CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FORMER SECOND SECTION

CASE OF TEKDAĞ v. TURKEY

(Application no. 27699/95)

JUDGMENT

STRASBOURG

15 January 2004

FINAL

14/06/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tekdağ v. Turkey,

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

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2000 and on 11 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 27699/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Turkish national, Ms Hatice Tekdağ ("the applicant"), on 26 June 1995.

2. The applicant, who had been granted legal aid, was represented by Mr Philip Leach and, as of 4 September 2002, by Ms Anke Stock, lawyers practising in London. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that State officials abducted and killed her husband and that the authorities failed to carry out an effective and adequate investigation into his disappearance. She relied on Articles 2, 3, 5, 10, 13, 14 and 18 of the Convention.

4. The application was declared admissible by the Commission on 25 November 1996 and transmitted to the Court on 1 November 1998, in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

5. The application was allocated to the then Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr Türmen, the judge elected in respect of

Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The Court, having regard to the factual dispute between the parties over the circumstances surrounding the disappearance of the applicant's husband, conducted its own investigation pursuant to Article 38 § 1 (a) of the Convention. It appointed three delegates to take evidence from witnesses at hearings held in Ankara between 9 and 14 October 2000.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Turkish national of Kurdish origin, resident in Diyarbakır. She is the wife of Mr Ali Tekdağ (A.T.), who disappeared in Dağkapı (Turkey) on 13 November 1994.

A. The facts

9. The facts surrounding the disappearance of the applicant's husband are disputed.

10. The applicant's version of events is set out in Section 1 below. The Government's version is set out in Section 2. A list of the documents submitted by the parties and a summary of statements by the witnesses whose testimonies were heard by the Court's delegates at hearings conducted in Ankara are provided in Part B.

1. The applicant's version of events

11. On 13 November 1994 at about 11.00 a.m. the applicant and her husband A.T. went shopping in the village of Küçükkadı, in Diyarbakır**.** When they got off the bus at Dağkapı A.T. told the applicant that he had to attend to something and that she should wait for him for about five minutes. He went off in the direction of the bus station.

12. A.T. returned less than two minutes later but, instead of coming to meet the applicant, he walked right past her without looking at her. When she called out to him, he said: “Don't come near me!”, made signs with his hands and walked into a street nearby. He was being followed by people with walkie-talkies and long-barrelled guns.

13. There was gunfire and everyone, the applicant included, threw themselves to the ground. When the firing stopped, plain-clothed policemen arrived on the scene. They took A.T. into a nearby building and a few minutes later took him away in a white minibus. A.T. was bleeding from a head wound received when he threw himself to the ground. There was a military vehicle parked in front of a bank near the scene, but the soldiers inside did not intervene. A salesman called Mr Necmettin was an eyewitness to the incident.

14. The applicant has not seen her husband since he was taken away by the police on that day. She alleges that a witness, Mr Seyfettin Demir, saw A.T. in custody at the Diyarbakır Headquarters of the Rapid Intervention Force while he himself was being held there and that in November 1994 other witnesses had seen A.T. in custody but were afraid to testify.

15. On 16 November 1994 the applicant petitioned the Principal Public Prosecutor at the Diyarbakır State Security Court for news of her husband, but was turned away by the police. She continued to submit petitions every day for thirty days until she was at last taken to see the Principal Public Prosecutor, Mr Bekir Selçuk.

16. The applicant reported her husband's disappearance to Mr Selçuk who said he would deal with the matter. When she returned a few days later, he said he had yet to obtain information. The applicant explained that, according to an article in Özgür Gündem newspaper, witnesses had seen her husband in prison but they were afraid to testify. She indicated that Seyfettin Demir was, however, willing to make a statement. Mr Selçuk replied that he wanted to know the names of the other witnesses, adding that the security forces could not have abducted her husband.

17. After forty days the applicant met the provincial governor Mr Doğan Hatipoğlu and explained the situation to him. Mr Hatipoğlu said he would make enquiries. When the applicant returned a few days later, he said he did not have the means to conduct an investigation.

18. Some time later the applicant, accompanied by her daughter Nuran (aged 21), went back to see Mr Selçuk, who denied that her husband had been taken into custody and said that A.T. was responsible for numerous illegal acts. Mr Selçuk said that if A.T. had been taken into detention he would bring charges against those responsible.

19. A.T. had previously been taken into custody by the Turkish security forces 19 times, on 17 of which he had been put in prison. He had changed his identity and assumed the name Mehmet Aslan to avoid being recognised, arguing that the police detained him whenever they saw the name “Tekdağ”.

20. About seven months after A.T.'s disappearance, policemen raided the applicant's house.

2. The Government's version of events

21. The first written request for an investigation into A.T.'s disappearance was signed by his mother and dated 5 January 1995. The request was addressed to the Provincial Governor of Diyarbakır, who forwarded it to the State of Emergency Bureau, which sent it to the Diyarbakır Police Headquarters. The latter issued a reply on 9 January 1995 denying that A.T. had been taken into custody.

22. A letter from the Public Prosecutor's Office at the Diyarbakır State Security Court to the Ministry of Justice indicated that the applicant had been told that A.T. had never been taken into custody and that she would have received a written reply if she had asked for one in writing.

23. A.T.'s illegal change of identity could indicate that he was still using a false identity and had joined the PKK terrorist organisation.

24. The applicant's daughter was arrested on 7 November 1995 on charges of aiding and abetting the PKK.

An investigation into the death of the applicant's brother showed that he had been assassinated by the terrorist group Hizbullah.

25. On 21 January 1996 the *Evrensel* newspaper published some news, issued by an anonymous source, according to which A.T. had been allegedly murdered while in the custody of the Armoured Brigade barracks in Silvan. The editor of the newspaper, interrogated on this point by the Public Prosecutor of Silvan, refused to disclose the identity of the source.

3. Domestic investigation

26. The main investigation file concerning A.T.'s disappearance contains 108 documents, including instructions by the judicial authorities to the security forces to investigate, information provided by the security forces to the public prosecutors, and judicial decisions.

B. Documents submitted by the parties

27. The parties submitted various documents concerning the investigation into A.T.'s alleged abduction. The main documents of relevance are as follows:

(a) The applicant's further applications to the authorities

28. The applicant reiterated her allegations in two further documents:

(i) A statement of 11 February 1995 regarding the disappearance of her husband;

(ii) A statement of 22 March 1997 sent to the European Commission of Human Rights.

(b) Documents from the domestic investigation

29. The main file on the investigation into A.T.'s disappearance is the Diyarbakır Public Prosecutor's preliminary investigation file no. 1998/130. It contains 108 documents. The six previous investigation files, which were finally incorporated into this file, are as follows:

(i) the Diyarbakır Public Prosecutor's office file no. 1996/748 (this investigation ended with a decision of no jurisdiction *ratione loci*);

(ii) the Silvan Public Prosecutor's office file no. 1996/70 (this investigation ended with a decision of no jurisdiction *ratione loci*);

(iii) the Diyarbakır Public Prosecutor's office file no. 1996/6950 (this investigation ended with a decision of no jurisdiction *ratione loci*);

(iv) the Silvan Public Prosecutor's office file no. 1996/685 (this investigation ended with a decision to discontinue the prosecution);

(v) the Silvan Public Prosecutor's office file no. 1996/286 (this investigation began following the Ministry of Justice's intervention and ended with a decision of no jurisdiction *ratione loci*);

(vi) the Diyarbakır Public Prosecutor's office file no. 1996/7840 (this investigation ended with a decision of no jurisdiction *ratione loci*);

(vii) the Silvan Public Prosecutor's office file no. 1996/286 (the investigation was reopened and ended with a decision of no jurisdiction *ratione loci*).

The main documents in the investigation file concerning A.T.'s disappearance are as follows:

(i) the Diyarbakır Security Directorate's letter of 9 January 1995 to the Governor's office in Diyarbakır;

(ii) the Diyarbakır Security Directorate's letter of 8 March 1995 to the Governor's office in Diyarbakır;

(iii) the Diyarbakır Security Directorate's letter of 8 March 1995 to the Principal Public Prosecutor in Diyarbakır;

(iv) the Diyarbakır Security Directorate's letter of 20 March 1996 to the Principal Public Prosecutor in Diyarbakır;

(v) the Diyarbakır Provincial Gendarme Commanding Oficer's letter of 31 March 1996;

(vi) the Diyarbakır Principal Public Prosecutor's decision of 11 April 1996 to discontinue the criminal proceedings;

(vii) the Silvan Public Prosecutor's letter of 6 May 1996 to the public prosecutor in Diyarbakır, which states:

> "Further to the investigation conducted by our public prosecutor's office in connection with the person named Ali Tekdağ, who is alleged to have been taken into custody in Diyarbakır on 13.11.1994, then taken to the Silvan Armoured Brigade Base and killed in custody, and in connection with the allegations contained in Hatice Tekdağ's attached application to the European Commission of Human Rights,

1- please identify the police officers who were on guard duty at the Refah Party Diyarbakır Provincial Branch Office on the date of the incident and interview them about what they know or saw regarding the allegations; and

2- interview the person named Seyfettin Demir, who is in Diyarbakır E-Type Prison as a convict or remand prisoner, about what he knows or saw regarding the allegations, and send the reply to this request to the principal public prosecutor's office. 06.05.1996. Three enclosures."

(viii) the Silvan Public Prosecutor's letter of 21 June 1996 to the public prosecutor in Diyarbakır, which states:

"We ask you again to please report further to our letter sent under the same number and dated 06.05.1996, requesting that the police officers on guard duty at the Refah Party Diyarbakır Provincial Branch Office be interviewed about what they know or saw in connection with the person named Ali Tekdağ, who is alleged to have been taken into custody in Diyarbakır on 13.11.1994, then taken to the Silvan Armoured Brigade Base and killed in custody, and that the person named Seyfettin Demir, who is in Diyarbakır E-Type Prison as a convict or remand prisoner, be interviewed about what he knows or saw regarding the allegations, and for the completed request to be returned to us."

(ix) the Diyarbakır Principal Public Prosecutor's decision declining jurisdiction and transferring the file to the Principal Public Prosecutor in Silvan;

(x) Public Prosecutor no. 31618's letter of 6 September 1996 to the Diyarbakır Police, Public-Order Section, which states:

"This is a letter requesting that (1) the complainant whose full identity is given below be summoned to your office and, in view of her allegation in the enclosed letter entitled "To the Human Rights Project" that her husband has disappeared and has been seen by persons in custody, asked the full names and addresses of those persons; (2) since in the same letter the complainant alleges that Seyfettin Demir, who saw the complainant's husband while in custody, is in Diyarbakır E-Type Prison, that this person be summoned as a witness and interviewed in connection with the enclosed petition.

Complainant, Hatice Tekdağ. Address...

Seyfettin Demir, in Diyarbakır E-Type Prison as a convict or remand prisoner."

(xi) the Diyarbakır Public Prosecutor's letter of 18 September 1996 to the E-type Prison in Diyarbakır which states:

"To the E-Type Prison Warden's Office, Diyarbakır. Please arrange for Seyfettin Demir, who is on remand at the E-Type Prison of our province, to be produced in connection with the investigation."

(xii) Public prosecutor no. 36866's letter of 6 February 1998 to the Diyarbakır Police, Public-Order Section ;

(xiii) Public Prosecutor no. 36866's letter of 13 April 1998 to the Diyarbakır Police, Public-Order Section;

(xiv) Public Prosecutor no. 36866's letter of 27 September 1999 to the Diyarbakır Police, Public-Order Section;

(xv) Public Prosecutor no. 29010's letter of 15 October 1999 to the Security Directorate in Diyarbakır;

(xvi) Mr Rana Yılmaz's letter of 5 November 1999 to the Diyarbakır Public Prosecutor, Mr Hasan Şakrak;

(xvii) Public Prosecutor no. 39945's letter of 9 November 1999 to the Principal Public Prosecutor at the Diyarbakır State Security Court;

(xviii) Public Prosecutor no. 38172's letter of 10 February 2000 to the Diyarbakır Security Directorate;

(xix) Public Prosecutor no. 39945's letter of 29 March 2000 to the Diyarbakır Public-Records Office;

(xx) Public Prosecutor no. 39945's letter of 29 March 2000 to the Principal Public Prosecutor at the Diyarbakır State Security Court.

C. Oral evidence

30. The Court held a hearing in Ankara on 13 and 14 October 2000 and took oral evidence from nine witnesses.

31. The applicant repeated her previous statements. As regards her allegation that she had been intimidated by State agents on account of her application, she said she could not identify or describe the persons who had raided her house at night. She thought they were plain-clothed police officers.

32. Mr Bekir Selçuk was the Principal Public Prosecutor at the Diyarbakır State Security Court at the time. He did not remember having met A.T. or having carried out an investigation into his disappearance. He said that no incident involving gunfire such as the one described by the applicant had been referred to him or to his office on the date of the alleged incident. He found it inconceivable that members of the security forces would detain someone without informing the public prosecutor. During his two meetings with the applicant, he had merely informed her that her husband had not been taken into police custody in connection with a case that was being dealt with by his office.

33. Mr Hasan Şakrak was the Public Prosecutor in Diyarbakır who had been in charge of the case since 1999. It was he who had conducted the investigation into the disappearance of A.T. and into the alleged intimidation of the applicant by police officers. His investigation file only contained testimonies from the applicant and her daughters, Yasemin and Remziye, in which they made no references to the other people who had allegedly witnessed both incidents. Mr Şakrak said that a large part of the documents concerning A.T. had never been handed over to him. He had never heard of Seyfettin Demir and the documents concerning Mr Demir were not in his investigation file.

34. Mr Ramazan Sürücü was the Director of the Anti-Terrorism Branch of the Diyarbakır Police Headquarters at the time. He had no idea what role Seyfettin Demir had played in A.T.'s disappearance. He denied that A.T. had been taken into custody by his unit. He also stated that A.T.'s brother had been abducted and killed by Hizbullah and that his team had caught the killers.

35. Mr Ahmet Duran Alp was the head of the Rapid Intervention Force at the time. There were approximately 400 uniformed officers in these units. He said he had never heard of A.T.

36. Mr Necmi Çakar was the head of the Interrogation Unit of the Anti-Terrorism Branch in Diyarbakır, under Mr Ramazan Sürücü's orders. He said that A.T. had been taken into custody on various occasions and interrogated in connection with his links to the PKK. Mr Çakar knew that members of Hizbullah had murdered A.T.'s brother. He said that officers from the Interrogation Unit could use ordinary police cars and vehicles, including minibuses, with civilian number plates.

37. Mr Hasan Şenay was the Deputy Director of the Police Headquarters in Diyarbakır. He had signed two letters to the applicant, indicating that A.T. had not been taken into police custody at the alleged time (the letters were not produced by the Government to the Court). The letters were consistent with the information contained in the police custody registers that were sent to the Headquarters by all the police departments.

38. Mr Kürşat Kılıçarslan was a sergeant and head of the Pirinçlik Gendarme Station at the time. His deputy's name was G. Alp. It was gendarme practice to take statements from persons connected with incidents that occurred in their area of jurisdiction. The witness had no idea who A.T. was and did not remember the name.

39. Mr Münir Büyükelçi was the Public Prosecutor in Silvan, and had for a certain period been responsible for the investigation into A.T.'s disappearance. He had taken a number of steps to elucidate the facts. He had taken statements from the complainants and from the editor of the *Evrensel* newspaper on A.T.'s alleged murder while in the custody of the Armoured Brigade barracks in Silvan.

Mr Büyükelçi said that he had begun a serious in-depth investigation but, having received no replies to his queries, he had transferred the file to the Diyarbakır Public Prosecutor. By letters of 6 May 1996 and 21 June 1996, he had invited the Diyarbakır Public Prosecutor's Office to trace the police officers who had been on guard duty at the Refah Party office situated near the scene of the incident and the main witness, Seyfettin Demir. He had not received any notification that action had been taken further to his requests. It became clear from his statement that the information about Seyfettin Demir, who was recorded as being in prison in Diyarbakır in 1994, had never been transmitted to him. Furthermore, he had not taken any steps to

hear testimony from possible witnesses to the event, such as residents of the district where the incident had occurred.

Mr Büyükelçi was asked to examine the investigation file which was produced on the spot by the Government, and through his explanations, it became apparent that the Government had not submitted to the Court large parts of the investigation file.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State of emergency

40. Since approximately 1985, serious disturbances have raged in south-east 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.

41. Two principal decrees relating to the south-eastern provinces of Turkey have been made under the Law on the State of Emergency (Law no. 2935 of 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-east Turkey. Under Article 4 (b) and (d) of the decree, all private and public security forces and the Gendarmes' Public Peace Command are at the disposal of the regional governor.

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

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

B. Constitutional provisions on administrative liability

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

> "All acts and 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."

44. 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.

C. Criminal law and procedure

45. The Turkish Criminal Code makes it a criminal offence to:

- deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),
- subject an individual to torture or ill-treatment (Articles 243 and 245),
- commit unintentional homicide (Articles 452 and 459), intentional homicide (Article 448) or murder (Article 450).

46. 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.

47. If the alleged perpetrator of a crime was a State official or a civil servant at the material time, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). An appeal lies against a local council decision to the Supreme Administrative Court; a refusal to prosecute gives rise to an automatic appeal of this kind. If the suspect is a member of the armed forces, he comes under the jurisdiction of the military courts and is tried in accordance with the provisions of Article 152 of the Military Criminal Code.

D. Civil law provisions

48. Any illegal act by a civil servant, be it a criminal offence or a tort, which causes material or moral damage may be the subject of a claim for compensation in the ordinary civil courts. Pursuant to Article 41 of the Civil Code, 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. The civil courts pursuant to Article 46 of the Civil Code may compensate pecuniary loss and non-pecuniary or moral damages awarded under Article 47.

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

E. Impact of Decree no. 285

50. 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.

51. 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 § 1, provides that all security forces under the command of the regional governor (see paragraph 41 above) shall be subject, in respect of acts performed in the course of their duties, to the Law of 1914 on the prosecution of civil servants. Thus, any prosecutor who receives a complaint alleging a criminal act by a member of the security forces must decline jurisdiction and transfer the file to the Administrative Council. These councils are composed of civil servants, chaired by the governor. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

THE LAW

I. EVALUATION OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. Arguments of the parties

1. The applicant

52. The applicant complained about her husband's detention, which the authorities denied, and disappearance in Dağkapı, Diyarbakır. She asked the Court to find that her husband's disappearance engaged the responsibility of the respondent State under Articles 2, 3, and 5 of the Convention and that each of these Articles had been violated.

2. The Government

53. The Government submitted that a state of emergency had been declared in south-east Turkey, as a result of terrorist activities by the PKK. Killings and kidnappings by unidentified persons and various other violent acts were common in that part of the country. However, the judicial system operated in such a way as to find the perpetrators of every crime. Complaints concerning disappearances should be lodged with the public prosecutor, who would register them and open a preliminary investigation file.

54. The Government denied that the applicant's husband has been detained and said that the applicant's account of events had not been corroborated by any witnesses. They submitted that the applicant was unable to provide the names or addresses of the persons who had allegedly seen A.T. in detention. Finally, the Government alleged that A.T. was a P KK sympathiser, who had changed his identity and probably joined the PKK.

The Government said in conclusion that, as it has not been proved beyond reasonable doubt that the applicant's husband had been detained by the security forces, his disappearance could not engage their responsibility.

B. General principles

55. The Court points out that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

C. The Court's considerations under Article 38 § 1 (a)

56. Article 38 § 1 (a) of the Convention provides:

> "1. If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities..."

57. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under former Article 25 of the Convention (now replaced by Article 34) that States

should furnish all necessary facilities to make possible a proper and effective examination of applications. It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his or her rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. The same applies to delays by the State in submitting information which prejudices the establishment of facts in a case (see *Orhan v. Turkey*, no. 25656/94, 18 June 2002, § 266).

58. In the light of the above principles and having regard to the Government's obligations under Article 38 § 1 (a) of the Convention, the Court has examined the Government's conduct in the present case, in particular as regards three matters relevant to the establishment of the facts.

59. The Government failed to submit the full investigation file along with their observations of 19 February 1996 on the admissibility and merits of the case. During the fact-finding mission by the delegates of the Court, it became apparent when the witness Münir Büyükelçi was asked to examine the whole investigation file on 13 October 2000 that the Government had withheld large parts of the investigation file from the Court (§ 38 above). The Government were requested by the Court in a letter of 25 October 2000 to explain why the documents, which were submitted at a later stage, had not been submitted earlier. The Court pointed out in that letter that an allegedly updated investigation file had been produced at the beginning of the hearing of evidence by the delegates, and a number of other documents had been provided after it had ended.

In response, the Government cited "clerical errors and communication problems between the Ministries of Justice and Foreign Affairs and the local courts" as the reason for the delay.

60. The Court points out in this connection that the Government were repeatedly invited to submit all documents in their possession to ensure the file was complete. The documents (namely written demands by public prosecutors to find the main witnesses) were furnished at the last minute in Ankara and were fundamental to the establishment of the facts. The Court considers that the clerical errors and problems of communication between the national authorities referred to by the Government do not constitute a convincing explanation for the delay in providing the complete investigation file.

61. The Court therefore finds that the Government have failed to provide any convincing explanation for their delays and failures to act in response to

the Court's requests for relevant documents and information. It accordingly considers that it may draw inferences from the Government's conduct in the instant case (see *Orhan*, cited above, § 274). Bearing in mind the difficulties inherent in a fact-finding exercise of this nature and the importance of the respondent Government's cooperation in Convention proceedings, the Court finds that the Government have failed to furnish all necessary facilities within the meaning of Article 38 §1 (a) of the Convention to assist the Court in its task of establishing the facts.

D. The Court's evaluation of the facts

62. The applicant alleged that secret forces within the State security forces had abducted and killed her husband. The Government denied this. The Court will therefore verify the facts by assessing the weight and effects of the evidence gathered by the Court's delegates.

63. The Court observes that the applicant's oral testimony largely confirmed the written statements she had given both to the national authorities and to the Court's delegates. Her evidence on the whole was consistent with the applications and statements she had made following her husband's disappearance.

The Court notes however that her accusation that the abduction of her husband was carried out by plain-clothed policemen is not supported by any evidence.

64. The applicant's statements on the question of her husband's alleged detention at Diyarbakır Police Headquarters or a military base near Silvan were denied by Ramazan Sürücü, Ahmet Duran, Necmi Çakar, Hasan Şenay and Kürşat Kılıçaslan when giving evidence before the delegates (see paragraphs 34-38 above). Mr Sürücü and Mr Çakar had heard that the Tekdağ family had problems with the Hizbullah and that the applicant's brother-in-law had been abducted and killed by members of that organisation (see paragraphs 34 and 36 above). The Head of the Rapid Intervention Force at the time, Mr Duran, had never heard of A.T. (see paragraph 35 above). The other witnesses, who were all members of the security forces, did not add anything that supported any of the applicant's allegations.

65. The Court notes that the most crucial witness in favour of the applicant's allegations, Seyfettin Demir, who allegedly saw A.T. in police custody, did not appear before the delegates. His whereabouts were unknown to the parties following his release from prison on 3 April 1995.

66. In the light of the foregoing, the Court points out that it has not been provided with any eyewitness accounts or evidence corroborating the applicant's account to a decisive extent. It notes that the only evidence that the applicant's husband was detained in a military base is hearsay and comes from a newspaper (see § 25 above). Furthermore, the documentary and oral

evidence with which it has been presented is, as outlined above, incomplete, inconsistent and on some points, even contradictory. The Court cannot draw any decisive conclusion from it. Nor can it determine from the witnesses' statements whether or not A.T. was arrested.

The Court therefore finds that the applicant's allegations about the alleged abduction and killing of her husband by officials have not been sufficiently proved.

67. That finding is not altered by the background against which the applicant submitted that the impugned incident should be seen, namely the pressure exerted by the authorities on the applicant's husband and members of his family, the authorities' suspicion of A. T.'s involvement in the PKK and his previous arrests, prior to his disappearance.

68. On the basis of the above findings, the Court will proceed to examine the applicant's complaints under the various Articles of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicant alleged that her husband had been abducted and killed by agents of the State and that the authorities had failed to carry out an effective and adequate investigation into his disappearance. She relied on 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."

A. Submissions of the parties

1. The applicant

70. The applicant alleged that it was established beyond reasonable doubt that the State security forces had detained her husband, who had met his death at the hands of the State security forces or their agents. She maintained that it was also established beyond reasonable doubt that the

respondent Government had failed to protect A.T.'s right to life, in that they had failed to conduct an independent, effective and thorough investigation into his disappearance and probable death in suspicious circumstances.

2. The Government

71. The Government disputed those allegations. They maintained that the applicant had not substantiated her allegations that her husband had been detained by the security forces. Accordingly, they contended that no issue could arise under Article 2 of the Convention.

The Government further contended that the investigation into the disappearance of the applicant's husband had met the requirements of the Convention.

B. The Court's assessment

1. The alleged failure to protect the right to life

72. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

73. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Orhan*, cited above, § 326).

74. The Court draws attention to its previous findings in similar Turkish cases to the effect that in 1993, as a result of the conflict in south-east Turkey, there were rumours that contra-guerrilla elements were involved in targeting persons suspected of supporting the PKK. It is undisputed that there were a significant number of killings which became known as the "unknown perpetrator killing" phenomenon and which included prominent Kurdish figures and journalists (see *Mahmut Kaya v. Turkey*, no. 22535/93, § 89, ECHR 2000-III and *Yaşa v. Turkey,* judgment of 2 September 1998, *Reports* 1998-VI). The Court considers that that context lends some support to the applicant's allegations.

75. However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

76. Accordingly, the Court refers to its above finding (see paragraph 68) that the applicant's allegations concerning her husband's abduction and killing have not been sufficiently proved. It appears from the evidence that there were no eyewitnesses to these alleged incidents. Nor has it been established that A.T. was seen in the custody of the State security forces. The witnesses referred to by the applicant either proved impossible to trace or preferred to remain anonymous.

77. In view of the above, the Court considers that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicant's husband was abducted and killed by any State agent or person acting on behalf of the State authorities.

It follows that there has been no violation of Article 2 on that account.

2. The alleged inadequacy of the investigation

78. The Court reiterates that the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, the *McCann and Others*, cited above, p. 49, § 161). This obligation extends to but is not confined to cases that concern intentional killing resulting from the use of force by agents of the State.

79. The Court also points out that the positive obligation imposed on the Contracting States by Article 2 § 1 requires that the right to life be protected by law. This implies that, as a minimum, a State is under an obligation to provide a framework of law which generally prohibits the taking of life and to ensure the necessary structures to enforce these prohibitions, including the provision of a police force with responsibility for investigating and suppressing infringements (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115). That positive obligation, however, does not impose a requirement that a State must necessarily succeed in locating and prosecuting perpetrators of fatal attacks.

80. Turning to the particular circumstances of the case, the Court notes that an investigation was indeed carried out into the disappearance and alleged death of the applicant's husband. However, there were important shortcomings in the conduct of the investigation.

In this connection, the Court observes that there was no real coordination between the different prosecutors in the conduct of the investigation. For example, large parts of the documents concerning A.T. had never been transmitted to Mr Şakrak, the Public Prosecutor of Diyarbakır in charge of the investigation in 1999. Mr Şakrak had never heard of the main witness on behalf of the applicant, Mr Seyfettin Demir (see paragraph 33 above). Furthermore, Mr Büyükelçi, the public prosecutor in Silvan who was in charge of the investigation for a period, asked the Diyarbakır Public Prosecutors' Office to trace the police officers on guard in the vicinity of the incident venue and also to trace the main alleged witness, Mr Seyfettin Demir (see paragraph 39 above). Mr Büyükelçi never received a reply to his requests. Moreover, the information about Seyfettin Demir being in prison in Diyarbakır in 1994 was never transmitted to him (ibid.).

81. The Court also considers that the public prosecutors failed to broaden the investigation by following up possible leads provided by the applicant and took no steps on their own initiative to identify possible witnesses to the alleged abduction.

82. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's husband. It holds, therefore, that there has been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

83. The applicant referred to the fact that she had been unable to find out what happened to her husband. She complained that having to live with his disappearance constituted inhuman treatment. She referred to the lack of information given to her by the authorities in answer to her enquiries and to the prolonged period of uncertainty over A.T.'s fate, which kept her imprisoned in a cycle of unfounded hope and despair.

Article 3 provides:

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

84. The Government submitted that the applicant's allegations were untrue and unsubstantiated.

85. The Court points out that whether a family member is a victim will depend on the existence of special factors giving his or her suffering a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie – in this context, a certain weight will attach to the marital bond –, the particular circumstances of the relationship, the extent to which the family

member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (*Çakıcı c. Turquie* [GC], no. 23657/94, § 99, ECHR 1999-IV).

86. In the present case, the Court first refers to its above finding that it has not been established beyond all reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the alleged abduction of the applicant's husband. Furthermore, there is nothing in the content or tone of the authorities' replies to the various enquiries made by the applicant that could be described as inhuman or degrading treatment. The Court considers that the lack of coordination between the public prosecutors involved in the case and their failure to broaden the investigation do not constitute special features which would justify finding a violation of Article 3 of the Convention in relation to the applicant herself. Accordingly, there has been no breach of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

87. The applicant complained that she had not been informed of the reasons for her husband's detention, that he had not been brought promptly before a judicial authority after his arrest and that she had been unable to bring proceedings to determine the lawfulness of his detention. She relied on Article 5 of the Convention.

In so far as relevant, Article 5 reads:

> "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;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

88. The applicant maintained that her husband had been detained without any guarantee as to security of person. No custody records had ever been disclosed confirming he was in custody. She submitted that the unacknowledged detention of an individual is a complete negation of guarantees, such as prompt judicial intervention against arbitrary deprivations of liberty.

89. The Government submitted that the applicant's allegations were untrue and unsubstantiated.

90. The Court refers to its above finding that it has not been established beyond all reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the alleged abduction of the applicant's husband. It also reiterates that there were no direct eyewitnesses to A.T.'s detention in Diyarbakır Prison or in the Silvan military base and that no inference can be drawn from the testimonies of the witnesses as to whether A.T. was or was not in custody. There is thus no factual basis on which to conclude that there has been a violation of these provisions as alleged by the applicant.

91. Accordingly, the Court holds that there has been no violation of Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. The applicant complained that she had been denied an effective remedy within the meaning of 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."

93. The applicant submitted that the authorities had failed to carry out an effective investigation into her complaints concerning her husband's disappearance. She argued that the location, nature and circumstances of her husband's disappearance were sufficient by themselves to warrant a full investigation. She also alleged that, at the material time, there was an official tolerance of the lack of effective remedies in south-east Turkey, a fact that demonstrated a systematic practice in relation to complaints of this nature.

94. The Government rejected the applicant's submissions and argued that the authorities had carried out a meticulous and effective investigation into her complaints.

95. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the following judgments: *Aksoy v. Turkey*, 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın v. Turkey* 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103, and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, p. 325, § 89).

96. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).

97. The Court reiterates that it has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the disappearance of the applicant's husband. However, according to its established case-law, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of Article 13 (see the following judgments: *Orhan*, cited above, § 386; *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, p. 23, § 52, *Kaya, cited above, pp. 330-31, § 107, and Yaşa,* cited above, § 113).

98. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the disappearance of the applicant's husband. For the reasons set out above (see paragraphs 80-84**),** no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see *Orhan, cited above*, § 387, and *Tanrıkulu*, cited above, § 119).

99. The Court therefore concludes that there has been a violation of Article 13 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14, READ IN CONJUNCTION WITH ARTICLES 2, 3, 5, 10, 13 AND 18, OF THE CONVENTION

100. The applicant complained that her husband had been killed because of his Kurdish origin in violation of Article 14 of the Convention, which provides:

> "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."

101. The applicant argued that there was a practice of discrimination in south-east Turkey against Kurdish people.

102. The Government did not comment on this issue beyond denying the factual basis of the substantive complaints.

103. The Court has examined the applicant's allegations in the light of the evidence submitted to it, but considers them unsubstantiated. There has therefore been no violation under this head.

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

104. The applicant alleged that the restrictions on her rights and freedoms set forth in the Convention had been applied for purposes not permitted under the Convention. She relied on Article 18, which reads:

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

105. The Court points out that it has already examined this allegation in the light of the evidence submitted to it, and found that it was unsubstantiated. Accordingly, no violation of this provision has been established.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

106. Article 34 of the Convention, in so far as relevant, provides:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

107. The applicant first submitted that the Government's conduct during the course of the proceedings and in particular during the fact-finding mission had been such as to breach their obligation under Article 34 of the Convention.

The applicant maintained in this connection that she and members of her family were consistently intimidated by the State agents on account of her application to the Court. In particular, she alleged that plain-clothed police officers had raided her house approximately seven months after her husband's disappearance.

108. The Government denied the applicant's allegations and averred that they had fully complied with their undertaking under Article 34 of the Convention.

109. The Court points out that it has already examined the Government's conduct during the fact-finding mission in the context of Article 38 § 1 (a) of the Convention and made certain findings. Accordingly, it does not consider it necessary also to examine these matters under Article 34 of the Convention (see *Orhan*, cited above § 402).

110. As to the applicant's allegation about intimidation by the State agents, the Court notes that the applicant could not identify or describe the persons who had raided her house at night. It is therefore only a suggestion by the applicant that the perpetrators of the alleged raid sons were plain-clothed police officers. Thus, having regard to the applicant's failure to provide detailed information on the impugned event and in the light of the ambiguous nature of her submissions, the Court considers these allegations unsubstantiated.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

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

A. Pecuniary damage

112. The applicant claimed 335,616.83 pounds sterling (GBP) for pecuniary damage she had suffered as a result of her husband's disappearance. She submitted in that connection that her family had lost its business.

113. The Government contended that the applicant had failed to submit any evidence in support of her claims.

114. The Court observes that there is no causal link between the matter held to constitute a violation of the Convention – the absence of an effective investigation – and the pecuniary damage alleged by the applicant (see *Ülkü Ekinci v. Turkey*, no. 27602/95, 16 July 2002, unreported). It dismisses the applicant's claim under this head.

B. Non-pecuniary damage

115. The applicant claimed GBP 60,000 for non-pecuniary damage. She referred in this respect to the severe anguish and distress she had suffered on account of her husband's disappearance.

116. The Government claimed that that amount was excessive and unjustified.

117. The Court reiterates that it has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the death of the applicant's husband, contrary to the procedural obligation under Article 2 of the Convention and in breach of Article 13 of the Convention. In the light of its established case-law in similar cases (see *Ülkü Ekinci*, cited above, § 171) and having regard to the circumstances of the case, the Court awards EUR 14,000 exclusive of any tax that may be chargeable, such sum to be converted into Turkish liras (TRL) at the rate applicable at the date of payment and paid into the applicant's bank account in Turkey.

D. Cost and expenses

118. The applicant claimed a total of GBP 23,301.64 for fees and costs in the preparation and presentation of her case before the Convention institutions. This included fees and administrative costs incurred (1) by her British representatives, Mr Philip Leach and Ms Anke Stock, and by other lawyers and administrators attached to the Kurdish Human Rights Project in London (GBP 14,366.64 including legal work, translations and summaries from English into Turkish from Turkish into English and GBP 335.00 in respect of expenses such as telephone calls, postage, photocopying and stationery) and (2) by her Turkish lawyers (17,659.17 EUROS).

119. The Government maintained that in the absence of any supporting evidence, the above claims had to be rejected as unsubstantiated and, in any event, were unnecessarily incurred and excessive.

120. The Court notes that the applicant has only partly succeeded in making out her complaints under the Convention. However, it notes that the present case involved complex issues of fact and law that required detailed examination, including the taking of evidence from witnesses in Ankara. It reiterates in this connection that only legal costs and expenses necessarily and actually incurred can be reimbursed under Article 41 of the Convention. Accordingly, the Court is not satisfied that, in the instant case, all the costs and expenses were necessarily and actually incurred. It considers excessive the total number of hours of legal work for which the applicant submits claims in respect of her British lawyers and Turkish administrators and finds that it has not been proved that all those legal costs were necessarily and reasonably incurred. As regards the translations and summaries and administrative costs, the Court considers that they may be regarded as necessarily and actually incurred. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, it awards her the sum of EUR 14,000 exclusive of any tax that may be chargeable, less EUR 1,513 received by way of legal aid from the Council of Europe, such sum to be converted into pounds sterling (GBP) at the date of settlement and to be paid into the bank account in the United Kingdom indicated in her just satisfaction claim.

E. Default interest

121. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 2 of the Convention as regards the applicant's allegation that her husband was abducted and killed by State agents or persons acting on behalf of the State authorities;

2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's husband;

3. *Holds* unanimously that there has been no violation of Article 3 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 5 of the Convention;

5. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;

6. *Holds* unanimously that there has been no violation of Article 14, read in conjunction with Articles 2, 3, 5, 10, 13 and 18 of the Convention;

7. *Holds* unanimously that there has been no violation of Article 18 of the Convention;

8. *Holds* unanimously that the Government have failed to fulfil their obligation under Article 38 § 1 (a) of the Convention;

9. *Holds* unanimously that it is not necessary to examine separately whether there has been a violation of Article 34 of the Convention as regards the Government's conduct during the course of the proceedings, and that the applicant's complaint about intimidations is unsubstantiated;

10. *Holds* by six votes to one
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
(i) 14,000 EUR (fourteen thousand euros) in respect of non-pecuniary damage;

(ii) 14,000 EUR (fourteen thousand euros) less EUR 1,513 EUR (one thousand five hundred and thirteen euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos L. ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partially dissenting opinion of Mr F. Gölcüklü is annexed to this judgment.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

To my great regret, I cannot agree on certain points with the opinion of the majority for the following reasons:

1. As I explained in my dissenting opinions in the cases of *Ergi v. Turkey*, (judgment of 28 July 1998), *Tanrıkulu v. Turkey* (judgment of 8 July 1999) and *Kaya v. Turkey* (judgment of 19 February 1998), when the Court finds a violation of Article 2 of the Convention on the ground that no effective inquiry has been conducted into the circumstances surrounding the disappearance of a close relative of the applicant, I consider that no separate issue arises under Article 13, because the absence of a satisfactory and appropriate inquiry into the disappearance forms the basis of the applicant's complaints under both Articles 2 and 13. In that connection, I refer also to the opinion expressed by a large majority of the Commission on the question in its reports (see *Aytekin v. Turkey*; no. 22880/93, Commission's report of 18 September 1997; *Ergi v. Turkey*, no. 23818/94, Commission's report of 20 May 1997; and *Yaşa v. Turkey*, no. 22495/96, Commission's report of 8 April 1997).

In my opinion, there has been no violation of Article 13 of the Convention in this case.

2. As to Article 41, the applicant alleged about ten violations in the present case and succeeded in only one of them. I think the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage she sustained.

The applicant claimed also a total of GBP 21,301.64 for costs and expenses incurred in the preparation and presentation of her case before the Convention institutions by her “lawyers”. If we divide the amount of 21,301.64 GBP by ten, the result is approximately GBP 2,130, which is more than enough for the work.

The sum allocated to the applicant for both non-pecuniary damage and for costs and expenses is more than excessive and constitutes in law unjust, i.e. unlawful enrichment.