



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

FIRST SECTION

CASE OF ÖZALP AND OTHERS v. TURKEY

(Application no. 32457/96)

JUDGMENT

STRASBOURG

8 April 2004

FINAL

08/07/2004

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 Özalp and Others v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOCHAROVA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 18 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 32457/96) 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 seven Turkish nationals, Mrs Makbule Özalp, Mr Suat Özalp, Mr Hacı Özalp, Mr Sercan Özalp, Ms Gülcan Özalp, Mr Mehmet Özalp, and Mr Osman Özalp (“the applicants”), on 4 March 1996.

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

3. The applicants alleged, *inter alia*, that Cavit Özalp had been killed by the security forces while he was under custody and that there had been no effective investigation into the circumstances of his death.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The application was allocated to the First 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.

6. By a decision of 31 August 2000, the Court declared the application partly admissible.

7. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants (see paragraph 1), who were born in 1955, 1975, 1977, 1979, 1981, 1985, and 1988 respectively, are the wife and children of the deceased, Cavit Özalp, who was killed in 1995 while he was under custody.

Events concerning the death of Cavit Özalp

1. Facts as presented by the applicants

10. Until 1994, the Özalp family resided in the Serçeler village in Bismil District in province of Diyarbakır. When the security forces started to pressurise the Özalp family members to become village guards, the family moved to Diyarbakır in the spring of 1994.

11. On 21 August 1995 one of the applicants, Mr Hacı Özalp, went back to Bismil to visit the fields that belonged to his family. When he arrived in Bismil, he was stopped by soldiers and questioned about his father, Cavit Özalp. He was subsequently taken to the gendarme command, where he was further questioned about his father. During the interrogation, Hacı told them where they could find Cavit Özalp.

12. On 24 August 1995 Cavit Özalp was taken into custody in Diyarbakır. On the same day, Hacı saw his father in custody however he was not allowed to speak to him.

13. On 26 August 1995 Hacı was released from custody. On the same day, while he was still in Bismil, he was informed by an acquaintance that an incident had taken place in the Kamberli village and that it concerned his father. Consequently, when Hacı went to the Kamberli village to find out more about this incident, he met a villager, called Vehyettin, who told him that his father was dead.

14. On the same day two police officers visited Cavit's house in Diyarbakır and told Hacı's uncle that Cavit had died.

15. On 5 February 1996 the applicants' representatives filed a petition with the public prosecutor attached to the Diyarbakır State Security Court. Referring to the investigation that had been commenced into the death of Cavit Özalp and the decision of non-prosecution that had been delivered by the Diyarbakır State Security Court public prosecutor, the applicants' representatives requested a copy of the arrest and autopsy reports as well as the public prosecutor's decision of non-prosecution.

16. The public prosecutor refused to give these documents and noted at the bottom of the petition the following:

“It has been decided [by this office] that no prosecution should be brought about the death of Cevat Özalp [*Note: Cavit's name is spelled out as Cevat in the public prosecutor's note.*] pursuant to Article 96 of the Turkish Criminal Code. The investigations in order to apprehend the co-activists of Cevat Özalp are still ongoing. A copy of the investigation file could not have been given [to the representatives] in accordance with the relevant provisions of the Constitution, as it would constitute disclosure of the content and the subject matter of the investigation file.”

2. Facts as presented by the Government

17. On 24 August 1995 Cavit Özalp was taken into custody by the gendarmes from the Bismil Gendarme District Command on suspicion of membership of the PKK, proscribed as a terrorist organisation. He was suspected of aiding and abetting the PKK terrorists.

18. On an unspecified date Cavit Özalp gave a statement to the gendarmes. He stated that the PKK terrorists were occasionally staying in his house and that he was providing them with food and military equipment such as weapons, clothes and medicine. He further stated that he had dug a shelter with the terrorists on the slopes of a hill near the Pamuk River in the Sarihüseyin hamlet attached to the Serçeler village to hide some equipment.

19. On 24 August 1995 Cavit Özalp was taken to the Bismil Health Center for medical examination. According to the medical report, there were no signs of ill-treatment on his body.

20. On 26 August 1995 at 4 a.m. the gendarmes conducted a search to find out the location of the shelter that had been mentioned by Cavit Özalp in his statement. Cavit guided the soldiers to the shelter near the Şedat road in the Kamberli village. While protecting themselves in a secure distance, the soldiers asked him to open the cover of the shelter. As he opened the cover, the soldiers witnessed a big explosion, which tore Cavit's body into pieces. The explosives had been placed in the entrance to the shelter by other members of the PKK and the soldiers found weapons, medical equipment and clothes in the shelter. The incident was further reported to the Bismil public prosecutor.

21. On the same day an on-site examination was conducted by the Bismil public prosecutor together with a doctor. According to an onsite body examination, it was established that both legs were severed as a result

of the explosion. No other signs of injury were observed on the dismembered body. The doctor decided that it was unnecessary to conduct a full autopsy on the body. Cavit's corpse was then given to Mr Hasip Yılmaz, a member of the Kamberli village assembly. An incident report was further drafted by the gendarmes and was signed by three non-commissioned officers and the village mayor Mr Kütbettin Altunç.

22. On 24 November 1995 the public prosecutor at the Diyarbakır State Security Court decided that no prosecution should be brought against Cavit Özalp on account of his membership of the PKK on the ground that he had died on 26 August 1995.

23. On 14 November 1995 the Bismil public prosecutor accused the non-commissioned officer, Mr İlhan Yücel, of failing to take the necessary precautions when Cavit Özalp had been asked to open the cover of the shelter and of causing Cavit Özalp's death through negligence. However, as the public prosecutor did not have the jurisdiction to bring proceedings against the non-commissioned officer, he declared lack of jurisdiction and transferred the case file to the Bismil District Administrative Council.

24. Subsequently, the District Administrative Council appointed a major as a rapporteur to conduct further investigations into the killing of Cavit Özalp. On 15 January 1996 the major took statements from the non-commissioned officers, Mr İlhan Yücel, Mr Yılmaz Öztiryaki and Mr Ömer Karabaş, who had been on site during the incident of 26 August 1995. The officers stated that Cavit Özalp had been taken into custody on suspicion of membership of the PKK and had confessed that he had been aiding and abetting the terrorists, providing them with food, clothes, weapons and medical equipment. The soldiers further stated that Cavit had mentioned a shelter which was used by the terrorists and when he was taken to the site to show the place of the shelter, the gendarmes had positioned themselves far from the shelter to prevent any loss of life. The soldiers explained that Cavit was asked to open the shelter, however he had died as a result of the explosion. The officers finally stated that medical equipment and clothes had been found in the shelter.

25. Basing himself on the statements of the three accused non-commissioned soldiers, the incident and the body examination reports, on 23 January 1996 the rapporteur submitted his report to the District Administrative Council. He concluded that the security forces had taken all the necessary precautions before Cavit Özalp was asked to open the cover of the shelter. The report further stated:

“Having regard to the fact that Cavit Özalp had confessed that he had dug a shelter [with the other terrorists] it was presumed that he could have known the place of the shelter and that he could have safely opened its cover himself. After the necessary safety measures had been taken, he had been asked to open the cover. However, he had died in an explosion. The explosives had been previously placed there by the terrorists. Neither the security forces nor Cavit Özalp had noticed the explosives.”

26. The report concluded that the security forces had performed their duty with diligence and it was recommended that no prosecution be brought against the members of the security forces.

27. On 28 February 1996 the Bismil District Administrative Council issued a decision stating that no prosecution should be brought against the members of the security forces. The council concluded that Cavit Özalp had died as a result of the explosion and that the accused members of the security forces had performed their duty with diligence.

28. On 2 April 1996 the Diyarbakır Regional Administrative Court, to which the case had been automatically referred to by law, upheld the decision of the Bismil District Administrative Council.

3. Materials submitted by the parties

- (a) Arrest report, dated 24 August 1995, drafted by Bismil District Gendarmerie Command;
- (b) Custody records, dated 24 August 1995 which indicate that Cavit Özalp was taken into custody on 24 August 1995 at about 11 a.m.;
- (c) Undated statement of Cavit Özalp;
- (d) Medical report dated, 24 August 1995;
- (e) Report of incident, dated 26 August 1995;
- (f) Sketch map of scene of incident, dated 26 August 1995;
- (g) Autopsy report dated, 26 August 1995;
- (h) Non-jurisdiction decision of the Bismil public prosecutor's office, dated 14 November 1995;
- (i) Statements of the three non-commissioned officers, Mr İlhan Yücel, Mr Yılmaz Öztiryaki and Mr Ömer Karabaş, dated 15 January 1996;
- (j) Non-prosecution decision of the Diyarbakır State Security Court Public Prosecutor, dated 24 November 1995, delivered against Cavit Özalp;
- (k) Non-prosecution decision of Bismil District Administrative Council, dated 28 February 1996;
- (l) Decision of the Diyarbakır Regional Administrative Court, dated 2 April 1996, upholding the decision of Bismil District Administrative Council;
- (m) Petition of the applicants' representatives to the Diyarbakır State Security Court public prosecutor's office dated 5 February 1996 and the subsequent rejection of the public prosecutor;
- (n) Undated statement of Hacı and Makbule Özalp concerning the application.

II. RELEVANT DOMESTIC LAW

29. In respect of relevant domestic legislation, the Court refers to its case-law in *Demiray v. Turkey* (no. 27308/95, §§ 26-30, ECHR 2000-XII).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

30. The applicants alleged that Cavit Özalp had been killed by security forces while he was in their custody and that no effective investigation had been carried out by the judicial authorities. They complained of a violation of Article 2 of the Convention, which provides:

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

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

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

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

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

31. The Government disputed those allegations. They maintained that Cavit Özalp had been killed while showing a shelter to the gendarmes when a bomb which had been planted by the PKK exploded. They thus disputed the State's responsibility under this provision of the Convention.

A. The circumstances of the death of Cavit Özalp

32. The Court reiterates that Article 2 of the Convention, 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 *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII).

33. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing, but also the situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. Article 2 may also imply in certain well-defined circumstances a positive

obligation on the authorities to take preventive operational measures to protect an individual for whom they are responsible (see, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3159, § 115; *Demiray*, cited above, § 41).

34. In this respect, it should be underlined that persons in custody are particularly in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (see *Salman*, cited above, § 99; *Demiray*, cited above, § 42). Thus, the State's responsibility might be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation with a view to avoiding and, in any event, to minimising incidental loss of civilian life (*Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1777, § 79). Although not every presumed threat to life obliges the authorities, under the Convention, to take concrete measures to avoid that risk, the position is different, *inter alia*, if it is established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an individual or individuals and that they failed to take measures within the scope of their powers which might have been expected to avoid that risk (see, *mutatis mutandis*, *Osman*, cited above, p. 3159, § 116).

35. In assessing evidence, the general principle applied in cases has been to apply the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Demiray*, cited above, § 43).

36. Turning to the particular circumstances of the present case, the Court's first task is to determine whether substantial grounds have been shown for believing that the respondent State did not comply with its duty to take all necessary measures to prevent lives from being unnecessarily exposed to danger and, ultimately, from being lost. Accordingly, the Court must consider whether the security forces had planned and conducted the search in such a way so as to avoid or minimise, to the greatest extent possible, any risk to the life of Cavit Özalp.

37. In that connection, the Court notes that the authorities were certainly in a position to evaluate the risks inherent in visiting the alleged site of the shelter in question, at the relevant time. The Court observes from the file before it that the gendarmes were indeed aware of a risk of explosion when they asked Cavit Özalp to open the door of the shelter. This fact is clear from the observations of the Government, in which it is stated that taking into account the existence of possible militants around, the gendarmes had taken necessary precautions and hidden around the shelter when Cavit Özalp had gone near the shelter (see paragraphs 20 and 24 above).

38. In the absence of any indication of other measures taken to protect the life of Cavit Özalp, it can reasonably be inferred that the relevant authorities had failed to take preventive measures with requisite care to protect his life.

39. The Court therefore considers that the State's responsibility for the death of Cavit Özalp is engaged. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in that regard.

B. The alleged inadequacy of the investigation

40. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention 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 *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 101, ECHR 1999-IV).

41. In the present case, the Government maintained that there were no shortcomings in the investigation into the killing of Cavit Özalp and that the authorities had taken all the necessary steps to meet the Convention standards.

42. The Court feels it important to point out from the outset that the obligation to carry out an investigation in circumstances such as those of the present case is not confined to cases where it has been established that the killing was caused by an agent of the State. In the instant case, the mere fact that the authorities were informed of the death gave rise ipso facto to such an obligation under Article 2 (see *Tanrıkulu*, cited above, § 103).

43. The Court would also observe that serious doubts arise as to the ability of the administrative authorities concerned to carry out an independent investigation, as required by Article 2 of the Convention, having regard to their nature and composition (see *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III, and *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, pp. 1732-33, § 80).

44. With regard to the investigative measures taken following the complaint, the Court observes that the Bismil public prosecutor's office accused the gendarme non-commissioned officer, Mr İlhan Yücel, of failing to take necessary precautions and causing Cavit Özalp's death by negligence. However, as the public prosecutor did not have the authority to prosecute non-commissioned officers, he declared lack of jurisdiction and transferred the case-file to Bismil District Administrative Council. Subsequently, a rapporteur, who was a major, was appointed by the District Administrative Council to conduct further investigations. This rapporteur took statements from the three gendarme officers, who were at the scene of incident on 26 August 1995. While preparing his report, the major solely based himself on the statements of the accused gendarme officers and the incident report dated 26 August 1995, which was also signed by the same three gendarme officers, without taking any further expert reports or any submissions from Cavit Özalp's family members. The rapporteur further failed to take evidence from the village mayor Kütbettin Altunç, who had signed the incident report. On 28 February 1996 the Bismil Administrative Council adopted the rapporteur's report and decided that there was no need to bring criminal proceedings against the three accused gendarme officers. The case was then automatically referred to the Diyarbakır Regional Administrative Court which upheld the decision of the Administrative Council on 2 April 1996 (see paragraphs 22-28 above).

45. In the light of the foregoing, the Court observes that the domestic authorities seem to have accepted the accused gendarme officers' account of the facts without any doubt and without hearing any further witnesses.

46. The Court concludes that the authorities failed to carry out an effective investigation into the circumstances of Cavit Özalp's death.

47. Accordingly, the Court holds that there has been a violation of Article 2 of the Convention in that regard.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicants alleged that Cavit Özalp had been ill-treated before his death.

49. The Government submitted that the applicants' allegations were unsubstantiated. In this respect, they also submitted a medical report, dated 24 August 1995, indicating that there were no signs of ill-treatment on Cavit Özalp's body.

50. The Court observes that in their initial submissions, the applicants submitted that Cavit Özalp had been tortured under custody. However the applicants have failed to bring any evidence in support of their allegations. In a written statement submitted to the Court, Hacı Özalp, who is one of the applicants, stated that he had seen his father in custody however he did not say that he had seen him being ill-treated (see paragraph 12 above). The

Court further notes that the medical report dated 24 August 1995, which was submitted by the Government states that there were no signs of ill-treatment on Cavit Özalp's body.

51. Accordingly, there is nothing in the case-file to enable the Court to conclude that Cavit Özalp had been tortured under custody.

52. In the light of the foregoing, the Court concludes that there has been no violation of Article 3 of the Convention in the instant case.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

53. The applicants further complained that there was no effective investigation into Cavit Özalp's death and that they were denied access to a court, in violation of Article 6 § 1 of the Convention, which in relevant part, provides as follows:

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

54. The Court observes that the essence of the applicants' complaint under Article 6 §1 of the Convention concerns the domestic authorities failure to mount an effective criminal investigation into Cavit Özalp's death. In the Court's view, it is therefore more appropriate to examine the applicants' Article 6 complaint in relation to the more general obligation on Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention (see amongst other authorities, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105 and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 93).

55. It accordingly does not find it necessary to determine whether there has been a violation of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. Article 13 of the Convention provides as follows:

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

57. The applicants complained that no effective investigation had been conducted into the circumstances of Cavit Özalp's death and they had been denied effective access to the investigative process.

58. The Government alleged that there had been no shortcomings in the investigation concerning the killing of Cavit Özalp.

59. As the Court has held many times, Article 13 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 the relevant Convention complaint 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 the omissions of the authorities of the respondent State (*Aksoy*, cited above, § 95, and *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 103; *Kaya*, cited above, § 89).

60. The nature of the rights safeguarded under Articles 2 and 3 of the Convention has implications for Article 13. Where there is an arguable claim that an individual has been tortured or subjected to serious ill-treatment, or deprived of his or her life, by agents of the State, 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 treatment in question or the deprivation of life, including effective access for the complainant to the investigation procedure (*Salman*, cited above, § 121).

61. On the basis of the evidence adduced in the present case, the Court has found that the Government are responsible under Article 2 of the Convention for the death of Cavit Özalp while he was under custody. The applicants' complaints in this regard are therefore "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and *Kaya*, cited above, § 107).

62. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the death of Cavit Özalp. For the reasons set out above (see paragraphs 43-46), no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which may be broader than the obligation to investigate imposed by Articles 2 and 3 (*Kaya*, cited above, pp. 330-31, § 107, and *Salman*, cited above, § 123).

63. The Court further notes that the Diyarbakır State Security Court Public Prosecutor had refused to hand out copies of the arrest and autopsy reports to the applicants' representative and refers to the fact that no statement was taken from any of the Özalp family during the investigation which was commenced following Cavit Özalp's death.

64. The Court concludes therefore, that the applicants have been denied an effective remedy in respect of the death of Cavit Özalp and thereby they had no access to any other available remedies at their disposal, including a claim for compensation.

65. In the light of the foregoing, the Court finds that there has consequently been a violation of Article 13.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicants claimed 136,269 US Dollars (USD) in respect of pecuniary damage.

68. The Government made no submissions as to the amounts claimed.

69. The Court recalls that there must be a casual connection between the damage alleged by the applicants and violation of the Convention and that this may, if appropriate, include compensation in respect of loss of earnings (see amongst other authorities, *Barberà, Messegue and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Salman*, cited above, § 137). The Court has held (see paragraphs 32-39 above) that the authorities were responsible under Article 2 of the Convention for Cavit Özalp's death. In these circumstances, there is direct casual link between the violation of Article 2 and the loss of potential financial support which the victim had been providing for his widow and children. The Court recognises that if Cavit Özalp was still alive he would have had the possibility of contributing to his family's livelihood.

70. The Court therefore rules on an equitable basis and awards 30,000 euros (EUR) as pecuniary damage to the applicants, such sum to be converted into Turkish Liras (TRL) at the rate applicable at the date of payment and to be paid to the applicants' bank account in Turkey.

B. Non-pecuniary damage

71. The applicants, who are the wife and children of the deceased Cavit Özalp, further claim USD 55,000 in respect of non-pecuniary compensation.

72. The Government did not make any comments on this issue.

73. The Court, having regard to the sums which it has awarded in comparable cases and deciding on an equitable basis, awards EUR 25,000 for non-pecuniary damage, such sum to be converted into TRL at the rate applicable at the date of payment and to be paid into the applicants' bank account in Turkey.

C. Costs and expenses

74. The applicants claimed USD 7,800 for legal fees and costs, corresponding to 78 hours' work and expenses incurred by their lawyer.

75. The Government did not express a view.

76. The Court notes firstly that the applicants have not supplied a breakdown of the number of hours worked by their lawyer and have not submitted any bill of costs and fees. In accordance with Rule 60 § 2 of the Rules of Court, the Court cannot therefore accept that request as such. The fact remains, nonetheless, that the applicants did necessarily incur costs for the work done by their lawyer to represent them in both the written and oral proceedings before the Court (see, *mutatis mutandis*, *Labita v. Italy* [GC], no. 26772/95, § 210, ECHR 2000-IV). The Court notes that ruling on an equitable basis, it awards EUR 6,000 under this head. That sum, to be converted into Turkish liras at the rate applicable at the date of settlement, shall also be exempt from all taxes and duties.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention in relation to Cavit Özalp's death;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances of the death of Cavit Özalp;
3. *Holds* that there has been no violation of Article 3 of the Convention;
4. *Holds* that there is no need to determine whether there has been a breach of Article 6 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish Liras at the rate applicable at the date of the settlement and exempt from all taxes and duties:

- (i) EUR 30,000 (thirty thousand euros) in respect of pecuniary damage;
- (ii) EUR 25,000 (twenty five thousand euros) in respect of non-pecuniary damage;
- (iii) EUR 6,000 (six thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President