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

CASE OF TANRIKULU v. TURKEY

(Application no. 23763/94)

JUDGMENT

STRASBOURG

8 July 1999

In the case of Tanrıkulu v. Turkey,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANȚÎRU,
Mr E. LEVITS,
Mr K. TRAJA,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 25 March and 17 June 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") on 24 September 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 23763/94) against the Republic of Turkey lodged with the Commission under former Article 25 by a Turkish national, Mrs Selma Tanrıkulu, on 25 February 1994.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2, 3, 6, 13 and 14 of the Convention and under former Article 25 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A[1], the applicant stated that she wished to take part in the proceedings and designated the lawyers who would represent her (former Rule 30).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Deputy Registrar, consulted the Agent of the Turkish Government ("the Government"), the applicant's lawyers and the Delegate of the Commission on the organisation of the written procedure.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr R. Türmen, the judge elected in respect of Turkey (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr. L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr L. Caflisch, Mr W. Fuhrmann, Mr K. Jungwiert, Mr B. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Panţîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4).

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

The Registrar received the applicant's memorial on 5 February 1999. The Government's memorial was received on 16 February 1999, that is to say after the expiry of the time allowed, which had already been extended at the Government's request. On 17 February 1999 the President of the Court declined to give leave for inclusion of the Government's memorial in the case file (Rule 38 § 1).

1. *Note by the Registry*. Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

5. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mrs J. Liddy, to take part in the proceedings before the Grand Chamber.

6. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 25 March 1999.

There appeared before the Court:

(a) *for the Government*
Mr Ş. ALPASLAN, *Co-Agent*,
Mr B. ÇALIŞKAN,
Mr F. POLAT,
Ms M. GÜLSEN,
Mr H. MUTAF, *Advisers*;

(b) *for the applicant*
Ms F. HAMPSON,
Ms A. REIDY,
Ms D. VIRDEE, *Counsel*,
Mr K. YILDIZ, *Adviser*;

(c) *for the Commission*
Mrs J. LIDDY, *Delegate*.

The Court heard addresses by Mrs Liddy, Ms Hampson and Mr Alpaslan.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant

7. The applicant, Mrs Selma Tanrıkulu, is a Turkish citizen who was born in 1964 and is at present living in Diyarbakır in south-east Turkey. Her application to the Commission was brought on her own behalf, on behalf of her three minor children and on behalf of her deceased husband Dr Zeki Tanrıkulu who, she alleges, was killed by State security forces or with their connivance.

B. The facts

8. The facts surrounding the killing of the applicant's husband are disputed.

9. The facts as presented by the applicant are set out in paragraphs 13 to 22 below. The applicant did not reiterate her version of the circumstances surrounding the killing in her memorial to the Court, relying on the facts as established by the Commission in its report of 15 April 1998 and her previous submissions to the Commission.

10. The facts as presented by the Government are set out in paragraphs 23 to 28 below.

11. A description of the material submitted to the Commission will be found in paragraphs 29 to 31 below. A description of the proceedings before the domestic authorities regarding the killing of the applicant's husband, as established by the Commission is set out in paragraphs 32 to 38 below.

12. The Commission, in order to establish the facts in view of the dispute over the circumstances surrounding the killing of the applicant's husband, conducted its own investigation pursuant to former Article 28 § 1 (a) of the Convention. To that end, the Commission examined a series of documents submitted by both the applicant and the Government in support of their assertions and appointed three delegates to take the evidence of witnesses at a hearing in Ankara on 21 and 22 November 1996. The Commission's evaluation of the evidence and its findings are summarised in paragraphs 39 to 48 below.

1. Facts as presented by the applicant

(a) Concerning the killing of the applicant's husband

13. At about noon on 2 September 1993 the applicant's husband, Dr Zeki Tanrıkulu, was shot dead in the town of Silvan on a steep road, known as Kaymakam Hill (*Kaymakam Rampası*), which runs between the public hospital and the security directorate. The applicant was on the low balcony of her hospital residence, close to the hospital gates, when she heard the sounds of automatic firing. She jumped off the balcony and ran towards Kaymakam Hill. While she was running she heard another type of firing start.

14. The applicant saw her husband lying near the top of the steepest part of the hill, close to the security directorate, the moment she ran out of the hospital gates. She did not see anyone as she ran towards him. However, as she knelt by him, she looked up and saw at least eight members of the security forces standing in a line across the street near the security directorate and brandishing machine-guns, about fifteen to twenty metres away from her. They were dressed in plain clothes but were wearing special jackets that enabled them to carry spare ammunition. Although there were

usually at least eight members of the security forces near the security directorate, it was not usual for them to stand together in a line. The applicant appealed to the police present at the scene to do something to catch the perpetrators but they did nothing. She ran back down to the junction with Old Bitlis Road (*Eski Bitlis Caddesi*), screaming for help. At the junction, she saw two young men running along Old Bitlis Road and she saw them turn up the next street on the left. She warned the security force members that they were allowing the perpetrators to escape. The street on the left of Old Bitlis Road that the men had run into joined Gazi Road (*Gazi Caddesi*) near the security directorate.

15. The applicant then turned and ran back to her husband, having recalled that there was a gun in his briefcase. At that point, people ran out of the hospital to help. They took Dr Tanrıkulu to the hospital where they tried unsuccessfully to resuscitate him. Meanwhile, three policemen on patrol in a vehicle had been summoned by radio and they arrived within five to ten minutes. Two of the police officers examined the scene and the third, Turan Dağ, went to the hospital, where he obtained from the applicant a description of the two young men and of the direction in which they had fled. He informed his two colleagues, who went in pursuit of the alleged killers but not in the direction which had been indicated by the applicant.

16. The applicant made several efforts to make a statement to the authorities. She contacted the police but they said that the Chief of Security was not there and hung up. She also tried to speak to the Governor but without success.

17. In April 1993 Dr Tanrıkulu had been taken in for questioning by the police. They had received a tip-off to the effect that he was sheltering a terrorist suspect belonging to the PKK (Workers' Party of Kurdistan). He had been released without charge the next day.

18. Dr Tanrıkulu took his duties as a doctor seriously and would treat anyone in need. As the only doctor in Silvan Hospital for about eight months, he would have been the person who produced medical reports on persons released from custody. While he generally sought to protect the applicant from anything that might worry her, he did say, on more than one occasion, "If we let them, they would write the reports", and he also spoke about torture. Following the killing of another doctor in Silvan on 10 June 1992, which led a third doctor to seek and obtain a transfer from the area, Dr Tanrıkulu was reported in the press as having refused to talk about that incident out of fear. At the time a large number of killings were being committed in Silvan by unknown persons. There were newspaper reports alleging that many of the killings were the work of counter-guerrilla forces and it was reported that a military officer by the name of Captain Vural had a list of names and that the people on it were killed one by one. Dr Tanrıkulu's name was rumoured to be on this list.

19. Although Dr Tanrıkulu had sought to reassure the applicant that he was not at risk, he had acquired a gun, with the necessary licence, two weeks before his death. The day before he was killed, Dr Tanrıkulu had requested permission from the Governor to take his annual leave. Permission had been refused, even though his leave was long overdue and other doctors had arrived in Silvan who could have replaced him.

20. Following the killing of Dr Tanrıkulu, other doctors working at the hospital told the Governor that if the killers could not be found it was not safe for them to remain in Silvan. The Governor allegedly told them that they were safe and that Dr Tanrıkulu had been killed because he was a Kurd from Silvan. The applicant requested one of these doctors, Dr İlhan, to make a statement about his conversation with the Governor but he refused, as he was frightened of the consequences.

(b) Concerning the alleged interference with the exercise of the right of individual petition

21. On 17 November 1994 the applicant received a summons to appear at the prosecutor's office at the Diyarbakır National Security Court the next day. She was scared before the interview and found the experience frightening. The Chief Public Prosecutor, Mr Bekir Selçuk, questioned the applicant about her application to the Commission and, in particular, about the power of attorney she had given to her lawyers in an accompanying document. The report that was drawn up of the interview states that the applicant was shown a power of attorney in the name of Selma Tan and that she denied that the signature on that document belonged to her. The power of attorney which the applicant had submitted to the Commission, however, was in her full name of Selma Tanrıkulu. The implied threat was made by Mr Selçuk that something might happen to the applicant on account of her application. Mr Selçuk also suggested that an application to the Commission was futile.

22. The report of the interview was not a reliable record of what had been said. Contrary to what was written in the report, the applicant did not tell Mr Selçuk during the interview that about ten days after her husband's death she had been telephoned by a person called Kevin, who was from a centre in England and was ringing from Diyarbakır.

2. Facts as presented by the Government

(a) Concerning the killing of the applicant's husband

23. At the time of day when Dr Tanrıkulu was shot, there were only two officers standing guard outside the entrance to the security directorate. These police officers would not have been standing just twenty metres away from the incident and watching it, since the entrance to the security directorate was round the corner from where the shooting took place. The

officers standing guard were under strict orders not to leave their posts even if they heard shooting or an explosion as that would render the security directorate vulnerable to attack.

24. The street into which the applicant said that she saw the two perpetrators of her husband's killing turn from Old Bitlis Road did not come out at the security directorate building on Gazi Road but two blocks away from there.

25. Dr Tanrıkulu had been happy and proud to be working for the State. Government officials were on good terms with him and police officers had felt free to request his help at any hour of the day or night. However, investigations had shown that many killings of State officials or persons working for the State, especially in the area where the state of emergency was in force, had been committed by militants of the PKK.

26. There was no connection between Dr Tanrıkulu's death and his having been summoned to the police station in April 1993 to make a statement concerning the allegation that he was hiding a terrorist. As soon as it had been established that the allegation was false, Dr Tanrıkulu had been released.

27. Dr Tanrıkulu had been refused leave because he was the deputy head consultant of the hospital and his leave would have interrupted the medical service.

(b) Concerning the alleged interference with the exercise of the right of individual petition

28. The purpose of the Chief Public Prosecutor at the Diyarbakır National Security Court in questioning the applicant on 18 November 1994 had been twofold: firstly, doing so was part of his duty in relation to the preliminary criminal investigation into the death of her husband and, secondly, it was done to verify the validity of her application to the Commission. It was vital that the applicant should be asked about the authenticity of her application in view of the fact that forged statements had been submitted to the Commission in various other cases. It clearly appeared from the record of the interview, however, that the applicant had stated that she wished to pursue her application.

3. Material submitted to the Commission by the applicant and the Government in support of their assertions

29. In the proceedings before the Commission the applicant and the Government submitted a number of statements which the applicant had made to the Human Rights Association in Diyarbakır and to the Chief Public Prosecutor at the Diyarbakır National Security Court. The parties further submitted a number of plans of the area where the shooting had taken place. At the Commission's request, the Government also submitted photographs and a video film of the area.

30. The Government further provided copies of the incident report drawn up by three police officers on the day of the shooting (2 September 1993), the reports of the post-mortem examination and ballistic tests, statements taken by police officers from witnesses at the scene (Mr Şinasi Malgil, Mr Umut Yüce and Mr Fırat Kızıl) and a decision issued by Silvan public prosecutor Mr Mustafa Düzgün on 5 November 1993 to the effect that he had no jurisdiction.

31. The Commission repeatedly requested the Government to provide it with a copy of the complete investigation file, as it had appeared during the hearing of witnesses in Ankara that the Government held more documents than had previously been submitted to the Commission. The Government did not submit any other documents.

4. Proceedings before the domestic authorities

32. Following the shooting of Dr Tanrıkulu, police inspected the scene of the incident and retrieved sixteen empty cartridges and one deformed bullet. They also drew up a plan of the immediate surroundings, searched the area and noted down names of people who had been present in the area at the time of the shooting. The notes containing those names have not been kept. The incident report drawn up by three police officers (Mr Turan Dağ, Mr Mehmet Şahin and Mr Durmuş Şahin) at 1 p.m. on 2 September 1993 mentions that during the examination of the scene of the incident sixteen 9-millimetre-long empty cartridges and one deformed bullet were retrieved. According to the incident report, residents of the area had stated that those who carried out the shooting had been two tall, thin people wearing jeans and trainers. One of these had been wearing a yellow T-shirt and the other a white striped T-shirt. In the general examination made of the area, no individuals fitting either of the descriptions were discovered.

33. On 2 September 1993 Mr Şinasi Malgil made a statement to the police in which he said that he had been walking behind Dr Tanrıkulu on Kaymakam Hill when he had heard a series of shots coming from behind them. He had thrown himself into the garden of houses on the right-hand side and had not seen the person or persons who had shot Dr Tanrıkulu.

34. Two other men, Mr Umut Yüce and Mr Fırat Kızıl, made a statement to the police on 6 September 1993 in which they related that when they were, respectively, walking towards the hospital and working in the grocer's shop on the corner of Kaymakam Hill, they had heard shots and had found Dr Tanrıkulu lying in a pool of blood. Following the gunshots Mr Umut Yüce had seen two people running in the direction of Old Bitlis Road. Mr Fırat Kızıl had not seen the person or persons who had shot Dr Tanrıkulu.

35. A post-mortem examination of Dr Tanrıkulu's body was carried out on 2 September 1993 by Dr Murat Yıldırım and Dr Tahir Buran, both general practitioners who worked at Silvan Hospital, and the public

prosecutor, Mr Mustafa Düzgün. According to the report of this examination, thirteen bullet entry wounds and twelve bullet exit wounds were recorded, *inter alia* on the nose, left ear and left forearm, to the left of the fifth vertebra, on the thumb and the right nipple and above the right knee. One bullet was found lodged just below the skin on the inside of the left femur and removed. The cause of death was given as the injury to, and extensive bleeding in, the chest and vital internal organs. In view of the obvious cause of death, it was not considered necessary to carry out a full autopsy.

36. Ballistic tests on the cartridges retrieved at the scene of the incident were carried out by the regional police laboratory. A comparative examination showed up conformity in various respects indicating a single source. The cartridges and the deformed bullet were kept in the laboratory archives. The report of the examination, dated 9 September 1993, does not indicate with what kind of firearm the cartridges and bullet might have been used.

37. On 5 November 1993 the public prosecutor, Mr Mustafa Düzgün, issued a decision to the effect that he had no jurisdiction. In view of the nature of the offence, the way it had been carried out and the existing evidence, the investigation into the incident fell within the competence of the prosecutor's office at the Diyarbakır National Security Court, where the case is still pending. The decision declining jurisdiction named the suspects as two unidentified persons.

38. The applicant was summoned to appear before the Chief Public Prosecutor at the Diyarbakır National Security Court, Mr Bekir Selçuk, on 18 November 1994. According to the report of her interview with Mr Selçuk, the applicant said that her husband had continually received threats from the PKK for being an official of the State and from Hizbullah for not complying with Islamic rules. She is also reported as saying that, approximately ten days after the incident, she received a telephone call from someone she believed was called Kevin, who invited her to come to the Diyarbakır branch of the Human Rights Association. The report further states that Mr Selçuk showed the applicant a petition signed by Selma Tan on 27 September 1993. The applicant denied having given anybody that document; her name was not Selma Tan and the signature on the document was forged. However, she confirmed that she had made an application to the Commission and that she herself had signed that.

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

39. Since the facts of the case were disputed, particularly concerning events on 2 September 1993, the Commission conducted an investigation, with the assistance of the parties, and received documentary evidence, including written statements and oral evidence taken from six witnesses: the applicant; Mr Bekir Selçuk, Chief Public Prosecutor at the Diyarbakır

National Security Court; Mr Turan Dağ, Mr Mehmet Şahin and Mr Durmuş Şahin, the three police officers who investigated the area where the incident took place, drew up the incident report and made a sketch of the area; and Dr Murat Yıldırım, one of the doctors who conducted the post-mortem examination.

A further six witnesses had been summoned but did not appear: Mr Şinasi Malgil, Mr Umut Yüce and Mr Fırat Kızıl, the witnesses who made statements to the police shortly after the incident; Dr Tahir Buran, the second doctor who had performed the post-mortem examination; Mr Mustafa Düzgün, the Silvan public prosecutor in 1993; and Mr Ünal Haney, whom the Government had identified as the public prosecutor at the Diyarbakır State Security Court who was in charge of the investigation at the time of the hearing of witnesses by the Commission's delegates. It appeared that Mr Umut Yüce and Dr Buran were ill and that Mr Fırat Kızıl was doing his military service and was involved in exercises which prevented his presence at the hearing. The Government had been unable to locate Mr Şinasi Malgil. Mr Ünal Haney informed the Commission that he was not prepared to attend the hearing. Although Mr Mustafa Düzgün was said to have boarded a bus bound for Ankara, he did not appear before the Commission's delegates. No explanation for his failure to attend was submitted by the Government, despite a number of requests to that effect from the Commission.

The Commission made a finding in its report (at paragraph 238) that the Government had fallen short of their obligations under former Article 28 § 1 (a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts. It referred to the Government's failure

(i) to provide copies of the complete investigation file (see paragraph 31 above); and

(ii) to secure the attendance of the witnesses Mustafa Düzgün and Ünal Haney.

40. In relation to the oral evidence, the Commission was aware of the difficulties attached to assessing evidence obtained orally through interpreters. It therefore paid careful attention to the meaning and significance which should be attributed to the statements made by the witnesses appearing before its delegates.

In a case in which there were contradictory and conflicting accounts of what actually occurred, the Commission particularly regretted the absence of a thorough domestic judicial investigation. It was aware of its own limitations as a first-instance tribunal of fact. In addition to the problems of language adverted to above, it inevitably had no detailed, direct familiarity with the conditions pertaining in the region. Moreover, the Commission had no power to compel witnesses to appear and testify. In the present case, while twelve witnesses had been summoned to appear, only six gave

evidence. The lack of documentary material has already been referred to. The Commission was therefore faced with the difficult task of ascertaining the facts in the absence of potentially significant testimony and with incomplete evidence.

The Commission's findings may be summarised as follows.

(a) The shooting of Dr Zeki Tanrıkulu on 2 September 1993

41. The Commission observed that no findings of fact had been made by domestic courts as regards the subject-matter of the applicant's complaints. The Commission had accordingly based its findings on the evidence given to its delegates orally or submitted in writing in the course of the proceedings. In this form of assessment the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact and, in addition, the conduct of the parties when evidence is being obtained may be taken into account (see, *mutatis mutandis*, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161).

42. The Commission noted that it was not in dispute that Dr Tanrıkulu had been shot on Kaymakam Hill on 2 September 1993. However, it had been presented with conflicting accounts as to the exact place on Kaymakam Hill where the incident had occurred. Whereas the applicant contended that her husband had been lying fairly far up Kaymakam Hill, near the security directorate, the three policemen who investigated the scene of the incident indicated in their report and in the sketch they made that Dr Tanrıkulu had been shot near the bottom of the hill. The Commission considered it doubtful that the applicant would have been able to see the body as she came out of the hospital gates, as she alleged, if he had been shot as far up Kaymakam Hill as she contended.

43. Neither the report of the post-mortem examination nor the oral evidence given by Dr Yıldırım to its delegates enabled the Commission to establish whether Dr Tanrıkulu was shot from the front or from behind, information which could have provided an indication of the place from where the bullets had been fired.

44. The applicant submitted that anyone trying to escape by going up Kaymakam Hill or via a side alley would have done so within sight of the members of the security forces – at least eight of them – who were standing at the top of the hill and that the perpetrators therefore could not have been concerned about the reaction of the police. The Government disputed that there would have been eight police officers as described by the applicant. They submitted that there were only two officers standing guard at the front of the security directorate, round the corner from the top of Kaymakam Hill, and that they were under strict orders not to leave their post. The Commission noted that, while this state of affairs was confirmed by police officers Turan Dağ and Mehmet Şahin before its delegates, it was at odds

with the situation portrayed on the photographs and the video film which, according to the Government, corresponded to the situation on the day of Dr Tanrıkulu's death. On the photographs and the video film, two uniformed police officers could be seen standing guard at the back of the security directorate as well.

45. As regards the general credibility of the applicant, the Commission found that her evidence was on the whole detailed, precise and consistent. However, even if it accepted that eight armed police officers had been present at or near the scene of the incident, the Commission considered that a finding to the effect that the killing of Dr Tanrıkulu had been carried out either by these officers or with their connivance would be based more on conjecture, speculation and assumption than on reliable inference. The Commission was of the opinion that the evidence available did not allow for inferences to be drawn capable of supporting such a finding. This was so even if account was taken of the background against which the applicant submitted that the incident should be seen: her husband's arrest five months previously on suspicion of harbouring a PKK terrorist; the refusal of his leave; the fact that his name was rumoured to feature on a hit list; and the large number of civil servants being killed in Silvan by unknown assailants at the time.

46. In reaching the conclusion that the applicant's allegations had not been sufficiently proved, the Commission pointed out that it had not been provided with any other eyewitness evidence or evidence corroborating the applicant's account to a decisive extent. Moreover, the documentary evidence with which it had been presented was incomplete, inconsistent and on some points even contradictory.

(b) Investigation by the authorities

47. In its evaluation of the evidence relating to the investigation into the killing of the applicant's husband, the Commission noted that there had been no thorough domestic judicial investigation. Referring to the incomplete investigation file and the failure of two public prosecutors to appear before its delegates, the Commission further pointed out that it was only able to evaluate the investigation to the extent that information concerning that investigation had been made available. In this respect it also noted that it had not been provided with any evidence showing what, if any, inquiries had been conducted following the drawing up of the incident report by three police officers one hour after the shooting.

48. In its assessment of the various investigative steps that had been taken by the domestic authorities, the Commission was particularly critical of the limited scope of the initial investigation carried out by the three police officers who had arrived at the scene shortly after the shooting. It found the sketch map they had made to be both imprecise and uninformative. In the absence of information to the contrary, it had to

assume that no photographs had been taken of the scene. The Commission was further struck by the fact that the applicant's statement had not been taken until more than a year later and it was not persuaded that attempts had been made to speak to her sooner. Finally, the Commission noted that only very little forensic information had been gathered and it expressed doubt as to the expertise possessed in this field by the two physicians who had carried out the post-mortem examination.

6. New evidence relied on before the Court

49. Before the Court the applicant referred to the so-called Susurluk Report, which was first produced to the Court in the case of Yaşa v. Turkey (judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, pp. 2423-24, § 46). The report became available in February 1998, after counsel had submitted the final pleadings on behalf of the applicant in the proceedings before the Commission. This confidential report was initially intended to be only for the Prime Minister, who had commissioned it on 13 August 1997 from the Board of Inspectors within his Office. After receiving the report in January 1998, it would appear that the Prime Minister then made it available to the public, although eleven pages from the body of the report and its appendices were withheld.

50. 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 that had occurred mainly in south-east Turkey and which tended to confirm the existence of a tripartite relationship involving unlawful dealings between political figures, government institutions and clandestine groups.

51. 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. It concludes that there is a connection between the fight to eradicate terrorism in the region and the underground relations that had been formed as a result, particularly in the drug-trafficking sphere.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

A. Criminal prosecutions

53. Under the Criminal Code all forms of homicide (Articles 448 to 455) and attempted homicide (Articles 61 and 62) constitute criminal offences.

The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or 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 duty is liable to imprisonment.

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

54. 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.

55. 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.

56. By virtue of Article 4, paragraph (i), of Legislative Decree no. 285 of 10 July 1987 on the authority of the governor of a state of emergency region, the 1914 Law (see paragraph 55 above) also applies to members of the security forces under the governor's authority.

57. 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 (Article 145 § 1 of the Constitution and sections 9 to 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 53 above) or with the offender's superior.

B. Civil and administrative liability arising out of criminal offences

58. 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.

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

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

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

60. Article 8 of Legislative Decree no. 430 of 16 December 1990, the last sentence of which was inspired by the provision mentioned above (see paragraph 59), provides:

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

61. 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 to 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 (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).

PROCEEDINGS BEFORE THE COMMISSION

62. Mrs Selma Tanrıkulu applied to the Commission on 25 February 1994. She alleged that her husband, Dr Zeki Tanrıkulu, had been killed either by State security forces or with their connivance and that the killing had not been adequately investigated by the authorities. She relied on Articles 2, 3, 6, 13 and 14 of the Convention. In the course of the proceedings before the Commission the applicant further alleged that she had been hindered in the effective exercise of the right of individual petition as guaranteed by former Article 25 § 1 of the Convention.

63. The Commission declared the application (no. 23763/94) admissible on 28 November 1995. In its report of 15 April 1998 (former Article 31 of the Convention), it expressed the opinion that there had been no violation of Article 2 on account of the killing of the applicant's husband itself or on account of its alleged discriminatory aspect (unanimously); that there had been a violation of Article 2 on account of the failure to carry out an effective investigation into the death of the applicant's husband (unanimously); that there had been no violation of Article 3 (unanimously); that it was not necessary to examine the complaint under Article 6 (unanimously); that there had been a violation of Article 13 (unanimously); that there had been no violation of Article 14 (unanimously); and that Turkey had failed to comply with its obligations under former Article 25 (twenty-nine votes to one). The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

FINAL SUBMISSIONS TO THE COURT

64. The applicant requested the Court in her memorial to find that the respondent State was in violation of Articles 2, 13, 14 and former Article 25 § 1 of the Convention and that it had not fulfilled its obligations under former Article 28 § 1 (a). She requested the Court to award her and her children just satisfaction under Article 41.

65. The Government requested the Court at the hearing on 25 March 1999 to dismiss the case as inadmissible on account of the applicant's failure to exhaust domestic remedies. In the alternative, they argued that the applicant's complaints were not substantiated by the evidence.

THE LAW

I. SCOPE OF THE CASE

66. In her application to the Commission the applicant had, *inter alia*, alleged a violation of Articles 3 and 6 of the Convention (see paragraphs 1 and 62 above). In her memorial to the Court, however, she accepted the Commission's conclusions that there had been no violation of Article 3 and that it was not necessary to examine the complaint under Article 6 § 1 (see paragraph 63 above). The applicant did not pursue those complaints in the proceedings before the Court, which sees no reason to consider them of its own motion (see, *mutatis mutandis*, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 28, § 62).

II. THE COURT'S ASSESSMENT OF THE FACTS

67. 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 v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1214, § 78).

68. In the instant case the Court points out that the Commission reached its findings of fact after a delegation had heard evidence in Ankara (see paragraphs 12 and 39 above). It considers that the Commission approached its task of assessing the evidence before it with the requisite caution, giving

detailed consideration to the elements which supported the applicant's account and to those which cast doubt on its credibility. No matters of substance having been advanced which might require the Court to exercise its own powers to verify the facts, it considers that it should accept the facts as established by the Commission.

69. In addition to the difficulties inevitably arising from a fact-finding exercise of this nature, the Commission was unable to obtain certain documentary evidence and testimony which it considered essential for discharging its functions. The Commission found that the Government had failed to provide the complete investigation file and to secure the attendance before the delegates of two State officials, Mr Mustafa Düzgün and Mr Ünal Haney (both public prosecutors) (see paragraph 39 above).

70. The Court would observe that it is of the utmost importance for the effective operation of the system of individual petition instituted under former Article 25 of the Convention (now replaced by Article 34) not only that applicants or potential applicants should be able to communicate freely with the Convention organs without being subject to any form of pressure from the authorities, but also that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see former Article 28 § 1 (a) of the Convention, which concerned the fact-finding responsibility of the Commission, now replaced by Article 38 of the Convention as regards the Court's procedures).

71. In their oral pleadings the Government argued that the essential documents contained in the investigation file had been submitted to the Commission at an early stage, and that more recent documents, such as information submitted periodically to the public prosecutor by the police and the gendarmerie to the effect that the investigation was still continuing, had no evidential significance. The Court is not persuaded by those arguments. Where an application contains a complaint that there has not been an effective investigation, as in the instant case, the Court considers it incumbent on the respondent State to furnish all documentation pertaining to that investigation. Moreover, the Court notes that at the hearing the Government referred to two police reports dated 7 and 20 September 1993. Copies of those reports were not submitted either to the Commission or the Court.

The Court further notes the lack of any satisfactory or convincing explanation by the Government as to the witnesses who did not attend the hearing before the Commission's delegates.

Consequently, it confirms the finding reached by the Commission in its report that in this case the Government fell short of their obligations under former Article 28 § 1 (a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts.

III. THE GOVERNMENT'S PRELIMINARY OBJECTION

72. At the hearing the Government objected that the applicant had not exhausted domestic remedies, as required by Article 35 of the Convention, by making proper use of the redress available through the instituting of criminal proceedings, or by bringing claims in the civil or administrative courts.

The Government maintained that the Commission had not decided correctly on that objection when considering the admissibility of the application. The Commission had not taken into account the fact that the applicant had immediately concluded that the State was responsible for the shooting of her husband and that she had then turned to lawyers working at the Diyarbakır branch of the Human Rights Association, whose "established practice" it was not to advise clients of the existence of domestic remedies. The applicant could have obtained from domestic judicial bodies the compensation for pecuniary and non-pecuniary damage which she sought in the present proceedings.

73. The applicant's counsel submitted at the hearing that the Government had failed to show that administrative-law remedies could be effective in cases where an allegation was made of criminal conduct on the part of the police or the security forces. In any event, what was required in such a situation was not simply an administrative-law remedy but an effective investigation and, if necessary, criminal proceedings against those responsible.

74. The Commission, rejecting the Government's arguments in its decision on admissibility, found that it had not been established that the applicant had adequate remedies at her disposal to deal effectively with her complaints. In its report the Commission also noted the applicant's contention that she had several times contacted the authorities in order that a statement might be taken from her but that they had refused to speak to her. At the hearing the Delegate of the Commission observed that the logic of the structure of the Convention and of the Court's case-law led to the conclusion that in the case of a killing of which the authorities were aware, the latter were under an obligation to conduct a thorough investigation without waiting for a complaint to be brought.

75. In view of its conclusion as to the scope of the case (see paragraph 66 above), the Court will consider the Government's preliminary objection only in so far as it concerns the complaints made under Articles 2 and 13 of the Convention.

76. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as

in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and the Akdivar and Others judgment cited above, p. 1210, §§ 65-67).

77. The Court notes that Turkish law provides civil, administrative and criminal remedies against illegal and criminal acts attributable to the State or its agents (see paragraphs 52 et seq. above).

78. As regards a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents (see paragraph 61 above), the Court notes that a plaintiff in such an action must, in addition to establishing a causal link between the tort and the damage he or she has sustained, identify the person believed to have committed the tort. In the instant case, however, it is still unknown who was responsible for the acts of which the applicant complained (see paragraph 37 above).

79. With respect to an action in administrative law under Article 125 of the Constitution based on the authorities' strict liability (see paragraphs 58 and 59 above), the Court reiterates that a remedy indicated by the Government must be sufficiently certain in practice as well as in theory (see, among other authorities, the Yağcı and Sargın v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 17, § 42). However, the Court has not been provided with any examples of persons having brought such an action in a situation comparable to the applicant's (see the Yaşa judgment cited above, p. 2431, § 74). Furthermore, the Court recalls its considerations in the Yaşa judgment to the effect that a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if in respect of complaints under those Articles an applicant were to be required to exhaust an administrative-law action leading only to an award of damages (ibid.).

80. Consequently, the applicant was not required to bring the civil and administrative proceedings in question and the preliminary objection concerning such proceedings is unfounded.

81. Finally, with regard to the criminal-law remedies (see paragraphs 53 to 57 above), the Court notes that the only recorded statement taken from the applicant by the authorities is that of her interview with the Chief Public Prosecutor at the Diyarbakır National Security Court, Mr Bekir Selçuk, on 18 November 1994 (see paragraphs 21, 28 and 38 above). The text of that statement, whose accuracy is disputed by the applicant (see paragraph 22 above), does not contain any allegation of security-force involvement in the

shooting of the applicant's husband. Irrespective of the content of the statement, however, it is not in dispute that a criminal investigation was opened into the murder of Dr Tanrıkulu.

82. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see the Akdivar and Others judgment cited above, p. 1211, § 69, and the Aksoy judgment cited above, p. 2276, §§ 53 and 54).

83. The Court considers that this latter limb of the Government's preliminary objection raises issues that are closely linked to those raised in the applicant's complaints under Articles 2 and 13 of the Convention.

84. Consequently, the Court dismisses the Government's preliminary objection in so far as it relates to the civil and administrative remedies relied on (see paragraph 80 above). It joins the preliminary objection concerning remedies in criminal law to the merits (see paragraphs 101 to 110 and 117 to 120 below).

IV. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

85. The applicant alleged that her husband, Dr Zeki Tanrıkulu, was killed either by security forces or with their connivance. She also complained that no effective judicial investigation had been conducted into the circumstances of the murder and that there had been a lack of protection in domestic law for the right to life. She argued that there had been a breach of Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

86. The Government disputed those allegations. The Commission expressed the opinion that Article 2 had been infringed on the ground that the authorities had failed to carry out an adequate criminal investigation into the circumstances surrounding the killing of the applicant's husband.

A. Submissions of those who appeared before the Court

1. The applicant

87. The applicant accepted that the Commission had been unable to reach a conclusion as to the complicity of the agents of the State that would meet the requisite standard of proof. However, she requested that the Court have regard to the fact that evidence which ought to have been in the hands of the authorities either was not available or had not been supplied to the Commission. In this connection, she referred to the Commission's finding that the Government had fallen short of their obligation under former Article 28 § 1 (a) of the Convention in that they had failed to produce certain witnesses and the complete investigation file.

The applicant submitted that where, as in the present case, there was a credible account from a reliable eyewitness – the applicant – and where evidence existed which might corroborate or refute the assertion but the Government did not produce that evidence, the Court should regard the evidence provided by the applicant as proof of her allegations. The applicant argued that she had adduced sufficient evidence to have established beyond reasonable doubt that the security forces were implicated in the killing of her husband.

88. The applicant asked the Court to endorse the Commission's opinion that there had been a violation of Article 2 of the Convention on the ground that the investigation into the death of her husband had been so inadequate and ineffective as to amount to a failure to protect the right to life.

89. In addition, counsel argued at the hearing that the respondent State had also failed to comply with the positive obligation to protect by law the right to life of those persons falling within a category of people known to be at real and imminent risk from the unlawful activities of counter-guerrilla forces of whose activities the authorities were aware.

90. In this context the applicant made reference to the Susurluk Report (see paragraphs 49-51), which confirmed that certain State agencies, acting at the instigation and with the knowledge and support of the State

authorities, were implicated in the deliberate elimination of locally prominent Kurds who were suspected of harbouring PKK sympathies.

The applicant also referred to the reports adopted by the Commission under former Article 31 of the Convention in the cases of Mahmut Kaya v. Turkey (concerning the killing of the applicant's brother, Dr Hasan Kaya) and Cemil Kılıç v. Turkey (concerning the killing of the applicant's brother, Kemal Kılıç) (applications nos. 22535/93 and 22492/93 respectively, reports adopted on 23 October 1998, both cases currently pending before the Court). In those cases the Commission found that in or about 1993 the legal structures in the south-east of Turkey operated in a manner incompatible with the rule of law. It also found that in the particular circumstances Hasan Kaya and Kemal Kılıç fell into a category of people who were at risk from unlawful violence as a result of targeting by State officials or those acting on their behalf or with their connivance or acquiescence. In respect of that risk, the Commission concluded that Hasan Kaya and Kemal Kılıç had not enjoyed the guarantees of protection required by the rule of law. In the applicant's submission, application of the Commission's analysis to the present case should lead to the conclusion that the preventive and protective framework in place at the relevant time was unable to protect the life of a prominent local Kurd such as Dr Tanrıkulu.

2. The Government

91. The Government maintained that the applicant's allegations were unfounded as her account of events was based on an incorrect description of the scene of the crime, designed solely to establish a connection between personnel at the security directorate and the killing of her husband. Furthermore, to reinforce her allegations, the applicant relied on rumours about a military officer having a "hit list" of prominent Kurds and about the Governor having said that her husband was killed because of his Kurdish origins.

92. The Government agreed with the Commission's conclusion that the alleged facts were not attributable to agents of the State. However, they disputed that there had been a breach of the obligation to carry out an effective investigation. A criminal investigation had been initiated immediately after the incident on 2 September 1993 and it was still pending.

The Government submitted that the Commission had not had proper regard to the limited opportunities for criminal investigation in a region where, and at a time when, terrorist violence was at its peak. Providing the necessary technical facilities for every crime scene created physical and material difficulties in those circumstances. Before concluding, as the Commission did, that it was a serious omission that no photographs of the scene had been taken, consideration should be given to the number of killings by unknown persons all over Turkey where the scene had been photographed. The public prosecutor at Silvan and the personnel at the

security directorate had carried out their duties in accordance with the provisions of the Code of Criminal Procedure despite the difficulties they had encountered as a result of "intimidation created by terrorism", which led to a lack of cooperation from the public.

93. The representative of the Government rejected any reference to the Susurluk Report, since the matters covered in that report were being investigated and evaluated by the criminal courts in Turkey.

3. The Commission

94. The Commission found that it had not been established beyond reasonable doubt that agents from the security forces or police officers had been implicated in the killing of the applicant's husband. As outlined in paragraph 46 above, it noted that it had been provided with documentary evidence which was incomplete, inconsistent and on some points even contradictory. It considered that this was largely due to the manner in which the investigation at the scene of the incident and the post-mortem examination of the body of Dr Zeki Tanrıkulu had been conducted.

95. Having analysed the various investigative measures taken in the present case, the Commission concluded that the investigation had been so inadequate and ineffective as to amount to a failure to protect the right to life.

B. The Court's assessment

1. The shooting of Dr Zeki Tanrıkulu

96. The Court has accepted the Commission's establishment of the facts in this case (see paragraph 68 above). On the basis of the material before it, the Commission was unable to conclude that the allegation that Dr Zeki Tanrıkulu had been shot by, or with the connivance of, agents of the State had been proved beyond reasonable doubt. However, the applicant pleaded before the Court that, in view of the Government's failure to produce evidence which might have either corroborated or refuted the applicant's credible account, the involvement of the security forces in the killing of Dr Zeki Tanrıkulu must be presumed to have been established beyond reasonable doubt.

97. The Court reiterates that while the attainment of the required evidentiary standard (see paragraph 94 above) may follow from the co-existence of sufficiently strong, clear and concordant inferences or unrebutted presumptions, their evidential value must be assessed in the light of the circumstances of the individual case and the seriousness and nature of the charge to which they give rise against the respondent State (see the Yaşa judgment cited above, pp. 2437-38, § 96).

98. The Court has already found that the Government have fallen short of their obligations under former Article 28 § 1 (a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts (see paragraph 71 above). It considers the Government's default in that respect a matter for grave concern.

The Court does not exclude that in certain circumstances inferences may be drawn where a Government without good reason fails to produce material requested of it. Nevertheless, it does not find that the present case discloses any such circumstance which could justify drawing an inference to the extent proposed by the applicant.

99. Consequently, the Court perceives no cause to depart from the Commission's conclusions regarding this complaint. It accordingly holds that the material in the case file does not enable it to conclude beyond reasonable doubt that Dr Zeki Tanrıkulu was killed by security forces or with their connivance.

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

2. Alleged failure to protect the right to life

100. The applicant alleged that there had been a violation of this limb of Article 2 on two counts: firstly, she complained of the investigation carried out into the killing of her husband; and secondly, she submitted that it appears from the Susurluk Report that the preventive and protective legal framework in place at the relevant time was unable to protect her husband's life.

(a) Alleged inadequacy of the investigation

101. The Court reiterates that the obligation to protect the right to 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 v. Turkey judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105).

102. In the present case the Government maintained that there was no evidence that agents of the State had been implicated in the killing of the applicant's husband (see paragraph 91 above). Moreover, there was no record of the applicant at any stage having made any explicit accusation to that effect (see paragraphs 72 and 81 above).

103. In that connection, the Court points out that the obligation mentioned above is not confined to cases where it has been established that

the killing was caused by an agent of the State. Nor is the issue of whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authorities decisive. In the instant case the mere fact that the authorities were informed of the murder of the applicant's husband gave rise *ipso facto* to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death (see, *mutatis mutandis*, the Ergi v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82, and the Yaşa judgment cited above, p. 2438, § 100).

104. Turning to the particular circumstances of the case, the Court notes in the first place the Commission's statement that its ability to make an assessment of the investigation had been limited due to the lack of information from the Government (see paragraphs 47 and 94 above). According to the Government's representative at the hearing before the Court, however, the Commission had been provided with all essential material.

It appears on the sum of the evidence before the Court that in the immediate aftermath of the shooting, which occurred at about noon on 2 September 1993, the scene of the crime was searched by two police officers, who retrieved a number of empty cartridges and one deformed bullet, whilst a third officer went to the hospital, where he spoke to the applicant (see paragraphs 15 and 32 above). The three officers then proceeded to search the area for two people of whom local residents had given a description (see paragraph 32 above). The incident report does not contain the residents' names. That report was drawn up at 1 p.m., that is barely one hour after the shooting had taken place (ibid.). There being no other evidence of any further investigation of the scene of the crime (the absence of photographs, for example, is noteworthy), it seems doubtful that the investigation of the scene could have amounted to more than a superficial one.

105. The Court, like the Commission, notes with concern the lack of precision and detail on the sketch map drawn by one of the police officers. It observes that the whole of the investigation was characterised by inadequate and imprecise reporting of the steps that were taken.

106. A post-mortem examination was performed on the same day by two general practitioners. The two physicians found that the applicant's husband had been hit by thirteen bullets, one of which had lodged in the body and was removed (see paragraph 35 above). The Court, sharing the Commission's misgivings as to the limited amount of forensic information obtained from this examination, considers it regrettable that no forensic specialist was involved and that no full autopsy was performed.

107. Statements were taken by police from three witnesses on 2 and 6 September 1993 (see paragraphs 33 and 34 above). On 9 September 1993 the regional police laboratory issued the findings of ballistic tests (see

paragraph 36 above). Apart from the deformed bullet found by the police officers at the scene of the crime, there is no record of any attempt having been made to retrieve the remaining eleven bullets, which must have passed through Dr Tanrıkulu's body.

108. On 5 November 1993 the public prosecutor, Mr Mustafa Düzgün, issued a decision to the effect that he had no jurisdiction and referred the investigation to the prosecutor at the Diyarbakır National Security Court (see paragraph 37 above). This course of action would suggest that according to Mr Düzgün at least, the killing of Dr Tanrıkulu constituted a terrorist offence (see paragraph 54 above). The Court is struck by the fact that this conclusion was drawn on the basis of, as Mr Düzgün put it in his decision, "the nature of the offence, the way it had been carried out and the existing evidence" (see paragraph 37 above). The Court would observe that the evidence available to the public prosecutor at that time contained few indications of the manner in which the offence had been committed, and certainly did not appear sufficiently ample to allow the conclusion to be drawn that terrorists must have been responsible. In the opinion of the Court, the foregoing provides a graphic illustration of the necessity for a Contracting State to cooperate with the fact-finding task of the Commission pursuant to former Article 28 § 1 (a) of the Convention. Had Mr Düzgün and Mr Haney, the prosecutor at the National Security Court who was subsequently in charge of the investigation (see paragraph 39 above), appeared before the Commission's delegates, light might have been shed on a decision which, in view of the available information, can at best be described as having very little basis in concrete evidence.

109. There is no evidence of any investigative steps being undertaken by the police or the public prosecutor before Mr Düzgün's decision other than those described above (see paragraphs 104 to 107). Neither is there any evidence of any investigative activity following that decision apart from the taking of the applicant's statement on 18 November 1994, that is more than one year after the incident occurred and just over a month after the present application was brought to the attention of the Government (see paragraph 6 of the Commission's report). This is in fact the last investigative action that the Court is aware of. It does not appear that the authorities, on being informed of the applicant's complaints, were prompted, for instance, to take statements from those members of the security forces who had been standing guard outside the security directorate. Although the Government have consistently maintained that the investigation is still pending, no concrete information on the progress of that investigation has been provided.

110. In the light of the foregoing, the Court agrees with the Commission that the authorities failed to carry out an effective investigation into the circumstances surrounding Dr Zeki Tanrıkulu's death. It finds that the authorities concerned disregarded their essential responsibilities in this

respect. The Court is prepared to take into account, as indicated in previous judgments concerning Turkey (see, for instance, the Kaya, Ergi and Yaşa judgments cited above, p. 326, § 91, p. 1779, § 85, and p. 2440, § 104, respectively), the fact that loss of life is a tragic and frequent occurrence in the context of the security situation in south-east Turkey, which may have hampered the search for conclusive evidence. Nonetheless, such circumstances cannot have the effect of relieving the authorities of the obligation imposed by Article 2 to carry out an effective investigation.

Moreover, the Court is not persuaded that the criminal-law remedies nominally available to the applicant would have been capable of altering to any significant extent the course of the investigation that was made. That being so, the applicant must be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.

111. The Court accordingly dismisses the criminal-proceedings limb of the Government's preliminary objection (see paragraphs 81 and 84 above) and holds that there has been a violation of Article 2.

(b) Alleged lack of protection in domestic law for the right to life

112. The applicant argued that it appeared from the Susurluk Report (see paragraphs 49 to 51 above) that the preventive and protective legal framework in place at the relevant time afforded insufficient protection for the lives of prominent local Kurds like her husband.

113. The Court considers that there is no call to examine that complaint, having regard to its earlier finding that the authorities were in breach of Article 2 of the Convention on account of their failure to carry out an effective investigation into the killing of the applicant's husband.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

114. The applicant complained that she had not had an effective remedy within the meaning of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

115. The Government argued that criminal and administrative remedies existed capable of offering redress but that the applicant had failed to avail herself of them.

116. The Commission was of the opinion that the applicant had arguable grounds for claiming that the security forces were implicated in the killing of her husband. Referring to its findings relating to the inadequacy of the investigation, it concluded that the applicant had been denied an effective remedy.

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

118. 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".

119. 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 104 to 109), 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).

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

VI. ALLEGED PRACTICE BY THE AUTHORITIES OF INFRINGING ARTICLES 2 AND 13 OF THE CONVENTION

120. The applicant maintained that there existed in Turkey an officially tolerated practice of violating Articles 2 and 13 of the Convention, which aggravated the breach of which she had been a victim. 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.

121. The Court considers that the scope of the examination of the evidence undertaken in this case and the material in the file are not sufficient, even in the light of findings made in previous cases, to enable it to determine whether the authorities have adopted a practice of violating Articles 2 and 13 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

122. The applicant submitted that her husband was killed because he was a Kurd and that he was thus, contrary to the prohibition contained in Article 14 of the Convention, a victim of discrimination on grounds of national origin in relation to the exercise of his right to life as protected by Article 2. Article 14 reads:

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

123. In addition to the material that had been taken into account by the Commission, the applicant further referred to the Susurluk Report (see paragraphs 49 to 51 above), which, she contended, established that prominent Kurds, particularly in the state of emergency region, were targeted as a matter of State policy.

124. The Government did not address this issue at the hearing. The Commission, finding that the allegation was unsubstantiated, concluded that there had been no violation of Article 14.

125. The Court considers that it does not have before it any evidence substantiating the alleged breach of Article 14.

VIII. ALLEGED VIOLATION OF FORMER ARTICLE 25 § 1 OF THE CONVENTION

126. Finally, the applicant complained that she had been subject to serious interference with the exercise of her right of individual petition, in

breach of former Article 25 § 1 of the Convention (now replaced by Article 34), 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."

127. The applicant submitted that the taking of her statement by Mr Bekir Selçuk, the Chief Public Prosecutor at the Diyarbakır National Security Court, raised concerns on three separate grounds. First, the purpose of the meeting was to question the applicant about her complaint to the Commission. Second, the statement drawn up by Mr Selçuk did not appear to be an accurate record of what had been said. Third, the power of attorney which the applicant was shown, with a signature which she was asked to confirm was hers, was not the document sent by the Commission to the Government. In spite of that, as counsel pointed out at the hearing, the Government, in their observations following the communication of the application, informed the Commission that the applicant had stated that she had not signed the document authorising her representation in the proceedings before the Commission.

128. At the hearing, the Government denied that any doubt had been cast on the authenticity of the application, referring to the Commission's finding of a violation of former Article 25 § 1 as "an exaggerated suspicion". Mr Selçuk's purpose in meeting the applicant had been twofold: firstly, he had wanted to question her on her recollection of her husband's killing; and, secondly, he had wished to verify the authenticity of the power of attorney (see paragraph 28 above). As Mr Selçuk had explained to the Commission's delegates, this latter step had been necessitated by the fact that in various other cases brought before the Convention institutions statements from applicants and witnesses had proved to be forged. In any event, it was apparent from the text of the statement made by the applicant to Mr Selçuk that the latter was satisfied that the applicant did indeed intend to pursue her application to the Commission.

129. The Commission considered that where a Government had doubts as to the authenticity of an application they should raise the matter with the Commission rather than take it upon themselves to contact the applicant. The Commission expressed concern at the fact that, according to the record of the applicant's interview with Mr Selçuk, the applicant was said to have been shown a power of attorney in the name of Selma Tan. The power of attorney submitted to the Commission, a copy of which had been transmitted to the Government at the time they were notified of the fact that

an application had been lodged, was in the name of Selma Tanrıkulu. Even if, as was suggested by the applicant, the statement was an inaccurate account of what had been said during the interview, the question arose of what had prompted the Government to inform the Commission that the applicant had denied signing the power of attorney.

The Commission concluded that in breach of former Article 25 § 1 an unacceptable attempt had been made by the Turkish authorities to cast doubt on the validity of the application.

130. 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 paragraph 70 above and the following judgments: Akdivar and Others cited above, p. 1219, § 105; Aksoy cited above, p. 2288, § 105; Kurt v. Turkey, 25 May 1998, *Reports* 1998-III, p. 1192, § 159; and Ergi cited above, p. 1784, § 105). 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, loc. cit.).

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.).

131. In the instant case it is not in dispute between the parties that the applicant was questioned about the authenticity of the power of attorney which had been submitted in respect of her legal representation in the proceedings before the Commission (see paragraphs 21, 28 and 38 above). The Court would emphasise that it is not appropriate for the authorities of a respondent State to enter into direct contact with an applicant on the pretext that "forged documents have been submitted in other cases". Even if a Government has reason to believe that in a particular case the right of individual petition is being abused, the Court, like the Commission,

considers that the appropriate course of action is for that Government to alert the Commission or the Court, depending on which of the two is dealing with the case, and to inform it of its misgivings. To proceed as the Government did in the present case could very well have been interpreted by the applicant as an attempt to intimidate her. Indeed, the applicant described her interview with Mr Selçuk as a frightening experience (see paragraph 21 above).

132. According to the record of the applicant's interview with Mr Selçuk, she was shown a power of attorney in the name of Selma Tan (see paragraphs 21 and 38 above), even though, and this is similarly not in dispute, the only power of attorney that the Government had been provided with was a copy of the power of attorney bearing the applicant's full name. The Court is unable to ascertain the accuracy of the written statement, but it is nevertheless a fact that the Government subsequently informed the Commission that the applicant had denied signing the power of attorney (see paragraph 279 of the Commission's report). Apart from the interview with Mr Selçuk, the Government have not indicated any other source from which they might have derived information of this kind.

The Court is of the opinion that a deliberate attempt has been made on the part of the authorities to cast doubt on the validity of the application and thereby on the credibility of the applicant. The actions of the authorities described above cannot but be interpreted as a bid to try and frustrate the applicant's successful pursuance of her claims, thus constituting a negation of the very essence of the right of individual petition.

133. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under former Article 25 § 1 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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. Non-pecuniary damage

135. The applicant claimed 15,000 pounds sterling (GBP) in respect of non-pecuniary damage to compensate herself, her husband and their three minor children on account of the fact that they were victims of individual violations of the Convention as well as of a practice of such violations.

136. The Delegate of the Commission made no submissions on the amount claimed by the applicant.

137. The Government, pointing out that the applicant had failed to establish any State involvement in the death of her husband and had not submitted her request for compensation to a domestic authority, rejected the applicant's claims as exaggerated and likely to lead to unjust enrichment.

138. The Court notes that the present case was brought by the applicant on behalf of herself, her deceased husband and their three minor children. The Court accepts that the applicant and her children have suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards the applicant the sum of GBP 15,000, to be converted into Turkish liras at the rate applicable at the date of payment.

B. Costs and expenses

139. The applicant claimed a total of GBP 24,396.06 for fees and costs incurred in bringing the application. 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 3,265 is listed as fees and administrative costs incurred in respect of the Kurdish Human Rights Project (the KHRP) in its role as liaison between the legal team in the United Kingdom and the lawyers and the applicant in Turkey, as well as a sum of GBP 3,000 in respect of work undertaken by a lawyer in Turkey.

140. The Government disputed that any sum should be awarded in respect of the KHRP, referring to the Court's reasoning in the cases of Menteş and Others v. Turkey (judgment of 28 November 1997, *Reports* 1997-VIII, p. 2719, § 107) and Ergi (judgment cited above, p. 1786, § 115). Moreover, they regarded the professional fees as exaggerated and unreasonable, submitting that the amount claimed under this head would have covered the applicant's representation in Strasbourg by twenty-one Turkish lawyers.

141. In relation to the claim for costs the Court, deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, awards her the sum of GBP 15,000 together with any value-added tax that may be chargeable, less the 13,495 French francs received by way of legal aid from the Council of Europe.

C. Default interest

142. 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 objection;

2. *Holds* unanimously that it has not been established that the applicant's husband was killed in violation of Article 2 of the Convention;

3. *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 the applicant's husband;

4. *Holds* unanimously that it is not necessary to consider the applicant's complaint under Article 2 of the Convention regarding the alleged lack of protection in domestic law of the right to life;

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

6. *Holds* unanimously that there has been no violation of Article 2 of the Convention taken in conjunction with Article 14;

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

8. *Holds* unanimously
   (a) that the respondent State is to pay the applicant and her children, within three months, by way of compensation for non-pecuniary damage, 15,000 (fifteen thousand) pounds sterling to be converted into Turkish liras at the rate applicable at the date of settlement;
   (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* by twelve votes to five
   (a) that the respondent State is to pay the applicant, within three months, in respect of costs and expenses, 15,000 (fifteen thousand) pounds sterling together with any value-added tax that may be chargeable, less 13,495 (thirteen thousand four hundred and ninety-five) 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 in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 July 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

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.

L.W.
M.B.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(*Translation*)

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

1. As I explained in my partly dissenting opinion in the case of Ergi v. Turkey (judgment of 28 July 1998, *Reports of Judgments and Decisions* 1998-IV), when the Court finds a violation of Article 2 of the Convention on the ground that no effective inquiry has been conducted into the death complained of I consider that no separate issue arises under Article 13, because the fact that there was no satisfactory and appropriate inquiry into the death forms the basis of the applicant's complaints under both Article 2 and Article 13. In that connection, I refer to my dissenting opinion in the Kaya v. Turkey case (judgment of 19 February 1998, *Reports* 1998-I) and the opinion expressed by a large majority of the Commission on the question (see Aytekin v. Turkey, application no. 22880/93, 18 September 1997; Ergi v. Turkey, application no. 23818/94, 20 May 1997; Yaşa v. Turkey, application no. 22495/93, 8 April 1997).

2. The Court has also reached the conclusion, by interpreting certain allegations by the applicant, that there has been a breach of former Article 25 § 1 of the Convention on the ground that the respondent State failed to fulfil its obligations under that provision (see paragraphs 126 et seq. of the judgment).

In that connection, the applicant referred to her interview with Mr Bekir Selçuk, the Chief Public Prosecutor at the Diyarbakır National Security Court. That interview was useful and necessary, firstly to ascertain exactly what the applicant alleged and secondly to check the validity of her application to the Commission. As the Government said, "it was vital that the applicant should be asked about the authenticity of her application in view of the fact that forged statements had been submitted to the Commission in various other cases". The applicant stated that she wished to pursue her application, as is apparent from the official record of the interview. It is true that when a complainant is summoned to appear before the relevant national authority to discuss an application to the Commission he may feel some disquiet. But to interpret that psychological state as pressure likely to prevent the person concerned from pursuing the proceedings before the Strasbourg institutions smacks in my opinion of bad faith or of a political ploy aimed at discrediting the respondent State.