



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

FORMER SECOND SECTION

CASE OF TEPE v. TURKEY

(Application no. 27244/95)

JUDGMENT

STRASBOURG

9 May 2003

FINAL

09/08/2003

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

In the case of Tepe v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr E. FRIBERGH, *Deputy Registrar*,

Having deliberated in private on 10 February 2000 and on 10 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 27244/95) 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, İsak Tepe (“the applicant”), on 4 May 1995.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr Philip Leach, a lawyer attached to the Kurdish Human Rights Project in London. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that his son had been tortured and killed following his abduction by undercover agents of the State and that the authorities had failed to carry out an effective and adequate investigation into his death. He relied on Articles 2, 3, 5, 10, 13, 14 and 18 of the Convention.

4. The application was declared admissible by the Commission on 25 November 1996 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

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

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

6. The Court, having regard to the factual dispute between the parties over the circumstances surrounding the death of the applicant's son, conducted an investigation pursuant to Article 38 § 1 (a) of the Convention. The Court appointed three delegates to take evidence from witnesses at hearings conducted in Ankara between 9 and 14 October 2000.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The applicant also made concluding submissions on 27 September 2002. The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr İsak Tepe, is a Turkish citizen who was born in 1943 and is at present living in İstanbul (Turkey). At the time of the events giving rise to his application, the applicant was the provincial chairman of a political party, the DEP (Democracy Party), in the province of Bitlis (south-east Turkey). The application concerns the applicant's allegations that his son, Mr Ferhat Tepe, was abducted and killed by undercover agents of the State.

A. The facts

9. The facts surrounding the death of the applicant's son are disputed between the parties.

10. The facts as presented by the applicant are set out in Section 1 below. The facts presented by the Government are contained in Section 2.

11. A summary of the documents submitted by the parties is to be found in Part B. The witness evidence taken by the Court's delegates at hearings conducted in Ankara is summarised in Part C.

1. Facts as presented by the applicant

12. In the beginning of July 1993, General Korkmaz Tağma, the commander of the Tatvan 6th Armoured Brigade, invited the provincial leaders of all political parties to a meeting at the army barracks. The applicant attended this meeting as the representative of the DEP and spoke in support of the cultural and democratic rights of the Kurdish population in Turkey. During the meeting, General Tağma claimed that there were no

Kurds in Turkey and that those who had taken to the mountains were Armenians. He then asked the participants to report to him the names of the people who helped the PKK. The applicant replied to General Tağma that there were Kurds in Turkey as well as Turks and other minorities and that these people should be treated on the basis of equality in a democratic manner. He added that the denial of other people's existence and the oppression or repression of others would not lead anywhere. General Tağma was furious and wanted to obtain information on the children of the chairmen, for example where they worked and how old they were. He warned the chairmen, including the applicant, that their children would be destroyed if they were not raised as loyal citizens of the State.

13. In the afternoon of 10 July 1993 the applicant's son, Ferhat Tepe, born in 1974 and working as a reporter for the *Özgür Gündem* newspaper in Bitlis, was taken into police custody. No reasons were given for his arrest. He was released the same day in the afternoon.

14. On 28 July 1993 at around 7 p.m., while Ferhat was in the schoolyard of the Şemsi Bitlis primary school, a tall, bearded man who was known in the area to be a policeman, took him by the arm, put him in a car and drove away with him. Their car was followed by a white car, a Renault with the registration number 65 AD 095. There were two persons inside the white Renault, which was seen later that day parked next to Mahallebaşı police station.

15. Later on the same day, the applicant learned from İsmetullah Güzelsoy and Adnan Karşlıoğlu that two plain-clothes policemen had made enquiries about Ferhat in the building where they lived. He went home in panic and realised that Ferhat was missing.

16. On 29 July 1993 at around 6 a.m. the applicant received a phone call from an anonymous person who claimed to be a member of an organisation called the "Ottoman Turkish Revenge Brigade" and said that they were keeping his son as a hostage. The caller said that Ferhat would be killed unless the applicant closed down the DEP's Bitlis branch, released four French tourists who were in the hands of the PKK and paid one billion Turkish liras (TRL). The applicant said he could close down the Bitlis branch and try to find TRL 1 billion but had no power to secure the release of the French tourists, as he had no connection with the PKK. The caller warned the applicant that his son would be killed if the conditions were not met.

17. On the same day at 8 a.m. the applicant went with his wife and daughter to the Bitlis Security Directorate, where he told the director and the provincial governor of his suspicion that Ferhat had been abducted by contra-guerrillas operating within the State security forces. The governor and the director denied the existence of contra-guerrillas in Turkey and affirmed that the State did not commit murder.

18. On the same day the applicant applied to the Bitlis Public Prosecutor and asked that his home and office telephones be tapped in order to trace the caller's number if another call was made. He also requested that all necessary action be taken to rescue his son.

19. On 30 July 1993 the applicant sent telegrams to the Prime Minister, the Minister of the Interior and the Governor of the state of emergency region asking for their aid in rescuing his son.

20. On 1 August 1993 the applicant and his wife went to Tatvan to talk to General Korkmaz Tağma at the brigade headquarters. They were told that the general was ill and had gone to Antalya. They were received by a colonel and attended a meeting at General Tağma's office. During this meeting, Mrs Tepe stated that the bloodshed between Turks and Kurds had to stop and that she would sacrifice her son if this were to bring the animosity to an end.

During the second or the third telephone call, the anonymous caller said that Mrs Tepe had spoken well at General Tağma's office, which proves that the caller was either present at the meeting or had been informed by someone who had attended the meeting.

21. Subsequently, the applicant informed the Security Director that according to Fatih Olcay and Adnan Karslıoğlu, eye-witnesses to Ferhat's abduction, the people who had taken Ferhat away were policemen. The applicant also said that there was evidence that the white Renault, which had followed the car in which Ferhat Tepe was abducted, belonged to the security forces.

22. On 4 August 1993 the applicant received another phone call at around 3 a.m. He immediately alerted the authorities while he was on the phone and asked them to identify the caller's number. The conversation that followed was recorded. The person on the phone said that the applicant had failed to fulfil their conditions for the release of Ferhat since the DEP branch had not been closed down, and the applicant had failed to pay and had reported everything to the authorities. The caller told the applicant to bring TRL 1 billion to an address in the province of Elazığ. After listening to the recording, the Security Director told the applicant that the State could give him special bank notes, the serial numbers of which had been noted by the police, and told him to come back later for the bank notes. Later on the same day, when the applicant called again, the Director told him that he was having difficulty in obtaining the bank notes.

23. On the same day the applicant, together with four policemen and four of his relatives, went to the address in Elazığ indicated by the caller but could not find anyone.

24. Still on 4 August 1993, Ferhat's dead body was found by a civil servant at the Lake Hazar, in Karakem. On the same day the public prosecutor and a medical expert examined the body. The report of their findings concluded that the cause of death was drowning and that there was

no need for a systematic autopsy. It also stated that no signs of blows or the use of force on the body or of friction on the wrists and ankles had been detected.

25. On 5 August 1993 the applicant, who had not yet been informed of Ferhat's death, applied to the Public Prosecutor enquiring whether the anonymous caller's number had been traced. His application remained unanswered.

26. On 8 August 1993 the applicant received a third anonymous telephone call in which he was told that Ferhat's body was at the morgue in Elazığ. Later that day the applicant discovered that the body had been buried on 5 August 1993 in the Elazığ cemetery for persons with no known relatives.

27. On 9 August 1993 the applicant identified Ferhat's body, which had been exhumed by the authorities. In preparation for the funeral ceremony, the applicant washed the body himself in a mosque. He saw that his son's testicles had been crushed and that there were marks on the arms, ankles, testicles and chest. He observed some cigarette burn marks on the body but no fractures. There were also deep wounds on the wrists and ankles showing that Ferhat had been bound hand and foot. The applicant alleged that, according to the eyewitnesses Mümtaz Çerçel, Ömer Aceban, Bahri Elçi, Miğdat Yaşar, Murat Koparan, Taner Şarlak, Erkan Dağdelen, Urfi Pasin and Rıza Demirtaş, who had been apprehended and questioned at the relevant time in the Diyarbakır Recruitment Office, Ferhat had been held there and tortured by members of the security forces between 28 July and 4 August 1993. Mümtaz Çerçel allegedly gave a statement, but withdrew it after being threatened by the police.

28. On 9 August 1993 the Sivrice Public Prosecutor issued a decision of non-jurisdiction, referring the investigation file to the Bitlis Public Prosecutor's office.

29. At the funeral procession in Bitlis on 10 August 1993, there was a strong police presence. The police filmed those who attended, checked their identification and arrested fifteen persons. Later on the same day the police searched the applicant's house.

30. On 12 August 1993 the Bitlis Public Prosecutor issued a decision of non-jurisdiction and referred the case to the Elazığ Public Prosecutor.

31. On 19 October 1993 the applicant sent a letter to the Committee of the Turkish Parliament on Murders Perpetrated by Unknown Persons, alleging that secret forces within the State security forces had killed his son.

32. On 2 November 1993 the applicant filed a petition with the Ministry of Justice, alleging that the abduction and killing of his son had been the acts of State forces and requesting an investigation into the matter.

33. On 16 March 1994 the applicant asked the Bitlis Public Prosecutor whether any inquiry into the killing of his son had been initiated. The Public Prosecutor told him there were some obstacles which he had been unable to overcome. On the same day the applicant went to the Bitlis Provincial

Security Directorate and asked the assistant director why no investigation had been carried out. The Assistant Director said he did not have to explain anything to the applicant.

34. On 28 September 1994 the applicant applied again to the Ministry of Justice asserting that certain State security forces had been responsible for the abduction and death of his son. He requested that his allegations be investigated.

35. On 15 November 1994 the Elazığ Chief Public Prosecutor issued a permanent search warrant for the perpetrators of the killing of Ferhat Tepe.

36. Following the applicant's complaints to the authorities, the police took tight security measures. The applicant, his office, his home and the DEP party building were put under constant surveillance. The police filmed the applicant's colleagues and his fellow-townsmen who came to console him, and checked their identity cards.

37. In the meantime, the applicant's family had been under intense pressure from the State authorities in relation to his political activities, the investigation he had personally carried out into the killing of his son and his application to the European Commission of Human Rights. The applicant's daughter was remanded in custody in December 1993; his son was remanded in custody in 1994 for four months and is currently being tried for an offence which carries the death sentence; another of the applicant's daughters was taken into custody in April 1994; four of the applicant's nephews were remanded in custody in 1994, one of whom is being tried for an offence which carries the death sentence; the applicant's brother was taken into custody in April 1994 and the applicant's cousin has been in Elazığ Prison since 1994. On 24 February 1996 the applicant was arrested in Bartın and held in police custody for eight days in Bitlis. During his detention, the police officers asked him why he accused the State and why he had taken his complaints to the European Commission. They further threatened him and said among other things: "We will kill you just as we killed Ferhat. You are complaining to the *infidels* about our State. Are they the ones who will save you? Well, let them come and save you." After being released, the applicant was acquitted of the charges by the Diyarbakır State Security Court. On 4 March 1996 the applicant was allegedly taken into custody in Bitlis on charges of aiding the PKK. He was released on an unspecified date after being interrogated.

38. On 19 February 1997 criminal proceedings were brought against the applicant on account of a speech he had made on a private TV channel, where he had alleged that his son had been murdered by the State. The applicant was charged with insulting the security forces. On an unspecified date, the applicant was convicted as charged and sentenced to one year's imprisonment.

39. In 1999 the applicant was arrested by police officers from the anti-terrorist department while entering the HADEP (People's Democracy Party)

party building in the Kadıköy district in Istanbul. He was kept in detention for one day. The police officers insulted him and threatened him with death. One of the police officers said that they would kill him just as they had killed Ferhat. The applicant complained to the Fatih Public Prosecutor in Istanbul, who decided to discontinue the proceedings, as there was no witness to confirm his allegations.

2. Facts as presented by the Government

40. The applicant's son Ferhat Tepe had been arrested on two occasions in 1991, as he was suspected of acting as a PKK courier.

41. The Government submitted that, according to various witnesses, on 28 July 1993 Ferhat had met someone in the schoolyard and had left with him of his own free will.

42. The authorities, at the request of the applicant, tapped the anonymous telephone call on 4 August 1993. Although a raid was carried out at the address mentioned in the telephone conversation, the premises were found to be empty. The authorities of the Ministry of the Interior nevertheless established that the residence searched belonged to reporters from *Özgür Gündem* in Elazığ and concluded that Ferhat's killing had been the work of the PKK.

43. A report of 24 September 1993 from the Ministry of the Interior to the Ministry of Foreign Affairs and a letter of 16 November 1995 from the governor of Bitlis province indicate that the death of the applicant's son was the work of the PKK.

44. In a letter of 10 November 1995 the Chief Public Prosecutor of Elazığ, charged with investigating Ferhat Tepe's death, informed the Ministry of Justice that there was no indication or record of Ferhat's having been taken into custody. Moreover, the custody records of the Bitlis Security Directorate contained no mention of him.

B. Documents submitted by the parties

45. The parties submitted various documents concerning the investigation into the alleged abduction and killing of Ferhat Tepe.

1. Official documents

(a) The applicant's further applications to the authorities

46. On 30 March 1995 the applicant's lawyer filed a petition with the Chief Public Prosecutor's office in Bitlis requesting information as to what steps had been taken to find the perpetrators of the abduction and killing of Ferhat.

47. On 31 March 1995, subsequent to the Bitlis Chief Public Prosecutor's decision of non-jurisdiction, the applicant's lawyer submitted a petition to the Sivrice Public Prosecutor's office in Elazığ *via* the Şişli Chief Public Prosecutor in İstanbul and requested information about the current state of the investigation into the impugned incident.

(b) Domestic investigation documents

(i) Custody records

48. The custody records of the Diyarbakır provincial gendarmes headquarters for the period between 28 July and 4 August 1993 do not contain the name of Ferhat Tepe.

(ii) Transcription of tapes of the telephone conversation dated 4 August 1993

49. The anonymous telephone caller told the applicant that their conditions for the release of Ferhat had not been fulfilled. The applicant replied that he was unable to close down the Bitlis branch of the DEP since this required a decision by the central board in Ankara. The applicant was then told to bring TRL 1 billion by 5 p.m. the next day to an address in Elazığ if he did not want his son to be killed. The person in question warned the applicant not to inform the authorities. The applicant's request to talk to Ferhat was rejected.

(iii) Post-mortem examination and autopsy report of 4 August 1993

50. An autopsy was carried out on Ferhat's body by the public prosecutor, a medical expert and the latter's assistant in the presence of two witnesses and a clerk. It was observed that rigor mortis had not set in and the body had not yet turned blue, that water spurted out when the chest was pressed, that light violet-coloured cyanosis was perceptible on the ears and the nails of both the hands and the feet as a result of suffocation and that there were no signs of any blow or of the use of force on the body, nor were there any signs of friction on the hands and feet. It was therefore concluded that the cause of death was drowning and that there was no need for a systematic autopsy.

(iv) Photographs of the corpse taken on 4 August 1993

51. Nine photographs were submitted to the Court, taken when the body had been pulled out of the lake. No signs of any blows or ill-treatment are visible on the body in these photographs.

(v) Identification report dated 9 August 1993

52. Following the finding of a corpse in Lake Hazar and its transfer to the morgue of Elazığ State Hospital, the applicant's nephew, Mr Talat Tepe,

went to the hospital to identify the body, which he recognised as being his uncle's son, Ferhat Tepe.

(vi) *Report dated 9 August 1993 signed by Talat Tepe and Public Prosecutor no. 29242*

53. This document states that Ferhat Tepe's clothes and shoes were given to Mr Talat Tepe.

(vii) *Undated statement of Ömer Aceban, bearing the title "To the Public"*

54. In his statement, Mr Aceban submitted that he had been kept in detention in a military detention centre in Diyarbakır between 25 July and 6 August 1993. He alleged that he had seen a detainee called "Ferhat" or "journalist" by the [officers] on the 3rd and 4th days of his detention. He described Ferhat as being a young man of about 18 or 19 years of age, with long, dark hair.

(viii) *Statement of Adnan Karşlıoğlu, a shopkeeper who had a shop in the building where Ferhat lived, dated 29 July 1993, taken by police officers*

55. In this statement, the witness was asked to say what he knew about the incident. He replied that on 28 July 1993, at around 4 p.m., he had seen two plain-clothes men making enquiries about Ferhat. When one of them asked whether he knew Ferhat and the other residents of the building, the witness told them that Ferhat lived there and gave the names of the other residents. He claimed that he did not know whether these men were police officers but that they spoke Turkish with a western accent.

(ix) *Statement of İsmetullah Güzelsoy, partner and brother-in-law of the applicant, dated 29 July 1993 and taken by police officers*

56. Mr Güzelsoy asserted that Ferhat had twice been taken into custody prior to his disappearance and that he was an irresponsible boy according to his father. The witness stated that on 28 July 1993, at 4 or 4.30 p.m., Mr Karşlıoğlu had told him that two police officers had made enquiries about Ferhat. He had told Mr Karşlıoğlu that this might have been an investigation in relation to the attack on police buildings which had taken place the previous day. Later that day, at approximately 5 p.m., he had seen Ferhat and had informed him that two police officers had been looking for him. Ferhat had replied to him that he had not done anything wrong. The next day, the witness had learned from the applicant of Ferhat's disappearance.

(x) *Statement of Suat Başboğa, the witness who saw a white Renault Toros car, dated 29 July 1993 and taken by police officers*

57. On 28 July 1993, at around 6.30 or 7 p.m., the witness saw Ferhat Tepe talking to two women and one or two men next to a bakery. A

white Renault Toros with the registration number “65” attracted the witness’s attention as its parking lights were on. There were two young men in the car. The driver was bearded and approximately 35-40 years old, while the man sitting next to him was about 25-30. According to the witness, these men could not have been police officers, otherwise he would have recognised them. The witness learned of the abduction of Ferhat Tepe when he went to the Social Democrat Populist Party building next day.

(xi) Statement of Fatih Olcay, alleged eyewitness to the abduction of Ferhat, dated 30 July 1993 and taken by police officers

58. The witness was 17 years old at the relevant time. On 28 July 1993, at about 7 or 7.30 p.m., he was playing football with his friends in the Şemsi Bitlis primary school yard. He saw a bearded man aged about 20-25 waiting in the schoolyard. Two or three minutes later Ferhat arrived and they left the schoolyard arm in arm, like two friends. The bearded man did not use any force against Ferhat.

(xii) Statement of Osman Pektaşoğlu, the owner of the beige Renault with the registration number 65 AD 095, dated 3 August 1993 and taken by police officers

59. The witness was a police constable at the traffic registration and inspection department of Bitlis Security Directorate. On 28 July 1993 he was on duty, between 7.30 a.m. and 6 p.m., in charge of traffic control in the town centre. His car was parked in front of his house throughout the day. Next day he went to the city centre at around 1 or 1.30 p.m. and parked his car in front of the Çarşı police station. He returned home at 5 p.m. He did not lend his car to anyone on 28 and 29 July 1993.

(xiii) Statements of Bahri Elçi and Migdat Yaşar, entitled “To the Public”, dated 10 August 1993

60. In their statement addressed to the public, the witnesses alleged that they had been taken into custody on 24 July 1993 and kept in a detention centre in Diyarbakır where they were tortured for five days. During their detention, Mr Elçi heard some officers call out “Come on, journalist, it is your turn”. Mr Yaşar heard them asking a man “Journalist, where are you from?”, to which the reply was “I am from Bitlis”. Following their detention on remand they read in *Özgür Gündem* that a journalist called Ferhat Tepe had been killed under torture and that his corpse had been found in Elazığ. The witnesses submitted that Ferhat Tepe was the journalist whose voice they had heard during their detention.

(xiv) *Statements of Murat Koparan, Taner Şarлак and Erkan Dağdelen, with the title "To the Public" and dated 16 August 1993*

61. The witnesses alleged that they had been kept in a military detention centre in Diyarbakır for twenty-two days. On the fourth or fifth day of his detention, Mr Dağdelen had seen a man called "journalist" by others. The journalist was chained by his hands to a water pipe and his body was bloody. He was unable to move or speak. Interrogators were torturing him and putting questions to him concerning his involvement with *Özgür Gündem*. Following their detention on remand, the witnesses read in *Özgür Gündem* that Ferhat Tepe had been killed. They identified him from his photos. They claimed that they were sure that they had seen Ferhat Tepe in the military detention centre in Diyarbakır.

(xv) *Letters from the Chief Public Prosecutor of Bitlis to the Central Gendarme Division Command and the Security Directorate in Bitlis, dated 30 July 1993*

62. The Chief Public Prosecutor informed the gendarmes and the police of Ferhat Tepe's disappearance and asked them to verify whether he had been taken into custody for any offence. The Public Prosecutor further instructed that the whereabouts of Ferhat Tepe be determined, that those responsible for Ferhat's disappearance be brought to his office and that all documents related to the case be sent to him.

(xvi) *Letter from the Bitlis Central Gendarmes Division Command to the Chief Public Prosecutor's office in Bitlis, dated 12 August 1993*

63. The Deputy Gendarmes Commander informed the prosecuting authorities in this letter that Ferhat Tepe had not been taken into custody and that he had eventually been found dead.

(xvii) *Letters from Public Prosecutor no. 25225 in Elazığ to the Chief Public Prosecutor's office in Bitlis and to the Security Directorate in Elazığ, dated 25 August 1993*

64. The Elazığ Public Prosecutor requested the former authority to carry out a comprehensive investigation into the death of Ferhat Tepe and to inform him of the outcome. He requested the latter authority to find the person(s) responsible for the killing of Ferhat Tepe and to bring them to his office.

(xviii) *Letter from the Security General Directorate of the Ministry of the Interior to the Ministry of Foreign Affairs, dated 24 September 1993*

65. In this letter, the authorities of the Ministry of the Interior informed the Foreign Ministry of their conclusion that, having regard to the way in which Ferhat Tepe had been abducted and to the anonymous telephone

calls, Ferhat must have been killed by members of the PKK, in a settling of scores within the organisation. They also noted that the allegation that the authorities had failed to respond to the applicant's request for help was untrue since, following receipt of the applicant's complaint, an investigation had been started and the photographs of Ferhat Tepe had been distributed to all the provinces and the security units had been alerted.

(xix) The Elazığ Chief Public Prosecutor's decision of 15 November 1994

66. The Chief Public Prosecutor, Mr Süleyman Tural, issued a permanent search warrant for the perpetrators of the killing of Ferhat Tepe. He requested the Elazığ Central Gendarmerie Commander and the Bitlis Chief Public Prosecutor to inform him every three months of any developments in the investigation.

(xx) Letter of 3 May 1995 from the Elazığ Chief Public Prosecutor's to the Şişli Chief Public Prosecutor's office in Istanbul

67. In reply to the petition filed by the applicant's lawyer on 31 March 1995, the Elazığ Public Prosecutor declared that the perpetrators of Ferhat's killing had not yet been found and that the complainants would be informed of any developments in the investigation.

(xxi) The letter from Public Prosecutor no. 25225 to the Elazığ Chief Public Prosecutor, dated 9 November 1995

68. It is stated in this letter that there is no record of Ferhat Tepe's having been taken into custody in Bitlis. According to the evidence given by the witnesses, Ferhat met a man in the Şemsi Bitlis Primary School yard and left the premises with that man arm in arm, without any force being used. It is also noted that, according to the autopsy report and the photos taken when Ferhat was found, there were no traces of ill-treatment and no blood stains on his body or his clothes, contrary to the allegations.

(xxii) Letter of 10 November 1995 from the Elazığ Chief Public Prosecutor to the International Law and External Relations Department of the Ministry of Justice

69. Following the lodging of the present application with the former Commission and its communication to the Government, in a letter of 27 October 1995 the authorities of the Ministry of Justice requested information from the Elazığ Chief Public Prosecutor's office on the current state of the investigation into the applicant's allegations.

70. The Chief Public Prosecutor wrote back stating that there was no evidence in support of the applicant's allegations that Ferhat had been abducted, kept in custody and killed under torture by the security forces. He noted that the investigation into the murder was pending. He appended to his letter the post-mortem examination report, the autopsy and identification

reports and copies of statements taken from İsmetullah Güzelsoy, Osman Pekdaşoğlu, Adnan Karşlıoğlu, Fatih Olcay and the applicant as well as the decisions of non-jurisdiction, the permanent search warrant and 7 photos of Ferhat Tepe.

(xxiii) Report of 16 November 1995 by the Governor of Bitlis addressed to the Ministry of the Interior and the Gendarmes General Command

71. The subject of this letter was Ishak Tepe's application to the European Commission of Human Rights. Having summarised the events, the governor concluded that the accusations made by the applicant were mere allegations since there was no evidence to substantiate them. He noted that on 4 August 1993 the applicant had received a phone call from a person who had told him to bring TRL 1 billion to an address in Elazığ if he wanted to rescue his son. When the applicant had gone to the address accompanied by police officers from the Elazığ Security Directorate, they had not been able to find anyone. Meanwhile, following inquiries made by the Elazığ police, it had been established that the residents at this address were two journalists from *Özgür Gündem* who had moved out 15 or 20 days before. The police had found the two journalists concerned and had taken statements from them. The governor concluded from these facts that the impugned incident had been a settling of scores within the PKK.

(xxiv) Statements of Taner Şarlak, Murat Koparan and Erkan Dağdelen, dated 26 February 1996, taken by the Public Prosecutor no. 31562 in Hazro

72. The Hozat Public Prosecutor took statements from the witnesses concerning the contents of the document signed by them on 16 August 1993 and entitled "To the Public".

73. The witnesses admitted to having signed this document but claimed that the contents were untrue. Mr Şarlak and Mr Koparan submitted that a person called İrfan Güler, who was responsible for their prison ward, had written this document and made them sign it. They believed that nothing unpleasant would befall them if they signed the document. They further averred that they had not seen a person called Ferhat Tepe; nor did they know of how he had been killed. Mr Dağdelen, however, asserted that he did not remember when and where he had signed this document.

(xxv) Letter from Public Prosecutor no. 25225 to the Elazığ Chief Public Prosecutor, dated 11 April 1996

74. In this letter, the Chief Public Prosecutor was informed that statements had been taken from Murat Koparan, Taner Şarlak and Erkan Dağdelen, that these persons did not know Ferhat Tepe and that they had denied the contents of the document entitled "To the Public". It was further noted that on 15 November 1996 a permanent search warrant had been issued to find the perpetrators of the killing of Ferhat Tepe.

(xxvi) Correspondence among the national authorities and other relevant documents in regard to the investigation into Ferhat Tepe's death

75. The following documents concern the internal communication of the national authorities concerning the investigation into the disappearance and subsequent death of Ferhat Tepe:

(a) Year 1993

- (i) Letter of 29 July 1993 from the Bitlis Chief Public Prosecutor to the PTT Telephone Directorate;
- (ii) Letter dated August 1993 from the Elazığ State Hospital Chief Doctor to the Sivrice Chief Public Prosecutor;
- (iii) Letter of 4 August 1993 from the Bitlis deputy governor of Bitlis to the Bitlis governor requesting the latter to submit information pertaining to the fate of Ferhat Tepe;
- (iv) Letter of 5 August 1993 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (v) The Sivrice Chief Public Prosecutor's decision of 7 August 1993 to indemnify those who were involved in the conduct of the autopsy on the body of an unidentified person (Ferhat Tepe);
- (vi) Letter of 9 August 1993 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (vii) Letter dated 9 August 1993 from Public Prosecutor no. 30760 to the PTT Telephone Directorate;
- (viii) Letter of 9 August 1993 from the Sivrice Chief Public Prosecutor to the Mayor of Elazığ;
- (ix) Letter of 9 August 1993 from the Sivrice Chief Public Prosecutor to the Registry Office enclosing Ferhat Tepe's death certificate;
- (x) Letter of 11 August 1993 from the Bitlis Security Director to the Chief Public Prosecutor's office in Elazığ;
- (xi) Letter of 16 August 1993 from the Sivrice Public Prosecutor to the Mayor of Elazığ;
- (xii) Letter of 17 August 1993 from the Elazığ Public Prosecutor to the Minister and Deputy Minister of Justice;
- (xiii) Letter of 25 August 1993 from the Elazığ Public Prosecutor to the Diyarbakır Chief Public Prosecutor's office;
- (xiv) Letter of 25 August 1993 from the Elazığ Public Prosecutor to the Bitlis Chief Public Prosecutor's office;
- (xv) Letter of 26 August 1993 from the Sivrice Chief Public Prosecutor to the Chief Public Prosecutor's office in Elazığ;
- (xvi) Letter dated 1 September 1993 from the public prosecutor, Süleyman Tatal, to the Chief Public Prosecutor's office in Elazığ;
- (xvii) Letter of 1 September 1993 from the Elazığ Chief Public Prosecutor to the Elazığ Governor's office.

- (xviii) Letter of 6 September 1993 from the Elazığ Chief Public Prosecutor to the Provincial Central Gendarmerie Command in Elazığ;
- (xix) Letter of 15 September 1993 from the Diyarbakır Security Directorate Traffic Department to the Diyarbakır Chief Public Prosecutor's office;
- (xx) Letter dated 27 October 1993 from the Public Prosecutor Süleyman Tural to the Chief Public Prosecutor's office in Elazığ;
- (xxi) Report of 12 December 1993 prepared by the police officers Mr Nizamettin Elma and Mr Halit Yılmaz, informing the Security Director that it had been impossible to find those responsible for the killing of Ferhat Tepe;
- (xxii) Letter of 28 December 1993 from the Bitlis Security Directorate informing the Chief Public Prosecutor of Elazığ it had been impossible to find those responsible for the killing of Ferhat Tepe.

(β) Year 1994

- (i) Letter of 1 February 1994 from the Elazığ Chief Public Prosecutor requesting information from the Public Prosecutor, Mr Tuna Güngör;
- (ii) Mr Tuna Güngör's letter of 3 February 1994 addressed to the Chief Public Prosecutor of Elazığ, informing the latter that no evidence had been obtained in regard to the death of Ferhat Tepe;
- (iii) Letter of 16 March 1994 from the Elazığ Chief Public Prosecutor requesting the Public Prosecutor Mr Süleyman Tural to inform him of developments in the investigation into the death of Ferhat Tepe;
- (iv) Letter of 21 March 1994 from Mr Süleyman Tural informing the Chief Public Prosecutor in Elazığ that no evidence had been obtained about the persons responsible for the killing of Ferhat Tepe;
- (v) Letter of 25 October 1994 from the Deputy General Director for the Council of Europe and Human Rights Affairs to the Ministry of the Interior and to the Ministry of Justice;
- (vi) Letter dated 7 November 1994 from Mr İlmettin Köklü, Elazığ Public Prosecutor, to the Chief Public Prosecutor's office in Elazığ;
- (vii) Letter of 17 November 1994 from Mr Süleyman Tural to the Chief Public Prosecutor in Elazığ.

(γ) Year 1995

- (i) Letter dated 12 January 1995 from Mr İlmettin Köklü, Elazığ Public Prosecutor, to the Chief Public Prosecutor's office in Elazığ;
- (ii) Letter of 1 February 1995 from Mr Süleyman Tural to the Chief Public Prosecutor's offices in Bitlis and Elazığ and to the Provincial Central Gendarmerie Command in Elazığ. Mr Tural noted that there was a permanent search warrant for the person(s) responsible for the killing of Ferhat Tepe and requested those authorities to submit information every three months about the investigation;

- (iii) Letter of 5 March 1995 from the Elazığ Chief Public Prosecutor to the Registry of the Preliminary Investigation Department;
- (iv) Letters of 20 March 1995 from the Elazığ Chief Public Prosecutor to the Registry of the Preliminary Investigation Department;
- (v) Letter of 20 March 1995 from the Elazığ Chief Public Prosecutor's to Mr Süleyman Tural;
- (vi) Letter of 21 March 1995 from Mr Süleyman Tural's to the Chief Public Prosecutor's office in Elazığ;
- (vii) Letter of 27 March 1995 from the Elazığ Provincial Central Gendarmerie Commander, informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (viii) Letter of 13 June 1995 from Mr Süleyman Tural to the Chief Public Prosecutor's office in Elazığ;
- (ix) Letter of 26 June 1995 from the Elazığ Chief Public Prosecutor to the Chief Public Prosecutor's office in Bitlis;
- (x) Letter of 27 June 1995 from the Elazığ Provincial Central Gendarmerie Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xi) Letter of 11 July 1995 from the Elazığ Chief Public Prosecutor to the Chief Public Prosecutor's office in Bitlis;
- (xii) Letter of 27 September 1995 from the Elazığ Provincial Central Gendarmerie Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xiii) Letter of 23 October 1995 from the Ministry of Foreign Affairs to the Ministry of Justice;
- (xiv) Letter of 23 October 1995 from the Ministry of Justice to the Chief Public Prosecutor's office in Elazığ;
- (xv) Letter of 27 October 1995 from the Ministry of Justice to the Chief Public Prosecutor's office in Elazığ;
- (xvi) Letter of 27 October 1995 from the Elazığ Chief Public Prosecutor to Mr Süleyman Tural;
- (xvii) Letter of 21 November 1995 from the Ministry of Justice to the Chief Public Prosecutor's office in Elazığ;
- (xviii) Letter of 22 November 1995 from the Elazığ Chief Public Prosecutor to Mr Süleyman Tural;
- (xix) Letter of 7 December 1995 from the Elazığ Provincial Central Gendarmerie Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xx) Letter of 7 December 1995 from Mr Süleyman Tural requesting the Chief Public Prosecutor at the Diyarbakır State Security Court to submit

information as to whether Mr Murat Koparan, Mr Taner Şarlak, Mr Erkan Dağdelen and Mr Ömer Aceban had been kept in detention on remand in July and August 1993 and whether these persons had seen Ferhat Tepe in detention. He further requested information regarding the current addresses of these persons;

(xxi) Report of 29 December 1995 regarding the search for the person(s) responsible for the killing of Ferhat Tepe, from Osman Badraslı Police Station to the Bitlis Security Directorate's Law and Order Department.

(xxii) Letter dated 31 December 1995 regarding the search for the person(s) responsible for the killing of Ferhat Tepe, from Osman Badraslı Police Station to the Bitlis Security Directorate's Law and Order Department.

(δ) Year 1996

(i) Letter dated 5 January 1996, from the Presidency of the State Security Court to the Chief Public Prosecutor's office at the same court, indicating the addresses of Mr Murat Koparan, Mr Taner Şarlak, Mr Erkan Dağdelen and providing information about them;

(ii) Letter of 2 February 1996 from the Elazığ Chief Public Prosecutor to the Chief Public Prosecutor's office in Hazro

(iii) Letter dated 12 February 1996 from the Chief Public Prosecutor's office in Hazro to the Bitlis Security Directorate;

(iv) Letter of 26 February 1996 from the Hazro Security Director to the Chief Public Prosecutor's office in Hazro;

(v) Letter of 8 March 1996 from the Elazığ Chief Public Prosecutor to the Chief Public Prosecutor's office in Bitlis;

(vi) Letter of 27 March 1996 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;

(vii) Letters of 30 March 1996 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;

(viii) Report of 30 March 1996 drafted by police officers, who informed the Security Directorate that the perpetrator(s) of the killing of Ferhat Tepe could not be identified;

(ix) Report of 31 March 1996 drafted by police officers who informed the Security Directorate that the perpetrator(s) of the killing of Ferhat Tepe could not be identified;

(x) Letter of 3 April 1996 from the Elazığ Chief Public Prosecutor to the Registry of the Preliminary Investigation Department;

(xi) Letter of 3 June 1996 from the Sivrice Chief Public Prosecutor to the Chief Public Prosecutor's office in Elazığ;

(xii) Letter of 23 June 1996 from Mr Süleyman Tural to the Chief Public Prosecutor's office in Elazığ;

- (xiii) Letter of 3 July 1996 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;
- (xiv) Letters of 30 September 1996 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xv) Letter of 24 December 1996 from the Ministry of Foreign Affairs to the Ministry of Justice;
- (xvi) Report of 25 December 1996, drafted by police officers, informing the Bitlis Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xvii) Letter of 27 December 1996 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;
- (xviii) Letter of 30 December 1996 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xix) Report of 31 December 1996, drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified.

(ε) Year 1997

- (i) Report dated 19 February 1997 drafted by police officers, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (ii) Letter of 5 March 1997 from the Ministry of Justice to the Chief Public Prosecutor's office in Elazığ;
- (iii) Report dated 14 March 1997, drafted by police officers, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (iv) Letter of 17 March 1997 from Mr Süleyman Tural to the Chief Public Prosecutor in Elazığ;
- (v) Letter of 27 March 1997 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (vi) Report of 28 March 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (vii) Report of 30 March 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (viii) Report of 31 March 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;

- (ix) Letter of 1 April 1997 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;
- (x) Report dated 3 June 1997, drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xi) Report of 30 June 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xii) Letter of 30 June 1997 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xiii) Letter of 2 July 1997 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;
- (xiv) Report dated 13 September 1997, drafted by gendarmes; noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xv) Report of 28 September 1997, drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xvi) Report of 30 September 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xvii) Letter of 30 December 1997 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xviii) Report of 31 December 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xix) Letter of 2 October 1997 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis;
- (xx) Report of 12 December 1997 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xxi) Letter of 31 December 1997 from the Bitlis Security Directorate to the Chief Public Prosecutor's office in Bitlis.

(ζ) Year 1998

- (i) Follow-up report of 21 January 1998 about the suspects in respect of whom a search warrant had been issued;
- (ii) Report of 31 March 1998 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;

- (iii) Letter of 1 April 1998 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (iv) Report dated 15 June 1998 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (v) Follow-up report of 15 June 1998 about the suspects in respect of whom a search warrant had been issued;
- (vi) Report of 25 June 1998 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (vii) Letter of 25 June 1998 from the Mollakendi Gendarmes Station Commander to the Elazığ Provincial Central Gendarme Headquarters;
- (viii) Report of 29 June 1998 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (ix) Report of 30 June 1998 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (x) Letter of 1 July 1998 from the Bitlis Şehit Fuat Bal Police Station Director to the Law and Order Department;
- xi) Letter of 1 July 1998 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (xii) Letter of 6 July 1998 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (xiii) Letter of 15 July 1998 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the perpetrator(s) could not be identified and that the investigation into the incident was still pending;
- (xiv) Report dated 11 August 1998, drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xv) Letter of 1 October 1998 from the chief of Bitlis Şehit Fuat Bal Police Station to the Law and Order Department;
- (xvi) Letter of 2 October 1998 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (xvii) Follow-up report of 14 December 1998 about the suspects in respect of whom a search warrant had been issued.

(η) Year 1999

- (i) Letter of 1 January 1999 from the Bitlis Security Director informing the Chief Public Prosecutor's office in Bitlis that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (ii) Report dated 21 January 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;

- (iii) Report dated 1 February 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (iv) Report dated 19 March 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (v) Reports of 24 March 1999 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (vi) Report dated 24 March 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (vii) Letter of 7 April 1999 from the Bitlis Security Director informing the Chief Public Prosecutor's office in Bitlis that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (viii) Report dated 14 June 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (ix) Report dated 21 June 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (x) Report of 30 June 1999 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xi) Letter of 1 July 1999 from the Bitlis Security Director informing the Chief Public Prosecutor's office in Bitlis that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xii) Report dated 22 September 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xiii) Follow-up report of 22 September 1999 about the suspects in respect of whom a search warrant had been issued;
- (xiv) Report dated 29 September 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xv) Report of 30 September 1999 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xvi) Letter of 4 October 1999 from the Bitlis Security Director informing the Chief Public Prosecutor's office in Bitlis that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xvii) Follow-up report of 12 December 1999 about the suspects in respect of whom a search warrant had been issued.;
- (xviii) Report dated 13 December 1999 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (xix) Letters of 31 December 1999 from the chief of the Bitlis Şehit Mustafa Yeter Police Station to the Law and Order Department;
- (xx) Export of 31 December 1999 drafted by police officers, informing the Security Directorate that the person(s) responsible for the killing of Ferhat Tepe could not be identified.

(θ) Year 2000

- (i) Letter of 5 January 2000 from the Elazığ Provincial Central Gendarmes Commander informing the Chief Public Prosecutor in Elazığ that the person(s) responsible for the killing of Ferhat Tepe could not be identified and that the investigation into the incident was still pending;
- (ii) Letter dated 18 February 2000 from Public Prosecutor no. 24705 to the Chief Public Prosecutor's office in Bitlis;
- (iii) Follow-up report of 25 February 2000 about the suspects in respect of whom a search warrant had been issued.;
- (iv) Report dated 25 February 2000 drafted by gendarmes, noting that the person(s) responsible for the killing of Ferhat Tepe could not be identified;
- (v) Letter of 6 March 2000 from the Bitlis Security Director to the Chief Public Prosecutor's office in Bitlis;
- (vi) Letter of 13 March 2000 from the Elazığ Provincial Central Gendarme Commander;
- (vii) Report dated 1 May 2000 drafted by Public Prosecutor no. 24705, noting that the negatives of the films taken of the body of Ferhat Tepe had been given to an officer from the Provincial Central Gendarmes Command;
- (viii) Letter dated 26 June 2000 drafted by Public Prosecutor no. 24705, informing the Elazığ Chief Public Prosecutor that every three months reports on developments in the investigation were received from the Bitlis and Elazığ Security Directorates and the Provincial Central Gendarme Headquarters and that a permanent search warrant had been issued in respect of the person(s) responsible for the killing of Ferhat Tepe.

(c) Unofficial documents

76. The applicant produced press releases concerning the alleged abduction and killing of Ferhat Tepe as well as the general situation in south-east Turkey at the relevant time. It was reported that Ferhat Tepe was the sixth correspondent of *Özgür Gündem* to be killed since the paper had gone into publication in May 1992. It was also stated that a previously unknown underground organisation calling itself the "Turkish-Ottoman Revenge Brigade" had claimed responsibility for the abduction of Ferhat in a telephone call to his family.

77. In a press release issued by Amnesty International on 6 March 1996, calling for urgent action, it was reported that the applicant, Ishak Tepe, had been taken into custody on charges of aiding the PKK. It was claimed that İshak Tepe had met the police officers against whom he had filed an official complaint after the murder of his son and his nephew and that he had been released after being brought before a court in Bitlis on 4 March 1996. Mr Tepe had not been subjected to any form of ill-treatment and had been able to see his wife and his lawyer while in police custody.

C. Oral evidence

78. The facts of the case being in dispute between the parties, the Court conducted an investigation with the assistance of the parties. In this respect, three delegates of the Court took oral evidence between 9 and 14 October 2000 from twenty-four witnesses. A further nine witnesses had been summoned but did not appear for various reasons. The evidence given by the witnesses may be summarised as follows.

1. *The applicant*

79. The applicant; who is currently living in İstanbul, was the provincial chairman of the DEP in Bitlis in 1993. He was at the same time a building contractor. During the taking of evidence in Ankara, in addition to his submission of the facts, the applicant stated the following.

80. At the relevant time, the applicant's son Ferhat lived with him and helped him at his building site. Ferhat also worked for *Özgür Gündem* as a provincial reporter. He was not politically active. However, he had been taken into custody on two occasions before his disappearance. His first detention, on charges of aiding and abetting the PKK, took place three or four months before his release on 2 February 1992. The second arrest was probably on 12 July 1993, when he had not been taken into police custody. Ferhat was taken to the police station, where he met a police officer from the anti-terrorist department called Nurhan Şentürk, known as "*sakallı*" (the bearded one) in Bitlis and bearing the nickname "Hacı". There were also two other men in the room whom Ferhat had never seen before. Ferhat felt that Hacı had taken him there to show him to these two newcomers. 17 or 18 days later Ferhat was abducted.

81. In the morning of 29 July 1993, at 6 a.m., the applicant received an anonymous phone call from a person claiming to belong to an organisation called the "Turkish-Ottoman Revenge Brigade" who declared that they were keeping his son as a hostage. In the applicant's opinion, the anonymous person on the phone was General Korkmaz Tağma. He recognised the general's voice from their meeting some 15 to 20 days earlier, when General Tağma had held a meeting with the provincial chairmen of all the political parties.

82. Immediately after this call, the applicant and his wife went to the Bitlis Security Directorate where they met the security director, Mr Orhan Ekinci, and the provincial governor of Bitlis, Mr Fethi Tunç. At the latter's request, the applicant wrote a petition to the administrative authorities and to the public prosecutor complaining that his son had been abducted by contra-guerrillas operating within the State. He asked the authorities to take immediate action to find him. He refrained from naming any suspects at the time, in particular General Korkmaz Tağma, as he hoped to get his son back

alive. The chief of police told the applicant that his son had not been taken into custody.

83. Later that day the applicant contacted Fatih Olcay, who had witnessed Ferhat's abduction. Fatih told him that a tall person with a slight beard had held Ferhat by the arm and had taken him away. From his manner and the fact that he was holding a walkie-talkie in his hand, Fatih had deduced that he was a policeman. However, Fatih was unable to repeat these allegations at the police station since he was under pressure.

84. A construction worker called Suat also told the applicant that he had seen Ferhat being taken away in a car with the registration number 65 AD 095. The applicant did not see Suat again and later learned that Suat had gone to İstanbul.

85. The applicant's nephew, Safiye Tepe, contacted former PKK members who had later become "confessors" (i.e. persons who cooperate with the authorities after confessing to having been involved with the PKK) for information about this case. One of them, A.İ., stated that General Korkmaz Tağma had ordered the killing of Ferhat. Some police officers and the JITEM (the gendarmes' intelligence agency), led by Major Cem Ersever and the Turkish-Ottoman Revenge Brigade, were involved in this plot. A warfare specialist, Ahmet Demir, code name "Yeşil" ("the Green") was at the head of this plot. Another "confessor" called Kenan – code name Cihan – confirmed that General Tağma had been involved in the killing of Ferhat.

86. A journalist, Soner Yalçın, published his interviews with Major Cem Ersever, the head of JITEM, who said that Ferhat Tepe and another person had been abducted by Ahmet Demir's team, who had been assigned to the Diyarbakır-Bitlis-Muş-Bingöl zone. The JITEM headquarters were at the gendarmes' interrogation centre in Diyarbakır, where Ferhat had been taken and murdered.

2. Fatih Olcay

87. The witness is currently living in Manisa. He was on a visit to Bitlis at the end of July 1993. He stated that in the evening of 28 July 1993, around 5.30 or 6 a.m., he had been playing football in the yard of the Şemsi Bitlis primary school when he had seen Ferhat walk over. He noticed that a young man around the age of 20-25, who was slightly bearded and dressed in civilian clothes was following Ferhat. They shook hands and walked away arm in arm, like ordinary friends. The witness did not see any cars around. The next day he heard that Ferhat was missing.

88. The witness denied the allegation that he had told the applicant about a tall bearded man, known in the area to be a policeman, or that this man had approached Ferhat, taken him by the arm and put him in a car.

3. *Osman Ergin*

89. The witness is a practising lawyer in İstanbul. He was the lawyer of *Özgür Gündem* at the relevant time and became the applicant's counsel following the killing of his son.

90. The witness interviewed Mümtaz Çerçel in the Diyarbakır prison. The latter told him that he had seen Ferhat Tepe ("the journalist") while being held in custody by the gendarmes. However, Mr Çerçel did not maintain his statement for fear of persecution. He also met Urfi Pasin and Rıza Demirtaş, who mentioned having seen Ferhat Tepe in custody. They were also afraid to testify before the authorities. They told the witness that a person by the name of Çetin Demirhan had also seen Ferhat and had even talked to him. The witness's attempts to reach Mr Demirhan also failed as the latter was under threat of death because of this incident. The witness has never spoken to Murat Koparan, Taner Şarлак and Erkan Dağdelen. He did not take statements from Bahri Elçi and Migdat Yaşar.

4. *İsmetullah Güzelsoy*

91. The witness was the applicant's business partner at the time. On 28 July 1993 he was told by Adnan Karslıoğlu that two police officers had made enquiries about Ferhat and the applicant. He reported this to Ferhat and asked him not to go anywhere. Ferhat was very calm about it and told him that he would be at home. That was the last time he had seen Ferhat.

5. *Colonel Yüksel Özçelik*

92. The witness was the provincial commander of the Bitlis Gendarmes Headquarters at the relevant time. He was in charge of security and law-and-order services outside the borders of the municipality. He had no judicial authority. He was not involved in the investigation into the disappearance and murder of Ferhat, as the incident had taken place within the police authority zone. He heard from the intelligence services in the area that Ferhat was suspected at the time of being involved in money laundering business and that he might have been killed by the PKK.

6. *Nurhan Şentürk, Şenol Çavdar, Şükrü Kutay and Osman Pekdaşoğlu (police officers from the Bitlis Security Directorate)*

93. The above witnesses were all police officers at the time in Bitlis occupying different functions in different departments, namely anti-terrorism, contraband and traffic. None of the witnesses were involved in the investigation into the disappearance and subsequent killing of Ferhat Tepe. Nor did they know of Ferhat, with the exception of Nurhan Şentürk, who said that Bitlis was a small town with a population of 28,000 where

everyone knew each other. He had seen Ferhat before 28 July 1993, when the latter had made a statement at the police headquarters. Mr Şentürk did not remember when this statement had been made and what it had been about. However, the statement was sent to the Public Prosecutor, with a note that Ferhat was a PKK sympathiser. Mr Şentürk further stated that he had grown a beard at the time. He also stressed that Ferhat had never been taken into custody.

94. Mr Çavdar confirmed that Mr Şentürk's nickname was "the bearded one". Mr Pekdaşoğlu was first asked to give an account of what he had been doing on 28 July 1993 three days after the incident. He explained that he used to have a *beige* car at the time, with the licence plate number 65 DA 092, and that on 28 July 1993 this car had been parked in front of his house. He had not lent it to anyone. Eye-witnesses identified it as not being the vehicle involved in the incident. The car involved in the abduction had been a white Renault Toros.

7. *X*

95. The witness was a former member of the PKK, holding a leadership position in the organisation until he was caught on 28 December 1992. Benefiting from the confession law, he became a "confessor" in return for information he gave to the authorities. He was released in mid-1994.

96. In or around March 1992 the witness and two other local leaders of the PKK summoned Ferhat Tepe to Germak village in the Bitlis area and questioned him in relation to his activities. Subsequent to a second meeting held on 14 August 1992 in the mountains, in September 1992 Ferhat was sentenced to death on the grounds that he had been the cause of the killing of a female member of the PKK as a result of having had sexual intercourse with her and that he had used money collected for the PKK for his own purposes, i.e. to build a house and to buy a car.

97. The witness explained that the PKK carried out death sentences by shooting where security did not pose a problem. Alternatively, other methods were used, such as throwing people down from rocks and strangling or drowning. Subsequent to his arrest, the witness reported to the police that Ferhat was on the list of persons sentenced to death by the PKK. However, he did not know whether Ferhat had been killed by the PKK.

8. *Colonel Eşref Hatipoğlu*

98. The witness was the commander of the Diyarbakır provincial gendarmes headquarters from 1992 to 1995. He was in charge of law and order and security in the rural areas within the boundaries of the province of Diyarbakır, which did not include the area around Bitlis. His organisation did not carry out any investigation into Ferhat Tepe's death. He was asked by the Chief Public Prosecutor at the Diyarbakır State Security Court

whether Ferhat Tepe had been taken into their custody. After examining the custody records and consulting his colleagues in all the gendarmes stations under his command, the witness reported back that no one of that description had been brought to their premises or taken into custody or involved in any incident in their region.

99. The witness admitted to mistakes or negligence in the keeping of the custody records at headquarters. He stated that, for security reasons, it was routine practice to blindfold people taken into custody when they arrived at headquarters. The blindfold was taken off once they were inside and, after that, they were never blindfolded. While he was serving in Diyarbakır, the witness heard some rumours about a Turkish-Ottoman Revenge Brigade, but there was never any concrete evidence of the existence of such an organisation.

9. Fırat Yavuz Yelekçi

100. The witness had been the head of the interrogation unit composed of ten officers at the Diyarbakır provincial gendarmes headquarters. His recollection of Ferhat Tepe's death was limited to the question asked by his commander, Mr Eşref Hatipoğlu, namely whether Ferhat had been taken into custody. He consulted the records and told his commander that Ferhat had not been detained.

101. The witness was not in charge of keeping the custody records and there was an officer specifically responsible for that duty at the headquarters. He asserted that detainees were never blindfolded during interrogation and that there was never any physical contact between the interrogators and those detained. He denied the suggestion that anybody had been tortured in the interrogation unit, since medical certificates were issued at the end of the custody period. He further stated that, at the relevant time, there had been twenty detention cells. If more than twenty detainees were brought in, they were transferred to other districts and held there until a cell became vacant in Diyarbakır.

10. Orhan Ekinici

102. The witness was the Bitlis Security Director in command of a staff of eight hundred people at the relevant time. On 29 July 1993 he was on duty when the applicant, along with his wife and daughter, came to the Bitlis police headquarters to tell him that he feared for the life of his son who had disappeared. The witness reassured the applicant, saying that he had checked with his colleagues that Ferhat had not been taken into their custody. He explained that every morning he received a list of the persons taken into custody by any of the security forces in his zone. This list was drawn up by the provincial police headquarters in the form of a report, listing the incidents of the day in the municipal area. It was then sent to the

governor's office. A similar report was submitted to the governor by the gendarmes responsible for rural areas. There were also daily security meetings held in the province with the Governor, which the witness and Yüksel Özçelik attended.

103. The witness assigned a police superintendent to the task of keeping in touch with the Tepe family. Statements were taken from all the persons named by the family. The information regarding the disappearance of Ferhat was communicated by radio and telex to all provinces in Turkey. The witness confirmed that he had been asked by the applicant to trace phone calls, but this procedure had not led anywhere, as in 1993, it was not possible to trace calls made from public telephone booths. Unable to obtain traceable bank notes from the National Police Headquarters owing to bureaucratic obstacles, he could not give cash to the applicant to pay the ransom.

11. Dr Mustafa Altuner

104. The witness was the doctor who signed the autopsy report. At the relevant time, he was a general practitioner working at the district health centre in the Sivrice district of Elazığ. He was not a pathologist qualified to conduct autopsies. He had, however, witnessed many autopsies carried out on persons drowned in Lake Hazar. He claimed that there were ten to fifteen drowning incidents per day at the relevant time.

105. The witness said he remembered the incident very well. He arrived at the scene of the incident at about 8 a.m. on 4 August 1993. After examining the body, he concluded that it was definitively a case of death by drowning which had occurred within a maximum of four hours. The deceased's lips were discoloured as though he had been deprived of oxygen and cyanosis had occurred. Rigor mortis had not set in. He could not see any scratches on the body. Nor did he find any fracture or bruising thereon. There was no sign that the deceased had been either in a fight or hit, beaten, pushed, thrown or killed, or that the body had been brought and thrown into the water. However, the witness saw some marks on the neck and diagnosed them as being erythema, an allergic reaction. He did not think it was necessary to note this in the autopsy report. The witness considered it unnecessary to call in a pathologist or to apply to superior authorities for an autopsy, since he had no doubt that it was a case of ordinary drowning.

12. Aydın Yiğit

106. The witness found the body on 4 August 1993, at 7.30 a.m. He had gone to the lake early in the morning for fishing. He saw the body half submerged in the water. The body had underpants on. He pulled the body onto the shore and left it right by the edge of the water. He did not notice any particular features on the body, such as bloodstains or marks of any

kind. He saw that there were some clothes – trousers and a shirt which had been placed on the shoes – about half a metre from the shore. He then went to a petrol station and called the Sivrice gendarmes station. He stayed on the spot for about an hour and a half and statements were taken from him by the public prosecutor.

13. The public prosecutors involved in the investigation

(a) Mustafa Yıldırım

107. The witness, who signed the autopsy report, was at the time the Sivrice Public Prosecutor in Elazığ. Although it was not the usual practice, he had photographs taken of the body for identification purposes following the post-mortem examination. At the beginning of his testimony, the witness stated that he had not taken any steps to see whether the body he had found matched any person reported as missing. After consulting the doctor and having heard the witnesses, he decided that a systematic autopsy was unnecessary as there was nothing suspicious about the incident and that he had come across similar drowning incidents in the past. However, he had not encountered a case where the identity of the victim was unknown and the identity card missing. Later he said that he had instructed both the gendarmes and the police to investigate whether anyone had reported a relative missing. He had the body sent to the morgue of the Elazığ State Hospital as there was no suitable morgue in Sivrice. He was informed later that the body had been buried because of a technical problem in the morgue. However, he did not know when the body had been buried and who had ordered the burial. He did not know anything about Ferhat Tepe until Ferhat's cousin, a lawyer, had applied to their office five days after the incident. When the witness learned that the scene of the incident fell within the territorial jurisdiction of Elazığ, he issued a decision of non-jurisdiction on 9 August 1993.

(b) Süleyman Tatal

108. The witness was the public prosecutor in Elazığ, in charge of the investigation into the death of Ferhat Tepe. In the investigation file and the autopsy report he received, there were no findings indicating that the deceased had been tortured. There was no sign of any ill-treatment on the photographs. In their statements made at the Hozat Public Prosecutor's office, Mr Murat Koparan, Mr Taner Şarlak and Mr Erkan Dağdelen had denied the allegations contained in the declarations addressed "To the Public". There was therefore no evidence that Ferhat had been abducted or killed under torture. The witness considered the incident to be a case of ordinary death by drowning and, accordingly, did not deem it necessary to conduct any further investigation.

(c) Hayri Özdal

109. The witness was the Chief Public Prosecutor in Bitlis at the time of the events. He was on judicial leave from 20 July to 6 September 1993. On 28 September 1993 he was appointed as a judge to a court in İstanbul. He could not contribute to the elucidation of the facts.

(d) Erdal Poyraz

110. The witness was one of the two Public Prosecutors who were deputies to the Chief Public Prosecutor in Bitlis. He was on duty when the Chief Public Prosecutor was on leave. He issued a decision of non-jurisdiction on 12 August 1993 after the body had been found and sent the preliminary investigation file he had prepared to the Sivrice Chief Public Prosecutor's office. He said the case had struck him as a unique and unusual one at the time. However, he could not remember whether he had done anything about the case, but said: "I must have started the investigation".

(e) Beytullah Metin

111. The witness was a trainee public prosecutor in Ankara in July and August 1993. He did not take part in any investigation concerning Ferhat Tepe.

(f) Şükrü Cüneyt Hamdovalı

112. The witness was assigned to the Bitlis office as a public prosecutor on 24 February 1993. He was on duty in July and August 1993 along with his colleague, Mr Erdal Poyraz. He confirmed that Mr Poyraz had been in charge of the investigation while he personally had not been involved in it. He did remember, however, that there had been some incidents during the funeral.

14. Murat Koparan, Erkan Dağdelen and Taner Şarлак (alleged eyewitnesses to the detention of Ferhat Tepe)

113. On 20 July 1993 all three witnesses were arrested on suspicion of aiding and abetting members of the PKK and taken into custody at the Hazro gendarmes headquarters, where they stayed for two days. The witnesses were then taken to Diyarbakır and kept at the gendarmes headquarters between 22 July and 13 August 1993. On the latter date, the Diyarbakır State Security Court ordered the witnesses' detention on remand and they were transferred to Diyarbakır E-type Prison. They stayed in the same cell for two months until the State Security Court ordered their release following acquittal.

114. The witnesses denied the suggestion that, during their detention, they had seen Ferhat Tepe being tortured or killed. Nor had they known of him or heard of a journalist being detained in the same place with them. As

regards the document addressed to the public which they had signed in prison, the witnesses alleged that the persons in the ward who had told them to sign this document had tricked them into it, as it contained statements which they had never uttered. They thought that it was a document prepared for the purposes of their defence in court; they had not read the document before signing it. The witnesses further stressed that they had been very young at the relevant time (16, 20, and 14 years old respectively) and that the persons who had made them sign the document had taken advantage of their youth and inexperience. The witnesses finally claimed that they had learned of the content of the impugned document when the Hazro Public Prosecutor had taken their statements about it on 26 February 1996.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal law and procedure

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

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

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

118. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP). The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However,

the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

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

B. Constitutional provisions on administrative liability

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

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

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

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

C. Civil action for damages

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

THE LAW

I. THE COURT'S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. Arguments of the parties

1. *The applicant*

123. The applicant argued that he had proven that his son had been tortured and killed while in custody following his abduction either by undercover agents of the State or by persons acting under their express or implicit instructions. He requested the Court to find that the death of his son and the failure of the authorities to carry out an effective investigation engaged the responsibility of the respondent State under Articles 2, 3, 5, 10, 13, 14 and 18 of the Convention and that each of these Articles had been violated.

2. *The Government*

124. The Government denied that the applicant's son had been in custody and submitted that Ferhat Tepe's death had been the result of a dispute within the PKK. They maintained that the investigation carried out by the authorities met the requirements of Articles 2 and 13 of the Convention.

B. General principles

125. The Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

126. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case

(see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30).

C. The Court's considerations under Article 38 § 1 (a)

127. Article 38 § 1 (a) of the Convention provides:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities...”

128. The Court reiterates that it is of utmost importance for the effective operation of the system of individual petition instituted under former Article 25 of the Convention (now replaced by Article 34) that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see, as the most recent authority, the *Orhan*, cited above, § 266, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI). The same applies to delays by the State in submitting information which prejudices the establishment of facts in a case (see *Orhan*, cited above, § 266).

129. In the light of the above principles and having regard to the Government's obligations under Article 38 § 1 (a) of the Convention, the Court has examined the Government's conduct in the present case in particular in regard to three matters in establishing the facts of the present case.

130. Having failed to submit the full investigation file along with their observations of 19 February 1996 on the admissibility and merits of the

case, the Government were requested by the Court in letters of 14 March and 23 June 2000 to provide further documents. On the latter date, the investigation file was still incomplete. At the opening of the hearing of witnesses in Ankara on 9 October 2000, the Government submitted a file which contained important documents such as the statements made by Mr Koparan, Mr Dağdelen and Mr Şarlak before the Hazro public prosecutor on 26 February 1996 and the original photographs of Ferhat Tepe's body. During the course of the hearing, the Government were requested to submit to the Court a number of documents. On 25 October 2000 the Court wrote to the Government asking again for these documents and inviting them to submit explanations for the delay in the submission of the complete file. Following a reminder from the Court on 15 December 2000, these documents were finally submitted to the Court on 16 March 2001. In response to the Court's letter of 25 October 2000, the Government cited "clerical errors and communication problems within the Ministry of Justice, Ministry for Foreign Affairs and the local courts" as the reason for the delay. They further averred that they had had no intention of hiding these documents, which in fact supported their submissions.

131. The Court points out in this connection that the Government were repeatedly invited to submit any documents in their possession for the completion of the file. The documents which they furnished at the last minute in Ankara, namely statements made by the aforementioned three witnesses and the photographs of Ferhat Tepe's body, were fundamental for the establishment of the facts. The Court considers that the Government's reliance on clerical errors and communication problems between the national authorities are not convincing explanations for the delay in provision of the complete investigation file.

132. Secondly, in its letter of 18 July 2000, the Court requested General Korkmaz Tağma, the then commander of the Tatvan 6th Brigade, to appear before its delegates. The Government, however, in a letter of 5 October 2000 set out strict conditions for his attendance at the hearing. During the taking of evidence in Ankara, the Court's Delegates decided not to hear General Tağma, as the applicant's representatives had rejected the condition indicated by the Government that the witness should be questioned in the absence of the applicant's lawyers. The delegation also decided that it would be for the Court to draw conclusions from the Government's attitude.

133. Thirdly, by the same letter of 18 July 2000, the Court also requested the Government to ensure the attendance of Murat Koparan, Taner Şarlak, Erkan Dağdelen, Ömer Aceban, Bahri Elçi, Miğdat Yaşar and Mümtaz Çerçel at the hearing in Ankara. These witnesses had allegedly been detained together with the victim. The Government were unable to find these witnesses or serve summonses on them, explaining that they had been released from prison at various dates between 5 October 1993 and 6 July 1994 and that their addresses were unknown to the authorities. However,

following the submission by the Government of the aforementioned documents on 10 October 2000 in Ankara, the Court's delegates noticed that, among these documents, statements taken from Mr Koparan, Mr Şarлак and Mr Dağdelen by the Hazro Public Prosecutor (no. 31562) on 26 February 1996 bore the current addresses of the witnesses. The witness records kept by the Diyarbakır State Security Court also contained their addresses. Accordingly, the delegates requested the Government to serve the summonses to the addresses indicated in these documents and to ensure the attendance of the witnesses at the hearing on 13 October 2000. The Delegates heard evidence from them on 14 October 2000. No evidence was taken from the other three witnesses, namely Mr Aceban, Mr Elçi and Mr Yaşar. The Court requested the Government to explain their failure to summon witnesses in time and the non-attendance of witnesses whose evidence was crucial for the present case, given that they had allegedly been detained together with Ferhat Tepe.

134. The Court notes that, apart from the response that they lacked information to locate these witnesses, the Government did not give any explanation. The Court considers that the Government's explanations are far from satisfactory, given that the information concerning the whereabouts of these witnesses was already contained in the documents in their possession and that it was also possible to find out these witnesses' addresses through the local courts which kept records.

135. The Court concludes that the Government have failed to provide any convincing explanation for its delays and omissions in response to the Court's requests for relevant documents, information and witnesses. The Court considers therefore, that it can draw inferences from the Government's conduct in the instant case (see *Orhan*, cited above, § 274). Bearing in mind the difficulties arising from a fact-finding exercise of this nature and in view of the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that the Government have failed to furnish all necessary facilities to the Court in its task of establishing the facts within the meaning of Article 38 § 1 (a) of the Convention.

D. The Court's evaluation of the facts

1. The alleged abduction and killing of the applicant's son Ferhat Tepe

(a) The Court's assessment of the parties' submissions and of the evidence

136. The applicant alleged that secret forces within the State security forces had abducted and killed his son. The Government denied this. The

Court will therefore verify the facts by assessing the weight and effects of the evidence gathered by the Court's delegates.

137. The Court observes that the applicant's oral testimony (paragraphs 79-86 above) broadly reiterated written statements he had given both to the national authorities and to the Convention institutions. However, his evidence on the whole was detailed and precise and consistent with the applications and statements he had made following the disappearance and subsequent death of his son (29 July 1993 to the Bitlis Security Director, the provincial governor and the Bitlis Public Prosecutor, 30 July 1993 to the Prime Minister's office, the Ministry of the Interior and the office of the Governor of the state of emergency region, 19 October 1993 to the Committee of the Turkish Parliament on Murders Perpetrated by Unknown Persons, 2 November 1993 and 28 September 1994 to the Ministry of Justice, 30 March 1995 to the Bitlis Chief Public Prosecutor's office and 31 March 1995 to the Sivrice Chief Public Prosecutor's office at paragraphs 17-18, 19, 31, 32 and 34 and 46-47 above).

138. In view of the testimonies of Colonel Yüksel Çevik and Nurhan Şentürk (see paragraphs 92-93), the Court finds persuasive the applicant's direct and detailed evidence of his allegation that Ferhat and other family members had been under pressure on account of their involvement in pro-Kurdish political activities. However, his evidence concerning the alleged abduction of his son by plain-clothes policemen did not go beyond hearsay statements, which were contradicted by the written statement and the testimony of Fatih Olcay (see paragraph 58 and 87-88). The Court notes in this latter respect that Suat Başboğa and Faruk Bayındır, whose evidence could have shed light on the alleged abduction of Ferhat, failed to attend the hearing for various reasons.

139. Furthermore, although the applicant's statements on the question of the alleged detention of Ferhat in Diyarbakır were to some extent supported by Osman Ergin, they were completely denied by the oral evidence given by Murat Koparan, Erkan Dağdelen and Taner Şarlak before the delegates (see paragraphs 89-90 and 113-114). The Court notes in this connection that the Government have not been able to find Ömer Aceban, Bahri Elçi, Miğdat Yaşar and Mümtaz Çerçel, who were allegedly detained with the applicant's son.

140. The applicant pointed to the fact that he had seen some marks on his son's body after exhumation. It was possible to question the applicant on the photographs produced by the Government during the hearing. He indicated the marks on the ankle, upper arm and the abdomen. In response to comments that there were no visible marks on the body in these photographs, the applicant claimed that they were less clear on the photographs than they had actually been when he had washed the body. He claimed that it was natural that the marks had become less obvious with time.

141. In the Court's view, the applicant's oral evidence clarified the steps he had taken to find his son following his disappearance, as well as his efforts to bring the killer(s) of his son to justice. In this respect, the Court considers that his evidence was consistent with that of Orhan Ekinci, Osman Ergin, Fırat Yavuz Yelekçi and Erdal Poyraz (see paragraphs 102-103, 89-90 and 100-101). It transpired, however, that the applicant had failed to indicate immediately to the Governor and to the Chief of Police that General Korkmaz Tağma was the person who had phoned him the first time.

142. Fatih Olcay's evidence did not add anything to the previous written statements he had made to the police officers (see paragraph 58). He denied ever having told the applicant that Ferhat Tepe had been taken away by a tall bearded policeman (see paragraph 88 above). He had been scared when the incident took place. He repeatedly underlined during the hearing that he had been very young at the relevant time. He tried to minimise what he had seen as much as possible, and seemed embarrassed about testifying in relation to this incident.

143. Osman Ergin gave a testimony noteworthy for its detail and clarity (see paragraphs 89-90 above). Mümtaz Çerçel, Urfi Pasin and Rıza Demirtaş had told the witness that they had seen Ferhat Tepe in detention. However, Mr Ergin's testimony was hearsay in nature and the Court was unable to verify these allegations since these witnesses did not want to testify.

144. İsmetullah Güzelsoy's evidence was also consistent with his previous statement to the authorities (see paragraph 56 above). He learned from Adnan Karşlıoğlu that two police officers had made enquiries about Ferhat before his disappearance. This statement and Mr Karşlıoğlu's statement to the police officers (see paragraph 55 above) support the allegation that the applicant's son was under surveillance by the security forces.

145. As regards Colonel Yüksel Özçelik, the Court considers that he was strikingly evasive in his testimony as, while giving evidence, he avoided answering even simple questions and was suspicious of their intent. He was afraid of negative inferences being drawn from his answers. Despite his unsatisfactory evidence, the most important information he gave was that Ferhat Tepe had at the time been suspected of being involved in a money-laundering business.

146. The testimonies of the police officers from the Bitlis Security Directorate were also of an evasive and general nature to the extent that they did not know anything and had heard nothing about Ferhat Tepe, with the exception of Nurhan Şentürk, who stated that Bitlis was a small town with a population of 28,000, where everyone knew each other (see paragraph 93 above). The Court therefore attaches no particular weight to these witnesses' evidence.

147. Concerning X, the Court notes that the witness is an ex-PKK member or a “confessor”, whose evidence must be treated with caution in the light of his background. X’s oral account confirmed the Court’s previous finding that the security forces suspected Ferhat Tepe of possible involvement in the PKK, since X had identified Ferhat as a member of the PKK who had been sentenced to death by the organisation (see paragraph 96 above). While X recounted in detail his contacts and conversations with Ferhat Tepe prior to his apprehension, his account of his meetings with Ferhat were vague and unspecific. Furthermore, although X gave animated and detailed information concerning Ferhat’s sexual relations with a female member of the PKK, which had caused her death and subsequently constituted one of the grounds for Ferhat’s death sentence, his account concerning Ferhat’s collection of money for the PKK and his use of that money to build a house and to buy a car lacked precision and any proof. In view of the aforementioned considerations, the Court finds that X’s allegation that the applicant’s son could have been killed by the PKK was not sufficiently substantiated by the evidence given and cannot be regarded as a fact or a significant probability. There is accordingly no satisfactory explanation as to who could have killed Ferhat Tepe, bearing also in mind X’s statement that he did not know whether the applicant’s son had been killed by the PKK (see paragraph 97 above).

148. As regards Eşref Hatipoğlu, Fırat Yavuz Yelekçi and Orhan Ekinci, the Court observes that they were generally credible witnesses whose evidence was inconclusive as to whether the applicant’s son had ever been detained by the security forces. After having checked the custody records, they all reported to the prosecuting authorities that Ferhat had never been taken into custody by the gendarmerie to which they belonged (see paragraphs 98, 100 and 102 above). In this regard, the Court notes with concern Mr Hatipoğlu’s statement that mistakes occurred in the keeping of custody records at headquarters (see paragraph 99). In the Court’s opinion, his statement confirms the Convention institutions’ earlier findings concerning the inadequacy and unreliability of custody records (see *Çiçek v. Turkey*, no. 25704, §§ 137-138, 27 February 2001, unreported; *Çakıcı v. Turkey* [GC], no. 23657/94, § 105, ECHR 1999-IV; *Aydın v. Turkey* judgment of 25 September 1997, Reports 1997-VI, Opinion of the Commission, p. 1941, §172), that such records cannot in general be relied upon to prove that a person had or had not been taken into custody. Against this background, the Court considers that even if the name of the applicant’s son does not appear in the custody ledgers, that does not prove that the security forces did not arrest him. Accordingly, no conclusion can be drawn from these witnesses’ testimonies as to the alleged detention of Ferhat Tepe.

149. Aydın Yiğit was a reliable witness whose evidence was consistent in its essential details. The witness did not notice any particular features, such as bloodstains or marks of any kind on Ferhat’s body (see

paragraph 106). The evidence given by Dr Mustafa Altuner (see paragraph 105) also supported the witness' observations on the body. The Court cannot therefore conclude from Mr Yiğit's testimony that there was any indication that the applicant's son had been killed.

150. The Court has also examined carefully the testimonies of the witnesses Murat Koparan, Erkan Dağdelen and Taner Şarlak (see paragraphs 113 and 114 above) and compared them with their statements entitled "To the Public" (see paragraph 61 above) and the statements they gave to the Hozat Public Prosecutor (see paragraphs 72-73 above). Considering that these young witnesses all claim not to have read what they had signed either in prison or before the public prosecutor, the Court cannot draw any conclusion from their evidence. Nor can it conclude on the basis of their statements that Ferhat Tepe had or had not been in custody.

151. The Court notes that, in order to make a full assessment of the investigation carried out by the authorities, the delegates took evidence from six public prosecutors and from the medical doctor who conducted the *post mortem* examination on the body of Ferhat Tepe. It further notes that the evidence given by Mustafa Yıldırım, who was present at the post mortem examination and subsequently issued a decision of lack of jurisdiction, indicated that the witness lacked competence and reliability. The Court points out in this connection that the witness, while stating on the one hand that he had no reason to suspect that this was anything else than an ordinary case of drowning similar to cases he had already seen, claimed on the other hand that he had not previously encountered a case where the person's identity card was missing (see paragraph 107 above). The Court also finds the witness's explanations contradictory in that he admitted not having taken any steps to see whether the body matched that of any person reported missing and later claimed to have instructed both the gendarmes and the police to find out whether there were any persons reported missing. It further appears that the security forces and the prosecuting authorities were unaware of the disappearance of Ferhat Tepe (see paragraph 107), contrary to what was alleged in the letter from the Ministry of the Interior (see paragraph 65). Furthermore, the Court cannot accept the witness' suggestion that it was unnecessary to conduct a systematic autopsy in a case where the body belonged to an unknown person, without any identification, money or keys, who had drowned at 4 a.m.

152. As to Süleyman Tural, the Court notes that he was the principal public prosecutor in charge of the investigation into the death of Ferhat Tepe. He also considered the incident to be an ordinary death by drowning having regard to the autopsy report, the photos of the body and the statements of Mr Murat Koparan, Mr Taner Şarlak and Mr Erkan Dağdelen to the Hozat Public Prosecutor (see paragraphs 76 and 77 above). He did not consider it necessary to conduct a further investigation since there was no evidence on which to conclude that Ferhat Tepe had been

abducted and tortured to death. The Court is struck by the fact that the witness deemed it unnecessary to extend the investigation although it had been alleged that secret forces within the State security forces had abducted and killed a young man. This is parallel to the above finding (see paragraph 151 above) that the judicial authorities did not consider hearing further witnesses, such as the members of the applicant's family or the security forces said to have been involved in the alleged killing, to verify the applicant's allegations.

153. Concerning the remaining four public prosecutors, the Court notes that Hayri Özdal, Beytullah Metin and Şükrü Cüneyt Hamdovalı were not involved in the investigation for various reasons (see paragraphs 109, 111 and 112 above) and, therefore, no conclusions can be drawn from their testimonies. As to Mr Erdal Poyraz, who issued a decision of non-jurisdiction after the body had been found, the Court considers that he did not give convincing and consistent evidence. It points out in this connection that the witness did not remember anything about the case, which he had defined as a unique and unusual case at the time (see paragraph 110 above). However, Mr Poyraz's qualification of the case was at variance with those of Mr Mustafa Yıldırım and Mr Süleyman Tural, who considered that the death of Ferhat Tepe was an ordinary drowning case (see paragraphs 107 and 108 above).

154. As regards Dr Mustafa Altuner, who conducted the post mortem examination and signed the autopsy report, the Court notes that the witness was at the relevant time a general practitioner and not a pathologist qualified to conduct autopsies (see paragraph 104 above). The Court notes that, apart from general observations on the body, the witness did not indicate in his report the skin marks which he had seen on the neck of the deceased. Although he told the Delegates that the death had occurred within a maximum of four hours before his arrival at the scene of the incident, the time of the death is not indicated in his report. Furthermore, the evidence given by the witness casts doubt on his credibility. At the beginning of his testimony the witness claimed that, at the relevant time, death by drowning occurred every day around the lake. At the end of his testimony he stated that in some weeks there were two such cases whereas in other weeks there was none. The Court further points out that the witness reached a firm conclusion of death by drowning without considering why a person would go swimming at around 4 o'clock in the morning in his underwear, without an identification card, money or keys. The Court considers it remarkable that in the circumstances of such a case the witness considered it unnecessary to call in a pathologist or refer the matter to superior authorities for an autopsy, despite his not being qualified to conduct autopsies. The post-mortem report and Dr Altuner's statements lead the Court to conclude that he did not possess sufficient expertise to conduct a forensic examination on the body of the applicant's son.

2. The Court's findings of fact and conclusion

155. Having regard to the testimonies of the witnesses heard by the Court's delegates (see paragraphs 79-114) and the documentary evidence submitted to it by the parties (see paragraphs 46-77 above), the Court is unable to make a finding as to who might have been responsible for the death of Ferhat Tepe. It considers that a finding to the effect that secret elements within the State security forces or persons with the connivance of the State authorities had abducted and killed the applicant's son would be based more on conjecture, speculation and assumption than on reliable evidence. Accordingly, the Court accepts the following account as the true facts pertaining to the events surrounding the death of the applicant's son.

156. On 28 July 1993, at around 6 p.m., the applicant's son Ferhat Tepe met a tall bearded man of about 25 years of age in the yard of the Şemsi Bitlis primary school. They talked like two ordinary friends and left the school premises together (see paragraph 87 above).

157. On 29 July 1993 at around 6 a.m. the applicant received a phone call from an anonymous person claiming to be a member of an organisation called the "Turkish-Ottoman Revenge Brigade", who said that they were holding his son hostage. The man on the telephone said that Ferhat would be killed unless the applicant closed down the Bitlis branch of the DEP, released the four French tourists in the hands of the PKK and paid a ransom of one billion TRL (see paragraph 81).

158. On 4 August 1993 the applicant received another phone call at around 3 a.m. The anonymous caller said that the applicant had failed to fulfil their conditions for the release of Ferhat since he had not closed down the party, had failed to bring the money and had reported everything to the authorities. He asked the applicant to bring TRL 1 billion to an address in Elazığ by 5 p.m. (see paragraph 49 above) if he wanted to see his son alive.

159. On the same day, 4 August 1993, at around 7.30 a.m., Ferhat's body was found half-submerged in the water in Lake Hazar in Elazığ (see paragraph 106 above). There were no visible marks of ill-treatment or fractures on his body (see paragraphs 50, 51, 105 and 106 above). An autopsy was carried out on the body and concluded that the cause of death was drowning (see paragraphs 50, 104 and 105). Ferhat's body was then sent to the morgue of Elazığ State Hospital.

160. On 5 August 1993 Ferhat's body was buried in the Elazığ cemetery for persons with no known relatives.

161. On 8 August 1993 the applicant received an anonymous call from a person who told him that Ferhat's body was in the Elazığ morgue.

162. On 9 August 1993 the applicant's wife and a group of relatives and family friends identified Ferhat's body, which had been exhumed by the authorities. The next day Ferhat was reburied in Bitlis.

163. In the light of the foregoing, the Court points out that it has not been provided with any eye-witness evidence or evidence corroborating the

applicant's account to a decisive extent. It notes that the only evidence that the applicant's son was detained in the Diyarbakır prison is hearsay. Furthermore, the documentary and oral evidence with which it has been presented are, as outlined above, incomplete, inconsistent and on some points even contradictory. The Court concludes therefore that the applicant's allegations have not been sufficiently proved.

164. This finding is not altered if account is taken of the background against which the applicant submits that the impugned incident should be seen: the pressure exerted by the authorities on the applicant and the members of his family, the authorities' suspicion of Ferhat's involvement in the PKK and his arrest prior to his death, the discussion between the applicant and General Korkmaz Tağma at the army barracks at the beginning of July 1993, and the large number of journalists killed in south-east Turkey by unknown persons at the relevant time.

165. On the basis of the above findings, the Court will proceed to examine the applicant's complaints under the various Articles of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

166. The applicant alleged that his son had been tortured and killed following his abduction by undercover agents of the State and that the authorities had failed to carry out an effective and adequate investigation into his killing. He relied on Article 2 of the Convention, which provides:

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

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. Submissions of the parties

1. The applicant

167. The applicant alleged that it was established beyond reasonable doubt that the State security forces had detained his son Ferhat Tepe, who had met his death at the hands of the State security forces or their agents. He argued that the circumstances in which Ferhat's body had been found and the way in which his body and his death had been handled by the authorities reinforced that conclusion. The Government therefore had the responsibility of a plausible explanation as to how Ferhat had met his death.

168. The applicant maintained that it was also established beyond reasonable doubt that the respondent Government had failed to protect Ferhat Tepe's right to life in that they had failed to conduct an independent, effective and thorough investigation into an allegation of a probable suspicious death.

2. The Government

169. The Government disputed these allegations. They submitted that there was no evidence whatsoever to support the applicant's allegation that State security forces or their agents had killed his son. In their opinion, Ferhat had been killed by the terrorist organisation PKK in a settling of scores within that organisation.

170. The Government further contended that the investigation into the killing of the applicant's son had met the requirements of the Convention.

B. The Court's assessment

1. The alleged failure to protect the right to life

171. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

172. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Orhan*, cited above, § 326).

173. The Court draws attention to its previous findings in similar Turkish cases to the effect that in 1993, as a result of the conflict in south-east Turkey, there were rumours that contra-guerrilla elements were involved in targeting persons suspected of supporting the PKK. It is undisputed that there were a significant number of killings which became known as the “unknown perpetrator killing” phenomenon and which included prominent Kurdish figures and other journalists (see *Mahmut Kaya v. Turkey*, no. 22535/93, § 89, ECHR 2000-III and *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI). In this respect, the Court considers that the circumstances in which Ferhat Tepe met his death and the fact that he was working for a pro-Kurdish newspaper, *Özgür Gündem*, militate in favour of the applicant’s allegations.

174. However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of “beyond reasonable doubt”, and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161). Accordingly, the Court refers to its finding above (see paragraph 163) to the effect that the applicant’s allegations have not been sufficiently proved. It appears from the evidence that there were no eye-witnesses to the alleged abduction and killing of the applicant’s son. Nor has it been established that Ferhat was seen in detention in Diyarbakır Prison. The witnesses referred to by the applicant remained anonymous and failed to give evidence for various reasons (see paragraphs 138 and 139 above). The only evidence available in this latter connection was the hearsay statement of the applicant’s then lawyer, Mr Osman Ergin (see paragraph 143).

175. In view of the above, the Court considers that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicant’s son was abducted and killed by any State agent or person acting on behalf of the State authorities.

It follows that there has been no violation of Article 2 on that account.

2. *The alleged inadequacy of the investigation*

176. The Court reiterates that the obligation to protect the right to life under Article 2, read in conjunction with the State’s general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals

have been killed as a result of the use of force (see, *mutatis mutandis*, the *McCann and Others*, cited above, p. 49, § 161). This obligation extends to but is not confined to cases which concern intentional killing resulting from the use of force by agents of the State.

177. The Court also points out that the positive obligation imposed on the Contracting States by Article 2 § 1 requires that the right to life be protected by law. This implies that, as a minimum, a State is under an obligation to provide a framework of law which generally prohibits the taking of life and to ensure the necessary structures to enforce these prohibitions, including the provision of a police force with responsibility for investigating and suppressing infringements (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115). That positive obligation, however, does not impose a requirement that a State must necessarily succeed in locating and prosecuting perpetrators of fatal attacks.

178. Turning to the particular circumstances of the case, the Court notes that an investigation was indeed carried out into the disappearance and ultimate death of the applicant's son. However, there were striking omissions in the conduct of the investigation. In this connection, the Court would observe that there was no real coordination between the police authorities and the different prosecutors in the conduct of the investigation. A typical example of this is that the prosecutors and police authorities in Elazığ knew nothing about Ferhat Tepe when conducting a post-mortem examination on him on 4 August 1993, while attempts were being made to find him by the applicant and the authorities in Bitlis until 8 August 1993 (see paragraph 151 above).

179. Furthermore, the Court considers that the public prosecutors failed to broaden the investigation by using possible leads given by the applicant and took no steps on their own initiative to identify possible witnesses. It notes that the public prosecutors did not take any statements from the police officers or other members of the security forces during the course of the investigation. It is true that the authorities were not informed by the applicant of his suspicion that General Korkmaz Tağma had been involved in the abduction of his son. However, they did reluctantly admit to hearing that persons within the State security forces might have been involved in the abduction but denied having heard anything about the contra-guerrilla forces in Turkey (see paragraph 17). Furthermore, the investigation did not include any attempt to broaden the investigation so as to cover the possible involvement of persons targeting journalists.

180. The Court also notes that, although the applicant brought it to the attention of the authorities that there were eye-witnesses to the detention of Ferhat Tepe in Diyarbakır Prison, no steps were taken to seek any evidence, beyond enquiring as to entries in custody records, until after the application had been communicated to the Government by the Commission

on 11 September 1995. The Court points out in this connection that the statements of Taner Şarлак, Murat Koparan and Erkan Dağdelen were only taken on 26 February 1996 (see paragraph 76). It also notes that no steps were taken to obtain information from Ömer Aceban, Bahri Elçi and Migdat Yaşar.

181. The Court recalls that a post-mortem examination was performed on the body of the applicant's son by a general practitioner in the presence of the Sivrice Public Prosecutor and that the body was buried the next day (see paragraphs 159 and 160). The Court has already noted with concern that no forensic specialist was involved (see paragraph 154 above) and finds it regrettable that the public prosecutor did not consider it necessary to carry out a full medico-legal autopsy, which could have provided valuable information (see paragraph 151 above). The Court underlines in this connection the importance and need for a medico-legal autopsy to be carried out by a qualified medico-legal expert or by a physician familiar with medico-legal examination in cases of suspected unnatural death (see Recommendation No. R (99) 3 of the Committee of Ministers on the Harmonisation of Medico-Legal Autopsy Rules, 2 February 1999). It is also of the utmost importance that, in such cases, the body of the deceased person should not be disposed of until an adequate autopsy is conducted by a physician, who is an expert in forensic pathology (see Section 12 of the UN Economic and Social Council resolution 1989/65 of 24 May 1989 on the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).

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

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 5 OF THE CONVENTION

183. The applicant complained that his son had been tortured before his death. He also asserted that the failure to enter Ferhat in any custody record had violated his right to security of person and that the violation was aggravated by the incommunicado detention. He further alleged that the authorities had failed to carry out an independent, thorough and effective investigation into his complaints. He relied on Articles 3 and 5 of the Convention.

Article 3 provides:

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

In so far as relevant, Article 5 reads:

“1. Everyone has the right to liberty and security of person.”

184. The applicant maintained that his son had been detained without any guarantee as to security of person. In his opinion, the secrecy of his said detention and the failure to acknowledge detainees would have made him more vulnerable than acknowledged detainees and would have exposed him to acute anxiety of such a kind as to constitute torture. He alleged that there was direct evidence that Ferhat Tepe had been tortured while in detention, as the statement of Erkan Dağdelen, Murat Koparan and Taner Şarлак dated 16 August 1993 showed.

185. The Government submitted that the applicant’s allegation was untrue and unsubstantiated. They further denied that the autopsy had revealed any sign of torture.

186. The Court refers to its above finding to the effect that it has not been established beyond all reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the death of the applicant’s son (see paragraph 175 above). It also reiterates that there was no direct eye-witness to the detention of Ferhat Tepe in Diyarbakır Prison (see paragraph 163 above) and that no inference can be drawn from the testimonies of Murat Koparan, Erkan Dağdelen and Taner Şarлак as to whether Ferhat Tepe had or had not been in custody (see paragraph 150 above). There is thus no factual basis on which to conclude that there has been a violation of these provisions as alleged by the applicant.

187. Accordingly, the Court holds that there has been no violation of Articles 3 and 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

188. The applicant alleged that the unlawful detention and killing of his son Ferhat Tepe had had the intention or the obvious effect of suppressing or interfering with freedom of expression as guaranteed by Article 10 of the Convention which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or

rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

189. The applicant argued that Ferhat Tepe’s death was clearly connected to his activity as a journalist and that the Government had therefore failed to protect his life and failed to guarantee an effective investigation into his disappearance and killing.

190. The Government denied the applicant’s allegations.

191. The Court notes that the applicant’s allegations arise out of the same facts as those examined under Article 2 of the Convention. It therefore does not consider it necessary to examine this complaint separately.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

192. The applicant complained that he had been denied an effective remedy within the meaning of Article 13 of the Convention, which provides:

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

193. The applicant submitted that the authorities had failed to carry out an effective investigation in relation to his complaints concerning the disappearance and murder of his son. He argued that the location, nature and circumstances of his son’s death were on their own sufficient to justify a full investigation. He also alleged that at and after the material time – July 1993 – there had been a practice of ineffective remedies in south-east Turkey in relation to complaints of this nature by Kurdish people.

194. The Government rejected the applicant’s submissions and argued that the authorities had carried out a meticulous and effective investigation into the applicant’s complaints.

195. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the following judgments: *Aksoy v. Turkey*, 18 December 1996,

Reports 1996-VI, p. 2286, § 95; *Aydın v. Turkey* 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103, and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, p. 325, § 89).

Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).

196. The Court reiterates that it has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's son. However, according to its established case-law, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of the Article 13 (see the following judgments: *Orhan*, cited above, § 386; *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, p. 23, § 52, *Kaya*, cited above, pp. 330-31, § 107, and *Yaşa*, cited above, § 113).

197. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the death of the applicant's son. For the reasons set out above (see paragraphs 176-182), no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see *Orhan*, cited above, § 387, and *Tanrıkulu*, cited above, § 119).

198. The Court therefore concludes that there has been a violation of Article 13 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2, 3, 5, 10, 13 AND 18 OF THE CONVENTION

199. The applicant complained that his son had been killed because of his Kurdish origin in violation of Article 14 of the Convention, which provides:

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

200. The applicant argued that there was a practice of discrimination in south-east Turkey against Kurdish people in relation to all such matters.

201. The Government did not address these issues beyond denying the factual basis of the substantive complaints.

202. The Court has examined the applicant's allegations in the light of the evidence submitted to it, but considers them unsubstantiated. There has therefore been no violation under this head.

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

203. The applicant alleged that the restrictions on his rights and freedoms set forth in the Convention had been applied for purposes not permitted under the Convention. He relied on Article 18, which reads:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

204. The Court points out that it has already examined this allegation in the light of the evidence submitted to it, and found that it was unsubstantiated. Accordingly, no violation of this provision has been established.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

205. Article 34 of the Convention, in so far as relevant, provides:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

206. The applicant submitted that the conduct of the Government during the course of the proceedings, and in particular during the course of the fact-finding hearings, had been such as to breach their obligation under Article 34 of the Convention. He alleged in this connection that the Government had failed to provide documents or had not provided them on time, and attempted to impose inappropriate conditions on the hearing of certain witnesses and had also failed to provide necessary and relevant witnesses.

207. The Government denied the applicant’s allegations and averred that they had fully complied with their undertaking under Article 34 of the Convention.

208. The Court points out that it has already examined these complaints in the context of Article 38 § 1 (a) of the Convention and has already made certain findings in these respects (see paragraphs 127-135 above). Accordingly, it does not consider it necessary also to examine these matters under Article 34 of the Convention (see *Orhan*, cited above § 402).

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

209. 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

210. The applicant claimed 1,584,800 US dollars (USD) in respect of the pecuniary damage suffered by him and by his son who was now dead. He submitted in this connection that he had lost his business and suffered financial damage in the amount of USD 1,506,000 as a result of loss of earnings and costs entailed by his son’s death. He maintained also that his son, aged 19 at his death and working as a journalist with a salary equivalent to USD 400 per month, could be calculated as having sustained a capitalised loss of earnings of USD 78,800.

211. The Government contended that the applicant failed to submit any evidence in support of his claims.

212. The Court observes that there is no causal link between the matter held to constitute a violation of the Convention – the absence of an effective investigation – and the pecuniary damage alleged by the applicant (see *Ülkü Ekinci v. Turkey*, no. 27602/95, 16 July 2002, unreported). It also notes that the applicant’s son was unmarried and had no children. It was not claimed either that the applicant was in any way dependent on his son. The Court considers therefore, that the claims for pecuniary damage in the instant case relate to alleged losses accruing subsequent to the death of the applicant’s son and not to losses actually incurred either by his son before his death or by the applicant after his son’s death (see *Mahmut Kaya*, cited above, § 135, and *Aksoy*, cited above, § 113, where the pecuniary claims made by the applicant prior to his death for loss of earnings and medical expenses arising out of detention and torture were taken into account by the Court in making an award of damages to the applicant’s father, who had continued the application). In the light of the above, the Court dismisses the applicant’s claim under this head.

B. Non-pecuniary damage

213. The applicant claimed 1,029,090.90 pounds sterling (GBP) in respect of non-pecuniary damage. He referred in this respect to the severe

anguish and distress he had suffered on account of his son's disappearance and death.

214. The Government claimed that this amount was excessive and unjustified.

215. The Court reiterates that it has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the death of the applicant's son contrary to the procedural obligation under Article 2 of the Convention and in breach of Article 13 of the Convention. In the light of its established case-law in similar cases (see *Ülkü Ekinçi*, cited above, § 171) and having regard to the circumstances of the case, the Court awards 14,500 euros (EUR) for non-pecuniary damage, such sum to be converted into Turkish liras (TRL) at the rate applicable at the date of payment and to be paid into the applicant's bank account in Turkey.

C. Punitive or exemplary damages

216. The applicant further submitted that the violation of Article 34 should be taken into account in assessing their claims for "just satisfaction" under Article 41 of the Convention. To that end, the applicant sought an award of punitive and exemplary damages in order to express the Court's disapproval of the State's blameworthy conduct, the purpose of the award being to punish the wrongdoer and deter the wrongdoer, and others, from such conduct.

217. The Government did not comment on this claim.

218. The Court notes that in a number of recent Grand Chamber cases it has rejected requests by applicants for exemplary and punitive damages (see *Orhan*, cited above, § 448, *Cable and Others v. the United Kingdom* [GC] nos. 24436/94 etc, § 30, 18 February 1999, unreported, *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 918, § 119, and *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/98 and 32377/96, §§ 22-23, 27 September 1999, unreported).

219. The Court therefore dismisses the applicant's claim under this head.

D. Cost and expenses

220. The applicant claimed a total of GBP 29,176.66 for fees and costs in the preparation and presentation of his case before the Convention institutions. This included administrative costs incurred (1) by his British representatives Mr Nicholas Stewart QC (GBP 6,000, 60 hours' work) and Mr Mark Muller (GBP 3,000, 30 hour's work) (2) by Mr Kerim Yıldız, Mr Philip Leach and others, attached to the Kurdish Human Rights Project in London (GBP 20,766.66, including approximately 184 hours' legal work, and GBP 1,570 for translations and summaries from English into Turkish

and from Turkish into English), and (3) in respect of expenses such as telephone calls, postage, photocopying and stationery (GBP 410).

221. The Government maintained that in the absence of any supporting evidence, the above claims must be rejected as unsubstantiated and, in any event, were unnecessarily incurred and excessive.

222. The Court notes that the applicant has only partly succeeded in respect of his complaints under the Convention. However, it notes that the present case involved complex issues of fact and law requiring detailed examination, including the taking of evidence from witnesses in Ankara. It reiterates in this connection that only legal costs and expenses necessarily and actually incurred can be reimbursed under Article 41 of the Convention. Accordingly, the Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. It considers excessive the total number of hours of legal work (over 274 hours) for which the applicant submitted claims in respect of his British lawyers and Turkish administrators and finds that it has not been proved that all those legal costs were necessarily and reasonably incurred. As regards the translations and summaries and administrative costs, the Court considers that they may be regarded as necessarily and actually incurred. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, it awards him the sum of EUR 14,500, exclusive of any value-added tax that may be chargeable, less EUR 2,922.97 received by way of legal aid from the Council of Europe such sum to be converted into pounds sterling (GBP) at the date of settlement and to be paid into the bank account in the United Kingdom indicated in his just satisfaction claim.

E. Default interest

223. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 2 of the Convention as regards the applicant's allegation that his son was abducted and killed by State agents or persons acting on behalf of the State authorities;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an adequate and

effective investigation into the circumstances surrounding the death of the applicant's son;

3. *Holds* that there has been no violation of Articles 3 and 5 of the Convention;
4. *Holds* that there has been no violation of Article 10 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention;
6. *Holds* that there has been no violation of Article 14 in conjunction with Articles 2, 3, 5, 10, 13 and 18 of the Convention;
7. *Holds* that there has been no violation of Article 18 of the Convention;
8. *Holds* that the Government have failed to fulfil their obligation under Article 38 § 1 (a) of the Convention;
9. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 34 of the Convention;
10. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 14,500 (fourteen thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into Turkish liras (TRL) at the rate applicable at the date of payment and to be paid into the applicant's bank account in Turkey;
 - (ii) EUR 14,500 (fourteen thousand and five hundred euros) in respect of costs and expenses, together with any value-added tax that may be chargeable, less EUR 2,922.97 (two thousand nine hundred and twenty-two euros ninety-seven cents) such sum to be converted into pounds sterling and to be paid into the bank account in the United Kingdom indicated in the applicant's just satisfaction claim;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Deputy Registrar

Christos ROZAKIS
President