced under Protocol 11 of the European Convention on Human Rights. The period from November 1998 until November 1999 was a transitional one: the Commission continued to deal with the cases which it had previously declared to be admissible, in order to transfer them to the Court before the Commission ceased to exist. All other cases, however, including all new applications, are now dealt with directly by the new Court. Most cases dealt with by the KHRP throughout 1999 and 2000 were originally initiated under the pre-Protocol 11 Commission and Court procedure. However, all new cases brought in 1999 and 2000 were introduced under the new system.

ADMISSIBILITY

Once an application has been brought before the European Court of Human Rights, the Court's first task is to declare whether the application meets the requirements as to admissibility contained in Articles 25, 26 and 27 of the European Convention. Once the complaint is submitted, it is assigned to a Rapporteur to decide on admissibility. The Rapporteur carries out an initial assessment upon which the Court makes its decision. The Court may send a summary of the allegations to the Government, inviting them to respond i.e. to *Communicate the Application.* This is an important stage at which most applications are rejected. The parties concerned are often invited to supply information or their *Observations* on admissibility and merits i.e. to *Communicate the Application* to which the other side can *Reply.* Both sides may offer further information and parties may be asked to submit observations at an oral hearing where they can be questioned. If the Court believes there is a case to answer, they declare the case 'admissible' and proceed to investigate the case itself. If a petition is rejected at this stage, the decision of the Court is final and there is no right of appeal against it.

This Report covers13 cases declared admissible during the period from June 1997 to March 2000.

INVESTIGATION HEARINGS ON THE MERITS

Once an application is declared admissible, the next task is to establish the facts. Further evidence is submitted on request, oral hearings are conducted and 'on the spot' investigations are carried out when witnesses and experts can be examined.

During the period January 1999 through March 2000, the Commission heard oral evidence on 4 separate occasions and in some 6 different cases. Investigation hearings were held on the following occasions:

February 1999, Ankara

A Delegation from the Commission heard evidence in the following case:
GUL v. Turkey: extra-judicial killing of the applicant's son by police officers.

June 1999, Ankara

A Delegation from the Commission heard evidence in the following cases:
ALTUN v. Turkey: destruction of the village of Akdorah, near Diyarbakir.
IKINCISOY v. Turkey: detention and subsequent disappearance of members of applicant's family.

September 1999, Ankara and Strasbourg

A Delegation from the Commission heard evidence in the following case:
AYDIN v. Turkey: extra-judicial killing of the applicant's husband.

October 1999, Ankara

A Delegation from the Commission heard evidence in the following cases:
AVSAR v. Turkey: extra-judicial killing of the applicant's brother by security forces.
ORHAN v. Turkey: destruction of the village of Adrok, near Diyarbakir and disappearance of applicant's brothers and son.

FRIENDLY SETTLEMENTS

Once an application had been referred to the Commission, Article 28(1)(c) of the European Convention also required that the Commission "place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention". Although friendly settlements are in the interests of the applicants, in that they offer them the certainty of obtaining compensation without the added trauma of a court hearing and of obtaining such compensation earlier than if they had had to wait for the Court's judgment, this practice has a negative side in that the defendant State also avoids public condemnation.

Regarding cases assisted by the KHRP, there were no friendly settlements reached between Turkey and the applicant between January 1999 and March 2000.

CASES STRUCK OUT OF THE LIST

According to former Article 30 para. 1 of the European Convention, "[t]he Commission may at any stage of the proceedings decide to strike a petition out of its list of cases where the circumstances lead to the conclusion that:

(a) the applicant does not intend to pursue his petition; or
(b) the matter has been resolved; or
(c) for any other reason established by the Commission, it is no longer justified to continue the examination of the petition.

However, the Commission shall continue the examination of a petition if respect for human rights as defined in this Convention so requires."

Article 37 gives these powers to the Court under the new Protocol 11 system.

For the period January 1999 to March 2000, the Commission and the Court did not strike any application assisted by the KHRP.

ARTICLE 31 REPORTS ON THE MERITS

In 1999, the Commission produced its final Article 31 Reports on the merits before the cases were referred to the Court under the old system. At this stage, the Commission was under an obligation to put itself at the disposal of the parties with a view to securing friendly settlement. Where a settlement was reached, the Commission drew up a brief report on the case, which was sent to the state concerned, the Committee of Ministers and the Secretary General of the Council of Europe for publication. Under the new system, the European Court continues to offer the 'friendly settlement' option to the parties.

If there was no settlement, the Commission drew up an Article 31 Report based on its findings in which it established the facts and expressed a legal opinion as to the question of violation(s) of the Convention. The Article 31 Report is a detailed and comprehensive

report that sets out the full history of the case, the testimony of witnesses and so on. Each member of the Commission had a vote and separate opinions were recorded. The report was sent only to the states involved and the Committee of Ministers. It remained confidential at this stage. The Commission and the respondent government then had a period of three months within which to refer the case to the Court. Shortly after referral the case became public. If this case was not referred to the Court, it was dealt with by the Committee of Ministers. Under the new system, the Court deals with the cases from start to finish. The judicial role of the Committee of Ministers has been abolished.

All KHRP cases in which an Article 31 Report has been adopted and published during 1999 and 2000 have been referred to the Court. Summaries of these cases, and the related Article 31 Reports, are set out below.

Timurtas v. Turkey ***(disappearance)***

This case concerned the disappearance of the applicant's son in August 1993. The applicant claims that his son was taken into detention by the authorities in the village of Yenikoy (Silopi district, Simak province, Southeast Turkey) at that time, and despite various sightings by third parties, he has not seen his son since. The Turkish government denies that the applicant's son was detained or apprehended. The applicant claims violations of Articles 2, 3, 5, 13, 14, 18 and 25 of the Convention.

In its report under Article 31 of the Convention, the Commission, in considering the facts before it, concluded that the applicant's allegation that his son had been detained was proved beyond reasonable doubt. It concluded that on 14 August 1993 Abdulvahap Timurtas was apprehended by gendarmes and taken to Silopi. At some stage after that, he was transferred to a place of detention in Simak. The Commission also examined the official investigation, carried out by the Turkish authorities at a domestic level, into the disappearance. It concluded that "the investigation carried out was dilatory, perfunctory and superficial and did not constitute a serious attempt to find out what, if anything, had happened to Abdulvahap Timurtas". Turning to the legal claims made by the applicant, the Commission concluded that there had been a violation of Article 5 of the Convention in relation to the unacknowledged detention and disappearance of Abdulvahap Timurtas, and a violation of Article 13, since the applicant did not have effective remedy available to him in respect of his complaints about the disappearance of his son. It also concluded that the applicant's rights under Article 3 had been infringed in view of the uncertainty and distress he had been subjected to as a result of the fate of his son and the government's failure to account satisfactorily for what had happened to him. The Commission also concluded that the government had fallen short of its obligations under Article 28(1)(a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts of the case.

The case was referred to the European Court in March 1999.

Kaya v. Turkey ***(torture; extra-judicial killing)***

The applicant in this case alleges that his brother, Dr. Hasan Kaya was kidnapped, tortured and killed by or with the connivance of State agents and that there was no effective investigation, redress or remedy for his complaints, with resulting breaches of Articles 2, 3, 6, 13 and 14 of the Convention. On 21 February 1993, Hasan Kaya, a member of the Human Rights Association of Turkey, and his friend Metin Can, a lawyer and president of the Human Rights Association in Elazig, left for a meeting with several unidentified individuals. The two men were not seen again by their families, but on 27 February 1993 their bodies were discovered under a bridge outside Tunceli, Southeast Turkey. They had been killed with a single shot to the back of the head. Their hands were tied behind their backs.

In its Article 31 report, the Commission recorded that it had found incontrovertible evidence to the effect that Hasan Kaya suffered injuries prior to his death, and that during his captivity his feet were exposed to snow or water for a significant period of time. The Commission examined oral and written evidence, including the Susurluk report, sections of which were published in 1998 at the request of the Turkish Prime Minister. The report contains findings of an investigation into a car accident in Susurluk, western Turkey, in November 1996. The passengers in the car were high level government officials actively involved in combating the Kurdistan Workers' Party, a former police chief, and a person wanted internationally for political murder and narcotics smuggling, who was carrying a Turkish passport, for use by State officials only, made out in his name, and large amounts of cash. The report looks into allegations of collaboration between the State security forces and organised crime. The Commission found that the legal structures in the Southeast of Turkey in 1993 operated in such a manner that security force personnel and others acting under their control or with their acquiescence were often unaccountable for their actions. The Commission considered "that this situation was incompatible with the rule of law which should apply in a democratic state respecting fundamental human rights and freedoms". In view of this, and the defects in the investigative procedures carried out into the kidnapping and killing, there was a failure on the part of the State to protect Dr. Kaya's right to life.

The Commission concluded that Articles 2, 3 and 13 of the Convention had been breached.

The case was referred to the European Court in March 1999.

Ersoz and others v. Turkey ***(freedom of expression)***

This case concerns a pattern of violence, murder, disappearances, abductions, threats, confiscation, seizures and threatened and actual prosecutions levelled at the pro-Kurdish newspaper *Ozgur Gundem* and its successor, *Ozgur Ulke*, and those involved in the production of the papers. The applicants, who were the owners, editor-in-chief and

assistant editor-in-chief, alleged breaches of Articles 10 and 14 of the Convention and Article 1 of Protocol 1 to the Convention.

The Commission, in its Article 31 report, concluded that there had been a breach of Article 10 of the Convention. It examined allegations of attacks on persons working in some capacity for *Ozgur Gundem*, including killings, arson attacks, threats and various kinds of violence. It held that "the dangerous situation in which the newspaper and its staff carried out their activities must have made it clear to the authorities that the freedom of expression of the newspaper, its owners and journalists was seriously threatened and imposed on them an obligation to take reasonable measures of protection in order to prevent, as far as possible, that the freedom was interfered with by violence and threats". The State failed to take measures of protection and adequate investigations in relation to the apparent pattern of attacks. The Commission examined other allegations, including an incident in December 1993 when the police confiscated all the administrative documents, archives and library facilities at the newspaper's offices in Istanbul, and took all the employees – over 100 people – into custody. The Commission had doubts about the legality of the arrests, and reported that it seemed "doubtful whether a large-scale action of that kind could be considered in its entirety to involve a legitimate purpose under" restrictions allowed by Article 10. Finally, the Commission examined a large number of the prosecutions brought in respect of articles appearing in the paper. It concluded, in several cases, that the convictions and punishments meted out were unjustified under limitations to Article 10.

The case was referred to the European Court in March 1999.

Kilic v. Turkey ***(extra-judicial killing; freedom of expression)***

In this case, the applicant alleges that his brother, Kemal Kilic, a journalist with the pro-Kurdish newspaper *Ozgur Gundem*, was killed by or with the connivance of agents of the Turkish state, at an incident near Sanliurfa, Southeast Turkey, in February 1993. He complains of breaches of Articles 2, 3, 10, 13 and 14 of the Convention.

On examining the evidence, including the Susurluk report referred to above, the Commission concluded that by February 1993 it was known to the authorities in Sanliurfa that *Ozgur Gundem* and persons associated with the publication considered that they were under harassment and threat of attack, and that the claims made by *Ozgur Gundem* at this time as regards attacks and incidents and the existence of a risk to personnel linked to the newspaper had a factual foundation.

Accordingly, the Commission found breaches of Articles 2 and 13 of the Convention. More particularly, it held that "on the facts of this case, which disclose a lack of effective guarantees against unlawful conduct by State agents, ... the State, through their failure to take investigative measures or otherwise respond to the concerns of Kemal Kilic about the apparent pattern of attacks on persons connected with *Ozgur Gundem*, and through

the defects in the investigative and judicial procedures carried through after his death, did not comply with their positive obligation to protect Kemal Kilic's rights to life".

The case was referred to the European Court in March 1999.

Ertak v. Turkey ***(disappearance)***

This case concerns the disappearance of the applicant's son, Mehmet Ertak, following a security operation in Sirnak, Southeast Turkey, in August 1992. Despite claims from a number of individuals who had seen Mehmet Ertak in custody, the security forces denied that he was in custody. Mehmet Ertak has not been seen since. The applicant complains of a breach of Article 2 of the Convention.

The Commission, having taken oral and written evidence, concluded in its Article 31 Report that there had been a breach of Article 2 of the Convention, on two grounds. The Commission gave great weight to the evidence of a lawyer who had been in the same cell as Mehmet Ertak for several days. He testified to the effect that individuals in detention had been subjected to torture: they were stripped naked, hung up, severely beaten and hosed with cold water. Mehmet Ertak was subjected to this treatment. After several hours, he was brought back into the cell and he appeared to be dead. Two minutes later he was dragged out of his cell by his legs. On the basis of this evidence, the Commission held that it had been established beyond all reasonable doubt that Mehmet Ertak's death had been caused by agents of the State, some time after his arrest, as a result of treatment for which the State was responsible. In addition, the lack of an effective and adequate investigation into the circumstances of Mehmet Ertak's disappearance gave rise to a breach of Article 2.

The case was referred to the Court in March 1999.

Salman v. Turkey ***(extra-judicial killing)***

This case was commenced in 1993 in respect of the death of the applicant's husband in Adana, Southeast Turkey, in April 1992. Agit Salman was arrested in April 1992 and taken to Adana Security Directorate. Twenty-four hours later he was dead. The applicant claims that this was as a result of torture inflicted on him while he was in detention. Mrs. Salman's case, invoking Articles 2, 3, 6, 13 and 18 of the European Convention, was declared admissible in February 1995.

The Commission examined oral and written evidence in the case before preparing its Article 31 Report.

When referring to the oral and written statements of the officers who arrested Mr. Salman, the Commission noted that "the oral and written accounts are ... strikingly contradictory and appear to the Commission to have been made with a view to presenting

a particular story to a particular audience". The Commission also found that the officers, when commenting on the general medical condition of Mr. Salman during his time in detention, "have exaggerated events in light of hindsight". The Commission examined contradictory medical evidence obtained after the death of Mr. Salman, and was satisfied, beyond reasonable doubt, that Agit Salman was questioned during the period of his detention and suffered physical ill-treatment of serious degree prior to his death. The Commission accordingly found that there had been a breach of Article 2 of the Convention, on the ground that Agit Salman was deprived of his life as a result of ill-treatment occurring during his detention, for which no justification had been established. Article 2 was also breached on the ground that there was a failure to provide a proper investigation into the circumstances of his death. Further, the Commission found breaches of Article 3, on the basis of the ill-treatment inflicted upon Mr. Salman, Article 13, on the ground that the applicant was denied an effective remedy in respect of the death of her husband, and former Article 25, on the ground that the applicant had been subjected to pressure from the authorities in respect of her claim under the European Convention.

The case was referred to the Court in June 1999.

Akkoc v. Turkey ***(extra-judicial killing and freedom of expression)***

This case concerns the punishment of the applicant as a result of statements she made to a newspaper, the killing of the applicant's husband, Zubeyir Akkoc, in Diyarbakir in January 1993, and the torture of the applicant at the Diyarbakir police station in February 1994. The applicant complained to the European Commission of Human Rights in November 1993 and in March 1994.

The Commission's Article 31 Report came to the following conclusions:

The Commission found a breach of Article 10, on the grounds that the applicant had been blocked from receiving promotion by a disciplinary committee after she had made a statement to a newspaper alleging that some teachers were verbally abused, harassed and in some cases physically assaulted by police. Such a restriction on freedom of expression was not "necessary in a democratic society" for any of the legitimate aims set out in Article 10(2) of the Convention. The Commission found a breach of Article 2 in respect of the killing of the applicant's husband, firstly on the grounds that he fell into a category of people who were at risk from unlawful violence from State officials or those acting on their behalf or with their connivance or acquiescence, and that he did not enjoy the guarantees of protection required by law in respect of this risk, and secondly on the ground that there was a failure to provide an adequate and effective investigation into the circumstances of his death. The Commission found a breach of Article 13 in the light of the inadequacy of the investigation into Zubeyir Akkoc's death. A violation of Article 3 of the Convention was found, the Commission concluding that the applicant suffered serious ill-treatment during her period in custody in February 1994. Finally, the

Commission found that questioning of the applicant by the authorities in relation to her complaint to Strasbourg constituted a breach of former Article 25 of the Convention.

This case was referred to the European Court in September 1999.

Ilhan v. Turkey ***(torture)***

This case concerns ill-treatment suffered by the applicant's brother, Abdullatif Ilhan, in Aytepe village, Mardin province, Southeast Turkey in December 1992. Soldiers came to the village and beat up Abdullatif Ilhan, kicking him and hitting him on the side of his head with a rifle butt. He lost consciousness and was put into a stream to revive him. The temperature was freezing and he subsequently had difficulty walking. After two days, Mr. Ilhan was taken to hospital. In February 1993, Abdullhatif Ilhan was prosecuted for resisting arrest. The people responsible for injuring him were not prosecuted. As a result of his injuries, Abdullhatif Ilhan still suffers from physical infirmity. The applicant therefore complained on his brother's behalf to the European Commission in June 1993.

In its Article 31 Report, the Commission found that there had been a breach of Article 2, on the basis of the injuries inflicted on Mr. Ilhan, the delay in sending him to a hospital, and the lack of an effective investigation into the circumstances of his injuries. The Commission also found a violation of Article 3 on the basis of the ill-treatment suffered at the hands of the soldiers and the inadequate investigation into Mr. Ilhan's treatment. Finally, the Commission found a breach of Article 13 in the light of the defective investigation carried out in Turkey.

The case was referred to the Court in September 1999.

Gul v. Turkey ***(extra-judicial killing)***

This case, also referred to in the investigation hearing's section above, concerns the shooting of the applicant's son, Mehmet Gul, by members of the security forces in Bozova, near Sanliurfa, Southeast Turkey, in March 1993.

In the early hours of 8 March 1993, there was a knock at the door of the apartment where Mehmet Gul lived with his family. According to the applicant, Mr. Gul went to answer the door, but before he could reach it shots were fired through the door by the security personnel waiting outside. Mr. Gul died as a result of the shooting. The Turkish government claims that before the security forces opened fire, the door of the apartment had been opened and shots fired. They therefore returned fire in self-defence. The government also claims that weapons had been found in Mr. Gul's apartment after the killing: the applicant and the victim's family claimed that these weapons had been planted. A complaint by the applicant's family was finally dismissed by the Turkish court, which decided not to prosecute the officers involved in the shooting.

The applicant alleged breaches of Articles 2, 6 and 13. The application was declared admissible in April 1995.

The European Commission's Article 31 Report made the following preliminary findings:

The government's evidence that a shot had been fired from the apartment before the security forces opened fire was unconvincing. The Turkish state was therefore responsible for a breach of Article 2 of the Convention, on the grounds that the force used by the state in shooting at the door was disproportionate and therefore unjustified. In addition, the Commission found a breach of Article 2 in view of the inadequacy of the investigation into the circumstances of the killing.

The Commission found a breach of Article 13, in view of the inadequate investigation into Mr. Gul's death. In coming to this conclusion, the Commission referred to over 50 cases previously examined by it which concern allegations of serious human rights violations occurring in Southeast Turkey, all of which involved complaints that the applicants were deprived of an effective remedy. In a number of cases, violations of Article 13 have been disclosed. The Commission commented that "these cases have disclosed that investigations into death or alleged ill-treatment involving the security forces or police have frequently been superficial and inadequate, undermined by failures to seek evidence or witnesses, flawed forensic and medical examinations and a reluctance to pursue any lines of enquiry into any alleged wrongdoing by members of the security forces or police force."

The case was referred to the Court in October 1999.

Tas v. Turkey ***(disappearance)***

This case relates to the disappearance of the applicant's son, Muhsin Tas, in October 1993. On 14 October 1993, Mr. Tas was treated in hospital in Cizre, Southeast Turkey, for injuries to his knee. The following day, his detention was ordered by the authorities. Despite regular visits to the police, gendarmerie and public prosecutors during the following months, the applicant received no information about his son. In mid-November 1993, the applicant was told by the public prosecutor that his son had been taken into the mountains where he had escaped. Mr. Tas has not been seen since. The government alleged that Mr. Tas had been taken into the mountains by the security forces in the afternoon of 9 November 1993 in order to identify hideouts used by the PKK. The team was attacked by the PKK and in the ensuing commotion Mr. Tas escaped. The government also referred to a decision of the administrative council in 1997 to terminate the investigation into the complaints of the applicant.

The applicant complained to the European Commission in June 1994, alleging breaches of Articles 2, 3, 5, 13, 14 and 18. The complaint was declared admissible in March 1996.

The European Commission heard evidence in May 1998, and produced its report on the case in September 1999. In its assessment of the evidence, the Commission concluded that the government's assertion that Mr. Tas had escaped in the mountains could not be established as a fact or significant probability, given the lack of credibility of the witnesses and the evidence on this point. Accordingly, the Commission found breaches of the Convention on the following grounds:

Article 2 had been breached in that there was sufficient circumstantial evidence to conclude, beyond reasonable doubt, that Mr. Tas had died. Since his death occurred after his detention by the security forces, and in the absence of any justifying explanation for his loss of life, the government must be regarded as liable for his death. In addition, the failure to make a thorough and effective investigation into the circumstances of Mr. Tas's death gave rise to a breach of Article 2.

While there was insufficient evidence to prove that Mr. Tas had been subjected to inhuman and degrading treatment himself, the Commission found that the applicant's inability to discover what had happened to his son amounted to inhuman and degrading treatment in breach of Article 3.

The unexplained disappearance of Mr. Tas, the lack of records concerning his detention and the failure to conduct a prompt and effective investigation into his alleged disappearance gave rise to "a particularly serious violation" of the right to liberty and security of the person under Article 5.

The Commission found that in view of the inadequacies of the investigation into the applicant's allegations, in particular the failure of the public prosecutor to act promptly, and the lack of independence of the administrative council decision, which failed thoroughly or effectively to pursue the enquiries made regarding the security force personnel involved in the alleged escape of November 1993, there had been a breach of Article 5.

On the facts, the Commission found that violations of Articles 14 and 18 of the Convention had not been established.

The case was referred to the Court in October 1999.

Sarli v. Turkey *(disappearance)*

This case concerns the disappearance of the applicant's children, Ramazan and Cemile, following their detention in the village of Ulusoy in the Tatvan district of Southeast Turkey in December 1993. The applicant alleges that her children were taken away by members of the security forces on 24 December 1993 and have not been seen since. The government claims that the two children were kidnapped by the PKK and have not been in custody. The applicant also claims that Mahmut Sakar, the lawyer in Diyarbakir who

took down the statement that formed the basis of his application under the Convention, was prosecuted by the Turkish authorities for his involvement in the application.

The applicant complained to the European Commission in June 1994, alleging breaches of Articles 2, 3, 5, 13, 14 and 18. The complaints were declared admissible in November 1995.

The Commission, in its Article 31 Report, concluded that the evidence of what happened in the village in December 1993 did not establish whether the applicant's children had been taken away by the security forces or by others. Accordingly, the Commission found that there was no proven violation of Articles 2, 3, 5, 14 or 18. Nevertheless, the Commission found that the authorities failed to take steps promptly in response to the complaints about the disappearance, and the investigation was inadequate, giving rise to a breach of Article 13. In addition, interrogation of Mahmut Sakar and commencement of proceedings against him in respect of his involvement with this application gave rise to a breach of Article 25.

The case was referred to the Court in October 1999.

Sabutekin v. Turkey ***(extra-judicial killing)***

This case concerns the killing of the applicant's husband, Salih Sabutekin, in a shooting incident in Adana, Southeast Turkey, in September 1994. The applicant alleges that her brother was assassinated on the orders of the state, as a result of his membership in HADEP and his associated activities. The assassins have never been found nor prosecuted. Mrs. Sabutekin claims that the relatives of Mr. Sabutekin were prevented from following his assassins by members of the security forces. Prior to Mr. Sabutekin's death, the family's house had been searched, Mr. Sabutekin had been taken into custody for a period and his relatives had been placed under surveillance. The government denies involvement in the killing.

Mrs. Sabutekin complained to the European Commission in March 1995, alleging breaches of Articles 2, 3, 6, 13 and 14 of the Convention. The complaint was declared admissible in March 1998.

The Commission, in its Article 31 Report, came to the conclusion that it was not possible to establish, on the basis of the evidence, that agents of the state were responsible for Mr. Sabutekin's death. Nevertheless, the inadequacy of the investigation into the circumstances of his killing was such as to give rise to a breach of Article 2. The facts did not disclose a breach of Articles 3 and 14, but the inadequacy of the investigation into the assassination was in breach of Article 13.

The case was referred to the Court in October 1999.

Bilgin v. Turkey ***(village destruction)***

This case concerns the destruction of the village of Yukarigoren in the district of Silvan, Southeast Turkey, on several occasions in late 1993 and 1994. In September 1993, gendarmes arrived in the village. The inhabitants were ordered to pile up harvested tobacco leaves in front of their houses and set light to them. Subsequently, gendarmes in the village damaged and broke furnishings, windows and various household goods belonging to the applicant. In late 1994, after all inhabitants other than the applicant's family had left the village, gendarmes came to the village again. They spread a substance in the houses, including the applicant's house, and set fire to them. The government claims that after the applicant's complaint under the Convention, a domestic investigation into his complaints was conducted. However, the applicant also claims that in August 1995 he was questioned by gendarmes about his application under the Convention, and forced to sign a statement purporting to retract it.

The applicant made an application under the European Convention in March 1994, complaining of breaches of Articles 3, 8, 13, 14, 18 and Article 1 of Protocol 1. The application was declared admissible in May 1995.

The Commission, in its Article 31 Report, recorded a finding that the evidence showed that the applicant's belongings and home had been destroyed by the security forces on the occasions alleged. It therefore made the following findings in respect of the alleged breaches of the Convention.

The destruction of the applicant's home and possessions gave rise to a breach of Article 8 and Article 1 of Protocol 1.

The distress suffered by the applicant as a result of the destruction of his possessions amounted to inhuman treatment in breach of Article 3.

While the applicant had made no application to the domestic authorities, the Commission found that "there are undoubted practical difficulties and inhibitions in the way of persons like the present applicant, who complain of village destruction in Southeast Turkey, where broad emergency powers and immunities have been conferred on the Emergency Governors and their subordinates". The applicant did not, therefore, have effective remedies at his disposal for his claims. This gave rise to a breach of Article 13 of the Convention. There was no basis for finding a breach of Articles 14 or 18.

The questioning of the applicant by the authorities in connection with his application was in breach of Article 25 of the Convention.

The case was referred to the Court in October 1999.

Akdeniz and others v. Turkey *(disappearance)*

This case concerns the disappearance of eleven individuals from the small district of Alaca, Southeast Turkey, in October 1993. During an operation by commandos from the security forces in that month, there was bombardment and firing from planes and helicopters over the area. Mehmet Salih Akdeniz, Cecil Aydogdu, Mehmet Serif Avar, Hasan Avar, Behcet Tutus, Bahri Simek, Mehmet Sah Atala, Turan Demir, Abdo Yamuk, Nusreddin Yerlikaya and Umit Tas were all taken away by members of the security forces, in varying circumstances. Some of them were seen in custody, some were seen leaving the area in a helicopter and some were wounded. These men have not been seen since, despite extensive enquiries from the applicants. The government denies that these persons were detained by the authorities: the chief public prosecutor in Diyarbakir claimed that they were kidnapped by the PKK.

The applicants complained to the European Commission in April 1994, alleging breaches of Articles 2, 3, 5, 13 and 14 of the Convention. The application was declared admissible in April 1995.

In its report under Article 31 of the Convention, the Commission came to the following conclusions.

The eleven relatives of the applicants were, on the evidence, taken into custody by the security forces, despite the fact the authorities have consistently denied the fact of their detention, and no official trace of their detention exists.

The Commission noted that "in the light of its increased experience of the conditions pertaining in Southeast Turkey at the relevant time," there was sufficient circumstantial evidence to conclude. beyond reasonable doubt, that the eleven men have died. Since their deaths occurred after their detention by the security forces, and in the absence of any justifying explanation for their loss of life, the Commission found that the Turkish state must be liable for their deaths, in breach of Article 2.

The failure to conduct a prompt and effective investigation into the circumstances of the men's disappearance also gave rise to a breach of Article 2.

The Commission found, on the evidence, that the conditions of the men's detention, including the fact of being tied up for long periods of time, amounted to inhuman and degrading treatment in breach of Article 3. While Mehmet Salih Akdeniz was not tied up, the privations resulting from his detention out of doors in the cold, combined with the stress and anxiety of the circumstances, having regard to the fact that he was aged 70 at the time, gave rise to a breach of Article 3.

The stress suffered by the applicants themselves as a result of the disappearance of their relatives, and the lack of any assistance from the authorities, was in breach of Article 3. The Commission had "no doubt that this process of searching in the hope of finding information and running continually into a wall of official ignorance and indifference

constituted an ordeal of which the applicants could claim to be victims in their own right".

The circumstances of the men's detention gave rise to a breach of Article 3. The Commission expressed particular concern at the lack of reliable and accurate records of those in custody.

The Commission held that the investigation into the applicant's complaints was inadequate. It was struck, in particular, by the reluctance and, in the case of the State Security Court Chief Prosecutor, a blatant refusal to envisage that the authorities could be implicated in allegations of unlawful acts. It is also noted that "as regards alleged disappearances, which may be related to either terrorist or non-terrorist crime, it does not appear that the separate jurisdictions of the public prosecutors and the State Security Court prosecutor are conducive to a coherent investigative procedure". There was, accordingly, a breach of Article 13.

There was no breach of Article 14.

Questioning of the applicants by the state about the circumstances in which they decided to bring an application gave rise to a breach of Article 25 of the Convention.

The case was referred to the Court in October 1999.

Onen v. Turkey ***(extra-judicial killing)***

This case concerns the killing of the parents and elder brother of the applicant, and the wounding of the applicant, in the village of Karatas, near Mardin, Southeast Turkey, in March 1993. The villagers had refused to participate in the village guard system, unlike the neighbouring village of Balpinar. This created tension between the two villages. On the evening of 16 March 1993, the applicant's parents and her elder brother were shot by intruders, who were revealed as village guards from the neighbouring village. The applicant's foot was injured in the attack. The applicant's mother died on the way to hospital, the journey being seriously delayed by the refusal of the commander of the local gendarme station to provide a car to take her to hospital. The subsequent investigation into the incident was ineffective. The government denies that the village guards were responsible for the killing, or that the investigation had been ineffective.

The applicant complained to the European Commission in September 1993, alleging breaches of Articles 2, 3, 6, 8, 13 and 14 of the Convention. The application was declared admissible in May 1995.

The Commission, in its Article 31 Report, decided that the evidence was not sufficient to demonstrate, beyond reasonable doubt, that the killing of the applicant's relatives was carried out by agents of the state. Nevertheless, the inadequacy of the state investigation into the circumstances of their deaths gave rise to a breach of Article 2 in any event.

There was no violation of Articles 3 and 8, in view of the Commission's finding that the state was not responsible for the killing. However, the inadequacy of the official investigation into the incident gave rise to a breach of Article 13.

The case was referred to the Court in October 1999.

Z.D. v. Turkey ***(village destruction)***

This case concerns the destruction of the applicant's home and possessions in Ciftlibahce village, Diyarbakir province in Southeast Turkey in November 1993. On 8 November 1993, local security forces came to the village. They rounded up the villagers, ordered them to leave and set fire to the houses. In the same incident, Ahmet Cakici was taken away by security forces. In its judgment of July 1999 (see below), the European Court of Human Rights ruled that the Turkish state was responsible for his disappearance and death.

The application made a complaint under the European Convention in May 1994, alleging violations of Articles 2, 3, 5, 6, 8, 13, 14 and 18. Her complaint was declared admissible in May 1996.

In September 1999, the Commission adopted its Article 31 Report on the case and referred the complaint to the European Court. At the time of going to press, the contents of the Article 31 report remain confidential.

Aktas v. Turkey ***(extra-judicial killing)***

This application concerns the death of Yakup Aktas, the brother of the applicant, while in detention in Mardin, Southeast Turkey, in 1990. On 18 November 1990, Mr. Aktas was arrested on suspicion of assisting and sheltering representatives of the PKK. He was taken into detention. One week later, members of his family were notified of his death. His body was buried in tight security conditions, but his relatives saw that there were bruises and scratches on his wrists, arm and back, and the back of his head was completely crushed. However, the autopsy stated that it was not possible to determine the cause of death. Official investigations acquitted two gendarmes of causing death by torture.

The applicant complained to the European Commission in May 1994, alleging breaches of Articles 2, 3, 6, 13 and 14 of the Convention. His application was declared admissible in September 1995.

In October 1999, the Commission adopted its Article 31 Report on the case. The Commission found that Yahup Aktas was deprived of his life as a result of ill-treatment during his detention for which no justification has been established. The Commission also found that there has been a failure to provide an adequate and effective investigation

concluding that there has been a violation of Article 2 of the Convention. The Commission found a violation of Article 3, in that there was no doubt that Yahup Aktas was subjected to ill-treatment amounting to torture during his period in custody. The Commission found that the delays which occurred in the investigation, the defects in the forensic procedure and the failure to ask any member of the gendarmerie to account for the injuries sustained by Yahap Aktas, amounted to a violation of Article 13 of the Convention. The Commission found unanimously that there had been no violation of Article 14.

The case was referred to the Court in October 1999.

Ayder and others v. Turkey ***(destruction of homes)***

The case concerns the destruction of the applicants' home and possessions in the course of an armed attack by police and soldiers in Lice, Southeast Turkey, in October 1993. No compensation has been received by the families concerned. The government claim that the damage was caused in a PKK raid on Lice.

The applicants complained to the European Commission in December 1994, alleging breaches of Articles 2, 3, 5, 6, 8, 13, 14, 18, 26 and Articles 1 of Protocol 1. The application was declared admissible in May 1995.

The European Commission adopted its report on the case in October 1999. The Commission concluded that there had been a serious interference with the applicants' rights under Article 8 of the Convention by State security forces. The Commission found that the security forces deliberately destroyed the homes and property of the applicants, a violation of Article 1 of Protocol No. 1 to the Convention. The Commission recorded a finding that the evidence showed the destruction by the security forces of the applicants' homes and property, and that this constituted an act of violence and deliberate destruction in utter disregard of the safety and welfare of the applicants or their families. The Commission concluded that this amounted to a violation of Article 3 of the Convention. Finally, the Commission found that the applicants did not have effective remedies at their disposal, in violation of Article 13 of the Convention.

The Commission found no violation of Article 2. The Commission also found that the evidence submitted under Article 14 and 18 was unsubstantiated, and therefore found no violation of Articles 14 and 18.

The case was referred to the Court in October 1999.

PROCEEDINGS BEFORE THE COMMITTEE OF MINISTERS

Aslantas v. Turkey ***(freedom of expression)***

This case concerns the prosecution of the applicant, a lawyer from Diyarbakir, Southeast Turkey, in respect of a speech made by him in October 1992. The applicant was convicted of making propaganda aimed at destroying the indivisible integrity of the nation and people of the State of Turkey. He was sentenced, on appeal, to a heavy fine.

The applicant complained to the European Commission in October 1994, alleging breaches of Articles 2, 3, 6, 10, 11, 13, 14 and 18 of the Convention. The case was declared admissible as regards the application under Articles 10, 11, 13, 14 and 18 in September 1997.

In March 1999, the European Commission adopted its Article 31 Report on the case. The Commission concluded that the applicant's conviction was an interference of his right to freedom of expression under Article 10, and that this interference was not justified under the restrictions contained in Article 10. The Commission considered that there was nothing in the applicant's speech to indicate that he was encouraging the use of violence or justifying terrorist acts. The Commission found no violation of Articles 13, 14 or 18 of the Convention.

The Article 31 Report was delivered to the Committee of Ministers of the Council of Europe in April 1999. In October 1999 the Committee of Ministers ruled that there had been a breach of Article 10 of the Convention. The Committee will now continue with its examination of the case with a view to adopting a final resolution.

PROCEEDINGS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Once assigned to the Court, the case is examined in light of the Article 31 Report (which carries strong weight but is not legally binding) together with any further written evidence or legal argument. There is usually a public hearing in Strasbourg where the delegate of the Commission and lawyers for the Government and the applicant present their submissions upon which they may be questioned.

The judges deliberate in private on whether there has been a breach of the Convention. The view of the majority forms the decision of the Court. Judgment is final and there is no appeal. In appropriate circumstances, the Court may ward *just satisfaction,* which is compensation and an order for the reimbursement of costs.

Judgments are transmitted to the Committee of Ministers, which supervises enforcement. This will continue under the new system.

Judgments have been delivered in 9 cases during the period May 1998 to March 2000 inclusive. These cases and related judgments are summarised below.

THE COURT'S JUDGMENTS

Since the last report, the following judgments of the Court have been delivered in KHRP assisted cases:

Tekin v. Turkey *(ill-treatment)*

The applicant alleged that he had been ill-treated by Turkish gendarme officers while being kept in detention at Derik and Derinsu Gendarme stations, in Southeast Turkey, from 15 to 19 February 1993. He also alleged that this event was not adequately investigated by the State authorities. He complained of violations of Articles 2, 3, 5, 6, 10, 13, 14 and 18 of the European Convention.

In its **judgment of 9th June 1998**, the Court concurred with the Commission's findings and held that Mr. Tekin's rights under Articles 3 and 13 of the Convention had been breached. They concluded that Mr. Tekin suffered inhuman and degrading treatment. His allegations of ill-treatment were not sufficiently investigated by the authorities thus giving rise to a breach of Article 13. The Court awarded Mr. Tekin damages and costs.

Ergi v. Turkey *(extra-judicial killing)*

This application concerned the alleged killing of the applicant's sister by Turkish security forces during an attack on the village of Kesentas, in Southeast Turkey, on 29 September 1993 and the lack of effective remedy in respect of her death. The applicant complained of violation of Articles 2, 8, 13, 14, 18 and 25 of the European Convention.

In its **judgment of 28th July 1998**, the Court found violations of Articles 2, 13 and 25. In particular, it criticised the way in which the attack was carried out by the security forces. The defects in the planning and conduct of the operation, and the subsequent lack of an adequate and effective investigation into the killing, demonstrated a breach of Havva Ergi's right to life. Her brother and daughter were awarded compensation by the court. This case is another example of the continuous failure of the domestic organs in Turkey to guarantee effective redress for victims of human rights violations.

A striking feature of the case is the Court's criticism of the authorities' intimidation of Mr. Ergi once he had submitted his application under the Convention. He had alleged that following the filing of his application, he had been interviewed by the Anti-Terror Department of the police on several occasions, and had been intimidated and threatened for having lodged a complaint. The Court found that the Turkish authorities had

intimidated Mr. Ergi in a manner which unduly interfered with his application. The Court awarded the applicant damages and costs.

Yasa v. Turkey ***(extra-judicial killing)***

The application concerned the alleged shooting of the applicant and killing of the applicant's uncle in Diyarbakir by agents of the Turkish State on 15 January 1993 and 14 June 1993 respectively. The applicant also alleged that he was ill-treated by the police while in detention. He also complained that he had no access to a court or to any effective remedy in respect of these matters. He complained of violation of Articles 2, 3, 6, 10, 13, 14 and 18 of the Convention.

In its **judgment of 2nd September 1998**, the European Court found a violation of Articles 2 and 13. In relation to Article 2, the Court found that the Turkish authorities had failed to carry out an adequate investigation of Mr. Yasa's complaints. In particular the Court was "struck by the fact that the investigating authorities appear to have excluded from the outset the possibility that State agents might have been implicated in the attacks". In short the Court concluded that since "no concrete and credible progress had been made, the investigations cannot be considered to have been effective as required by Article 2".

As concerns Article 13, the Court found that although "the authorities had an obligation to carry out an effective investigation into the circumstances of the attacks ... five years after those attacks took place, the investigations have still not produced any results". The applicant was awarded damages and costs.

Aytekin v. Turkey ***(extra-judicial killing)***

This application concerned the alleged killing of the applicant's husband by a gendarme on 24 April 1993 and the lack of adequate investigation or effective remedy in respect of his death. The applicant complained of violations of Articles 2 and 13 of the European Convention.

In its **judgment of 23rd September 1998**, the European Court of Human Rights took into consideration the domestic proceedings, which had taken place, and were continuing, in Turkey, in respect of the killing of Mr. Aytekin. The Court decided, *inter alia*, that:

- it could not be said that the official investigation into the killing by the Turkish authorities did not offer the applicant any reasonable prospects of success in bringing the person responsible for the death of her husband to justice;
- in the circumstances, the applicant had reasonable prospects of successfully suing those involved for compensation.

Consequently, the Court held that domestic remedies available to the applicant in respect of her grievances had not been exhausted. It is a prerequisite to the consideration of the

merits of the case that the applicant should exhaust all available and effective domestic remedies. In this case, therefore, the Court was unable to go on to consider the merits.

Tanrikulu v. Turkey ***(extra-judicial killing)***

This case concerned the killing of Dr. Zeki Tanrikulu, a medical doctor and Head Consultant at Silvan District Hospital until his death on 2 September 1993, and the adequacy of the authorities' investigation into the incident. Dr. Tanrikulu was shot by two unidentified assailants outside Silvan District Hospital on 2 September 1993. The applicant, Dr. Tanrikulu's widow, alleged in particular that members of the police force stood by and allowed the assailants to flee the scene. She also claimed that no statement was taken from her. The applicant complained of violations of Articles 2, 3, 6, 13 and 14 of the European Convention.

In its **judgment of 8th July 1999**, the Court concluded that the Turkish State had been responsible for breaches of several articles of the European Convention. Article 2 was breached on the grounds that there had been no effective investigation capable of leading to the identification and punishment of those responsible for the killing of Dr. Tanrikulu. The examination carried out at the scene could have been no more than superficial, there was no record of any attempt having been made to find the bullets which had hit the applicant's husband, there was a limited amount of forensic evidence available, and the applicant's statement had not been taken until more than a year after the event. The Court was struck by the fact that the public prosecutor had indicated that this was a terrorist killing, although there did not appear to have been any evidence supporting this conclusion. The Court also found that Article 13 had been violated in view of the lack of an effective investigation into the killing. Finally, the Court ruled that Article 25 had been breached since the applicant had been questioned by the chief public prosecutor at the Diyarbakir State Security Court about the authenticity of the power of attorney which had been submitted in respect of her claim to the Commission. The Court held that this was inappropriate, and could have been interpreted as an attempt to intimidate the applicant. In addition, the Court was of the opinion that a deliberate attempt had been made on the part of the authorities to cast doubt on the validity of the application to the Commission and therefore the credibility of the applicant. The Court awarded damages and costs to Mrs. Tanrikulu.

Cakici v. Turkey ***(disappearance)***

This case related to the disappearance of the applicant's brother, after allegedly being taken into custody. The applicant argued that his brother, Ahmet Cakici, along with three other Kurds, was taken into custody by the Turkish authorities in November 1993. He had not been seen since. The Turkish authorities claimed that Ahmet was never taken into custody or detained on remand. However, several villagers witnessed his arrest, and one of the three other detainees reported that he was held for 16 to 17 days in the same detention centre as Mr. Cakici. Ahmet Cakici claimed at the time that he had been

tortured many times. The applicant complained of violations of Articles 2, 3, 5, 13, 14 and 18 of the European Convention.

In its **judgment of 8th July 1999**, the Court held that there had been a violation of Article 2 of the European Convention on the ground that Ahmet Cakici's disappearance after being taken into custody had given rise to a presumption that he had died. In the absence of any explanation by the government as to what had happened to him during his detention, the government was liable for his death. The Court also found that Article 2 had been violated on the ground that there had been an inadequate investigation into the disappearance of Ahmet Cakici. The Court held that Article 3 had been violated on the ground that Ahmet Cakici had been tortured while in custody, and Article 5 had been breached since the disappearance of Ahmet Cakici during an unacknowledged detention disclosed a particularly grave violation of the right to liberty and security of the person. The Court referred in particular to the lack of accurate and reliable records of persons taken into custody by gendarmes and the lack of any prompt or meaningful enquiry into the circumstances of Ahmet Cakici's disappearance. Article 13 had been violated since the national authorities were under an obligation to carry out an effective investigation into the circumstances of the disappearance of Ahmet Cakici. This they had failed to do. The Court awarded damages to Ahmet Cakici's wife and children, and awarded damages and legal costs to the applicants.

Ozgur Gundem v. Turkey ***(freedom of expression)***

This case concerned a pattern of violence, murder, disappearances, abductions, threats, confiscations, seizures and threatened and actual prosecutions levelled at the pro-Kurdish newspaper *Ozgur Gundem* and its successor, *Ozgur Ulke*, and those involved in the production of the papers. The applicants, who were the owners, editor-in-chief and assistant editor-in-chief, alleged breaches of Articles 10 and 14 of the Convention and Article 1 of Protocol 1 to the Convention.

In its **judgment of 16th March 2000**, the European Court of Human Rights found in favour of the applicants. It ruled that the Turkish State had committed breaches of Article 10, on the ground that Turkey had failed to take adequate protective and investigative measures to protect *Ozgur Gundem*'s exercise of its freedom of expression and that it had imposed measures on the newspaper, through the search and arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of the issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. It found no violation of Article 14, on the grounds that there was no reason to believe that the restrictions on freedom of expression could be attributed to a difference of treatment based on the applicant's national origin or association with a national minority. The Court awarded the applicant damages and costs.

Kaya v. Turkey ***(torture; extra-judicial killing)***

The applicant in this case alleged that his brother, Dr. Hasan Kaya, was kidnapped, tortured and killed by or with the connivance of State agents and that there was no effective investigation, redress or remedy for his complaints. On 21 February 1993, Hasan Kaya, a member of the Human Rights Association of Turkey, and his friend Metin Can, a lawyer and president of the Human Rights Association in Elazig, left for a meeting with several unidentified individuals. The two men were not seen again by their families, but on 27 February 1993 their bodies were discovered under a bridge outside Tunceli, Southeast Turkey. They had been killed with a single shot to the back of the head. Their hands were tied behind their backs. The applicant complained of breaches of Articles 2, 3, 6, 13 and 14 of the Convention.

In its **judgment of 28th March 2000,** the Court found Turkey to be in violation of Articles 2, 3 and 13 of the European Convention. In particular it noted that the investigation by the Turkish authorities was "limited, superficial and dilatory" and that the autopsies conducted on the bodies was "cursory and inadequate". It concluded that "no effective criminal investigation could be considered as having been conducted".

Under Article 41 (just satisfaction), the Court awarded damages in respect of Dr. Hasan Kaya and in respect of the applicant himself. It also awarded legal costs and expenses.

Kilic v. Turkey ***(extra-judicial killing; freedom of expression)***

In this case the applicant alleged that his brother, Kemal Kilic, a journalist with the pro-Kurdish newspaper *Ozgur Gundem*, was killed by or with the connivance of agents of the Turkish State, at an incident near Sanliurfa, Southeast Turkey, in February 1993. He complained of breaches of Articles 2, 3, 10, 13 and 14 of the Convention.

In its **judgment of 28th March 2000,** the Court found Turkey to be in violation of Articles 2 and 13. The Court found that the Turkish State authorities were fully aware of the risk of attack, particularly since elements of the security forces were acting alongside contra-guerrillas, and had failed to protect Kemal Kilic's right to life. It noted in its judgment that the legal framework in the Southeast of Turkey was inadequate and severely flawed in its ability to deal with allegations of this nature. The administrative councils used to investigate offences allegedly committed by State officials "did not provide an independent or effective procedure for investigating deaths implicating the security forces". The Court concluded that these defects "undermined the effectiveness of criminal law protection" and "fostered a lack of accountability of members of the security forces".

Under Article 41 (just satisfaction), the Court awarded damages in respect of Kemal Kilic and in respect of the applicant himself. It also awarded legal costs and expenses.

Table setting out the Articles invoked and the outcomes in cases dealt with by the Court

Article of the European Convention	Invoked	Violated	Not violated	No separate issue arises or Not necessary to consider the complaint
Article 2 (right to life)	- Kurt v. Turkey - Selcuk and Asker v. Turkey (2nd applicant only) - Kaya v. Turkey - Mentes and others v.Turkey (4th applicant only) - Tekin v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Aytekin v. Turkey - Tanrikulu v. Turkey - Cakici v. Turkey - Kaya v. Turkey - Kilic v. Turkey - Ertak v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Ilhan v. Turkey	- Kaya v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Tanrikulu v. Turkey - Cakici v. Turkey - Kaya v. Turkey - Kilic v. Turkey - Timurtas v. Turkey - Salman v. Turkey	- Mentes and others v. Turkey (4th applicant only) - Ilhan v. Turkey - Tekin v. Turkey	- Kurt v. Turkey - Selcuk and Asker v. Turkey - Aytekin v. Turkey (domestic remedies not exhausted so merits not considered).
Article 3 (prohibition of torture)	- Kurt v. Turkey - Gundem v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Akdivar and others v. Turkey - Tekin v. Turkey - Cakici v. Turkey - Kaya v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Ilhan v. Turkey	- Kurt v. Turkey (in respect of the applicant only) - Selcuk and Asker v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Tekin v. Turkey - Kaya v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Ilhan v. Turkey	- Gundem v. Turkey - Mentes and others v. Turkey (4th applicant only) - Cakici v. Turkey	- Kurt v. Turkey (in respect of the applicant's son) - Kaya v. Turkey - Mentes and others v. Turkey (1st, 2nd and 3rd applicants only) - Akdivar and others v. Turkey
Article 5 (right to liberty and security)	- Kurt v. Turkey - Gundem v. Turkey (5§1) - Selcuk and Asker v. Turkey (5§1)	- Kurt v. Turkey - Aksoy v. Turkey - Cakici v. Turkey - Timurtas v. Turkey	- Gundem v. Turkey - Mentes and others v. Turkey (4 th applicant only)	- Selcuk and Asker v. Turkey - Mentes and others v. Turkey (1st, 2nd and 3rd applicants only)

	- Mentes and others v. Turkey (5§1) - Aksoy v. Turkey (5§3) - Akdivar and others v. Turkey (5§1) - Cakici v. Turkey - Timurtas v. Turkey			- Akdivar and others v. Turkey
Article 6 § 1 (right to a fair trial)	- Gundem v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Akdivar and others v. Turkey		- Mentes and others v. Turkey (4th applicant only)	- Gundem v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey (1st, 2nd and 3rd applicants only) - Aydin v. Turkey - Aksoy v. Turkey - Akdivar and others v. Turkey
Article 8 (right to respect for family life and home)	- Gundem v. Turkey - Selcuk and Asker v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey	- Selcuk and Asker v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey	- Gundem v. Turkey - Mentes and others Turkey (4th applicant only)	
Article 10 (freedom of expression)	- Tekin v. Turkey - Yasa v. Turkey - Ozgur Gundem v. Turkey - Kilic v. Turkey	- Ozgur Gundem v. Turkey - Yasa v. Turkey	- Tekin v.Turkey	- Kilic v. Turkey
Article 13 (right to an effective remedy)	- Kurt v. Turkey - Gundem v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Akdivar and others v. Turkey - Tekin v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Aytekin v. Turkey - Tanrikulu v Turkey - Cakici v. Turkey - Kaya v. Turkey - Kilic v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Ilhan v. Turkey	- Kurt v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Tekin v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Tanrikulu v. Turkey - Cakici v. Turkey - Kaya v. Turkey - Kilic v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Ilhan v. Turkey	- Gundem v. Turkey - Mentes and others v. Turkey (4th applicant only)	- Akdivar and others v. Turkey - Aytekin v. Turkey (domestic remedies not exhausted so merits not considered)

Article 14 (prohibition of discrimination)	- Kurt v. Turkey - Selcuk and Asker v. Turkey - Kaya v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey - Tekin v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Tanrikulu v. Turkey - Cakici v. Turkey - Ozgur Gundem v. Turkey - Kaya v. Turkey - Kilic v. Turkey		- Kurt v. Turkey - Selcuk and Asker v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey - Ozgur Gundem v. Turkey - Cakici v. Turkey - Tanrikulu v. Turkey - Tekin v. Turkey - Ergi v. Turkey	- Kilic v. Turkey - Kaya v. Turkey - Yasa v. Turkey
Article 18 (prohibition of the use of restrictions for an improper purpose)	- Kurt v. Turkey - Gundem v. Turkey - Selcuk and Asker v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey - Tekin v. Turkey - Ergi v. Turkey - Yasa v. Turkey - Cakici v. Turkey - Timurtas v. Turkey		- Kurt v. Turkey - Gundem v. Turkey - Selcuk and Asker v. Turkey - Mentes and others v. Turkey - Akdivar and others v. Turkey - Cakici v. Turkey - Tekin v. Turkey - Ergi v. Turkey	- Timurtas v. Turkey - Yasa v. Turkey
Article 25 § 1 (right to individual petition)	- Kurt v. Turkey - Aydin v. Turkey - Aksoy v. Turkey - Akdivar and others v. Turkey - Ergi v. Turkey - Timurtas v. Turkey - Salman v. Turkey - Tanrikulu v. Turkey	- Kurt v. Turkey - Akdivar and others v. Turkey - Ergi v. Turkey - Tanrikulu v. Turkey - Timurtas v. Turkey - Salman v. Turkey	- Aydin v. Turkey - Aksoy v. Turkey	
Article 1 Protocol N°1 (right to peaceful enjoyment of possessions)	- Gundem v. Turkey - Selcuk and Asker v. Turkey - Akdivar and others v. Turkey - Ozgur Gundem v. Turkey	- Selcuk and Asker v. Turkey - Akdivar and others v. Turkey	- Gundem v. Turkey	

APPENDIX C

CHRONOLOGICAL LIST OF MAIN EVENTS IN CASES ASSISTED BY THE KHRP FROM OCTOBER 1994 THROUGH MARCH 2000

1994

October 1994	European Commission declares three cases, CAGIRGE, AKSOY and AKDIVAR, admissible after oral hearings in Strasbourg.
October 1994	European Commission declares the cases of AKKOC and BERTRAY admissible.
December 1994	European Commission declares the cases of AYDIN and ASKER admissible.

1995

January 1995	European Commission declares 6 further cases admissible: KAYA, KILIC, MENTES, DEMIR, CETIN and GUNDEM.
February 1995	European Commission declares the case of SALMAN admissible.
March 1995	European Commission declares the cases of ASLAN and O.A. admissible.
March 1995	European Commission Delegation travels to Cizre, Turkey, to take oral evidence in the cases of AKSOY, CAGIRGE and AKDIVAR.
March 1995	European Commission declares the cases of KAYA, TEKIN and ERGI admissible.
April 1995	European Commission Delegation travels to Ankara, Turkey to take further oral evidence in the cases of AKSOY, CAGIRCE and AKDIVAR.
April 1995	European Commission declares seven further cases admissible: AKDENIZ, ISIYOK, YASAR, OVAT, K.S., GUL and YASA.
May 1995	European Commission declares the cases of BILGIN, ONEN and AYDER and Others admissible.

June 1995	European Commission declares seven further cases admissible: AYTEKIN, BILGIN, CAKICI, ILHAN, ONEN, SAHIN and YILMAZ.
July 1995	European Commission holds hearings on the merits in Strasbourg, in the cases of AKDIVAR, AKSOY and CAGIRGE. Friendly settlement reached in the case of CAGIRGE.
July 1995	European Commission Delegation travels to Ankara, Turkey to take oral evidence in the cases of AYDIN and MENTES.
September 1995	European Commission declares five further complaints admissible: AKTAS, KURT, TIMURTAS, BEYAZ, ALTUN.
October 1995	European Commission holds hearings in Strasbourg in the case of ERGOZ.
October 1995	The case of Ozgur GUNDEM is declared admissible after an oral hearing.
October 1995	Further evidence is taken in the case of AYDIN and the question of admissibility is adjourned in the application of KAPAN.
November 1995	European Commission Delegation travels to Diyarbakir, Turkey, to take oral evidence in the cases of GUNDEM, KAYA and TEKIN.
November 1995	European Commission declares the case of SARLI admissible.
December 1995	European Commission issues Article 31 Reports in the cases of AKDIVAR and AKSOY.

1996

January 1996	European Commission holds admissibility hearing in Strasbourg in the case of TAS.
February 1996	European Commission travels to Ankara to take oral evidence in the cases of KURT, ASLAN, O.A., SELCUK and ERGI.
February 1996	European Commission declares the case of IKINCISOY partially admissible and partially inadmissible.

March 1996	European Commission holds investigation hearing in Strasbourg in the case of TEKIN.
March 1996	European Commission declares the case of TAS admissible.
April 1996	European Commission Delegates travel to Ankara for the taking of evidence in the cases of OVAT, YILMAZ, SAHIN, DUNDAR, ISIYOK and ILHAN.
April 1996	European Commission adopts Article 31 Reports on the cases of MENTES and AYDIN.
April 1996	European Court hears the cases of AKDIVAR and AKSOY in Strasbourg.
May 1996	European Commission declares the cases of DULAS and Z.D. admissible.
July 1996	Investigation hearing in Ankara in SALMAN, AKKOC and CAKICI.
September 1996	European Court delivers judgment in the case of AKDIVAR.
September 1996	European Commission adopts an Article 31 Report in the case of GUNDEM.
September 1996	European Commission declares the case of BILGIN inadmissible.
October 1996	European Commission issues Article 31 Report in the case of Mehmet KAYA.
October 1996	European Commission declares the case of AVSAR admissible.
November 1996	European Commission adopts Article 31 Report in case of SELCUK and ASKER.
November 1996	European Commission holds oral hearings in Ankara in the cases of TIMURTAS, DEMIR and TANRIKULU.
November 1996	European Commission declares the cases of TEKDAG and TEPE admissible.
December 1996	European Court delivers judgment in the case of AKSOY.
December 1996	European Commission issues an Article 31 Report in the case of KURT.

December 1996	Admissibility hearing held before the European Commission in Strasbourg in the case of ELCI. Case declared partially admissible.
December 1996	European Commission declares the case of SEN admissible.

1997

January 1997	European Court holds hearings in the cases of AYDIN and MENTES.
January 1997	European Commission holds oral investigation hearings in Strasbourg in the case of Mahmut KAYA.
January 1997	European Commission declares the case of YOYLER admissible.
January 1997	Case of KAPAN struck out of the list.
February 1997	European Commission Delegation travels to Ankara, Turkey, to take oral evidence in the cases of ERTAK, KILIC, KAYA and DULAS.
March 1997	European Commission Delegation travels to Ankara, Turkey, to take oral evidence in the cases of AKUM, AKAN and KAROKOC.
April 1997	European Commission declares the case of DANIS inadmissible.
April 1997	European Commission declares the case of ORHAN admissible.
April 1997	European Commission adopts an Article 31 Report in the case of YASA.
April 1997	European Commission adopts an Article 31 Report in the case of TEKIN.
May 1997	European Commission strikes out of the list the case of ASLAN.
May 1997	European Commission adopts an Article 31 Report in the case of ERGI.
June 1997	European Commission declares the case of T.A. & M.A. admissible.

July 1997	European Commission holds investigation hearing in Strasbourg in the cases of KILIC, KAYA and SALMAN.
September 1997	European Commission declares the case of ZENGIN inadmissible.
September 1997	European Commission declares the case of ASLANTAS partially admissible and partially inadmissible.
September 1997	European Commission adopts an Article 31 Report in the case of AYTEKIN.
September 1997	European Commission adopts an Article 31 Report in the case of YILMAZ, OVAT, SAHIN and DUNDAR.
September 1997	European Commission strikes out of the list the case of BEYAZ.
September-October 1997	European Commission Delegation travels to Ankara, Turkey, to take oral evidence in the cases of ILHAN, AKDENIZ and SARLI.
September 1997	European Court holds hearing in the case of GUNDEM.
September 1997	European Court holds hearing in the case of AYDIN.
October 1997	European Commission declares the case of YURTTAS partially admissible and partially inadmissible.
October 1997	European Commission declares the case of SADAK, ZANA, DICLE and DOGAN partially admissible and partially inadmissible.
October 1997	Friendly settlement reached in the case of Ahmet, Ahmet and Bedri ISIYOK.
November 1997	European Commission Delegation travels to Ankara, Turkey, to take oral evidence in the cases of BERKTAY and AKTAS.
November 1997	European Court delivers judgment in the case of MENTES.
December 1997	European Commission declares the case of AKDENIZ admissible.

1998

January 1998	European Court holds hearing in the case of KURT.

January 1998	European Commission declares the case of AYDIN admissible.
February 1998	European Court delivers judgment in the case of KAYA.
March 1998	European Commission declares the case of SABUKTEKIN admissible.
March 1998	European Court holds hearing in the case of TEKIN.
March-April 1998	European Commission Delegation travels to Ankara, Turkey, to take oral evidence in the cases of OZKAN and ONEN.
April 1998	European Court holds hearings in the cases of ERGI and YASA.
April 1998	European Court delivers judgment in the cases of SELCUK and ASKER.
May 1998	European Court delivers judgment in the cases of KURT and GUNDEM.
June 1998	European Commission Delegation travels to Ankara, Turkey, to hear oral evidence in the cases of HARAN, CICEK and SEN.
June 1998	European Court delivers judgment in the case of TEKIN.
June 1998	European Court holds final hearing in the case of AYTEKIN.
July 1998	European Court delivers judgment in the case of ERGI.
September 1998	European Court delivers judgment in the case of AYTEKIN.
October 1998	European Commission delegation travels to Ankara, Turkey in the case of OZKAN.
December 1998	European Commission delegation travels to Ankara, Turkey in the case of ELCI and Others.

1999

February 1999	European Commission delegation travels to Ankara, Turkey in the case of GUL.
Mar. 1999	European Commission adopts Article 31 Report in the case of ASLANTAS.

April 1999	European Commission adopts Article 31 Reports in the cases of AKKOC and ILHAN.
April 1999	European Commission delivers Article 31 Report in the case of ASLANTAS to the Committee of Ministers of the Council of Europe.
June 1999	European Court declares three cases admissible: CELIKBILEK, EKINCI and HARAN.
June 1999	European Commission delegation travels to Ankara, Turkey, to hear oral evidence in the cases of ALTUN and IKINCISOY.
July 1999	European Court delivers judgment in the cases of CAKICI and TANRIKULU.
August 1999	European Court declares the case of DUNDAR partially admissible and partially inadmissible.
September 1999	European Court declares the cases of AKMAN and TOGCU admissible.
September 1999	European Commission adopts Article 31 Reports in the cases of AKDENIZ, TAS, ONEN and Z.D.
September 1999	European Commission delegation travels to Ankara, Turkey, to hear oral evidence in the case of AYDIN.
October 1999	European Court declares the case of ATES admissible.
October 1999	Committee of Ministers of the Council of Europe rules on the case of ASLANTAS.
Oct. 1999	European Commission adopts Article 31 Reports in the cases of AKTAS and AYDER and Others.
October 1999	European Commission delegation travels to Ankara, Turkey, to hear oral evidence in the cases of AVSAR and ORHAN.
October 1999	European Commission adopts Article 31 Reports in the cases of GUL, SARLI, SABUTEKIN, and BILGIN.
November 1999	European Court declares the case of UYKUR inadmissible.
November 1999	European Court holds hearings in three cases: OZGUR GUNDEM, ERTAK and TIMURTAS.

December 1999	European Court declares the case of KISMIR admissible.
December 1999	European Court declares the case of YAMAN partially admissible and partially inadmissible.

2000

January 2000	European Court declares the case of DIZMAN admissible.
February 2000	European Court declares the case of BINBAY admissible.
February 2000	European Court holds hearings in the cases of SALMAN and ILHAN.
March 2000	European Court declares the case of MACIR admissible.
March 2000	European Court delivers judgment in three cases: OZGUR GUNDEM, KILIC and KAYA.

APPENDIX D

UPDATE ON NON-KHRP CASES AGAINST TURKEY April 1998 – March 2000

PROCEEDINGS BEFORE THE EUROPEAN COMMISSION OF HUMAN RIGHTS

Admissibility decisions

Cases declared admissible

May 1999	Solomu v. Turkey (Application No. 36832/97) The application concerned the killing of a Cypriot national whilst he was taking down a Turkish flag in Dernia in protest against the Turkish troops in Cyprus.
May 1999	Takak v. Turkey (Application No. 30452/96) The case concerned criminal proceedings and a complaint that the applicant was not given a fair hearing by an independent tribunal.
May 1999	Solomonides and 28 others v. Turkey (Application No. 16682/90) The applicants were prevented from returning home after the invasion of the Northern Cyprus.
June 1999	Andreou v. Turkey (Application No. 18360/91) The application concerned the interference with the peaceful enjoyment of property.
June 1999	Denmark v. Turkey (Application No. 34382/97) The application concerned a Danish citizen who had been detained and suffered inhumane treatment during detention.
June 1999	Ketengoglu and Ketengoglu v. Turkey (Application No. 29360/95 and 29361/95) The application concerned criminal proceedings. The applicants complained about the unreasonable length of the proceedings and of an unfair hearing.
June 1999	Onder v. Turkey (Application No. 28520/95) The application concerned torture in police custody.
June 1999	Skoutaridou v. Turkey (Application No. 16159/90) Orphanides v. Turkey (Application No. 36705/97) Kyriakou v. Turkey (Application No. 36705/97) Diogenous and Tseriotis (Application No. 16259/90)

	Eugenia Michaelidou Developments Ltd and Tymvios v. Turkey (Application No. 16163/90) Nicola v. Turkey (Application No. 18404/91) Hapeshis, Hapeshi - Michaelidou, Hapeshi - Campbell and Hapeshi - Evagora v. Turkey (Application No. 38179/97) Hadjiprocopiou and Hadjiprocopiou - Iacovidou (Application No. 37395/97) These cases concerned the denial of property of rights of Cypriot nationals since the Turkish invasion of Cyprus.
August 1999	Evagorou Christou v. Turkey (Application No. 18403/91) Nicholaides v. Turkey (Application No. 18406/91) Economou v. Turkey (Application No. 18405/91) Demades v. Turkey (Application No. 16219/96) Demitriou v. Turkey (Application No. 16158/90) These applications concerned complaints by Cypriot nationals, who complained of an interference with their right to peaceful enjoyment of their homes and property since occupation by the Turkish military authorities.
August 1999	Satik and others (Application No. 31866/96) The application concerned inhumane treatment with the intention to kill by gendarmes and prison wardens.
August 1999	Yalcin and 26 others (Application No. 26480/95) The applicants were arrested and detained for membership in Dev-Yol (Revolutionary Way).
August 1999	Ramon v. Turkey (Application No. 29092/95) Michael v. Turkey (Application No. 18361/91) In these cases, the respective applicants were unable to exercise peaceful enjoyment of their property since the Turkish invasion of Cyprus.
September 1999	Veznedaroglu v. Turkey (Application No. 32357/96) The application concerned torture during police custody.
September 1999	Karatas and Boga v. Turkey (Application No. 24669/94) The application concerned ill-treatment by the police.
December 1999	Christodoulidou v. Turkey (Application No. 16085/90) The application concerned the beating of the applicant by police during an anti-Turkish demonstration.

January 2000	Ocal v. Turkey (Application No. 30944/96) The application concerned the unreasonable length of civil proceedings.
January 2000	Hadjithomas v. Turkey (Application No. 39970/98) The applicant complained of a denial of property rights since the invasion of Cyprus.
January 2000	Eginlioglu v. Turkey (Application No. 31312/96) The applicant complained of the unreasonable time of criminal proceedings.
February 2000	Gavriel v. Turkey (Application No. 41355/98) The applicant, a Cypriot national, complained of an interference with the peaceful enjoyment of his private life and property rights as he was unable to return to his home since the Turkish invasion.
February 2000	Ecer and Seyrek v. Turkey (Application No. 29295/95 and 29363/95) The applicant invoked Article 7 because the law had been applied retrospectively to increase his penalty by half. He had been associated with the PKK.
February 2000	Ayhan and Ayhan v. Turkey (Application No. 41964/98) The application concerned the right to life. The deceased's name had been included in an illegal list of opponents of State policies. The killing was by undercover security forces. The applicants complained they had no access to the domestic courts since the murderers were state officials.
March 2000	Buker v. Turkey (Application No. 29921/96) The application concerned administrative proceedings and their conclusion in an unreasonable time.
March 2000	Ioannou v. Turkey (Application No. 18364/91) The case concerned a Cypriot national who had been evicted from his home during the Turkish invasion. He had been deprived of access to his property since.
March 2000	Sunnetci v. Turkey (Application No. 28632/95) The applicant complained of torture during police custody following a suspicion that he was a member of the PKK.
March 2000	Oral v. Turkey (Application No. 27735/95)

The application concerned the killing of the applicant's father by police following a suspicion that he was a member of the TKP/ML-TIKKO militants. He was shot when trying to escape.

Cases declared partly admissible

April 1998 — Djavit v. Turkey (Application No. 20652/92)
The case concerned the Turkish authorities not allowing Cypriots over the "green line" and prohibiting their rights to freedom of assembly, freedom of association and freedom of expression.

April 1998 — Simsek v. Turkey (Application No. 28010/95)
The case concerned the detention of the applicant unlawfully, not informing him of the reason for arrest and detention, not bringing him promptly before a judge and the complaint that there was no right to compensation.

May 1998 — Hansen v. Turkey (Application No. 36141/97)
The application concerned the failure of the authorities to enforce the applicant's right to see her child.

July 1998 — Sanli and Erol v. Turkey (Application No. 36760/97)
The applicant complained of being arrested and not being brought promptly before a judge, receiving abuse whilst in custody and the denial of a lawyer whilst in custody.

September 1998 — Sahin v. Turkey (Application No. 29874/96)
The applicant complained he was detained on remand for an excessive length of time and denied a fair trial.

September 1998 — Taskaya, Camyar and Cuce v. Turkey (Application No. 39233/98)
The applicant was detained without being brought promptly before a judge and received no legal assistance.

October 1998 — Atkin v. Turkey (Application No. 39977/98)
The applicant complained that his detention was prolonged beyond a reasonable time, that he did not receive a fair trial and that the criminal proceedings against him exceeded a reasonable time.

October 1998 — Eginlioglu v. Turkey (Application No. 31312/96)
The applicant complained of inhumane treatment during detention and that detention was for an unreasonable length of time. It was claimed that the authorities had conducted investigations due to the conflicting views of the applicant and Turkish authorities on the political system.

October 1998	Inan v. Turkey (Application No. 39428/98) The applicant complained of being detained for an unreasonable time and that he was not heard by an independent and impartial tribunal.
February 1999	Darici v. Turkey (Application No. 29986/96) The applicant complained of inhumane and degrading treatment of soldiers by the Military Criminal Code.
March 1999	Sat v. Turkey (Application No. 38041/97) Kocak v. Turkey (Application No. 32581/96) The applicants complained of torture during detention and of not being brought before a judge.
March 1999	Demiral v. Turkey (Application No. 30493/96) The applicant complained that criminal proceedings were not conducted within a reasonable time and detention on remand was prolonged beyond a reasonable time.
March 1999	Koc v. Turkey (Application No. 32580/95) Criminal proceedings not concluded within a reasonable time and case was not heard before an independent and impartial tribunal.
May 1999	Aydar v. Turkey (Application No. 32207/96) The case concerned conviction of the applicant following a speech and revocation of his office as mayor.
May 1999	Fidan, Turk, Cagro and Ozarslaner v. Turkey (Application Nos. 29883/96, 29884/96, 29885/96) The applicants claimed they were arrested on account of statements made under duress and they were detained without being brought promptly before a judge due to their affiliation with HADEP.
May 1999	Anli v. Turkey (Application No. 36094/97) The applicant complained of inhumane treatment during detention and of no fair hearing following a raid of the congress of HADEP.
July 1999	Ayhan v. Turkey (Application No. 41964/98) The case concerned the killing of the deceased by security forces because his name was included in an illegal list of opponents.
August 1999	Alexandrou v. Turkey (Application No. 16162/90) Solomonides and others v. Turkey (Application No. 16161/90)

	The applications concerned the deprivation of property rights following the Turkish invasion of Cyprus.
August 1999	G.H.H. and others v. Turkey (Application No. 43258/98) The application concerned the deportation of the applicants to Iran, which would amount to a violation of Article 3.
October 1999	Goc v. Turkey (Application No. 36590/97) The case concerned unlawful detention, torture and denial of a fair hearing. The applicant complained of insufficient compensation awarded by the domestic courts.
October 1999	Jabari v. Turkey (Application No. 40035/98) The applicant complained of torture during detention and that he received no information on why he was arrested.
November 1999	Degirmenci and 38 others v. Turkey (Application No. 31879/96) The applicants were accused of being members of Dev-Yol and of being detained on remand. They complained of ill-treatment and an unfair hearing.
November 1999	Alfatli and others v. Turkey (Application No. 32984/96) Ill-treatment during pre-trial detention.
November 1999	Elik and 39 others v. Turkey (Application No. 41137/98) The application concerned the applicants' expulsion from Turkey to Iran where there was a risk of treatment contrary to Articles 2 and 3.
January 2000	Sahiner v. Turkey (Application No. 29279/95) Kiziloz v. Turkey (Application No. 32962/96) Yakis v. Turkey (Application No. 33368/96) Yildrim v. Turkey (Application No. 30451/96) Gunes v. Turkey (Application No. 31893/96) Yalgin v. Turkey (Application No. 33370/96) Dogan v. Turkey (Application No. 33363/96) The cases concerned criminal proceedings and complaints of unfair hearings.
January 2000	Kalin Gezer and Otebay v. Turkey (Application No. 24849/94, 24850/94, 24941/94) The applicant complained of torture and of not being brought promptly before a judge.

February 2000	Fidan v. Turkey (Application No. 24209/94) The applicant was tortured during police custody for five days and his wife was forced to undergo a gynaecological examination.
March 2000	Keskin v. Turkey (Application No. 40156/98) The applicant complained of ill-treatment during police custody, excessive length of detention, unreasonable length of proceedings and that he was charged on account of his opinions.
March 2000	Kilic v. Turkey (Application No. 40498/98) The applicant complained of an unfair hearing and that he was not brought before a judge.
March 2000	Ipek v. Turkey (Application No. 39706/98) The applicant complained of ill-treatment and of an excessive period of detention following a homicide charge.
March 2000	Cacan v. Turkey (Application No. 28632/95) The applicant's home was destroyed and his family beaten, arrested and taken to a refugee camp where they were tortured. His daughter committed suicide. A petition was filed to complain of the compulsory evacuation of the village and destruction of their home and property but no reply was received.
March 2000	N.O. v. Turkey (Application No. 33234/96) The application concerned a death as a result of torture whilst in police custody, unlawful arrest and denial of legal assistance during detention.
March 2000	Yalman and others v. Turkey (Application No. 36110/97) The applicant complained of insufficient compensation for the deprivation of his liberty.
March 2000	Alinak v. Turkey (Application No. 40287/98) The applicant's books were seized. It was claimed that the interim seizure order violated Articles 9 and 10 and that he received an unfair hearing.

<u>Cases declared inadmissible</u>

April 1998	Penton v. Turkey (Application No. 24463/94) The applicants were British nationals who complained that their property was taken by the Turkish army. The applicants were found not to be victims under Article 25.

April 1998 — C.T.U. v. Turkey (Application No. 26396/95)
The applicant was held in detention on remand for 37 months and awarded compensation following his acquittal. He complained the compensation was insufficient. The facts showed no breach of Article 5.

April 1998 — Solduk v. Turkey (Application No. 31789/96)
The applicant was detained for 54 days. He complained that he was not granted compensation and that there were no effective remedies allowing any person who is acquitted or discharged after standing trial to obtain compensation.

April 1998 — Ozgur v. Turkey (Application No. 36589/97)
The applicant claimed he received insufficient compensation after being detained for 54 days and that the length of the compensation proceedings exceeded a reasonable time.

May 1998 — Eker v. Turkey (Application No. 26970/95)
The applicant complained that he was forced to perform compulsory labour and did not have a fair trial. He claimed he was unfairly treated due to the fact he was a labourer.

May 1998 — Sezer and others v. Turkey (Application No. 29593/95)
The applicant complained he received insufficient compensation following detention and that the length of proceedings exceeded a reasonable time.

May 1998 — Uslu v. Turkey (Application No. 29860/96)
The applicant complained about the length of civil proceedings and that he was denied a fair trial.

May 1998 — Kaplan v. Turkey (Application No. 31830/96)
The applicant complained that his personal reputation was damaged after being prosecuted as an alleged terrorist by the Chief Public Prosecutor attached to the Ankara State Security Council. He claimed he was prosecuted due to statements made to newspapers and that the Prosecutor was not prosecuted despite filing criminal complaints against him for the misuse of power.

May 1998 — D.H. v. Turkey (Application No. 31836/96)
The applicant complained he was unlawfully detained.

May 1998 — Tosunbas v. Turkey (Application No. 36216/97)
The applicant complained about the length of criminal proceedings.

July 1998	Ascioglu v. Turkey (Application No. 27695/95) The applicant complained that he was denied the right to a fair trial and that the national courts awarded insufficient compensation.
July 1998	Durak v. Turkey (Application No. 30491/96) The application concerned the deprivation of the applicant's property.
July 1998	Toluk v. Turkey (Application No. 35981/97) The case concerned complaints against the police whose negligence had resulted in the death of the applicant's father.
September 1998	Odabas v. Turkey (Application No. 27530/95) The application concerned the detention of the applicant for 25 days. He complained the detention was unnecessary and that he received an unfair hearing.
September 1998	Sayin v. Turkey (Application No. 29568/95) The applicant complained of a breach of his right to a fair trial.
September 1998	Onsipahioglu v. Turkey (Application No. 29861/96) The application concerned the restitution of land.
September 1998	Unal v. Turkey (Application No. 29916/96) The applicant complained that his right to a fair trial was violated. The applicant's contract had been revoked and the defendants were a co-operative of lawyers.
September 1998	Yilmaz and 91 others v. Turkey (Application No. 35074/97) The applicants complained of the failure to protect the lives of detainees in prisons and that there was no personal security in prisons. Some prisoners had been beaten by gendarmes whilst being brought before the court.
October 1998	Ahmet v. Turkey (Application No. 37408/97) The applicant complained the Turkish courts had deprived him of property rights due to Cypriot nationality.
December 1998	Ugur v. Turkey (Application No. 30006/96) The applicant complained he did not receive a fair trial during criminal proceedings.
January 1999	Colak v. Turkey (Application No. 34542/97) The application concerned administrative proceedings and whether there had been a fair hearing.

March 1999	Erdagoz and Erdagoz v. Turkey (Application No. 36219/97) The application concerned inhumane treatment, unlawful arrest and detention.
March 1999	Sariaslan and others v. Turkey (Application No. 32554/96) The case concerned civil proceedings and a complaint of an unfair hearing.
June 1999	T.T. v. Turkey (Application No. 28002/95) The case concerned criminal proceedings and whether there had been a fair hearing.
June 1999	A.S. and S.S. v. Turkey (Application No. 40076/98) The application concerned the burning of the applicant's home and a failure by the authorities to respond to a petition.
June 1999	Yasar v. Turkey (Application No. 30500/96) The case concerned the impartiality of criminal proceedings.
June 1999	A.G. and others v. Turkey (Application No. 40229/98) The application concerned deportation to Iran where the applicants faced a risk of arrest and persecution.
September 1999	S.O., A.K. and A.K. v. Turkey (Application No. 31138/96) The case concerned the deprivation of property.
September 1999	Keskin and others v. Turkey (Application No. 36091/97) The application concerned the length of detention on remand and a complaint that criminal proceedings were not concluded within a reasonable time.
September 1999	Arslan v. Turkey (Application No. 39080/97) The case concerned administrative proceedings and whether there had been a fair hearing.
October 1999	Gunduz v. Turkey (Application No. 36212/97) The applicant's home was burnt down. He claimed he was tortured and unlawfully detained.
October 1999	Bolukbas and others v. Turkey (Application No. 37793/93) The applicants were accused of being a members of Dev-Yol and complained of being detained for an unreasonable length of time and that the criminal proceedings were not concluded within a reasonable time.
November 1999	S.T. v. Turkey (Application No. 28310/95)

The applicant was charged with being a member of the PKK and complained that he was tortured during detention on remand.

March 2000 — Akan v. Turkey (Application No. 39444/98)
The case concerned criminal proceedings and whether there had been a fair hearing.

Cases struck out of the list (pursuant to Article 30 of the European Convention)

July 1998 — Nurkhalaj and Hassanpour v. Turkey (Application No. 39499/98)
The case concerned deportation to Iraq.

August 1999 — Constantinides v. Turkey (Application No. 16075/90)
Georgiou v. Turkey (Application No. 16093/90)
Kyriakou v. Turkey (Application No. 16074/90)
Philaniolou v. Turkey (Application No. 16089/90)
Tryphones v. Turkey (Application No. 16098/90)
Tsadiotou Ioannou v. Turkey (Application No. 16090/90)
Menalaou v. Turkey (Application No. 16080/90)
Leftaki v. Turkey (Application No. 16099/90)
Souglidou v. Turkey (Application No. 16095/90)
Papniti v. Turkey (Application No. 16096/90)
Marouthia v. Turkey (Application No. 16100/90)
Papastylianou v. Turkey (Application No. 16083/90)
Stavrou v. Turkey (Application No. 16092/90)
The applicants were involved in an anti-Turkish demonstration and were subsequently arrested, beaten and detained.

January 2000 — Khadjawi v. Turkey (Application No. 52239/99)
The case concerned the expulsion of the applicant from Turkey to Iran where there was a risk of treatment contrary to Articles 2 and 3.

January 2000 — Sasmaz, Doman, Yildirim, Sitilay, Yildirim and Caytas v. Turkey (Application Nos. 30681/96, 10734/96, 30802/96, 30806/96, 30836/96, 30843/96)
The case concerned clashes between PKK members and security forces.

Cases in which Article 31 Reports were issued

March 1999 — Erdogdu v. Turkey (Application No. 25723/94)
The application concerned a violation of Article 10.

April 1999 — Sener v. Turkey (Application No. 26680/95)
The case concerned the applicant's conviction by the State Security Court on account of an article in a weekly review.

June 1999 — Cyprus v. Turkey (Application No. 25781/94)
The application concerned breaches of the Convention in relation to Cypriot territory occupied by Turkey since the invasion of Cyprus.

EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS IN NON-KHRP CASES

9 June 1998 — INCAL v. Turkey
The case concerned the conviction of the applicant following his participation in the preparation of a leaflet. In its judgment, the Court found a violation of Articles 10 and 6.

27 July 1998 — GULEC v. Turkey
The applicant's son was killed by security forces. The Court found that disproportionate force had been used by agents of the state and that no adequate investigations had been conducted. It was held that Article 2 had been violated.

23 September 1998 — AKA v. Turkey
The applicant complained of delays in the payment of additional compensation for the expropriation of land. In its judgment, the Court found a violation of Article 1 of Protocol 1.

23 September 1998 — DEMIR and others v. Turkey
The case concerned the excessive length of the applicant's detention in police custody. It its judgment, the Court found a violation of Article 5.

28 October 1998 — CIRAKLAR v. Turkey
The applicant complained that he was arrested in the absence of any reasonable suspicion that he had committed an offence, that the authorities failed to bring him before a judge and that the tribunal he was heard before was not impartial and independent. The Court found a violation of Articles 5 and 6.

20 May 1999 — OGUR v. Turkey
The application concerned the shooting of the applicant's son by security forces. The Court found a violation of Article 2.

8 July 1999	CEYLAN v. Turkey The case concerned imprisonment of the applicant for publishing a pro-Kurdish article. In its judgment, the Court found a violation of Article 10.
8 July 1999	ARSLAN v. Turkey The applicant was convicted and imprisoned for publishing a pro-Kurdish book. His work was confiscated and he also complained of the denial of a fair trial. The Court found a violation of Articles 6, 9 and 10.
8 July 1999	GERGER v. Turkey The applicant was imprisoned following his speech at a memorial ceremony for the leaders of an extreme left wing movement. In its judgment, the Court found a violation of Articles 6, 9 and 10.
8 July 1999	POLAT v. Turkey The applicant had been imprisoned following the publication of a pro-Kurdish book. The Court found a violation of Articles 9 and 10.
8 July 1999	KARATAS v. Turkey The case concerned the conviction of the applicant for the publication of pro-Kurdish poetry, confiscation of the work and the denial of a fair trial. The Court found a violation of Articles 6, 9 and 10.
8 July 1999	ERDOGDU and INCE v. Turkey The applicant was imprisoned following publication of a pro-Kurdish interview. In its judgment, the Court found a violation of Articles 9 and 10.
8 July 1999	BASKAYA and OKCUOGLU v. Turkey In its judgment, the Court found a violation of Articles 6, 7, and 10. The case concerned the imprisonment of the applicant for publishing a pro-Kurdish article.
8 July 1999	OKCUOGLU v. Turkey The application concerned confiscation of the applicant's magazine, which published a pro-Kurdish article. In its judgment, the Court found a violation of Articles 6, 9 and 10.

8 July 1999 — SUREK and OZDEMIR v. Turkey
The application concerned the seizure of the applicant's publication and his conviction without a hearing. The Court found a violation of Articles 6, and 10.

8 July 1999 — SUREK (No. 1) v. Turkey
The applicant was convicted and sentenced following the publication of a letter, which condemned the military actions of the authorities in Southeast Turkey. He also complained of the denial of a fair trial. In its judgment, the Court found a violation of Article 6.

8 July 1999 — SUREK (No. 2) v. Turkey
The application concerned the publication of an article reporting that the Iimak Chief of Police had given order to open fire on the people of the village. The applicant was charged with revealing the identity of officials mandated to fight terrorism and therefore of rendering them terrorist targets. In its judgment, the Court found a violation of Articles 6 and 10.

8 July 1999 — SUREK (No. 3) v. Turkey
The case concerned the seizure of the applicant's publication and denial of a fair hearing. The Court found a violation of Article 6.

8 July 1999 — SUREK (No. 4) v. Turkey
The application concerned the seizure of a review containing pro-Kurdish news commentary and interview. The applicant was charged and convicted. The Court found a violation of Articles 6 and 10.

28 September 1999 — OZTURK v. Turkey
The applicant was convicted following publication of a book about the life of a founding member of the Communist Party of Turkey. The Court held there had been a violation of Article 10 and Article 1 of Protocol 1.

8 December 1999 — OZDEP (FREEDOM & DEMOCRACY PARTY) v. Turkey
The application concerned the dissolution of the Freedom and Democracy Party. In its judgment, the Court found a violation of Articles 9, 10, 11 and 14.

INDEX TO ADMISSIBILITY DECISIONS LISTED IN VOLUMES 1-7

Numbers following each name refer to volume and decision number.
Example: Kaya 1.13 = Volume 1, decision no. 13

Relevant Articles of the European Convention on Human Rights

(Note the changes made following the coming into force of Protocol 11).

Convention

Article 2: Right to life.
Article 3: Prohibition of torture or inhuman or degrading treatment or punishment.
Article 4: Prohibition of slavery and forced labour.
Article 5: Right to liberty and security.
Article 6: Right to a fair trial.
Article 7: No punishment without law.
Article 8: Right to respect for private and family life.
Article 9: Freedom of thought, conscience and religion.
Article 10: Freedom of expression.
Article 11: Freedom of assembly and association.
Article 12: Right to marry.
Article 13: Right to an effective remedy.
Article 14: Prohibition of discrimination.
Article 15: Derogation in time of emergency.
Article 16: Restrictions on political activity of aliens.
Article 17: Prohibition of abuse of rights.
Article 18: Restrictions under Convention shall only be applied for prescribed purpose.
Article 34: Application by person, non-governmental organisations or groups of individuals. (formerly Article 25).
Article 38: Examination of the case and friendly settlement proceedings (formerly Article 28).
Article 41: Just satisfaction to injured party in event of breach of Convention. (formerly Article 50).

Protocol No. 1

Article 1: Protection of property.
Article 2: Right to education.
Article 3: Right to free elections.

Protocol No. 2

Article 1: Prohibition of imprisonment for debt.
Article 2: Freedom of movement.
Article 3: Prohibition of expulsion of nationals.
Article 4: Prohibition of collective expulsion of aliens.

Protocol No. 6

Article 1: Abolition of the death penalty.

Protocol No. 7

Article 1: Procedural safeguards relating to expulsion of aliens..
Article 2: Right to appeal in criminal matters.
Article 3: Compensation for wrongful conviction.
Article 4: Right not to be tried or punished twice.
Article 5: Equality between spouses.

To date, Turkey has only ratified the Convention and Protocol No. 1.

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 London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

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
- 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 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