



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

FOURTH SECTION

CASE OF SABUKTEKİN v. TURKEY

(Application no. 27243/95)

JUDGMENT

STRASBOURG

19 March 2002

This judgment may be subject to editorial revision.

In the case of Sabuktekin v. Turkey,

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

Mr M. PELLONPÄÄ, *President*,

Mr A. PASTOR RIDRUEJO,

Mrs E. PALM,

Mr J. MAKARCZYK,

Mr J. CASADEVALL,

Mrs V. STRÁŽNICKÁ, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 January and 26 February 2002,

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

PROCEDURE

1. The case originated in an application (no. 27243/95) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mrs Sultan Sabuktekin (“the applicant”), on 24 March 1995.

2. The applicant, who had been granted legal aid, was represented by Mr K. Boyle and Ms F. Hampson, lecturers at the University of Essex (England). The Turkish Government (“the Government”) did not appoint an Agent to represent it.

3. The applicant alleged that her husband had been killed by security forces on account of his political activities within a pro-Kurdish party. She relied on Articles 2, 3, 6, 13 and 14 of the Convention.

4. The application was transmitted to the Court by the Commission, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention [*Note by the Registry*: Protocol No. 11 entered into force on 1 November 1998.], on 30 October 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention). The application was declared admissible by the Commission on 2 March 1998. In its report of 21 October 1999 (former Article 31 of the Convention) the Commission expressed the unanimous opinion that: the applicant's husband had been killed unlawfully, in breach of Article 2 of the Convention; there had been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to carry out an effective investigation into his death; there had been no violation of Article 3 of the

Convention; and it was unnecessary to examine the applicant's complaint under Article 6 of the Convention. It also expressed the opinion that there had been a violation of Article 13 of the Convention (twenty-five votes to two), but no violation of Article 14 (unanimously).

5. On 6 December 1999 the panel of the Grand Chamber decided that the case should be examined by one of the Sections of the Court (Rule 100 § 1 of the Rules of Court). The application was allocated to the Fourth Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The death of the applicant's husband

1. The applicant's version of events

7. On 28 September 1994 the applicant's husband, Salih Sabuktekin, a building contractor, was killed outside his house as he was getting into his van. He was a member of the pro-Kurdish political party, *HADEP* (the People's Democracy Party) and a delegate of the local Yüreğir/Adana branch. According to the witnesses, he was gunned down by two men in civilian clothes in front of a number of people, including his brother, Halil Sabuktekin, who was waiting for him in the vehicle.

8. There are discrepancies between the parties' accounts of what took place, as regards both the timing of the incident and events immediately after the shooting.

9. According to the applicant, the shooting took place between 6.30 a.m. and 7 a.m. Her brother-in-law, Halil Sabuktekin, attempted to chase his brother's killers but had been prevented from doing so by plainclothes police officers, who had proceeded to arrest him and taken him into police custody. In her observations of 31 March 1997 the applicant added that her brother-

in-law had set off in pursuit of the killers with another person whom she named in a statement of 21 June 1999 as Latif Turan.

10. In corroboration of her account, the applicant *inter alia* sent the Commission a statement made by her brother-in-law on 31 March 1997 before a member of the Human Rights Association and a member of the *HADEP*. According to that statement, the shots had been fired at approximately ten minutes past seven. He had set off in pursuit of the killers with a friend, but they had been intercepted by police officers. After questioning them about the PKK, Hizbullah (the Party of God), and the *HADEP*, the police officers had taken them firstly to Adana State Hospital, where Halil Sabuktekin had caught sight of his brother on a bench, and then to the police station, where they were questioned. The police had released them an hour later. Halil Sabuktekin had then returned to the hospital, where he learnt that his brother had died in the meantime.

11. The applicant added that some twenty people had been taken into police custody while her husband's funeral was taking place. Moreover, on at least three occasions before her husband's death the police had burst into their house at night and carried out searches. On the first two occasions they had enquired as to her husband's whereabouts and on the third had taken him away. However, he had been released the following day. She also said that their house had been kept under constant police surveillance.

12. The applicant affirmed that she was not asked to attend for interview by the investigators until February or March 1998.

2. *The Government's version of events*

13. The Government maintained that the shots had been fired just before 6 a.m. The investigation revealed that Halil Sabuktekin had immediately taken his brother to Adana Hospital.

14. The Government also maintained that the applicant had been sent a letter requiring her to attend the local police station after the murder, but had failed to do so.

15. The record of the victim's examination on his admission to hospital, which was signed by two doctors, put the time of his arrival at 6.20 a.m. A police report recorded as having been made up at 6.30 a.m. on 28 September 1994 and which was signed by two police officers, A.Ö. and S.A., and a doctor, stated that the applicant's husband had arrived at the casualty and emergency department of the Adana State Hospital at 6.20 a.m. and had been taken to an operating theatre. A second police report signed by the same two officers and Halil Sabuktekin had been made up at 6.30 a.m. on 28 September 1994 to record the remittance of various objects and money in the wounded man's possession to his brother, Halil Sabuktekin.

B. Action taken by the domestic authorities

16. After the incident the police made inquiries at the scene, drew up a sketch map of the locality and took the names of everyone who was present when the shooting occurred. The incident report states that seven cartridges were found.

17. On 28 September 1994 five people, including Halil Sabuktekin, made statements to the police. Halil Sabuktekin said that the incident had occurred at about 6.30 a.m. and that he had taken his brother to hospital on discovering that he had been hit. He made no mention of having chased the assailants or of being stopped by police officers. Abdullah Ertekin, an employee of the victim who was in the back of the vehicle when the shooting took place, made no mention of any such events in his account either. He was questioned by police officers at 7 a.m. and put the time of the shooting at 6.30 a.m., immediately after he and one Mesut Şen had pulled up outside the victim's house in the van. These two witnesses were only able to give a brief description of the two gunmen. Müslüm Olcay, the owner of a tearoom, gave information on the age, height and hair colour of one of the gunmen, but was unable to describe the second. He did, however, say that there were approximately ten people in his tearoom in addition to the workmen who had just left to get into the van. He made no reference in his statement to the suspects being chased after the shooting. Questioned by the same officers, Suphi Özbudak, a baker working nearby, was unable to provide any helpful information.

18. The Adana Public Prosecutor began a preliminary investigation into the murder of the applicant's husband. On 13 October 1994 the Head of the Adana Anti-Terrorist Branch sent a report to the Adana Public Prosecutor, to which were attached the records of the four interviews conducted on 28 September 1994, a sketch map of the scene of the crime and three other police reports giving details of the searches made at the scene and of the vehicle and confirming that the police had received the bullet that had been removed from the victim's body. Two medical reports were also attached, namely the death certificates concluding that an autopsy was required, and the toxicological analysis report. Among other matters referred to in the Head of the Anti-Terrorist Branch's report and enclosed with it were the results of the ballistics report.

19. On 6 December 1994, in the course of that investigation, the Adana Public Prosecutor issued an arrest warrant against a person or persons unknown for murder and requested the relevant police department to investigate the crime and arrest the suspects. It was instructed to report to the Principal Public Prosecutor's Office quarterly on progress.

20. In July 1995 the Adana Anti-Terrorist Branch Headquarters launched an operation against the illegal organisation Hizbullah after several members of the *HADEP* and a number of PKK supporters were

killed. In an interview on 27 July 1995, Z.T., one of fourteen people arrested in that operation, said that another member of the organisation, H.T., had asked him to obtain information on members of the PKK and the *HADEP* living in the vicinity, including Salih Sabuktekin. After completing his mission, he learnt that the people concerned had been killed in 1994 and 1995. He added that he had no idea who the killers were or who had ordered the murders to be carried out. H.T., who was also among those arrested, was questioned the same day but denied the accusations. That information was passed on to the Adana Public Prosecutor, with a summary of the interviews of the persons questioned.

21. Meanwhile, forensic tests were carried out on firearms and ammunition that had been seized at the homes of some of the people who had been arrested on 20 July 1995. It showed that the cartridge cases from the seized ammunition were not the same as cartridge cases that had been found at the scene of certain unsolved cases.

22. On 4 August 1995 the Adana Public Prosecutor questioned the fourteen suspects. He made an application on the same day for six of them to be remanded in custody.

23. After hearing these suspects the Second Division of the Adana Criminal Court remanded five of them, including H.T. and Z.T., in custody and ordered the release of the sixth.

24. Also on 4 August 1995 the Adana Public Prosecutor relinquished jurisdiction over the case, as he considered that some of the criminal activities of which the persons arrested were accused, namely the counts of being members of and activists in an illegal organisation, fell within the jurisdiction of the Public Prosecutor at the Konya National Security Court.

25. On 11 August 1995 the Public Prosecutor at the Konya National Security Court dropped charges against eight of the fourteen defendants, as he considered that there was no concrete evidence to show that they had played an active role in the illegal organisation. He committed the six remaining defendants to stand trial before the National Security Court.

26. On 16 August 1995 the Public Prosecutor at the Konya National Security Court requested the Adana Public Prosecutor to arrange a confrontation between the four witnesses who had been questioned on 28 September 1994 and six of the persons who had been arrested in July 1995, including Z.T. and H.T. On 1 September 1995 the Adana Public Prosecutor instructed Adana Police Headquarters to produce the four witnesses concerned and the Governor of Adana Prison to produce the six prisoners for a confrontation. Müslüm Olcay was brought before him on 26 September 1995. According to a note dated 29 September 1995, it was not possible to produce Halil Sabuktekin, as he was performing his military service at Doğubayazıt in another region. Abdullah Ertekin and Suphi Özbudak could not be produced either, as they had moved and the police could not find anyone who knew their new address. In letters of

25 September and 18 October 1995 the Adana Public Prosecutor informed the Public Prosecutor at the Konya National Security Court that it had not been possible to hold the requested confrontation, since there was no record of one of the accused in the prison register and the others had been transferred to Karaman Prison.

27. On 7 November 1995 the Public Prosecutor at the Konya National Security Court requested the Adana Anti-Terrorist Branch Headquarters to produce the four witnesses concerned. On 21 November 1995 the Adana Anti-Terrorist Branch Headquarters repeated that Halil Sabuktekin was performing his military service at Doğubayazıt and said that the other witnesses had insufficient means to pay their travel expenses and would attend as soon as they were able.

28. On 28 November 1995, referring in particular to the report of 13 October 1994 (see paragraph 18 above), the Public Prosecutor at the Konya National Security Court requested the Adana Anti-Terrorist Branch Headquarters to conduct a thorough search for those responsible for the murders of Salih Sabuktekin and another person. He asked for quarterly progress reports on the investigation.

29. On 12 December 1995 the Public Prosecutor at the Konya National Security Court invited the Adana Public Prosecutor's Office to arrange for a confrontation between the witnesses to Salih Sabuktekin's murder and the defendants who had been committed on 11 August 1995 for trial by the National Security Court.

30. On 7 March 1996 the Anti-Terrorist Branch Headquarters informed the Public Prosecutor at the Konya National Security Court that, despite its efforts, it had not yet managed to identify those responsible for the two murders referred to in the latter's letter of 28 November 1995. It assured him that as soon as it obtained any further information it would pass it on to him.

31. On 14 March 1996 the Public Prosecutor at the Konya National Security Court again invited the Adana Public Prosecutor's Office to arrange for a confrontation between the persons who had witnessed the murder and the defendants who had been committed on 11 August 1995 for trial by the National Security Court.

32. On 25 July 1996 the Konya National Security Court acquitted the six defendants who on 11 August 1995 had been committed to stand trial before it for lack of evidence. On 1 August 1996 the Public Prosecutor appealed to the Court of Cassation, which, in a judgment of 16 February 1998, upheld the judgment of 25 July 1996.

33. On 25 September 1996, having received no reply to his letters of 12 December 1995 and 14 March 1996, the Public Prosecutor at the Konya National Security Court repeated his request of 14 March 1996 for a confrontation to be arranged. He gave instructions for photographs to be taken of the persons concerned for use for identification purposes should the need subsequently arise. On 3 and 7 October 1996 he received a reply

informing him among other things that it had not been possible to arrange for the presence of the persons indicted on 11 August 1995 as, according to the information contained in the indictment, they were in custody.

34. On 18 October 1996 the Public Prosecutor at the Konya National Security Court renewed his requests to the Adana Public Prosecutor's Office for a confrontation to be arranged, explaining that the persons who were to be confronted by the witnesses had been released as a result of their acquittal.

35. On 5 November 1996 the Public Prosecutor at the Konya National Security Court invited the Adana Public Prosecutor's Office to recover the clothing the victim was wearing when he was killed for use in forensic tests. He explained that it might have been handed over to his brother, Abdulvahap. He also requested a further hearing of the four witnesses who had given evidence on 28 September 1994 and a further inspection of the scene of the crime.

36. The Konya National Security Court was abolished by Law no. 4210 of 13 November 1996 and replaced by the Adana National Security Court, to which the case was transferred.

37. On 23 June 1997 the Public Prosecutor at the Adana National Security Court instructed the Anti-Terrorist Branch Headquarters to pursue its investigations into the five crimes of murder and assault, including the murder of Salih Sabuktekin, that had been committed in 1994 and 1995. He invited it to explore the possibility that the crimes were the work of the illegal Hizbullah or PKK organisations further. He pointed out that H.T. and Z.T. remained under suspicion in that regard, and requested that nine witnesses, including Halil Sabuktekin and Müslüm Olcay, be shown the photographs of the suspects that had been taken at the request of the Public Prosecutor at the Konya National Security Court on 25 September 1996.

38. On 3 July 1997 the Public Prosecutor at the Adana National Security Court took a deposition from Müslüm Olcay; it did not add to the information contained in his deposition of 28 September 1994. Müslüm Olcay was shown the photographs of suspects, but said that he did not recognise any of them and had not seen the killers' faces.

39. Also on 3 July 1997 the Anti-Terrorist Branch Headquarters informed the Public Prosecutor that it was unable to bring the other witnesses before him, as they were not staying at their addresses.

40. On 30 July 1997 the Public Prosecutor at the Adana National Security Court again invited the Anti-Terrorist Branch Headquarters to pursue its investigations into the five crimes of murder and assault and reminded them that H.T. and Z.T. were suspects. He also requested monthly progress reports.

41. Referring to the letters of 23 June and 30 July 1997 the Anti-Terrorist Branch Headquarters informed the Public Prosecutor on 28 August 1997 that it had not been able to establish where H.T. and Z.T. lived. It had

found the addresses of Z.T.'s brothers and H.T.'s brother, but the latter did not know where H.T. lived. On 9 September 1997 the Anti-Terrorist Branch Headquarters informed the Public Prosecutor that it had been unable to obtain data or information about the murder on 28 September 1994.

42. By letters of 6 November 1997, 6 January, 3 February and 19 March 1998, the Public Prosecutor at the Adana National Security Court again invited the Anti-Terrorist Branch Headquarters to pursue its investigations into the death and to provide him with monthly progress reports. The Anti-Terrorist Branch acknowledged receipt of the letters and promised to take the necessary action. By letters of 20 May, 20 June, 20 July, 20 August and 22 September 1998 it informed him that no new information had been obtained from its further inquiries.

43. Meanwhile, on 14 April 1998 the Public Prosecutor at the Adana National Security Court invited the Anti-Terrorist Branch Headquarters to arrange for the applicant and Abdulvahap and Halil Sabuktekin to attend his office for questioning. The request concerning Abdulvahap Sabuktekin was forwarded the following day to the Public Prosecutor's Office in Izmir, where he lived.

44. On 15 April 1998 the Public Prosecutor at the Adana National Security Court invited the Anti-Terrorist Branch Headquarters to arrange for the police officer who had been the first to the scene to be brought before him for questioning. The Anti-Terrorist Branch informed him the same day that it had been unable to contact the police officer as he was performing his military service and it was not known to which barracks he had been assigned.

45. On 15 April 1998 the Public Prosecutor at the National Security Court took a deposition from the applicant, in which the latter stated:

“On 28 September 1994 my husband left the house at approximately 6.53 a.m. to go out in our van. He set off in the direction of the tearooms to fetch the workmen who were waiting for him there. He was getting into the van when two people came up alongside him. They shot him from behind from a distance of approximately two metres. As I was a little way off, I cannot say who fired the shots: it is possible that both the assailants did. I ran towards the scene of the murder to try to grab hold of the killers, but they fled. One of the persons who fired the shots was short and stout, the other was thin and approximately 1 metre 70 tall. I saw them from behind.”

The complainant is asked to examine photographs of the suspects, but says that she cannot recognise the killers as she did not see their faces.

“The accused fired the shots with a pistol. I do not know how many shots were fired. I would say six or seven. I did not see the pistols. I do not know who killed my husband, nor do I know whether he was executed by an organisation. I wish to file a complaint if the killers are found. I would add that my husband was killed as he opened the van door and started to get in.”

46. Abdullah Ertekin was heard on 16 April 1998 and gave similar information to that contained in his deposition of 28 September 1994. He

added that after the shots had been fired, the injured man was taken to Adana Hospital, where he died. Müslüm Olcay was heard the same day but did not add to the information he had given in his previous depositions, (see paragraph 17 above).

47. The victim's brother, Abdulvahap Sabuktekin, was heard by the Public Prosecutor on 20 April 1998. He had little information to give about his brother's death. He had been informed of events at work and had gone to the hospital where he learnt that his brother had died. He added that his brother's clothes had not been handed over to him and he did not know what had been done with them. Halil Sabuktekin was heard by the Public Prosecutor on 22 April 1998. The record of his deposition reads as follows:

“Towards 6.30 a. m. on the morning of 28 September 1994, I went to the tearoom. My elder brother's van arrived at about 6.30 a.m. I got into the driver's cabin, and my elder brother, Mehmet Salih Sabuktekin, did likewise. He had already put a foot inside when I heard six pistol shots and my brother collapsed in the driver's cabin of the van. There were four of us in the cabin and my brother fell on top of us. I started to run after the two men who had fired the shots. I did not see their faces, but there had been other people in the tearoom while I was there, apart from the workmen. It was they who shot my brother. Both of them had a pistol in their hands but I am unable to identify the make. One of the killers was approximately 1 metre 80 tall, the other 1 metre 60. He was stout. The man who was 1 metre 80 tall was slim, had a black moustache and hollow cheeks. The other man was 1 metre 60 tall, stout, blond and had bright coloured eyes. I ran after them but was unable to catch them. They turned into another street and got away. They did not fire at me or anyone else.’

The witness was shown the photographs in the case file [including the photographs of the fourteen people who were arrested in July 1995 (see paragraph 20 above)]. He said: 'The men who shot my brother are not any of the men in the photographs. I do not know what clothes my brother was wearing the day he was killed or where they are, but they are not in our house. I saw my brother's killers from behind, not from the front. However, they were in the tea-room: one was tall and dark, the other small and blond. I did not see the killers after the murder.'

The witness's statements of 28 September 1994 were read over to him. He replied:

‘The statements are correct and the signature is mine. In our suburb the owner of a bookshop was killed. He was Z.T.'s elder brother. Two months after that murder, my brother was killed. After the bookshop owner was killed, a group of men gathered outside our office in the 19 May suburb, shouting 'They are the killers'. I do not know these people. It is possible that my brother Mehmet Salih Sabuktekin was believed to be responsible for the death of the bookshop owner and was executed by Hizbullah supporters. I have nothing else to say.’”

48. By a letter sent on 24 April 1998 the International Relations Department at the Ministry of Justice informed the Ministry of Foreign Affairs of the position in the investigation and forwarded information from the case file. It advised that following the murder of Salih Sabuktekin, the police had begun inquiries the same day and had summoned Halit

Sabuktekin, the applicant (Sultan Sabuktekin), Abdullah Ertekin, Müslüm Olcay and Suphi Özbudak to give statements as witnesses.

49. Halil Sabuktekin was questioned further by the Public Prosecutor on 8 May 1998 and stated *inter alia*:

“When we recovered the body of my brother, Mehmet Salih Sabuktekin, he was not wearing any clothes. The clothes were not returned to us.

At the time of the murder, I was inside the van on the corner of 1034 Street in the 19 May district. My brother was shot as he was getting into the van. He collapsed, but later managed to sit up. We took him to Adana Hospital. He was not operated on by the Casualty and Emergency Department. We were told later that he had died as he was being taken for an operation.

I saw the killers. They were not people I knew. I would recognise them if I saw them again.”

50. On 18 September 1998 the Public Prosecutor at the Adana National Security Court issued further instructions to the Anti-Terrorist Branch Headquarters concerning the five murders and/or assaults committed in 1994 and 1995, including:

“(a) In the light of your replies regarding these case files, we note that no analyses have been carried out, the acts remain unexplained and no inquiries have been made to resolve them. These acts may have been the work of either the PKK organisation or Hizbullah. In any event, in view of the importance of the events, inquiries must be made and a detailed reply given...

(e) The murders and attempted murders have profoundly affected public opinion, creating a sense of insecurity. It is for that reason that you are asked to investigate these cases carefully and to inform us of the results of your inquiries.”

51. On 28 September 1998 the Anti-Terrorist Branch Headquarters brought the following information about the present case to the Public Prosecutor's attention:

“It is considered that the murder of Mehmet Salih Sabuktekin on 28 September 1994 was perpetrated by Hizbullah. During questioning, Z.T., a member of Hizbullah, stated that H.T., a member of the same organisation, had given an order for information to be obtained on members of the PKK with a view to ridding the district of those people. Z.T. has admitted that he compiled a list containing the names of those people and gave it to B.T. Mr Salih Sabuktekin's name was included on the list. Z.T. has also said that he heard about the murder later. H.T. denied Z.T.'s allegations. No organisation has claimed responsibility for this murder.”

Abdullah Ertekin appeared before the public prosecutor again on 5 November 1998 and provided similar information to that contained in his deposition of 28 September 1994. He added that he had remained at the scene of the murder while the driver of the van, Mesut Şen, took the victim, his brother-in-law, to hospital.

52. Referring to the letter of 19 March 1998 (see paragraph 42 above), the Anti-Terrorist Branch informed the Public Prosecutor at the Adana

National Security Court in a letter of 21 October 1998 that it was pursuing its inquiries and would inform him of developments.

53. On 4 November 1998 the Anti-Terrorist Branch Headquarters questioned Halil Sabuktekin, who gave the following account:

“At about 7 a.m. on the day of the murder, I was waiting outside the tearoom on Cukurova Boulevard with about fourteen workers for my brother to arrive. He came to within approximately twenty metres of us and gestured for us to get into the van, a Skoda. I sat in the front. When my brother was next to us, some people who I did not know but had noticed drinking tea while waiting for my brother, one of whom was very corpulent, the other tall and slim, shot him. My brother collapsed on top of us. I got out on the driver's side and ran after the assailants. When they saw that I was giving chase, they fired two shots. That scared me and I turned back at that point. Nobody prevented me from chasing them. Later I took a collective taxi to the hospital to which my brother had been admitted.

The fourteen workmen who were in front of the tearoom on that day were our workmen. I do not remember their names and addresses.

In the deposition I made at the police station on 28 April 1994 I did not mention the fact that I had chased the assailants, but in my later depositions to the judicial authorities and the Public Prosecutor at the Adana National Security Court, I did explain that I had chased the suspects and that no one had stopped me doing so.

A day after I made my depositions to the judicial authorities and the Public Prosecutor, a man with a beard approached me saying he was a member of the Adana Section of the Human Rights Association. He got me to sign a blank sheet of paper and told me that he would fill it in and approach the authorities. When I asked him which authorities he had in mind, he told me not to worry and left.

I have made this deposition without being subjected to pressure of any sort and have expressed my opinion of my own will.

54. On 9 November 1998 Mesut Şen was heard by the Anti-Terrorist Branch Headquarters. The following is an extract from his statement:

“I knew Mehmet Salih Sabuktekin, who was killed on the aforementioned date, as I worked for him as a driver and he was married to my half sister, Sultane Sabuktekin. On the day of the murder I arrived outside the tearoom on Cukurova Boulevard in the 19 May of Yüreğir District in Adana, to collect the workmen. Thirteen or fourteen workmen got into the back of the van. Seated next to me in the van were Halil Sabuktekin and one Abdullah. I do not know his surname or address. When our employer, Mehmet Salih Sabuktekin, got in beside me I heard pistol shots. I heard five or six shots. I did not see the suspects' faces. I leant over inside the vehicle to protect myself. Halil Sabuktekin got out of the van by climbing over me but I do not know whether he chased the suspects. I then saw the suspects from behind making their getaway along the D400 road. I did not give chase as I was afraid. Since I did not see their faces, I cannot identify them. Once I had got over the shock, I took Mehmet Salih Sabuktekin to the Adana State Hospital. I was questioned by police officers in the hospital. This is what I know about these events.”

55. Mesut Şen said virtually the same thing when he was questioned the same day by the Public Prosecutor at the Adana National Security Court. He

explained that he was alone in the van when he stopped outside the tea room. Halil Sabuktekin and Abdullah Ertekin got in beside him and the other workmen got in the back.

56. Under further questioning on 9 November 1998 by the Public Prosecutor, Halil Sabuktekin gave the following details about the persons present in the tearoom just before his brother was killed:

“Those present were our workmen, Mesut Şen, Latif Turan, Ekrem Turan, Abdullah Ertekin and some others whose names I do not recall. The two people who killed my brother were sitting beside us. As I had no reason to be suspicious of them, I did not pay them any attention. My brother's van, whose vehicle registration number I do not recall, arrived to pick up the workmen. I was sat in the part reserved for the driver and passengers. My brother, Mehmet Salih Sabuktekin, put a foot inside the vehicle to sit down next to me and at that point I heard six pistol shots. My brother collapsed towards me. I got out of my seat and began to run after the suspects. I did not see their faces. These were not the people whose photographs were shown to me earlier. The only persons at the scene were our workmen and the two suspects.”

57. The applicants was further questioned by the Public Prosecutor on 18 November 1998. The two records made of the interview read as follows:

“At about 6.53 a.m. on 28 September 1994, my husband, Mehmet Salih Sabuktekin, left our house. His van was going to pick up the workmen outside Müslüm Olcay's coffee house to take them to the building site. When he left the house, I wondered whether he would manage to catch the van and that is why I waited outside the house. I was approximately 250 metres from the van and there was nothing obstructing my view of it. I knew that the van driver was Mesut Şen, but did not know the workmen. As my husband, Mehmet Salih Sabuktekin, got into the van alongside the driver, two people came up and fired shots, but I was unable to work out whether my husband was the target. At that point a person I did not know arrived and told me that my husband had been shot. One of the assailants was stout and short. The other was slim and approximately 1 metre 70 tall. I did not see their faces. From what I heard, they fired six or seven shots. I saw one of them fire a shot in the air. I do not know who killed my husband. I was not questioned after the killing. The first deposition I gave was to you on 15 April 1998. Mesut Şen was the van driver and that is how I know that he was at the scene of the murder. I do not know the identity of the other workmen. I do not remember whether I took any official action after the murder. The assailants ran towards me. At that point I did not know that they had shot my husband. They disappeared round the corner of the road just next to me. They were holding pistols. My brother-in-law, Halil Sabuktekin, arrived and told me that my husband had been shot. I did not see Halil run after the suspects. When he got up to me he fainted. I wanted to help him recover his senses and at the same time to follow the suspects, but I did not find them. I met an elderly person. I do not know his name, but do know his address. That person may know in which direction the suspects fled. When I asked him which way they had gone, he said that he had not seen them. To be precise, he said that they had run off and that there was no point in giving chase, as I would never be able to catch them up. No one stopped me when I tried to chase them. In any event, I was the only person who sought to follow the suspects. Three or four years before my husband was killed, there was an investigation. My husband was taken into police custody but was not detained. He was questioned about a person named Rıfat and another workman, who were working on one of the building sites in the sub-prefecture of Karatas. Rıfat and the other workman were suspected of being members of the PKK and I think my husband was suspected of helping them. I repeat that my husband was

not detained but merely taken into police custody. I do not suggest that any plainclothes police officers were at the scene of the murder. No one sought to stop anyone from chasing the suspects. In any event, I was the only person who attempted to follow them. That is all I have to say.'

The depositions was read out and the witness approved it. Not knowing how to sign her name, she affixed a thumbprint.

'I did not tell the people who drew up the memorial [the memorial in reply that was lodged with the Commission] that my brother-in-law, Halil Sabuktekin, was prevented from chasing after the suspects by plainclothes police officers. I do not know where they obtained that information. I did not say that in my deposition of 15 April 1998, as it is not true and I was not asked about that subject. We buried the deceased the day he was killed. At about 5 a.m. the following day, I noticed someone in the fields, about 250 metres from my home, and another person walk past my house. I think that they were police officers, but they were not wearing uniforms. The person who walked past my house saw me crying and made off in the direction of the fields. He undoubtedly caught up with the person who was already there. I have nothing else to say.'

58. On the afternoon of 18 November 1998, the Public Prosecutor took the following statement from Ali Acar:

"At about 3.30 p.m. today, police officers, accompanied by a person who I did not know beforehand but whom I subsequently learnt was Mrs Sultane Sabuktekin, came to my house. Pointing at me, Sultane said 'I am not sure, but he may be the person'. The police officers gave me an appointment to attend the office of the Public Prosecutor at the Adana National Security Court. In 1994 and 1995 several people were killed in our district. I did not know the person who was killed, Mehmet Salih Sabuktekin, or his wife, Sultane Sabuktekin. I had never seen Sultane before today. I am a brick manufacturer. I do not recall the murder of Mehmet Salih Sabuktekin. Mrs Sultane never spoke to me about the subject at that time. I do not know anything and have not seen anything. I do not know the suspects and have no information about the murder of Mehmet Salih Sabuktekin."

59. When questioned on 19 November 1998, Latif Turan said that after hearing the first shots, he had been seized by panic and had not watched what happened. He had not seen the assailants or the persons who had chased after them and could not say whether there had been a chase. It was only later that he had noticed that Salih Sabuktekin had been wounded. Salih Sabuktekin and his brother were the only persons he knew among those who had been present. He could not remember whether his brother, Ekrem Turan, who was also working on the building site to which they were all going, was present that morning. Ekrem Turan was later questioned, but stated that he was not at the scene of the murder as he had taken the day off work.

II. RELEVANT DOMESTIC LAW AND PRACTICE

60. The rules and procedures applicable to liability for illegal acts may be resumed as follows.

A. Criminal law and procedure

61. The Criminal Code contains provisions dealing with unintentional homicide (Articles 452 and 459), intentional homicide (Article 448) and murder (Article 450).

62. The authorities' obligations with regard to conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure (CCP). Offences may be reported to the authorities or members of the security forces or to the public prosecutors' offices. Complaints may be made in writing or orally. If the complaint is made orally, the authority must make a record of it (Article 151 CCP).

63. If there is evidence to suggest that a death is not due to natural causes, members of the security forces who have been informed of that fact are required to advise the public prosecutor or a criminal-court judge (Article 152 CCP).

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

B. Civil and administrative liability arising out of criminal offences

65. Under section 13 of Law no. 2577 on Administrative Procedure, anyone who sustains damage as a result of an act by the authorities may, within one year after the alleged act was committed, claim compensation from them. If the claim is rejected in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

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

“All acts or decisions of the authorities are subject to judicial review...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

That provision establishes the State's strict liability, which comes into play if it is shown that in the circumstances of a particular case the State has failed in its obligation to maintain public order, ensure public safety or protect people's lives or property, without it being necessary to show a

tortious act attributable to the authorities. Under these rules, the authorities may therefore be held liable to compensate anyone who has sustained loss as a result of acts committed by unidentified persons.

67. Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages for pecuniary loss (Articles 41 to 46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal courts on the issue of the defendant's guilt (Article 53).

68. However, under section 13 of Law no. 657 on State Employees, anyone who has sustained loss as a result of an act done in the performance of duties governed by public law may, in principle, only bring an action against the authority by whom the civil servant concerned is employed and not directly against the civil servant (see Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. When an act is found to be illegal or tortious and, consequently, is no longer an “administrative” act or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the employer (Article 50 of the Code of Obligations).

THE LAW

...

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

83. The applicant alleged that her husband had been killed by or with the connivance of the security forces as a result of his activities within a pro-Kurdish political party. She also complained of the lack of an adequate and effective investigation into the circumstances of the murder. She complained of a violation of Article 2 of the Convention, which provides:

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

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

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

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

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

A. The parties' submissions

1. The applicant

84. While observing that her husband had been murdered near Adana, outside the region in which the state of emergency had been declared, the applicant cited the Court's judgment in the case of *Osman v. the United Kingdom* (28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3124) and asserted that the authorities did not ensure that the law was effectively upheld in the South East of the country or in the region of Adana at the time of the alleged events. She relied on the Susurluk Report as support for allegations that illegal assaults had been committed with the support of the authorities and to their knowledge. She said that while the report did not enable those responsible for the assaults to be identified, it did contain very serious admissions and an acknowledgement that attacks for which no responsibility had been claimed and which had been attributed to “unknown perpetrators” had in fact been ordered by senior officers in the security forces, a fact that was of direct relevance to the present case. She pointed to the shortcomings in the investigations into the illegal killings, which had been highlighted by the Convention institutions, as evidence that public prosecutors were not really in a position to investigate complaints against members of the security forces effectively. Those matters, taken as a whole, showed that the security forces and those acting under their control or with their approval enjoyed impunity, a factor which in the applicant's submission was incompatible with the concept of the rule of law. In the special circumstances of the instant case, in which her husband had been at risk of attack owing to his position as an active member in the pro-Kurdish *HADEP* party, the authorities had not protected his life and the respondent State had failed to discharge its positive obligation to protect by law the lives of a category of citizens known to be exposed to a real and present danger by the illegal activities, of which the authorities were aware, of the counter-insurgency movements.

85. The applicant invited the Court to concur with the Commission's opinion that there had been a violation of Article 2 of the Convention on the ground that the investigation into her husband's death had been so inadequate and ineffective as to amount to a breach of the obligation to protect the right to life.

2. The Government

86. The Government emphasised that while it did not contest the fact that Salih Sabuktekin had been murdered by unidentified killers, they did

not agree with the conclusions to be drawn under Article 2 of the Convention on the facts. They maintained in that connection that the applicant's allegations were unfounded and that there was no evidence in the case file capable of explaining why her husband's murder should be attributable to the security forces.

87. As to the investigation into the death, the Government submitted that the authorities had to date conducted the investigations, which were still pending, properly and in a thorough and appropriate manner. All the measures had been taken rapidly and efficiently. The authorities had heard evidence from the victim's brother and other eyewitnesses on the very day of the incident. Inquiries had been made at the scene and a ballistic report prepared. The investigation had continued following the arrest of a suspect who was a member of Hizbullah and criminal proceedings had been started against that person and six other co-defendants suspected, *inter alia*, of implication in the Salih Sabuktekin's murder.

88. The Government said in conclusion that, as the authorities in charge of the case had carried out the necessary investigations and heard evidence from witnesses that had not yielded any persuasive evidence that the security forces had been in any way implicated in the killing, there had been no violation in the present case.

3. *The Commission*

89. The Commission expressed that opinion that the applicant's assertion that her husband's killers were members of the security forces was based more on conjecture, hypothesis and speculation than reliable evidence. As to the investigation into the killing, the Commission considered that there had been a number of shortcomings in that domain, particularly concerning the tracing and identification of witnesses, especially the people who had been in the tearoom or in the vicinity at the time of the murder. It also noted that it had taken more than three and a half years for the applicant to be heard. The Commission said that until 1998 the investigators had merely invited witnesses to describe to them the murder scene, without attempting to check their evidence against their previous statements or the statements of other witnesses with a view to spotting omissions, inconsistencies or contradictions. It concluded that the investigation had been inadequate and ineffective and amounted to a breach of the obligation to protect the right to life.

B. The Court's assessment

1. *The death of the applicant's husband*

90. In the instant case, the Commission was not able to conclude on the evidence before it that the allegation that Salih Sabuktekin had been killed by agents of the State or with their connivance had been proved beyond reasonable doubt.

91. The Court reiterates that Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention and, together with Article 3 of the Convention, enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). Furthermore, in keeping with the importance of this provision, the Court must, in making its assessment, subject complaints concerning the right to life to the most careful scrutiny.

92. The Court notes that the events in the present case took place at Adana, a town outside the region in south-east Turkey in which a state of emergency has been declared. It notes that the Government do not contest the applicant's account of the facts. However, the two parties radically disagree about the conclusions to be drawn from the facts under Article 2 of the Convention.

93. The Court will examine the issues that arise in the light of the documentary evidence that has been adduced in the present case, in particular that lodged by the Government concerning the judicial investigations that have been carried out, as also the parties' observations. 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 un rebutted presumptions of fact. Moreover, the conduct of the parties when evidence is being obtained has to be taken into account (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, pp. 64-65, §§ 160-161).

94. The applicant alleges that her husband was deliberately killed by the security forces or at their instigation on account of his activities in a pro-Kurdish political party. She has submitted a statement by her brother-in-law (see paragraphs 9 and 10 above) in support of her allegations. However, the Court notes that that statement is not corroborated in any decisive way by any other eyewitness statement or other evidence. In their statements to the public prosecutor, neither the applicant nor Halil Sabuktekin mentioned the facts described in that statement (see paragraphs 17, 45, 47, 53, 56 and 57 above). The statement is also contradicted by the statements of the other eyewitnesses, including Latif Turan and Müslüm Olcay, and the other evidence that has been provided.

95. In these circumstances, the Court considers that the conclusion that Salih Sabuktekin was murdered by or with the complicity of agents of the State is based more on hypothesis and speculation than reliable evidence. It considers that the evidence before it does not provide proof capable of supporting that conclusion (see paragraph 94 above).

96. The Court accordingly finds that the evidence in the case file does not allow it to conclude that Salih Sabuktekin was killed by the security forces or with their connivance.

Consequently no violation of Article 2 of the Convention has been established on that account.

2. *The nature of the investigations*

97. The obligation to protect the right to life under this provision read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, Series A no. 324, p. 49, § 161; and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, p. 329, § 105).

98. The aforementioned obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. The mere fact that the authorities have been informed of the death will give rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, *Reports* 1998-IV, p. 1778, § 82, *Yaşa v. Turkey*, 2 September 1998, *Reports* 1998-VI, p. 2438, § 100; and *Jordan v. the United Kingdom*, no. 24746/94, §§ 107-109, 4 May 2001).

99. In the present case there is no dispute over the steps that were taken by the authorities responsible for the preliminary investigation and the relevant public prosecutor's office after the incident (see paragraphs 16-59 above).

100. The evidence in the case file shows that immediately after the shooting, police officers searched the scene of the incident and the van and found seven cartridges. They took the names of the people present in the vicinity at the time of the shooting. Also on 28 September 1994 they took statements from the victim's brother, Halil Sabuktekin, and four other eye witnesses, namely, Abdullah Ertekin, an employee of the victim who was in the back of the vehicle when the shots were fired, Mesut Şen, the driver of the van who was seated next to the victim, Müslüm Olcay, the owner of the tearoom, and Suphi Özbudak, a baker who worked nearby. The first four witnesses were only able to give a brief description of the two men who fired the shots and did not give the names of any eye witnesses.

101. As to the preliminary investigation into the murder, it likewise started after the incident and Police Headquarters sent all the information and documents to the Adana Public Prosecutor (see paragraph 18 above). The Court notes that following an operation by the security forces a member of the illegal Hizbullah organisation was arrested with six other suspects and they were charged *inter alia* with being implicated in the murder of Salih Sabuktekin. Forensic tests carried out on the guns and ammunition seized at the suspects' homes showed that the cartridge cases were of a different type from those found at the scene of the crime. The Public Prosecutor at the Adana National Security Court took a statement from Müslüm Olcay, who was shown photographs of the suspects. Mr Olcay was unable to provide any other information than that he had given in his statement to the police. He said that he had not seen the killers' faces. Also in that connection, Halil Sabuktekin likewise stated that the men who had shot his brother were not any of the suspects and presumed members of Hizbullah whose photographs he had been shown (see paragraph 47 above). As regards the proceedings that ended with the acquittal of the persons accused, the Court notes that the domestic courts reached that verdict as a result of a lack of real evidence. Having examined the documents in the investigation file, it does not consider that there were any failings in the conduct of the proceedings serious enough to harm the overall investigation into the murder. Furthermore, when the National Security Court ruled that there was insufficient evidence to find the suspects guilty, the Public Prosecutor at the National Security Court sent fresh instructions to the Anti-Terrorist Branch to conduct a thorough investigation into the murder and to provide him with detailed information about the results of its inquiries.

102. The Court notes that after communication of the Commission's decision on the admissibility of the application, the Government produced the entire investigation file and information about how the investigation had been conducted. That evidence shows that the authorities took witness statements from the applicant and the victim's brothers and other people who were present when the crime was committed (see paragraphs 45-59 above). It is true that the applicant's first statement was not taken until 15 April 1998, that is to say three and a half years after her husband was killed. According to a letter from the Ministry of Justice to the Ministry of Foreign Affairs, the applicant and other people were instructed by the police to attend the police station to give a statement on the day of the murder. The Court notes at the outset that the applicant was not present at the scene of the crime. She was 250 metres from the van. Her statements show that she did not see the killers or know the identities of the workmen in the van (see paragraph 57 above). The Court also notes that neither the applicant nor the deceased's brothers informed the authorities responsible for investigating the case of the matters which, in their opinion, proved or made it probable that Salih Sabuktekin had been killed by or at the instigation of the security

forces. The applicant failed to inform the relevant bodies of specific events that might have served to corroborate her allegation and notably of certain events on which she relied before the Commission, such as the three nocturnal visits by the police to her home, her brother-in-law's attempt to pursue the killers with another person and the fact that they had been prevented from doing so by plainclothes police officers who had gone on to arrest them. Nor do Halil Sabuktekin's statements to the investigating authorities show that he made any reference to those events, which allegedly occurred immediately after the killing, either. In these circumstances, the fact that the applicant was not interviewed promptly by the investigating authorities does not suffice to cast any doubt on the effectiveness of their investigations (see paragraphs 45 and 57 above).

As to the other witnesses, the Court does not find any contradiction or inconsistency in their statements to the investigating authorities. They were only able to provide a brief description of the two assailants but were unable to offer any information of use in the investigation.

103. The Court finds that the evidence in the investigating file and the information provided by the Government show that, although it did not result in the identification of the killer or killers, the investigation was not devoid of effect and it cannot be maintained that the relevant authorities took no action with regard to the circumstances in which the applicant's husband was killed.

104. In the light of the aforementioned findings and having examined the various measures that were taken in the instant case, the Court finds that the investigation into the circumstances in which the applicant's husband was killed may be regarded as satisfying the requirements of Article 2 of the Convention. Consequently, there has been no violation of Article 2 on this account.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. Before the Commission, the applicant alleged that the risk of being unlawfully killed was far higher in south-east Turkey than in other areas of the country and that that amounted to discriminatory treatment against people of Kurdish origin. She did not pursue that complaint in the memorial she lodged with the Court.

106. That being so, the Court does not consider it necessary to examine that complaint of its own motion.

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

107. The applicant complained that she had been deprived of effective access to a court from which she could seek reparation, in breach of

Article 6 § 1 of the Convention. In the absence of an effective criminal prosecution, any civil action was bound to fail. On that point, the applicant said that the facts of the case demonstrated that there was no commitment to carry out an investigation and that in reality there had been no investigation into her husband's murder and no prosecution. She also alleged that as a result she had been deprived of an effective remedy to make her complaints, in breach of Article 13 of the Convention.

Article 6 § 1 of the Convention provides:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

Article 13 of the Convention reads as follows:

“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.”

(a) Article 6 § 1 of the Convention

108. The Court notes that the applicant's grievance under Article 6 § 1 of the Convention is inextricably bound up with her more general complaint concerning the manner in which the investigating authorities treated her husband's death. It is accordingly appropriate to examine the applicant's Article 6 complaint in relation to the more general obligation on Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention (see, among other authorities, *Kaya* cited above, p. 329, § 105).

(b) Article 13 of the Convention

109. Examining the complaint under Article 13, the Court reiterates that this provision guarantees the availability at the national level of a remedy to enforce the Convention rights and freedoms. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The remedy must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. However, Article 13 only applies to grievances that are arguable under the Convention (see *Çakıcı* cited above, p. 691, § 112; and *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, p. 23, § 52).

110. In the instant case the Court has found that there is insufficient evidence in the file to show that the applicant's husband was killed by the security forces or with their connivance. That does not necessarily mean,

however, that the complaint under Article 2 was not arguable (see, among other authorities, *Boyle and Rice* cited above). The Court's finding on the merits does not release the State from its obligation to conduct an effective investigation into the substance of the complaint.

Having analysed the various measures that were taken in the present case, the Court has found that the relevant authorities cannot be said to have taken no action with regard to the killing. Accordingly, for the reasons set out above (see paragraphs 97 to 100), the respondent State may be regarded as having conducted an effective criminal investigation, as required by Article 13 of the Convention.

Consequently, the Court holds that there has been no violation of Article 13 in the instant case.

V. ALLEGED VIOLATION OF ARTICLES 2, 6 AND 13 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 14

111. Before the Commission the applicant complained of discrimination in the enjoyment of the rights guaranteed by Articles 2, 6 and 13 of the Convention on the grounds of ethnic origin and political opinions. She did not pursue that complaint in the memorial she lodged with the Court.

112. That being so, the Court does not consider it necessary to examine that complaint of its own motion.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there it has not been established that the applicant's husband was killed in breach of Article 2 of the Convention;
3. *Holds* by six votes to one that there has been no violation of Article 2 of the Convention as regards the national authorities' investigations into the death of the applicant's husband;
4. *Holds* unanimously that there it is unnecessary to examine the applicant's complaint under Article 6 § 1 of the Convention;
5. *Holds* by six votes to one that there has been no violation of Article 13 of the Convention;

Done in French, and notified in writing on 19 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President

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

M.O.B.
M.P.

PARTLY DISSENTING OPINION
OF JUDGE CASADEVALL

(*translation*)

1. I agree with the majority that there is insufficient evidence in the case file to show that the applicant's husband was killed by the security forces or with their complicity and that no violation can be found on that ground. However, I am of the contrary view when it comes to the nature of the investigations that were conducted by the relevant authorities and whether they were of the standard required by the Court's settled case-law on that subject. The principles governing the conduct of such investigations are set out *inter alia* in the *Hugh Jordan v. the United Kingdom* judgment of 4 May 2001, in which the Court consolidated a number of the applicable rules (see §§ 107 to 109). It will be noted that the obligation is not to achieve results but to exercise skill and care.

2. Contrary to what is stated in paragraph 99 of the judgment, I am not persuaded that the steps taken by the authorities in charge of the preliminary investigation and by the public prosecutor's office were wholly satisfactory. While it is true that a lengthy and complex investigation procedure was set in motion immediately after the fatal shots were fired, I have doubts about the relevance, adequacy and effectiveness of the inquiries in view of the direction the investigations took, and the omissions and numerous difficulties subsequently encountered by the Public Prosecutor at the Konya National Security Court.

3. The proceedings which began in September 1994 and which, so far as I am aware, are still pending, can be divided into three distinct periods:

(a) On the day the shooting occurred, 28 September 1994, there were approximately fourteen people in the tea rooms and four in the front of the van when the victim was killed¹. Thirteen of the workmen had got into the back of the vehicle². The applicant was approximately 250 metres from the scene at the material time³. In addition to the workmen who had just got into the van about ten or so people were present in the tearoom or in the vicinity⁴. A police officer arrived to make the initial inquiries⁵. However,

the police questioned *only four people*⁶.

The Principal Public Prosecutor immediately started a preliminary investigation. However, it does not appear from the case file that an autopsy or a toxicological analysis was carried out, despite the recommendation made in the medical report⁷. The victim's body was returned to the family unclothed⁸. The police officer who made the initial inquiries at the scene of the crime was not called to give evidence⁹. The record of interview of Mesut Sen, the van driver, was not communicated to the Court (assuming it was compiled). On 13 October 1994, two weeks after the incident, the Head of the Anti-Terrorist Branch forwarded a report to the Public Prosecutor. It does not appear from the case file that other information concerning the search for and identification of witnesses was obtained before July 1995.

(b) Following the deaths of several members of the *HADEP* and of PKK supporters, an operation was launched against Hizbullah in July 1995 and fourteen people arrested. From that point on, Hizbullah became the prime suspect and the investigation into the applicant's husband's death concentrated on the fourteen suspects (see paragraphs 20 to 42 of the judgment). However, despite the Konya Public Prosecutor's efforts to make progress¹⁰, the investigation did not to yield any results. It should be noted, however, that only two of the fourteen suspects, Z.T. and H.T., were questioned. The Head of the Anti-Terrorist Branch informed the Public Prosecutor in various letters, the last of which was dated 22 September 1998, that no further evidence had been found in the investigation¹¹.

(c) Three years and seven months after the applicant's husband was killed and a month after the European Commission of Human Rights declared the application admissible¹², that is to say on 14 April 1998, the investigating authorities heard evidence for the first time from the applicant, Sultan Sabuktekin, her brother-in-law Abdulvahap and the police officer who had made the initial inquiries at the scene¹³. Similarly, it was not until 9 November 1998 that the first record of interview of the van driver, Mesut Sen, was compiled, and not until 19 November 1998 that the records of interview of Latif and Ekrem Turan, who were employed by the victim, were compiled. On the other hand, while the victim's brother, Halil Sabuktekin, was questioned on four occasions between April and November 1998, it was on each occasion with regard to the scene of the murder. Quite clearly, it was by then far too late.

4. In view of these circumstances, I consider that, though admittedly long and complex, the investigation into the applicant's husband's death was too incomplete, superficial and late to afford any prospect of the murder being cleared up. Like the Commission, I have reached the conclusion that the investigation was inadequate and ineffective and, consequently, did not comply with the procedural requirements arising under Article 2 of the Convention. Likewise and for the reasons set out in the Commission's report, I also consider that there has been a violation of Article 13.

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1. See Halil Sabuktekin's statement (referred to in paragraphs 47 and 53 of the judgment).
 2. See the statement dated 9 November 1998 of Mesut Sen (the driver – paragraph 54 of the judgment).
 3. Statements of 15 April and 18 November (paragraphs 45 and 57 of the judgment).
 4. Statement of Müslüm Olcay dated 28 September 1994 (paragraph 17 of the judgment).
 5. Paragraph 44 of the judgment.
 6. Paragraphs 17 and 100 of the judgment refer to five people, but in fact only four statements were taken, from Halil Sabuktekin, Abdullah Ertekin, Müslüm Olcay and Suphi Özbudak. The Commission's report also refers to four people (see paragraph 26 of its report). At all events, the alleged record made of Mesut Sen's interview by the police at the hospital is not in the file. Nor does Mesut Sen's name appear in the letter 24 April 1998, which is cited in paragraph 48 of the judgment, in the list of people who were allegedly informed by the police on the day of the shooting that they were required to attend the police station for questioning.
 7. Medical report appended to the report of 13 October 1994 (see paragraph 18 of the judgment).
 8. Statements of the victim's brothers (see paragraphs 47 and 49 of the judgment), which were not contested by the Government.
 9. He did not receive the summons at the material time and the summons was not served in 1998 on the ground that he was performing his military service and it was not known to which barracks he was attached (!).
 10. See the requests dated 16 August and 12 December 1995, 14 March, 25 September and 18 October 1996 of the Konya Public Prosecutor for a confrontation between the four witnesses and the detained suspects. See also his request of 5 November 1996 for forensic analysis of the victim's clothes, which were never located.
 11. See paragraph 42 of the judgment.
 12. Admissibility decision of 12 March 1998. See the Commission's report of 21 October 1999.
 13. See note 9 above.