



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

SECOND SECTION

CASE OF KOKU v. TURKEY

(Application no. 27305/95)

JUDGMENT

STRASBOURG

31 May 2005

FINAL

31/08/2005

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 Koku v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 10 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 27305/95) 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, Mr Mustafa Koku (“the applicant”), on 19 April 1995.

2. The applicant was represented by Dr Anke Stock, a lawyer practising in London. The Turkish Government (“the Government”) did not designate an agent for the purposes of the proceedings before the Convention institutions.

3. The applicant alleged, in particular, that his brother had been taken into police custody and had been subjected to inhuman and degrading treatment before being killed by agents of the State. He invoked Articles 2, 3, 5, 6, 13 and 14 of the Convention. However, in his observations on the merits, the applicant asked the Court to consider his Article 6 complaints under Article 13 of the Convention.

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).

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. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Professor Feyyaz Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 26 June 2001, the Court declared the application admissible.

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

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, a Turkish citizen of Kurdish origin, was born in 1963 and lives in the United Kingdom. He is the brother of Hüseyin Koku, who was allegedly detained by the police on 20 October 1994 and whose body was found in a location outside the town of Pötürge, in south east Turkey on 26 April 1995.

A. Introduction

10. The facts of the case, particularly concerning events which occurred between 20 October 1994 and 26 April 1995, are disputed by the parties.

11. The facts as presented by the applicant are set out in Section B below (paragraphs 12-41). The Government's submissions concerning the facts are summarised in Section C below (paragraphs 42-58). The documentary evidence submitted by the applicant and the Government is summarised in Sections D (paragraphs 59-87) and E (paragraphs 88-93) respectively.

B. The applicant's submissions on the facts

12. The applicant's brother, Hüseyin Koku, was born in the town of Elbistan in south-east Turkey, in 1958. In 1978 he married Fatma Koku (*née* Güzel) and by 1994 they had had six children, aged at that time between 6 and 15 years.

13. Hüseyin Koku and his family were active in local politics in Elbistan. Hüseyin became an active member of the pro-Kurdish Democracy Party (DEP). Following the closure of DEP by the Constitutional Court in 1994 and the arrest of the DEP Members of Parliament, the People's Democracy Party (HADEP) was set up as a successor to DEP. Hüseyin

Koku was one of the founding members of HADEP's Elbistan district organisation and he became the chairman of HADEP's Elbistan branch.

14. At the end of March 1994, or the beginning of April 1994, Hüseyin Koku was arrested, taken into custody and placed in detention on remand. He was accused of membership of, and helping and abetting, the Kurdistan Workers' Party (PKK). During his time in prison he was kept blindfolded, given electric shocks, subjected to *falaka* and to Palestinian hanging, hosed down with ice cold water, deprived of water and sleep and beaten with truncheons and iron bars. On 10 May 1994 he was released pending trial and was acquitted on 17 May 1994 due to a lack of evidence against him.

15. As a prominent local HADEP politician, Hüseyin Koku was the subject of harassment and intimidation by the police, and, in particular, by the Governor of Elbistan, Mr Şükrü Görücü. Mr Görücü threatened to kill him and alleged that he was a traitor to the State and further alleged that HADEP was a terrorist party. Mr Görücü also told Hüseyin Koku that "he would be removed quickly". Hüseyin took this threat seriously and discussed it with other HADEP party officials. In an article published in the *Özgür Ülke* newspaper on 11 November 1994, the president of HADEP's Kahramanmaraş branch was reported as saying that Hüseyin Koku had told him about the threats made by the local Governor in Elbistan.

16. At this time, Hüseyin Koku was also regularly followed by plain-clothes police officers and received anonymous telephone calls and threats. Another brother of Hüseyin's and the applicant's, Ali Koku, who worked closely with Hüseyin for HADEP, left Turkey because of political persecution and is currently living in the United Kingdom.

17. On or about 17 October 1994, a number of Kurds from the Cumhuriyet neighbourhood in Elbistan went to the local HADEP office and informed HADEP officials that plain-clothes security forces were painting red crosses on houses belonging to Kurdish families in the neighbourhood and were taking down house numbers and personal details of everyone in the area. This was of concern to the families because there had been a massacre of Alevi Kurds in Kahramanmaraş in the late 1970s, prior to which houses had been marked in a similar way. Hüseyin Koku made a statement about this to the *Özgür Ülke* newspaper.

18. On the following day, that is on 18 October 1994, Hüseyin Koku was summoned to the office of the Elbistan Mayor. The Mayor told him that, when they had previously arrested and imprisoned him, they had thought that he would not continue with his political activities in the area. He warned Hüseyin to resign from the party, close down the branch and leave the area. The Mayor also told him that if he listened to his advice, nothing would happen to him, but if he did not, the Mayor could not be responsible for what happened to him. The Mayor also told Hüseyin that he believed that Hüseyin and other HADEP members were assisting the PKK. Hüseyin replied that he was an elected representative and that he was not

doing anything illegal. Hüseyin later reported this meeting to the administrative board members of the Elbistan branch of HADEP, including Mustafa Yeter, the local HADEP deputy chairman.

19. On 20 October 1994 Hüseyin was walking along Malatya Street in Elbistan between midday and 1 p.m., accompanied by his wife Fatma, when he was abducted by plain-clothes police officers carrying walkie-talkies, who then drove him away in a white Renault. The incident was witnessed by Fatma Koku, who was three to four metres away from Hüseyin at the time. The three men had introduced themselves as police officers and told Hüseyin that he would be going with them to the police station.

20. Another eye-witness to the abduction was Mr Bulut Yılmaz who was also active within the HADEP party in Elbistan at this time and who knew Hüseyin well. Mr Yılmaz recognised one of the plain-clothes police officers as one who had previously confiscated newspapers from his shop.

21. Later on 20 October 1994 Fatma Koku went to the HADEP office to tell her husband's colleagues what had happened.

22. On 21 October 1994 Fatma Koku went to the Elbistan Police Headquarters, accompanied by Mustafa Yeter, to obtain information about her husband's whereabouts. She was told that Hüseyin had not been taken into custody. She was then referred to the gendarmerie and subsequently to the Prosecutor's office. Further inquiries were made by other members of the family, but no information was given to them. Fatma Koku also contacted the applicant to inform him that her husband – his brother – had been taken into custody on the previous day.

23. Ali Koku accompanied Fatma Koku to five or six police stations in Elbistan shortly after the abduction, but at each station they were told that Hüseyin Koku was not being detained there.

24. On 31 October 1994 a statement made by the Elbistan Governor, Şükrü Görücü, was published in the local newspaper, *Elbistanın Sesi*. In this statement Mr Görücü denied that Hüseyin had been detained.

25. On 1 November 1994 Fatma Koku lodged a criminal complaint with the Elbistan Prosecutor about the disappearance of her husband. She provided a photograph of him and requested that the matter be investigated. Her petition was counter-signed by both the Prosecutor and the Security Director on 1 November 1994.

26. Also on 1 November 1994 Amnesty International published an 'Urgent Action' bulletin in respect of the disappearance of Hüseyin Koku.

27. On 3 November 1994 Fatma Koku and a number of HADEP executives petitioned the Elbistan Governor and requested him to carry out an investigation into Hüseyin's disappearance.

28. One evening on or about 5 November 1994, a telephone call was made to Hüseyin Koku's house which was answered by his 13-year old daughter, Özlem. During the telephone call, she was made to listen to the voice of her father whilst he was being tortured. Fatma Koku went

immediately to the police station to complain about this telephone call, but the police were not interested and even made fun of her. A complaint about the call was lodged with the Prosecutor but, as far as the applicant was aware, no steps were taken by the Prosecutor to investigate the matter. About two and a half months later the Koku family were called to the Cumhuriyet neighbourhood police station in Elbistan where they were asked questions about the telephone call. Fatma Koku asked the police officers why they had not investigated her husband's case before. One of the police officers replied to Fatma, "I knew Hüseyin well, but if I saw him now, I would not recognise him and neither would you". She asked what he meant by this, but was sent away.

29. Fatma Koku and other family members went to meet with Şükrü Görücü, but he provided them with no information about Hüseyin Koku's whereabouts and instead he insulted and threatened Fatma.

30. Following Hüseyin Koku's abduction, Mustafa Yeter and Hasan Güner were made temporary leaders of HADEP's Elbistan branch. They were later arrested and subjected to torture. Mr Yeter was threatened by the police not to talk about Hüseyin Koku's case or to ask further questions about him or highlight the case abroad. He was told to resign or he would suffer the same fate as others.

31. On 24 April 1995 the Elbistan Prosecutor called Fatma Koku to his office and questioned her about her husband. He asked her whether Hüseyin could have been killed by the PKK. Fatma replied that her husband had never had any contact with the PKK and that there was no reason to believe that he had been abducted or killed by them. She said that her husband had previously been detained for alleged involvement with the PKK but had been released. She told the Prosecutor that neither she nor her husband's family had ever had any problems with anyone.

32. On or about 27 April 1995 Fatma Koku was informed by the police that a body had been found near the town of Pötürge, in Malatya province, about 150 kilometres from Elbistan. Fatma and members of the Koku family went to Pötürge to see the decapitated body of Hüseyin Koku, which had been separated into three or four pieces. Most of the body was in a state of decomposition.

33. The Pötürge Prosecutor took statements from the Koku family members present. The security forces told the relatives that an autopsy would be carried out within 15 days and that the body would be released afterwards.

34. On 28 April 1995 Fatma Koku made several formal complaints to the Prosecutor, requesting that the murder of her husband be investigated and the necessary action be taken.

35. On 12 May 1995 Amnesty International published another 'Urgent Action' bulletin about Hüseyin Koku.

36. According to the autopsy report drawn up by the Forensic Medicine Directorate on 29 June 1995, there were two bullet wounds in the body, including one in the skull.

37. In July 1995 Fatma Koku was summoned to the police station and was asked about the petitions she had made in respect of her husband. While at the police station, she signed a document which she believed confirmed that she had submitted those petitions.

38. The Koku family have not been informed by the Prosecutor or any other official about any investigation being undertaken into her husband's disappearance and murder.

39. On 23 August 1995 Hüseyin Koku's body was released to the family's lawyer. The body was buried the same day. Members of the security forces surrounded the area during the burial to prevent anyone other than close family from entering.

40. The applicant kept in contact with Mr Mehmet Kaya, another member of HADEP's Elbistan branch, throughout this period. Mr Kaya told the applicant in 1996 that HADEP would be making a statement about the abduction and murder of his brother during the forthcoming annual general meeting of HADEP. Mr Kaya and two other local HADEP politicians were shot and killed on their way back from that annual general meeting.

41. The applicant took up the matter with various international organisations, including Amnesty International. He sought advice from his MEP, Mr Alf Lomas, who petitioned the European Parliament concerning Hüseyin Koku's death. At this time, while making telephone calls to Turkey, the applicant would on several occasions be cut off and a Turkish-speaking voice would interrupt and threaten him.

C. The Government's submissions on the facts

42. The Court notes that the Government did not submit observations on the merits of the case (see paragraph 7 above). The following submissions are therefore taken from the observations submitted to the Commission on 15 May 1996 and from the additional observations submitted on 10 April 1997, i.e. prior to the application being declared admissible.

43. According to the Government, the authorities first became aware of the disappearance of Mr Hüseyin Koku on 3 November 1994, following the receipt of the petition submitted by Mrs Fatma Koku to the Kahramanmaraş Governor (see paragraph 91 below). Upon receipt of this petition, the Deputy Governor of Kahramanmaraş requested information from a number of authorities.

44. On 7 November 1994 the Elbistan Gendarme Headquarters sent a reply to the Deputy Governor. According to this reply, Hüseyin Koku had not been taken into the custody by the gendarmerie.

45. Also on 7 November 1994 the Police Headquarters informed the Deputy Governor that Hüseyin Koku had not been detained by them on or around 20 October 1994.

46. On 9 November 1994 the Kahramanmaraş Governor sent his report to the Ministry of the Interior, according to which a number of newspapers had carried reports of the alleged disappearance of Hüseyin Koku. On 23 October 1994 the *Özgür Ülke newspaper* had run the headline, “Director of HADEP’s Elbistan Branch Taken into Custody”. On 5 November 1994 the same newspaper had reported, “HADEP’s Elbistan Director Missing” and asked, “Was HADEP Director Killed?”. On 29 October 1994 the *Nevroz newspaper* had carried the headline, “Custody in Elbistan”. The accuracy of these articles had been assessed by the Kahramanmaraş security units and it had been established that Hüseyin Koku had not been taken into custody. He had, however, been arrested in 1982 and 1994 in connection with his alleged membership of outlawed organisations. On the basis of his past activities, the Kahramanmaraş Governor concluded in his report that it was possible that Hüseyin Koku had left the country through illegal means in order to join the PKK or to carry out activities on behalf of the PKK.

47. On 10 November 1994 a reply was given to the Secretary of State for Human Rights, who had apparently enquired on 2 November 1994 whether Hüseyin Koku had been treated at the Kahramanmaraş State Hospital for injuries sustained as a result of torture. The reply stated that between the dates of “20 November 1994 and 10 November 1994”, Hüseyin Koku had not requested any kind of treatment from this hospital and neither had he been brought there by the police.

48. On 11 November 1994 the chief of the Elbistan Police Headquarters sent a letter to the chief of the Kahramanmaraş Police Headquarters in which he wrote that he had questioned a number of persons who owned shops on Malatya Street where Hüseyin Koku had allegedly been taken away by the police. None of these persons had any information about such an incident. On the basis of this information and also on the basis of statements taken from Fatma Koku and Özlem Koku, the Elbistan police chief concluded that the allegation was one of many similar allegations made with the aim of dishonouring the security forces.

49. On 26 June 1995 the Chief Public Prosecutor of Elbistan sent to the Ministry of Justice’s International Law and Foreign Relations Directorate (hereinafter “the Directorate”) a letter in which reference was made to information sent to the Ministry previously. This letter informed the Directorate of the discovery of Hüseyin Koku’s body, together with three keys, on 26 April 1995; one of these keys had been for the door to the HADEP party office building, one for Hüseyin Koku’s house and the third one for a briefcase belonging to Hüseyin Koku.

50. In view of the contents of the briefcase, it had been established that Hüseyin Koku was conducting an extramarital affair with a certain C.E.,

who was a married woman. Adultery being an offence at the relevant time, C.E.'s husband had made a complaint to the authorities against Hüseyin Koku which had resulted in a decision not to prosecute, taken by the Elbistan Prosecutor on 20 December 1993. A number of letters found in the briefcase revealed the unfaithful acts of C.E.

51. The Chief Public Prosecutor further referred to a statement taken from Ahmet Güzel, Fatma Koku's brother, by the Pötürge Prosecutor on 28 April 1995. According to this statement, Mehmet Çolak, the father of C.E., had told Mr Güzel on 22 October 1994 that, "... they fucked him up and got rid of him ...". This had been understood to be a reference to Hüseyin Koku.

52. The Chief Public Prosecutor, taking into account the above information, concluded in his letter to the Directorate that the death of Hüseyin Koku was closely connected to his extra-marital affair with C.E.

53. According to the autopsy report of 26 June 1995, drawn up by the Forensic Medicine Directorate in Istanbul, there were two bullet wounds on the body and another one in the skull.

54. In a letter of 8 September 1995 the Elbistan Prosecutor informed the Directorate of all the facts and evidence collected until that date.

55. On 1 March 1996 the Elbistan Prosecutor sent another letter to the Directorate. Referring to the application lodged with the Commission, the Prosecutor informed the Directorate that the death of Hüseyin Koku would be explained when the preliminary investigation, which had been started by the Pötürge Prosecutor after the discovery of the body, was completed.

56. On 21 March 1996 the Ministry of Justice sent a letter to the Directorate, informing the latter of the above mentioned correspondence. According to this letter, the allegations directed against State officials were illusory and had been made for propaganda purposes.

57. A letter drawn up on 22 March 1996 by the Ministry of Interior's General Security Directorate referred to the above mentioned facts and reports and stated that the body of Hüseyin Koku had been buried by his family in Elbistan on 23 August 1995.

58. In their additional observations submitted to the Commission on 10 April 1997, the Government finally submitted that the Pötürge Prosecutor's investigation into the death of Hüseyin Koku was still pending under file no. 1995/42 and that it would continue until the expiry of the statutory limitation period.

D. Documentary evidence submitted by the Government

59. The following information appears from the documents submitted by the Government.

60. Pursuant to an interim decision adopted by the Malatya State Security Court (hereinafter "the Malatya Court") on 10 May 1994, the

applicant's brother, Hüseyin Koku, was released from prison pending the outcome of criminal proceedings brought against him on account of his alleged PKK membership and on suspicion of aiding and abetting that organisation.

61. On 17 May 1994 the Prosecutor at the Malatya Court decided to discontinue the prosecution of the applicant's brother on account of a lack of sufficient evidence to show his involvement in such offences.

62. At 1 p.m. on 26 April 1995 Emin Ziya Kekeç, a village guard, informed the commander of the Tepehan Gendarmerie Station of his discovery of a dismembered body in a location near Arğuça hamlet of Sinan village, situated within the administrative jurisdiction of the town of Pötürge. The commander of the Tepehan Gendarmerie Station, together with a number of soldiers under his command, went to the location where the body had been found by Mr Kekeç. They were unable to find any bullets at the scene.

63. Mr Zeki Polat, the Prosecutor of the town of Pötürge, arrived at the scene shortly after the gendarmes and recorded his findings in a report. Mr Polat also instructed a photographer to photograph the body. The soil under and around the body parts was searched for bullets, spent bullet cases and for similar evidence, but none were found.

64. A wallet, found in the deceased's jacket pocket, contained an electricity bill and a piece of scrap paper. Noting that these papers were very wet and risked being torn, a decision was taken to read them at a later stage when they were dry. A key for a door lock, a small, rusty flick-knife and two rusty telephone tokens were also found in the jacket pocket.

65. Dr Kağan Denge and Dr Naim Özata, who had arrived at the scene together with the Prosecutor, detailed their findings in a report drawn up during the examination of the body. According to this report, the body was badly decomposed and body parts and bones were lying around. The head was missing. Bones had been scattered around the body, possibly by wild animals. The examination carried out on the body parts did not reveal any firearm injuries. The internal organs had all disappeared. The doctors were unable to establish the cause of death and a decision was therefore taken to send the remains of the body to the Forensic Medicine Directorate in Istanbul.

66. On 27 April 1995 the Pötürge Prosecutor sent a fax message to his colleague in the town of Elbistan, asking the latter to help establish the identity of the body by checking the information found in the jacket pocket.

67. On 28 April 1995 Fatma Koku examined the clothes found on the body and concluded that they belonged to her husband Hüseyin Koku. The Pötürge Prosecutor then sent the remains of the body, together with the reports drawn up at the site where it had been found, to the Forensic Medicine Directorate and asked for the cause of death to be established.

68. Also on 28 April 1995, a report was drawn up by two gendarmes. According to this report, the key found on the body belonged to a briefcase

owned by Hüseyin Koku which was being kept in the house of his brother-in-law, Ahmet Güzel. The briefcase was opened by the gendarmes who found a number of documents in it. These documents related, *inter alia*, to the criminal proceedings brought against Hüseyin Koku on account of his alleged adultery with C.E.

69. On 29 April 1995 a number of soldiers and village guards once more visited the site where the body had been found and searched for the missing head. They found the skull in three pieces.

70. Later that same day, the Pötürge Prosecutor and Dr Denge visited the area and examined the bones found by the soldiers earlier that day. Dr Denge observed that the posterior part of the skull had a bullet entry, measuring 1 x 1 centimetre. This bullet had also caused a fracture in the skull. The Prosecutor forwarded the skull pieces to the Forensic Medicine Directorate in Istanbul.

71. Between 28 and 30 April 1995 statements were taken by the authorities from members of Hüseyin Koku's family, who stated that they had heard that Hüseyin Koku had been having an extra-marital affair with C.E. and that C.E.'s family were angry with Hüseyin.

72. On 1 May 1995 Fatma Koku submitted a petition to the Elbistan Prosecutor and asked for the remains of her husband to be returned to her after they had been examined in Istanbul.

73. On 25 May 1995 the Forensic Medicine Directorate began its examination of the remains of the body. The Ballistics Department was asked to establish whether the clothes worn by the deceased bore any damage caused by a bullet or sharp objects. In case bullet damage was found, the Ballistics Department was requested to establish the distance from which the bullet had been fired.

74. On 26 May 1995 the Pötürge Prosecutor, Zeki Polat, sent a letter to his colleague in the town of Elbistan, stating that, in his opinion, the affair Hüseyin Koku had been conducting with C.E. could be connected with his death in October 1994. Mr Polat asked the Elbistan Prosecutor to take statements from members of C.E.'s family who lived in the town of Elbistan.

75. The Pötürge Prosecutor also sent a letter to the Forensic Medicine Directorate on 26 May 1995 and urged them to expedite the examination of the remains of Hüseyin Koku's body.

76. On 1 June 1995 Pötürge Prosecutor Mr Polat drew up a report in which he detailed the developments that had taken place in the investigation. According to this report, Hüseyin Koku, chairman of HADEP's Elbistan branch, had been found dead on 26 April 1995 with a possible bullet entry wound on his skull. Mr Polat had also found out from the Elbistan Prosecutor that the disappearance of Hüseyin Koku in October 1994 had been brought to the attention of that Prosecutor. The husband of C.E. had also disappeared 15-20 days prior to the disappearance of Hüseyin

Koku and C.E. had then started living with another man in Gaziantep. Hüseyin Koku had gone to Gaziantep prior to his disappearance and had had a row with that man.

77. On 13 June 1995 the Ballistics Department concluded that the large number of cuts and other damage on the clothes had been caused by rotting.

78. On 29 June 1995 the Forensic Medicine Directorate recorded in their report that Hüseyin Koku had been shot in the head from behind. It was also observed that another bullet had gone through the spine. It was concluded that the two bullets had caused the death but that it was not possible to establish the distance from which the bullets had been fired. The report contains no information as regards the time of death.

79. In a letter of 18 August 1995 the Prosecutor in Elbistan requested the Prosecutor in the city of Gaziantep to question C.E. in order to establish whether she had any information about the death of Hüseyin Koku.

80. On 23 August 1995 the remains of Hüseyin Koku's body were returned to the Pötürge Prosecutor, who then handed them over to the family's lawyer for burial.

81. On 5 September 1995 a statement was taken from C.E. by the Prosecutor in Gaziantep. In her statement C.E. denied that she had had a relationship with Hüseyin Koku and added that she did not know anything about his death.

82. On 18 January 1996 a certain Mr Aziz Dalkılıç was questioned by a gendarme officer in relation to "the killing of a person by two people in a location near Sinan village in the autumn of 1994". Mr Dalkılıç stated that at around 3 p.m. one day in late October 1994, he and his wife had gone to the forest to collect leaves for his animals. Approximately two hours later, when they had finished collecting leaves and had begun their journey back in a tractor, they had seen three men, one of whom was lying on the ground, with his face down, between two rocks, and the other two had "taken positions". The two men who had "taken positions" were wearing clothing and hats similar to military uniforms and military boots. All three men were wearing light brown vests, similar to the type in which ammunition could be carried. Mr Dalkılıç was able to see the barrel of the gun of one of the men. He did not think that the men had seen him or his wife. He had not heard any gun shots. He and his wife had been scared and taken another path which took them to the asphalt road. On their way home, they had seen a minibus whose driver he knew. He had told the minibus driver that he and his wife had seen three armed men and asked the minibus driver to inform the gendarme station.

83. The following day Mr Dalkılıç had been summoned to the gendarme station where he was questioned about what he and his wife had witnessed the previous day. He had heard at a later date that the soldiers had gone to the area to look for the three men but that they were unable to find them.

84. At 9 a.m. on 2 February 1996 Mr Dalkılıç was collected from his house by gendarmes and taken to the place where he had seen the three persons. Mr Dalkılıç showed the gendarmes the two rocks between which the “dead man”, who was wearing military clothing, had been lying.

85. Also on 2 February 1996 Mr Dalkılıç was questioned by the Pötürge Prosecutor. Mr Dalkılıç repeated the version of events contained in his previous statement made to the gendarmerie and added that the three men, all with long hair, had been wearing commando uniforms and berets. He did not think any of them was dead. The person lying between two rocks was not moving but the other two were. Although he had told the minibus driver that he had seen three armed men, in fact only two of them had been armed. The fact that the men had longer hair than soldiers’ had led him to form the opinion that the two men were terrorists.

86. On 8 March 1996 the Prosecutor at the Malatya Court sent a letter to the Prosecutor in Elbistan and asked him whether an investigation had been carried out into the disappearance of Hüseyin Koku in October 1994. The Prosecutor also referred in his letter to the following correspondence:

- (a) a letter sent to the Elbistan Prosecutor by the Directorate on 1 September 1995;
- (b) a letter sent by the Elbistan Prosecutor on 8 September 1995;
- (c) a letter sent by the Prosecutor’s office at the Malatya Court to the Directorate on 11 September 1995;
- (d) a letter sent by the Directorate on 26 September 1995;
- (e) a reply given on 27 September 1995 by the Prosecutor’s office at the Malatya Court to the Directorate’s letter of 26 September 1995;
- (f) a letter sent by the Directorate on 28 February 1996 to the Elbistan Prosecutor; and, finally,
- (g) a letter sent by the Elbistan Prosecutor on 1 March 1996.

87. On 24 September 1996 the Elbistan Prosecutor forwarded to the Directorate the decision taken by his office on 20 December 1993 not to prosecute Hüseyin Koku and C.E. for adultery.

E. Documentary evidence submitted by the applicant

88. The following information appears from the documents submitted by the applicant.

89. On 1 November 1994 Fatma Koku submitted a petition to the Prosecutor’s office in the town of Elbistan. Mrs Koku alleged in that petition that her husband had been taken away by plain-clothes police officers in a Renault car at around midday on 20 October 1994. She further stated that she had already contacted the Elbistan Police Headquarters where she had been told that her husband had not been detained by the police. She finally stated that her fears for her husband’s safety were heightened following the publication of a press release – drawn up by the Governor of

Elbistan – in the local paper on 31 October 1994. According to that communiqué, her husband had not been detained by the police. She asked the Prosecutor to look for her husband. Mrs Koku enclosed a photograph of her husband with her petition and wrote her address on the petition.

90. Mrs Koku's petition was accepted by the Prosecutor the same day. On the petition the Prosecutor wrote his instructions according to which "[Hüseyin Koku] should be searched for in the places where he may be". It also appears that this petition and the instructions were forwarded to the Elbistan Police Headquarters the same day.

91. On 3 November 1994 Mrs Koku submitted a similar petition, together with a photograph of her husband, to the office of the Governor of Kahramanmaraş.

92. Mr Bulut Yılmaz sent three letters to the applicant's lawyers in which he described his eye-witness account of the abduction of Hüseyin Koku on 20 October 1994 (see paragraph 20 above). Mr Yılmaz left Turkey in 1995 and settled in Switzerland where he was subsequently granted political asylum. According to these letters, Mr Yılmaz had seen two plain-clothes police officers talking to Hüseyin Koku on Malatya Street in Elbistan on 20 October 1994. Hüseyin had then got into the white Renault car and left with the police officers.

93. The applicant submitted to the Court a chronology of incidents, listing attacks against representatives of pro-Kurdish political parties, in particular the People's Labour Party (HEP), DEP and HADEP, between 1990 and 2001. This chronology lists a large number of attacks against members of these pro-Kurdish political parties who either died or were left injured as a result. It also lists armed attacks and bombings, etc. against the premises of these parties. According to the list, over sixty politicians belonging to the above mentioned political parties have been murdered between the entry into the Parliament of HEP in 1990 and the abduction of Hüseyin Koku in October 1994.

II. RELEVANT DOMESTIC LAW AND PRACTICE

94. The relevant domestic law and practice are set out in the judgment of *Tepe v. Turkey* (no. 27244/95, §§115-122, 9 May 2003).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

95. The Government, not having submitted any observations on the merits (see paragraph 7 above), have not made any preliminary objections as such. However, the Court recalls that, in its decision on admissibility of the application of 26 June 2001, it considered that the question whether the criminal investigation at issue could be regarded as effective under the Convention was closely linked to the substance of the applicant's complaints and that it should be joined to the merits.

96. The Court considers it appropriate to address this point in its examination of the substance of the applicant's complaint under Article 2 of the Convention below (paragraphs 147-160).

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

A. Arguments of the parties

1. *The applicant*

97. The applicant submitted that there was reliable eye-witness evidence that Hüseyin Koku had been abducted from the centre of Elbistan in October 1994 by armed police officers. In support of his allegation, the applicant referred, *inter alia*, to the eye-witness accounts provided by Fatma Koku and Bulut Yılmaz who had seen Hüseyin being taken away by plain-clothes police officers in a white Renault (see paragraphs 19 and 92 above) – a make of car which, according to the applicant, has frequently been identified in the Turkish cases before the Commission and the Court as having been used by the security forces for illegal abductions.

98. The applicant, referring to the chronology of the attacks against pro-Kurdish politicians submitted by him (see paragraph 93 above), further argued that there was overwhelming and compelling evidence that in the mid-1990s acts of torture and inhuman treatment, disappearances and extra-judicial killings were widespread and systematic. His brother, who had been an active local politician, had also been subjected to ill-treatment during his detention and had been the victim of continuous harassment and intimidation by State officials, in particular by the Governor and the Mayor of Elbistan. He had constantly been followed by plain-clothes police officers.

99. Finally, the investigation by the authorities into Hüseyin Koku's abduction was totally inadequate and was characterised by flat denials that he had been detained.

100. The applicant submitted that in view of the above factors, there was sufficient factual and evidentiary material for the Court to conclude beyond reasonable doubt that his brother had been intentionally killed by the police. Referring to the Court's case-law in the applications of *Aydın v. Turkey* (judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, § 73) and *Kaya v. Turkey* (judgment of 19 February 1998, *Reports* 1998-I, § 77), the applicant submitted that this was a case in which the required evidentiary standard followed from the coexistence of sufficiently strong, clear and concordant inferences. He finally submitted that, in case the Court was not satisfied beyond reasonable doubt that Hüseyin Koku had been killed in custody, there was sufficient evidence to prove on the balance of probabilities – which he argued was the appropriate test in cases of deaths in custody – to prove his allegation.

2. The Government

101. The Government did not submit observations on the merits and did not, therefore, specifically deal with the applicant's allegations above. In their observations submitted prior to the application being declared admissible, the Government did contend, however, that comprehensive investigations had been carried out by the domestic authorities into the disappearance of the applicant's brother. The disappearance had finally been solved with the discovery of Hüseyin Koku's body. The death of Hüseyin Koku had nothing to do with acts of State officials; it was a simple act of revenge, carried out by the family of C.E.'s husband. The State security units had not, in any way or for any reason, abducted or taken into custody the applicant's brother who, according to the evidence collected by the authorities, had been killed intentionally probably due to his extramarital affair with a married woman.

102. According to the Government, this application and many such similar applications to the Convention institutions had been made with political aims and for propaganda purposes.

B. Article 38 § 1 (a) and the consequent inferences drawn by the Court

103. Before proceeding to assess the evidence, the Court would stress, as it has done previously, that it is of the utmost importance for the effective operation of the system of individual petition, instituted under Article 34 of the Convention, that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu 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. The failure by a Government 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).

104. The Court notes at the outset that the Government, in their observations submitted to the Commission on 15 May 1996, quoted from a number of documents purportedly drawn up by the domestic authorities (see paragraphs 44-57 above). However, none of these documents, which allegedly indicate the steps taken by the domestic authorities shortly after the disappearance of Hüseyin Koku, have been submitted to the Convention institutions. These documents include:

- (a) the Elbistan Gendarmerie Headquarters' reply to the Deputy Governor of 7 November 1994 (see paragraph 44 above);
- (b) a letter sent by the Police Headquarters on 7 November 1994 to the Deputy Governor (see paragraph 45 above);
- (c) the Kahramanmaraş Governor's report of 9 November 1994 (see paragraph 46 above);
- (d) a reply given to the Secretary of State for Human Rights on 10 November 1994 and the latter's enquiry of 2 November 1994 (see paragraph 47 above);
- (e) a letter of 11 November 1994 by the chief of the Elbistan Police Headquarters (see paragraph 48 above);
- (f) the Elbistan Chief Public Prosecutor's letter of 26 June 1995 (see paragraph 49 above);
- (g) a letter sent by the Elbistan Prosecutor on 8 September 1995 (see paragraph 54 above);
- (h) a letter sent by the Elbistan Prosecutor on 1 March 1996 (see paragraph 55 above);
- (i) the Ministry of Justice's reply of 21 March 1996 sent to the Directorate (see paragraph 56 above); and, finally,
- (j) a letter drawn up on 22 March 1996 by the Ministry of Interior's General Security Directorate (see paragraph 57 above).

105. Furthermore, the Court has noted with concern a number of matters regarding the Government's response to the Commission and the Court's requests for documents and information.

106. First, the Government, in response to the Commission's requests to submit to it all the documents pertaining to the investigation into the disappearance and the subsequent death of the applicant's brother,

submitted to the Court certain documents. The Court observes that some of these documents make reference to a number of other, potentially important, documents pertaining to the investigation, which have, however, not been made available to the Convention institutions. These documents (referred to at paragraph 86 above) include:

- (a) a letter sent to the Elbistan Prosecutor by the Directorate on 1 September 1995;
- (b) a letter sent by the Prosecutor's office at the Malatya Court to the Directorate on 11 September 1995;
- (c) the letter sent by the Directorate on 26 September 1995;
- (d) a reply given on 27 September 1995 by the Prosecutor's office at the Malatya Court to the Directorate's letter of 26 September 1995; and, finally,
- (e) a letter sent by the Directorate on 28 February 1996 to the Elbistan Prosecutor.

107. Secondly, the Government failed to send to the Convention institutions the photographs taken of the body during the autopsy (see paragraph 63 above) and also the documents found in Hüseyin Koku's jacket pocket (see paragraph 64 above).

108. Finally, on 27 July 2000 the Court asked the Government to provide information on the outcome of the investigation into the death of the applicant's brother which, according to the submissions of the Government, was being carried out by the Pötürge Prosecutor under file no. 1995/42 (see paragraph 58 above). The Government have not responded to this request and have not provided any reasons for their failure to do so.

109. The Court concludes that the Government have not advanced any explanation for their omissions in response to the Commission's and the Court's requests for relevant documents and information. Accordingly, it finds that it can draw inferences from the Government's conduct in this respect. Furthermore, the Court, referring to the importance of a respondent Government's co-operation in Convention proceedings (see paragraph 103 above), finds that the Government fell short of their obligations under Article 38 § 1 (a) of the Convention to furnish all necessary facilities to the Commission and the Court in their task of establishing the facts.

C. The Court's evaluation of the facts

110. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 161). As the applicant pointed out, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

111. The Court observes that in support of his allegations the applicant relied, in particular, on the eye-witness testimony of Fatma Koku (see paragraph 19 above) and Bulut Yılmaz (see paragraphs 20 and 92 above), both of whom had claimed that the persons taking Hüseyin Koku away were police officers. The applicant also relied on the anonymous telephone call received by Hüseyin Koku's daughter on 5 November 1994 during which, the applicant claimed, the girl heard her father's voice while he was being tortured (see paragraph 28 above).

112. The Court finds, however, that the above mentioned factors do not prove to a satisfactory extent that the persons who kidnapped Hüseyin Koku on 20 October 1994 or the person or persons who subsequently killed him, were agents of the State. Having said that, the Court is mindful of the impossibility in some cases for the applicants to satisfy the necessary standard of proof required by the Court in the absence of documents to which the respondent Government have sole access. In this connection the Court finds that it can legitimately draw inferences from the Government's failure in the present case to submit to the Convention bodies the above mentioned documents – in particular those relating to the investigation allegedly carried out immediately after the disappearance of Hüseyin Koku (see paragraph 104 above) –, to the extent that these documents were detrimental to the Government's case and the failure to submit them rendered the Court unable to establish the circumstances surrounding the kidnapping of Hüseyin Koku.

113. Nevertheless, the Court finds it more appropriate to deal with the consequences of the Government's above mentioned failure when examining the applicant's complaint concerning the Government's alleged failure to protect his brother's right to life (see paragraphs 121-146 below).

114. Similarly, to the extent that the applicant's submission concerning the alleged indifference of the authorities to the family's allegations of the disappearance indicated a cover-up of the circumstances surrounding the kidnap and death of Hüseyin Koku, the Court finds that these aspects of the case can be more appropriately examined in the context of the Government's obligation to carry out an effective investigation into the circumstances of the death of Hüseyin Koku.

115. In the light of the above, the Court is unable to make a finding as to who might have been responsible for the abduction and subsequent death of Hüseyin Koku.

116. The Court will now proceed to examine the applicant's complaints under the various Articles of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

117. Article 2 of the Convention provides as follows:

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Alleged killing of Hüseyin Koku by State agents

118. The applicant alleged that his brother had been intentionally killed by agents of the State in circumstances where none of the exhaustive list of purposes set out in Article 2 § 2 of the Convention applied.

119. According to the Government, the killing of the applicant’s brother was a simple act of revenge, carried out by the family of C.E.’s husband.

120. The Court has already found that it could not be established that the kidnapping and subsequent killing of Hüseyin Koku were carried out by agents of the State (see paragraph 115 above). It follows, therefore, that there has been no violation of Article 2 of the Convention on that account.

B. Alleged failure to safeguard the right to life of Hüseyin Koku

1. The applicant

121. Referring, *inter alia*, to the Court’s case-law in the case of *L.C.B. v. the United Kingdom* (judgment of 9 June 1998, *Reports* 1998-III, § 36), the applicant submitted that Article 2 of the Convention imposed on States a positive obligation to safeguard the lives of those within their jurisdiction. The applicant argued that a failure by the authorities to take reasonable steps to investigate or protect the life of a person whose abduction and enforced disappearance have been reported to them, violated that obligation to take positive steps to protect the right to life.

122. The applicant relied on the test set in the case of *Osman v. the United Kingdom* (judgment of 28 October 1998, *Reports* 1998-VIII, § 116) and submitted that his brother was clearly a person who was the

subject of a real and immediate risk to his life from the moment of his abduction and disappearance in October 1994, and that the authorities manifestly omitted to take reasonable steps to avoid that risk because of their failure to investigate the disappearance of Hüseyin Koku adequately. The real and immediate risk to the life of the applicant's brother in this case arose from the repeated and continuing incidents of disappearances, extra-judicial killings and killings by unknown perpetrators in south-east Turkey, as detailed in the chronology mentioned above (see paragraph 93).

2. The Government

123. The Government submitted that the allegations of the applicant concerning the responsibility of the State for Hüseyin Koku's death were baseless. These allegations reflected an effort by the applicant to benefit from a common crime committed against his brother, most likely by those who were unhappy about Hüseyin's extra-marital affair with C.E.

124. The Government made extensive references to the threat posed by the terrorist acts carried out by the PKK against the integrity and indivisibility of the Turkish State. Unidentified killings, kidnappings and various other violent acts were common in situations of terrorism. Disappearances were also one of the problems with which the State had to deal. Even under these conditions, the State institutions had operated in such a way as to enable the perpetrator of each crime against its citizens to be found. In the present case, the exhaustive investigations that were carried out into the disappearance of the applicant's brother established that his death had nothing to do with the acts of State officials.

3. The Court's evaluation

125. The Court has not found it established that State agents were responsible for the disappearance and subsequent death of the applicant's brother. However, this does not necessarily exclude the responsibility of the Government for his death. As the applicant pointed out, the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B.*, cited above, § 36).

126. This involves a primary duty on the State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by a law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman*, cited above, at § 115).

127. In this connection, the Court would reiterate that, in the light of the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life therefore can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 78, ECHR 2000-X).

128. The Court reiterates that, for a positive obligation to arise, it must be 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 identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116).

129. As to whether there was a real and immediate risk to the life of Hüseyin Koku, the Court observes at the outset that, according to the Government, Hüseyin Koku had been kidnapped and killed by members of C.E.'s family who were angry about an alleged extra-marital the two had been conducting. The Court also notes that the authorities were aware of the allegations that Hüseyin Koku was having an affair with C.E. and had unsuccessfully attempted to prosecute Hüseyin Koku for that (see paragraph 87 above).

130. Noting, however, that there is no indication whatever of any member of C.E.'s family having been convicted or prosecuted for the disappearance and the death of Hüseyin Koku, the Court finds it inappropriate to accord any weight to the Government's submissions implicating C.E.'s family in the murder of Hüseyin Koku. It therefore disregards the unsubstantiated allegations against C.E.'s family in their entirety.

131. In contrast, the Court finds that Hüseyin Koku, as the chairman of HADEP's Elbistan branch, belonged to a category of persons who ran a particular risk of falling victim to a disappearance and murder. In this connection, the Court would point to the fact that, as detailed in the chronology submitted by the applicant – the accuracy of which has not been challenged by the Government –, dozens of politicians working for HADEP and its predecessors were being kidnapped, injured and killed at around the time of Hüseyin Koku's death. Indeed, a number of attacks carried out against, or killings of, politicians belonging to these political parties have been examined by the Court (see, *inter alia*, *Binbay v. Turkey* (friendly settlement), no. 24922/94, 21 October 2004; *Ekin v. Turkey*, no. 25625/94, 18 July 2000; *Nuray Şen (no. 2) v. Turkey*, no. 25354/94, 30 March 2004; *Sincar v. Turkey* (dec.), 10 October 2002, no. 70835/01; *Sabuktekin*

v. Turkey, no. 27243/95, ECHR 2002-II (extracts); *Macir v. Turkey*, no. 28516/95, 22 April 2004).

132. The Court finds that in the circumstances of the instant case, following his disappearance, the life of the applicant's brother was at more real and immediate risk than other persons at that time. It follows, therefore, that the action which was expected from the domestic authorities was not to prevent the disappearance of the applicant's brother – which had already taken place – but to take preventive operational measures to protect his life which was at risk from the criminal acts of other individuals (*Osman*, cited above, § 115).

133. As regards whether the authorities knew or ought to have known of the risk posed to the life of Hüseyin Koku, the Court notes that, according to the Government, the authorities had been notified of his disappearance on 3 November 1994, following the submission of the petition by Fatma Koku to the Kahramanmaraş Governor (see paragraph 91 above). According to the applicant, however, the Koku family had already made a number of inquiries with the authorities between 21 October 1994 and 3 November 1994 (see paragraphs 22, 23 and 25 above). The Court observes that the accuracy of the applicant's submissions detailing the steps taken by Fatma Koku and the family and friends of her husband prior to 3 November 1994 have not been challenged by the Government. Neither have the Government submitted any information which could lead the Court to doubt the accuracy of the applicant's submissions as regards the steps taken by the family during that time. It notes furthermore that, on 23 October 1994, the *Özgür Ülke* newspaper ran the headline "Director of HADEP's Elbistan Branch Taken into Custody" and that the domestic authorities were aware of this media coverage (see paragraph 46 above). In any event, the fact that a statement made by the Elbistan Governor – in which Hüseyin Koku's detention by the police was denied – was published in the local paper on 31 October 1994, indicates that the authorities were aware of the disappearance of Hüseyin Koku as early as 30 October 1994.

134. Finally, the petition submitted by Fatma Koku to the Prosecutor's office on 1 November 1994, having been signed on the same day by the Prosecutor (see paragraph 90 above), serves as another indication that the authorities were aware of the disappearance prior to 3 November 1994, contrary to what the Government have claimed. In the light of the foregoing, the Court finds that the domestic authorities with the duty to investigate were sufficiently aware of the abduction of Hüseyin Koku on 20 October 1994. The Court has no doubt that the same authorities were also aware of the risks that such an active political figure faced following his disappearance at that troubled time.

135. This brings the Court to an examination of the question whether there were in place effective criminal-law provisions to deter the commission of offences against the person at risk, and whether the

authorities had taken measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk to Hüseyin Koku's life.

136. Although the Government have not explicitly dealt with the issue of whether there were effective criminal law provisions in place, the Court notes from its previous judgments that there were large numbers of security forces in the south-east region pursuing the aim of establishing public order at the relevant time. They faced the difficult task of countering violent armed attacks carried out by the PKK and other groups. The Court also notes that there was a framework of law in place with the aim of protecting life. The Turkish Criminal Code prohibited murder and there were police and gendarmerie forces with the role of preventing and investigating crime, under the supervision of the judicial branch of public prosecutors. There were also courts applying the provisions of the criminal law in trying, convicting and sentencing offenders (*Akkoç*, cited above, § 86, and *Tepe*, cited above, at §§ 115-122).

137. As regards apportioning the duties in a domestic investigation, the Court observes that, according to Article 153 of the Code of Criminal Procedure, 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 in order to decide whether or not there should be a prosecution. Furthermore, pursuant to Article 151 of the Code of Criminal Procedure, offences may be reported to local governors with a view to forwarding them to the relevant judicial authorities. Finally, according to 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 duty is liable to imprisonment.

138. As regards the steps which might have been expected to protect the life of Hüseyin Koku following his disappearance, the Court is of the opinion that the starting point for the Elbistan Prosecutor, who was informed by Fatma Koku on 1 November 1994 of the disappearance of her husband, would have been to obtain more information from her and to question police officers in order to verify the accuracy of the allegations. Furthermore, an examination of the custody records of the detention facilities in the area and the questioning of possible eye-witnesses would also have been obvious avenues of investigation for the Prosecutor to pursue.

139. No information has been submitted by the Government to indicate that any steps were in fact taken by the Elbistan Prosecutor in these crucial early days to find out who had kidnapped Hüseyin Koku. Neither does it appear that steps were taken by this Prosecutor upon the information he had been given by Fatma Koku as to the anonymous telephone call received by her daughter (see paragraph 28 above). Indeed, according to the

Government's own summary of the activities carried out by the authorities after 3 November 1994, the first step taken by the Elbistan Prosecutor had been to send a letter to the Directorate on 26 June 1995, that is almost seven months after that Prosecutor had been informed of the disappearance, which letter merely informed the Directorate of the alleged extra-marital affair conducted by Hüseyin Koku (see paragraph 49 above).

140. As to the action taken by the Kahramanmaraş Governor following his receipt of Fatma Koku's petition of 3 November 1994, the Court observes at the outset that the Government have not provided the Court with any information indicating that the Governor, as required by Article 151 of the Code of Criminal Procedure or by Article 235 of the Criminal Code (see paragraph 137 above), alerted the local prosecutor of the allegation that had been brought to his attention.

141. According to the Government, the investigation carried out by the Governor established that Hüseyin Koku had not been taken into the custody of either the police (see paragraph 45 above) or the gendarmerie (see paragraph 44 above). Furthermore, the people who owned shops on Malatya Street were not aware that Hüseyin Koku had been taken away (see paragraph 48 above). According to the Government, the investigation carried out by the Governor established that Hüseyin Koku had left the country through illegal means in order to join the PKK or to carry out activities on behalf of the PKK (see paragraph 46 above), and that the allegations of his disappearance had been made for political purposes with the aim of dishonouring the security forces (see paragraphs 48 and 56 above).

142. The Court finds, however, that in the light of the Government's failure to submit certain documents to the Convention bodies (see paragraph 104 above), – thereby preventing the Court from examining them first-hand in order to establish what actual steps were taken and how – it cannot take cognisance of the alleged contents of these documents. In any event, the investigation, which was purportedly carried out by the Kahramanmaraş Governor who was himself responsible for the security forces whose conduct was in issue, does not comply with the requirement that an investigation be independent and impartial (see, *mutadis mutandis*, *Akkoç*, cited above, § 88, and the cases cited therein).

143. The Court concludes that the Elbistan Prosecutor, who had the duty to instigate and supervise an investigation into the disappearance, remained completely inactive during these crucial days at a time when many people were being killed in the south-east region of Turkey. By failing to take any steps, neither the prosecutor, nor indeed the Turkish authorities in general, did everything within their power to prevent the murder of the applicant's brother after the disappearance.

144. The Court has previously held that the implementation of the criminal law in respect of unlawful acts allegedly carried out with the

involvement of the security forces disclosed particular characteristics in the south-east region during this period (*ibid*, § 87). One of these characteristics was the failure of public prosecutors to pursue complaints by individuals claiming that the security forces were involved in an unlawful act, for example, by not interviewing or taking statements from implicated members of the security forces and by accepting at face value the reports of incidents submitted by members of such forces (*ibid*, § 89, and the cases cited therein). This same failure occurred in the present case. In the light of the foregoing, the Court concludes that, although there were criminal law provisions in place, the defects referred to above undermined the effectiveness of the protection afforded by the criminal law in the south-east region during the period relevant to this case.

145. Consequently, these defects removed the protection which Hüseyin Koku should have received by law.

146. The Court concludes that the authorities failed to take the reasonable measures available to them to prevent a real and immediate risk to the life of Hüseyin Koku from materialising. There has, accordingly, been a violation of Article 2 of the Convention.

C. Alleged inadequacy of the investigation

147. The applicant alleged that there had been a violation of Article 2 of the Convention on account of the State's failure to carry out an adequate and effective investigation into the disappearance and subsequent murder of his brother.

148. The Government submitted that comprehensive investigations had been conducted into the disappearance and death of Hüseyin Koku.

149. 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, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and *Kaya*, cited above, § 105). In that connection, the Court points out that this obligation is not confined to cases where it is apparent that the killing was caused by an agent of the State (see *Salman v. Turkey* [GC] no. 21986/93, § 105, ECHR 2000-VII).

150. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21954/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the

incident, including, *inter alia*, eye-witness testimony (see *Tanrıkulu*, cited above, § 109). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard.

151. There is also a requirement of promptness and reasonable expedition implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-IV, §§ 102-104; *Çakıcı v. Turkey* [GC], no. 23657/94, § 80, 87, 106, ECHR 1999-IV; *Tanrıkulu*, cited above, § 109). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of, collusion in, or tolerance of, unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-115, ECHR 2001-III, and *Avşar v. Turkey*, no. 25657/94, § 390-395, ECHR 2001-VII (extracts)).

152. Turning to the particular circumstances of the case, the Court has already examined whether the national authorities – and in particular the Prosecutor of Elbistan, where Hüseyin Koku was abducted – took measures within the scope of their powers to avoid the risk to his life. In this context it concluded that the authorities had failed to conduct an investigation into Hüseyin Koku's disappearance (see paragraphs 143-146 above). In the Court's opinion, that failure undermined the possibilities for the authorities in the town of Pötürge – in whose jurisdiction the body was found – to identify the perpetrator(s) of the killing. In any event, and for the reasons set out below (paragraphs 153-159), the investigation carried out by the authorities in Pötürge into the death was also defective.

153. The Court observes at the outset that the report drawn up by the Forensic Medicine Directorate does not contain any information as to when Hüseyin Koku was killed; indeed, it does not appear from that report that any attempt was made by the Forensic Medicine Directorate to establish the time of death (see paragraph 78 above). In this connection, the Court would stress that it has not been provided with any information as to why the Pötürge Prosecutor Zeki Polat referred to the date of Hüseyin Koku's death as "October 1994" in his letter of 26 May 1995 (see paragraph 74 above).

154. In the Court's opinion, the Forensic Medicine Directorate's failure to establish the time of death and the investigating prosecutors' failure to question or follow this matter up is an indication that the investigating authorities were from the outset not committed to according due diligence and seriousness to their inquiry.

155. As regards the subsequent steps taken by the investigating authorities, the Court observes that these steps predominantly related to Hüseyin Koku's alleged adulterous relationship with C.E.

156. No steps appear to have been taken by the Prosecutor to identify and question the persons whom Mr Dalkılıç said he had seen, together with a dead person, in an area very close to where Hüseyin Koku's body was found. Notwithstanding the information provided by Mr Dalkılıç to the effect that the two persons had been wearing clothing similar to military uniforms (see paragraph 82 above) or commando uniforms and berets (see paragraph 85 above), no member of the military was questioned by the prosecutors. Similarly, the Court has not been provided with information as to the accuracy or veracity of Mr Dalkılıç's statement that he had heard that soldiers had gone to the area to look for the three men but that they had been unable to find them (see paragraph 83 above).

157. The Court reiterates that for an investigation into a death to be regarded as effective within the meaning of the case-law of the Court, it is imperative that the next-of-kin of the victim be involved in the procedure to the extent necessary to safeguard their legitimate interests (*McKerr*, cited above, § 148). There is no information in the case file to indicate that the wife and other close relatives of Hüseyin Koku, who took an active role in that they had promptly informed the authorities of the disappearance (see paragraphs 22, 23, 25 and 27 above) and of all subsequent developments (see paragraph 28, 29, 31 and 34 above), were provided with information about the investigation into the death of Hüseyin Koku.

158. As regards the steps purportedly taken by the authorities between 1 September 1995 and 1 March 1996, the Court observes that it has not been provided with the documents in which these steps were recorded (see paragraph 86 above), and it is unable, therefore, to assess the effectiveness of those measures.

159. Finally, due to the Government's failure to respond to the Court's request of 27 July 2000 for information about the investigation (see paragraph 108 above), the Court is not aware of any step taken by the authorities after 24 September 1996 (see paragraph 87 above).

160. In the light of the above, and having particular regard to the Government's failure to inform the Court of the outcome of the investigation (see paragraph 108 above), the Court rejects the Government's preliminary objection based on exhaustion of domestic remedies (see paragraphs 95-96 above), and concludes that the authorities have failed to carry out an effective investigation into the death of the applicant's brother, as required by Article 2 of the Convention.

161. The Court finds, therefore, that there has been a violation of Article 2 of the Convention under its procedural limb.

IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

162. The applicant submitted that there had been a separate violation of Article 3 of the Convention for each of the following reasons:

- (a) the abduction and disappearance of his brother, coupled with the State's failure to carry out any form of adequate and effective investigation into the disappearance, undermined, and were inconsistent with, the protection against torture and inhuman or degrading treatment under Article 3 of the Convention;
- (b) there was sufficient evidence to establish that Hüseyin Koku was tortured whilst in the custody of the security forces, for the second time, following his detention on 20 October 1994; and, finally,
- (c) the applicant himself had suffered anguish and distress in the face of the authorities' complacency in relation to his brother's disappearance.

163. Article 3 of the Convention provides as follows:

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

164. In support of his last argument, the applicant submitted to the Court a report drawn up by Dr Tricia Bohn on 2 October 2001, following the latter's examination of the applicant and his medical records. According to this report the applicant had been diagnosed as suffering from depression on 12 June 1995, which was caused by the disappearance of his brother and the subsequent discovery of his brother's dismembered body. His symptoms had not responded to five different anti-depressant medicines and he was unable to work.

165. The Government have not specifically dealt with the complaints under this Article.

166. The Court deems it more appropriate to examine the first limb of the applicant's complaint under Article 13 of the Convention (see paragraphs 177-183 below).

167. As regards the second limb of the complaint under Article 3, the Court refers to its finding above that it has not been established that any State agent was implicated in the killing of the applicant's brother (see paragraph 115 above). There is thus no factual basis on which to conclude that there has been a violation of this provision as alleged by the applicant.

168. Concerning the applicant's final complaint, the Court has previously found that distress and anguish caused to applicants as a result of the disappearance of their close relatives and their inability to find out what had happened to those relatives, coupled with the manner in which their complaints were dealt with by the authorities, constituted inhuman and degrading treatment contrary to Article 3 of the Convention (see, *inter alia*, *Timurtaş*, cited above, § 98, and *İpek v. Turkey*, no. 25760/94, § 183, ECHR 2004 (extracts)). In reaching its conclusions, the prolonged and continuing periods of uncertainty and apprehension suffered by the

applicants were determinant factors for the Court (see *Timurtaş*, cited above, § 98; *İpek*, cited above, § 183; *Orhan v. Turkey*, no. 25656/94, § 360, 18 June 2002).

169. In support of his complaint of a violation of Article 3 of the Convention in respect of himself in the present case, the applicant referred to the Court's case-law in the cases of *Kurt v. Turkey* (judgment of 25 May 1998, *Reports* 1998-III) and *Çakıcı*, cited above). Both of these cases concerned disappearances of the applicants' close relatives – a son and a brother respectively – during unacknowledged detentions which, at the time of the Court's adoption of its judgments, had already lasted for periods of four and a half years and five and a half years.

170. To the extent that the Court may be prepared to regard the period which elapsed between the abduction of Hüseyin Koku on 20 October 1994 and the discovery of his body on 26 April 1995 as sufficient for the purposes of its examination of the complaint under this Article, the question arises as to which family members of a disappeared person can claim to be a victim of treatment contrary to Article 3 of the Convention. This will depend, as the Court has already made clear in its judgment in *Çakıcı* judgment (cited above, § 98), on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person, and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct.

171. In the present case, the applicant, like the applicant in *Çakıcı*, was the brother of the disappeared person. He was not present when his brother was abducted, as he was living in the United Kingdom. It also appears that, while the applicant took a number of steps to bring his brother's case to the attention of international organisations, including the European Parliament (see paragraph 41 above) and Amnesty International (see paragraphs 26 and 35 above), he did not bear the brunt of the task of making inquiries with the domestic authorities in Turkey. Neither have any aggravating features arising from the response of the authorities been brought to the attention of the Court in this case. Consequently, the Court perceives no special features

existing in this case which would justify a finding of a violation of Article 3 of the Convention in relation to the applicant himself.

172. Accordingly, there has been no breach of Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

173. Invoking Article 5 of the Convention, the applicant alleged that his brother had been detained in complete disregard of the safeguards contained in paragraphs one to five of this provision, which guarantees the right to liberty and security.

174. Beyond denying that the applicant's brother had been detained by the police, the Government have not specifically dealt with this complaint.

175. The Court recalls its finding above that it has not been established that any State agent was implicated in the abduction of the applicant's brother (see paragraph 115 above). There is thus no factual basis to substantiate the applicant's allegation.

176. Consequently, the Court finds no violation of Article 5 of the Convention in respect of the applicant's brother.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

177. The applicant submitted that he and his family had taken every reasonable step possible in order to ensure that the abduction, detention and murder of his brother was properly and thoroughly investigated by the national authorities. However, the response of the various authorities to their complaints and petitions had been utterly inadequate. The necessary remedies either did not exist or they were, in practice, useless. 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.”

178. The Government contended that the disappearance and death of the applicant's brother had been adequately investigated.

179. 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. Thus its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın*, cited above, § 103; *Kaya*, cited above, § 106).

180. Given the fundamental importance of the right to the 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 death, including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, § 107).

181. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that agents of the State carried out the abduction or murder of the applicant's brother. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 2 of the Convention from being an "arguable" one for the purposes of Article 13 (see *Akkoç*, cited above, § 104 and the cases cited therein). In this connection, the Court observes that it is not in dispute that the applicant's brother was the victim of an abduction and an unlawful killing, and the applicant may therefore be considered to have an "arguable claim".

182. The authorities thus had an obligation to carry out an effective investigation into the circumstances of these crimes. For the reasons set out above (see paragraphs 152-160), 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 Article 2 (see *Kaya*, cited above, § 107). The Court finds, therefore, that the applicant was denied an effective remedy in respect of the abduction and the subsequent death of his brother, and was thereby denied access to any other available remedies at his disposal, including a claim for compensation.

183. Consequently, there has been a violation of Article 13 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 2, 3, 5, 6 AND 13

184. The applicant argued that the circumstances of this case disclosed a violation of Article 14 of the Convention in conjunction with Articles 2, 3, 5, 6 and 13. He submitted that there was sufficient evidence to establish that his brother's abduction and murder had been carried out as a direct result of his lawful political views and his activities on behalf of HADEP and, more

widely, the Kurdish minority in Turkey. Article 14 of the Convention provides as follows:

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

185. The Government have not specifically dealt with this complaint.

186. The Court observes its findings of violations of Articles 2 and 13 of the Convention and does not consider that it is necessary to examine separately the applicant’s complaints under Article 14 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

187. 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

188. The applicant submitted that his brother had been born in 1958 and was 36 years old at the time of his abduction. He was married and had six children, aged at that time between 6 and 15 years.

189. At the time of his death Hüseyin Koku had been working as a welder and pipe fitter. He had worked for a number of international companies in Iraq, Saudi Arabia and South Africa. In his memorial submitted to the Court in 2001, the applicant claimed past and future pecuniary losses on behalf of the family of Hüseyin Koku and submitted that, due to the difficulties in contacting Hüseyin Koku’s wife and family in Turkey, it had not been possible to submit an itemised claim. Although the applicant added that a fully itemised claim based on actuarial calculations would be submitted to the Court as soon as possible, he failed to do so.

190. The applicant further submitted that, as a result of his brother’s abduction and murder, he had been unable to work because of depression since 1995. In support of his submission the applicant referred to the report drawn up by Dr Tricia Bohn (see paragraph 164 above). The applicant claimed that prior to 1995 he had been an experienced welder, earning an average weekly salary of 294.70 pounds sterling (GBP). Having regard to actuarial tables, the applicant claimed the sum of GBP 266,644.56 in respect of his estimated loss of earnings.

191. The Government objected to the amount claimed by the applicant and argued that there was no causal connection between his claim for loss of

earnings and the death of his brother, which in any event was not attributable to the authorities.

192. As regards the applicant's claim for the loss of his earnings, the Court's case law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegue and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı*, cited above, § 127).

193. However, the Court does not find sufficient causal connection between the matters found to constitute violations of the Convention – the failure to safeguard the right to life of the applicant's brother and the absence of an effective investigation – and the pecuniary damage alleged by the applicant. It therefore rejects the applicant's claims for his own alleged loss of earnings.

194. As regards the applicant's claim for the loss of earnings of his deceased brother, the Court observes that he has failed to submit to the Court an itemised claim detailing that loss. However, the fact remains that Hüseyin Koku had been providing his family with a living and this has not been disputed by the Government. Having regard to the family situation of the deceased, Hüseyin Koku, his age and his professional activities which provided his wife and six children with a living, the Court finds it established that there was a direct causal link between the violation of Article 2 and the loss suffered by Hüseyin Koku's family of the financial support provided by him.

195. In the light of the foregoing the Court, deciding on an equitable basis, awards EUR 60,000 in respect of pecuniary damage to the widow and six children of Hüseyin Koku, which amount is to be paid into the bank account in Turkey of Hüseyin Koku's widow and six children (see, *mutatis mutandis*, *Buldan v. Turkey*, no. 28298/95, § 116, 20 April 2004).

B. Non-pecuniary damage

196. The applicant invited the Court to take into account the severity of the violations of the Convention in this case and asked the Court to award him the sum of GBP 50,000 for the widow and six children of Hüseyin Koku and the sum of GBP 10,000 for himself by way of non-pecuniary damages on account of the distress caused to them by the disappearance and subsequent death of his brother.

197. The Government submitted that the applicant had failed to substantiate his allegations concerning the merits of the case and that for that reason they should not be liable to pay any compensation to the applicant by way of non-pecuniary damage.

198. The Court recalls the violations of Articles 2 and 13 of the Convention which it has found. Consequently, and having regard to the awards made in comparable cases, the Court, on an equitable basis, awards EUR 20,000 in respect of non-pecuniary damage, to be paid into the bank account of the widow and six children of Hüseyin Koku. It also awards the applicant the sum of EUR 3,500 for non-pecuniary damage sustained by him in his personal capacity, which amount is to be paid into the applicant's bank account in the United Kingdom.

C. Costs and expenses

199. The applicant claimed a total of GBP 14,935.66 for the fees and costs incurred in bringing the application. His claim comprised:

- (a) GBP 10,141.66 for the fees of his lawyers working for the Kurdish Human Rights Project (KHRP) in the United Kingdom;
- (b) GBP 2,500 for Kerim Yıldız, the director of the KHRP;
- (c) GBP 470 for administrative costs, such as telephone, postage, photocopying and stationary, incurred by the United Kingdom-based lawyers; and
- (d) GBP 1,824 for translation costs incurred by the United Kingdom based lawyers.

200. In support of his claims for the fees of his lawyers the applicant submitted a detailed schedule of costs.

201. The Government submitted that only expenses which have been actually incurred could be reimbursed, and that the applicant and her representatives should have documented all their costs and expenses, but failed to do so. The Government also invited the Court not to award an excessive sum.

202. The Court, observing the applicant's failure to provide any explanation for his claim for the sum of GBP 2,500 in respect of the director of the KHRP, cannot make any award in this respect.

203. As regards the remainder of the claim for costs and expenses, making its own assessment based on the information available, the Court awards the applicant 15,000 euros (EUR) in respect of costs and expenses – exclusive of any value-added tax that may be chargeable – the net award to be paid in pounds sterling into his representatives' bank account in the United Kingdom, to be identified by the applicant.

D. Default interest

204. 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that the respondent State has failed to fulfil its obligation under Article 38 of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts;
3. *Holds* unanimously that there has been no violation of Article 2 of the Convention in respect of alleged abduction and killing of the applicant's brother;
4. *Holds* unanimously that the respondent State failed to protect the life of the applicant's brother in violation of Article 2 of the Convention;
5. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances of the death of the applicant's brother;
6. *Holds* unanimously that there has been no violation of Article 3 of the Convention;
7. *Holds* unanimously that there has been no violation of Article 5 of the Convention;
8. *Holds* unanimously that there has been a violation of Article 13 of the Convention;
9. *Holds* by six votes to one that it is unnecessary to examine separately the applicant's complaint under Article 14 of the Convention;
10. *Holds* unanimously
 - (a) that the respondent State is to pay to the widow and six children of Hüseyin Koku, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 60,000 (sixty thousand euros) and any tax that may be chargeable on this amount, in respect of pecuniary damage; this sum is to be converted into new Turkish liras at the rate applicable at the date of settlement and be paid into the bank account of Hüseyin Koku's widow and six children;
 - (b) that the respondent State is to pay to the widow and six children of Hüseyin Koku, within the same three month period, EUR 20,000 (twenty thousand euros) and any tax that may be chargeable on this

amount, in respect of non-pecuniary damage; this sum is to be converted into new Turkish liras at the rate applicable at the date of settlement and be paid into the bank account of Hüseyin Koku's widow and six children;

(c) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) and any tax that may be chargeable on this amount, in respect of non-pecuniary damage; this sum is to be converted into pounds sterling at the rate applicable at the date of settlement and be paid into the bank account of the applicant;

(d) that the respondent State is to pay the applicant, within the same three month period, into the bank account, to be identified by him, of his representatives in the United Kingdom, EUR 15,000 (fifteen thousand euros) in respect of costs and expenses, together with any value-added tax that may be chargeable, to be converted into pounds sterling at the rate applicable at the date of settlement;

(e) 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

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

J.-P.C.
S.D.

PARTLY DISSENTING OPINION OF JUDGE MULARONI

Unlike the majority, I believe that it is necessary for the Court to examine separately the applicant's complaint under Article 14 of the Convention.

After examining tens and tens of similar applications, all lodged, without exception, by Turkish citizens of Kurdish origin, and very often concluding that there was a violation of Articles 2 and 3 of the Convention, the Court should, to my mind, at least consider that there could be a serious problem under Article 14 of the Convention as well.

This does not mean, of course, that in the end the Court will invariably find that there has been a violation of Article 14. However, I cannot agree with the majority approach, which to me is tantamount to considering that the prohibition on discrimination in this type of case is not an important issue.