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

FIRST SECTION

CASE OF AKKOÇ v. TURKEY

(Applications nos. 22947/93 and 22948/93)

JUDGMENT

STRASBOURG

10 October 2000

This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Akkoç v. Turkey,

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

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr L. FERRARI BRAVO,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 20 June and 19 September 2000,

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

PROCEDURE

1. The case originated in two applications (nos. 22947/93 and 22948/93) 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 a Turkish national, Mrs Nebahat Akkoç ("the applicant"), on 1 and 22 November 1993 respectively.

2. The applicant had been granted legal aid.

3. The applicant alleged principally that she had been subjected to a disciplinary sanction in respect of an article published in a newspaper, that her husband had been killed in circumstances for which the authorities were responsible, that she had been deprived of an effective remedy and access to court in respect of her husband's death, that she had been tortured by the police in custody and that she had been intimidated in respect of her application to the Commission. She relied on Articles 2, 3, 10, 13 and former Article 25 of the Convention, as well as Articles 14 and 18 of the Convention and Article 1 of Protocol No. 1, complaints which she later dropped in the proceedings before the Court.

4. The applications, having been joined, were declared admissible by the Commission on 11 October 1994. In its report of 23 April 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable form the Registry.], it expressed the opinion that there had been a violation of Article 10 of the Convention (unanimously), that there had been a violation of Article 2 of the Convention (unanimously), that there had been a violation of Article 13 of the Convention (twenty-seven votes to two), that no separate issue arose under Article 14 of the Convention (unanimously),

that there had been no violation of Article 1 of Protocol No. 1 (unanimously), that there had been a violation of Article 3 of the Convention (unanimously), that there had been no violation of Article 18 of the Convention (unanimously) and that Turkey had failed to comply with its obligations under former Article 25 of the Convention.

5. In accordance with Article 5 § 4 of Protocol No. 11 to the Convention, the case was assigned to the First Section. The Chamber constituted within that Section included *ex officio* Mr R. Türmen, the judge elected in respect of Turkey (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mrs E. Palm President of the Section (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mrs W. Thomassen, Mr L. Ferrari Bravo, Mr C. Bîrsan, Mr J. Casadevall and Mr R. Maruste.

6. Subsequently Mr Türmen withdrew from sitting in the Chamber (Rule 28). The Turkish Government ("the Government") accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. The applicant and the Government each filed observations on the merits.

8. On 29 February 2000 the Chamber decided to hold a hearing.

9. The hearing took place in public in the Human Rights Building, Strasbourg, on 20 June 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mrs D. AKÇAY, *Co-Agent*,
Ms A. EMÜLER,
Ms G. AKYÜZ,
Mr K. VAROL, *Advisers*;

(b) *for the applicant*
Ms A. REIDY, *Counsel*,
Mr S. TANRIKULU,
Mr S. ASLANTAŞ,
Mr M. MULLER, *Advisers*.

The Court heard addresses by Ms Reidy and Mrs Akçay.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Concerning the disciplinary proceedings

10. The applicant is a former teacher and former head of the Diyarbakır branch of the Education and Science Workers Union, Eğit-Sen. On 31 October 1992 the applicant made a statement to the *Diyarbakır Söz* newspaper, giving an account of a meeting which had taken place on 27 October 1992 between the applicant and a delegation of Eğit-Sen and the National Education Director. The applicant stated that the teachers were verbally abused, harassed and in some cases assaulted by the police. This account was published in an article titled "Eleven teachers detained in Diyarbakır".

11. On 14 May 1993 the Diyarbakır Provincial Education Disciplinary Committee decided, as a penalty for the statement made to the newspaper without permission, to suspend the promotion of the applicant to a higher grade of teacher for one year, pursuant to section 125/D-g of Law no. 657, which prohibited civil servants from giving information or giving statements to the press, news agencies, radio or television without authorisation.

12. The decision was confirmed by the Diyarbakır Administrative Court on 4 October 1994. The court noted that section 15 of Law no. 657 prohibited public officials from making announcements or statements relating to their public-sector work to the press and that only the officials authorised by the minister could do so. While all citizens had the right to express their thoughts and opinions within the framework of the rights under the Constitution, not all citizens had the same opportunity to exercise this right to the same degree. As stated in a decision of 14 December 1993 (1993/4214) of the Eighth Division of the Supreme Administrative Court, State officials were required to exercise their freedom of expression in a more measured manner and with more care in their statements relating to their superiors and public officials. In this case, when the applicant expressed her thoughts and the negative aspects observed by her in the continuing arguments between teachers and police officers, she was criticising and accusing the administration. Accordingly, there was no contravention of the legislation in the decision to impose a disciplinary sanction on the applicant for the actions which were contrary to the special requirements of her service. Her application to annul the decision was unanimously rejected.

13. The applicant appealed to the Supreme Administrative Court, which on 5 December 1995 sent the case back to the Administrative Court to revise only the severity of the penalty. It agreed that civil servants had to exercise their freedom of expression with greater care and sensitivity when making announcements about their superiors and public duties. Since the applicant had criticised the administration, which was in breach of the Code of Conduct, it was appropriate to impose a disciplinary sanction but, in order to achieve a fair balance between the offence and the sentence, a lighter sentence should have been imposed.

14. On 3 April 1996 the Administrative Court maintained its decision and the penalty. The applicant appealed again to the Supreme Administrative Court.

15. On 16 October 1998 the Supreme Administrative Court observed that the prohibition in section 15 of Law no. 657 related to State officials not being allowed to give statements to the press relating to their own powers, duties and responsibilities. The applicant had expounded her personal opinion on current issues not relating to her duty, exercising her right of expression and communication to others, within the framework of the freedom of thought and opinion guaranteed by the Constitution. Since this did not fall within the scope of the aforementioned section, there was no question of any disciplinary sanction being imposed. Accordingly, the procedure by which the applicant had been punished by the suspension of one year's promotion in application of section 125/D-g of Law no. 657 was unlawful and the decision of the Administrative Court was not correct. The Administrative Court's decision was consequently annulled.

16. On 17 February 1999 the Administrative Court adopted the reasoning of the Supreme Administrative Court and annulled the disciplinary sanction imposed on the applicant.

B. Concerning the death of the applicant's husband

17. The applicant's husband, Zübeyir Akkoç, was of Kurdish origin and also a teacher involved in the Eğit-Sen trade union. On 13 January 1993, at about 7 a.m., Zübeyir Akkoç was shot dead on his way to work at a primary school. Ramazan Aydın Bilge, who was accompanying him, was also killed. No classic autopsy was carried out. Two gendarmes arrived at the scene of the incident, allegedly having been notified by radio. They made no attempt to discover in which direction the perpetrators had fled. They took only one statement, from Abdullah Elgören, who had helped place Zübeyir Akkoç's body in a taxi to be taken to hospital. This was notwithstanding the crowd that had gathered at the scene according to Abdullah Elgören's statement.

18. Prior to her husband's killing, and following the incident at the National Education Directorate, the applicant had received several threats over the telephone and had been harassed by the security forces. In the

telephone calls, she was told: "It is your turn, we are going to kill you too." She reported the threats to the public prosecutor but her complaints were ignored. Her husband had been detained by the police on several occasions prior to his death. When she was detained in February 1994, the applicant claimed that members of the security forces told her that they had killed her husband.

19. The public prosecutor opened a file (no. 1993/339) into the killing, classifying it as an "unknown perpetrator" killing. On 27 March 1997 the prosecutor issued an indictment against Seyithan Araz, a student, for involvement in six murders and a number of assaults. These included the killing of Zübeyir Akkoç, but not that of Ramazan Aydın Bilge. Seyithan Araz was alleged to have carried out activities for Hizbullah. In his statement of 17 March 1997, Seyithan Araz told the public prosecutor that he was not a member of Hizbullah and that the 26-page statement signed by him at the headquarters of the anti-terrorism branch of the Diyarbakır Security Directorate had been obtained through torture and that he refuted its contents.

20. On 4 June 1997 Seyithan Araz maintained his denials before the Diyarbakır National Security Court no. 4. On 14 August 1997 evidence was received from three of the victims of the assaults listed in the indictment that they did not recognise any of the defendants. On 10 December 1997 the court ordered the release of Seyithan Araz, due to the lack of any evidence justifying his continued detention.

21. On 23 September 1999 the court acquitted Seyithan Araz for lack of sufficient evidence to prove any of the charges.

C. Concerning the detention of the applicant and questioning by the authorities

22. The facts of this part of the case, in particular the events during the detention of the applicant, were disputed by the parties.

The Commission took oral evidence in respect of the applicant's allegations of torture during police custody from 13 to 22 February 1994 and interference with the right of individual petition arising out of three periods of detention – 13 to 22 February 1994, 26 to 27 September 1995 and 14 October 1995. Commission delegates heard evidence from the applicant, her mother, Ramazan Sücürü (head of the anti-terrorism branch at Diyarbakır), Taner Şenturk and Hasan Pişkin (officers from the anti-terrorism branch who interrogated the applicant during the period 13 to 22 February 1994), Dr Buldağ (the doctor who signed the medical report on the applicant's release from custody) and Enver Atlı (a former headmaster taken into custody with the applicant on 26 September 1995). The public prosecutor who had seen the applicant prior to her release on 22 February 1994 had been called as a witness, but he died before the hearing took place.

1. The Commission's findings of fact

(a) Concerning the period of detention from 13 to 22 February 1994

23. On 13 February 1994, shortly after midnight, police officers came to the applicant's home and carried out a search. The officers took the applicant away, with her anorak pulled over her head. After a visit to a doctor, she was taken to the Diyarbakır Security Directorate, where she was held in custody at the headquarters of the anti-terrorism branch until her release on 22 February 1994.

24. During her ten days in custody, the applicant was subjected to various forms of ill-treatment, including sexual abuse and psychological pressure. She was interrogated by police officers, who accused her of being involved with the PKK (the Workers' Party of Kurdistan) and questioned her about imminent elections and whether she was a candidate. She was also asked about her application to the Commission and told that this was the same as joining the PKK in the mountains. She thought she saw a piece of paper, which was her letter of authority sent to Kevin Boyle – a lawyer practising in the United Kingdom, who has been involved in many cases brought against Turkey – with her application.

25. Over the period of her detention, the applicant was exposed to the following treatment. She was generally blindfolded when taken out of her cell; she was stripped naked on numerous occasions and, on one occasion, forced to walk a gauntlet, naked, between officers who touched her and abused her verbally; photographs were taken of her naked; on many occasions she was taken to a room where she was doused in hot and cold water, the cold water being hosed on her with such force that she could hardly stand; she was subjected to electric shocks on several occasions, a wire being attached to her toe and once to a nipple; there was an attempt to suspend her by her arms from the ceiling, which ended when a scar on her stomach was noticed; she was struck on the chin by a blow which knocked her to the ground; her cell was floodlit and loud music was played; she was handcuffed to a door for a period of two days and nights and forced to listen to the sounds of other persons being ill-treated; her hair was pulled and she was hit, including a blow to her foot with a stick. She was told that her children had been brought into detention and were being tortured.

26. On 18 February 1994 the applicant signed a statement drawn up by the police, stating that she was a member of the PKK and implicating her in various propaganda activities conducted by the PKK. The statement included the information that she had made an application to the Commission about her husband's murder.

27. On 22 February 1994 the applicant and sixteen other detainees were taken by police officers to the emergency ward of the Diyarbakır State Hospital, where Dr Buldağ signed a report stating that they had not suffered

any physical blows. She described the examination as involving the doctor asking them collectively in the presence of the police if anyone had any complaints or wanted a medical examination. She stated that she requested a medical examination and showed him the injuries on her head and toe. The applicant was then taken before a public prosecutor. She told him that she had been ill-treated, showing him some of her injuries, and that she had signed a statement under pressure. He ordered her release.

28. A few days after her release, the applicant sought treatment. She had a terrible pain in her jaw. An ear-nose-throat specialist arranged for an X-ray but refused to sign a report when the applicant told him that she had been in custody. Another X-ray was taken and treatment given at the university clinic. The applicant believed that her jaw had been broken and submitted the X-rays to the Mardin Assize Court during her trial on charges relating to the PKK. These X-rays were later made available to the Commission. It was agreed by the parties that they did not disclose any fracture.

29. Following this period of detention, the applicant had a number of problems with her health. She provided the Commission with information and prescriptions relating, *inter alia*, to eczema on her ear, a respiratory infection and pains in her leg. On 30 October 1995 she went to the Ankara Treatment Centre of the Human Rights Foundation, in connection with the psychological problems she had been experiencing since this time. Her symptoms included loss of memory, trembling of the hands, indecision, pain and numbness in parts of her body and insomnia. A psychological examination had disclosed manifest anxiety, pessimism, inability to stand, slight impairment of attention and concentration and lack of self-confidence. Chronic post-traumatic stress disorder was diagnosed and medication (an antidepressant (fluoxetin) and an anxiolitic) was prescribed. The applicant returned for further consultations on 12 December 1995, and 12 January and 14 April 1996. On the last occasion, her complaints had diminished considerably and she was advised to continue the medication for another two months.

30. In reaching its findings, the Commission accepted the evidence of the applicant, assessing her as a lucid and convincing witness who gave the impression of being honest and credible. Her evidence was supported by that of her mother who gave evidence as to the terrible state the applicant was in on her release from custody and by the report from the Ankara Treatment Centre of the Human Rights Foundation concerning her psychological symptoms. It found the evidence of the police officers to be evasive, inconsistent and unreliable. It also found that the evidence of Dr Buldağ was unreliable, observing that the examinations of detainees in the busy emergency ward appeared to be undertaken with reluctance and were carried out cursorily, without any concern for complaints about ill-treatment.

(b) Concerning the period of detention from 26 to 27 September 1995

31. On 26 September 1995 the applicant was apprehended by the police along with a friend and colleague, Enver Atlı. They were taken to a doctor and then to the Security Directorate, where she was stripped and searched. She was blindfolded and questioned about the ill-treatment she had been subjected to in 1994. It was mentioned that she had complained at the European level. She was left in a cell where it was extremely cold. Enver Atlı was also blindfolded during questioning by officers when he was asked about his relations with the applicant and whether she was a member of the PKK. They were released at about 6.30 p.m. on 27 September 1995. The release record of that date indicated that they had both been detained for investigation about membership of and activities for the PKK but that the examination established that they were not involved.

32. The Government alleged that the applicant had been detained because of the forgery of a document. However, the Commission found that there was no evidence to support this assertion. There was insufficient material to support a conclusion that she was taken into custody because of her application to the Commission. It noted, however, the lack of any concrete elements to justify her detention in respect of allegations of PKK involvement, which gave the incident the appearance of a "fishing expedition".

(c) Detention on 14 October 1995

33. The applicant was summoned to give a statement to the public prosecutor. Although he did not wish to see her until Monday 16 October 1995, police took her to the Security Directorate early in the morning on Saturday 14 October 1995. She remained sleeping on a sofa until a senior officer allowed her to go home in the afternoon. She returned at 9 a.m. with her mother on 16 October 1995. They were kept waiting in a locked room until the afternoon, when she was questioned by the prosecutor about a publication of the Human Rights Association.

(d) Concerning domestic proceedings

34. On 3 May 1995 the Diyarbakır public prosecutor issued a decision of non-prosecution against two officers, Mustafa Tarhan Şenturk and Hasan Pişkin, in respect of an allegation that the applicant had been tortured in custody and that her jaw had been broken. The decision referred to the defendants' denial of the charges and to the doctor's report that the applicant bore no signs of blows on her release. Due to the absence of evidence, it was decided not to pursue the investigation.

35. The Government have since provided further information. On 25 May 1999, in a decision of non-jurisdiction, the Diyarbakır public prosecutor referred to the allegations made by the applicant that she had

been tortured during interrogation. As he had no jurisdiction, he transferred the case to the Diyarbakır Provincial Administrative Council.

II. MATERIAL BEFORE THE CONVENTION ORGANS

A. Domestic investigation documents

36. The contents of the investigation file concerning the death of the applicant's husband were provided to the Commission. Further documents concerning the proceedings against Seyithan Araz were provided to the Court.

B. The Susurluk report

37. The applicant lodged with the Commission a copy of the so-called Susurluk report[1], produced at the request of the Prime Minister by Mr Kutlu Savaş, Vice-President of the Board of Inspectors within the Prime Minister's Office. After receiving the report in January 1998, the Prime Minister made it available to the public, although eleven pages and certain annexes were withheld.

38. The introduction states that the report was not based on a judicial investigation and did not constitute a formal investigative report. It was intended for information purposes and purported to do no more than describe certain events which had occurred mainly in south-east Turkey and which tended to confirm the existence of unlawful dealings between political figures, government institutions and clandestine groups.

39. The report analyses a series of events, such as murders carried out under orders, the killings of well-known figures or supporters of the Kurds and deliberate acts by a group of "informants" supposedly serving the State, and concludes that there is a connection between the fight to eradicate terrorism in the region and the underground relations that have been formed as a result, particularly in the drug-trafficking sphere. The report made reference to a certain Mahmut Yıldırım, also known as Ahmet Demir or "Yeşil", detailing his involvement in unlawful acts in the south-east and his links with *MİT* (the Turkish intelligence service):

1. Susurluk was the scene of a road accident in November 1996 involving a car in which a member of Parliament, a former deputy director of the Istanbul security services, a notorious far-right extremist, a drug trafficker wanted by Interpol and his girlfriend had been travelling. The latter three were killed. The fact that they had all been travelling in the same car had so shocked public opinion that it had been necessary to start more than sixteen judicial investigations at different levels and a parliamentary inquiry.

"... Whilst the character of Yeşil, and the fact that he along with the group of confessors[1] he gathered around himself, is the perpetrator of offences such as extortion, seizure by force, assault on homes, rape, robbery, murder, torture, kidnapping, etc., were known, it is more difficult to explain the collaboration of the public authorities with this individual. It is possible that a respected organisation such as *MİT* may use a lowly individual ... it is not an acceptable practice that *MİT* should have used Yeşil several times ... Yeşil, who carried out activities in Antalya under the name of Metin Güneş, in Ankara under the name of Metin Atmaca and used the name Ahmet Demir, is an individual whose activities and presence were known both by the police and *MİT* ... As a result of the State's silence the field is left open to the gangs ... [p. 26].

... Yeşil was also associated with *JİTEM*, an organisation within the gendarmerie, which used large numbers of protectors and confessors [p. 27].

In his confession to the Diyarbakır Crime Squad, ... Mr G. ... had stated that Ahmet Demir[2] [p. 35] would say from time to time that he had planned and procured the murder of Behçet Cantürk[3] and other partisans from the mafia and the PKK who had been killed in the same way ... The murder of ... Musa Anter[4] had also been planned and carried out by A. Demir [p. 37].

All the relevant State bodies were aware of these activities and operations. ... When the characteristics of the individuals killed in the operations in question are examined, the difference between those Kurdish supporters who were killed in the region in which a state of emergency had been declared and those who were not lay in the financial strength the latter presented in economic terms. These factors also operated in the murder of Savaş Buldan, a smuggler and pro-PKK activist. They equally applied to Medet Serhat Yos, Metin Can and Vedat Aydın. The sole disagreement we have with what was done relates to the form of the procedure and its results. It has been established that there was regret at the murder of Musa Anter, even among those who approved of all the incidents. It is said that Musa Anter was not involved in any armed action, that he was more concerned with the philosophy of the matter and that the effect created by his murder exceeded his own real influence and that the decision to murder him was a mistake. (Information about these people is to be found in Appendix 9[5]). Other journalists have also been murdered [p. 74][6]."

40. The report concludes with numerous recommendations, such as improving coordination and communication between the different branches

1. Persons who cooperate with the authorities after confessing to having been involved with the PKK.
2. One of the pseudonyms of a former member of the PKK turned informant who was known by the code name "Green" and had supplied information to several State authorities since 1973.
3. An infamous drug trafficker strongly suspected of supporting the PKK and one of the principal sources of finance for *Özgür Gündem*.
4. Mr Anter, a pro-Kurdish political figure, was one of the founding members of the People's Labour Party (HEP), director of the Kurdish Institute in Istanbul, a writer and leader writer for, *inter alia*, the weekly review *Yeni Ülke* and the daily newspaper *Özgür Gündem*. He was killed in Diyarbakır on 30 September 1992. Responsibility for the murder was claimed by an unknown clandestine group named "*Boz-Ok*".
5. The appendix is missing from the report.
6 The page following this last sentence is also missing from the report.

of the security, police and intelligence departments; identifying and dismissing security-force personnel implicated in illegal activities; limiting the use of confessors; reducing the number of village guards; terminating the use of the Special Operations Bureau outside the south-east region and incorporating it into the police outside that area; opening investigations into various incidents; taking steps to suppress gang and drug-smuggling activities; and recommending that the results of the Grand National Assembly Susurluk inquiry be forwarded to the appropriate authorities for the relevant proceedings to be undertaken.

C. The 1993 report of the Parliamentary Investigation Commission (10/90 no. A.01.1.GEC)

41. The applicant provided this 1993 report into extra-judicial or "unknown perpetrator" killings by a parliamentary investigation commission of the Turkish Grand National Assembly. The report referred to 908 unsolved killings, of which nine involved journalists. It commented on the public lack of confidence in the authorities in the south-east region and referred to information that Hizbullah had a camp in the Batman region where they received political and military training and assistance from the security forces. It concluded that there was a lack of accountability in the region and that some groups with official roles might be implicated in the killings.

III. RELEVANT DOMESTIC LAW AND PRACTICE

42. The principles and procedures relating to liability for acts contrary to the law may be summarised as follows.

A. Criminal prosecutions

43. Under the Criminal Code all forms of homicide (Articles 448-55) and attempted homicide (Articles 61-62) 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 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 exercise of his duties 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).

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

45. 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) 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.

46. By virtue of Article 4, paragraph (i), of Decree no. 285 of 10 July 1987 on the authority of the governor of a state of emergency region, the 1914 Law (see paragraph 45 above) also applies to members of the security forces who come under the governor's authority.

47. 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 (see paragraph 43 above) or with the offender's superior.

B. Civil and administrative liability arising out of criminal offences

48. 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.

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

> "All acts or decisions of the authorities are subject to judicial review ...
>
> The authorities shall be liable to make reparation for all damage caused by their acts or measures."

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.

50. Article 8 of Decree no. 430 of 16 December 1990, the last sentence of which was inspired by the provision mentioned above (see paragraph 49), provides:

> "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 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."

51. Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages (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).

IV. RELEVANT INTERNATIONAL REPORTS

Investigations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

52. The European Committee for the Prevention of Torture (CPT) has carried out seven visits to Turkey. The first two visits, in 1990 and 1991, were *ad hoc* visits considered necessary in light of the considerable number of reports received from a variety of sources, containing allegations of torture or other forms of ill-treatment of persons deprived of their liberty, in particular, those held in police custody. A third periodic visit took place at the end of 1992. Further visits took place in October 1994, August and September 1996 and October 1997. The CPT's reports on these visits, save that of October 1997, have not been made public, such publication requiring the consent of the State concerned, which has not been forthcoming. The CPT has issued two public statements concerning its visits to Turkey.

1. The first public statement

53. In its public statement adopted on 15 December 1992, the CPT concluded that torture and other forms of severe ill-treatment were important characteristics of police custody. On its first visit in 1990, the following types of ill-treatment were constantly alleged, namely, "Palestinian hanging", electric shocks, beating of the soles of the feet (*falaka*), hosing with pressurised cold water and incarceration in very small, dark, unventilated cells. Its medical examinations disclosed clear medical signs consistent with very recent torture and other severe ill-treatment of both a physical and psychological nature. Specifically, it found that officers of the anti-terrorism branch of the Diyarbakır police frequently resorted to torture and/or other forms of severe ill-treatment, both physical and psychological.

On its second visit in 1991, it found no progress had been made in eliminating torture and ill-treatment by the police. Many persons complained of similar types of ill-treatment – an increasing number of allegations were heard of forcible penetration of bodily orifices with a stick or truncheon. Once again, a number of the persons making such claims were found on examination to display marks or conditions consistent with their allegations. Torture and other forms of severe ill-treatment continued unabated at the headquarters of the anti-terrorism branch of the Diyarbakır police. On its third visit, from 22 November to 3 December 1992, the CPT delegation was inundated with allegations of torture and ill-treatment. Numerous persons examined by its doctors displayed marks or conditions consistent with their allegations. It listed a number of these cases. On this

visit, the CPT had visited Adana, where a prisoner at Adana Prison displayed haematomas on the soles of his feet and a series of vertical purple stripes (10 cm long by 2 cm wide) across the upper part of his back, consistent with his allegation that he had recently been subjected to *falaka* and beaten on the back with a truncheon while in police custody. At the headquarters of Ankara and Diyarbakır Security Directorates, it found equipment that could be used for torture and the presence of which had no other credible explanation. The CPT concluded in its statement that "the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey".

2. The second public statement

54. In its second public statement, issued on 6 December 1996, the CPT noted that some progress had been made over the intervening four years. However, its findings after its visit in 1994 demonstrated that torture and other forms of ill-treatment were still important characteristics of police custody. In the course of visits in 1996, CPT delegations once again found clear evidence of the practice of torture and other forms of severe ill-treatment by the police. It referred to its most recent visit in September 1996 to police establishments in Adana, Bursa and Istanbul, when it also went to three prisons in order to interview certain persons who had very recently been in police custody in Adana and Istanbul. A considerable number of persons examined by the delegation's forensic doctors displayed marks or conditions consistent with their allegations of recent ill-treatment by the police and, in particular, of beating of the soles of the feet, blows to the palms of the hands and suspension by the arms. It noted the cases of seven persons who had been very recently detained at the headquarters of the anti-terrorism branch of Istanbul Security Directorate and which ranked among the most flagrant examples of torture encountered by CPT delegations in Turkey. They showed signs of prolonged suspension by the arms, with impairments in motor function and sensation which, in two persons, who had lost the use of both arms, threatened to be irreversible. It concluded that resort to torture and other forms of severe ill-treatment remained a common occurrence in police establishments in Turkey.

55. The CPT underlined the importance of the preventive role of doctors:

> "Particular reference should be made to the work of doctors appointed by the State to carry out forensic tasks, a matter to which the CPT has given considerable attention in the course of its dialogue with the Turkish authorities. The present system of detained persons being routinely examined by a forensic doctor at the end of their period of police custody is, in principle, a significant safeguard against ill-treatment. However, certain conditions must be met: the forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is sufficiently broad in scope. If these conditions are not

met – as is frequently the case – the present system can have the perverse effect of rendering it all the more difficult to combat torture and ill-treatment.

A series of circulars have been issued by the Ministry of Health on this subject; in particular, a Ministry of Health Circular of 22 December 1993 – subsequently endorsed in the Minister of the Interior's instructions of 16 February 1995 – sets out the required contents of forensic certificates drawn up following the detention of persons detained by law enforcement agencies. Despite this, the great majority of forensic certificates seen by the CPT over the last three years have not met the requirements of that circular.

Measures need to be taken to ensure that there is full compliance with all the above-mentioned circulars and, more generally, that doctors called upon to perform forensic tasks can carry out their work free from any interference. Further the necessary resources should be made available in order to allow the training programme for doctors called upon to perform forensic tasks – recently devised by the Ministry of Health – to be implemented throughout Turkey without delay."

56. The CPT again stressed the need for public prosecutors to react expeditiously and effectively when confronted by complaints of torture and ill-treatment and the need for the reduction of maximum periods of police custody.

3. CPT report on its visit to Turkey from 5 to 17 October 1997

57. The CPT repeated in this report, *inter alia*, its concerns about the forensic examination of persons in police custody, emphasising that examination of persons in custody by a doctor can be a significant safeguard against ill-treatment, provided the doctors concerned enjoy formal and *de facto* independence, have a mandate which is sufficiently broad in scope and have been provided with specialised training. It had found, however, that the standard forensic medical form set out in the Ministry of Health circular of 25 January 1995 was not used in many forensic services, the doctors recording their findings on a piece of paper devoid of headings, omitting to record the allegations of the detained person and failing to draw conclusions. It recalled that it had previously stressed that it was essential for forensic certificates drawn up after examination of a detained person to contain an account of the relevant statements of the detainee, an account of the objective medical findings based on a thorough medical examination and the doctor's conclusions in light of those two elements, which should include an assessment of the degree of consistency between any allegations made and the objective medical findings.

58. It expressed the hope that generalised use of the standard forensic medical form would put an end to the collective forensic examination of groups of detained persons, an undesirable practice of which it had found some evidence during its visit. It had also noted that certain forensic examinations were conducted in the presence of the police officers who had brought the detained person and that the doctor handed an open copy of the

report to these police officers. It stressed that examinations should always be conducted out of the hearing range and out of sight of the police officers, unless the doctor requested otherwise in a particular case. It welcomed the steps taken to ensure that the forensic reports be forwarded in sealed envelopes to the public prosecutor and the head of the police department concerned.

THE LAW

I. CONCERNING THE DISCIPLINARY PROCEEDINGS

A. The Government's preliminary objection

59. The Government submitted that the applicant had not exhausted her domestic remedies as required by Article 35 § 1 of the Convention, since she had introduced her complaints about the disciplinary sanction imposed on her in respect of a statement reported in the press before the administrative proceedings which she had brought to challenge that sanction had culminated. They criticised the Commission for examining this complaint before the domestic proceedings had finally concluded.

60. The applicant pointed out that the Government had not raised this point before the Commission. In any case, she had appealed once to the Supreme Administrative Court and did not consider that it was part of the ordinary process of remedies to have to appeal twice.

61. The Court observes that the Commission declared this part of the applicant's application admissible on 11 October 1994 in circumstances where the Government had not made any response to the application communicated to them, even though the Commission had extended the time-limit at their request. The Court finds, in accordance with its constant case-law, that the Government are estopped at this stage from raising arguments on admissibility (see, for example, the Aydın v. Turkey judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, p. 1885, § 58). Accordingly, this preliminary objection must be dismissed.

B. Article 10 of the Convention

62. The applicant complained that the disciplinary sanction imposed on her for a statement reported in the press violated her right to freedom of expression guaranteed in 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."

63. The applicant submitted that, notwithstanding the fact that the Administrative Court had quashed the penalty on 17 February 1999, she could still claim to be a victim of a violation of this provision. She pointed out that the proceedings had taken almost six years and that during this time she had suffered the consequences of both the sanction and the burden of repeated appeals. She stated that it had encouraged her to retire early and increased her difficulties, for example, in obtaining a passport. In her view, the procedure by which she had to apply twice to the Supreme Administrative Court to quash the decision of the Administrative Court could not be regarded as an ordinary or effective avenue of redress. She could not have predicted, or relied on the courts completely changing their approach in her case.

64. The Government argued that the applicant could no longer claim to be a victim of any interference with her rights. She had used the domestic remedies provided and this had resulted in the disciplinary sanction being quashed. Her freedom of expression had been vindicated and there was no issue remaining.

65. The Court reiterates that it is primarily a supervisory body and subsidiary to the national systems safeguarding human rights. The rule of exhaustion of domestic remedies and the requirement under Article 13 that States provide effective remedies for arguable breaches of guaranteed rights and freedoms, reflect the principle that it is first and foremost the role of the Contracting State to investigate and give redress for interferences with the rights protected under the Convention (see the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 65).

66. In this case the applicant utilised the available means of redress against the disciplinary sanction of one year's suspension of promotion as a teacher. It finds that the procedure whereby the applicant appealed a second time to the Supreme Administrative Court from the Administrative Court's decision to maintain its decision cannot be categorised, in the context of the Turkish system, as an extraordinary procedure. The Court has considered whether the length of time which this procedure took – from 14 May 1993 to 17 February 1999 – might itself be regarded as a factor disclosing that the

remedy provided could no longer be regarded as effective and thus that the applicant could claim still to be a victim of a wrongfully imposed measure.

67. The Court considers that, although five years and nine months is a considerable period of time, it does not in the circumstances of this case deprive the domestic procedures of efficacy in providing adequate redress. The Administrative Court quashed the disciplinary sanction, which thereby ceased, retrospectively, to have any effect, vindicating the applicant's right of freedom of expression. While the applicant was not awarded compensation, she has not specified to the Court that she suffered any concrete financial loss as a result of the decision. Nor does her reference to the role played by this sanction, amongst the other difficulties which she was experiencing at this time, in her decision to retire from teaching and to her problems with the authorities provide a sufficient substantiation of a causative link between the disciplinary sanction and any identifiable prejudice for which she has not been afforded redress.

68. The Court concludes that the applicant may in these circumstances no longer claim to be a victim of an interference with her right of freedom of expression under Article 10 of the Convention. Accordingly, there has been no violation of this provision.

II. CONCERNING THE KILLING OF THE APPLICANT'S HUSBAND

A. The Government's preliminary objection

69. The Government submitted that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention as she had not joined the criminal proceedings, as a civil party, against Seyithan Araz, who had been charged with killing her husband, Zübeyir Akkoç. Nor had she brought administrative proceedings claiming damages.

70. The applicant argued that there were no effective remedies available to her in the circumstances of her case.

71. The Court recalls that the Government made no submissions to the Commission concerning these objections prior to the Commission's decision on admissibility of 11 October 1994. As already held above (see paragraph 61), the Government are therefore estopped from raising them now.

B. Article 2 of the Convention

72. The applicant complained that the State had failed in its obligations to protect the life of her husband, Zübeyir Akkoç, who had been killed by an unknown perpetrator, and to carry out an effective investigation into his death. 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."

1. Alleged failure to take protective measures

(a) The parties' submissions

73. The applicant had originally claimed that her husband had been killed by persons acting for the security forces, as a result of his connection with her and their involvement in Eğit-Sen, and as part of the official State policy of intimidation against Kurdish teachers in south-east Turkey. While accepting the Commission's finding that it could not be established beyond reasonable doubt that it was a member of the security forces or agents acting on their behalf or with their knowledge who carried out the killing, she agreed with the Commission's conclusion that in the circumstances of this case the authorities had failed in their positive obligation under Article 2 to protect the right to life of her husband.

74. The applicant referred to the Commission's finding, endorsed by the Court in two earlier cases (*Kılıç v. Turkey*, no. 22492/93, ECHR 2000-III, and *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III), that the legal structures in the south-east of Turkey during 1993 operated in such a manner that security-force personnel and others acting under their control or with their acquiescence were often unaccountable. Her husband was a person at risk in this situation, as he was Kurdish and involved, with her, in trade-union activities regarded as unlawful by the authorities. They had both received threats to their life on the telephone and although this had been reported to the authorities nothing had been done about it. Having regard therefore to the strong suspicions which existed that risk to persons associated with opposition to the authorities derived from targeting by State officials or those acting on their behalf or with their acquiescence, there had been a failure by the authorities to protect her husband's life.

75. The Government pointed out that the intensity of the conflict in the south-east of Turkey at this time was such that everyone in the area was at risk of unlawful violence. The security forces who operated in the area

carried out their duties to protect the general population and could not be expected to prevent every killing. Over 30,000 people lost their lives, of whom 116 were teachers. They submitted that teachers and schools were a specific target of the PKK. The applicant herself was treated as a victim of their terrorism, as the education authorities awarded her a widow's and orphan's pension under the legislation dealing with the fight against terrorism.

76. The Government denied therefore that they had failed to take any reasonable measures to protect the applicant's husband. There was, for example, no indication that the telephone threats were of any seriousness. They also pointed to the partial decision of the Commission on admissibility of 28 February 1994 where it had rejected the applicant's claims that Article 2 required that she be given specific protection against the threats to her life.

(b) The Court's assessment

77. The Court recalls that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the L.C.B. v. the United Kingdom judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by a law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see the Osman v. the United Kingdom judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115).

78. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life therefore can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see the Osman judgment cited above, p. 3159-60, § 116).

79. In the present case, it has not been established beyond reasonable doubt that any State agent or person acting on behalf of the State authorities

was involved in the killing of Zübeyir Akkoç (see paragraphs 248-59 of the Commission's report). The question to be determined is whether the authorities failed to comply with their positive obligation to protect him from a known risk to his life.

80. The Court notes that the applicant's husband, who was a teacher of Kurdish origin, had been involved with the applicant in the trade union Eğit-Sen, which was regarded as unlawful by the authorities. He had been detained a number of times by the police. Following a demonstration in October 1992, in which teachers had claimed that police officers had assaulted and abused them and eleven had been taken into custody, the applicant and her husband had received telephone calls in which it was threatened that they would be killed next. These had been reported to the public prosecutor in petitions.

81. The Government have claimed that Zübeyir Akkoç was not at more risk than any other person, or teacher, in the south-east region. The Court notes the tragic number of victims to the conflict in that region. It recalls, however, that in 1993 there were rumours current alleging 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 – the "unknown perpetrator killing" phenomenon – which included prominent Kurdish figures such as Musa Anter as well as other persons suspected of opposing the authorities' policies in the south-east (see paragraphs 39 and 41 above, and the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, p. 2440, § 106). The Court is satisfied that Zübeyir Akkoç, as a Kurdish teacher involved in activities perceived by the authorities as being unlawful and in opposition to their policies in the south-east, was at that time at particular risk of falling victim to an unlawful attack. Moreover, this risk could in the circumstances be regarded as real and immediate.

82. The Court is equally satisfied that the authorities must be regarded as being aware of this risk. Although the Government disputed the seriousness of the threatening telephone calls, the Court finds it rather significant that the public prosecutor took no steps in response to the petitions lodged by the applicant and her husband.

83. Furthermore, the authorities were aware, or ought to have been aware, of the possibility that this risk derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces. A 1993 report by a parliamentary investigation commission (see paragraph 41 above) stated that it had received information that a Hizbullah training camp was receiving aid and training from the security forces and concluded that some officials might be implicated in the 908 unsolved killings in the south-east region. The Susurluk report, published in January 1998, informed the Prime Minister's Office that the authorities were aware of killings being carried out to eliminate alleged supporters of the

PKK, including the murders of Musa Anter and Metin Can, a lawyer. In previous cases, the Government have insisted that this report did not have any judicial or evidential value. However, even the Government described the report as providing information on the basis of which the Prime Minister was to take further appropriate measures. It may therefore be regarded as a significant document (see *Kılıç* and *Mahmut Kaya* cited above, § 68 and § 91 respectively).

84. The Court does not rely on the report as establishing that any State official was implicated in any particular killing. The report does, however, provide further strong substantiation for allegations, current at the time and since, that contra-guerrilla groups involving confessors or terrorist groups were targeting individuals perceived to be acting against the State's interests, with the acquiescence, and possible assistance, of members of the security forces.

85. The Court has considered whether the authorities did all that could reasonably be expected of them to avoid any threat to Zübeyir Akkoç from materialising.

86. It recalls that, as the Government submitted, there were large numbers of security forces in the south-east region pursuing the aim of establishing public order. They faced the difficult task of countering the violent armed attacks of the PKK and other groups. There was a framework of law in place with the aim of protecting life. The Turkish Criminal Code prohibited murder and there were police and gendarmerie forces with the role of preventing and investigating crime, under the supervision of the judicial branch of public prosecutors. There were also courts applying the provisions of the criminal law in trying, convicting and sentencing offenders.

87. The Court observes, however, that the implementation of the criminal law in respect of unlawful acts allegedly carried out with the involvement of the security forces discloses particular characteristics in the south-east region in this period.

88. Firstly, where offences were committed by State officials in certain circumstances, the competence to investigate was removed from the public prosecutor in favour of administrative councils which took the decision whether to prosecute (see paragraph 45 above). These councils were made up of civil servants, under the orders of the Governor, who was himself responsible for the security forces whose conduct was in issue. The investigations which they instigated were often carried out by gendarmes linked hierarchically to the units concerned in the incident. The Court accordingly found in two cases that the administrative councils did not provide an independent or effective procedure for investigating deaths involving members of the security forces (see the Güleç v. Turkey judgment of 27 July 1998, *Reports* 1998-IV, pp. 1731-33, §§ 77-82, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 85-93, ECHR 1999-III).

89. Secondly, the cases examined by the Convention organs concerning the region at this time have produced a series of findings of failure by the authorities to investigate allegations of wrongdoing by the security forces, both in the context of the procedural obligations under Article 2 of the Convention and the requirement for effective remedies imposed by Article 13 of the Convention (concerning Article 2, see the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, pp. 324-26, §§ 86-92; the Ergi v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, pp. 1778-79, §§ 82-85; the Yaşa judgment cited above, pp. 2438-41, §§ 98-108; *Çakıcı v. Turkey* [GC], no. 23657/94, § 87, ECHR 1999-IV; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101-11, ECHR 1999-IV; *Mahmut Kaya* and *Kılıç*, cited above, §§ 102-09 and §§ 78-83 respectively; *Ertak v. Turkey*, no. 20764/92, §§ 134-35, ECHR 2000-V; and *Timurtaş v. Turkey*, no. 23531/94, §§ 87-90, ECHR 2000-VI; concerning Article 13, see the judgments cited above, and the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-VI, pp. 2286-87, §§ 95-100; the Aydın judgment cited above, pp. 1895-98, §§ 103-09; the Menteş and Others v. Turkey judgment of 28 November 1997, *Reports* 1997-VIII, pp. 2715-16, §§ 89-92; the Selçuk and Asker v. Turkey judgment of 24 April 1998, *Reports* 1998-II, pp. 912-14, §§ 93-98; the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, pp. 1188-90, §§ 135-42; and the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1519-20, §§ 62-69).

A common feature of these cases is a finding that the public prosecutor has failed to pursue complaints by individuals claiming that the security forces were involved in an unlawful act, for example, not interviewing or taking statements from implicated members of the security forces, accepting at face value the reports of incidents submitted by members of the security forces and attributing incidents to the PKK on the basis of minimal or no evidence.

90. Thirdly, the attribution of responsibility for incidents to the PKK had particular significance as regards the investigation and judicial procedures which ensue since jurisdiction for terrorist crimes has been given to the national security courts (see paragraph 44 above). In a series of cases, the Court has found that the national security courts do not fulfil the requirement of independence imposed by Article 6 of the Convention, due to the presence of a military judge whose participation gives rise to legitimate fears that the court may be unduly influenced by considerations which had nothing to do with the nature of the case (see the Incal v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1571-73, §§ 65-73).

91. The Court finds that these defects undermined the effectiveness of the protection afforded by the criminal law in the south-east region during the period relevant to this case. It considers that this permitted or fostered a lack of accountability of members of the security forces for their actions which, as the Commission stated in its report, was not compatible with the

rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention.

92. Consequently, these defects removed the protection which Zübeyir Akkoç should have received by law.

93. The Government have disputed that they could in any event have effectively provided protection against an attack. The Court is not convinced by this argument. A wide range of preventive measures would have been available to the authorities regarding the activities of their own security forces and those groups allegedly acting under their auspices or with their knowledge. The Government have not provided any information concerning steps taken by them prior to the Susurluk report to investigate the existence of contra-guerrilla groups and the extent to which State officials were implicated in unlawful killings carried out during this period, with a view to instituting any appropriate measures of prevention or protection. No steps were taken when the applicant and her husband petitioned the public prosecutor, drawing to his attention that they were victims of direct threats to their lives.

94. The Court concludes that in the circumstances of this case the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of Zübeyir Akkoç. There has, accordingly, been a violation of Article 2 of the Convention.

2. Alleged inadequacy of the investigation

95. The applicant, agreeing with the opinion of the Commission, submitted that the investigation was inadequate, as, *inter alia*, there was no indication of any steps being taken after 25 January 1993 or before March 1997. Only the statement of one witness was taken at the scene of the killing. Even though a suspect, Seyithan Araz, was charged with the murder, it was striking that there was no evidence against him, save a confession to the police which he retracted claiming it had been made under torture, and that he was not charged with the murder of Ramazan Aydın Bilge who, according to the forensic evidence, was killed by a bullet from the same gun during the incident.

96. The Government submitted that the police had carried out all necessary steps to investigate the killing of the applicant's husband. They disputed that there was any failure to take statements at the scene of the crime, which took place early in the morning in winter. They denied that there was anything unsatisfactory about the criminal proceedings against Seyithan Araz, pointing out that he was charged with two other persons with a number of serious offences. His trial took some time and involved numerous hearings and the evidence of numerous witnesses. While there was no lack of effort on the part of the authorities, they argued that there were also substantial difficulties in finding the perpetrators of terrorist crimes.

97. The Court reiterates that the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention "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 v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and the Kaya judgment cited above, p. 329, § 105).

98. The Court recalls that, following the killing of Zübeyir Akkoç and Ramazan Aydın Bilge, the police arrived at the scene and commenced an investigation. According to the information provided by the Government, however, only one statement was taken from a witness near the scene. Although the Government disputed that this was in any way remarkable, considering the time of the incident, the Court notes that the witness concerned referred to a crowd being present at the location. No steps having been taken after 25 January 1993, this part of the investigation appears to have been active for only twelve days. As regards the later criminal proceedings against Seyithan Araz for, *inter alia*, killing Zübeyir Akkoç, it transpires that he was acquitted on 23 September 1999 on the basis of insufficient evidence. No explanation was forthcoming from the Government as to the fact that he had been charged only with the murder of Zübeyir Akkoç and not also with that of Ramazan Aydın Bilge, killed at the same time with the same gun. The Court, as the Commission did, finds that this gives an impression that the charges against Seyithan Araz were made arbitrarily. There is no indication that any investigation was conducted into the possible source of the threats made against the applicant and her husband prior to the shooting.

99. Having regard therefore to the limited scope and short duration of the investigation in this case, the Court finds that the authorities have failed to carry out an effective investigation into the circumstances surrounding Zübeyir Akkoç's death. It concludes that there has been, in this respect also, a violation of Article 2 of the Convention.

C. Article 13 of the Convention

100. The applicant complained that she had no effective remedy in respect of her complaints, relying on Article 13 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."

101. The applicant submitted, adopting the reasoning of the Commission, that the lack of an effective investigation deprived her of an

effective remedy in relation to her complaint regarding the killing of her husband in breach of this provision.

102. The Government argued, as above (see paragraph 96), that there had been no shortcomings in the investigation carried out by the authorities.

103. The Court's case-law establishes 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 cited above: Aksoy, p. 2286, § 95; Aydın, pp. 1895-96, § 103; and Kaya, pp. 329-30, § 106).

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 the Kaya judgment cited above, pp. 330-31, § 107).

104. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's husband. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of Article 13 (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and the Kaya and Yaşa judgments cited above, pp. 330-31, § 107, and p. 2442, § 113, respectively). In this connection, the Court observes that it is not in dispute that the applicant's husband was the victim of an unlawful killing and she may therefore be considered to have an "arguable claim".

105. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. For the reasons set out above (see paragraphs 98-99), 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 the Kaya judgment cited above, pp. 330-31, § 107). The Court finds therefore that the applicant has been denied an effective remedy in respect of the death of her husband and thereby

access to any other available remedies at her disposal, including a claim for compensation.

Consequently, there has been a violation of Article 13 of the Convention.

III. CONCERNING THE APPLICANT'S DETENTION

A. Evaluation of the facts

106. The Court reiterates its settled case-law that under the Convention system prior to 1 November 1998 the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). While the Court is not bound by the Commission's findings of fact and remains free to make its own assessment in the light of all the material before it, it is only in exceptional circumstances that it will exercise its powers in this area (see, among other authorities, the Akdivar and Others judgment cited above, p. 1214, § 78).

107. The Government argued that the Commission gave undue weight to the applicant's evidence which was in their view unreliable and inconsistent. They provided a medical opinion from a doctor who stated that the medical prescriptions and notes provided by the applicant to the Commission, as well as the X-rays, disclosed no evidence of traumatic injury. The Court observes that the Government's points concerning the credibility of the applicant and the other witnesses were taken into consideration by the Commission in its report, which approached its task of assessing the evidence with the requisite caution, giving detailed consideration to the elements which supported the applicant's claims and those which cast doubt on their credibility. In particular, the Commission did not regard the prescriptions submitted by the applicant as disclosing any proof of ill-treatment. It gave weight only to the existence of the X-rays as supporting the applicant's credibility to the extent that it showed that she believed that the injury to her jaw had caused a fracture. It considered the psychiatric report, which the Government did not comment on, as substantiating the applicant's complaints as it showed that she was suffering from post-traumatic stress disorder consistent with the torture to which she alleged having been subjected.

108. The Court does not find that the criticisms made by the Government raise any matter of substance which might warrant the exercise of its own powers of verifying the facts. In these circumstances, the Court accepts the facts as established by the Commission (see paragraphs 23-30 above).

B. The Government's preliminary objection

109. The Government submitted that the applicant had not lodged administrative proceedings claiming compensation for her ill-treatment, nor civil proceedings seeking damages. They alleged that she had also failed to make proper use of criminal remedies, by failing to appeal against the public prosecutor's decision not to prosecute the police officers who interrogated her and applying to the Commission even before that decision was issued.

110. The Court observes that the Government did not raise any of these obstacles to the admissibility of this part of the applicant's claims prior to the Commission's decision on admissibility on 11 October 1994, even though the Commission extended the time-limit for the submission of their observations. Consequently, the Government are estopped from relying on these matters before the Court. The preliminary objection is dismissed.

C. Article 3 of the Convention

111. The applicant complained that she had been subjected to torture during her detention at the headquarters of the Diyarbakır anti-terrorism branch from 13 to 22 February 1994, contrary to Article 3 of the Convention which provides:

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

112. The applicant relied on the findings of the Commission that the ill-treatment which was inflicted on her during her detention reached the level of torture.

113. The Government denied that the applicant had been ill-treated.

114. 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, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the Tekin judgment cited above, p.1517, § 52).

115. Further, in determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 66-67, § 167). In addition to the severity of the treatment, there is a purposive element, as recognised in the

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, and which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations Convention).

116. The Court accepts the findings of the Commission concerning the ill-treatment inflicted upon the applicant, which involved electric shocks, hot-and-cold water treatment, and blows to the head (see paragraphs 24-25 above). It notes the elements of psychological pressure suffered by the applicant, in particular the threats made concerning the ill-treatment of her children, which caused the applicant intense fear and apprehension. This treatment left the applicant with long-term symptoms of anxiety and insecurity, diagnosed as post-traumatic stress disorder and requiring treatment by medication.

117. Having regard to the severity of the ill-treatment suffered by the applicant and the surrounding circumstances, the Court finds that she was a victim of very serious and cruel suffering that may be characterised as torture (see also *Selmouni v. France* [GC], no. 25803/94, §§ 96-105, ECHR 1999-V).

118. The Court further endorses the comments expressed by the Commission concerning the importance of independent and thorough examinations of persons on release from detention. The European Committee for the Prevention of Torture (CPT) has also emphasised that proper medical examinations are an essential safeguard against ill-treatment of persons in custody. Such examinations must be carried out by a properly qualified doctor, without any police officer being present and the report of the examination must include not only the detail of any injuries found, but the explanations given by the patient as to how they occurred and the opinion of the doctor as to whether the injuries are consistent with those explanations. The practices of cursory and collective examinations illustrated by the present case undermines the effectiveness and reliability of this safeguard.

119. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

D. Former Article 25 of the Convention

120. The applicant claimed that she was questioned about her application and subjected to pressure by the authorities, relying on former Article 25 § 1 which provided:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting

> Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

121. The applicant complained that during her detention from 13 to 22 February 1994 the police officers interrogating her had asked her about her application. She also referred before the Commission to being detained on two further occasions – in September and October 1995 (see paragraphs 31-33 above).

122. The Government stated that the applicant was detained on the basis of suspicions of her involvement with the PKK on the first occasion and that there was no link with her application. The later periods of detention also had nothing to do with the proceedings before the Convention organs.

123. The Commission found, on the basis of the applicant's testimony and the statement drawn up by the police officers during her interrogation, that she had been questioned about her application during her detention from 13 to 22 February 1994 and that the officers had used it as an element in seeking to obtain admissions from her as to her involvement with the PKK (see paragraphs 24 and 26 above). This was incompatible with former Article 25 of the Convention. It did not, however, make any findings concerning the other periods of detention, although it noted their somewhat arbitrary nature.

124. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by former Article 25 that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see the following judgments, all cited above: Akdivar and Others, p. 1219, § 105; Aksoy, p. 2288, § 105; Kurt, p. 1192, § 159; Ergi, p. 1784, § 105; and *Tanrıkulu*, §§ 130-31). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see the Kurt judgment cited above, pp. 1192-93, § 160).

125. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of former Article 25 § 1 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see the Akdivar and Others and Kurt judgments cited above, p. 1219, § 105, and pp. 1192-93, § 160, respectively). In previous cases the Court has had regard to the vulnerable position of applicant villagers and the reality that in south-east Turkey complaints

against the authorities might well give rise to a legitimate fear of reprisals, and it has found that the questioning of applicants about their applications to the Commission amounts to a form of illicit and unacceptable pressure, which hinders the exercise of the right of individual petition in breach of former Article 25 of the Convention (ibid.).

126. In the present case, the Court has accepted the findings of the Commission that the applicant was questioned during her detention from 13 to 22 February 1994 about her application. It is irrelevant that the purpose of the detention was concerned with investigating an alleged crime committed by the applicant. The statement of 18 February 1994 taken by the police during her interrogation supports the applicant's assertion that her application was one of the matters on which she was questioned. Having regard to the context in which this took place, and in particular given that the applicant was the victim of torture during these interrogations, the Court finds that the applicant must have felt intimidated in respect of her application to the Commission. This constituted undue interference with her petition to the Convention organs.

127. The Court considers therefore that the respondent State has failed to comply with its obligations under former Article 25 § 1 of the Convention.

IV. ALLEGED PRACTICE BY THE AUTHORITIES OF INFRINGING ARTICLES 2, 3 AND 13 OF THE CONVENTION

128. The applicant maintained that there existed in the south-east region of Turkey at the relevant time a practice of torture and inhuman and degrading treatment and punishment, contrary to Article 3 of the Convention, and a practice of inadequate and ineffective investigations into unlawful killings and of inadequate and ineffective remedies, contrary to Articles 2 and 13 of the Convention respectively, which aggravated the breaches found above. Referring to other cases concerning events in south-east Turkey in which the Commission and the Court had also found breaches of these provisions, the applicant submitted that they revealed a pattern of denial by the authorities of allegations of serious human rights violations as well as a denial of remedies.

129. Having regard to its findings under Articles 2, 3 and 13 above, the Court does not find it necessary to determine whether the failings identified in this case are part of a practice adopted by the authorities.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant claimed loss of earnings of 38,967.81 pounds sterling (GBP). She submitted that her husband, who worked as a teacher at the time of his death and was 40 years of age, earned the equivalent of GBP 233.62 per month. Taking into account the average life expectancy in Turkey in that period, the calculation according to actuarial tables resulted in the capitalised sum quoted above.

132. The Government, rejecting that any violations had occurred requiring any awards of just satisfaction, submitted that the sums claimed were excessive and took no account of economic realities in Turkey. In any event, the Convention organs should not be regarded as providing a system of life insurance. They pointed out that the applicant had received a lump sum of 190,380,000 Turkish liras in 1994 and a widow's and orphan's pension from the education authorities in respect of her husband's death.

133. As regards the applicant's claims for loss of earnings, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, the Barberà, Messegué and Jabardo v. Spain judgment of 13 June 1994 (*Article 50*), Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı* cited above, § 127). The Court has found (see paragraph 94 above) that the authorities were liable under Article 2 of the Convention for a failure to protect the life of the applicant's husband. In these circumstances, there was a causal link between the violation of Article 2 and the loss by his widow and children of the financial support which he provided for them. The Court notes that the Government have not provided any information contradicting the detailed figures submitted by the applicant. It is, however, apparent that the applicant received certain sums from the authorities in respect of the death of her husband, in particular, a lump sum and a widow's and orphan's pension. In these circumstances, the Court awards GBP 35,000 to the applicant, to reflect the loss of income due to her husband's death, such sum to be converted into Turkish liras at the rate applicable at the date of payment.

B. Non-pecuniary damage

134. The applicant claimed, having regard to the severity and number of violations, GBP 40,000 in respect of the violations suffered by her husband and GBP 30,000 in respect of the violations suffered by herself for non-pecuniary damage.

135. The Government considered that no violations had occurred requiring any awards of just satisfaction and that the amounts claimed amounted to unjust enrichment.

136. The Court recalls that it has found a violation of Article 2 of the Convention in that the authorities failed to protect the life of the applicant's husband and that it has also found that the authorities failed to provide an effective investigation and remedy in respect of these matters, contrary to the procedural obligation under Article 2 of the Convention and in breach of Article 13 of the Convention. Additionally, the applicant was subject to torture contrary to Article 3 of the Convention and intimidation in the pursuance of her application. In these circumstances and having regard to the awards made in comparable cases, the Court awards on an equitable basis the sum of GBP 15,000 for non-pecuniary damage suffered by Zübeyir Akkoç to be held by the applicant as surviving spouse and the sum of GBP 25,000 for non-pecuniary damage suffered by the applicant in her personal capacity, such sums to be converted into Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

137. The applicant claimed a total of GBP 23,643.41 for fees and costs incurred in bringing the application, less the amounts received by way of Council of Europe legal aid. This included fees and costs incurred in respect of attendance at the taking of evidence before the Commission's delegates at a hearing in Ankara and attendance at the hearing before the Court in Strasbourg. A sum of GBP 12,560 was listed as fees and administrative costs incurred in respect of the Kurdish Human Rights Project (KHRP) in its role as liaison between the legal team in the United Kingdom and the lawyers and the applicant in Turkey, which included GBP 3,620 for translation costs. A sum of GBP 2,565.39 was claimed in respect of work undertaken by lawyers in Turkey.

138. The Government did not consider that any claim could properly be made for work done by Turkish lawyers or the KHRP. They considered that the amounts claimed by the applicant's British lawyers were excessive, considering the similarity of the issues in other cases. They further argued that the fees awarded should reflect the rates applied by the Turkish Bar.

139. Save as regards the translation costs, the Court is not persuaded that the fees claimed in respect of the KHRP were necessarily incurred. Having

regard to the details of the claims submitted by the applicant, it awards the applicant the sum of GBP 13,648.80 together with any value-added tax that may be chargeable, less the 3,600 French francs received by way of legal aid from the Council of Europe, such sum to be paid into the applicant's sterling bank account in the United Kingdom as set out in her just satisfaction claim.

D. Default interest

140. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* unanimously that there has been no violation of Article 10 of the Convention;

3. *Holds* by six votes to one that the respondent State failed to protect the life of Zübeyir Akkoç in violation of Article 2 of the Convention;

4. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances of the death of Zübeyir Akkoç;

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 a violation of Article 3 of the Convention in respect of the applicant;

7. *Holds* unanimously that the respondent State has failed to comply with its obligations under former Article 25 § 1 of the Convention;

8. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months, the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) GBP 35,000 (thirty five thousand pounds sterling) for pecuniary damage;

(ii) GBP 40,000 (forty thousand pounds sterling) for non-pecuniary damage;

(b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

9. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months and into the latter's bank account in the United Kingdom, in respect of costs and expenses, GBP 13,648 (thirteen thousand six hundred and forty-eight pounds sterling eighty pence) together with any value-added tax that may be chargeable, less FRF 3,600 (three thousand six hundred French francs) to be converted into pounds sterling at the rate applicable at the date of delivery of this judgment;

(b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

10. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President

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

E.P.
M.O'B.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

To my great regret I am unable to agree with the majority with regard to operative provisions nos. 3, 5 and 8 of the judgment for the following reasons:

1. The Court reached the conclusion that Article 2 has been violated because the State had not taken the measures necessary to protect the life of the applicant's husband, Mr Zübeyir Akkoç. In other words, the respondent State had failed to satisfy its *positive obligation* in this sphere.

The Court has defined the content of that obligation on more than one occasion in previous judgments. Under its settled case-law on this point, the obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, although the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources have to be borne in mind. Accordingly, *not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising* (see, *mutatis mutandis*, the Osman v. the United Kingdom judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, pp. 3159-60, §§ 115-16). It was on the basis of those principles that the Court concluded in the Osman case that there had been no violation of Article 2. Nevertheless, in that case the police had received several warnings that the situation was dangerous and the person concerned was a teacher with unusual proclivities and whose behaviour was highly abnormal. He was mentally unstable and capable of doing anything. Indeed, on being arrested he asked the police: “Why didn't you stop me before I did it, I gave you all the warning signs?” (ibid., p. 3142, § 57)

Whatever the position, the Court's finding in that case that there had been no violation of Article 2 as regards the State's positive obligation (to protect the right to life) was both correct and consistent with its previous decisions in this sphere. Viewed from that standpoint, then, what was the reality of Zübeyir Akkoç's situation? Was he at greater risk than the victim in the Osman case?

South-east Turkey, without a shadow of a doubt, is and was a high-risk area, not only for the applicant's husband, but for everyone living there. PKK and Hizbullah terrorists and militants from tiny groups of left-wing extremists, similar to those operating in the 1970s and encouraged and supported by foreign powers, continue to make the most of every opportunity to commit acts of appalling violence. In order to protect the local population from this threat to life and to prevent the arbitrary and

bloody violence perpetrated by the terrorists, the government took – and continues to take – all necessary and sufficient measures within its power (see paragraph 86 of the judgment). It is unfortunately not possible, and this applies to every government, to take measures to provide immediate individual protection (such as assigning a number of bodyguards to accompany anyone feeling threatened) in an area in which hundreds, even thousands, of people find themselves in the same position as the applicant's husband.

In the south-east of the country, ten times as many members of the security forces have been assigned to combat terrorism as elsewhere. Surely, under the Court's case-law, the positive obligation on the State is to use the best endeavours in the circumstances (see paragraph 78 of the judgment) and is not an absolute obligation.

In the present case, the difficulty lies in knowing whether the causal link between the conduct of the security forces and the death of Zübeyir Akkoç was sufficiently strong and proximate for the respondent State to be held responsible for the death of the applicant's husband. I find it impossible to accept that in this case the causal link between the alleged negligence of the police and the dramatic outcome was sufficiently close and proximate for the State's responsibility to be engaged, especially as we are dealing with a region that is volatile.

Under these circumstances, there can be only one right answer: either the aforementioned principle established by the Court's case-law governing the positive obligation of States is correct, in which case the analysis of the majority in the instant case is wrong, or the analysis of the majority is correct, in which case the principle concerned has no legal value.

In conclusion, I do not share the majority's opinion that the State failed in its duty to protect the life of Zübeyir Akkoç, in breach of Article 2 of the Convention.

2. As regards the Court's finding of a violation of Article 13, I entirely agree with the dissenting opinion of Mr Trechsel, the President of the European Commission of Human Rights, annexed to the report adopted by the Commission on 23 April 1999 in the instant case (applications nos. 22947/93 and 229488/93):

> "With regard to Article 13, I have voted against the finding of a violation, although I fully agree with the considerations set out in paragraphs 286-87 [lack of an effective investigation]. In my view, no further issue arises because the finding on Article 2 takes into account that there has been no effective investigation nor any adequate proceedings after the incident."

On that subject, I refer to my detailed dissenting opinion in the case of Ergi v. Turkey (judgment of 28 July 1998, *Reports* 1998-IV).

3. By operative provision no. 8 of the judgment, the Court awarded the applicant 35,000 pounds sterling (GBP) for pecuniary damage on the

ground that, as the respondent State had failed to protect her husband's life, there was a relevant causal link between the alleged negligence and his death and that the respondent State was responsible for that death.

We are aware that Article 2 can be violated in three ways:

(a) when the homicide is committed by State agents;

(b) when the State has failed to protect the victim by taking adequate measures within its power; and, lastly,

(c) when, in breach of the criminal law, there has been no effective investigation into the victim's death.

In paragraph 79 of the judgment, the Court affirmed:

> "In the present case, it has not been established beyond reasonable doubt that any State agent or person acting on the behalf of the State authorities was involved in the killing of Zübeyir Akkoç ..."

Therefore, the Government was in no way directly responsible for the death of the applicant's husband (first form of violation).

An award of compensation for pecuniary damage should be made only if the outcome is the direct result of the alleged breach.

What, then, is the position with regard to the second and third forms of violation? Clearly, a failure to hold an effective investigation into the death could not have been the cause of death. Therefore, the third form of violation should be discounted. There remains the second form, which is the one on which the majority relied in holding that the State had incurred its responsibility with regard to pecuniary damage. But was there a proximate and direct causal link between the alleged negligence of the security forces and Zübeyir Akkoç's death? For that question to be answered in the affirmative, one would have to assume that the measures of protection which the State could have taken were infallible, and such measures would thus be expected to prevent the death of everyone receiving protection. That is an impossible demand and one that is unacceptable under the "positive obligation" principle established by the Court.

It goes without saying that the causal link that must be sought in the event of pecuniary damage does not automatically result from the number of the Article that is alleged to have been violated, but must be demonstrated by the manner in which the provision concerned was effectively infringed. In the instant case, by accepting the applicant's claim for the pecuniary damage entailed by her husband's death, the Court speculated in a manner that defies all legal reasoning on the true effectiveness of protective measures. In other words, the Court is saying that the respondent State was required to take protective measures guaranteeing the survival of Zübeyir Akkoç.

It is worth noting that in the history of the European Court of Human Rights, this is the first judgment in which in such circumstances the Court has, on the basis of supposition and speculation, accepted the existence of

pecuniary damage without taking the actual factual circumstances of the case into account.

I therefore consider that there is no relevant factual causal link capable of sustaining a claim for material damage between the type of violation found and Zübeyir Akkoç's death.

The Akkoç case is clearly distinguishable from the cases of *Ertak v. Turkey* (no. 20764/92, ECHR 2000-V) and *Çakıcı v. Turkey* ([GC], no. 23657/94, ECHR 1999-IV), in which the respondent State was held directly responsible for the deaths, in other words as the perpetrator of the homicides in question.

In the Yaşa v. Turkey case (judgment of 2 September 1998, *Reports* 1998-VI) the Court dismissed the claim for pecuniary damage on the ground that it had not been established that the applicant had been assaulted and his uncle killed by the security forces (p. 2444, § 124).

In the Kurt v. Turkey case (judgment of 25 May 1998, *Reports* 1998-III) the applicant, the mother of a person who had disappeared while in custody, sought compensation without specifying the nature (pecuniary or non-pecuniary) of the damage sustained. The Court only made an award for non-pecuniary damage and said so openly and expressly.

The worst feature of the present case is that the Court, acting like an insurance company, but without any reliable and genuine evidence at its disposal or any qualifications for making a computation of this type, awarded the applicant a sum for pecuniary damage allegedly caused by her husband's death that was determined on the basis of a speculative actuarial calculation and was so exorbitant as to resemble a payout under a life-insurance policy.

I consider that the sums awarded in the present case, both for pecuniary and non-pecuniary damage, are more than excessive and do not take into account the economic realities of the country concerned, nor the sums previously awarded by the Court in similar cases.

Here are some examples:

In the Kurt case, the applicant claimed GBP 70,000 without specifying the nature of the damage. The Court awarded GBP 15,000 + GBP 10,000 in all.

In the case of Ertak, the applicant claimed GBP 60,630.44 + GBP 40,000 + GBP 2,500. The Court awarded GBP 37,500 in all.

In the case of Güleç v. Turkey (judgment of 27 July 1998, *Reports* 1998-IV), the applicant claimed GBP 400,000 + FRF 100,000. The Court awarded FRF 50,000 in all.

In the cases of *Kılıç v. Turkey* (no. 22492/93, ECHR 2000-III) and *Kaya v. Turkey* (no. 22535/93, ECHR 2000-III), the applicants claimed GBP 30,000 + GBP 40,000 + GBP 2,500 (without specifying the nature of the damage). The Court awarded GBP 15,000 + GBP 2,500 in all.

Finally, in the case of Yaşa cited above, the applicant claimed DEM 54,000 + GBP 150,000. The Court awarded only GBP 6,000 in all for non-pecuniary damage.