



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

FOURTH SECTION

**CASE OF ENZİLE ÖZDEMİR v. TURKEY**

*(Application no. 54169/00)*

JUDGMENT

STRASBOURG

8 January 2008

**FINAL**

*08/04/2008*

*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 Enzile Özdemir v. Turkey,**

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

Nicolas Bratza, *President*,  
Josep Casadevall,  
Giovanni Bonello,  
Rıza Türmen,  
Kristaq Traja,  
Stanislav Pavlovski,  
Lech Garlicki, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 54169/00) 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 a Turkish national, Mrs Enzile Özdemir (“the applicant”), on 7 September 1999.

2. The applicant, who had been granted legal aid, was represented by Ms R. Yalçındağ, Ms A. Demirtaş and Mr S. Demirtaş, lawyers practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, that her husband Mehmet Özdemir had been abducted and killed by agents of the State and that the national authorities had failed to conduct an adequate and effective investigation. She invoked Articles 2, 3, 5, 6, 13 and 14 of the Convention.

4. On 11 March 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1953 and lives in the village of Bağıvar, Diyarbakır.

### **A. Background**

6. The applicant and her husband, Mehmet Özdemir lived in the village of Bağıvar, Diyarbakır. They have eight children. The applicant submits that her husband was a member of HADEP (People's Democracy Party) at the material time.

7. In 1995 the Diyarbakır State Security Court tried and acquitted Mehmet Özdemir of the charges of aiding and abetting an illegal armed organisation, namely the PKK (The Kurdistan Workers' Party).

8. On 5 August 1997 Mehmet Özdemir was arrested and taken into police custody where he remained until he was released pending trial on 9 August 1997. Criminal proceedings were initiated against him on the ground that he was aiding and abetting an illegal armed organisation. These proceedings ended with Mehmet Özdemir's acquittal on 23 January 1998.

9. The applicant alleged that, prior to his disappearance, her husband had been harassed by security forces. She claimed in this connection that he had been arrested a few times and subjected to severe torture.

10. The applicant also alleged that her house had been raided by security forces about twenty days prior to her husband's disappearance. She maintained that after this event her husband had left home to stay with his relatives in Diyarbakır for fifteen days. However, she later learned that during this time her husband had once again been arrested, interrogated and subsequently released. The applicant stated that her husband had told her that he had been instructed by a police officer to report his whereabouts every day. She alleged that her husband had phoned the number given to him twice but that no one had responded.

### **B. Disappearance of the applicant's husband**

11. The applicant did not witness the abduction of her husband. She was informed by an eye-witness who told her that, on 26 December 1997, two armed men, dressed in civilian clothes, with walkie-talkies had entered the coffee house where Mehmet Özdemir was sitting with his friends and told him to come with them. They had taken him outside to a white taxi. Mehmet Özdemir had not initially resisted the men, but when he saw a third person sitting in the back of the car, he had started to struggle and had been eventually forced into the car.

12. The applicant stated that, since the eye-witness was illiterate, he had been unable to write down the registration number of the taxi.

### **C. Investigation into the disappearance of Mehmet Özdemir**

13. On 29 December 1997 the applicant lodged a petition with the public prosecutor's office at the Diyarbakır State Security Court requesting

information as to the whereabouts of her husband who, she stated, had been arrested by policemen in civilian clothes at a coffee house. On the same day, this petition was stamped. This stamp read “taken into custody by Security Directorate”. However, the stamp bears no signature of a public official.

14. On 7 January 1998 the applicant lodged a petition with the disappearance bureau of the Diyarbakır public prosecutor's office. In this petition she submitted, in particular, that her husband had been arrested on 26 December 1997, at around 3.30 p.m., by four armed policemen, in civilian clothes, at a park near the Diyarbakır vegetable market. She further stated that her petition of 29 December 1997 had been stamped stating that her husband was in custody, but that later she had been informed orally that her petition was stamped by mistake and that her husband was not in custody.

15. The Diyarbakır public prosecutor (“the prosecutor”) commenced an investigation into the disappearance of Mehmet Özdemir. The prosecutor requested the Diyarbakır Security Directorate to inform him whether Mehmet Özdemir had been taken into custody as alleged. The Government submitted documents of various dates in 1998 issued by various branches of the Security Directorate, the prosecutor and the gendarmerie command in which it is stated that Mehmet Özdemir was not taken into custody.

16. On 12 January 1998 the Security Directorate, upon the applicant's petition, informed her that her husband was not in custody.

17. In the meantime, on 13 January 1998, the applicant lodged an application with the Human Rights Commission of the Turkish National Assembly. In this petition, the applicant submitted that her husband had been arrested by four armed policemen with walkie-talkies while he was sitting at a coffee house in Çiftkapı.

18. On 26 February 1998 the Security Directorate, upon the applicant's petition, reiterated that her husband was not in custody.

19. On 20 April 1998 the applicant was shown an unidentified body. She confirmed that the corpse was not her husband.

20. On 20 April 1998 the Diyarbakır Deputy Mayor informed Mehmet Özdemir's sister, upon her petition of 17 April 1998 requesting information, that they had no information as to the whereabouts of her brother and that the investigation into his disappearance was ongoing.

21. On 23 June 1998 the applicant lodged a petition with the Diyarbakır public prosecutor's office requesting that criminal proceedings be initiated against the security force officials on duty on 26 December 1997 at the Anti-Terrorism branch of the Diyarbakır Security Directorate. In this petition, she stated, *inter alia*, that her husband had been arrested while he was sitting at a coffee house with his friends near the Şehitlik vegetable market. The applicant submitted that she was certain her husband was taken into custody by police from the Anti-Terrorism branch of the Security Directorate because he had been arrested at least 7-8 times before and had

been threatened and tortured. Finally, she maintained that she could not provide the names of eye-witnesses as they were afraid to talk.

22. On the same day, the applicant was interviewed by the prosecutor. She stated, *inter alia*, that she had not heard from her husband for the past six months and that two people who were afraid to give their names had claimed to have seen her husband in custody. The applicant pointed out that she had initially been told that her husband was in custody, a fact which was later denied by the authorities.

23. On the same day, the prosecutor requested the Diyarbakır Security Directorate to inform him whether Mehmet Özdemir had been taken into custody and if so, the date(s) of his detention.

24. On 4 January 1999<sup>1</sup> the applicant was interviewed again by the prosecutor. She stated that a person whom she did not know had approached her and informed her that her husband had been taken into custody by JITEM (Gendarmerie Anti-Terror Intelligence Branch).

25. On 27 May 1999 the prosecutor interviewed Mehmet Özdemir's sister.

26. On 25 June 1999 the prosecutor informed the Diyarbakır prosecutor's office that the search for Mehmet Özdemir was ongoing and that he had requested the Security Directorate to inform him of any developments in the case every three months. The Government submitted documents of various dates in 1999 issued by various branches of the Security Directorate, the prosecutor and the gendarmerie command in which it is stated that Mehmet Özdemir was not taken into custody.

27. On 12 August 1999 the Human Rights Commission of the Turkish National Assembly informed the applicant that following their investigation they had found that her husband had been released from custody on 9 August 1997 and that since that time he had not been taken into custody by the Diyarbakır Security Directorate.

28. On 27 November 2000 the prosecutor requested the Diyarbakır Security Directorate to inform him of any developments in the case every three months. The Government submitted numerous documents issued by various branches of the Diyarbakır Security Directorate during the years 2000-2002 in this connection. In these documents, some of which are accompanied by copies of relevant custodial records, it is maintained that Mehmet Özdemir was not taken into custody as alleged and that his name does not appear in the custodial records of that date.

29. On 12 May 2003 the prosecutor interviewed the applicant. She reiterated her earlier statements and submitted that she had not heard from her husband since his disappearance. In particular, the applicant stated that

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<sup>1</sup> The original document is dated 4 January 1998. The Court considers this to be a clerical error.

she had not witnessed the arrest but had been told about it by people who were at the Esnaflar coffee house.

30. On 18 November 2003 the prosecutor ordered that the search for the alleged abductors of Mehmet Özdemir be continued until the end of the statutory time limit for that crime (26 December 2007) and that he be informed of any developments in the case every three months. The Government submitted numerous items of correspondence between the various branches of the Diyarbakır Security Directorate and the prosecutor in this connection.

31. On 19 December 2003 the prosecutor decided not to open any criminal proceedings regarding Mehmet Özdemir's abduction. The applicant objected. On 1 September 2004 the Siverek Assize Court dismissed the applicant's objections on the ground that there was no evidence that anyone was responsible for the disappearance of her husband. This decision was served on the applicant on 16 December 2004.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Tanış and Others v. Turkey*, no. 65899/01, §§ 154-157, ECHR 2005-VIII, and *Tepe v. Turkey*, no. 27244/95, §§ 115-122, 9 May 2003.

## THE LAW

### I. ADMISSIBILITY

33. The Government maintained, firstly, that the applicant did not have sufficient legal interest to bring complaints on behalf of her husband under Articles 5, 6 and 14 of the Convention. Secondly, they asked the Court to dismiss the application as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. In this connection, the Government argued that the applicant could have sought reparation for the harm allegedly caused by the agents of the State by instituting an action in the civil or administrative courts. They further pointed out that the applicant had lodged her application with the Court before awaiting the results of the criminal investigation. Finally, the Government maintained that the applicant had failed to comply with the six-month rule. In this regard, they submitted that, since the applicant complained of a lack of an effective domestic remedy, she should have

lodged her complaints with the Court within six months from the date of the disappearance of her husband.

34. The applicant disputed the Government's arguments.

35. As regards the first limb of the Government's objections, the Court considers that the applicant, as the wife of Mehmet Özdemir, can legitimately claim to be a victim within the meaning of Article 34 of the Convention as regards the disappearance of her husband. In this connection, the Court finds that since the applicant's complaints under Articles 5, 6 and 14 of the Convention are intrinsically linked to her complaint under Article 2 of the Convention pertaining to the disappearance of her husband, the applicant can also claim to be a victim under these provisions (see *Ekinci v. Turkey* (dec.), no. 27602/95, 8 June 1999, and, *a contrario*, *Biç and Others v. Turkey*, no. 55955/00, §§ 17-24, 2 February 2006). In these circumstances, the Court rejects the Government's preliminary objection under this head.

36. As to the second limb of the Government's objections, the Court notes, firstly, that it has already examined and rejected similar preliminary objections in so far as they relate to civil and administrative remedies (see, for example, *Kaya and Others v. Turkey* (dec.), no. 4451/02, 4 October 2005). The situation in the present case is comparable. Therefore, it finds no particular circumstances in the instance case which would require it to depart from its findings in the above-mentioned application. As regards the Government's submission that the applicant had failed to await the outcome of the criminal investigation before lodging her application, the Court recalls that the last stage of domestic remedies may be reached shortly after the lodging of the application, but before the Court is called upon to pronounce on admissibility (see, for example, *Sağat, Bayram and Berk v. Turkey* (dec.), no. 8036/02, 8 March 2007, and *Yıldırım v. Turkey* (dec.), no. 40074/98, 30 March 2006). The Court observes that the proceedings concerning the applicant's allegations were concluded on 1 September 2004, which is before the Court had delivered its decision on admissibility. The Court, therefore, dismisses the Government's preliminary objection under this head.

37. Finally, in view of the Court's above considerations and reiterating that the six month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies, the Court considers that the application lodged on 7 September 1999 was introduced in conformity with the six-month time-limit provided for in Article 35 § 1 of the Convention. It also rejects the Government's preliminary objection in this connection.

38. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that



it is not inadmissible on any other grounds. It must therefore be declared admissible.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

39. The applicant alleged that her husband had disappeared after he had been abducted and unlawfully held in detention and that the authorities had failed to carry out an effective and adequate investigation into his disappearance. She relied on Article 2 of the Convention, the relevant part of which provides as follows:

“Everyone's right to life shall be protected by law.”

### A. The parties' submissions

#### 1. *The applicant*

40. The applicant maintained that her husband must be presumed dead since he had not been heard from since his disappearance. She pointed out that the Court had already dealt with a significant number of cases of disappearances in south-east and eastern Turkey and had found violations of Article 2. Referring to the Court's case law, she stated that the Government had failed to protect the right to life of her husband and that the investigation conducted into the circumstances surrounding his disappearance had been inadequate.

#### 2. *The Government*

41. The Government stated that there had been no direct or indirect involvement of State agents in the applicant's husband's disappearance. They noted that the document indicating that the applicant's husband was taken in custody should not be regarded as accurate as there was no official signature on it. They stated that, at the moment, they were not certain that the applicant's husband had been abducted and killed by anyone. In this connection, they maintained that the authorities had not been informed of any threats made against him and that it had not been necessary for any special security measures to be applied to him. The Government further submitted that a prompt and meticulous investigation had been carried out by the public prosecutor's office into the circumstances surrounding the applicant's husband's disappearance.

## B. The Court's assessment

### 1. *The alleged failure to protect the right to life*

42. The Court reiterates the basic principles laid down in its judgments concerning Article 2 (see, in particular, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV, *Finucane v. the United Kingdom*, no. 29178/95, § 67-71, ECHR 2003-VIII, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and *Bazorkina v. Russia*, no. 69481/01, § 103-109, 27 July 2006). It further reiterates that Article 2 has been interpreted in the Court's case-law to include disappearances where as time goes by without any news it becomes increasingly likely that the individual has died (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-III). The Court will examine the present case in the light of these principles.

43. In assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt”. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 143, 26 July 2007 and the cases referred therein).

44. Moreover, the Court must reach its decision on the basis of the available evidence submitted by the parties. It will thus 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 investigation carried out in the case, as well as the parties' written observations (see, for example, *Menteşe and Others v. Turkey*, no. 36217/97, § 46, 18 January 2005).

45. In the instant case the Court must determine whether Mehmet Özdemir can be presumed dead and whether his death can be attributed to the authorities. The Court notes, firstly, that, prior to his disappearance, Mehmet Özdemir had been arrested at least twice and charged with offences relating to his alleged involvement with the PKK. In fact, at the very time of his disappearance, criminal proceedings had been pending against him on that account. In this connection, the Court recalls that it has previously found that, in certain circumstances, the disappearance, in south-east

Turkey, of a person suspected by the authorities of PKK involvement could be considered life-threatening (see, for example, *Timurtaş v. Turkey*, no. 23531/94, ECHR 2000-VI, and *İrfan Bilgin v. Turkey*, no. 25659/94, ECHR 2001-VIII).

46. Secondly, on 29 December 1997, the applicant's petition to the public prosecutor's office received an official stamp indicating that her husband was detained in police custody. The Government argued that, in the absence of an official signature, this document should not be considered as accurate. It is not for the Court to evaluate whether the official stamp is valid or not in the absence of a signature of an official. However, it finds it noteworthy that the Government have neither challenged the authenticity of the official stamp nor have they attempted to provide any explanation whatsoever as to how the applicant's petition was erroneously stamped as she was told by the authorities.

47. Thirdly, the Court notes that, while the Government deny any State involvement and have briefly stated in their observations that they are not certain whether he has been abducted or killed by anyone, they have not challenged the applicant's version of facts regarding the circumstances surrounding her husband's abduction and the events thereafter, particularly the date, the place and the manner in which Mehmet Özdemir was seen to have been abducted (see, for example, *a contrario*, *Çelikkilek v. Turkey*, no. 27693/95, §§ 51-52, 31 May 2005, *Koku v. Turkey*, no. 27305/95, § 101, 31 May 2005 and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 72, 27 June 2006). In view of the above and taking into account the fact that, save for minor details, her version of facts has been constant, the Court finds the applicant's submissions regarding these facts credible. In this connection, the Court finds it significant that the *modus operandi* of the applicant's husband's abduction shows some similarities with the disappearances of persons in south-east Turkey in the mid-1990s (see, for example, *Nuray Şen v. Turkey (no. 2)*, no. 25354/94, § 31, 30 March 2004, *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 35, ECHR 2004-III, *Çelikkilek*, cited above, § 14, and *Koku v. Turkey*, cited above, § 19).

48. Although it is unable to draw a complete picture of the factual circumstances surrounding Mehmet Özdemir's disappearance due to the defects in the domestic investigation, which hampered assessment of the exact circumstances surrounding his disappearance (see paragraphs 53-54 below), and the absence of his physical remains, the Court, nevertheless, finds that there are strong inferences, based on concrete elements, on which it may be concluded beyond reasonable doubt that Mehmet Özdemir was apprehended and taken into custody as alleged and disappeared thereafter.

49. For the above reasons, and taking into account the fact that no information has come to light concerning his whereabouts for more than ten years - a fact not disputed by the Government - the Court is satisfied that

Mehmet Özdemir must be presumed dead following unacknowledged detention. Consequently, the responsibility of the respondent State is engaged. No explanation has been forthcoming from the authorities as to what occurred following Mehmet Özdemir's detention.

50. Accordingly, there has been a violation of Article 2 on that account in respect of Mehmet Özdemir.

## *2. The alleged inadequacy of the investigation*

51. The Court further reiterates that Article 2 of the Convention requires that there should be some form of effective official investigation when the authorities are informed of a killing, irrespective of the status of the alleged perpetrator (see, *mutatis mutandis*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The procedural obligations of Article 2 also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening and time passes without any news (see, for example, *Kaya and Others v. Turkey*, no. 4451/02, § 37, 24 October 2006).

52. The Court reiterates that 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 Ekinci v. Turkey*, no. 27602/95, § 144, 16 July 2002). The minimum standards as to effectiveness defined by the Court's case-law include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with diligence and promptness (see, in general, *Ramsahai and Others v. the Netherlands*, GC, no. 52391/99, § 321, ECHR 2007-... , *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, and *Avşar v. Turkey*, no. 25657/94, §§ 390-395, ECHR 2001-VII (extracts)).

53. In the present case, a prompt investigation was indeed carried out into the disappearance of the applicant's husband. This led the judicial authorities, almost six years and eight months later, to conclude that no one was responsible for Mehmet Özdemir's disappearance (see paragraph 31 above). It also appears from the case file that official inquiries into his disappearance will continue until the end of 2007 (see paragraph 30 above).

54. Having examined the investigation file submitted by the Government, the Court finds that there are striking omissions in the conduct of the prosecutor's investigation into the disappearance of Mehmet Özdemir. In this regard, the Court observes that the investigation conducted by the prosecutor did not go beyond checking custody records, interviewing the applicant and her sister-in-law and regularly asking for updated information as to developments in the case from the security forces. The Court is struck by the fact that the prosecutor took no steps whatsoever to identify possible

witnesses to the alleged abduction. In this connection, it considers that the fact that the authorities were informed of Mehmet Özdemir's abduction only three days after the events and that the applicant never disclosed the identities of the alleged eye-witnesses, adversely affected the investigations into the circumstances surrounding his disappearance. However, the conduct of the applicant does not absolve the national authorities from their obligation to conduct a meaningful investigation into the circumstances surrounding a disappearance within the limits of the practical realities of investigation work (see, for example, *Nesibe Haran v. Turkey*, no. 28299/95, § 77, 6 October 2005). On this point, the Court points out that the applicant's husband was abducted in a public place. In the Court's opinion, securing the testimonies of at least the owner of the coffee house, the waiters and/or shopkeepers within the vicinity would have been the logical starting-point in an investigation into an alleged abduction in such circumstances, particularly for the purposes of identifying potential eye-witnesses. Moreover, the Court notes that no attempt was made by the authorities to elucidate the circumstances surrounding the official stamp on the applicant's petition which was dismissed simply as a mistake.

55. In the light of the foregoing the Court finds that the investigation carried out into the disappearance of the applicant's husband was inadequate and, therefore, in breach of the State's procedural obligations to protect the right to life.

56. It follows that there has been a violation of Article 2 under its procedural limb.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained that the ill-treatment her husband was probably subjected to while he was unlawfully held in detention and her anguish at the uncertainty about his fate, coupled with the authorities' indifference to her persistent efforts to request information and an effective investigation constituted a breach of her rights and those of her husband under Article 3 of the Convention, which provides:

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

#### A. The parties' submissions

58. The Government suggested that this part of the application did not raise any separate issues distinct from the applicant's complaints under Article 2 of the Convention.

59. The applicant maintained that her husband had been subjected to torture after his abduction. In this respect she claimed that it was common

knowledge that persons held in detention were subjected to torture. In addition she affirmed that, during his previous periods in detention, her husband had been tortured. She further claimed that she had been misled by the authorities when they first said that her husband was in custody and later denied this fact.

## **B. The Court's assessment**

### *1. Alleged violation of Article 3 in respect of Mehmet Özdemir*

60. The Court recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that 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, pp. 64-65, § 161 *in fine*).

61. The Court has found it established that the applicant's husband was apprehended and taken into custody on 26 December 1997 and has not been seen since. The Court has also considered that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraphs 45-49 above). However, the exact way in which he died and whether he was subjected to ill-treatment while in detention have not been elucidated, particularly since his physical remains have not been found. No evidence such as eye-witness testimony has been provided to the Court to confirm the applicant's allegations under this head.

62. In conclusion, since the information before it does not enable the Court to find beyond all reasonable doubt that the applicant's husband was subjected to ill-treatment, it cannot conclude that there has been a violation of Article 3 of the Convention on this account.

### *2. Alleged violation of Article 3 in respect of the applicant*

63. As to the second limb of the applicant's complaint, the Court reiterates that whether a family member is also a victim will depend on the existence of special factors which gives the suffering of the family member a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant factors will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries.

The essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather in the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Çakıcı*, cited above, § 98).

64. In the present case, the Court notes that the applicant was the wife of the disappeared person. Although she did not witness the abduction, she has had no news of her husband for more than ten years. During this period she took a number of steps to bring her husband's case to the attention of domestic authorities. Despite these attempts, the applicant has never received any plausible explanation or information as to what became of her husband following his detention. The responses received by the applicant mostly denied the responsibility of the State or simply informed her that an investigation was ongoing. The Court notes that, as an additional element contributing to the applicant's sufferings, the initial official stamp which must have reassured the applicant of the whereabouts of her husband was later disowned as an error without any plausible explanation.

65. In view of the above, the Court finds that the applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of her husband and of her inability to find out what had happened to him. The manner in which her complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

66. The Court concludes therefore that there has been a violation of Article 3 of the Convention in respect of the applicant.

#### IV. ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION

67. The applicant claimed that her husband's detention was not attributable to any of the exhaustive purposes listed under Article 5 and hence unlawful. Under the same provision, the applicant contended that none of the guarantees listed under Article 5 §§ 3 and 4 were respected. The applicant stated under Article 6 of the Convention that her husband's unlawful detention and subsequent disappearance had deprived him of his rights to defence, his right to see his family and counsel, his right to know of the charges brought against him and his right to be brought before a court within a reasonable time.

68. The Court considers that these complaints should be examined from the standpoint of Article 5 alone, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

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

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

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

#### **A. The parties' submissions**

69. The Government suggested that this part of the application did not raise any separate issues distinct from the applicant's complaints under Articles 2 and 13 of the Convention.

70. The applicant maintained her allegations.

#### **B. The Court's assessment**

71. The Court has previously found that unacknowledged detention is a complete negation of the guarantees against arbitrary detention of an individual and discloses a most grave violation of Article 5. Bearing in mind the responsibility of the authorities to account for individuals under their control, Article 5 requires them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since (see, for example, the above cited judgments of *Orhan*, § 369, and *Timurtaş*, § 103, and *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001).



72. It is established that the applicant's husband was apprehended and taken into custody on 26 December 1997 and has not been seen since. His detention was initially acknowledged and later denied by the authorities. It appears that apart from the applicant's stamped petition of 29 December 1997 there exists no official trace of his detention and of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see for example *Baysayeva v. Russia*, no. 74237/01, § 146, 5 April 2007).

73. The Court further considers that the authorities should have been alert to the need to investigate more thoroughly and promptly the applicant's complaints that her husband had been detained by the security forces and taken away in life-threatening circumstances. It notes that the applicant turned to the relevant authorities three days after her husband's apprehension. However, the Court's reasoning and findings in relation to Article 2 above, in particular as regards the inadequateness of the investigation conducted into Mehmet Özdemir's disappearance, leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

74. Accordingly, the Court finds that Mehmet Özdemir was held in unacknowledged detention in the complete absence of the safeguards contained in Article 5 and that there has therefore been a violation of the right to liberty and security of person guaranteed by that provision.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

76. The Government reiterated that the disappearance of the applicant's husband had been adequately investigated. They further noted that the applicant could have brought administrative or civil proceedings to obtain redress for her grievances.

77. The applicant maintained her allegations.

78. In view of the submissions of the parties and of the grounds on which it has found a violation of Article 2 in relation to its procedural aspect (see paragraphs 53-54 above), the Court further considers that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 120-123, ECHR 2005-VII, and *Makaratzis v. Greece* [GC], no. 50385/99, § 86, ECHR 2004-XI).

## VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

79. The applicant claimed that her husband was subjected to discrimination on account of his Kurdish ethnic origin and political opinions in breach of Article 14 in conjunction with Articles 2, 3, 5, 6 and 13 of the Convention. Article 14 provides as follows:

“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.”

80. The Government rejected the applicant's allegations.

81. The applicant maintained her allegations. In particular, she submitted that her husband had been taken into custody several times for aiding and abetting the PKK and subsequently acquitted.

82. The Court has examined the applicant's allegation in the light of the evidence submitted to it, but considers it unsubstantiated. In particular, there is no evidence in the case file to substantiate the applicant's insinuation that her husband was a deliberate target of a forced disappearance on account of his ethnic origin or his political opinions. There has therefore been no violation of Article 14 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant submitted that her husband was 43 years old at the material time and that they had eight children, the youngest of whom had been born five months after his disappearance. She maintained that her husband had earned his living by farming and trading in livestock. The

applicant claimed 134,520 euros (EUR) for the alleged loss of earnings of her husband. She further claimed EUR 47,565 for living costs including electricity, water and heating bills as well as the education costs of five children and the average amount spent on food. In support of her claims, the applicant submitted one electricity bill, one telephone bill and one water bill in the name of Celal Özdemir.

85. The Government maintained that the applicant should not be awarded any just satisfaction in respect of pecuniary damage since there was no causal link between the damages claimed and the facts of the case, and that her claims were excessive and unsubstantiated.

86. The Court's case-law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that the award may, in an appropriate case, include compensation for loss of earnings (see, among other authorities, *Taniş and Others v. Turkey*, no. 65899/01, § 231, ECHR 2005-...).

87. The Court observes that the applicant failed to submit to the Court an itemised claim detailing the loss of income stemming from the disappearance of her husband. However, the undisputed fact remains that Mehmet Özdemir had been providing his family with a living. Having regard to the family situation of Mehmet Özdemir, his age and his professional activities which provided for his wife and children, the Court finds it established that there was a direct causal link between the authorities' responsibility for Mehmet Özdemir's abduction and subsequent disappearance and the loss to his family of the financial support provided by him. On the other hand, it finds no causal link between the matters held to constitute a violation of the Convention and the living costs requested by the applicant.

88. In the light of the foregoing the Court, deciding on an equitable basis, awards the applicant EUR 40,000 in respect of pecuniary damage.

## **B. Non-pecuniary damage**

89. The applicant left the determination of the amount to award in respect of non-pecuniary damage to the Court's discretion.

90. The Government submitted that since the applicant had failed to substantiate her non-pecuniary losses they should not be liable to pay any compensation to the applicant for non-pecuniary damage.

91. The Court has found a violation of Articles 2 and 5 of the Convention on account of the unacknowledged detention and presumed death of the applicant's husband at the hands of the authorities. The applicant herself has been found to be a victim of a violation of Article 3 of the Convention in relation to the emotional anguish endured by her. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Ruling on an

equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 23,500, plus any tax that may be chargeable on the above amount.

### **C. Costs and expenses**

92. The applicant, who received EUR 824 in legal aid from the Council of Europe in connection with the presentation of her case, claimed EUR 7,739 for fees and costs incurred both before the domestic authorities and before the Court. The applicant submitted a schedule of costs prepared by her representatives and the Diyarbakır Bar Association's recommended minimum fees list for 2005. However, she did not submit any receipts or other relevant documents.

93. The Government argued that the applicant's claims for legal costs and expenses were unsubstantiated.

94. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). By Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

95. In the light of these principles and having regard to the material before it, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 3,000 - less EUR 824 received by way of legal aid from the Council of Europe - for the proceedings before the Court.

### **D. Default interest**

96. 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. *Declares* the application admissible;
2. *Holds* that the respondent State is liable for the disappearance and presumed death of the applicant's husband in violation of Article 2 of the Convention;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which the applicant's husband disappeared;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicant's husband's alleged ill-treatment in detention;
5. *Holds* that there has been there has been a violation of Article 3 of the Convention in respect of the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicant's husband;
7. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;
8. *Holds* that there has been no violation of Article 14 of the Convention in conjunction with Articles 2, 3, 5, 6 and 13;
9. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable at the date of settlement:
    - (i) EUR 40,000 (forty thousand euros) in respect of pecuniary damage;
    - (ii) EUR 23,500 (twenty three thousand and five hundred euros) in respect of non-pecuniary damage;
    - (iii) EUR 2,176 (two thousand one hundred and seventy six euros) in respect of costs and expenses;
  - (b) that from the expiry of the abovementioned 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;

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

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President