



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

THIRD SECTION

CASE OF SELİM YILDIRIM AND OTHERS v. TURKEY

(Application no. 56154/00)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

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 Selim Yıldırım and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŒ,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005 and on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 56154/00) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Turkish nationals, Mr Selim Yıldırım, Ms Hasibe Yıldırım, Ms Leyla Yıldırım, Mr Rıdvan Yıldırım, Ms Gülcan Yıldırım, Ms Berivan Yıldırım and Ms Şermin Yıldırım (“the applicants”), on 2 February 2000.

2. The applicants were represented by Mr S. Okçuođlu, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged, in particular that their relative, Adnan Yıldırım, was killed following his abduction by undercover agents of the State and that the authorities failed to carry out an effective and adequate investigation into his death. In this respect, they relied on Articles 2, 3, 6, 13 and 14 of the Convention.

4. The application was allocated to the Third 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.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

6. By a decision of 1 December 2005, the Court declared the application admissible.

7. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts as submitted by the parties

8. The applicants were born in 1928, 1955, 1980, 1982, 1984, 1987 and 1994 respectively. The first applicant lives in Diyarbakır and the remainder of the applicants live in Istanbul. The first applicant is the father, the second applicant is the wife and the remainder of the applicants are the children of Adnan Yıldırım, who was killed on 3 June 1994.

9. On 3 June 1994 at about 4.30 a.m. while Adnan Yıldırım was leaving the casino at the Çınar Hotel in the Yeşilyurt area of Istanbul with his two friends Savaş Buldan and Hacı Karay, seven or eight people wearing bullet-proof vests and carrying firearms approached them. They introduced themselves as police officers and forced the three men into three cars.

10. The applicants were informed of the incident on that same day. They immediately contacted the Bakırköy public prosecutor and the Yeşilköy police headquarters to find out more about the kidnapping. They were informed that the three persons had not been taken into custody. The same day, the brother of Savaş Buldan filed a complaint with the Bakırköy public prosecutor and complained that his brother and his two friends, Adnan Yıldırım and Hacı Karay, had been abducted by people who had introduced themselves as police officers.

11. On 3 June 1994 at about 9 p.m. İsmail Taşcan contacted the Yığılca gendarmerie station within the district of Bolu. He informed the gendarmes that he had seen three bodies in an area near the river where he had gone to fish. At about 9.15 p.m. the gendarmerie arrived at the scene. The positions of the bodies were recorded. No documents or other property were found on the bodies which might establish their identities. The corpses were taken to the Health Centre in Yığılca for further examination.

12. On 4 June 1994 a post mortem examination of Adnan Yıldırım's body was carried out by two doctors in the presence of the Yığılca public prosecutor. In the body examination report, it was noted that there was an ecchymosis measuring 1x1 cm and an abrasion on the surface of the knee cap of the second body that was later identified as that of Adnan Yıldırım. It was further recorded that cyanosis was noted on the front part of the body,

left leg upper part, left knee, genitals and the head. It was perceived that rigor mortis was fading. According to the report, when the body was touched, the skin peeled - which was most probably due to its damp condition. One bullet entrance hole on right occipital area and burnt hair caused by a close-range shot and a bullet exit hole behind the right ear (which damaged the tissue, internal tissue and bones) were noted. A wide haematoma on the left eye due to trauma caused by a blunt object, fracture of the nose, and blood from the nostrils to the moustache area were also noticed. No other signs or abnormalities were observed either on the back of the body or the genital area. There were no documents to prove identification, nor were there any valuables or money. On the surface of the right hand and wrist a further ecchymosis measuring 1 cm. in width was noted, which was probably caused when the hands were tied with a rope. The doctors further concluded that as the cause of death was clearly cerebral haemorrhage, there was no need to conduct a classical autopsy. The estimated time of death was given as 10 hours before the autopsy was carried out.

13. The bullets recovered from the bodies were sent for ballistic examination to the Central Police Forensic Laboratory, which prepared two forensic reports dated 6 and 14 June 1994 respectively. The report dated 14 June 1994 showed that the five spent bullet cases found at the scene of the killing had been discharged by three different pistols. The report concluded that comparisons of the five spent bullet cases with other bullet cases recovered from the scenes of other unknown perpetrator killings since 1985 did not reveal any similarities.

14. The bullets were then sent to the Gendarmerie Forensic Laboratory which prepared its own report on 17 June 1994. The report stated that comparisons of the five spent bullet cases found at the scene of the killing with other bullet cases recovered from the scenes of other unknown perpetrator killings did not reveal any similarities.

15. On 4 June 1994 the Yığılca public prosecutor conducted a search of the scene of the crime in the presence of İsmail Taşcan, who had found the bodies. During the examination, a person named Ms Ayşe Araç told the public prosecutor that she had heard a gun shot in the morning of 3 June 1994.

16. From 4 to 7 June 1994 the Yığılca gendarmerie took statements from twenty-six persons.

17. On 4 June 1994 the Bakırköy public prosecutor took a statement from Sebahattin Uz, the doorman at the Çınar Hotel. In his statement, Mr Uz explained that when Adnan Yıldırım, Savaş Buldan and Hacı Karay, who were regular customers at the hotel casino, left the hotel around 5 a.m. on 3 June 1994, six or seven persons, who had arrived in two cars, approached them and conducted body searches holding them against the wall. The three persons were then put into a dark-coloured Mercedes car

with registration number 34 CK 420. The doorman stated that he had overheard one of the men saying that they were police officers and that they would release the three persons as soon as their statements were taken. The Mercedes was followed by a sports car. The doorman was unable to describe any of the men, since it was dark and he had seen them from a distance.

18. Also on 4 June 1994 the Bakırköy public prosecutor took the statement of Hüseyin Kılıç, a security guard at the Çınar Hotel. He stated that seven or eight men, wearing waistcoats and carrying weapons, had approached the three men as they walked out the door. They forced the three men into the waiting cars, after having conducted body searches. This witness stated that one of the cars was a sports car.

19. On 5 June 1994 Serdar Özdemir, a taxi driver waiting at the taxi rank outside the Çınar Hotel, gave his statement to the Bakırköy public prosecutor. He stated that while waiting for customers, he had noticed three persons coming out of the casino. At that very moment, seven or eight men walked towards them, made the three persons face the wall and then searched them. Afterwards, the three were put into the waiting cars. One of the cars was a black-coloured Mercedes 300 SEL. The second car was a cherry-red Hyundai. The witness also recalled that he had seen a third car, a sports car, which was driven away by one of the men wearing a waistcoat. The witness had been unable to see the licence plates of the cars or the faces of these men.

20. Again on 5 June 1994 the Bakırköy public prosecutor took a statement from another taxi driver, Hüsnü Durmazer. He stated that as he approached the taxi rank outside the hotel, he saw some people forcing three men into a black car.

21. On 9 June 1994 the Istanbul Security Department established that the car with registration number 34 CK 420 was a burgundy coloured 1987 model BMW and that it belonged to a certain C.P., who resided in Istanbul.

22. On 18 June 1994 the first applicant, Selim Yıldırım, gave a statement to the police. He stated that his son, Adnan Yıldırım, had been abducted from the Çınar Hotel. He explained that when the Bolu Gendarmerie informed him about the three dead bodies that had been found in Yığılca, he had identified his son's body in the Bolu State Hospital. He asked the authorities to find the perpetrators of this crime.

23. The preliminary enquiries led the Bakırköy public prosecutor to issue a continuous search warrant on 23 June 1994, which was valid for ten years. The investigation file was forwarded to the Yığılca public prosecutor on 17 March 1995 since the bodies were found within his area of jurisdiction.

24. As it had not been possible to establish the identities of the perpetrators, on 31 August 1995 the Yığılca public prosecutor issued a permanent search warrant for the perpetrators of the killings, which would

remain valid for twenty years pursuant to Article 102 of the Criminal Code. The prosecutor further stated in his report that no evidence had been found during the investigation. Copies of this search warrant were distributed to the Yığılca gendarmerie and the Yığılca police as well as to the Bakırköy public prosecutor in Istanbul so that they could inform the Yığılca public prosecutor if they found the perpetrators. The prosecutor also instructed these authorities to continue carrying out meticulous searches for the perpetrators.

25. After the Susurluk incident, Hanefi Avcı, who was the Head of Intelligence Branch of Istanbul Police Headquarters at the time, gave a statement to the public prosecutor in connection with the Susurluk incident. In his statement, he referred to the killings of Savaş Buldan, Adnan Yıldırım and Hacı Karay as the work of an illegal group. He further stated that, as that information was based on secret intelligence, he did not have any documents to prove the allegations. He was, however, of the opinion that, if an investigation was carried out into certain sources, it would be possible to find documents to verify the accuracy of these allegations. He was prepared to indicate those issues in respect of which it might be possible to find documents. Among his submissions, which were recorded in a seven-page statement, Mr Avcı stated, *inter alia*, the following:

“The Gendarmerie and the National Intelligence Service (*Milli İstihbarat Teşkilatı*, hereinafter MIT) became concerned about the financial assistance being provided to the PKK from certain members of the Kurdish community, which they felt accounted for its increased activity between 1991 and 1993. They did not feel that they had enough evidence to bring charges and consequently some officers from the Police, Gendarmerie and MIT started talking about using different methods of dealing with certain members of the Kurdish community. A special team was formed for this purpose by, *inter alia*, the Chief of Police, Mehmet Ağar and the Chief of Special Forces, Korkut Eken. This team consisted both of members of the Special Forces and certain civilians, including Yaşar Öz. The activities of this special team were known to other members of the MIT and the Intelligence Branch of the Gendarmerie (the JİTEM). The kidnapping and the killing of Savaş Buldan and his friends formed part of such activities. It was established that these persons were helping the PKK financially. The way they were kidnapped and killed did not bear any resemblance to the activities of a Mafia or other underground organisation known to us. Police identity cards and policing methods were used during the kidnapping of Savaş Buldan and his friends, otherwise it would not have been possible to kidnap them and to kill them as there are checkpoints on the roads along which they would have been stopped. To go through these checkpoints could only have been possible by making use of an official title”.

On 24 March 1997 Hanefi Avcı was interrogated once again in Ankara at the request of the Yığılca public prosecutor. In his statement, he stated that he did not know how and by whom the killings were carried out.

26. On 11 March 1997 the police officers Ercan Ersoy, Oğuz Yorumaz and Ayhan Çarkın, who were in detention in connection with an investigation into the Susurluk incident, were shown to the eyewitnesses to

the abduction, Hüsnü Durmazel and Sabahhattin Uz. However, the eyewitnesses stated that they had not seen these persons before.

27. The photo-fit drawings of the three abductors made on the basis of the statements of the witnesses were compared with the photographs of Ercan Ersoy, Oğuz Yorulmaz and Ayhan Çarkın at the Criminal Police Laboratory. In the laboratory report, dated 19 March 1997, it was stated that the photo-fits did not have the necessary facial characteristics to make a positive comparison.

28. The photo-fits were also compared with the photograph of Yaşar Öz, another suspect detained in connection with the Susurluk investigation. The report of the criminal laboratory dated 27 March 1998 concluded that one of the photo-fits bore resemblances to the photograph and that the person in the photo-fit could be Yaşar Öz. Accordingly, on 20 April 1998 the Yığılca Magistrates' Court issued an arrest warrant for Yaşar Öz. On 7 May 1998 Yaşar Öz gave a statement to the public prosecutor. He stated that he was not in Istanbul between 1 April 1994 and October 1994 and that he did not know who had carried out the kidnapping on 3 June 1994. He further stated that he did not fit the description of any of the abductors as he had had a beard at the time of the kidnapping. He explained that this fact could be easily verified because he had given an interview to a local television channel in Milas at around the time of the kidnapping.

29. On 14 May 1998 the Yığılca Criminal Court rejected the appeal of Yaşar Öz against the decision ordering his arrest for the kidnapping and killing of the applicants' relative and the other two persons. On 29 May 1998 an identity parade was held in the prison where Yaşar Öz was being detained on remand. Both Sebahattin Uz, the doorman at the Çınar Hotel, and Hüsnü Durmazer, the taxi driver who had witnessed the kidnapping on 3 June 1994, stated that Yaşar Öz, who was included in a line-up of ten persons, was not one of the men who had carried out the kidnapping. On 14 July 1998 Ali Osman Sivri was questioned by the public prosecutor. Mr Sivri was a watchman working at the Karadere Forest, which was on the road to the Yedigöller National Park. He referred to his previous statement which he had given on 7 June 1994 and stated that he had only seen a red car stop outside his office in the forest at around 10.30 a.m. on 3 June 1994. One person had left the car and filled a container with water from a fountain. When he was shown pictures of Yaşar Öz, the witness stated that the person he had seen did not look like Yaşar Öz.

30. On 24 July 1998 the Yığılca public prosecutor took a decision of non-jurisdiction in respect of Yaşar Öz. The prosecutor sent the investigation file to the Ankara State Security Court which, in the prosecutor's opinion, was the competent court to prosecute Mr Öz.

31. In the meantime, on 29 September 1998, the Istanbul Security Department wrote to the management of the Çınar Hotel Casino and requested that the video recordings of the security camera for the night of

3 June 1994 be transmitted to them. In reply, on 2 October 1998 the casino management informed the security department that the video recordings were kept for one month and then erased. They further stated that as the casino was closed as of 12 February 1998, all video recordings were deleted.

32. On 7 October 1998 the public prosecutor attached to the Ankara State Security took a decision of non-jurisdiction in respect of Yaşar Öz. The prosecutor concluded that there was insufficient evidence to suggest that the killings had been carried out by or on behalf of an illegal organisation. He therefore concluded that the State Security Court did not have jurisdiction in this matter. The file was sent to the Düzce public prosecutor, who later transferred the file to the Yiğilca public prosecutor.

33. On 2 November 1998 the Yiğilca public prosecutor, noting that Yaşar Öz had been arrested and put on trial for the killings, decided to continue the search for the other perpetrators. The prosecutor also asked the Düzce public prosecutor to charge Yaşar Öz, who, according to the evidence gathered by the Yiğilca public prosecutor, was one of the perpetrators of the kidnappings and subsequent killings.

34. On 16 November 1998 the Düzce public prosecutor filed a bill of indictment with the Düzce Assize Court. The prosecutor alleged that the evidence justified the prosecution of Yaşar Öz for the murder of the applicant's brother and his two friends.

35. During the proceedings before the Düzce Assize Court, the court took into consideration the indictment which had been submitted to the Istanbul State Security Court on 29 April 1997 and which dealt with Yaşar Öz's role in the Susurluk affair. The Düzce Assize Court noted that, according to this indictment, Mr Öz was a notorious international drugs trafficker who held three official service passports, two of which were in the names of Tarık Ümit and Eşref Çuğdar.

36. The Düzce Assize Court finally noted that Yaşar Öz's name had been implicated in the Susurluk Report which had concluded that the fight against terrorism had gained momentum in 1993 when Mehmet Açar was appointed head of the General Police Headquarters in Ankara. According to this Report, there had been a number of unknown perpetrator murders in the area between Izmit, Adapazarı and Bolu after the then prime minister declared publicly that she had in her possession a list containing the names of those businessmen who were supporting the PKK. The Report further stated that the killings of Savaş Buldan, Behçet Cantürk, Vedat Aydın, Medet Serhat Yöş and Metin Can formed part of such activities.

37. Recalling that Savaş Buldan, Adnan Yıldırım and Hacı Karay had been kidnapped by seven persons and then killed in the area between Izmit, Adapazarı and Bolu, the Düzce Assize Court held that these killings resembled the above-mentioned killings in the same area. Considering that the defendant was already facing prosecution before another court for

membership of an organisation which was allegedly responsible for killing persons who had much in common with the deceased persons in the present case and as there was no other evidence to suggest that these killings were carried out for personal reasons, the Düzce Assize Court concluded on 24 November 1998 that it was precluded from examining the merits of the case for reasons of jurisdiction.

38. The case file was transferred to the Ankara State Security Court which had jurisdiction to deal with cases involving organised crime. On 16 December 1998 the court concluded that it too did not have jurisdiction to deal with the case. It held that, according to the Düzce public prosecutor's indictment of 16 November 1998, Yaşar Öz was charged with multiple murders. The indictment had made no reference to organised crime and the court did not have jurisdiction to examine this allegation *ex officio*. The case file was sent to the Court of Cassation in order to resolve the dispute over jurisdiction.

39. On 25 February 1999 the Fifth Criminal Chamber of the Court of Cassation, upholding the decision of the Ankara State Security Court, ruled that the Düzce Assize Court had jurisdiction to deal with the case.

40. Seven hearings were held before the Düzce Assize Court in the course of the criminal proceedings against Yaşar Öz. The applicants joined the proceedings as a civil party. Yaşar Öz told the court that there was no evidence to link him to the killings and that the only reason for putting him on trial was to prove to the European courts that the killings were being investigated. Nineteen eyewitnesses, who had either seen the three men being put into the cars outside the hotel in Istanbul or had seen the three cars near the spot where these persons were killed, stated during the hearings that they had never seen Yaşar Öz before.

41. On 18 November 1999 the Düzce Assize Court acquitted Yaşar Öz of the charge of multiple murders due to lack of evidence. On 25 May 2001 the Court of Cassation upheld this decision.

B. Documents submitted by the parties

42. The parties submitted various documents with a view to substantiating their claims. These documents, in so far as they are relevant, may be listed as follows.

1. Official documents

(a) Documents in respect of domestic investigation

- (i) Scene of incident report, dated 3 June 1994, prepared by the District Gendarme Commander.

- (ii) Second scene of incident report, dated 4 June 1994, prepared by the District Gendarmerie Commander.
- (iii) Sketch of the scene of incident drawn by District Gendarmerie Commander, dated 4 June 1994.
- (iv) Decision of the Yığılca public prosecutor for a continuous search warrant, dated 31 August 1995.
- (v) A further scene of incident report, dated 4 June 1996, prepared by the Yığılca public prosecutor.
- (vi) Further statement of Ayşe Araç, dated 4 June 1996, who allegedly heard gun shots on the day of the incident.
- (vii) A further sketch of incident, dated 4 June 1996, prepared by the Yığılca public prosecutor's office.
- (viii) An expert report, dated 6 June 1996, stating that from the point where the witness, Ayşe Araç, had been standing on the day of the incident it was probable that she might have heard gun shots.
- (ix) The letter of the Ministry of Justice International Law and Foreign Affairs Directorate, dated 3 June 1996, to the Düzce public prosecutor's office.
- (x) Periodic follow-up reports (thirty one in all) of gendarmes between 1998 and 2004.
- (xi) Bakırköy public prosecutor's decision to transfer the case file to Yığılca public prosecutor's office, dated 17 March 1995.
- (xii) Report of the Istanbul Security Department to the Yeşilköy police, dated 15 November 1996.
- (xiii) Report of identity parade, in which it is indicated that Ercan Ersoy, Oğuz Yorulmaz and Ayhan Çarkın were shown to two eyewitnesses to the kidnapping, Mr Sebahattin Uz and Hüsnü Durmazel, and that no similarities with the perpetrators had been noted.
- (xiv) Letter of Çınar Hotel Casino Management to the Istanbul Security Directorate, dated 2 October 1998.
- (xv) Decision of the Yığılca public prosecutor to continue searching for the perpetrators of the killings, dated 2 November 1998.

(b) Witness testimonies

- (i) Statements of Sabahattin Uz, doorman of the Çınar Hotel, dated 4 June 1994 and 10 March 1997 respectively, taken by the Bakırköy public prosecutor's office.
- (ii) Statement of Hüseyin Kılıç, security guard of the Çınar hotel, dated 4 June 1994, taken by the Bakırköy public prosecutor's office.
- (iii) Statement of Serdar Özdemir, dated 5 June 1994, taken by the Bakırköy public prosecutor's office.
- (iv) Statements of Hüsnü Durmazel, dated 5 June 1994 and 10 March 1997 respectively, taken by the Bakırköy public prosecutor's office.

- (v) Statement of İsmail Taşcan, a villager, dated 4 June 1994, taken by the Yığılca District Gendarmerie.
- (vi) Statements of Ayşe Araç, a villager, dated 6 June 1994 and 14 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (vii) Statement of Bengül Ünsal, a student, dated 4 June 1994, taken by Yığılca District Gendarmerie.
- (viii) Statement of Nuriye Cesur, a student, dated 4 June 1994, taken by the Yığılca District Gendarmerie.
- (ix) Statements of Ayşe Uzun, a villager, dated 4 June 1994 and 6 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (x) Statement of Hazım Yıldız, driver of the school bus, dated 4 June 1994, taken by the Yığılca District Gendarmerie.
- (xi) Statements of Mehmet Baş, a villager, dated 4 June 1994 and 14 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xii) Statements of Seyfettin Çakmak, a villager, dated 4 June 1994 and 14 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xiii) Statement of Fevzi Aydın Aslan, a villager, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xiv) Statement of Bayram Yılmaz, a villager, dated 4 June 1994, taken by the Yığılca District Gendarmerie.
- (xv) Statements of İrfan Kurşunlu, a villager, dated 4 June 1994 and 4 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xvi) Statements of Hasan Baş, a villager, dated 4 June 1994 and 6 June 1994 taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xvii) Statements of Mehmet Beşir Erdoğan, a villager, dated 4 June 1994 and 22 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xviii) Statement of Mehmet Yıldız, a villager, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xix) Statements of Şevket Öztürk, a villager, dated 6 June 1994 and 12 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xx) Statements of Yunus Öztürk, dated 6 June 1994 and 14 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xxi) Statement of Ruhi Aldal, who works at the Yedigöller national park, dated 6 June 1994, taken by the Yığılca District Gendarmerie.

- (xxii) Statement of Halit Sivri, who works at the Yedigöller national park, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxiii) Statement of Fikret Gürez, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxiv) Statement of Hasan Salcı, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxv) Statement of Kamil Çolak, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxvi) Statements of Muzaffer Yıldız, dated 6 June 1994 and 12 June 1996, taken by the Yığılca District Gendarmerie and the prosecutor.
- (xxvii) Statement of Mehmet Yıldız, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxviii) Statement of İsmail Topcan, dated 6 June 1994, taken by the Yığılca District Gendarmerie.
- (xxix) Statement of İlyas Topuz, dated 7 June 1994, taken by the Yığılca District Gendarmerie.
- (xxx) Statements of Hasan Topuz, dated 7 June 1994 and 21 June 1996, taken by the Yığılca Gendarmerie and the public prosecutor respectively.
- (xxxi) Statement of Şükrü Bayram Yılmaz, dated 7 June 1994, taken by the Yığılca District Gendarmerie.
- (xxxii) Statement of Fevzi Aydın, dated 7 June 1994, taken by the Yığılca District Gendarmerie.
- (xxxiii) Statement of Ali Osman Sivri, dated 7 June 1994, taken by the Yığılca District Gendarmerie.
- (xxxiv) Statements of Bahar Yıldırım, dated 7 June 1994 and 12 June 1996, taken by the Yığılca District Gendarmerie and the public prosecutor respectively.
- (xxxv) Statement of Bengü Çelebi, dated 6 June 1996, taken by the Yığılca District Gendarmerie.
- (xxxvi) Statement of Nihat Buldan, the brother of Savaş Buldan, dated 21 June 1994, taken by the Yığılca District Gendarmerie.
- (xxxvii) Statement of Arif Karay, the brother of Hacı Karay, dated 18 June 1994, taken by the police.
- (xxxviii) Statement of Selim Yıldırım, dated 18 June 1994, taken by the police.

(c) Forensic documents

- (i) Body examination report, dated 4 June 1994.
- (ii) Photo-fits of three of the perpetrators.
- (iii) Ballistics examination reports, dated 6 and 14 June 1994, prepared by Central Police Forensic Laboratory.

- (iv) Ballistics report dated 17 June 1994, prepared by Gendarmerie Forensic Laboratory.
- (v) Ballistics examination report dated 10 January 1995, prepared by the Central Police Forensic Laboratory.
- (vi) Ballistics examination report of the Gendarmerie Forensic Laboratory, dated 15 January 1997.
- (vii) Report of Central Police Laboratory dated 19 March 1997, comparing the photo-fits of the perpetrators to Ercan Ersoy, Oguz Yorulmaz and Ayhan Çarkın.

(d) Documents concerning the investigation following the Susurluk incident

- (i) Statement of Korkut Eken, Head of Special Operations team, dated 11 March 1997.
- (ii) Statements of Hanefi Avcı, dated 7 February 1997, 24 March 1997, and 20 April 1998 concerning the Susurluk incident.
- (iii) Report of the Central Police Laboratory indicating that the photo-fits of the perpetrators had similarities with the photo of Yaşar Öz.
- (iv) Statement of Yaşar Öz, dated 7 May 1998.
- (v) Report of identity parade, dated 29 May 1995, which indicates that although Yaşar Öz had been shown to two eye witnesses to the kidnapping, Mr Sabahattin Uz and Hüsnü Durmazer, the witnesses concluded that they had not seen Yaşar Öz before.
- (vi) Decision of non-jurisdiction, delivered by the Yığılca public prosecutor concerning the prosecution of Yaşar Öz, dated 7 March 1998. The file was transferred to Ankara State Security Court.
- (vii) Non-jurisdiction decision of the Ankara State Security Court, dated 7 October 1998.
- (viii) Non-jurisdiction decision of Düzce Assize Court, dated 24 November 1998, and transfer of case file to the Ankara State Security Court.
- (ix) Non-jurisdiction decision of Ankara State Security Court, dated 16 December 1998. The case was sent to the Court of Cassation to settle the dispute on jurisdiction.
- (x) Decision of the Court of Cassation, dated 25 February 1999, settling the dispute over jurisdiction between the Ankara State Security Court and the Düzce Assize Court. The case file was sent to Düzce Assize Court.
- (xi) Minutes of the criminal proceedings against Yaşar Öz before the Düzce Assize Court.
- (xii) Decision of the Düzce Assize Court, dated 18 November 1999, by which Yaşar Öz was acquitted of the charges against him due to lack of evidence.
- (xiii) Judgment of the Court of Cassation, dated 25 May 2001, upholding the decision of the Düzce Assize Court dated 18 November 1999.

2. *Unofficial documents*

43. The applicants submitted a copy of the so-called “Susurluk Report”, which was produced at the request of the Prime Minister by Mr Kutlu Savaş, Vice-President of the Board of Inspectors within the Prime Minister’s Office. After receiving the report in January 1998, the Prime Minister made it available to the public, although eleven pages and certain annexes were withheld.

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

45. 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. In the Report, reference is made to the killing of the applicant’s brother:

“All the relevant State bodies were aware of these activities and operations. ... When the characteristics of the individuals killed in the operations in question are examined, the difference between those Kurdish supporters who were killed in the region in which a state of emergency had been declared and those who were not lay in the financial strength the latter represented in economic terms. These factors also operated in the murder of Savaş Buldan, a smuggler and pro-PKK activist. (page 74).”

46. The Report concludes with numerous recommendations, such as improving co-ordination and communication between the different branches of the security, police and intelligence departments; identifying and dismissing security force personnel implicated in illegal activities; limiting the use of “confessors”; reducing the number of village guards; terminating the use of the Special Operations Bureau outside the south-east region and incorporating it into the police force outside that area; opening investigations into various incidents; taking steps to suppress gang and drug-smuggling activities; and recommending that the results of the Grand National Assembly Susurluk inquiry be forwarded to the appropriate authorities for the relevant proceedings to be undertaken.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. For the relevant domestic law and background information on the Susurluk Report, the Court refers to the judgments of *Ülkü Ekinçi v. Turkey* (no. 27602/95, §§ 111-18, 16 July 2002) and *Tepe v. Turkey* (no. 27244/95, §§ 115-22, 9 May 2003).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

48. The Government argued that the applicants have failed to exhaust the domestic remedies available to them, within the meaning of Article 35 § 1 of the Convention. In this connection, they maintained that the investigation concerning Adnan Yıldırım's death was still pending.

49. The Court reiterates that, in its decision of 1 December 2005, it considered that whether the criminal investigation at issue could be regarded as effective under the Convention was closely linked to the substance of the applicants' complaints 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 applicants' complaint under Article 2 of the Convention.

50. Consequently, the Court joins the preliminary objection concerning the effectiveness of the criminal investigation to the merits of the applicants' complaint under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

51. The applicants alleged that Adnan Yıldırım had been tortured and killed following his abduction by undercover agents of the State or by persons acting under their express or implicit instructions. They also complained that the authorities had failed to carry out an effective and adequate investigation into his killing. The applicants relied on Article 2 of the Convention, which provides:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

A. The parties' submissions

1. The applicants

52. The applicants claimed that there was sufficient evidence to prove that Adnan Yıldırım was killed by agents of the State and that the State had failed to protect his right to life and to carry out an investigation to find the perpetrators. The applicants made extensive references to the Susurluk Report which concluded that Adnan Yıldırım and his friend Savaş Buldan had been killed by agents of the State. According to the applicants, the Susurluk Report and the statements of Mr Hanefi Avcı, former head of the

intelligence service of Istanbul Police Headquarters, made it clear that the killing had taken place with the full knowledge of the Turkish authorities.

53. As to the unsatisfactory nature of the investigation, the applicants submitted that the authorities excluded the possibility that the killings might have been carried out by the police or other individuals acting on behalf of or with the approval of the State. In the applicants' opinion, the investigation carried out by the authorities was a mere formality intended to impress the Strasbourg organs.

2. *The Government*

54. The Government disputed these allegations and denied that Adnan Yıldırım had been killed by undercover agents of the State.

55. As regards the requirement to carry out an effective investigation, the Government maintained that the investigation carried out by the authorities had met the requirements of the Convention.

B. The Court's assessment

1. *The death of Adnan Yıldırım*

56. The Court recalls that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47).

57. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002).

58. The Court will examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular the documents lodged by the Government with respect to the judicial investigations carried out in the case as well as the parties' written observations.

59. The Court is sensitive to the subsidiary nature of its role and 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 (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII) even if certain domestic proceedings and investigations have already taken place.

60. The Court observes in the first place that this case arises out of the same facts as set out in the *Buldan v. Turkey* judgment (no. 28298/95, 20 April 2004).

61. The Court notes that the applicants allege that Adnan Yıldırım was deliberately killed by agents of the State. In this respect, they rely on the Susurluk Report, which refers to the killing of Savaş Buldan. In this Report, it is stated that it had been a State strategy to kill wealthy Kurdish people who supported the PKK, an organisation proscribed under domestic law. It is further revealed that these factors were also relevant in the murder of Adnan Yıldırım. Furthermore, the Court observes that in the investigation conducted following the publication of the Report, Mr Hanefi Avcı, former head of Istanbul and Diyarbakır Police Intelligence, deposed before the public prosecutor that a special team made up of State officials and civilians had been established and that the kidnapping and assassination of Savaş Buldan and his friends had been one of the actions carried out by this team.

62. In view of the above, the Court concludes that the applicants' allegation that Adnan Yıldırım was killed by or at least with the connivance of State agents cannot therefore be discarded as *prima facie* untenable. However, it recalls that the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161, *Ülkü Ekinci*, cited above, §§ 141-42, and *Buldan*, cited above, § 78).

63. The Court observes that there is no indication in the case-file that Adnan Yıldırım had been threatened by anyone, or had reason to believe

that his life was at risk prior to his death. It further recalls that there were no eyewitnesses to the killing.

64. Moreover, in respect of the applicants' reliance on the Susurluk Report, it recalls that in its earlier judgments (*Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, §§ 95-96, and *Özgür Gündem v. Turkey*, no. 23144/93, § 40, ECHR 2000-III), it held that the Susurluk Report may not be relied on for establishing to the required standard of proof that State officials were implicated in any particular incident. It can only be considered that the Report, which was drawn up at the request of the Prime Minister and which he decided should be made public, must be regarded as a serious attempt to provide information on and analyse problems associated with the fight against terrorism from a general perspective and to recommend preventive and investigative measures.

65. In the light of the foregoing, the Court concludes that notwithstanding the fact that the name Savaş Buldan was mentioned in the Report, the actual circumstances in which the deceased died remain a matter of speculation and assumption. Accordingly, there is an insufficient evidentiary basis on which to conclude that Adnan Yıldırım was, beyond reasonable doubt, killed by or with the connivance of State agents in the circumstances alleged by the applicants.

66. Accordingly, there has been no violation of Article 2 on that account.

2. *The alleged inadequacy of the investigation*

67. 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 brother gave rise *ipso facto* to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death (see *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 (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, and *Ülkü Ekinçi*, cited above, § 144).

68. There is also a requirement of promptness and reasonable expedition implicit in this context (*Yaşa*, cited above, §§ 102-04, *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV, *Tanrıkulu*, cited above, § 109, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force or a disappearance may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, in general, *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, and *Avşar*, cited above, §§ 390-95).

69. Turning to the particular circumstances of the case, the Court notes that an investigation was indeed carried out into the kidnapping and subsequent death of the applicants' relative. However, there were striking omissions in the conduct of the investigation.

70. It observes in this connection that the applicants had made known their concerns to the domestic authorities on 4 June 1994 that undercover agents of the State might have been involved in the killing of Adnan Yıldırım. For the Court, the applicants' concerns should have led the authorities to broaden the scope of the investigation. However, it is apparent from the case file that the authorities did not make any serious attempt to broaden the investigation so as to investigate the possible involvement of State agents in the killing. It notes that a link between the killing of Adnan Yıldırım and the special team mentioned in the Susurluk Report was in fact established in the decision of the Düzce Assize Court dated 24 November 1998. In reaching this decision, the Düzce Assize Court stated that there was no evidence to suggest that the killing of Adnan Yıldırım and his friends had been carried out for personal motives. However, the Düzce Assize Court ruled that it had no jurisdiction in the matter and transferred the case file to the State Security Court (paragraphs 37-38 above). As can be observed from the facts of the case, a protracted dispute then ensued over which court had jurisdiction to prosecute Yaşar Öz for the killing of Adnan Yıldırım. Ultimately, the Fifth Criminal Chamber of the Court of Cassation found that the charges laid against Yaşar Öz were not related to organised crime and remitted the case to the Düzce Assize Court, which acquitted Yaşar Öz for lack of evidence. It can only be concluded that in the course of these proceedings the link identified between the killing of Adnan Yıldırım and the activities of the special team was regrettably ignored. The Court is also struck by the fact that it would appear that no investigation was carried out in order to determine whether the documents referred to by Mr Hanefi Avcı in his statement dated 7 February 1997 in fact existed (paragraph 25 above). It recalls in this connection that, according to Mr Avcı, if an investigation were to be conducted into certain sources it would be possible

to find documents to verify the accuracy of the allegation that Adnan Yıldırım and his friends had been killed by an illegal group.

71. It should further be recalled that for an investigation to be effective there must also be a requirement of promptness and reasonable expedition. The Court notes in this respect that there was no real co-ordination between the different public prosecutors dealing with the case. In this connection, it refers to the fact that the Bakırköy public prosecutor's office only transferred the case file to the Yiğilca public prosecutor on 17 March 1995, almost nine months after the incident (paragraph 23 above). However, this case file contained crucial information including eyewitness testimonies to the abduction of the applicants' relative. Such information could have been very useful to the Yiğilca public prosecutor in the early stages of his investigation. Furthermore, the video recordings of the security cameras outside the Çınar Hotel were requested only on 29 September 1998, almost four years after the incident. As these recordings were kept for one month and then erased, crucial evidence that would have been of great importance to the pending investigation could not be obtained (paragraph 31 above).

72. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of Adnan Yıldırım. It concludes therefore that there has been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

73. The applicants further alleged that there has been a violation of Article 3 of the Convention in respect of his brother. Article 3 reads:

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

74. The Government submitted that the applicants' allegation was untrue and unsubstantiated.

75. The Court recalls its finding above that it has not been established that any State agent was implicated, directly or indirectly, in the killing of the applicants' relative. There is thus no factual basis on which to conclude that there has been a violation of this provision as alleged by the applicant.

76. In this respect, the Court finds no violation of Article 3 of the Convention in respect of the applicants' relative, Adnan Yıldırım.

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

77. The applicants maintained that the investigation conducted by the authorities had been insufficient to meet the Convention standards. In this

respect, they invoked Article 6 § 1 of the Convention which provides, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

and Article 13 of the Convention, which provides:

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

78. The Government contended that the killing of Adnan Yıldırım had been adequately investigated.

A. Article 6 § 1 of the Convention

79. The Court observes that the applicants' grievance under Article 6 § 1 of the Convention is inextricably bound up with their more general complaint concerning the manner in which the investigating authorities treated their complaints concerning Adnan Yıldırım's death and the repercussions which this had on their access to effective remedies. It accordingly finds it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention (see amongst other authorities, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports 1998-I*, p. 329, § 105).

80. The Court therefore finds it unnecessary to determine whether there has been a violation of Article 6 § 1.

B. Article 13 of the Convention

81. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of 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 its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Tekdağ v. Turkey*, no. 27699/95, §95, 15 January 2004).

82. Given the fundamental importance of the right to the 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, including effective access for the complainant to the investigation procedure (see *Tekdağ*, cited above, § 96).

83. The Court reiterates that it has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of Adnan Yıldırım. However, according to its established case-law, that does not preclude the complaint in relation to Article 2 from being “arguable” for the purposes of Article 13 (see *Orhan*, cited above, § 386, and *Tekdağ*, cited above, § 97).

84. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the killing of the applicants' relative. For the reasons set out above (paragraphs 70-72 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 (see *Buldan*, cited above, § 105, *Tanrıkulu*, cited above, § 119, and *Tekdağ*, cited above, § 98). The Court finds therefore that the applicants have been denied an effective remedy in respect of the death of his brother and thereby access to any other available remedies at his disposal, including a claim for compensation.

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

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

86. The applicants complained that Adnan Yıldırım had been killed because of his Kurdish origin, in violation of Article 14 of the Convention, which provides:

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

87. The Government did not address this issue beyond denying the factual basis of the complaint.

88. The Court observes refers to its findings of violations of Articles 2 and 13 of the Convention above and does not consider it necessary to examine the applicants' complaints separately under Article 14 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. Under the heading of pecuniary damage, the applicants sought compensation for the loss of earnings of the deceased Adnan Yıldırım, who had been a businessman. In this respect, they requested a total amount of 352,796.80 New Turkish liras (YTL), the equivalent of 185,869 euros (EUR), for the widow and five children of Adnan Yıldırım.

91. The Government contested the applicants' claims.

92. The Court does not find any casual connection between the matter found to constitute a violation of the Convention – the absence of an effective investigation – and the pecuniary damage alleged by the applicants. In accordance with the principles in its case-law, it rejects the entirety of the applicants' claims under this heading (see *Buldan*, cited above, §113, *Çakıcı*, cited above, § 127, and *Önen v. Turkey*, no. 22876/93, § 115, 14 May 2002).

B. Non-pecuniary damage

93. Without specifying any amount, the applicants requested non-pecuniary compensation for their suffering as a result of Adnan Yıldırım's death.

94. The Court observes that the authorities' failure to investigate effectively the death of Adnan Yıldırım must have caused considerable anguish and distress to his father, wife, and children. Accordingly, deciding on an equitable basis, the Court awards EUR 20,000 to the applicants jointly in respect of non-pecuniary damage.

B. Costs and expenses

95. The applicants claimed a total of YTL 563.30 (approximately EUR 298) for the costs and expenses incurred in bringing the application. This sum, evidenced by relevant receipts, includes postage, translation and expert's report expenses. Referring to the Istanbul Bar Association's recommended minimum fees list for 2006, the applicants further requested YTL 46,900 (approximately EUR 24,800) as lawyer's fee.

96. The Government contested the applicants' claims.

97. The Court, deciding on an equitable basis and having regard to the details of the claims submitted, awards the applicants jointly a global sum of EUR 6,000 in respect of fees and expenses.

C. Default interest

98. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies and *dismisses* it;
2. *Holds* that there has been no violation of Article 2 of the Convention as regards the applicants' allegation that their relative was killed in circumstances engaging the responsibility of agents of the respondent State;
3. *Holds* 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 applicants' relative;
4. *Holds* that there has been no violation of Article 3 of the Convention;
5. *Holds* that it is not necessary to consider the applicants' complaints under Article 6 § 1 of the Convention;
6. *Holds* that there has been a violation of Article 13 of the Convention;
7. *Holds* that it is unnecessary to examine separately the applicants' complaint under Article 14 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into New Turkish liras at the rate applicable at the date of the settlement and exempt from all taxes and duties:

- (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary compensation;
- (ii) EUR 6,000 (six thousand euros) in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President