



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

SECOND SECTION

CASE OF MERYEM ÇELİK AND OTHERS v. TURKEY

(Application no. 3598/03)

JUDGMENT

STRASBOURG

16 April 2013

FINAL

16/07/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Meryem Çelik and Others v. Turkey,

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

Guido Raimondi, President,

Danutė Jočienė,

Peer Lorenzen,

Dragoljub Popović,

Işıl Karakaş,

Nebojša Vučinić,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 3598/03) 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 fourteen Turkish nationals, Ms Meryem Çelik, Ms Zübeyda Uysal, Ms Misrihan Seveli, Ms Emine Çelik, Ms Marya Çelik, Mr Hamit Şengül, Ms Fatma Şengül, Ms Besna Seveli, Ms Hanife İzci, Mr Şakir Öztürk, Ms Kimet Şengül, Ms Hazima Çelik, Ms Şekirnaz İnan and Ms Hamayıl İnan (“the applicants”), on 10 September 2002.

2. The applicants, who had been granted legal aid, were represented by Mr L. Kanat, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that State security forces were responsible for the killing and forced disappearance of their relatives. They asserted that their rights protected by Articles 2, 3, 5, 6, 8, 13 and 14 of the Convention had been violated.

4. On 17 April 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Turkish nationals and live in the Şemdinli district of Hakkari.

6. The applicants are the close relatives of the thirteen persons who went missing (Casım Çelik, Aşur Seçkin, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan) and one person who was allegedly killed (Kerem İnan) in July 1994, during an operation conducted by security forces in the Ormancık hamlet of the Ortaklar village, in the Şemdinli district of Hakkari. The inhabitants of Ormancık had been village guards prior to the events giving rise to the present application. The relationship between the applicants and their missing relatives is as follows:

Meryem Çelik - wife of Casım Çelik;
Misrihan Seveli - wife of Cemal Seveli;
Emine Çelik - wife of Yusuf Çelik;
Marya Çelik - wife of Mirhaç Çelik;
Hamit Şengül - brother of Naci Şengül;
Fatma Şengül - wife of Seddik Şengül;
Besna Seveli - wife of Reşit Seveli;
Hanife İzci - wife of Kemal İzci;
Şakir Öztürk - brother of Hayrullah Öztürk;
Kimet Şengül - wife of Salih Şengül;
Hazima Çelik - partner of Hurşit Taşkın;
Şekirnaz İnan - partner of Abdullah İnan;
Zübeyda Uysal - partner of Aşur Seçkin;
Hamayıl İnan - wife of Kerem İnan.

A. The alleged events giving rise to the present application

7. According to the applicants' submissions, on 24 July 1994 military and gendarmerie forces arrived in Ormancık. The inhabitants of the hamlet were told by members of the security forces to gather at the helicopter landing pad, which was in the main square. The men of the village were stripped naked and beaten. Two of the applicants, Emine Çelik and Zübeyda Uysal, who were pregnant at the time of the events, were also beaten when they protested against the security forces' conduct and both eventually suffered miscarriages. Furthermore, Kerem İnan was killed by a non-commissioned gendarmerie officer, a certain F.A., when he did not obey the order to gather in the main square.

8. The security forces set fire to the houses in the hamlet. Subsequently, Cemal Seveli, Reşit Seveli, Aşur Seçkin, Salih Şengül, Yusuf Çelik, Naci Şengül and Kemal İzci were put in military vehicles by the soldiers to be taken to the military base. On the way to the base, the soldiers stopped two cars in which ten villagers were travelling. The soldiers let the four children in the cars go, but arrested Hayrullah Öztürk, Abdullah İnan, Mirhaç Çelik, Seddik Şengül, Casım Çelik and Hurşit Taşkın. The soldiers then set fire to the villagers' cars.

9. The applicants and other villagers were forced to leave Ormancık and Turkey by the security forces. They then crossed the border into Iraq. In that respect, according to a document dated 24 July 1994, drafted and signed by members of the administrative council (including the mayor) of Ortaklar village, there was an armed clash in Ormancık on that day and all property in the hamlet was burned. The document further states that the inhabitants of Ormancık were forced to leave the hamlet soon afterwards and flee to Iraq.

10. Between 1994 and 1997, the applicants lived in the Atrush refugee camp, which had been established by the United Nations High Commissioner for Refugees, in northern Iraq. In March 1997, following the closure of the camp by the United Nations, the applicants moved to Suleymaniyeh, a city in northern Iraq. During the autumn of 1997 they finally returned to Turkey and began living in Şemdinli.

11. On an unspecified date, criminal proceedings were brought against six people who had lived in the Atrush refugee camp, including two of the applicants, Emine Çelik and Besna Seveli, who were charged with aiding and abetting members of the PKK (the Workers' Party of Kurdistan, an illegal organisation) while living in the camp.

12. On 28 November 1997 the Van State Security Court acquitted the accused, finding that the charges against them were not proved beyond reasonable doubt.

B. The parliamentary inquiry into the alleged events

13. In July 1998 a member of parliament, Naim Geylani, visited Şemdinli. Some of the applicants met Mr Geylani and told him that in July 1994 one person had been killed, thirteen others had disappeared and two of the applicants had suffered miscarriages following a military operation in their hamlet. Mr Geylani then requested the Human Rights Commission attached to the Turkish Grand National Assembly ("the Parliamentary Human Rights Commission") to initiate an investigation into the applicants' allegations. On 4 July 1998 a newspaper published an article about Mr Geylani's request.

14. On 10 February 1999 the chair of the Parliamentary Human Rights Commission, Dr Sema Pişkinsüt, sent a letter to Mr Geylani informing him

of the findings in the investigation conducted into the alleged events. She stated that in 1988 a number of people from the Ormancık hamlet of Ortaklar village had become village guards. Some of them, including Casım Çelik, Seddik Şengül, Kerem İnan and Salih Şengül (the relatives of the first, seventh, thirteenth and tenth applicants, respectively), had then made a deal with the PKK that it would not perpetrate acts of violence in the village in exchange for logistical support such as a month's salary from each village guard, food, shelter and ammunition. In July 1994 and June 1995 the village guards had helped members of the PKK to ambush security forces. In the first incident, three members of the security forces had lost their lives and fifteen of them had been injured, and in the second incident fifteen members of the security forces had been killed. According to the report, as a result of pressure from the PKK the villagers moved to the Atrush camp in northern Iraq in July 1994. Following the closure of the Atrush camp by the United Nations, the villagers had returned to their homes in December 1997. Thirteen persons who had been involved in the illegal activities of the PKK had then surrendered to the authorities and seven of them had been put on trial after having been questioned. However, the residents of the Ormancık hamlet, particularly the women who had been questioned by the authorities on their return, had not mentioned anyone having been killed. Nor had they made any such allegations to the authorities. Consequently, it was considered that the allegations were unfounded.

C. The criminal investigation into the alleged events

15. On 6 July 1998, after having read the above-mentioned newspaper article (see paragraph 13 above), the Hakkari public prosecutor asked the Şemdinli public prosecutor to open an investigation into the allegations.

16. In August 1998 and January 1999, Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Hamayil İnan, Kimet Şengül and Hazima Çelik made statements before the Şemdinli public prosecutor, through interpreters, as they did not speak Turkish. They all maintained that, following the security forces' arrival at the hamlet, they had been forced to gather in the main square, whereupon the men of the village had been beaten. They stated that they did not know the reason why the security forces had come to the hamlet. They alleged that the security forces had illegally confiscated their belongings, such as money and jewellery, and had destroyed their houses. They further contended that a gendarmerie officer named Fatih had killed Kerem İnan and that seven men had been taken away by soldiers. Hamayil İnan, Kerem İnan's wife, maintained that they could not bury his husband as they had to leave the hamlet immediately after the killing and that she had been told that Kerem İnan's corpse had been buried where he had been killed by villagers from another hamlet. The applicants stated that the soldiers had taken six other

inhabitants of Ormancık into custody while driving to the military base. The applicants maintained that they had been told that their relatives had subsequently been killed and their corpses left in the vicinity of the military base. They further alleged that a lieutenant colonel known as “Ali” had told the villagers that they were traitors and did not deserve to live in Turkey, and that they should go to live in Iraq, Iran or Syria. The inhabitants of the hamlet had then been coerced into leaving the hamlet and, subsequently, the country. They had been forced to go to Iraq by members of the PKK. Zübeyda Uysal and Emine Çelik further maintained that they had been pregnant at the time of the incident and that they had both suffered miscarriages as a result of having being beaten by the security forces. The applicants requested that those responsible for the killing of Kerem İnan and the disappearance of the thirteen other villagers be found and punished.

17. The Şemdinli public prosecutor also took statements from Lieutenant Colonel A.Ç., who had allegedly been the commanding officer of the soldiers who had gone to Ormancık, as well as from the non-commissioned gendarmerie officer, F.A. They both denied the applicants’ allegations.

18. On 11 August 1998, upon the request of the Şemdinli public prosecutor, the military forces sent a letter to the public prosecutor’s office stating that soldiers had arrested thirteen villagers and taken them to the Derecik military base. The villagers had been released after questioning. However, Aşur Seçkin had died immediately afterwards as a result of gunshot wounds received from an unknown source while trying to escape to join the PKK.

19. On 13 April 1999 the Şemdinli public prosecutor drew up a report (*fezleke*) in which he set out the developments in the investigation. In his report, the public prosecutor identified A.Ç. and F.A. as the “accused” and Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Hamayıl İnan, Kimet Şengül and Hazima Çelik as the “complainants”. The offences allegedly committed by the accused were defined as homicide, aggravated theft (*gasp*), the causing of a miscarriage, the forced evacuation of a village and the burning of vehicles. According to this report, on 24 July 1998, in the vicinity of the Ormancık hamlet, two soldiers had been killed and fourteen soldiers wounded, in an ambush set up by members of the PKK with the aid of a group of village guards from the hamlet. Subsequently, a group of soldiers under the command of Lieutenant Colonel A.Ç. and non-commissioned officer F.A. had arrived at the hamlet. The Şemdinli public prosecutor cited the allegations of the applicants who had made statements in August 1998 and January 1999 and the contents of the letter from the military forces dated 11 August 1998. The public prosecutor concluded that the Hakkari Assize Court had jurisdiction to deal with cases involving offences allegedly committed by members of the security forces and referred the investigation file to the Hakkari public

prosecutor's office with a request to punish the accused for the offences cited in the report.

20. On 22 April 1999 the Hakkari public prosecutor declined jurisdiction and sent the file to the Şemdinli District Administrative Council for authorisation to investigate the actions of the members of the security forces, pursuant to Articles 1 and 4 (b) of Legislative Decree no. 285 and the Prosecution of Civil Servants Act.

21. On 8 June 2000 the Şemdinli District Administrative Council decided not to authorise the prosecution of A.Ç. and F.A. In its decision, the Administrative Council noted that the complainants had maintained that they had not known the accused. The Administrative Council further stated that the complainants' account of events was hypothetical and that the accused officers had not been in Ormancık on 24 July 1994 and furthermore that F.A. had never been there.

22. The decision of 8 June 2000 was not served on the complainants. However, as decisions not to prosecute made by district councils were subject to an automatic appeal to regional administrative courts at the material time, the decision was then referred to the Van Regional Administrative Court.

23. On 18 July 2000 the Van Regional Administrative Court upheld the decision not to prosecute A.Ç. and F.A. This decision was not served on the complainants.

D. The lodging of the present application with the Court

24. On 23 October 2001 the applicants appointed Mr L. Kanat as their legal representative.

25. On 7 March 2002 Mr Kanat applied to the Şemdinli public prosecutor's office for the case to be referred to the Şemdinli District Administrative Council, and requested information concerning the outcome of the investigation.

26. On 4 April 2002 the Şemdinli public prosecutor sent Mr Kanat a copy of the decisions of the Şemdinli District Administrative Council and the Van Regional Administrative Court.

27. On 10 September 2002 he lodged the present application with the Court.

28. On 2 November 2006 Mr Kanat submitted to the Court a letter dated 7 September 2006 from the president of the Van Regional Administrative Court, stating that review decisions of this type were not communicated to the parties. The president noted that such judgments were sent to the relevant domestic authorities, together with the investigation files.

29. On the same day, Mr Kanat also submitted a document signed by members of the Ortaklar Community Council and four witnesses, in which the latter declared that Zübeyda Uysal, Hazima Çelik and Şekirnaz İnan had

been the partners of Aşur Seçkin, Hurşit Taşkın and Abdullah İnan, respectively, to whom they had been married according to Islamic traditions.

II. RELEVANT DOMESTIC LAW

30. The relevant domestic law and practice applicable at the material time can be found in the judgment of *İpek v. Turkey* (no. 25760/94, §§ 92-106, ECHR 2004-II).

THE LAW

I. ADMISSIBILITY

A. The parties' submissions

31. In their observations dated 5 October 2008 the Government argued that the applicants had failed to observe the six-month time-limit. Relying on the Court's decisions in the cases of *Bayram and Yıldırım v. Turkey* ((dec.), no. 38587/97, ECHR 2002-III); *Bulut and Yavuz v. Turkey* ((dec.), no. 73065/01, 28 May 2002); and *Hazar and Others v. Turkey* (dec.), nos. 62566/00, 62567/00, 62568/00, 62569/00, 62570/00, 62571/00, 62572/00, 62573/00, 62574/00, 62575/00, 62576/00, 62577/00, 62579/00, 62580/00, 62581/00, 10 January 2002), the Government contended that had the applicants considered that there were no effective remedies at the domestic level, they should have submitted their application to the Court within six months after the alleged events took place. They maintained that the applicants had not lodged a complaint with the State authorities after the alleged events had taken place and that an investigation had been instigated by the investigating authorities of their own motion. The Government argued that the applicants should have applied to the Court earlier if they thought that this investigation would not be adequate.

32. The Government further submitted that the final decision in domestic law had been delivered by the Van Regional Administrative Court on 18 July 2000, whereas the application had been lodged on 10 September 2002.

33. The applicants contended that they had been forced to leave Turkey after the events complained of had taken place and that they had returned from Iraq in 1997. They noted that they had informed Mr Geylani of the events giving rise to the present application on their return to Turkey and

had made detailed submissions to the Şemdinli public prosecutor once the investigation had been initiated. However, they had not been informed of the developments in the investigation. Specifically, they had received no notification of the decisions that had been delivered. The applicants submitted that they had actually been waiting to be summoned to the court hearing where the military officers were to be tried. The applicants further asserted that the final decision had not been served on them and that they had lodged their application with the Court within the six-month period after the date on which their representative had been notified of that decision. Furthermore, the applicants' representative emphasised that most of his clients did not speak Turkish and therefore had been unable to learn the outcome of the investigation without the assistance of a lawyer.

B. The Court's assessment

34. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Bulut and Yavuz* (dec.), cited above and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

35. The Court further reiterates that, according to the case-law on the six-month rule in cases concerning deprivation of life, if no remedies are available or if they are judged to be ineffective, the six-month time-limit runs, in principle, from the date of the act complained of. Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Hazar and Others* (dec.), cited above; *Bulut and Yavuz* (dec.), cited above; and *Bayram and Yıldırım* (dec.), cited above).

36. As regards the Government's submission that the applicants should have lodged their application with the Court within six months after the alleged events took place, the Court considers that it should first examine the period between July 1994 and autumn 1997, namely the period during which the applicants claim to have been living in northern Iraq. In this connection, the Court observes that the applicants submitted that they left Turkey and went to Iraq to live in a refugee camp which was under the control of the Office of the United Nations High Commissioner for Refugees. According to their submissions, the applicants left northern Iraq and returned to Şemdinli only after the United Nations had closed down the

camp (see paragraph 10 above). The Court further observes that the Government did not deny the veracity of this claim, nor did they claim or attempt to demonstrate that the applicants had actually been living in Turkey during those years. In any case, the Şemdinli public prosecutor who conducted the initial investigation referred to the applicants' statement that they had been in Iraq until the autumn of 1997 and did not question the authenticity of this claim in his report of 13 April 1999 containing a request for the punishment of two military officers. Besides, the report of the Human Rights Commission attached to the Turkish Grand National Assembly also states that the applicants were in Northern Iraq between July 1994 and December 1997 (see paragraph 14 above).

37. Having regard to the aforementioned elements, the Court is led to conclude that the applicants lived in northern Iraq as refugees for at least three years before they returned to Turkey in the autumn of 1997. In these circumstances, the Court considers that the present case is different from the case of *Bayram and Yıldırım* (dec.), cited above, where the applicants did not petition the public prosecutor's office for more than three years with regard to the death of their relatives and where the Court found that the applicants' failure to do so was due to their own negligence. In the Court's view, in the instant case, the applicants could not have been expected to initiate an investigation in Turkey concerning the alleged events of July 1994 while they were living as refugees in a camp in another country. The Court therefore concludes that special circumstances prevented the applicants from using domestic remedies during this period.

38. As to the period between autumn 1997 and 23 October 2001, that is to say, the date on which the applicants appointed their lawyer with a view to learning the outcome of the investigation, the Court acknowledges that at first sight the present case may appear to be similar to the cases of *Bulut and Yavuz* (dec.) (cited above), and *Hazar and Others* (dec.) (cited above). In the case of *Bulut and Yavuz* (dec.) (cited above), the applicants alleged that they had become aware of the ineffectiveness of the proceedings almost five years after the last decision taken in the investigation. In its decision in that case, the Court considered that the applicants, whose close relative had been killed, might be expected to display a certain amount of diligence and initiative in informing themselves about the progress made in the investigation and ruled that the applicants had been negligent in that respect. The Court similarly declared *Hazar and Others* (dec.) (cited above), inadmissible, holding that the applicants, who had not availed themselves of any remedy for seven years after the destruction of their homes, should have become aware of the ineffectiveness of the remedies much earlier.

39. The Court, however, considers that there are substantial differences between the above-mentioned cases and the present application. Firstly, most of the applicants in the present case are rural women who are illiterate and who do not speak Turkish. Secondly, they had to leave their village and

then their country, for more than three years after the alleged events took place, during which time they lived as refugees. In the Court's view, therefore, they could not have been expected to have applied to the domestic authorities immediately after their return to Turkey in the autumn of 1997. Nevertheless, they contacted Mr Geylani (a member of parliament at that time) in July 1998 and explained the events that had allegedly taken place in July 1994 (see paragraph 13 above). Furthermore, in 1998 and 1999 a parliamentary investigation took place at Mr Geylani's request, based on the applicants' account of events. The Court further notes that in 1998 and 1999 the applicants made statements when they were summoned to testify in the investigation which was initiated by the Şemdinli public prosecutor of his own motion (see paragraphs 15 and 16 above). They cooperated with the prosecutor and provided him with evidence. In fact, this investigation continued to be actively conducted by the prosecutor, who carried out a detailed examination of the events in question before asking the Hakkari public prosecutor to lodge a bill of indictment with the Hakkari Assize Court in April 1999 accusing the two military officers of various crimes (see paragraph 19 above).

40. In these circumstances, the Court considers that the applicants received a positive response from the national authorities in the face of their allegations and therefore it was not unreasonable on their part to await the outcome of this investigation between 1999 and 2001. Besides, unlike the cases referred to by the Government, the applicants in the present case have not claimed that they lodged their case pending an investigation because they found the latter ineffective. Having regard to the aforementioned elements, the Court considers that the principles in the Court's case-law referred to by the Government cannot be applied in the present case.

41. The Court further points out that in cases concerning disappearances it has held that allowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 162-163, ECHR 2009). Furthermore, as the Court held recently, the nature of the investigations into disappearances is such that relatives of a disappeared person may be justified in waiting lengthy periods of time for the national authorities to conclude their investigations. Thus, in the case of *Er and Others v. Turkey* (no. 23016/04, §§ 55-58, 31 July 2012) the applicants, who had waited for a period of almost ten years after the disappearance of their relative before lodging their application, were held to have complied with the six-month rule because an investigation was being conducted at the national level into the disappearance (see, *a contrario*, *Yetişen v. Turkey* (dec.), no. 21099/06, 10 July 2012).

42. The Court is mindful of the fact that the investigation at the domestic level did not only concern the disappearance of the applicants' relatives, but

also the alleged killing of two persons, the alleged ill-treatment of nine others and the destruction of the applicants' homes. Nevertheless, given that the Şemdinli public prosecutor did not find it necessary to conduct separate investigations into the above-mentioned allegations and considering that the examination of the compliance with the six-month rule is intrinsically linked to the investigation conducted, the Court finds that the aforementioned factors which were taken into consideration in the case of *Er and Others* (cited above, §§ 45-60) are also relevant in the present case.

43. Finally, as regards the Government's submission that the final decision in domestic law was delivered on 18 July 2000 by the Van Regional Administrative Court whereas the application was lodged on 10 September 2002, the Court notes that an explicit and detailed question was put to the Government as to whether this decision had been served on the applicants. The Court observes that the Government failed to respond to this question. Moreover, the applicants submitted a document in which the president of the Van Regional Administrative Court stated that these types of review decisions were not communicated to the parties. In these circumstances, the Court concludes that this decision was not served on the applicants. As the Court has considered that the applicants could reasonably have awaited the outcome of the investigation (see paragraph 40 above) and since the decision of the Van Regional Administrative Court was not served on the applicants before their lawyer requested information from the Şemdinli public prosecutor's office, the Court is of the opinion that 5 April 2002, that is the day after the date on which the applicants' lawyer was notified of the decisions in the investigation, should be taken as the starting-point of the six-month period.

44. In view of the aforementioned considerations, the Court dismisses the Government's objection based on the six-month time-limit.

45. The Court also 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. MERITS

A. Alleged violation of Article 2 of the Convention on account of the disappearance of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Sevlı, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and the killing of Aşur Seçkin

46. The applicants complained under Article 2 of the Convention that members of the armed forces had been responsible for the disappearance of

their relatives: Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin. Article 2 of the Convention reads as follows:

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

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

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

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

47. The Government did not make any submissions on these issues.

1. The Court’s assessment of the evidence and establishment of the facts as regards the disappearance of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and the killing of Aşur Seçkin

48. The Court reiterates that the national authorities are responsible for the well-being of persons in custody and that respondent States bear the burden of providing a plausible explanation for any injuries, deaths and disappearances which occur in custody (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII; *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII; and *Er and Others*, cited above, § 66).

49. In the present case, the Court observes that the applicants alleged that Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin were arrested and taken away by members of the military forces and the Government did not offer any evidence to the contrary. The Court further observes from correspondence dated 11 August 1998 that the military forces sent a letter to the Şemdinli public prosecutor, in which it was acknowledged that soldiers had arrested the thirteen villagers and taken them to the Derecik military base. However, according to the above-mentioned letter, the villagers had been released after questioning (see paragraph 18 above).

50. The Court reiterates that there is an obligation to account for the well-being of a detainee if it is established that he or she was officially

summoned by the military or the police, and entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Tanış and Others*, cited above, § 160). The authorities' obligation to account for the fate of a detained individual continues until they have shown that the person has been released (see *Er and Others*, cited above, § 71). Besides, in its judgment in the case of *Süheyla Aydın v. Turkey* (no. 25660/94, § 154, 24 May 2005), which concerned the unlawful killing of Mrs Aydın's husband after he was allegedly released from police custody, the Court held that the absence of an official release document meant that the Government had failed to discharge their burden of proving that Mr Aydın had indeed been released, and found the respondent State responsible for the killing.

51. In reaching that conclusion in *Süheyla Aydın* (cited above), the Court had regard to Article 11 of the Declaration on the Protection of all Persons from Enforced Disappearance (United Nations General Assembly resolution 47/133 of 18 December 1992), which provides that "[a]ll persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured" (see also Article 21 of the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force on 23 December 2010).

52. The Court further notes that the unlawfulness of detaining persons in south-east Turkey in the early 1990s without any details being entered in custody records has been noted by the Court in previous judgments (see, *inter alia*, *Orhan v. Turkey*, no. 25656/94, § 372, 18 June 2002). In a number of its judgments the Court has examined the failure by members of the armed forces to keep adequate custody records and concluded that the deficiencies in the keeping of such records attested to the absence of effective measures to safeguard individuals in detention against the risk of disappearance (see *Er and Others*, cited above, § 69; *Orhan*, cited above, §§ 313 and 372 and the cases cited therein; see also *Çiçek v. Turkey*, no. 25704/94, § 137, 27 February 2001).

53. In the present case, and as detailed above, although their presence at the Derecik military base was later acknowledged, no documents were drawn up by the military officials concerning either the detention of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin, or their alleged release.

54. In the light of the foregoing, the Court finds it established that the applicants' relatives, Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik,

Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan remained in the custody of the State. It follows that the Government are under an obligation to account for their disappearance.

55. The Court further observes that, despite the applicants' claim that Aşur Seçkin also disappeared, according to the documents in the case file, he was, in fact, killed at the Derecik military base (see paragraph 18 above).

56. On the basis of the aforementioned findings, the Court will proceed to examine the applicants' complaints under Article 2 of the Convention. The Court will, however, examine the complaints brought by Zübeyda Uysal concerning her partner Aşur Seçkin, in the light of the principles governing death in the custody of security forces rather than those regarding forced disappearances.

2. Disappearance of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan

57. In the *Timurtaş v. Turkey* judgment (no. 23531/94, §§ 82-83, ECHR 2000-VI) the Court stated as follows:

... where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention In the same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody ...

In this respect the period of time which has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead. In this respect the Court considers that this situation gives rise to issues which go beyond a mere irregular detention in violation of Article 5. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention ..."

58. Furthermore, in its recent judgment in the case of *Er and Others* (cited above), noting that the disappearance of the applicants' relative Ahmet Er took place in 1995, the Court observed that this disappearance fitted in with the pattern of disappearances of large numbers of persons in

south-east Turkey between 1992 and 1996. The Court further noted that in its examination of a number of those disappearances, it had reached the conclusion that the disappearance of a person in south-east Turkey at the relevant time could be regarded as a life-threatening event (see, *Er and Others*, cited above, § 77, and the following cases cited therein: *Osmanoğlu v. Turkey*, no. 48804/99, 24 January 2008; *Akdeniz v. Turkey*, no. 25165/94, 31 May 2005; *İpek*, cited above; *Akdeniz and Others v. Turkey*, no. 23954/94, 31 May 2001; *Çiçek*, cited above; *Taş v. Turkey*, no. 24396/94, 14 November 2000; *Timurtaş*, cited above; *Ertak v. Turkey*, no. 20764/92, ECHR 2000-V; and *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV).

59. The Court considers that the disappearance in the present case also fits into the above-mentioned pattern. Besides, as in the case of *Er and Others*, cited above, the lack of any documentary evidence relating to the detention of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan at a military base would have increased the risk to their lives in the general context of the situation in south-east Turkey at the time of their disappearance (see *Er and Others*, cited above, § 78).

60. In the light of the aforementioned elements and given that no information has come to light concerning the whereabouts of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan over the period of more than eighteen years since they were detained by the security forces, the Court accepts that they must be presumed dead. Consequently, the responsibility of the respondent State for their death is engaged. Noting that the authorities have not accounted for what happened during their detention and that they do not offer any justification for the possible use of lethal force by their agents, it follows that liability for their death is attributable to the respondent Government (see *Er and Others*, cited above, § 79).

Accordingly, there has been a violation of Article 2 of the Convention in its substantive aspect.

3. Killing of Aşur Seçkin

61. The Court reiterates that where an individual is taken into custody in good health and dies at the hands of the security forces, the obligation on the authorities to account for the treatment of that individual is particularly stringent (see *Taş*, cited above, § 63). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to

provide a satisfactory and convincing explanation (see *Avşar v. Turkey*, no. 25657/94, § 392, ECHR 2001-VII; *Salman*, cited above, § 100; *Çakıcı*, cited above, § 85; *Ertak*, cited above, § 32; and *Timurtaş*, cited above, § 82).

62. The Court observes at the outset that Aşur Seçkin was one of those persons whose arrest was acknowledged by the military forces. The Court further observes that according to the above-mentioned letter, the contents of which was included in the Şemdinli public prosecutor's report, he was brought to the military base with other persons and died immediately after his questioning as a result of gunshot wounds received from an unknown source while trying to escape to join the PKK (see paragraph 18 above). The Court notes that the deceased was under the exclusive control of the State authorities when he received those gunshot wounds and died. Yet no steps were taken to identify the cause of his death or the perpetrator of the shooting. The Government did not offer any explanation, let alone a plausible one, as regards the death of Aşur Seçkin. The Court therefore concludes that the Government have failed to discharge the burden of proof imposed on them.

63. Accordingly, the Court finds that the Government have not accounted for the killing of Aşur Seçkin as a result of gunshot wounds during his detention at the Derecik military base and that the respondent State's responsibility for his death is engaged.

It follows that there has been a violation of Article 2 under its substantive aspect in this respect.

B. Alleged violation of Article 2 of the Convention on account of the alleged killing of Kerem İnan

64. One of the applicants, Hamayil İnan, submitted under Article 2 of the Convention that on 24 July 1994 her husband Kerem İnan had been shot and killed by a military officer when soldiers raided their village.

65. The Government did not submit any observations on this point.

66. The Court observes at the outset that Hamayil İnan's allegation under Article 2 concerns a grave violation of the Convention. It further observes that both before the Court and before the domestic authorities, Hamayil İnan's claims were consistent. The account of events as stated by the applicant when she made statements before the Şemdinli public prosecutor was coherent with the statements of other applicants before the public prosecutor. Besides, the Şemdinli public prosecutor considered these allegations sufficiently reliable and arguable and requested that a case be brought against two military officers. Furthermore, the Hakkari public prosecutor also found the applicant's allegations credible and asked for authorisation for the prosecution of the military officer named Fatih for the murder of Kerem İnan. The Court therefore considers that the applicant

made out a *prima facie* case before the national authorities that his husband had been killed.

67. The Court, however, cannot confirm the veracity of the applicant's allegations. In particular, it cannot verify whether the alleged killing occurred and, if so, whether it resulted from the actions of members of the security forces.

68. In the Court's view, its inability to establish a clear picture of the circumstances stems mainly from two factors. First, the Government's failure to make submissions regarding the merits of the application is a factor affecting the Court's ability to find out the factual circumstances. The second and primary factor is the absence of a judicial investigation into the alleged killing. Owing to this failure to carry out an investigation which could have shed light on those events, the Court finds that there is nothing in the case file proving or disproving the veracity of the applicant's claims. The Court finds it more appropriate to deal with the consequences of this failure when examining the applicants' complaint concerning the Government's alleged failure to fulfil their obligation under Article 2 of the Convention to carry out an effective investigation (see paragraphs 70-78 below).

69. Against this background and having regard to the unclear circumstances of the case, the Court is unable to establish whether Kerem İnan was deprived of his life by members of the security forces as alleged. The Court is therefore led to conclude that there has been no violation of Article 2 of the Convention under its substantive limb with regard to the death of Kerem İnan.

C. Alleged violations of Articles 2 and 13 of the Convention on account of the alleged ineffectiveness of the investigation into the disappearance of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Sevlı, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hürşit Taşkın and Abdullah İnan, the killing of Aşur Seçkin and the alleged killing of Kerem İnan

70. The applicants complained under Articles 2 and 13 of the Convention that the domestic authorities had failed to carry out an effective investigation into the circumstances of their relatives' disappearance and the killing of Kerem İnan.

71. The Government did not make any submissions on these issues.

72. The Court considers that this complaint should be examined from the standpoint of Article 2 alone.

73. In this connection, the Court reiterates 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. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324 and *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII). Nor is it decisive whether members of the deceased’s family or others have lodged a formal complaint about the killing with the competent investigating authority. The mere fact that the authorities were informed of the killing of an individual gives rise, *ipso facto*, to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (see *Ucar v. Turkey*, no. 52392/99, § 90, 11 April 2006).

74. For an investigation into an allegation of unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for the investigation and its conduct to be independent from those implicated in the events (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 222, ECHR 2004-III; *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV; and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). This means not only the absence of a hierarchical or institutional connection but also independence in practical terms (see *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 70, ECHR 2002-II).

75. The above-mentioned obligations apply equally to cases where a person has disappeared in circumstances which may be regarded as life-threatening. In this connection, the Court has already accepted that the more time that goes by without any news of the person who has disappeared, the greater the likelihood that he or she has died (see *Tahsin Acar*, cited above, § 226, and *Er and Others*, cited above, § 82).

76. In the present case, the Court observes that the Şemdinli public prosecutor initiated an investigation and took steps to find out the truth of the events giving rise to the present application. The investigation, however, could not be continued owing to the decision of the Şemdinli Administrative Council to deny authorisation for the prosecution of two suspects (see paragraph 21 above). Consequently, there were no criminal proceedings in which those responsible for the disappearance of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan, the killing of Aşur Seçkin and the alleged killing of Kerem İnan could be identified and punished.

77. The Court reiterates its earlier findings in a number of cases, the administrative councils cannot be regarded as independent since these councils are chaired by the governors or their deputies, and composed of

local representatives of the executive, who are hierarchically dependent on the governor - an executive officer linked to the very security forces under investigation (see, among many others *Ipek*, cited above, § 174; *Oğur*, cited above, § 91; *Güleç*, cited above, § 80; and *Orhan*, cited above, § 342).

78. The Court finds no reason in the instant case to depart from its aforementioned previous findings. It therefore concludes that the domestic authorities did not conduct an adequate and effective investigation into the disappearance of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Sevlı, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan, the killing of Aşur Seçkin and the alleged killing of Kerem İnan by the members of the security forces.

There has accordingly been a violation of Article 2 of the Convention in its procedural aspect.

D. Alleged violation of Article 5 of the Convention on account of the detention of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Sevlı, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin

79. The applicants whose relatives were arrested and taken away by the members of the security forces complained that the detention of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Sevlı, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin had given rise to multiple violations of Article 5 of the Convention.

80. Article 5 of the Convention, in so far as relevant, provides as follows:

“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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...”

81. The Government did not submit any observations on this point.

82. The Court reiterates the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. The Court has stressed in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5 of the Convention, namely to protect the individual from arbitrary detention (see, for example, *İpek*, cited above, § 187; *Ucar*, cited above, § 163; and *Er and Others*, cited above, § 102).

83. In order to minimise the risks of arbitrary detention, Article 5 of the Convention provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 of the Convention. Bearing in mind the responsibility of the authorities to account for individuals under their control, Article 5 of the Convention 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 *Er and Others*, cited above, § 103, and *Akdeniz*, cited above, § 129 and the authorities cited therein).

84. The Court has already found that the applicants’ relatives were taken away from their village by members of the security forces on 24 July 1994 and that they were taken to the Derecik military base. Their detention there was not logged in the relevant custody records and there is no official record of the purported release of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan. In the view of the Court, 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 detainees. Furthermore, the absence of records of such details as the date, time and location of the detention, the name of the detainee as well as the reasons for the detention, the name of the person effecting it and the time and date of release must be seen as incompatible with the very

purpose of Article 5 of the Convention (see *Er and Others*, cited above, § 104, and *Akdeniz*, cited above, § 130).

85. Accordingly, the Court finds that Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin were held in unacknowledged detention in the complete absence of the safeguards contained in Article 5 of the Convention and that there has been a violation of the right to liberty and security of person guaranteed by that provision.

E. Alleged violation of Article 3 of the Convention on account of the suffering of Meryem Çelik, Misrihan Seveli, Emine Çelik, Marya Çelik, Hamit Şengül, Fatma Şengül, Besna Seveli, Hanife İzci, Şakir Öztürk, Kimet Şengül, Hazima Çelik, Şekirnaz İnan and Zübeyda Uysal due to their relatives' disappearance

86. The applicants whose relatives were arrested and taken away by the members of the security forces complained that the suffering they endured on account of their relatives' disappearance was in violation of Article 3 of the Convention.

87. Article 3 of the Convention provides as follows:

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

88. The Government did not make any submissions on this point.

89. The Court reiterates that the question whether a family member of a “disappeared person” is a victim of treatment contrary to Article 3 of the Convention will depend on the existence of special factors which give the suffering of the applicant 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. Such elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond – 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 attempts to obtain information about the missing person and the way in which the authorities responded to those enquiries (see *İpek*, cited above, §§ 181-183, and the authorities cited therein). The Court further emphasises that the essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather 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).

90. In the present case, the Court notes that the applicants are the wives, partners and brothers of the persons who disappeared. They witnessed their relatives being taken away by soldiers and have not heard from them since. Although after the applicants contacted Mr Geylani and described to him the arrest and disappearance of their relatives, an investigation was initiated by the Şemdinli public prosecutor of his own motion and the Şemdinli public prosecutor took several steps, that investigation ended with the decision of an administrative body (see paragraph 21 above). In fact, the domestic authorities took no meaningful action, notwithstanding the unlawful nature of the detention. As a result, the applicants have not had any news of their relatives for more than eighteen years and despite their cooperation with the authorities, they have never received any plausible explanation or information as to what became of their relatives following their disappearance.

91. In view of the above and having regard, in particular, to the fact that the investigation ended with Şemdinli Administrative Council denying authorisation for prosecution, the Court concludes that the applicants as relatives of the missing persons, suffered and continue to suffer distress and anguish as a result of that disappearance, their inability to find out what happened to them and the manner in which their allegations were dealt with (see, among many others, *Kadirova and Others v. Russia*, no. 5432/07, §§ 120-122, 27 March 2012, and *Er and Others*, cited above, §§ 95-97).

92. Accordingly, there has been a violation of Article 3 of the Convention on this account.

F. Other alleged violations of the Convention

93. The applicants complained under Article 3 of the Convention that Cemal Seveli, Reşit Seveli, Aşur Seçkin, Salih Şengül, Yusuf Çelik, Naci Şengül and Kemal İzci had been beaten by members of the security forces before being arrested. Zübeyda Uysal and Emine Çelik also complained under Articles 2 and 3 of the Convention that they had both suffered miscarriages as a result of the violence to which they had been subjected by members of the security forces. The applicants maintained under Article 8 of the Convention that on the day of the events giving rise to the present application the security forces had conducted searches of their houses, seized their belongings illegally and subsequently destroyed the houses. The applicants further submitted under Article 13 of the Convention that they had been denied an effective remedy in respect of their aforementioned allegations. They also complained of violations of a number of rights in respect of Casım Çelik, Aşur Seçkin, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan under Article 6 of the Convention. The applicants finally complained, under

Article 14 of the Convention, that all the alleged breaches of their rights enshrined in the Convention had been motivated by their Kurdish ethnic origin.

94. The Government did not make any submission on these points.

95. Having regard to the facts of the case and its finding of violations of Articles 2, 3 and 5 of the Convention, the Court considers that it has examined the main legal questions raised in the present application. It concludes therefore that there is no need to give a separate ruling on the applicants' remaining complaints under the Convention (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Getiren v. Turkey*, no. 10301/03, § 132, 22 July 2008; *Akkum and Others v. Turkey*, no. 21894/93, § 271, ECHR 2005-II); and *Güveç v. Turkey*, no. 70337/01, § 135, ECHR 2009)

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicants Meryem Çelik, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Sevlı, Hamayıl İnan, Kimet Şengül, Hazima Çelik and Şekirnaz İnan each claimed 100,000 euros (EUR) in respect of pecuniary damage. The applicants Zübeyda Uysal, Misrihan Sevlı and Hanife Izci each claimed EUR 80,000 under this head. Hamit Şengül and Şakir Öztürk did not submit any claim in respect of pecuniary damage. Those applicants who submitted claims in respect of pecuniary damage maintained that they had been deprived of the financial support of their husbands and partners who had died or disappeared. They also referred to the destruction of their homes.

98. The Government considered that there was no causal link between the damage claimed by the applicants and their complaints. They also submitted that the sums claimed were devoid of any basis.

99. As regards the applicant Hamayıl İnan, the Court does not discern any causal link between the violation found and the pecuniary damages alleged; it therefore rejects her claim.

100. As regards the remaining applicants' claim for pecuniary damage, 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 this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Er and Others*, cited above, § 118; *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C; and *Çakıcı*, cited above, § 127). The Court has found that the authorities were liable under Article 2 of the Convention for the disappearance and death of the applicants' relatives (see paragraphs 60 and 63 above). The Court observes that although the applicants have failed to submit to the Court itemised claims detailing their loss of financial support, the fact remains that the applicants' missing and deceased relatives had been providing their families with a living and this has not been disputed by the Government. In these circumstances, the Court finds it established that there was a direct causal link between the violation of Article 2 and the applicants' loss of the financial support provided by their missing and deceased relatives.

101. In the light of the foregoing the Court, deciding on a reasonable basis, awards Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan EUR 60,000 each in respect of pecuniary damage.

B. Non-pecuniary damage

102. The applicants Zübeyda Uysal and Emine Çelik claimed EUR 90,000 in respect of non-pecuniary damage. The remaining applicants each claimed EUR 80,000 under this head.

103. The Government were of the opinion that there was no causal link between the damage claimed by the applicants and their complaints. They further submitted that the applicants' claims were excessive.

104. The Court observes that it has found that the authorities are to be held accountable for the disappearance and death of the relatives of Meryem Çelik, Misrihan Seveli, Emine Çelik, Marya Çelik, Hamit Şengül, Fatma Şengül, Besna Seveli, Hanife İzci, Şakir Öztürk, Kimet Şengül, Hazima Çelik, Şekirnaz İnan and Zübeyda Uysal. In addition to the violation of Articles 2, 3 and 5 in that respect, it has further found that the authorities failed to undertake an effective investigation into the disappearance and death of the applicants' relatives contrary to the procedural obligation under Article 2 of the Convention. The violation of Article 2 of the Convention in its procedural aspect also concerned the alleged killing of Hamayil İnan's husband, Kerem İnan, by members of the security forces.

105. The Court finds that the applicants suffered non-pecuniary damage which cannot entirely be compensated for by the finding of violations. The Court accordingly awards Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan EUR 65,000 each in respect of

non-pecuniary damage. The Court further awards Hamit Şengül and Şakir Öztürk EUR 32,500 each under this head. The Court finally awards Hamayil İnan EUR 20,000 in respect of non-pecuniary damage.

C. Costs and expenses

106. The applicants also claimed a total of EUR 14,988 for costs and expenses incurred before the Court. They requested EUR 300 to cover administrative costs, such as telephone, postage, photocopying and stationery. They further requested EUR 14,688 for their lawyer's fee, in support of which they submitted a breakdown of expenses and also referred to the recommendations of the Ankara Bar Association regarding lawyers' fees.

107. The Government contested these claims and submitted that the applicants had failed to demonstrate that these costs and expenses had actually been incurred. The Government further maintained that the claims were excessive.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court dismisses the claim for administrative costs, which were not supported by any documentary evidence. However, it considers it reasonable to make a joint award to the applicants of the sum of EUR 5,200 to cover the fee of their legal representative in the proceedings before it. From this sum should be deducted the EUR 850 granted by way of legal aid under the Council of Europe's legal aid scheme.

D. Default interest

109. The Court considers it appropriate that the default interest rate 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

1. *Declares* the application admissible by a majority;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the disappearance and presumed death of Casım Çelik, Cemal Sevlı, Yusuf Çelik, Mirhaç Çelik, Naci Şengül,

Seddık Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan;

3. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the killing of Aşur Seçkin;
4. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an adequate and effective investigation into the disappearance of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan, the killing of Aşur Seçkin and the alleged killing of Kerem İnan by members of the security forces;
5. Holds unanimously that there has been a violation of Article 5 of the Convention on account of the unlawful detention of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin;
6. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the suffering of Meryem Çelik, Misrihan Seveli, Emine Çelik, Marya Çelik, Hamit Şengül, Fatma Şengül, Besna Seveli, Hanife İzci, Şakir Öztürk, Kimet Şengül, Hazima Çelik, Şekirnaz İnan and Zübeyda Uysal due to the disappearance of their relatives;
7. *Holds* unanimously that there is no need to examine the applicants' other complaints under Articles 2, 3, 6, 8, 13 and 14 of the Convention;
8. Holds
 - (a) by six votes to one that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 60,000 (sixty thousand euros) which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement, each to Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan in respect of pecuniary damage;
 - (b) unanimously that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 65,000 (sixty-five thousand euros) each, plus any tax that may be chargeable, to Meryem Çelik, Zübeyda Uysal, Misrihan Sevli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Sevli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan in respect of non-pecuniary damage;

(ii) EUR 32,500 (thirty-two thousand five hundred euros) each, plus any tax that may be chargeable, to Hamit Şengül and Şakir Öztürk in respect of non-pecuniary damage;

(iii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to Hamayıl İnan in respect of non-pecuniary damage;

(iv) EUR 5,200 (five thousand two hundred euros) jointly in respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros), granted by way of legal aid, plus any tax that may be chargeable to the applicants;

(c) 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President