CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ÜLKÜ EKİNCİ v. TURKEY

(Application no. 27602/95)

JUDGMENT

STRASBOURG

16 July 2002

FINAL

16/10/2002

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

In the case of Ülkü Ekinci v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 2 July 2002,

Delivers the following judgment, which was adopted on this date:

PROCEDURE

1. The case originated in an application (no. 27602/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ülkü Ekinci ("the applicant"), on 4 May 1995, on her and her late husband's behalf. The Commission decided on 3 December 1995 to bring the application to the notice of the respondent Government, in accordance with Rule 48 § 2 (b) of its Rules of Procedure.

2. The applicant was represented before the Court by Professor W. Bowring, a university teacher at the University of North London (United Kingdom). The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that her husband Yusuf Ekinci had been killed by one or more unknown perpetrators acting with the knowledge and under the auspices of the Turkish authorities, and that there had been no effective investigation into his killing. She relied on Articles 2, 3, 6, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was initially allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28).

The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 8 June 1999 the Chamber declared the application admissible.

7. After having consulted the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 *in fine*) and invited the parties to submit their observations on the merits.

8. The applicant and the Government each filed final observations on the merits (Rule 59 § 1).

9. Following the general restructuring of the Court's Sections as from 1 November 2001 (Rule 25 § 1 of the Rules of Court), the application was assigned to the newly composed Second Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case included Mr F. Gölcüklü as *ad hoc* judge.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant's husband Yusuf Ekinci, was born in Lice (south-east Turkey) and was a member of a well-known Turkish family of Kurdish origin. He was a practising lawyer and a member of the Ankara Bar. During his studies, he worked for the Turkish Workers Party (*Türkiye İşçi Partisi*) and was a member of the Eastern Revolutionary Cultural Grouping (*Doğu Devrimci Kültür Ocakları*). On that latter account, he was arrested in May 1971. He spent six months in prison, but was finally acquitted. Following his acquittal, he took no further active part in politics.

11. On 24 February 1994, at about 6.30 p.m., Yusuf Ekinci left his office in the central part of Ankara to drive in his private car to his home located in a different part of the town. Before he left his office, he spoke to several persons including the applicant who had telephoned him at about 5 p.m.. He gave his office assistant Güngör S.E. a lift. As the applicant's husband had just enough petrol to get home, he dropped Güngör S.E. off somewhere on the way.

12. When Yusuf Ekinci failed to return home, the applicant and Güngör S.E. inquired at local hospitals and police stations in the course of the evening, but were unable to obtain any information about his whereabouts. As the applicant was concerned that her husband had met with the same fate as Behçet Cantürk[1] from Lice – who had disappeared a month

[1] An infamous drug trafficker strongly suspected of supporting the PKK and one of the principal sources of finance for the *Özgür Gündem* daily newspaper (see *Özgür Gündem* v.

previously and whose body had been found soon after – she telephoned around midnight Mehmet Kahraman, the State Minister responsible for Human Rights and a friend of the family, and asked him for help. The first thing Mr Kahraman said was: "This cannot have been done to Yusuf ...", which frightened the applicant even more.

13. On 25 February 1994, at about 2 a.m. and 7.30 a.m. respectively, the applicant received two anonymous telephone calls. No one spoke on the other end of the line. During the second call, the applicant could hear the sound of typewriters. At about 9.30 a.m. the telephone rang again. When the applicant answered, a woman said, "I am the depths of hell", and then put the receiver down.

14. Later that day, at about 12.30 p.m., road workers found the body of Yusuf Ekinci along the E-90 TEM highway in Gölbaşı on the outskirts of Ankara, i.e. 1.5 kilometres from the Doktorlar Sitesi neighbourhood and 1 kilometre in the direction of Eskişehir. They informed the police. Yusuf Ekinci had been shot and killed. His car was found at a distance of 1 to 2 kilometres from the place where his body was found. The petrol tank was empty.

15. On the same day, the Gölbaşı public prosecutor opened a criminal investigation into the death of Yusuf Ekinci.

16. According to the applicant, the buttons of Yusuf Ekinci's coat were done up when his body was found. His identity documents, a small quantity of cash and his spectacles were missing. His ring and a valuable watch were returned to the applicant by the police.

The domestic investigation

a. Police records

17. On a sketch map drafted by a police officer, dated 25 February 1994, it is recorded that eight bullets were found directly next to the head of Yusuf Ekinci.

18. In the police report on the finding of Yusuf Ekinci's body, dated 26 February 1994, it is recorded that no weapon and no empty cartridges were found near to or within a radius of 500 metres from the body, and that his car was found at a distance of about 2.5 kilometres from the spot where the body was found.

Turkey, no. 23144/93, ECHR 2000-III). Behçet Cantürk and his driver disappeared on 14 January 1994. Their bodies were found on 15 January 1994. They were both shot and killed by unknown perpetrators.

b. Forensic examinations

19. An autopsy on Yusuf Ekinci was carried out on 26 February 1994. He was identified by his paternal cousin, Ahmet Murat İ. It was concluded that he had died of bullet wounds to the head and chest. The autopsy report does not include any indication of the estimated time of death. In the autopsy report, 11 bullet entry wounds, 7 bullet exit wounds and 1 bullet graze wound were recorded. In the course of the autopsy 2 deformed bullets and 2 bullets which were not deformed were removed from his body. These bullets were described as having blue painted tips and a diameter of probably 9mm. The bullets were given to the prosecutor in whose presence the autopsy was conducted. A blood sample was taken for examination for traces of alcohol, stimulants and depressants.

20. In a ballistics report of the Central Criminal Police Laboratory (*Merkez Kriminal Polis Laboratuarı*) of Ankara, dated 28 February 1994, it is recorded that six Parrabellum type bullets of 9 mm calibre as well as three outer layers of the same type and bullet calibre were submitted for a ballistics examination in relation to the killing of Yusuf Ekinci. As to the findings of the examination, the report states that all bullets examined had been fired from the same weapon, and that these bullets did not bear any resemblance to any other bullets previously examined by the Laboratory. The report further states that it could not be confirmed nor excluded with absolute certainty, given the lack of adequate comparative material, that these bullets had been fired from a Uzi weapon of Israeli make. The bullets, however, were found to be of Israeli make. The report further states that the items examined were being archived under code nr. 4155.

21. On 3 March 1994, the typewriter that Yusuf Ekinci used in his office was examined by the Central Criminal Police Laboratory. The examination of the typewriter ribbon disclosed only a petition concerning a compensation case.

22. According to a supplementary autopsy report of 12 April 1994, no traces of alcohol, stimulants or depressants had been found in Yusuf Ekinci's body.

c. Statements taken by the investigation authorities in 1994

23. Between 25 February and 1 March 1994, the police took statements from fourteen persons, including the applicant.

24. In a statement taken on 25 February 1994 by the police from Hacı M.Ö., one of the two road workers who had found the body of Yusuf Ekinci, Hacı M.Ö declared that, at 11.15 a.m., he and his colleague Akif H. had spotted the body on the banks of the highway and had informed the traffic police. They had also found a red car about one kilometre from the location of the body. They had not seen anyone in the vicinity of the body or the car.

25. In a statement taken on 25 February 1994 by the police, Akif H. confirmed the account given by his colleague Hacı M.Ö.

26. In a first statement taken on 25 February 1994 by the police from Yusuf Ekinci's assistant Güngör S.E., the latter declared that he had known Yusuf Ekinci since 1983, and that Yusuf Ekinci had dealt with compensation cases. He further stated that Yusuf Ekinci used to carry a gun whenever he travelled to another city, but that he never carried a gun in Ankara. Güngör S.E. had once asked Yusuf Ekinci what he would do if the PKK (*Partiya Karkeren Kurdistan* – Workers' Party of Kurdistan) demanded money from him. Yusuf Ekinci had replied that he would pay up, but that he would also inform the police. According to Güngör S.E., Yusuf Ekinci had not been involved in politics and had no connections with illegal organisations.

27. In a second statement taken by the police on the same day, Güngör S.E. stated that Yusuf Ekinci had practised law in Ankara since 1982 and that his law practice mostly dealt with compensation cases. Yusuf Ekinci had an account at the Necetibey Branch of the Yapı Kredi Bank, a safe deposit box at the Yenişehir Branch of the İş Bank, and a further account at the Yapı Kredi Bank. He owned nine apartments and two cars, and had two offices. According to Güngör S.E., Yusuf Ekinci had no enemies. He had no knowledge of anyone ever having threatened Yusuf Ekinci.

28. Güngör S.E. further stated that, in 1989 or 1990, Behçet Cantürk had started to call Yusuf Ekinci. Their first meeting took place in the office of Vekin A. Subsequent meetings were held in the office of Zeynel C., and over dinner with others in the S. Restaurant in Çankaya. They also had meetings in Behçet Cantürk's office in İstanbul.

29. In 1992, Yusuf Ekinci had been involved in the case of Behçet Cantürk's nephew, Reşit Cantürk, who had been accused of carrying guns without a licence. Yusuf Ekinci had attended the funeral of Behçet Cantürk. Since the latter's funeral, there had been no further contacts between Yusuf Ekinci and the Cantürk family, but Yusuf Ekinci had asked his brother Tahsin Ekinci, who was also a lawyer as well as a member of the Executive Committee of the political party DEP (*Demokrasi Partisi*), whether there was any news about the killing of Behçet Cantürk.

30. Güngör S.E. further stated that, on 24 February 1994, he and Yusuf Ekinci had gone to the Palace of Justice. After their return to the office, Yusuf Ekinci had a meeting with his cousin Murat İ. In the afternoon, Yusuf Ekinci received telephone calls from the applicant, the husband of a niece, as well as from his son and his sister. Güngör S.E. had not found these calls suspicious. At about 5.45 p.m., he left the office together with Yusuf Ekinci, who gave him a lift. The applicant called him at about 9.30 p.m., wondering where Yusuf Ekinci was. Suspecting a traffic accident, Güngör S.E. checked with several police stations located on the way to Yusuf Ekinci's home, but with no success.

31. At around 11 p.m. Güngör S.E. went to the applicant's house, where he found the applicant, Mansure Ö., and friends of the applicant's daughter. Nadire İ. arrived later. The persons present then started to speculate on Yusuf Ekinci's whereabouts. According to Nadire İ., he could have been kidnapped by the PKK, and there might be a connection with Behçet Cantürk. According to others, he could have been kidnapped by the MİT (*Milli İstihbarat Teşkilatı* – National Intelligence Organisation) or by counter-guerrilla agents.

32. Güngör S.E. later left the house to check with a police station and a hospital, but without any success. He returned to the applicant's house the next morning at around 9.30 a.m. At around 10 a.m., there was a telephone call from the police inviting the applicant to come to the police station. The applicant refused to go. Güngör S.E. and Özlem B. went to the police station where they were told that Yusuf Ekinci had been found dead.

33. In a first statement taken on 25 February 1994 by the police from Yusuf Ekinci's secretary Özlem B., the latter declared that Güngör S.E. had called her on 25 February 1994 asking her whether Yusuf Ekinci had contacted the office. The public prosecutor Ali Rıza had called that morning asking her whether she had any information about Yusuf Ekinci. She replied that she did not. He then asked whether anything unusual had occurred. Güngör S.E. arrived at the office later and together they went to the police. She never witnessed anyone threatening Yusuf Ekinci. She further declared that Güngör S.E. and Yusuf Ekinci had been very close; she initially thought that Güngör S.E. was Yusuf Ekinci's son.

34. In a second statement taken by the police from Özlem B. on 26 February 1994, Özlem B. declared that Yusuf Ekinci's law practice mostly dealt with compensation cases and that Nadire İ. was a client. She further declared that on 25 February 1994 Güngör S.E. had come to the office and had told her that Yusuf Ekinci had disappeared. He instructed her to take Yusuf Ekinci's notebooks and mobile telephone. They then went to the police headquarters, to the department dealing with disappearance cases. She did not know who Behçet Cantürk was, but she had seen this person's address in a notebook used by Yusuf Ekinci's previous secretary.

35. In a statement taken by the police on 27 February 1994, the applicant declared that in 1979 she and her husband had moved from Diyarbakır to İstanbul and in 1982 to Ankara. Her husband had practised law in these three cities. She further stated that, since 1970, her husband had not been involved in politics and that his law practice dealt mainly with civil law cases. She further related what had happened when her husband had failed to return home on 24 February 1994, referring among other things to the anonymous telephone calls she had received. She did not remember anyone having threatened her husband. Her husband had never said anything about having been threatened.

36. In a statement taken by the police on 27 February 1994 from Ahmet Ö., the witness declared that he was running an estate agency together with Orhan D. He had met Yusuf Ekinci in March 1993 in the office of Zeynel C., who was one of Yusuf Ekinci's clients. Yusuf Ekinci, who had recently become involved in buying and selling property, had been interested in buying a plot in Gölbaşı. Ahmet Ö. had no information about Yusuf Ekinci's death.

37. In a statement taken on 27 February 1994 by the police, Orhan D. confirmed the account given by his business partner Ahmet Ö.

38. In a statement taken by the police on 27 February 1994 from Hüdayi D., a doorman at the applicant's residence, the witness declared that he had observed nothing suspicious about Yusuf Ekinci and had seen no strangers coming to or leaving Yusuf Ekinci's home.

39. The statement taken by the police on 27 February 1994 from Mehmet I., another doorman at the applicant's residence, was similar to the one given by his colleague Hüdayi D.

40. In a statement taken by the police on 27 February 1994 from Vetin A., a business man and a hometown friend of Yusuf Ekinci, the witness declared that he used to see Yusuf Ekinci quite often and that the latter's brothers were involved in politics. He confirmed that Yusuf Ekinci and Behçet Cantürk knew each other and that the three of them had had several restaurant dinners together. He saw Yusuf Ekinci for the last time at Behçet Cantürk's funeral in Ankara.

41. In a statement taken on 28 February 1994 from Mansure Ö., a friend of the applicant's family, the witness confirmed that she and others had been in the applicant's house on the evening of 24 February 1994. She denied that anyone present that evening had mentioned the possibility that Yusuf Ekinci had been kidnapped by the PKK, MİT or counter-guerrilla agents.

42. In a statement taken on 28 February 1994 from Nadire İ., another friend of the applicant's family, she confirmed that she along with others had been in the applicant's house on the evening of 24 February 1994. She denied having said that Yusuf Ekinci had been kidnapped by the PKK, MİT or counter-guerrilla agents.

43. In a statement taken by the police on 28 February 1994 from Ahmet Murat İ., a paternal cousin of Yusuf Ekinci, he declared that he had visited Yusuf Ekinci in his office on 24 February 1994 at 2 p.m., and that Yusuf Ekinci used to deal with compensation cases against the State.

44. In a statement taken by the police on 1 March 1994 from Zeynel C., a hometown friend and client of Yusuf Ekinci, the witness declared that Yusuf Ekinci and Behçet Cantürk had twice met in his office and that the three of them had dined together on one occasion. He did not know what had been discussed between Yusuf Ekinci and Behçet Cantürk during their meeting in his office. He did know that Yusuf Ekinci had been dealing with a tax case related to Behçet Cantürk and with another case involving a

relative of Behçet Cantürk. Zeynel C. further stated that he had been a personal friend of Behçet Cantürk, but that they had had no business dealings with each other. He added that, in 1990, he had bought a hotel on behalf of a company from Mehmet Hankozat "who was Cantürk's man". He had paid 25% of the purchase price to Behçet Cantürk and 25% to Mehmet Hankozat. He had been unable to pay the remaining 50% of the purchase price.

45. In a statement taken by the police on 21 March 1994 from Ağa Ç., the latter gave a detailed description of how he had bought his apartment from Yusuf Ekinci on 15 October 1991.

d. Further activities undertaken in 1994 in the domestic investigation

46. On 28 February 1994, the Gölbaşı public prosecutor, who was in charge of the investigation, informed the National Turkish Bank Association that Yusuf Ekinci had been killed and that his bank accounts should be examined. The public prosecutor requested the Bank Association to take the necessary measures without giving any further specifications.

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

48. On 9 March 1994 the National Turkish Bank Association informed the public prosecutor that, pursuant to Article 83 of the Act on Banking (*Bankalar Kanunu*), information about private bank accounts was secret and, therefore, the prosecutor's request of 28 February 1994 could not be granted.

49. By letter of 16 May 1994, the Gölbaşı public prosecutor asked the District Police Headquarters to be kept informed of any developments in the investigation into the killing of Yusuf Ekinci until 25 February 2009, i.e. when a prosecution in relation to the killing would become statute-barred.

50. By letters of 25 June, 25 August, 25 October 1994, 25 February 1995 and 25 October 1995, the Commissioner of the Gölbaşı local police station informed the District Police Headquarters that the enquiries in relation to the identification of the perpetrator(s) conducted so far had proved unsuccessful, that they were still being actively sought and, if found, the victim's family would be notified. These letters do not contain any details about the modalities of the police investigation.

51. On 8 November 1994, in reply to a request for information about the investigation filed by the applicant on the same day, the Gölbaşı public prosecutor informed the applicant that the investigation was still continuing.

e. Developments at the domestic investigation as from 1996

52. On 26 February 1996, referring to a letter of the Ministry of Foreign Affairs, the Ankara deputy chief public prosecutor asked the Gölbaşı public prosecutor for information about the investigation.

53. On 28 February 1996 the Gölbaşı Provincial Police Headquarters transmitted copies of documents related to the investigation – obtained from the Ankara Police Headquarters – and the ballistics report of 28 February 1994 to the Gölbaşı public prosecutor, in response to the latter's oral instructions.

54. On 7 March 1996, the Gölbaşı public prosecutor informed the Ankara chief public prosecutor that the investigation of the killing of Yusuf Ekinci was still being pursued

55. In a letter of 7 March 1996, the Gölbaşı public prosecutor informed the Ankara chief public prosecutor that, as in his statement of 26 February 1994 Güngör S.E. had mentioned that Murat İ. was related to Yusuf Ekinci, Ahmet Murat İ. was to be summoned in order to clarify whether or not Yusuf Ekinci had a relative named Murat İ.

56. On the same day, the Gölbaşı public prosecutor requested the Ankara Police Headquarters to send him the six Parrabellum type 9 mm calibre bullets and the three outer layers of the same type and bullet calibre that had been examined by the Central Criminal Police Laboratory and subsequently archived under code nr. 4155 (see § 20 above).

57. In a brief statement given on 8 April 1996, Ahmet Murat İ. declared that Yusuf Ekinci did not have a relative named Murat İ.

58. On 6 November 1996, the applicant requested the Gölbaşı public prosecutor for a ballistics comparison of the weapons found in the Susurluk accident (see §§ 92-93 below) and the weapon used in the killing of her husband.

59. On 11 November 1996, the Gölbaşı public prosecutor instructed the İzmir District Criminal Police Laboratory to compare the weapons found in Susurluk with the weapon used in the killing of Yusuf Ekinci.

60. In a report of the İzmir District Criminal Police Laboratory, dated 20 November 1996 and sent to the Gölbaşı public prosecutor on 21 November 1996, it is recorded that a ballistics examination had established that the bullets used in the killing of Yusuf Ekinci had not been fired from the six 9 mm. calibre weapons found on 3 November 1996 in Susurluk.

61. In an article published in the daily newspaper "*Radikal*" on 5 December 1996, the journalist İsmet Berkan wrote:

> "It all dates back to early 1992. At that time the Turkish Chief of Staff's office made radical changes in its strategy in the fight against the outlawed PKK. The military units, which used to take action only after PKK attacks had taken place by engaging in hot pursuit, started to be organised as a guerrilla force. Now they were taking

pre-emptive action. This change soon started to bear fruit. The PKK no longer had the initiative. Now the PKK was on the run with the soldiers at its heels.

The PKK gradually withdrew from the centres of population where it had been staging attacks, taking refuge in the mountains. But Turkey's "active fight" against terrorism was continuing. This time, the logistic support for the PKK in the mountains began to diminish through village evacuations. The PKK had been greatly weakened, and seemed to be on the verge of being "finished off".

But the change in the strategy was not limited to a "low-intensity conflict" in the region. It was decided that a "more active" drive was required to dry up other sources of terrorism too. In this way, with a little effort, this job would be "finished off next spring".

This would take the form of a two-pronged effort. Terrorists would be caught – or killed if necessary – before they actually staged attacks. And the persons who provided the terrorists with material or moral support would be equated with the terrorists themselves.

This change in strategy was put on the agenda of the National Security Board at the end of 1992. A National Security Board document, which the author of this column was allowed to see, contains the chart of the organisation that was to be created for this purpose, as well as the names of the persons who would take part in it. These names included Abdullah Çatlı. The others taking part in the organisation included policemen belonging to the "special teams", soldiers and some of Çatlı's friends.

Initially, the proposed tactics did not meet with the approval of the National Security Board. Turgut Özal, at that time the President of Turkey, and Eşref Bitlis, at that time the Commander of the Turkish Armed Forces, both opposed the State taking action in co-operation with fugitives <from justice>. I guess this is pure coincidence, but first General Bitlis and then Özal died, the former in an accident and the latter due to a heart attack.

Süleyman Demirel became President and Tansu Çiller the Prime Minister. Initially, Çiller was quite mild on the south-east issue. She was talking about the Basque model and, with good intentions, having discussions with the opposition leaders on the issue. But after a short time she underwent a change. She became more hawkish than all of the other hawks, declaring, "This <the PKK> will either be finished or it will be finished". It was obvious that she was convinced that it would end soon.

As there was no one around to raise objections any longer, the issue was again submitted to the National Security Board. And this new technique of struggle was approved in the autumn of 1993. The organisation, call it "Gladio"[2] or "special organisation," was founded by a decision taken by the National Security Board.

According to figures released at that time, Turkey was spending more than $8 billion annually on the fight against the PKK. No doubt the PKK was also spending a lot in its fight against Turkey. Calculations made in the higher State echelons indicated that the PKK's war budget was no less than $3 billion. In the autumn of

[2] An apparent reference to "*Gladio*"; an anti-communist resistance network, that included a Turkish branch, set up by NATO in Western Europe after the second World War.

1993, the year in which Çiller became Prime Minister, the PKK had two main sources of income: 1. money obtained through narcotics and extortion. 2. donations collected in Europe.

First the income from the European channel was cut off. At first, Germany and then France closed down the associations connected with the PKK and prevented them from collecting funds. In both countries the PKK went underground.

But there was also the income from drug trafficking. Here, the "special organisation" had to become active. We all remember that during those days Çiller was saying "We will dry up the PKK's sources of income".

Behçet Cantürk, Savaş Buldan, Yusuf Ekinci, Hacı Karay, Adnan Yıldırım, Medet Serhat and Ömer Lütfü Topal.

All of them were figures involved in drug trafficking in one way or another. None is alive today. They were either involved in drug trafficking on behalf of the PKK or had to pay extortion money. In either case the PKK was getting income. All of these people are now dead.

The daily newspaper Özgür Ülke was a PKK mouthpiece. The PKK leader Öcalan had a column in the paper, using the pen name, "Ali Fırat". The head office and the branch offices of that daily have been bombed. It is being claimed that the İstanbul police caught the bombers but had to release them in line with "orders received from high up".

This article has been written entirely on the basis of a document which I was not permitted to photocopy. I was not permitted either to take notes. I just had a chance to read it quickly. I wish that this piece of "news", the truth of which I measure by considering a lot of other things, proves to be false. Naturally, I have no doubt that it will be denied immediately. I just hope that those who will be denying it will be telling the truth."

62. On 6 December 1996, the applicant informed the Gölbaşı public prosecutor that, given the articles published on 5 and 6 December 1996 in the daily newspaper "*Radikal*", the journalist İsmet Berkan held information and documents in relation to the killing of her husband.

63. On the same day, the Gölbaşı public prosecutor Ali Rıza O. asked the Ankara public prosecutor to take a statement from İsmet Berkan.

64. In a brief statement taken by a public prosecutor on 1 January 1997, İsmet Berkan declared that he had no information as to who killed Yusuf Ekinci or how he was killed. He had only commented, in the atmosphere created by the Susurluk incident, that Yusuf Ekinci might have been killed by the "Susurluk gang".

65. On 31 January 1997, the Gölbaşı public prosecutor requested the Turkish Parliamentary Susurluk Investigation Commission (*Susurluk Araştırma Komisyona*) to provide him with a copy of the statement given in the course of the investigation conducted by this Commission by İbrahim Şahin, the deputy head of the Special Operations Department (*Özel Harekat Dairesi Başkan Vekili*).

66. On the same day and acting upon the applicant's request of 27 January 1997, the Gölbaşı public prosecutor requested the Turkish Telecommunications Directorate to identify the origin of the anonymous telephone calls received by the applicant on 25 and 26 February 1994.

67. By letter of 7 February 1997, the Telecommunications Directorate informed the public prosecutor that it was technically impossible to identity these telephone numbers.

68. On 28 March 1997 and referring to İsmet Berkan's newspaper article of 5 December 1996, the Gölbaşı public prosecutor requested the National Security Council (*Milli Güvenlik Kurulu*) to provide him with the document referred to in the newspaper article, i.e. the National Security Board document that İsmet Berkan had been allowed to see and which contained the chart of the organisation that had been created as well as the names of its members. He explained that this document could be of relevance to the investigation into the killing of Yusuf Ekinci.

69. In a letter of 8 April 1997 to the Gölbaşı public prosecutor, the National Security Council denied the existence of the document referred to in the article written by İsmet Berkan.

70. By letters of 26 June and 25 October 1995, the Commissioner of the Gölbaşı local police station informed the Gölbaşı District Police Headquarters that the enquiries in relation to the identification of the perpetrator(s) conducted so far had proved unsuccessful, that they were still actively being sought and that, if found, the victim's family would be notified. These letters do not contain any details about the modalities of the police investigation.

71. In January 1998, the Prime Minister received the report he had commissioned on the Susurluk affair (see §§ 92-93 and §§ 100-102 below), according to which Behçet Cantürk had been killed on the instructions of an unspecified Turkish security organisation ("*Türk Emniyet Teşkilatı"*) on the basis of a decision to eliminate about 100 businessmen suspected of involvement in financing the PKK, and whose names were set out in a non-disclosed list referred to in a public statement made on 4 November 1993 in İstanbul by the former Prime Minister, Ms Tansu Çiller.

72. On 26 February 1998, the Commissioner of the Gölbaşı local police station informed the Gölbaşı District Police Headquarters that the enquiries conducted so far in relation to the identification of the perpetrator(s) had proved unsuccessful, that they were still actively being sought and that, if found, the victim's family would be notified. These letters do not contain any details about the modalities of the police investigation.

73. On 20 May 1998 the Gölbaşı public prosecutor requested the Ankara public prosecutor to identify, summon and take statements from the road workers and petrol station staff who had been on duty at the time of the incident.

74. In a statement taken on 3 June 1998, Atilla C., the manager of a petrol station on the TEM highway, stated that he had been the manager of this petrol station for 13 years and that the employees on duty at the material time no longer worked there. It does not appear from the record of this statement whether or not he was asked for the names of the former employees.

75. In a statement taken on 16 June 1998 from Ümit T., a traffic police officer who had been on duty on the TEM highway on the day of the incident date, Ümit T. stated that he could not remember anything about the incident. Too much time had passed since then.

76. In a statement taken on the same day from the traffic police officer Şevket Y., he stated that he did not recall anything about the incident. He considered that it was probable that Yusuf Ekinci's body had been found when he was not on duty. Similar statements were taken on 16 June 1998 from the traffic police officers Abdullah G. and Osman Y.

77. In a statement taken on 16 June 1998 from Sezgin S., a traffic police officer who had been on duty at the relevant time, Sezgin S. declared that he arrived at the scene of the crime after having heard the message on the police radio. The body had been lying in a ditch. He had not inspected the wounds on the body. The victim's car had been located at a distance of about 15 or 20 metres from the body. He left the scene after the arrival of the police officers from the Criminal Bureau.

78. In a statement taken on 16 June 1998 from Arif İ., a traffic police officer on duty on the day of the incident, Arif İ declared that he arrived at the scene of the crime after having heard the message on the police radio. He had seen a dead body lying in a ditch. He had seen bullet wounds to the right and left cheek. The victim's car had been located at a distance of 20 or 25 metres from the body. He left the scene of the crime when police officers from the Criminal Bureau arrived.

79. On 26 June 1998, the Commissioner of the Gölbaşı local police station informed the Gölbaşı District Police Headquarters that the investigation aimed at the identification of the perpetrator(s) of the killing of Yusuf Ekinci had, so far, proved unsuccessful, that they were still actively being sought and, if found, the victim's family would be notified. This letter does not contain any details about the modalities of the police investigation.

80. On 10 August 1998 the Ankara public prosecutor requested the Gölbaşı public prosecutor for information about the steps taken in the investigation of the killing of Yusuf Ekinci.

81. On 14 August 1998 the Gölbaşı public prosecutor informed the Ankara public prosecutor that the investigation was still continuing and, should the perpetrator(s) be found, the Ankara public prosecutor would be notified.

82. In a further statement taken on 2 December 1998 from the traffic police officer Şevket Y., the latter declared that he had no information about

the killing of Yusuf Ekinci. A similar statement was taken on 4 December 1998 from Abbas Ş., another traffic police officer who had been on duty at the relevant time.

83. On 26 February 1999, the Commissioner of the Gölbaşı local police station informed the Gölbaşı District Police Headquarters that, so far, the enquiries in relation to the identification of the perpetrator(s) of the killing of Yusuf Ekinci had proved unsuccessful, that they were still actively being sought and, if found, the victim's family would be notified. This letter does not contain any details about the modalities of the police investigation.

Actions undertaken by the applicant and others

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

85. On 28 February 1996, the brother of Yusuf Ekinci, Tarik Ziya Ekinci, and the lawyer Tahsin Ekinci wrote to the President of Turkey voicing their continuing concerns and suspicions, and complaining that the investigation into the killing of Yusuf Ekinci was inadequate.

86. In August 1997, during a Parliamentary session, the Member of Parliament Fikri Sağlar, put questions in relation to the killing of Yusuf Ekinci to the then Prime Minister Mr Mesut Yılmaz. Mr Sağlar mentioned that it was common knowledge that Yusuf Ekinci had been killed by a Uzi type weapon and that a number of these weapons destined for use by the police had gone missing. He enquired whether these weapons had been acquired by Turkey on the basis of a public tender, how many weapons had gone missing, who was responsible for the weapons and whether the ballistics characteristics of the weapons had ever been recorded. He further asked whether a ballistics comparison had been carried out between the bullets used in the killing of Yusuf Ekinci and the Uzi weapons that had gone missing from the records of the Special Police Teams.

87. In December 1997, in reply to the questions put by Fikri Sağlar, the Minister of the Interior, Murat Başesgioğlu, declared that ballistics reports had revealed that the bullets used in the killing of Yusuf Ekinci were similar to those of the Uzi weapons allegedly used by the Susurluk gang in other illegal incidents.

88. In a letter of 17 February 1998 to the Minister of Justice, Tarık Ziya Ekinci complained that the investigation into the killing of his brother was inadequate. He suggested *inter alia* that a team of independent investigators be formed to carry out investigation, that the case-file be transferred from the Gölbaşı public prosecutor to the public prosecutor of the Ankara State Security Court, that a ballistics examination of all the Uzi type weapons in

the possession of the Special Operations Department be ordered in order to verify whether they matched the weapon used to kill his brother, and that statements be taken from road workers and petrol station staff on duty at the time when his brother was killed.

89. In a statement taken on 17 April 1998 by the police, Tarık Ziya Ekinci confirmed that he had written a letter to the Minister of Justice in relation to the killing of his brother. On 6 May 1998 the Ankara public prosecutor informed the Gölbaşı public prosecutor of the statement given on 17 April 1998 by Tarık Ziya Ekinci.

90. In 1998 the applicant allegedly succeeded in contacting an eye-witness, namely a person who had been working at a petrol station situated on the road between Yusuf Ekinci's office and his home. According to this witness, whose identity was not disclosed by the applicant, he had seen that a red Toyota – Yusuf Ekinci's car was a red Toyota – had been stopped by a police patrol car, that the police officers had taken the driver from this car and that they had searched his clothes. After about five minutes, a policeman got into the Toyota, which drove off together with the police patrol car. However, out of fear, this witness had refused to give a written statement. The account given by this witness was reported on the internet site of the daily newspaper "*Hürriyet*".

II. RELEVANT BACKGROUND TO THE CASE

91. Before the Court the applicant referred to the so-called Susurluk incident and the domestic reports that have been produced in relation to this incident. These reports have been made available to the Court in a number of other cases brought against Turkey (cf. Yaşa v. Turkey judgment of 2 September 1998, *Reports of Judgments and Decisions*, 1998-VI, *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, *Özgür Gündem v. Turkey*, no. 23144/93, ECHR 2000-III, *Kılıç v. Turkey*, no 22492/93, ECHR 2000-III, *Akkoç v. Turkey*, nos. 22947/93 & 22948/93, ECHR 2000-X, and *Avşar v. Turkey*, no. 25657/94, ECHR 2001-VII).

The Susurluk accident and related documents

92. Susurluk was the scene of a road accident on 3 November 1996 involving a truck and a car. The four passengers in the car were Mr Sedat Bucak, a member of Parliament for the conservative True Path Party and close to Tansu Çiller, Mr Hüseyin Kocadağ, the former deputy head of the İstanbul security services, Mr Abdullah Çatlı, a notorious far-right militant wanted by Interpol for drug trafficking and by the Turkish authorities for the killing of seven left-wing militants, and Ms Gonca Us, Mr Çatlı's girlfriend and a former beauty queen. All passengers, except for Mr Bucak, were killed.

93. The fact that they had been travelling together in the same car, that Abdullah Çatlı was found in possession of a licence to carry arms and a Turkish senior officials' passport, both documents signed by the Minister of the Interior Mehmet Ağar, and that various weapons of a model normally used by the police with matching silencers as well as money and drugs were found in the car had so shocked public opinion that it forced Mehmet Ağar to resign as Minister of the Interior on 8 November 1996, and led the authorities to carry out comprehensive investigations into the accident and to commission investigations at different levels. These investigations have resulted in the so-called "Susurluk Reports".

1st Susurluk Report

94. In its decision No. 472 of 12 November 1996, the Turkish Grand National Assembly (*Türkiye Büyük Millet Meclisi*) ordered the conduct of an official parliamentary inquiry into the "relations between illegal organisations and the State and the accident in Susurluk". A Commission was set up from among the members of Parliament. The Commission heard evidence from 54 people, whose names had been implicated in the Susurluk affair in one way or another, including Sedat Bucak, Mehmet Ağar and İbrahim Şahin. The Commission also instructed inspectors from the Ministry of Home Affairs and the Ministry of Justice to carry out investigations on its behalf. The Commission published its findings in 1997 in the "Susurluk Commission Report of the Turkish Grand National Assembly" in 1997.

95. In the concluding remarks of this Report it is stated:

> "...the uncontrollable forces were in collaboration with some public servants who worked for the State. The rising terrorist incidents in south-east Turkey in the nineties have also created an income-based terrorism. As to the unknown perpetrator killings, <the NCO> Hüseyin O. stated in his evidence to the Commission that 'the intelligence services used to give us a list the night before and the gunmen would go in the morning and kill those whose names were on the list'..."

96. According to an article published on 27 May 1997 in the liberal daily newspaper "*Milliyet*", the answers given by the MİT in relation to the killing of Yusuf Ekinci had not been published in the Parliamentary Report.

2nd Susurluk Report

97. The Prime Minister, in his letter no: B.02.0.MUS.1902/01236 of 19 November 1996, ordered Köksal Sönmez, the under secretary of the MİT to carry out an investigation into the allegations of the existence of an illegal organisation within the State and this organisation's activities. A report (No. 11.011.01.156/24746) was prepared and submitted to the Prime Minister on 17 December 1996. Although this report was never officially made public, its contents were leaked to the press and are currently in the public domain.

98. This Report contained statements made by Doğu Perinçek, the leader of the Workers' Party **(***İşçi Partisi***)**, who alleged that Tansu Çiller has set up an organisation comprising MİT members, police officers and members of the "Grey Wolves" (*Ülkücüler*)[3]. This organisation, known to its about 700 members – amongst whom Tansu Çiller, her husband Özer Çiller, Mehmet Ağar, the deputy-under secretary of the MİT, Mehmet Eymur, the Director of the Special Operations Department İbrahim Şahin, and Abdullah Çatlı – as "the Special Bureau" was responsible, according to Doğu Perinçek, for the killings of many persons, including Yusuf Ekinci.

99. The Report contains one page on which information on Yusuf Ekinci's personal background and activities is set out. This pages states:

"**Yusuf Ekinci**

Son of Kamil, and born in Lice-Diyarbakır in 1942.

In June 1963 he was a second year student at the Ankara University, Faculty of Law. He was known as a pro-Kurdish socialist. In December 1963 he was a member of the "youth branch" of the TIP (*Türkiye İşçi Partisi* - Turkish Workers Party) which was established in Ankara. He was further the editor of the "Emekçi" newspaper, the official bulletin of that party.

After his graduation in April 1969, he went to Diyarbakır in order to finish his traineeship. In Diyarbakır he participated in an organised demonstration against the Law on the Protection of the Constitution.

He was detained on remand in 1970 <or> 1971 and subsequently prosecuted on charges of involvement in pro-Kurdish activities in the Eastern Revolutionary Cultural Grouping (*Doğu Devrimci Kültür Ocakları*).

As from 1972 he worked as a lawyer in Diyarbakır, where he tried to direct the Kurdish movement.

In April 1971, during the 4th TIP General Assembly, he declared that he opposed the ideas of his brother Tarık Ziya Ekinci, and added that his own objective was the creation of Kurdistan and that he was a Kurdish nationalist.

Since 1984 he worked as a lawyer in Ankara.

In February 1990 he was expelled from the SHP (*Sosyal Demokrat Halkçı Parti* - Social Democrat People's Party). He became involved in establishing a Marxist party together with M. Ali Eren.

He was found dead on 25 February 1994 close to the Doktorlar Sitesi neighbourhood in Gölbaşı Ankara."

[3] Turkish nationalist extreme right-wing movement.

3rd Susurluk Report

100. On 13 August 1997, Prime Minister Mesut Yılmaz, instructed Kutlu Savaş, the vice-president of the Committee for Co-ordination and Control attached to the Office of the Prime Minister, to carry out an investigation into the Susurluk affair. Savaş and his personnel studied the report prepared by the Parliamentary Commission (see §§ 94-96 above), the MİT report (see §§ 97-99 above), and they conducted their own investigation. After receiving the report in January 1998, the Prime Minister made it available to the public, though eleven pages and certain annexes were withheld.

101. 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 unlawful dealings between political figures, government institutions and clandestine groups.

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

> "The bombing of the newspaper Özgür Gündem in İstanbul, the killing of Behçet Cantürk, ... the trillion credits of the banks are in reality the extension of diverse aspects of the action in Ankara. ... The beginning of the Susurluk action might be hidden in a sentence of the Prime Minister at that time, Tansu Çiller. "*The list with the names of the businessmen helping the PKK is in our possession*." she said. The executions began afterwards. Who decided the executions? It was inevitable that a deterioration would occur and that personal interests would replace the national interests, and in fact they did. This report perceives the Susurluk incident in that manner. (*page 8*)

> Since the struggle in the region <of eastern and south-eastern Anatolia> and the PKK attacks created an ever increasing reaction, even in the western regions, it is possible to understand and excuse some of the attitudes of martyrs[4], the reaction and anger of the State forces fighting the PKK, and those living in the State of Emergency Region. It is in fact inevitable. However it is necessary to detail the incidents which took place in this complicated structure and the institutions participating in this natural, albeit complicated, scenery. By doing so, it will be possible to see the country's fight with the PKK and the connection stretching to İstanbul, Ankara and the financial relationships. (*page 9*)

[4] State agents having lost their lives.

... Whilst the character of Yeşil and the fact that he, along with the group of confessors he gathered around himself, is the perpetrator of offences such as extortion, seizure by force, assault on homes, rape, robbery, murder, torture, kidnap etc., were known, it is more difficult to explain the collaboration of the public authorities with this individual. It is possible that a respected organisation such as the MİT may use a lowly individual... it is not an acceptable practice that MİT should have used Yeşil several times... Yeşil opened an account at the Heykel Branch of the Ziraat Bank in Ankara under the name of Ahmet Demir in order to collect extortion money. The existence of this account appeared from the State Archives. ... Yeşil, who carried out activities in Antalya under the name of Metin Günes, in Ankara under the name of Metin Atmaca and used the name Ahmet Demir, is an individual whose activities and presence were known both by the police and the MIT... and they kept quiet. As a result of the State's silence the field is left open to the gangs (*page 26*)

... Yeşil was also associated with JİTEM, an organisation within the gendarmes, which used large numbers of protectors and confessors (*page 27*)

Muhsin Gül (Code name Kekeç-Pepe-Metin) testified, in his statements taken between 22.07.1994 and 16.08.1994 by the Commander of the Diyarbakır Crime Squad in relation to Ahmet Demir[5], that the kidnapping of Bayram Kanat and the finding of his dead body ... was result of a plan of Ahmet Demir who was then working at the Diyarbakır Gendarmerie ... and that he <Muhsin Gül> had worked for the Gendarmerie from time to time. (*page 35*)

<In his confession to the Diyarbakır Crime Squad> Musin Gül ... had stated that Ahmet Demir would say from time to time that he had personally planned and committed the murder of Behçet Cantürk and of other mafia and PKK members who had died in the same manner. (*page 37*)

Summary information on the antecedents of Behçet Cantürk, are set out below. He was of Armenian origin ... and was born in Lice. ... In 1990 he joined certain Kurdish intellectuals and formed a group called "The National Platform". Later they set up a company called Mesopotamia and attempted to publish a newspaper called Mesopotamia. As of 1992 he was the middleman in collecting money from drugs smugglers to hand over to the PKK. In April 1992 he brought 6 tons of base morphine and 5 tons of hashish from Pakistan to Turkey and these drugs were purchased by <six persons> and ... Behçet Cantürk collected money from these individuals on various occasions in order to give it to the PKK. (*page 72*)

As of 1992 < Behçet Cantürk> was one of the financiers of the newspaper *Özgür Gündem*. ... Although it was obvious who Cantürk was and what he did, the State was unable to cope with him. Because legal remedies were inadequate the *Özgür Gündem* was blown up with plastic explosives and when Cantürk started to set up a new undertaking ... the Turkish Security Force Organisation (*Türk Emniyet Teşkilatı*) decided that he should be killed and that decision was carried out. Thus one person was removed from "the list obtained of businessmen who finance the PKK" referred to by the then Prime Minister and which list is known to have consisted of nearly 100 persons.
No discussion has taken place on the question as to whether the murder of

[5] One of the pseudonyms of a former member of the PKK turned informant who was known by the name "*Green Code*" and who had supplied information to several State agencies since 1973.

Behçet Cantürk was right or wrong, or whether it was necessary. However, inevitable questions must be asked. Who ordered the murder of Cantürk? Who can exercise such authority? Under what circumstances can this authority be exercised? Who is responsible to whom?
The objection "in a State where the rule of law prevails there can be no place for these questions" is not, in our opinion, valid and is not in accordance with reality. (*page 73*)

All of the relevant State bodies were aware of these activities and operations. ... For example, one of the common features of the murders having taken place in the İzmit-Adapzarı-Bolu axis <an area between İstanbul and Ankara> is the concerted activities of the police, the gendarmerie and members of the confessor organisations in this region ... When the characteristics of the individuals killed in such actions are examined, the difference between, on the one hand, those Kurdish supporters who were killed in the region where the state of emergency had been declared and, on the other, those who were killed elsewhere lay in the financial strength the latter represented in economic terms. ... The sole disagreement we have with what was done relates to the form of the procedure and its results. (*page 74*)

<JİTEM - Gendarmerie Intelligence Service> We had the authority the execute almost everyone in Diyarbakır and its surroundings whom we suspected of being connected with the PKK. ... Instead of handing them over to the justice authorities, we adopted as a method the "unknown perpetrator killing" ("*faili mesul cinayetleri*"). This was what was wanted from us. We received instructions to this effect. (*page 76*)"

103. In an interview published on 8 February 1998 in the newspaper Turkish Daily News, the State Minister responsible for Human Rights, Mr Hikmet Sami Türk, was asked:

"In the Susurluk Report it was explained that some murders, which had previously been called "mysterious", were committed by the security forces. Did the families of the victims come to your Ministry and how did you deal with them?"

Mr Türk replied:

"No, they have not come to us. The number of incidents reported to us is not that high. I think that those people apply to the courts. What we look at are those that the non-governmental organisations dealt with and the letters that we received."

In response to the remark:

"You say that we have to trust our government, but in the Susurluk Report, which was given to the Prime Minister Mesut Yılmaz, it is indicated that certain violent activities and unsolved crimes were committed in the name of the State.",

Mr Türk stated:

"It is not possible for us to find out these kinds of things. We would get lost within some labyrinth if we tried to find them out. These are issues that must always be investigated and supervised by the State. I must add that the State must not allow illegal formations within its body."

Judicial procedures linked with the Susurluk affair

Defamation proceedings brought by Tansu and Özer Çiller

104. On 18 February 1998, the daily newspaper Yeniyüzyıl published an article in which it was claimed that "there existed an organisation called Çiller's Private Organisation, that Çiller ordered the <premises of> Özgür Gündem to be bombed and that F.G. was Çiller's secret partner in money laundering".

105. Tansu Çiller and her husband Özer Çiller took a civil action for defamation against the editor and the owner of the newspaper. In the resulting judgment no. 1998/624 of 23 September 1998, the Ankara Court of First Instance **(***Asliye Hukuk Mahkemesi***)** noted that the article was based on the contents of a MİT report. Having checked the author's copy of this report, i.e. the Report No. 11.011.01.156/24746 (see §§ 97-99 above) against a copy of the original report obtained from the MİT, the court concluded that these were identical. The Court of First Instance found against Ms Çiller, holding that:

> "The press ... has a duty to monitor the behaviour of politicians and to inform the public of their activities ... as long as the media are informing the public of any news that is in the public interest ... this constitutes a public duty on the part of journalists which should be carried out effectively ... The defendant has proved the source of his news and therefore there has been no attack on the plaintiffs' personal integrity."

In its unanimous decision no. 1999/5030 of 31 May 1999, the 4th Chamber of the Court of Cassation (*Yargıtay*) rejected the appeal in cassation filed by Ms Çiller and her husband, and upheld the judgment of 23 September 1998.

Criminal proceedings taken against persons implicated in the Susurluk affair

106. In criminal proceedings brought against a number of persons implicated in the Susurluk affair, which have been extensively covered by the Turkish media, the İstanbul State Security Court (*Devlet Güvenlik Mahkemesi*) decided in a ruling of 3 May 1999 to discontinue the proceedings against Sedat Bucak and Mehmet Ağar on grounds of their immunity as elected members of parliament in the April 1999 elections.

107. In its judgment of 12 February 2001, the İstanbul State Security Court convicted, *inter alia*, the former deputy head of the Special Operations Department İbrahim Şahin and the former MİT official Korkut Erken of "founding and directing a gang with the aim of committing crimes" and sentenced them both to six years' imprisonment. Twelve others, including former members of Special Operation Teams and police officers,

received lower sentences. In its judgment, the State Security Court stated *inter alia*:

> "Obstruction of the judicial investigation through administrative, political and legal manoeuvring worries and scares society and damages the sense of justice. ... The people who commit crimes and hide behind political, social, administrative and legal shields, and others who refuse to remove these protections ought not to forget that they too will need justice one day."

108. On 24 October 2001, the 8th Chamber of the Court of Cassation (*Yargıtay*) declared the appeal in cassation filed against the judgment of 12 February 2001 founded and quashed this judgment. It held, *inter alia*, that the İstanbul State Security Court had unjustly rejected the defendants' request to have the proceedings conducted *in camera*.

109. On 11 December 2001, the Plenary Court of Cassation (*Yargıtay Ceza Genel Kurulu*) accepted the objection filed by the public prosecutor against the judgment of 24 October 2001. It subsequently quashed this ruling and referred the case back to the 8th Chamber of the Court of Cassation for a new decision.

110. On 23 January 2002, the 8th Chamber of the Court of Cassation rejected the appeal in cassation filed against the State Security Court's judgment of 12 February 2001.

III. RELEVANT DOMESTIC LAW AND PRACTICE

Criminal law and procedure

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

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

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

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

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

Administrative liability

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

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

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

Civil action for damages

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

119. The Government submitted that the applicant had filed her application without awaiting the outcome of the domestic criminal investigation into the death of her husband. That investigation is still continuing and should be regarded as effective. According to the Government, the application was therefore premature.

120. The Government further submitted that, as the applicant claimed that the criminal investigation was not effective, her application had to be rejected for having been lodged out of time. The Government observed that the applicant's husband was killed in February 1994 whereas her application was introduced on 4 May 1995, which is more than six months later.

121. The applicant maintained that the criminal investigation at issue was too superficial to be considered either adequate or effective.

122. The applicant further submitted that, before applying to the European Commission of Human Rights ("the Commission") in May 1995, she had first attempted to obtain information from the competent public prosecutor about the criminal investigation. She had, moreover, petitioned the President of Turkey, the Prime Minister and the Speaker of the Grand National Assembly in relation to the lack of an effective investigation into her husband's killing. When it was clear to her that these efforts were to no avail, she decided to file an application with the Commission.

123. The Court recalls that, in its decision of 8 June 1999, it considered that the question whether the criminal investigation at issue can be regarded as effective under the Convention was closely linked to the substance of the applicant's complaints and that it should be joined to the merits. Noting the arguments presented by the parties on this question, the Court considers it appropriate to address this point in its examination of the substance of the applicant's complaint under Article 2 of the Convention.

124. As to the Government's argument based on the six months rule set out in Article 35 § 1 of the Convention, the Court recalls that it has already examined and rejected this argument in its decision on admissibility of 8 June 1999.

125. Consequently, the Court dismisses the Government's preliminary objection insofar as it relates to the six months rule set out in Article 35 § 1 of the Convention, and joins the preliminary objection concerning the effectiveness of the criminal investigation to the merits of the applicant's complaint under Article 2.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

126. The applicant complained that her husband was killed in circumstances indicating that agents of the Turkish State were in one way or another involved. She further complained of a failure by the authorities to protect her husband's life and to carry out an effective and adequate investigation into his killing. She relied on Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Arguments before the Court

1. The applicant

127. The applicant submitted that the killing of her husband was one of about 400 so-called "unknown perpetrator" killings in 1994, as documented by both Amnesty International[6] and the Turkish Human Rights Foundation[7]. The principal victims included prominent Kurdish businessmen and intellectuals. As pointed out in the study written by her husband's brother Tarik Ziya Ekinci, Yusuf Ekinci was an intellectual of Kurdish origin from the town of Lice. At the time Yusuf Ekinci was killed, the focal point of the campaign against terrorism was Lice and its surrounding villages. Moreover, the method used in the killing of Yusuf Ekinci was identical to that used in the murders of intellectuals and businessmen of Kurdish origin in the main Turkish cities in 1994.

[6] "Unfulfilled Promise of Reform", September 1995.
[7] 1994 Report.

128. According to the applicant, there are sufficient *prima facie* indications that the Turkish State, at the very least, connived in the killing of Yusuf Ekinci, namely:

- in the oral evidence given on 17 September 1999 by Süheyla Aydın to a Delegation of the Commission in relation to her application no. 25660/94 on the abduction and killing of her husband in April 1994, she declared, that during her questioning in March 1994 by the police in Diyarbakır, the following exchange took place:

> "Two people held me by my shoulders as I left the room after the third interrogation ... Somebody holding me by my shoulder said: 'Look, come to your senses. It's a pity for you, isn't it? Do you know Yusuf Ziya Ekinci?' I told him that I did not. He said: 'A short time ago he was murdered in Ankara. His body was found in an empty lot. I don't think that you want your husband to end up the same way. Wouldn't it be a pity? Now move off.' ...";

– the eye-witness account of the petrol station employee, which the authorities manifestly failed to seek to obtain;

– the MİT Report No. 11.011.01.156/24746 and the outcome of the subsequent court case brought by Tansu Çiller;

– the likelihood that the weapon and bullets used in the killing were the same as those used by the security forces, and probably also by the criminal gangs working under their direction or with their connivance; and

– the wilful failure of the authorities to follow up even the most elementary leads.

129. The applicant further submitted that the respondent Government failed to take appropriate steps to safeguard the life of her husband, especially against the background of the "unknown perpetrator" killings. In her opinion, the Turkish authorities failed to discharge its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of unlawful acts carried out by persons acting under the auspices of certain State authorities.

130. According to the applicant, the Government also failed to comply with the procedural requirements of Article 2 of the Convention to provide an effective investigation into the circumstances of the killing of her husband. Like in many other cases, although there were no personal, family or professional motives for the killing of her husband, the criminal investigation into his killing was solely focused on his family and friends and on his professional contacts and activities. The possibility of involvement of State agents was never explored, even though there was very strong evidence that the perpetrators were known to the authorities.

2. The Government

131. The Government submitted that there was no evidence whatsoever to support the applicant's allegation that her husband was killed by State agents. According to the Government, the Ekinci family is a well-known family in Turkey. Its members are wealthy and have close connections with high-ranking officials. The situation of the Ekinci family serves to contradict the allegation that persons of Kurdish origin are victims of discrimination.

132. According to the Government, given that Yusuf Ekinci was a very wealthy lawyer dealing with clients from every walk of life it was quite possible that he had been dealing with clients and cases involving large amounts of money and had made enemies as a result of his various legal disputes.

133. The Government further observed that the applicant submitted that Yusuf Ekinci was not politically active. However, at the same time she alleged that he was killed by State agents for the sole reason that he was of Kurdish origin. It follows, in the Government's view, that the applicant must be taken to believe that the entire Turkish population of Kurdish origin was at risk of being killed by State agents. Given the number of persons of Kurdish origin serving as members of parliament, ministers or high State officials and who are successful in society without any hindrance from the side of the State, the Government contended that the applicant's allegation must be seen as wholly unfounded and intended to mislead and misinform the general public and the Court.

134. The Government further submitted that the investigation into the killing of the applicant's husband was in conformity with the requirements of the Convention. A criminal investigation was opened immediately after Yusuf Ekinci's body had been found. The investigating authorities did their best to find the perpetrators of the killing. There was no cover-up of the facts and all investigating authorities involved – the police, the public prosecution department and the forensic officials – worked speedily and effectively in a well co-ordinated, open and transparent criminal investigation procedure.

3. The Court's assessment

(a) General considerations

135. The Court recalls that Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3 of the Convention, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human rights requires that these provisions be

interpreted and applied so as to make its safeguards practical and effective (cf. *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII).

136. Where allegations are made under Articles 2 and 3 of the Convention, the Court must conduct a particularly thorough scrutiny (cf. *Matyar v. Turkey*, no. 23423/94, 21.2.2002, § 109) and will do so on the basis of all material submitted by the parties and, if necessary, material obtained *proprio motu* (cf. the H.L.R. v. France judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 758, § 37).

(b) As to the killing of the applicant's husband

137. The Court notes that there is no indication in the case-file that the applicant's husband had been threatened by anyone, or had reason to believe that his life was at risk. The Court further notes that there were no eye-witnesses to the killing of Yusuf Ekinci. The witness referred to by the applicant (see § 90 above) has remained anonymous and, reportedly, is unwilling to give a written statement. The only forensic evidence available consists of a number of bullets found at the scene of the crime. A forensic examination of this evidence resulted in a finding that all of the bullets had been fired from the same weapon and that they bore no resemblance to bullets previously examined.

138. The Court further notes that the investigating authorities looked for possible leads in Yusuf Ekinci's professional and private circles. It appears from the statements taken from Güngör E., Vetin A., and Zeynel C. that one of the clients of his law practice was Behçet Cantürk, who had been killed one month earlier in similar circumstances (see § 12 above). It further appears from the Susurluk Report, commissioned and made public in January 1998 by the Prime Minister (see §§ 100-102), that there are strong indications that State agents were in fact involved in the killing of Behçet Cantürk, that he was killed for supporting the PKK from the proceeds of drug trafficking and that the Turkish authorities were aware of the existence of a list containing the names of about 100 businessmen, including Behçet Cantürk, who were believed to be providing the PKK with financial support.

139. The Court observes that it is undisputed that Yusuf Ekinci was a wealthy person of Kurdish origin and that it transpires from the information about him in the MİT report no. 11.011.01.156/24746 (see §§ 97-99) that, at least in the past, he had publicly stated that he was a Kurdish nationalist and, to a certain extent, he had been politically active until 1990.

140. For the Court, it is surprising that the investigating authorities, from the very outset, failed to see the link between Yusuf Ekinci and Behçet Cantürk.

141. In view of the above, the applicant's allegation that her husband was killed by or at least with the connivance of State agents cannot therefore be discarded as *prima facie* untenable.

142. However, the Court recalls that the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (cf. the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 161). As regards the assessment of evidence, the Court reiterates that its role is of subsidiary nature, and that it must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (cf. *Matyar v. Turkey*, *loc. cit.*, § 108).

143. On the basis of the material in its possession, the Court is of the opinion that the actual circumstances in which the applicant's husband died remain a matter of speculation and assumption and that, accordingly, there is an insufficient evidentiary basis on which to conclude that the applicant's husband was, beyond reasonable doubt, killed by or with the connivance of State agents in the circumstances alleged by the applicant.

(c) As to the alleged inadequacy of the investigation

144. The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of the applicant's husband gave rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (cf. *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (cf. *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI).

145. As regards the question whether the criminal investigation carried out in the present case can be regarded as adequate and effective, the Court has already noted that there was a striking omission in the investigation from the very outset, namely the failure to make the connection between Yusuf Ekinci and Behçet Cantürk who was killed one month earlier in similar circumstances. Even when, subsequently, various official reports on the Susurluk incident had been made or became public and reinforced the

relevance of the connection between the two men, no investigation was carried out into the possibility that there might be a link between the killing of Behçet Cantürk and that of the applicant's husband and that State agents might possibly have been involved in the latter's death. As pointed out by the applicant, the criminal investigation into her husband's killing was mainly focused on his family and friends and on his professional contacts and activities.

146. In these circumstances, the Court cannot but conclude that the investigation by the Turkish authorities into the circumstances surrounding the killing of the applicant's husband was neither adequate nor effective. There has therefore been a breach of the State's procedural obligation under Article 2 to protect the right to life. It accordingly dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies (see § 125 above) and holds that there has been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

147. The applicant further alleged that there has been a violation of Article 3 of the Convention, which reads:

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

She submitted that the killing of her husband, the indifference of the authorities and their failure to carry out any serious investigation into the killing have caused her very great anguish, mental torment, stress and suffering. In her submission, these considerations amount to a violation of Article 3.

148. The Government submitted that the applicant's allegation under Article 3 of the Convention was abstract and unsubstantiated.

149. The Court recalls its above finding that it has not been established that any State agent was implicated, directly or indirectly, in the killing of the applicant's husband. In this respect, the Court finds no violation of Article 3 of the Convention.

150. As regards the question whether the authorities' failure to conduct an effective investigation amounted to treatment contrary to Article 3 of the Convention, the Court considers this complaint to be a separate complaint from the one brought respectively under Articles 2 and 13, which relate to procedural requirements and not to ill-treatment in the sense of Article 3.

151. Although the Court accepts that the inadequacy of the investigation into the killing of her husband may have caused the applicant feelings of anguish and mental suffering, the Court considers that, insofar as the applicant has substantiated this claim, it has not been established that there were special features which would justify finding a violation of Article 3 of

the Convention in relation to the applicant herself (cf. *mutatis mutandis*, Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, pp. 1187-1188, §§ 130-134, *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 98-99, ECHR 1999-IV, and *Orhan v. Turkey*, no. 25656/94, 18 June 2002, §§357-360). It therefore finds no breach of Article 3 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

152. The applicant complained that the authorities' abject failure to conduct an effective criminal investigation fatally undermined the effectiveness of any other remedy which might have existed, thus violating her rights under Articles 6 § 1 and 13 of the Convention.

153. Article 6 § 1 of the Convention, insofar as relevant, reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal...".

Article 13 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."

154. The applicant submitted that, as a consequence of the inadequate investigation into the killing of her husband, the perpetrators have remained unidentified, thus rendering it impossible for her take to bring civil proceedings.

155. The Government argued that a meticulous investigation was being conducted and that the applicant's complaints under Articles 6 § 1 and 13 were baseless and unsubstantiated.

156. The Court considers that, since the applicant made no attempt to take any proceedings before the domestic courts, it is not possible in the instant case to determine whether these courts would have been able to adjudicate on her claims. As the applicant's complaint of lack of access to a court is bound up with her more general complaint concerning the manner in which the investigating authorities dealt with the killing of her husband and the repercussions which this had on access to effective remedies which would help redress the grievances which she harboured as a result of the killing, the Court finds it appropriate to examine this compliant in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of alleged violations of the Convention. It does not find it necessary therefore to determine whether there has been a violation of Article 6 § 1.

157. 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. 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 (cf. *Avşar v. Turkey*, *loc. cit.*, § 429).

158. The Court recalls that it has not found it proven beyond reasonable doubt that State agents carried out, or were otherwise implicated in, the killing of the applicant's husband. However, as it has held in previous cases, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of Article 13 (*Tanrıkulu v. Turkey* [GC], no. 23763/94, § 118, ECHR 1999-IV, *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, and *Avşar v. Turkey*, *loc. cit.*, § 430).

159. 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 §§ 145-146 above), 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 (cf. *Tanrıkulu v. Turkey*, *loc. cit.*, § 119, and *Avşar v. Turkey*, § 431).

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

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

161. The applicant submitted that her husband was killed because he was a Kurd and, although not politically involved, he was sympathetic to the democratic demands of the Kurds. 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. The applicant also maintained that she too had been discriminated against in violation of Article 14, which 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."

162. The Government rejected the allegation that Turkish nationals of Kurdish origin are discriminated against or persecuted. No incidence of racial discrimination on the basis of Kurdish origin has ever been reported. Furthermore, the applicant has not shown why among the hundreds of thousands of Turkish nationals of Kurdish origin living in Turkey her husband alone was killed.

163. The Court considers that the applicant's complaint under Article 14, in so far as it has been substantiated, arises out of the same facts considered under Articles 2, 3, 6 and 13 of the Convention and does not find it necessary to examine this complaint separately (cf. *Mahmut Kaya v. Turkey*, no. 22535/93, § 131, ECHR 2000-III).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. Article 41 of the Convention provides:

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

A. Pecuniary damage

165. Under the heading of pecuniary damage, the applicant sought compensation in the amount of 63,813.82 pounds sterling ("GBP") for the loss of earnings of the deceased Yusuf Ekinci, who was a prominent self-employed lawyer.

166. The Government contested the applicant's claim.

167. The Court has not found any causal connection between the matter held to constitute a violation of the Convention - the absence of an effective investigation - and the pecuniary damage alleged by the applicant. In accordance with the principles in its case-law, it rejects the entirety of the applicant's claim under this heading (cf. *Çakıcı v. Turkey*, cited above, § 127).

B. Non-pecuniary damage

168. The applicant claimed the sum of GBP 10,000 by way of compensation for mental torment and suffering caused as a direct result of violations of the Convention. The applicant further claimed an amount of GBP 40,000 on behalf of the estate of her deceased husband for unlawful

detention, ill-treatment, inadequate investigation and the absence of an effective remedy.

169. The Government submitted that the claim was excessive and in any event unjustified.

170. The Court has found no causal link between the prejudice claimed to have been suffered by the estate of the applicant's husband and the violations found. Consequently, the Court considers that this part of the claim must be dismissed.

171. As regards the claim submitted by the applicant on her own behalf, the Court accepts, notwithstanding its conclusion on the applicant's complaint under Article 3 of the Convention (see § 151 above), that she must have suffered some anguish and distress from the authorities' failure to investigate effectively the death of her husband, which cannot be compensated solely by the findings of violations. Deciding on an equitable basis, the Court awards the applicant the sum of 15,590 euros ("EUR") for non-pecuniary damage, such sum to be converted into Turkish liras at the rate applicable at the date of payment.

C. Costs and expenses

172. The applicant claimed a total of GBP 5,200.85 for fees and costs incurred in bringing the application. This figure consisted of GBP 4,795 in fees and GBP 405.85 in administrative costs for the applicant's representative in the United Kingdom. Although the applicant mentioned that she also wished to claim costs and expenses incurred in Turkey as well as by the Kurdish Human Rights Project, she did not specify the work or expenses to which this part of her claim related or even the amount so claimed.

173. The Government disputed the above claim, arguing that it was excessive and unsubstantiated in that it was not supported by any invoices or other relevant documentary material.

174. The Court notes that the present case involved complex issues of fact and law requiring detailed examination. The claim of the applicant's representative in the United Kingdom with respect to the hours of work undertaken and the administrative costs do not in the circumstances appear unreasonable. It therefore awards the amount claimed in full, together with any value-added tax that may be chargeable, such sum to be paid into the applicant's sterling bank account in the United Kingdom as set out in her just satisfaction claim.

D. Default interest

175. The Court considers it appropriate that default interest should be payable at the rate of 7.25% per annum with regard to the sums awarded in euros and 7.5% with respect to the sums awarded in pounds sterling.

E. Request for a thorough investigation into the circumstances and search for the perpetrators of the killing of Yusuf Ekinci

176. The applicant further submitted that the Court should indicate, as a necessary implication of an award of just satisfaction, that the payment of compensation and costs would not in itself be sufficient just satisfaction and that the Committee of Ministers, the organ of the Council of Europe responsible for ensuring supervision of the execution of the Court's decisions, should ensure that just satisfaction in the present case also included the carrying out of a genuine and thorough investigation into the circumstances of the killing of Yusuf Ekinci and a search for the perpetrators of this killing

177. In the applicant's opinion, such measures were required in order to prevent continuing violations. Moreover, her mental torment and suffering would continue as long as no such investigation or search had been carried out.

178. The Government did not address this part of the applicant's claim under Article 41 of the Convention.

179. The Court recalls that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not in principle make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers acting under Article 46 of the Convention to supervise compliance in this respect (cf. *mutatis mutandis*, Akdivar and Others v. Turkey judgment of 1 April 1998 (Article 50), *Reports* 1998–II, p. 723, § 47). Consequently, the applicant's claims under this head must be dismissed.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection that the application has been lodged out of time;

2. *Joins* unanimously *to the merits* the Government's preliminary objection that the application is premature and *dismisses* it unanimously;

3. *Holds* unanimously that there has been no violation of Article 2 of the Convention as regards the applicant's allegation that her husband was killed in circumstances engaging the responsibility of agents of the respondent State;

4. *Holds* by six votes to one 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 adequate and effective investigation into the circumstances surrounding the death of the applicant's husband;

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

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

7. *Holds* unanimously that it is not necessary to examine the applicant's complaint under Article 6 of the Convention;

8. *Holds* unanimously that it is not necessary to examine separately whether there has been a violation of Article 14 of the Convention;

9. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums:
   (i) EUR 15,590 (fifteen thousand five hundred and ninety euros) in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (ii) GBP 5,200.85 (five thousand and two hundred pounds sterling and eighty-five pence) in respect of costs and expenses, to be paid directly into the applicant's sterling bank account in the United Kingdom, together with any value-added tax that may be chargeable;

(b) that simple interest at the following annual rates shall be payable from the expiry of the above-mentioned three months until settlement:
(i) an annual rate of 7.25% in relation to the sums awarded in euros, and
(ii) an annual rate of 7.5% in relation to the sums awarded in pounds sterling;

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

Done in English, and notified in writing on 16 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President

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

J.-P.C
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

To my great regret I am unable to agree with certain of the majority's conclusions for the following reasons:

(1) The Court found in paragraph 143 of its judgment:

> "On the basis of the material in its possession, the Court is of the opinion that the actual circumstances in which the applicant's husband died remain a matter of speculation and assumption and that, accordingly, there is an insufficient evidentiary basis on which to conclude that the applicant's husband was, beyond reasonable doubt, killed by or with the connivance of State agents in the circumstances alleged by the applicant."

(2) However, when it examined whether the State had complied with its "positive obligation" under Article 2 of the Convention, the majority held that there had been a violation of that limb of the Article as the national authorities had failed to carry out an adequate and effective investigation into the death of the applicant's husband, in other words it found that no proper investigation was conducted in the instant case.

It is that fundamental conclusion which I contest.

(3) Let us examine the reasoning of the majority.

In paragraph 145 of the judgment in the instant case the majority substituted its view for that of the national authorities on a point that depended entirely on the strictly personal observations and factual findings of the officers investigating the case. Assuming the mantle of a skilled detective, it declared:

> "As regards the question whether the criminal investigation carried out in the present case can be regarded as adequate and effective, the Court has already noted that there was a striking omission in the investigation from the very outset, namely the failure to make the connection between Yusuf Ekinci and Behçet Cantürk who was killed one month earlier in similar circumstances. Even when, subsequently, various official reports on the Susurluk incident had been made or became public and reinforced the relevance of the connection between the two men, no investigation was carried out into the possibility that there might be a link between the killing of Behçet Cantürk and that of the applicant's husband and that State agents might possibly have been involved in the latter's death. As pointed out by the applicant, the criminal investigation into her husband's killing was mainly focused on his family and friends and on his professional contacts and activities.
>
> In these circumstances, the Court cannot but conclude that the investigation by the Turkish authorities into the circumstances surrounding the killing of the applicant's husband was neither adequate nor effective." (*emphasis added*)

In a word, the only omission in the investigation which the majority was able to come up with was the failure to make a connection between the two murders.

However, firstly, there is no basis for the majority's affirmation. How does the Court know that the officers in charge of the investigation neglected that line of investigation. There is nothing in the case file to support such an unwarranted "finding!". On the contrary, in their depositions all the witnesses emphasised the links and friendship – in short the connection – between Y. Ekinci, the applicant's deceased husband, and Cantürk, a drug-trafficking suspect who had also been killed a month earlier (see, in particular, paragraphs 28, 31, 40, 44 of the judgment). In these circumstances, how can the majority or anyone else imagine that the investigators would have omitted to investigate "... from the very outset..." the connection between the two men, that being the most obvious lead (see in particular the article published in the daily newspaper *Raz'kal*, and paragraphs 61, 102 and 138 of the judgment), especially as in this type of "scenario", the "settling of scores" is an everyday occurrence. Anyone with the least knowledge of how criminal investigators work will be aware that following up a "good lead" always requires intelligent, individual reflection that never appears on paper in the form of a report.

That being so, I repeat the crucial question: How does the majority know (or guess) that the police failed to follow up that lead "... from the very outset of its investigation..."?

In my opinion, the investigation conducted by the national authorities into the murder of Y. Ekinci was perfect and flawless. A careful reading of paragraphs 17 to 60 and 62 to 83 of the judgment will provide sufficient proof of that.

Secondly, supposing for a moment, as the majority was content to do, that the police did omit to investigate the "Ekinci et Cantürk" connection. Surely, one would have to ask how taking one unsolved crime as the starting point will help to solve another, namely the murder of Y. Ekinci?

In criminology the notion of "unsolved crime" is well known: the present case is not the first and will not be the last in which it proves impossible to identify the killer or killers, despite an investigation. I hope that the murderer will be identified before the limitation period expires.

It will be recalled that the positive obligation on the State in the Convention system is an obligation to use best endeavours with the means available; it is not an absolute obligation. It would be erroneous to consider that an investigation is inadequate and ineffective until such time as those responsible have been identified and brought to justice.

(4) Lastly, I also disagree with the majority as regards the summary of the facts. What are the majority's conclusions? Firstly, that it has not been proved that Y. Ekinci was killed by State agents(!) and, secondly, that there has been a violation of the procedural guarantee provided by Article 2. In that case, and particularly in the light of the first conclusion, what is the relevance and purpose of all the "rumour-mongering" in the "the facts" section of the judgment and of all these scenarios of dubious taste (see

paragraphs 61, and 91 to 110). It seems very akin to "idle gossip" or "something for nothing" and has no place in the judgment of an international court. A judgment of a court of law is not a "a receptacle for anything and everything".

(5) With regard to a violation of Article 13, I consider that when the Court finds a violation of Article 2 in its procedural aspect, as the majority did in the instant case, no separate issue arises under Article 13, since the finding of a violation of Article 2 takes account of the fact that there has been neither an effective inquiry nor a satisfactory procedure after the incident. For more details on that subject, I refer to my dissenting opinions in the Ergi v. Turkey judgment of 28 July 1998 (*Reports*, 1998-IV) and Akkoç v. Turkey of 10 October 2000.

(6) Personally, as I find no violation in the present case, I consider that Article 41 is inapplicable.