



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

FOURTH SECTION

CASE OF TANIŞ AND OTHERS v. TURKEY

(Application no. 65899/01)

JUDGMENT

STRASBOURG

2 August 2005

FINAL

30/11/2005

In the case of Tanış and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMEŒ,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 5 July 2005,

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

PROCEDURE

1. The case originated in an application (no. 65899/01) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Turkish nationals, Mr Yakup Tanış, Mr Mehmet Ata Deniz, Mr Şuayip Tanış and Mrs Selma Güngen (Tanış) ("the applicants"), on 9 February 2001.

2. The applicants, who had been granted legal aid, were represented by Mr T. Elçi, Mr İ. Tanış, Mr C. Aydın and Mr R. Yalçındağ, of the Diyarbakır Bar. The Turkish Government ("the Government") were represented by their co-Agent, Mr M. Özmen.

3. The application concerns the disappearance of two leaders of the Silopi branch of the People's Democracy Party (Halkın Demokrasi Partisi (HADEP)). The applicants alleged that the two men had been the victims of an extrajudicial execution in custody, despite the authorities' assertion that they had not been detained. The applicants relied on Articles 2, 3, 5 and 13 of the Convention

4. 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.

5. By a decision of 11 September 2001, the Chamber declared the application admissible.

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

7. A delegation from the Court, composed of Judges Sir Nicolas Bratza, M. Pellonpää and R. Maruste, heard evidence from witnesses between 28 and 30 April 2003 in Ankara.

8. On 6 June 2003, to assist it in its examination of the merits of the case, the Court asked the Government to produce a fresh copy of the investigation file to include information that had been deleted from the file initially sent following a request by the public prosecutor's office for it to remain confidential. In a letter of 25 July 2003, the Government informed the Court that, as the information was still confidential, they were unable to produce the internal file with the missing information.

9. In a letter of 4 December 2003, the Court asked the Government for additional information regarding progress in the investigation launched by the domestic authorities, including a chronology of the various stages in the investigation, the date the file would cease to be confidential and the date the investigation was scheduled to end. The letter also stated that the Court “regret[ted] that it ha[d] not received the documents from the investigation file showing the deleted information and that it [had] not [been] permitted to take evidence from Mr Levent Ersöz, the commanding officer of the Şırnak gendarmerie regiment at the material time, or from the person who [had] made the telephone call to Serdar Tanış”.

10. On 3 and 30 July 2004 respectively the applicants' representatives and the Government produced to the Court copies of decisions in which the prosecuting authorities had ruled that neither the commanding officer of the Şırnak gendarmerie nor the officers concerned had a case to answer.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The applicants were born in 1978, 1963, 1955 and 1975 respectively and live in Şırnak. They are close relatives of Serdar Tanış and Ebubekir Deniz, respectively the President and Secretary of the Silopi branch of the People's Democracy Party (Halkın Demokrasi Partisi (HADEP)).

A. The applicants' version of the events

13. The applicants alleged that Serdar Tanış and Ebubekir Deniz received death threats from the Silopi gendarmerie command and the Şırnak gendarmerie regimental headquarters on account of their political activities.

14. At about 1.30 p.m. on 25 January 2001, three people in a blue Fiat purporting to be police officers attempted to force Serdar Tanış to get into the car. Having informed them that he would go to the central gendarmerie station only if he received an official summons, he made his way to HADEP's offices. On receiving a call on his mobile phone from the gendarmerie commanding officer, he went to the station accompanied by Ebubekir Deniz. Three witnesses, Ömer Sansur, İsa Kanat and Hamit Belge, saw them enter the station.

15. An hour later, unable to reach the men on their mobile phones, their families and lawyers asked the Silopi public prosecutor and the Silopi gendarmerie command for information. The commanding officer, Süleyman Can, told them on the telephone that neither man had attended the station or been taken into custody.

16. On 1 February 2001, after the incident was reported in the press, the Şırnak provincial governor issued a written statement indicating that the two men had gone to the Silopi gendarmerie station on 25 January 2001, stayed for half an hour, and then left the premises.

17. The applicants said that they had received no news of Serdar Tanış or Ebubekir Deniz since 25 January 2001. Neither man had shown any sign of life.

B. The Government's observations on the facts

18. The Government said that, on 17 and 18 January 2001 respectively, Serdar Tanış and his father, Şuayip Tanış, attended the Silopi gendarmerie station to speak to the commanding officer. They signed the visitors' register, which indicated the times of their arrival and departure.

19. At 2 p.m. on 25 January 2001, Serdar Tanış and Ebubekir Deniz went to the station to see the commanding officer. As he was not there, they spoke to another officer and left the building at 2.30 p.m. They signed the visitors' register on entering and leaving the building.

20. After criminal complaints were lodged by the two men's families, the Silopi public prosecutor launched an investigation and took statements from the applicants. The relevant authorities were notified that they were missing and their photographs and descriptions were circulated to the public prosecutor's offices and police headquarters in the province.

21. On 26 February 2001, at the request of the prosecutor leading the investigation, the district court made an order under Article 143 of the Code

of Criminal Procedure restricting access to the preliminary investigation file.

22. On 3 March 2001 the authorities seized a letter discovered when searching a vehicle that had crossed the border from northern Iraq which indicated that Serdar Tanış and Ebubekir Deniz were in a PKK (Workers' Party of Kurdistan) camp in Doloki (Iraq). The driver and owner of the vehicle and Serdar Tanış's father were taken into custody, but released after making statements.

C. Oral evidence

23. Three delegates from the Court took the following depositions in Ankara between 28 and 30 April 2003. The depositions of Divan Arsu, Mehmet Ata Deniz and Zehra Deniz were obtained through an interpreter.

1. *Şuayip Tanış*

24. Şuayip Tanış said that he was an applicant and Serdar Tanış's father. He was living in Cizre at the material time, and ran a petrol station in Başveren (Silopi). He last saw his son, who lived in Silopi, on 24 January 2001.

25. Before commencing his military service, that is to say prior to November 2000, his son had worked as a driver transporting fuel from Iraq. Serdar Tanış was the only child providing for the family, as the other children had not completed their studies. The witness said that he had heard that after returning from military service Serdar Tanış and a group of friends had taken steps to open a local branch of HADEP in Silopi.

26. In October 2000 the witness and his brother were arrested by gendarmes on their way to work. His brother was released, but the witness was taken to Cizre district gendarmerie station. On the same day the gendarmes searched his home in his presence and made him sign a record. He was then taken to Şırnak gendarmerie headquarters, where he was held for seven days. He was made to wear a blindfold during questioning, so could not identify his interrogator. His interrogator told him: "Give up your HADEP activities. If you don't, it will cost you your life." The witness was tried with four co-defendants and spent approximately fifty-seven days in prison. The person who made the accusations against them subsequently sent a letter to the authorities informing them that he had been acting under duress and did not even know the defendants.

27. The witness then gave details of a meeting he had had with the commanding officer, Levent Ersöz, at the Şırnak regimental headquarters. The commanding officer had threatened him, saying: "Give up the idea of opening a local branch of HADEP in Silopi. I don't want to hear what you have to say, this is my area. If you don't give it up, I will not let you live."

28. The witness said that he had also been summoned by Süleyman Can, the commanding officer of the Silopi district gendarmerie, in January 2001, approximately two weeks before his son went missing. Süleyman Can had said to him “Tell Serdar to give up this business” and had telephoned Levent Ersöz, who asked to speak to the witness and said: “Why didn't Serdar come and see me? You tell him that if he doesn't come today, I'll kill him if he ever sets foot in the Şırnak area again. Tell him that. He knows my position and rank.”

29. The witness and his son Müdür went back to see Süleyman Can, who repeated his earlier warning: “Tell him to give up that business. All his colleagues have resigned. He's the only one who's stayed on. If he doesn't resign, he'll come to grief.” Before leaving the premises, they asked Süleyman Can to convince Serdar Tanış himself or to put pressure on him.

30. On being asked by the witness why he had not gone to see the Şırnak commanding officer, Serdar Tanış replied that he had spoken to him on the telephone and added that after the party's inauguration he had received a call from Süleyman Can and had told him: “Commanding Officer, if I give it up, someone else will replace me. I was born in the area and know the situation better and am not carrying out any illegal activity; I will not leave the party.”

31. The witness's nephew Eyüp Tanış told him that on 25 January 2001 an attempt had been made to force Serdar Tanış into a vehicle outside the post office. He had told the occupants that he would only do as they said if he received a call from the “official” authorities.

32. The witness said that his son and Ebubekir Deniz went to the gendarmerie station after receiving a telephone call from that source. The two men got on well and worked together for HADEP. Ebubekir Deniz had also received threats because of his political activities and, like Serdar Tanış, had been forced into hiding before the branch opened. Owing to the intimidation, he had been unable to continue working. The witness added that the entire family had suffered as a result of Serdar Tanış's political activities.

33. He said that on the night of 25 January he was informed by his nephew İdris Tanış that Serdar Tanış and Ebubekir Deniz had not returned from the station. For four or five days the authorities denied that they had been there. On the sixth day the commanding officer said that, as he had been out on a tour of inspection, the two men had been seen by a non-commissioned officer, Selim Gül, and had left the premises half an hour later. The witness lodged a complaint with the public prosecutor on 28 or 29 January. Subsequently he and Mehmet Ata Deniz went to see the commanding officer Süleyman Can, who repeated that they had been on the premises for half an hour, but had then left. He told them: “We handed them over to the JİTEM [*Jandarma İstihbarat Terörle Mücadele* – Gendarmerie

Anti-Terrorist Intelligence Branch] ... the JİTEM does not take orders from the regimental commanding officer.”

34. The witness affirmed that he had been held in custody at the Şırnak Security Directorate because of a letter addressed to him that had allegedly been seized in a vehicle that had entered Turkey from Iraq. The police told him that the letter said that his son was in the PKK camps. The witness considered that incident to be part of a “plot” against them.

2. *Eyüp Tanış*

35. Eyüp Tanış said that he was born in 1976 and was living in Silopi at the material time. He was a cousin of Serdar Tanış and a former administrator of the local branch of HADEP.

36. He too stated that threats had been made against Serdar Tanış by the regimental commanding officer of the gendarmerie because of his attempts to open a local branch of HADEP in Silopi. Serdar Tanış had been subjected to intimidation and followed by plain-clothes police officers. He had been forced to leave Silopi and had spent approximately one month in Diyarbakır. The witness said that he too had been followed on a number of occasions. All seven of the HADEP party administrators had received threats and three had resigned as a result.

37. On the morning of 25 January 2001, the witness and Serdar Tanış went to the HADEP offices, where the other party members were also present. Towards noon he went with Serdar Tanış to the post office. A car with three people inside pulled up in front of them. The driver and one of the passengers opened a rear door and asked them to get in. Serdar Tanış refused, saying: “We don't know you and if there's anything to be discussed, then we'll talk in an official institution, at the Silopi gendarmerie station or Security Directorate if you like – in an official place like that.” Unable to persuade the witness and Serdar Tanış to accompany them, the three people, who said they were police officers, left the scene. The witness and Serdar Tanış then returned to HADEP's offices. The witness left for a short period during which it appears that Serdar Tanış received a telephone call from the commanding officer of the gendarmerie and went to the station with Ebubekir Deniz. After waiting for approximately twenty minutes, the witness made several unsuccessful attempts to reach Serdar Tanış on his mobile phone. According to the witness, the driver of the minibus who took them to the station saw them enter the building.

38. The witness said that he made a statement before the Silopi public prosecutor. He also answered questions by an investigating officer and provided a description enabling an identikit picture to be prepared of the two people who attempted to force Serdar Tanış and Ebubekir Deniz into the car. He subsequently attended the public prosecutor's office three times to examine photographs. At one of the sessions he indicated that he recognised the driver of the car in one of the photographs and found a strong

likeness in another. In that connection, the witness confirmed the content of the identification record that was drawn up on 26 February 2001.

39. The threats prompted by their political activities in HADEP continued after January 2001 and on one occasion the police searched the party's offices.

40. The witness added that before starting his military service Serdar Tanış was in the business of transporting fuel from Iraq and did not engage in any political activity. He repeated that on 25 January Serdar Tanış went to the Silopi gendarmerie station with Ebubekir Deniz after receiving a telephone call from the commanding officer. The two men had been subjected to intimidation by the authorities when transporting fuel in their vehicles. They had threatened to withdraw Ebubekir Deniz's operator's licence and certificate. All the intimidation was linked to their political activities.

41. The witness said that following Serdar Tanış's disappearance he became the acting President pending the next HADEP congress. In 2002 he was taken into custody at Silopi gendarmerie station. Around 7 a.m. one morning a military vehicle drew up outside his house. He was taken to the Silopi gendarmerie station. He was blindfolded and told: "You must resign from HADEP!" He refused and was tortured and threats were made to kill him like Serdar Tanış and Ebubekir Deniz. He was brought before a judge and accused of having PKK documents at his home. He lodged a criminal complaint against the officers who were on duty when he was in custody.

3. *Yakup Tanış*

42. Yakup Tanış said he was an applicant and one of Serdar Tanış's brothers. He was born in 1978 and was studying in Isparta at the material time. He returned to Silopi on 27 January 2001 following his brother's disappearance.

43. He saw his brother when their father was taken into custody by the gendarmerie. His father telephoned him to say that he was with an officer and asked him to contact Serdar Tanış to persuade him to resign from HADEP.

44. Yakup Tanış also confirmed that the family had been subjected to intimidation by the authorities on account of his brother's political activities. Serdar Tanış could not remain in Silopi. He feared that he would be arrested and had been threatened by Levent Ersöz and Süleyman Can, the commanding officers of the gendarmeries of Şırnak and Silopi respectively. Ebubekir Deniz was in the same position. Serdar Tanış had sent a complaint to the authorities about the threats that had been made against him and had asked for protection. The witness said that he had seen the complaint in question.

45. The witness said that despite various attempts he was unable to gain any information from the authorities about his brother. He had even been

taken to the police station twice, where he was instructed not to write any further letters to the authorities. A person called Mahmut had threatened to kill him like his brother.

4. Mehmet Ata Deniz

46. Mehmet Ata Deniz said that he was an applicant and Ebubekir Deniz's brother. He was assisted by an interpreter when giving evidence. He was born in 1963 and lived in Silopi.

47. He confirmed that before they went missing his brother and Serdar Tanış had been forced to go to Diyarbakır by the threats and intimidation to which they had been subjected on account of their activities as members of HADEP. Their wives, who lived in Silopi, feared reprisals by the authorities and moved frequently.

48. The witness said that approximately twenty days before his disappearance his brother had been arrested at the Habur checkpoint at the border with northern Iraq, and his operator's licence had been seized. The intimidation against his brother had begun when he joined HADEP.

49. The witness described a meeting he had had with Captain Süleyman Can. He and Şuayip Tanış had gone to the gendarmerie station to make enquiries about Serdar Tanış and Ebubekir Deniz. He had said to the captain: "You have handed them over to the JITEM", to which the captain had replied that the JITEM was not under his orders or the orders of the Şırnak regimental commanding officer.

50. The witness said that he had made two statements to the Silopi public prosecutor without the assistance of an interpreter. His statements had been recorded by the public prosecutor, who had noted that he was illiterate and did not understand Turkish.

5. Zehra Deniz, Divan Arsu and Selma Güngen

51. The three witnesses were born in 1981, 1978 and 1975. Zehra Deniz is the wife and Divan Arsu the partner of Ebubekir Deniz. Selma Güngen is Serdar Tanış's wife.

52. They confirmed that the authorities had threatened and intimidated both men on account of their activities as members of HADEP. They said that they had been afraid to remain in Silopi and had been forced to leave their home for a time.

6. Ömer Sansur

53. Ömer Sansur was born in 1981 and was living in Silopi at the material time.

54. He said that he was present at HADEP's offices when Serdar Tanış received a telephone call from the gendarmerie station. Although it was

Serdar Tanış who received the summons to go to the station, Ebubekir Deniz insisted on accompanying him.

55. The witness said that he had driven the two men to the station and dropped them off approximately 20 metres from the main entrance.

7. Hamit Belge and İsa Kanat

56. The two witnesses were born in 1963 and 1951 respectively and lived in Silopi at the material time.

57. They said that they saw Serdar Tanış and Ebubekir Deniz as they were about to enter the gendarmerie headquarters by the main entrance. The two men waved at them.

8. Ebcet Sunmez

58. Ebcet Sunmez was born in 1978 and was living in Cizre at the material time. He was a lorry driver and travelled from time to time to Iraq with Serdar Tanış and Ebubekir Deniz. He knew Serdar Tanış well, as they were from the same village.

59. He said that Serdar Tanış had told him in telephone conversations that he had been subjected to intimidation and threats because of his political activities, and that he had had to leave Silopi for approximately one month and had attended to the administrative formalities required to open a branch of HADEP in Silopi in Diyarbakır.

60. The witness gave this account of a visit he and Şuayip Tanış had made to the commanding officer of the Silopi gendarmerie Süleyman Can:

“Approximately twenty days before Serdar Tanış's disappearance, I drove Şuayip Tanış to the Silopi district command. He had been summoned by Süleyman Can, who met us and told Şuayip Tanış that he wanted to speak to Serdar Tanış to get him to give up his activities as a member of HADEP. Süleyman Can said that Levent Ersöz, the commanding officer of the Şırnak regiment, had asked to speak to Şuayip Tanış. He reached Levent Ersöz on the telephone in İdil where he was on a tour of inspection. After speaking for approximately three minutes outside his office, Süleyman Can passed the telephone to Şuayip Tanış. As it was a cordless phone, I was able to hear the conversation. The commanding officer said to him: 'Tell Serdar to come and see me tomorrow, otherwise he had better not ever set foot in Şırnak again, or I'll kill him.'”

The witness added that after leaving the station Şuayip Tanış telephoned Serdar Tanış to ask him to go and see the commanding officer. After that incident, he encountered Serdar Tanış in HADEP's offices in Silopi and told him that he had seen Süleyman Can.

61. The witness said that Şuayip Tanış had been arrested prior to 25 January 2001, probably as a result of his son's political activities.

9. *Sezgin Tanrıkulu*

62. Sezgin Tanrıkulu said that he was born in 1963 and was living in Diyarbakır at the material time. He was a lawyer and a representative of the Human Rights Association in Diyarbakır.

63. He did not know Serdar Tanış or Ebubekir Deniz personally. However, he had been informed of the threats that had been made against them on account of their activities as members of HADEP. He learnt of their disappearance on 26 January 2001.

64. The witness said that on 29 January 2001 he, the President of the Human Rights Association in Diyarbakır, Osman Baydemir, and two other people went to see the Silopi public prosecutor, Kubilay Taştan. Mr Taştan told them that he had spoken on the telephone with the commanding officer of the Silopi gendarmerie, who had affirmed that Serdar Tanış and Ebubekir Deniz had not been taken into custody or been to the station. The delegation from the Human Rights Association asked the public prosecutor why he had not gone to the station himself. The public prosecutor replied that he considered the answer he had received from the commanding officer on the telephone sufficient and urged them to pursue their enquiries in Şırnak.

65. The witness said that he and Osman Baydemir had failed to get an audience with either the commanding officer of the Silopi gendarmerie or the district governor. The delegation went the same day to see the Şırnak public prosecutor. He had been informed of the incident and was waiting for written information from the Silopi public prosecutor's office. He said that he would then enquire of the commanding officer of the Şırnak gendarmerie regiment whether the two men had been taken into custody. He told the delegation that he had no power to take any other action.

66. On 31 January 2001 the witness drafted a report with other lawyers entitled "The Silopi Disappearance Report", which brought the matter to the attention of the public. As a result, the disappearance of Serdar Tanış and Ebubekir Deniz was widely reported in the media. Approximately four days after the media became involved, the Şırnak provisional governor issued a statement to say that the two men had attended the gendarmerie station but had left a short time later.

67. The witness said that on 4 February 2001 he and Osman Baydemir made a public statement asking the authorities to explain why they had denied the truth and to reply to various questions. As a result of their statement, they were prosecuted and tried before being acquitted of the charges.

10. Osman Baydemir

68. Osman Baydemir was born in 1971. He lived in Diyarbakır and was the President of the Human Rights Association at the material time. He is now the mayor of Diyarbakır.

69. On 26 January 2001 the association was informed by İdris Tanış that Serdar Tanış and Ebubekir Deniz were missing. It tried to contact the authorities but was unable to obtain any information.

70. The witness said that he went to Silopi on 29 January with Sezgin Tanrikulu and two other people. He described the meetings with the public prosecutors and confirmed what Sezgin Tanrikulu had said in his statement. He said that he had formed the view that the Silopi public prosecutor appeared to be bound by the gendarmerie's denials and had told them that he had not questioned any of the gendarmes concerned or gone to the scene to make enquiries.

11. Resul Sadak

71. Resul Sadak was born in 1959 and was living in Şırnak at the material time. In January 2001 he was the President of the local branch of HADEP in Şırnak. He knew Serdar Tanış and Ebubekir Deniz from their activities in the party.

72. He confirmed that members and leaders of HADEP were subjected to threats and intimidation. He himself had been taken into custody after the application was made to open a party office in Silopi.

73. In 1999, when he and others were in the process of trying to open a local branch of HADEP in Şırnak, they too had been subjected to intimidation and threats by the authorities. Three members of the party in Silopi had been forced to resign as a result of the intimidation. The party had only been able to assemble five members instead of seven. Serdar Tanış had informed him of the pressure being exerted on him and in January 2001 had handed over a letter in his presence to the President of the Diyarbakır office of HADEP giving details of the threats and intimidation to which he and members of the party in Silopi had been subjected by the commanding officer of the Şırnak regiment.

74. The witness asserted that at the beginning of January 2001 he was arrested by gendarmes on the road from Şırnak to Diyarbakır and summoned to the Şırnak regimental headquarters. The commanding officer threatened him and expressed his displeasure at the opening of local party branches in Silopi and Cizre. He asked him not to open the offices, saying: "If you do not give it up, I will strangle you at the Kasrik Pass. Go and complain to whoever you want. You'll be in big trouble."

75. The witness said that Serdar Tanış had received a number of telephone calls in his presence from the commanding officers of the Silopi

and Şırnak gendarmeries, and had informed him of the threats and pressure to which he had been subjected in an effort to persuade him to resign.

76. He said that he had informed the Şırnak public prosecutor of the threats and intimidation to which they had been subjected as a result of their political activities in HADEP and lodged a complaint.

12. Ali Ürküt

77. Ali Ürküt was born in 1959 and was the President of the Diyarbakır office of HADEP at the material time.

78. He said that he had known Serdar Tanış and Ebubekir Deniz since the end of 2000 and that they often came to Diyarbakır. He personally oversaw their attempts to secure permission from the authorities to open a local party branch in Silopi and witnessed the enormous difficulties they encountered.

79. Serdar Tanış informed him of all the threats and intimidation to which he and his entourage had been subjected. The witness overheard a telephone conversation in which Serdar Tanış's father Şuayip Tanış, who was in custody at the time, called his son to ask him to see the commanding officer of the Şırnak gendarmerie regiment immediately.

80. The witness said that Serdar Tanış had been anxious and concerned about the threats and arranged for his lawyer to draft five or six copies of a petition to the public prosecutor and other authorities, informing them of the intimidation and pressure to which he and his entourage were being subjected by the commanding officer of the Şırnak gendarmerie regiment. On 8 January 2001 Serdar Tanış gave him the petitions. However, fearing reprisals, he kept them until 25 January 2001, when he handed them over to the lawyers dealing with the case.

13. Mahmut Damar

81. Mahmut Damar was born in 1971. He was a sergeant at Silopi gendarmerie district command and a traffic team commander at the material time.

82. He said that approximately eighty people worked at the station. He described the premises and said that in addition to the main entrance there was a separate entrance for officers on the left-hand side of the building.

83. From 25 January until 9 a.m. on 26 January 2001 he was the duty officer and assisted non-commissioned officer Faruk Atalay. His duties were to monitor and record incidents and to supervise the activities of the soldiers. Sergeant Veysel Ateş was responsible for recording the names of visitors at the main entrance.

84. Mr Damar said that visitors were required to leave proof of identity and to sign the register. They were given a badge to enter the building.

85. He said that no incidents had been recorded on 25 January 2001. He did not know Serdar Tanış or Ebubekir Deniz and learnt of their disappearance from the press and from discussions within the gendarmerie.

14. Cemal Güldüler

86. Cemal Güldüler was born in 1968 and was a non-commissioned officer at Silopi district gendarmerie command at the material time. He had administrative duties relating to personnel.

87. He said that he did not know Serdar Tanış or Ebubekir Deniz. He had heard of them and was informed of the incident after receiving a summons from the Silopi public prosecutor.

88. The witness said that in January they carried out a tour of inspection. He could not remember whether the commanding officer of the Şırnak regiment had taken part. He confirmed that people entering or leaving the station were required to sign a register.

15. Arif Aydoğan

89. Arif Aydoğan was born in 1979. He was performing his military service at Silopi district gendarmerie command at the material time. He was on guard duty inside the building.

90. He did not know Serdar Tanış or Ebubekir Deniz. He had heard of them through the public prosecutor.

91. The witness said that he could not recall the following statement he made on 29 January 2001:

“The witness was shown photographs of Serdar Tanış and Ebubekir Deniz. He said, 'The persons you have shown me did not enter the station while I was on duty ... on 25 January 2001. As a great many civilians enter or leave the station, it is not easy to keep track of them'.”

16. Mehmet Taşdan

92. Mehmet Taşdan was born in 1979. He was performing his military service at Silopi district gendarmerie command at the material time. He was on guard duty at the main entrance to the station.

93. He said that the visitors' registers were kept by Veysel Ateş.

94. He did not know Serdar Tanış or Ebubekir Deniz. He had made a statement to the public prosecutor, who showed him photographs of the men and asked him if he knew them and whether he had seen them previously at the station. That is how he learnt that they were missing.

17. Selim Gül

95. Selim Gül was born in 1968. He was a non-commissioned officer engaged in operations intelligence at Silopi district gendarmerie command at the material time.

96. He said that his job was to gather intelligence for use in maintaining public order and preventing crime. He was the leader of a two-man team. He and his colleague reported to the commanding officer, Süleyman Can. The usual source of their information was individuals.

97. The witness knew Serdar Tanış and Ebubekir Deniz. Serdar Tanış contacted him by telephone at the end of 2000 to ask him for help as his father had been taken into custody for providing assistance and support to a terrorist organisation. Serdar Tanış offered to provide information in exchange. The witness first met Serdar Tanış in January 2001 in the commanding officer's office. Their discussion lasted several minutes, but the witness could not remember what it was about. They did not speak about Serdar Tanış's HADEP activities and he was not subjected to pressure or intimidation.

98. The witness said that Serdar Tanış provided him with information. He got in touch when he had information to pass on and in some ways acted as an agent for the witness and Captain Süleyman Can. The witness said that the first time he saw Ebubekir Deniz was on 25 January 2001.

99. On that date he saw both Serdar Tanış and Ebubekir Deniz in the waiting-room on the second floor of the gendarmerie station. They had come to see Süleyman Can about Ebubekir Deniz being disqualified from driving. The witness did not summon them to the building. As the commanding officer was not there, they left the waiting-room, Ebubekir Deniz first. The witness spoke with Serdar Tanış for approximately thirty seconds and he handed him documents wrapped in a newspaper he had taken out of the inside pocket of his jacket. One of the documents concerned HADEP, the other, contraband. The witness parted company with the two men in the building and saw them leave by the main entrance. However, he lost sight of them once they were in the street.

100. The witness did not recall when or how he was informed of their disappearance. He was questioned by the public prosecutor about it. He could not really remember whether he had handed the documents over to the public prosecutor.

101. He said that he gathered information about HADEP and other political parties as part of his job and that gendarmerie officers working in intelligence used unmarked vehicles when necessary. Taşkın Akgün worked for the intelligence service at the regimental headquarters of the Şırnak gendarmerie. The witness did not know whether Taşkın Akgün and other gendarmes came to Silopi in civilian dress on 25 January 2001. He contacted him after the men's disappearance in order to work with him on the investigation.

18. Veysel Ateş

102. Veysel Ateş was born in 1975. He was performing his military service and had the rank of sergeant at Silopi district gendarmerie command

at the material time. He was responsible for keeping the visitors' registers and carrying out the checks necessary for that purpose.

103. He said that once the checks had been carried out visitors were allowed to go to the relevant office unaccompanied.

104. He knew Serdar Tanış, who had already been to the gendarmerie station in the past. The witness was on duty on 25 January 2001. Serdar Tanış arrived with Ebubekir Deniz. They appeared relatively calm and he spoke with them briefly. They told him that they had come to see the commanding officer Süleyman Can. He informed them that he had gone out. Serdar Tanış asked when he would be back. The witness replied that the commanding officer did not give them any information about his schedule. Serdar Tanış decided to wait for him in the waiting-room. He entered their names in the register and the two men signed the book using his pen. The witness gave the following account of what ensued: "After a few minutes Serdar Tanış and Ebubekir Deniz returned to reception. I gave Serdar Tanış his mobile phone, they signed the register and left the premises. They did not say whether they had seen anyone else and did not ask to see Selim Gül."

105. As regards the visitors' register, the witness explained that when his turn of duty came to an end he would show the register to the officer relieving him, who would check it and sign at the foot of the last page. The witness was unable to explain why there was no signature in the register for 25 January 2001, whereas the corresponding page for 5 January 2001 did have one.

The visitors' register showed that Serdar Tanış had been to the station on 18 January 2001.

106. The witness said that he clearly recalled that he had not seen any vehicle pass through the entrance to the building on that date, other than military vehicles.

19. Yücel Erteki

107. Yücel Erteki was born in 1979. He was performing his military service as a sentry at Silopi district gendarmerie command.

108. He said that he had not been informed of the disappearance of Serdar Tanış and Ebubekir Deniz. From his post, he could not see people entering or leaving the building. He could not recall being summoned by the public prosecutor. However, he acknowledged that the signature on a statement taken by the public prosecutor was his.

20. Mehmet Bozca

109. Mehmet Bozca was born in 1966. He was a non-commissioned officer serving in the operations unit of the Şırnak gendarmerie at the material time.

110. He said that he had heard of Serdar Tanış and Ebubekir Deniz following anonymous information received at the gendarmerie station in March. While he could not remember the precise content of the information, the gist was that two people, who may have been Serdar Tanış and Ebubekir Deniz, had been taken by lorry to PKK camps in northern Iraq. The gendarmerie passed the information on to the anti-terrorist branch of the Security Directorate and drew up a report. He played no further part in the case.

21. Adnan Yenici, Murat Özbaş, Hüseyin Vedat Yılmaz, Ramazan Arlıcı and Ramazan Gürlek

111. The witnesses were born in 1972, 1970, 1949, 1970 and 1972 respectively. They were police officers at the Habur Security Directorate and responsible for immigration control at the border with northern Iraq.

112. They were informed that Serdar Tanış and Ebubekir Deniz were missing and were asked whether the two men had left or entered Turkey through the Habur checkpoint.

113. Acting on information from an anonymous informant, the witnesses stopped a lorry that had entered Turkey from Iraq and, during a search that took approximately five hours, seized a letter and a small bottle filled with green powder. They were somewhat surprised as the information related to a possible haul of leaflets issued by an illegal organisation. The driver was present during the search and denied any implication in the incident. They informed the Silopi public prosecutor, who came out to the checkpoint. The letter was intended for Şuayip Tanış and said that Serdar Tanış and Ebubekir Deniz were in PKK camps in northern Iraq.

22. Süleyman Can

114. Süleyman Can was born in 1968 and was the commanding officer of the Silopi district gendarmerie at the material time.

115. He said that his superior was Colonel Levent Ersöz, the commanding officer of the Şırnak gendarmerie regiment. He would converse with him several times a day.

116. He described the location of his office. Visitors waited in the waiting-room opposite his office and he saw them when he had time.

117. He had not known Serdar Tanış and Ebubekir Deniz before November 2000. He knew the former through his political activities as a member of HADEP. Serdar Tanış was in contact with non-commissioned officer Selim Gül and provided important information on the trafficking of arms, fuel, drugs and illegal products.

The witness met Şuayip Tanış for the first time in January. As the witness had only just been appointed to the post, Şuayip Tanış paid him a courtesy visit. He was accompanied by another person. Şuayip Tanış

mentioned that his son, Serdar, had just become President of the local branch of HADEP in Silopi and would shortly be paying him a visit. The witness asked Şuayip Tanış to congratulate his son on his behalf.

118. The witness said that in principle the establishment of a local party office or a change in its membership would be of no interest to him. However, certain information and material in his possession had raised concerns about possible links between HADEP and the terrorist organisation KADEK (Kurdistan Freedom and Democracy Congress). He did not at any stage ask Serdar Tanış and Ebubekir Deniz to give up their activities as members of HADEP.

119. He met Şuayip Tanış again on 17 January 2000. He came to pay him a visit with his brother Mustafa Tanış and two other people. This too was a courtesy visit. On 18 January Serdar Tanış himself came to visit him. The witness had already spoken with him on the telephone but this was the first time he had seen him. Serdar informed him of his new position at the local branch of HADEP and confirmed that he continued to see non-commissioned officer Selim Gül. Serdar told the witness: "Do not have any suspicions about me, I wish to collaborate closely with the State, with all the agents of the State, the gendarmerie, the police and the district governor." He added that party leaders and other people had been putting pressure on him. He had left Silopi for a time and had travelled to Van, Cizre and Diyarbakır to attend to personal matters and HADEP's affairs. The witness said that their meeting took place in a very friendly atmosphere and he even called in Selim Gül. This was the first time Selim Gül had met Serdar Tanış, as they had previously only spoken on the telephone. Serdar Tanış had contacted Selim Gül for help when his father was in custody and offered to provide information in exchange. The witness said that he had never met Ebubekir Deniz; however, he had seen his name mentioned in an official document as someone engaged in the transport of fuel from northern Iraq.

120. On the morning of 25 January 2001, the witness played host to a team of eight or nine inspectors whom he accompanied on a tour of inspection of the Ortaköy and Botaş gendarmerie posts (having left the station at approximately 1.30 p.m.). He did not return to the station until 5.30 p.m. or 6 p.m. and did not speak to Selim Gül that day. He saw him at about 5 p.m. the following day. The witness said that he was replaced by the duty officer during his absence. None of his superiors or other officers from the Şırnak regimental headquarters visited the Silopi district command on 25 January.

121. The witness said that on his return to the station in Silopi he received a telephone call from the Silopi public prosecutor, Kubilay Taştan, enquiring whether two people, who were members of HADEP, had been taken into custody at Silopi district gendarmerie command. He said that they had not, but that he would make enquiries at other gendarmerie posts. The public prosecutor rang back at about 9 p.m. and the witness informed

him that his enquiries indicated that neither Serdar Tanış nor Ebubekir Deniz had been taken into custody at any stage.

It was not until the following day that Süleyman Can learnt that Serdar Tanış and Ebubekir Deniz had come to see him. Selim Gül told him that he had spoken with the two men, who said that Ebubekir Deniz was having problems with his fuel transport business and needed his help. Before leaving the building Serdar Tanış handed some documents on HADEP to Selim Gül. The witness refused to divulge the content of those documents.

122. It was the witness's understanding that the public prosecutor was fully empowered to inspect the gendarmerie station (or to carry out an investigation). When visiting the station, the public prosecutor would inspect the registers and cells and thus perform routine checks.

123. With regard to HADEP's activities, the witness said that they were relatively concerned about the party's links with KADEK. He added:

“KADEK is a terrorist organisation and has a great deal of influence over HADEP. I informed Serdar Tanış about this and asked him to keep me informed of any developments. He assured me that Selim Gül and I would be informed without delay and that he would not be doing anything illegal. Prior to 26 January 2001 I had not spoken about Serdar Tanış and Ebubekir Deniz to my superior, Levent Ersöz. He had not asked me any questions about them. Following their disappearance, the public prosecutor and the Ministry of the Interior investigators made enquiries. All the enquiries focused on the Silopi district gendarmerie command. We also made enquiries: we questioned a number of people, some 400 soldiers, worked in close cooperation with the police and circulated posters bearing their photographs. However, when the letter was seized by police at the Habur border control, we directed our investigations to northern Iraq.

I repeat that no pressure was exerted by command as a result of HADEP's activities. The resignations of some of HADEP's members was an internal party affair. The allegations of threats and intimidation made by Şuayip Tanış are without foundation. He came to pay me a courtesy visit and brought me a gift, which I declined. No one ordered Serdar Tanış and Ebubekir Deniz to come to the station. I did not witness a call by Levent Ersöz to Şuayip Tanış on 5 January 2001; he did not say that unless Serdar Tanış came to see him he would never be able to set foot in Şırnak again and he would kill him. I repeat that neither Serdar Tanış nor Ebubekir Deniz were at any stage taken into custody. On 25 January they came to the station and then left.”

124. The witness said that after returning from his tour of inspection at about 5.30 p.m. on 25 January 2001 he was contacted by Mr İdris Tanış and the public prosecutor Kubilay Taştan. He told them that neither of the missing men was in custody and gave the same reply to the district governor the following day. In response to the district governor's comments, he checked the register of visitors' arrivals and was informed of Serdar Tanış and Ebubekir Deniz's visit. On 28 or 29 January 2001 the public prosecutor summoned the gendarmes and requested the registers.

125. As to the allegation that the visitors' register was not signed by the duty officer on 25 January 2001, the witness explained that there was no

rule on the subject and that it was left to the duty officer's discretion. The important point was to note comings and goings.

126. The witness did not know the officers on the interrogation and intelligence team at the Şırnak regimental headquarters. He was unable to comment on the document the Silopi public prosecutor had sent to the Şırnak public prosecutor asking to be allowed to interview the officer who had telephoned Serdar Tanış (on his mobile phone) at 1.44 p.m. on 25 January 2001 and indicating that the persons who had attempted to force him into their car at around 1.30 p.m. had been identified.

127. The witness said that he was questioned by the public prosecutor in February 2002, by which time he had been transferred to the Baykan district. The public prosecutor had not summoned him earlier. He said that certain teams from the Şırnak regimental headquarters (dealing with intelligence) wore plain clothes and used unmarked cars.

128. The witness denied telling Mehmet Ata Deniz that the JİTEM was not under his orders or the orders of the commanding officer of the Şırnak gendarmerie regiment. He said that he knew nothing about the JİTEM and had never heard of the existence of such a unit within the gendarmerie.

23. Kubilay Taştan

129. Kubilay Taştan was born in 1969 and was one of the Silopi public prosecutors at the material time. There were three public prosecutors in Silopi at the time, Hakan Başverdi, Gündoğan Öztürk and the witness.

130. He did not know Serdar Tanış and Ebubekir Deniz and had never met them. He was informed of the incident at about 5 p.m. on 25 January 2001 by Mr İdris Tanış. He contacted the commanding officer of the Silopi gendarmerie on the telephone and asked his replacement to make enquiries of all the gendarmerie posts. Süleyman Can called him back to say that neither of the missing men had been to the gendarmerie station or taken into custody.

After receiving that information he did not consider an on-site inspection necessary. The procedure was that the commanding officer of the gendarmerie had a duty to inform him whenever anyone was taken into custody and of the reasons for the arrest. He regarded everything he was told by the gendarmes as true. He gave the following account of the events:

“We considered that Serdar Tanış and Ebubekir Deniz had not been taken into custody. The investigation proceeded orally. I found the information provided by the commanding officer to be satisfactory. On 26 January 2001 I contacted the Şırnak, Cizre and İdil public prosecutors' offices by telephone and asked whether the missing men had been detained within their sectors. They said they had not. Later that day Mr Tanış arrived with the father of one of the missing men. We took a statement from him, they lodged their complaint and the investigation began that day. On 27 and 28 January I took a statement from someone who said that he saw Serdar Tanış and Ebubekir Deniz enter the district gendarmerie command and gave instructions to the commanding officer to send full lists of the names of the soldiers and officers who

were on the premises on 25 January 2001. I also questioned five or six soldiers who were on duty that day. I repeat that it would not have been possible to conceal any detention from me and that there would have been no point in my going to the station. On 29 January 2001, in accordance with our internal organisation procedure, I handed the investigation file over to my colleague Gündoğan Öztürk, who took evidence from various gendarmes and members of the armed forces. On the same day a delegation from the Human Rights Association came to see me and asked me questions about the investigation. I did not say that they should look for Serdar Tanış and Ebubekir Deniz in Şırnak. I always spoke to Süleyman Can on the telephone and did not meet him in person. We did not receive any information about what had happened to the missing men. I saw the visitors' register and the custody record on 29 January 2001 and checked the signatures.”

131. With regard to the investigation procedure, the witness said that, when investigating a case, the public prosecutor was in all cases entitled to enter the gendarmerie station, make enquiries on the premises and carry out judicial checks, such as inspecting the cells or checking the lawfulness and conditions of detention.

132. He expressed no view on the allegation that a gendarme had called Serdar Tanış to ask him to come to the station. He said that he could not divulge the name of that person as the investigation was confidential.

24. Gündoğan Öztürk

133. Gündoğan Öztürk was born in 1971 and was a public prosecutor in Silopi at the material time.

134. He did not know Serdar Tanış or Ebubekir Deniz. He was in charge of the investigation into the disappearance of the two men for a period of five months before being transferred on 12 July 2001.

He gave the following account:

“There were three public prosecutors in Silopi. One of us was on duty each week. I was given the file on the case by Kubilay Taştan. He had taken some statements and requested the registers from the station. I questioned the gendarmes who were present at Silopi district gendarmerie command on 25 January 2001 and carried out a proper investigation taking all possibilities into account. On a number of occasions I used Eyüp Tanış, who was a key witness in this case. I sent him to Diyarbakır so that an identikit picture could be made of the people who had attempted to force Serdar Tanış into a car. I asked for the people who had telephoned him to be identified and photographs of all personnel at Silopi district gendarmerie command were shown to Eyüp Tanış. The public prosecutors' offices in the region were informed that the two men were missing. Copies of the visitors' registers to the station were sent to the Institute of Forensic Medicine. I did not take a statement from Süleyman Can as I was not given the authority to do so, as when a commanding officer was accused of an offence authorisation was needed from the Ministry of Justice. I questioned the other gendarmes as suspects.

Until 26 February 2001 those concerned had access to the documents in the investigation file and a copy of the material in the file was given to İdris Tanış. However, the information had been disseminated by the media, including the media controlled by the illegal organisation. Therefore, further to an application by me with

a view to bringing the investigation to a successful conclusion, the judge made an order on 26 February 2001 imposing restrictions on access to the file. It is true that the commanding officer of the Silopi gendarmerie had earlier sought an order making all the statements from the gendarmerie personnel confidential.”

135. In response to a question regarding the identity of the person who had telephoned Serdar Tanış on 25 January 2001, the witness replied:

“No call was made by the commanding officer of the Silopi gendarmerie. The list compiled by the telephone operators indicates the name of the person who rang Serdar Tanış. That name appears in the file. When we sent a copy of the investigation file to the Ministry of Justice, the names had not been deleted. Since the person concerned was not in Silopi, I had no jurisdiction to question him or her or to organise an identification procedure. I informed the competent public prosecutor's office and it was its responsibility to take the necessary action.”

25. Hakan Başverdi

136. Hakan Başverdi was born in 1968 and was a public prosecutor in Silopi at the material time.

137. He did not know Serdar Tanış or Ebubekir Deniz and was not personally responsible for the investigation. However, the other two public prosecutors worked with him.

D. The documentary evidence

1. The petitions lodged with the Silopi public prosecutor's office by İdris Tanış on 26 January 2001 and by Şuayip Tanış and Mehmet Ata Deniz on 29 January 2001

138. The applicants alleged that Serdar Tanış and Ebubekir Deniz had been threatened and intimidated by the commanding officer of the Şırnak gendarmerie regiment on account of their activities as members of HADEP. They stated that after being summoned by the commanding officer of the Silopi gendarmerie the missing men had gone to the station on 25 January 2001. There had been no news of them since.

2. The documents relating to the investigation carried out by the Silopi public prosecutor's office

139. On 26 January 2001 the public prosecutor Kubilay Taştan took evidence from Eyüp Tanış and Ömer Sansur. The latter said that, following a telephone call from the commanding officer, he had taken Serdar Tanış and Ebubekir Deniz by car to the Silopi gendarmerie.

The telephone records showed that Serdar Tanış had received a call on his mobile phone at 1.44 p.m. on 25 January 2001.

140. On 27 January 2001 statements were taken from Eyüp and İdris Tanış at the Silopi Security Directorate. Eyüp Tanış described the men who had attempted to force him and Serdar Tanış to get into their car. İdris Tanış said that Eyüp and Serdar Tanış had been intimidated in the past on account of their activities as members of HADEP and that he was worried about their safety.

141. On 28 January 2001, further to an oral request from the Silopi public prosecutor's office, the commanding officer of the Şırnak gendarmerie regiment sent two notes to the Şırnak and Silopi public prosecutors' offices and to the Şırnak provincial governor indicating that:

(a) Serdar Tanış went to the Silopi district gendarmerie command of his own accord on 18 January 2001, and during his meeting there he was not threatened on account of his political activities or forced to resign from his position as leader of the local branch of HADEP;

(b) On 25 January 2001, Serdar Tanış and Ebubekir Deniz went to the station of their own free will and left the building at 2.30 p.m.;

(c) During the visit, the commanding officer was out inspecting the Ortaköy gendarmerie post;

(d) Serdar Tanış was a gendarmerie informant;

(e) On 25 January 2001 Serdar Tanış handed over certain documents to a non-commissioned officer and sought the latter's help with respect to the revocation of Ebubekir Deniz's operator's licence;

(f) The purpose of all the allegations that had been made was to tarnish the image of the security forces, to misinform the public and to put pressure on the courts following the arrest of HADEP leaders in Şırnak on account of their links with the PKK. The persons concerned had issued official statements indicating that they had received death threats and those allegations had appeared in the 5 January 2001 edition of the *Yeni Gündem* newspaper.

142. On 29 January 2001 the public prosecutor Kubilay Taştan took statements from two witnesses who said that they had seen Serdar Tanış and Ebubekir Deniz enter the gendarmerie station together, from the applicants Şuayip Tanış and Mehmet Ata Deniz, and from four gendarmes from Silopi station. The gendarme Veysel Ateş said that Serdar Tanış was wearing a suit and entered the building with Ebubekir Deniz. The two men left approximately half an hour after arriving. The gendarme Yücel Erteki stated that Ebubekir Deniz arrived at the station half an hour before Serdar Tanış.

143. On 30 January 2001 the public prosecutor Gündoğan Öztürk took statements from two gendarmes who said that the missing men had not been taken into custody in any of the gendarmerie posts and that they had no information about them.

144. As to the other statements taken by the Silopi public prosecutor's office, the Court notes that certain names and information have been deleted from the documents the Government produced on 5 March 2003. The

Government stated that, owing to a confidentiality order made by the competent court, they were unable to disclose the name or details of the person who had telephoned Serdar Tanış on 25 January 2001, whom the public prosecutor Gündoğan Öztürk had identified, or to provide the unexpurgated investigation file containing the information that had been deleted from the file sent originally.

145. On 19 November 2001 Şuayip Tanış and his brother Nurettin were questioned by the public prosecutor. Nurettin Tanış stated that in January 2001 they were arrested on the Silopi road while on their way to Cizre by three people in civilian dress who asked Şuayip Tanış to go to the Şırnak regimental headquarters. Şuayip Tanış went to see the commanding officer Levent Ersöz, who told him that Serdar Tanış should resign from his position in HADEP.

146. On 22 April 2003 the Silopi public prosecutor sent the case file to the public prosecutor at the Diyarbakır National Security Court.

3. The other evidence before the Court

147. On 6 October 2003 the Government sent the Court a letter from General Levent Ersöz, stating that the investigation by the Silopi public prosecutor was still pending and that a simultaneous investigation by the Court would interfere with due process and undermine the investigation. He said that he had submitted his written statement to the domestic court authorities and refused to appear as a witness before the Court.

148. In a letter of 25 November 2003, the Government informed the Court of the outcome of the proceedings concerning the complaint lodged with the Şırnak public prosecutor by Resul Sadak of intimidation against HADEP party members. They said that the investigation had begun on 2 March 2001. The public prosecutor had declared that he had no jurisdiction *ratione materiae* and had returned the case file to the Şırnak Administrative Council. In an order dated 1 June 2001, the Administrative Council had concluded that there were no grounds for prosecuting the gendarmes against whom the accusations had been made.

149. In a letter to the Court dated 1 December 2003, the applicants' representative said that the person who made the telephone call to Serdar Tanış had been identified by the Silopi public prosecutor as the head of the intelligence and interrogation unit of the Şırnak gendarmerie regiment, Taşkın Akyün. He said that the file showed that Mr Akyün and two gendarmes from the same unit had attempted to force Serdar Tanış to get into the car on 25 January 2001.

150. On 20 May 2002 the Şırnak public prosecutor ruled that the commanding officer of the Şırnak gendarmerie, Levent Ersöz, had no case to answer on the charge of making threats in order to secure compliance with an ultimatum.

151. On 20 May 2003 Şuayip Tanış asked the President of the Siirt Assize Court to review that decision and again alleged that death threats had been made. His application was dismissed on 19 January 2004 on the ground that there was no evidence in the file to show that the accused had threatened Şuayip Tanış.

4. The public prosecutor at the Diyarbakır National Security Court's decision that the defendants had no case to answer

152. On 9 February 2004 the public prosecutor ruled that seventy-three of the defendants, including forty-eight gendarmes, had no case to answer. His findings were as follows:

“The document ... dated 22 April 2003 drafted by the Silopi public prosecutor's office on the kidnapping incident has been examined.

... the Silopi public prosecutor's office, on 22 April 2003, when referring the investigation file concerning the disappearance of the President and Secretary of the local branch of HADEP in Silopi, Serdar Tanış and Ebubekir Deniz, ... asserted that the events in this case fell within the jurisdiction of the National Security Court for the following reasons:

1. As regards defendants nos. 1 to 47 and defendant no. 71 – at approximately 1 p.m. on the date of the incident three individuals claiming to be police officers pulled up in a vehicle in front of Serdar Tanış and Eyüp Tanış outside Silopi Post Office and asked them to get in. Serdar Tanış and Eyüp Tanış refused, saying that they would go to the gendarmerie headquarters only if they received a call from the authorities. Serdar Tanış received a telephone call at about 2.30 p.m. and was summoned to the Silopi district gendarmerie command. Serdar Tanış and Ebubekir Deniz went to the gendarmerie headquarters and have not been heard of since.

Approximately twenty-five days before the incident, the commanding officer of the Şırnak gendarmerie regiment had summoned Serdar Tanış's father, Şuayip Tanış, and threatened him telling him that his son should resign from his position as President of the local branch of HADEP as otherwise neither he nor his family would be allowed to live. The missing men were abducted by the security forces. Acts of serving security forces in the region contravened Article 174 § 2 of the Turkish Criminal Code and fell within the jurisdiction of the National Security Court.

2. As regards defendant no. 70 – according to information received on police telephone numbers 155 and 156 approximately one month previously, the President of the HADEP provincial office in Şırnak, Resul Sadak, had sent Serdar Tanış and Ebubekir Deniz in a state of unconsciousness from Silopi to northern Iraq where they were to be handed over to the PKK in exchange for 5,000 [United States] dollars [USD]. Such conduct contravened Article 168 § 1 of the Turkish Criminal Code and fell within the jurisdiction of the National Security Court.

3. As regards defendants nos. 48 to 60, 62 to 69 and 72 – calls were made from their telephones after 25 January 2001 to number 0542 8078821, which is Ebubekir Deniz's telephone number. Such conduct contravened Article 169 of the Turkish Criminal Code and fell within the jurisdiction of the National Security Court.

4. As regards defendant no. 61, Zeki Genç – the defendant has made a statement to the press saying that he killed the two missing men.

Having regard to the material in the investigation file and information obtained from the additional investigation by this office:

1. As regards defendants nos. 1 to 47 and defendant no. 71, who are serving members of the security forces in the region and local informants.

Firstly, an order was made to sever the investigation file concerning the allegations of death threats made by the commanding officer of the Şırnak gendarmerie regiment, the head of the security forces in the region, against Şuayip Tanış, the father of the missing Serdar Tanış, and to send it to the Şırnak public prosecutor's office for investigation. Following the investigation by the Şırnak public prosecutor's office ..., a decision was made on 20 May 2002 that there was no case to answer as the only evidence was abstract allegations. Following an objection by Şuayip Tanış's representative, Tahir Elçi, the President of the Siirt Assize Court decided on 19 January 2004 ... to reject it, for want of sufficient evidence to institute proceedings or try ... the commanding officer of the Şırnak gendarmerie, and to uphold the decision that there was no case to answer.

Since that decision is final, the allegation that 'he [Serdar Tanış] was threatened with death twenty-five days before the incident', which constitutes the basis for the allegations that the said persons were kidnapped and executed by the security forces, is still pending and has not been made out.

Further, as regards the allegation that Serdar Tanış and Ebubekir Deniz were summoned by the commanding officer of the Silopi district gendarmerie shortly before they went missing, that it has been impossible to obtain any news about them since and that they were kidnapped by the security forces:

Having regard to the information provided to the investigators by the commanding officer of the Silopi gendarmerie and the examination by the local public prosecutor's office of the registers kept by the Silopi district gendarmerie command;

It has been established from the signatures in the visitors' register at the district gendarmerie command that the missing persons arrived at the Silopi district gendarmerie command at 2 p.m. on the day they disappeared; that the records state that they left at 2.30 p.m.; that their signatures on their arrival and departure appear opposite their names; that these signatures were sent to the Institute of Forensic Medicine for comparison with samples of their signatures obtained by the local public prosecutor's office from various public records; and that the department of the Istanbul Forensic Medical Institute specialising in handwriting analysis ... concluded in its report of 29 June 2001 ... that the signatures in the register opposite the names of the missing men ... were those of Serdar Tanış and Ebubekir Deniz.

Further, according to the Silopi gendarmerie, Serdar Tanış was a local informant. He provided information and documents about past or future incidents in the region. On the day of his disappearance he attended the gendarmerie headquarters for that reason. ... the visitors' register shows that on 5 and 17 January 2001 his father, Şuayip Tanış, and on 18 January 2001 Serdar Tanış himself, went to the gendarmerie headquarters; it was also noted that there was a fact sheet in the name of Serdar Tanış among the fact sheets giving details of the sources and means of obtaining information held by

the central gendarmerie command at the Ministry of the Interior where the names of local informants were listed.

In the light of these explanations, the investigation file does not contain sufficient information and evidence to establish that the missing persons have been kidnapped by the security forces.

2. As regards defendant no. 70, Resul Sadak – in view of the information received by the security forces at 3.15 p.m. on 4 March 2001 from a person who did not disclose his or her identity and has not been identified ('I do not recall the date exactly, I negotiated with Resul Sadak, a member of HADEP, to take two people to the north of Iraq in exchange for USD 5,000. I smuggled them to the north of Iraq via the Habur border checkpoint in a lorry. On the way, the road was blocked by armed individuals who took the two men with them. They also took the USD 5,000. I asked Resul Sadak for this money on my return, but he did not give it to me.'), it was alleged that the defendant had sent the missing persons to the PKK in northern Iraq in exchange for money.

In view of:

- (a) the denial of these accusations by the defendant;
- (b) the failure to identify the informant;
- (c) the informant's failure to ask the authorities to take action;
- (d) the lack of concrete evidence to support the allegation;

the investigation file does not contain sufficient information and evidence to establish the truth of that allegation.

3. As regards defendants nos. 48 to 60, 62 to 69 and 72 – although the telecommunications records established that calls were made after the disappearance of the two men to telephone number 0542 8078821, which is registered in the name of Ebubekir Deniz, that telephone is not used by Ebubekir Deniz, but by his uncle Mehmet Reşat Tanış, who has used it since 2000 and who received the calls that were made to it. In view of that fact, the investigation file does not contain sufficient information or evidence to establish that the defendants established contact with Ebubekir Deniz after the date of his disappearance.

4. As regards defendant no. 61, Zeki Genç – it has been claimed that the defendant had stated in the press that he killed the missing men.

However, in view of:

- (a) the statements made by the defendant on 10 May 2002 to the public prosecutor, in which he said that after seeing a group of HADEP party members set the Turkish flag on fire and insult martyrs [people who had been killed by PKK militants] he had snatched back the flag and injured a person in the leg for insulting his brother, a martyr, that he had no connection with the missing persons and the article in the 15 November 2001 edition of the *Star* newspaper was exaggerated, that he rejected the accusation and did not know the missing persons;

(b) the fact that it is impossible to find concrete evidence to support the newspaper article;

the investigation file does not contain sufficient information and evidence as regards this allegation.

In the light of the above findings:

The defendant's implication ... in the disappearance of the two men has not been sufficiently established to enable criminal proceedings to be instituted under Article 163 of the Code of Criminal procedure.

Decides, pursuant to Articles 164 and 165 of the Code of Criminal Procedure:

That, in the light of the lack of evidence, no criminal proceedings should be brought against the defendants;

That in view of the confidentiality order issued by the Silopi District Court on 11 December 2001 under the provisions of the Code of Criminal Procedure and the restriction imposed on the rights of the parties or their representatives to examine the case file and to take copies of documents, owing to the fact that when the investigation was carried out by the local public prosecutor's office statements were obtained from local informants in which their names and addresses were given, it is necessary to remove from the file and hold at the public prosecutor's office at the National Security Court pursuant to section 6 of the Prevention of Terrorism Act the statements of the local informants, the information relating to their identity and a copy of the documents, without prejudice to the merits;

To return the case file to the Silopi public prosecutor's office, which has jurisdiction in the area in which the incident took place, in order to discover the real culprits;

To serve a copy of the decision on the complainants, their representatives and the defendants;

To serve a copy on the Department of Criminal Affairs, on the Department of International Law and External Relations at the Ministry of Justice, as the case is the subject of an application to the European Court of Human Rights; and

To serve a copy of the decision on the commanding officer of the Şırnak provincial gendarmerie, as the accused include gendarmerie officers."

153. The applicants appealed against the decision that there was no case to answer. Their appeal was dismissed by the Malatya National Security Court on 3 May 2004. The relevant passages from its decision read as follows:

"Having considered the grounds of appeal and the investigation file:

1. The decision that the defendants, who are public servants, have no case to answer concerns Article 174 § 2 of the Criminal Code [which governs offences against political freedom]. No such order has been made in the case concerning the disappearance. The decision contains an order to pursue the investigation into that incident.

2. A decision that there is no case to answer is not a final decision. The proceedings will resume if new evidence comes to light before the end of the limitation period. Proceedings may be brought *de novo* against an accused who has been found to have no case to answer or against other suspects (Article 167 § 2 of the Code of Criminal Procedure).

In the present case, the offence in respect of which the appeal has been made is within the jurisdiction of the National Security Court. No additional investigation has been ordered under Article 166 § 2 of the Code of Criminal Procedure since no defect liable to affect the merits has been found. However, it would appear advisable to take the following steps when gathering evidence in the course of the investigation:

(a) To obtain a new statement from Taşkın Akyün regarding the point referred to in the document issued on 11 June 2001 by the Silopi public prosecutor's office; to organise a confrontation between the witness Eyüp Tanış and Taşkın Akyün, in accordance with the procedure, in order to clear up the uncertainty over identification; to establish why Taşkın Akyün called Serdar Tanış at 1.44 p.m. on 25 January 2001;

(b) To trace the record drawn up on 12 January 2001 concerning the lorry with registration number 73 DK 558 and to obtain a statement from Sami Tanış, whose name is mentioned in the record, in order to determine why Ebubekir Deniz went to the gendarmerie headquarters;

(c) In order to determine whether Eyüp Tanış and Serdar Tanış were threatened on the day of the incident [attempt made to force them to get into a vehicle], to identify the registration number of the vehicle concerned, and establish why the eyewitness Eyüp Tanış failed in broad daylight to note a single letter from the number plate which was very close to him when he had given a detailed description of the people who had tried to force them to get into the vehicle;

(d) To send the photograph of Serdar Tanış in the case file and the photograph allegedly portraying Serdar Tanış with a militant from the organisation to the relevant department at the Istanbul Institute of Forensic Medicine to see whether the two photographs are of the same person.

Having regard to the aforementioned considerations:

Decides, following its examination of the case file, dismissing the appeal and sitting as a court of last instance:

1. To dismiss the complainants' objections to the public prosecutor at the National Security Court's decision of 9 February 2004 that there was no case to answer concerning the offence under Article 174 of the Criminal Code of using threats or violence to prevent the exercise of political rights, as the decision complied with the rules of procedure and the law;

2. To pursue the investigation, to send the case file to the Silopi public prosecutor's office to remedy the defects noted in the investigation and listed above ...

To remit the case file to the public prosecutor's office at the Diyarbakır National Security Court.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

154. The Criminal Code makes it an offence to:

- (a) arbitrarily deprive a person of his or her liberty (Article 179 lays down the general rule, Article 181 the rule applicable to public servants);
- (b) make threats (Article 191);
- (c) subject a person to torture or ill-treatment (Articles 243 and 245);
- (d) commit involuntary homicide (Articles 452 and 459), voluntary homicide (Article 448) or premeditated murder (Article 450).

155. For all these offences, complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, with the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against a decision by the public prosecutor not to institute criminal proceedings.

The public prosecutor had no jurisdiction to investigate alleged acts of terrorism, for which a separate system of national security prosecutors and courts operated throughout Turkey (at the material time).

156. Article 143 of the Code of Criminal Procedure provides:

“Counsel for the defence may examine all the material in the investigation file and the procedural file and take copies of any documents free of charge.

If it would be prejudicial to the preliminary investigation for this right to be exercised, a district court judge may, on an application by the public prosecutor, make an order restricting its exercise ...”

157. Article 174 of the Criminal Code provides:

“Anyone who by threats or violence ... totally or partly prevents another from exercising his or her political rights shall be guilty of an offence ...

If the offender is a public servant who has abused his or her authority to commit the offence, the prison sentence shall be ... and the offender shall be disqualified from public service for between one and three years.”

THE LAW

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

158. The Court is called upon to decide whether on the facts the authorities of the respondent State failed to comply with their duty to

protect the applicants' relatives' right to life and with their procedural duty, which likewise arises under Article 2 of the Convention, to carry out an adequate and effective investigation into the incident. The applicants also relied on Articles 3, 5 and 13 of the Convention.

159. In order to establish the facts, the Court has referred to the parties' observations, the documentary evidence and the depositions taken from the witnesses in Ankara.

160. The Court considers the following principles to be relevant when assessing the evidence for the purposes of establishing the facts.

(a) In assessing the written and oral evidence, the Court has generally adopted up to now the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact; in addition, the conduct of the parties when evidence is being obtained may be taken into account (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) As regards the depositions taken by the delegates, the Court has paid particular attention to the issue of the meaning and weight to be attached to the witnesses' testimony.

(c) In cases in which there are conflicting accounts, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. The Court has no power to compel the attendance of witnesses. In the present case, two witnesses failed to attend the hearing before the delegates: Levent Ersöz, the commanding officer of the Şırnak gendarmerie regiment at the material time; and the person who telephoned Serdar Tanış on 25 January 2001, whose identity has not been revealed by the Government. In addition, the Court has not been able to obtain a complete set of unexpurgated documents from the investigation file. Its task of establishing the facts has been made more difficult as a result of these gaps in the material before it.

When, as in the instant case, the respondent Government have exclusive access to information and the power to secure the attendance of witnesses able to corroborate or refute the applicants' allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations (see, *mutatis mutandis*, *Akkum and Others v. Turkey*, no. 21894/93, § 209, ECHR 2005-II).

(d) The Court has previously held that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Tomasi*

v. France, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; and *Salman*, cited above, § 100).

Further, since the authorities are accountable for persons in their custody, Article 5 requires them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1185, § 124, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 104, ECHR 1999-IV).

These principles also apply to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she was officially summoned by the military or the police, entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty. In the absence of such an explanation, the Court's examination of the case may extend beyond Article 5 of the Convention to encompass, in certain circumstances, Article 2.

161. In a case such as the present one in which there are contradictory and conflicting factual accounts of the events, the Court finds it particularly regrettable that there should have been no thorough judicial examination or other independent investigation into the relevant facts by the domestic courts. In that connection, it reiterates the importance of the first undertaking given by the Contracting States, in accordance with Article 1 of the Convention, which is to secure the rights guaranteed by the Convention, and in particular the right to an effective remedy laid down by Article 13 of the Convention.

A. Article 38 § 1 (a) of the Convention

162. The relevant part of Article 38 of the Convention provides:

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

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

...”

163. The Court notes that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti*

incumbit probatio (he who alleges something must prove that allegation). It has previously held that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see, for example, *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 or her rights under the Convention, that in certain instances only the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention, but may also give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI, and *Tepe v. Turkey*, no. 27244/95, § 128, 9 May 2003). The same principle will apply where the State fails to secure the attendance of witnesses at a hearing, thereby making it far more difficult to establish the facts.

164. In the light of the foregoing principles, the Court considers that the Government's failure to respond diligently to the Court's requests for the evidence it considered necessary for the examination of the application, such as an unexpurgated copy of the investigation file, and the fact that it was unable to take evidence from Levent Ersöz, the commanding officer of the Şırnak gendarmerie regiment at the material time, or from the person, whose name has been withheld, who telephoned Serdar Tanış on 25 January 2001 (see paragraphs 8-9 and 160 above), cannot be reconciled with the Government's obligations under Article 38 § 1 (a) of the Convention.

B. The Court's assessment of the facts

165. In their application form and in their oral testimony before the delegates, the applicants said that Serdar Tanış and Ebubekir Deniz had received death threats from the commanding officers of the Silopi and Şırnak gendarmeries and had to be presumed dead following their unacknowledged detention by the security forces.

1. Events prior to the disappearance of Serdar Tanış and Ebubekir Deniz

166. According to the evidence of Ali Ürküt, the President of HADEP in Diyarbakır, towards the end of 2000 Serdar Tanış and Ebubekir Deniz were actively engaged in opening a branch of the party in the district of Silopi, where they had been appointed party administrators. At the time, HADEP's leadership was increasingly being harassed by the authorities and when it

came to the authorities' attention that Serdar Tanış and Ebubekir Deniz had been appointed party administrators, the two men began to be subjected to all kinds of pressure: they were constantly harassed, followed and threatened by the authorities to the point where they were forced to leave Silopi and to travel to Diyarbakır, where they remained until the first week of January 2001. On 8 January 2001, the day before the official opening of the Silopi branch, Serdar Tanış left a petition with Ali Ürküt describing in detail the harassment to which he had been subjected.

167. Ali Ürküt's evidence was corroborated by Resul Sadak, the President of HADEP in Şırnak, who stated that the party leaders, including Serdar Tanış, had been threatened by members of the security forces in an attempt to dissuade them from opening a branch in Silopi.

168. In his evidence Serdar Tanış's father, Şuayip Tanış, described the actual threats which he said had been made by members of the security forces to prevent his son from opening a branch and continuing his activities as a member of HADEP. He explained how a few weeks before his son went missing he himself had been arrested in Cizre, while travelling to Şırnak, by members of the security forces who had told him that the commanding officer of the Şırnak regiment, Levent Ersöz, wished to speak to him. He went to Şırnak, as requested, on 2 January 2001. Levent Ersöz told him to end his involvement with HADEP and asked where his son was. On being told that he was in Diyarbakır, he instructed Şuayip Tanış to tell him to come and see him immediately. A few days later, Şuayip Tanış received a telephone call informing him that Süleyman Can, the commanding officer of the Silopi district gendarmerie wished to see him. He complied with that request and, during his meeting with Süleyman Can, he took a call from Levent Ersöz, who instructed him to tell Serdar Tanış that unless he went to see him that same day, he would be killed if he ever set foot in Şırnak province again. Later that month, Şuayip Tanış received a further summons from Süleyman Can, who told him once again that he had to persuade his son to end his involvement with HADEP and that Serdar Tanış would be in trouble unless he resigned from the party. Süleyman Can instructed Şuayip Tanış to send Serdar Tanış to see him. Shortly afterwards, his son told him that he had been summoned by Süleyman Can and told to leave HADEP. He refused, saying that the party was legal and that if he did not set up a branch, someone else would. The register of visitors to the district gendarmerie station clearly shows that such a meeting took place on 18 January 2001.

169. Şuayip Tanış's account was confirmed by other witnesses. Eyüp Tanış said that before the party branch was opened, Serdar Tanış and Ebubekir Deniz were harassed and followed by plain-clothes police officers in Silopi and forced to leave the town; he added that three members of HADEP had left the party after receiving threats from the authorities. Selma Güngen, Serdar Tanış's wife, said that her husband had received a number

of threats from the authorities on account of his political activities and had been forced to leave Silopi. Divan Arsu and Zehra Deniz, Ebubekir Deniz's partner and wife, said that he had received countless visits from the authorities when he first became involved with HADEP and he too had been obliged to leave Silopi. Ebcet Sunmez described the circumstances in which Şuayip Tanış had been summoned by the commanding officer of the Silopi district gendarmerie, his meeting with Süleyman Can and the telephone conversation with the regimental commanding officer, Levent Ersöz, and the death threats the latter had made.

170. The statements of these witnesses were disputed by the members of the security forces who testified before the delegates of the Court. Selim Gül, who at the material time was a non-commissioned officer in the intelligence unit at Silopi district gendarmerie command, denied that the authorities had put any pressure on HADEP members and said that since the end of 2000, Serdar Tanış had in fact been providing him with information on the illegal activities in which the party was engaged. He had initially made contact with Serdar Tanış by telephone, and had met him for the first time on 18 January 2001 when he came to the station to see Süleyman Can. He was, however, unable to remember what was said during the brief period he was there.

Süleyman Can in person denied that any pressure had been brought to bear on the HADEP leadership, although he did acknowledge that the authorities had concerns about HADEP after receiving information suggesting that it had established contact with the terrorist organisation KADEK. He confirmed that Serdar Tanış had supplied information about certain offences that had been committed in the province.

171. As to his two meetings with Şuayip Tanış in January, Süleyman Can said that on both occasions it was Şuayip Tanış who came to see him in order to congratulate him, in accordance with local tradition, on his recent appointment as commanding officer and to introduce him to other people in the province. He denied having a telephone conversation with Levent Ersöz during the meeting in the course of which threats were made against Serdar Tanış or ever having put pressure on Şuayip Tanış to persuade his son to abandon his activities as a member of HADEP. Nor had he made any demands at the meeting of 17 January for Serdar Tanış to come and see him: he had simply told Şuayip Tanış that he was prepared to meet Serdar Tanış at his convenience. At the meeting on 18 January, Serdar Tanış had given Süleyman Can his telephone number so that they could remain in touch, before proceeding to explain that because of his amicable relations with the authorities, there were occasions when the party leadership exerted pressure on him and that some members of the party wanted to oust him from the presidency.

172. Levent Ersöz's refusal to testify before the delegates of the Court has made the Court's task of assessing the witnesses' conflicting accounts of

the relationship between the authorities and the leaders of HADEP, in particular Serdar Tanış and Ebubekir Deniz, more difficult. His evidence on the general stance taken by the authorities on the HADEP question, on the efforts he was alleged to have made to dissuade Serdar Tanış from continuing with his activities within the party and on the direct threats he was alleged to have made on the telephone were quite clearly of central relevance to the examination of the case by the Court.

173. On the basis of their testimony before the delegates, the Court finds the evidence of a number of witnesses that HADEP's leaders were subjected to harassment by the authorities consistent, credible and convincing. It also finds convincing the evidence of the two missing men's relatives and the party presidents that Serdar Tanış and Ebubekir Deniz became specific targets for harassment once it became known that they intended to set up a local branch. Şuayip Tanış's account of the circumstances in which he met Levent Ersöz (which, in the absence of any testimony from the latter, has not been contradicted) is consistent not only with the statements taken by the Human Rights Association, but also with the petition Serdar Tanış himself drafted on 8 January 2001. His account of the threats made by Levent Ersöz, though disputed by Süleyman Can, is expressly corroborated by the evidence of Ebcet Sunmez and again accords with Serdar Tanış's virtually contemporaneous account in his petition. In addition, Şuayip Tanış's assertion that he had been instructed at the meeting of 17 January to tell Serdar Tanış to go to see Süleyman Can is corroborated by the fact that he visited him the following day. Not only does the Court consider Şuayip Tanış to be a reliable witness, it finds no evidence to support Süleyman Can's suggestion that his allegation that the security forces had engaged in harassment prior to Serdar Tanış's disappearance had been made as a result of "manipulation" by unidentified persons.

2. Events of 25 January 2001

174. Eyüp Tanış said in evidence that when he and Serdar Tanış left the post office in Silopi at about 1.30 p.m. on 25 January 2001 three men in civilian dress waiting in a car approached them claiming to be police officers. This account has not been contested and was regarded as an established fact by the prosecutors after Serdar Tanış and Ebubekir Deniz went missing. Nor has it been disputed that the two men were told to get into the vehicle to discuss certain matters or that Serdar Tanış refused, saying that any discussion would have to take place in the proper place, such as the Silopi gendarmerie station or Security Directorate.

175. Eyüp Tanış stated in his testimony that shortly after returning to the party offices Serdar Tanış received a call on his mobile phone from someone claiming to be from the Silopi gendarmerie who asked him to go to the station. His evidence was corroborated by Ömer Sansur, who said that Serdar Tanış had been about to set off for the station on his own when

Ebubekir Deniz insisted on accompanying him. The witness agreed to drive them there and did so, dropping them off at the entrance. The two men were in fact seen entering the station by two acquaintances, Hamit Belge and İsa Kanat.

176. The only evidence regarding what happened after the two men entered the district gendarmerie station is the testimony of the members of the security forces. According to Veysel Ateş, the sergeant on duty at the main entrance that day, Serdar Tanış and Ebubekir Deniz informed him that they wished to see Süleyman Can to speak to him about something. When he told them that he was not at the station and that he did not know when he would be back, they had said that they would wait for a while and, after signing the visitors' register, they had been directed to the waiting-room on the second floor next to the commanding officer's office. Selim Gül said that he spotted Serdar Tanış and Ebubekir Deniz by chance as he went past the room where they were waiting. They told him that they were waiting for Süleyman Can as they wished to speak to him about Ebubekir Deniz's lorry, which had been seized as he was suspected of involvement in the illegal importation of fuel. After a brief discussion the two men got up to leave. Ebubekir Deniz left the room shortly before Serdar Tanış, who handed him a HADEP document and a piece of paper with information about contraband taken out of the inside pocket of his jacket. Selim Gül said that he saw the two men go downstairs and leave the station by the main entrance. Veysel Ateş said that when the two men returned to the main entrance, Serdar Tanış said that they had decided to leave as Süleyman Can had not arrived, but that they would come back later. Veysel Ateş handed back Serdar Tanış's mobile phone, the two men signed the register and went out into the street.

177. According to the evidence of Süleyman Can, which was corroborated by other members of the security forces, a tour of inspection of the gendarmerie took place in the morning of 25 January 2001; after taking lunch at about 12 noon, he and the inspection team left the gendarmerie station (between 1 p.m. and 1.30 p.m.) to inspect the Ortaköy and Botaş posts. He did not return to the station until about 5.30 p.m. or 6 p.m. He denied that he or any other member of the district gendarmerie summoned Serdar Tanış on the telephone, adding that there would have been no point, as he was due to be out for the entire afternoon.

178. The Court accepts Süleyman Can's evidence that he left the gendarmerie station at about 1.30 p.m. and sees no reason to question his evidence that he did not telephone Serdar Tanış to summon him to the station. However, it finds that the evidence shows that such a call was made by a person in authority. The telephone records indicate that Serdar Tanış received a call on his mobile phone at 1.44 p.m. on 25 January. An order has been made for the identity of the caller to be kept secret. Furthermore, none of the witnesses who testified before the delegates was prepared to

divulge the caller's identity, other than to say that the call did not come from the district gendarmerie station and that the caller “was not a member of the Silopi gendarmerie” (see the statement of the public prosecutor, Gündoğan Öztürk, at paragraph 135 above). The witnesses were not prepared to confirm or deny the claim put to them on a number of occasions by the applicants' representatives that the call was made by Taşkın Akgün, the head of the intelligence service in Şırnak. Nor was any witness able to confirm that Taşkın Akgün was one of the three people sitting in the car that was waiting outside the post office; Selim Gül said that he had no information as to whether Taşkın Akgün was in Silopi on 25 January.

179. Despite the lack of information on the identity of the caller, the Court is satisfied on the basis of the material before it that Serdar Tanış was summoned to the district gendarmerie station by a person in authority and that that person told him that he must go and see Süleyman Can. The suggestion put forward by the members of the security forces in their evidence that Serdar Tanış and Ebubekir Deniz went to the station of their own accord with the specific aim of speaking to Süleyman Can to see whether it was possible to recover Ebubekir Deniz's vehicle does not tally with Ömer Sansur's evidence, which the Court accepts, that after receiving the call summoning him to the gendarmerie station, Serdar Tanış had been about to set out alone when Ebubekir Deniz insisted on accompanying him.

180. The Court further finds that the account given by the members of the security forces of the reasons for the missing men's visit to the district gendarmerie station and of the events at the station are inherently improbable. It finds it hard to accept that, if the two men had decided of their own volition to see Süleyman Can in an attempt to recover the confiscated vehicle, they would have gone to the station without first making an appointment or that, on being told that Süleyman Can would be out for an indefinite period, they would have said they intended to stay and await his return. Nor does the Court find it likely that the two men would have been allowed to go to the waiting-room inside a military building without an escort and to remain there on their own until, by chance, Selim Gül should happen upon them. Selim Gül's statement that he came across the two men by accident also poses a problem. He acknowledged in his deposition that he had never met Ebubekir Deniz, that neither man had been to the station to meet him and that their visit was unexpected, as its sole acknowledged purpose was to discuss the issue of Ebubekir Deniz's vehicle with Süleyman Can. However, in his testimony he said that Serdar Tanış had come to the station as an informant to deliver to him, out of Ebubekir Deniz's sight, documents containing information on the HADEP party of which both men were members. The explanation given by Selim Gül – that Serdar Tanış was an informant and had already supplied information in the past to Süleyman Can, with whom he was in close contact, and to whom he may have intended to give further information on this occasion – is not

readily reconciled with Süleyman Can's testimony before the delegates that Serdar Tanış had never previously personally supplied him with any information about HADEP. Since the documents he is alleged to have handed over to Selim Gül were also decreed to be confidential, the delegates were unable to consult them or to establish their content to see whether they supported or contradicted Selim Gül's account.

181. As regards Veysel Ateş's evidence that he saw Serdar Tanış and Ebubekir Deniz sign the visitors' register and leave the building and the fact that the register contains what appears to be the two men's signatures both on entering and leaving the building, the Court notes that Veysel Ateş himself said in his testimony before the delegates that it was his practice to show the register to the duty officer every day for checking and signing. However, the witness was unable to explain why the page containing the six entries for 25 January 2001 did not contain the duty officer's signature, whereas the corresponding page for 5 January 2001 did. In addition, the Court is struck by the fact that, although the missing men's disappearance was reported on the afternoon of 25 January 2001, the visitors' register containing the entries for that date was not submitted to the public prosecutor concerned until 29 January 2001. Whatever the case may be, the Court does not consider that Veysel Ateş's evidence or what appears to be the signatures of the two missing men definitively establishes that they left the gendarmerie station free men or that they were at liberty when they went into the street after leaving the building.

182. Conversely, it is clear from the material before the Court that, after being summoned to the district gendarmerie station and being seen entering the building, neither man was seen or heard of again, whether by their families, friends or colleagues from the HADEP party.

3. Events after the disappearance of Serdar Tanış and Ebubekir Deniz

183. The delegates of the Court heard detailed testimony from police officers who, acting on an anonymous tip-off, stopped and searched a vehicle at the Habur border checkpoint on 2 March 2001. These witnesses said that they discovered a plastic bag containing a bottle full of powder and a letter addressed to Şuayip Tanış that was concealed between the cabin roof of the vehicle and the protective canvas covering of the trailer. The letter was alleged to have been sent by the PKK – it bore what was alleged to be that organisation's seal and stated that the two missing men were alive and to be found in PKK camps in northern Iraq. The Court sees no reason to doubt the truth of the police officers' testimony and it has not been contested. However, in the absence of any evidence that the letter is authentic or as to when, where and by whom it was concealed in the vehicle, it cannot attach any weight to its content. In particular, the letter does not provide any basis for concluding that the two men are still alive or that they are or were in northern Iraq, as has been alleged. The same applies to the

documents in the case file referring to anonymous telephone calls which are said to show that the two men were exchanged with the PKK for money and taken to Iraq or that they were killed in a vendetta.

4. Official investigation into the disappearance

184. With regard to the investigation carried out by the domestic authorities, the Court observes that it has not received the full investigation file, as a large amount of information had been deleted from some of the documents, and that two witnesses whose testimony would have played an important role in establishing the facts failed to appear before its delegates.

185. The evidence in the case file and the oral testimony show that at about 5 p.m. on 25 January 2001 the families of the missing men attempted to contact various authorities for news of them. They were informed by the Silopi public prosecutor, Kubilay Taştan, and the commanding officer of the gendarmerie, Süleyman Can, that the men had not been to the gendarmerie station or taken into custody.

186. Mr Taştan contacted the gendarmerie command by telephone. He did not go to the station and decided that everything the gendarmes had told him could be accepted at face value. The Court is struck by the following comment he made: “We considered that Serdar Tanış and Ebubekir Deniz had not been taken into custody. The investigation proceeded orally. I found the information provided by the commanding officer to be satisfactory ...” It is therefore apparent that he focused the investigation essentially on the theory that the men had been taken into custody. He did not check the gendarmerie registers until 29 January 2001.

187. As regards the investigation conducted by public prosecutor Gündoğan Öztürk, his testimony and the material in the case file show that he endeavoured to conduct a proper investigation. He identified the person who telephoned Serdar Tanış and one of the persons who attempted to abduct him. However, he was unable, in his capacity as the independent official in charge of the investigation, to take a statement from that person or from Süleyman Can, or to organise a confrontation with the alleged witnesses (see paragraphs 133-34 above). The Şırnak regimental gendarmerie command's denials of the charges and its firmly anchored view that the applicants' allegations were solely intended to mislead public opinion, to tarnish the image of the security forces and to put pressure on the judiciary following the arrest of HADEP's leaders in Şırnak, hampered the public prosecutor's investigations. On 22 April 2003 he forwarded the file to the public prosecutor at the Diyarbakır National Security Court.

It is also apparent from the material in the case file and the testimony of Süleyman Can that part of the initial investigation was conducted by the Silopi gendarmerie, under Süleyman Can's command. The Court is struck by the fact that the public prosecutors did not check how the investigation was being conducted. They accepted, without reservation, the reports

submitted by the Silopi and Şırnak gendarmerie commands and ruled that there was no case to answer as the investigation file contained insufficient information and evidence about the applicants' allegations.

188. Furthermore, it is surprising that, on the applicants' application for a review of the decision that there was no case to answer, the Malatya National Security Court should have declined to order additional investigations, despite finding that there were gaps in the investigation (see paragraph 153 above). That decision shows the incomplete and inadequate nature of the investigation.

189. The Court therefore finds that the authorities have failed to furnish any plausible and substantiated explanation concerning the fate of Serdar Tanış and Ebubekir Deniz after they entered Silopi district gendarmerie command following a telephone call from a gendarme. Further, it is apparent from the case file that the investigation was not conducted with anywhere near the degree of reliability, thoroughness and independence required, even though the applicants repeatedly explained that the missing men had been subjected to intimidation and threats by the commanding officers of the gendarmerie in the past and feared for their lives.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

190. The Government submitted that the domestic proceedings had not yet ended and that the application was premature.

191. The applicants contended that there was no court or tribunal before which their complaints about Serdar Tanış and Ebubekir Deniz's unacknowledged detention by the authorities and subsequent disappearance could have been examined properly. Referring to the judge's order restricting access to the investigation file, they said that they had not been informed of progress in the investigation and that the authorities had failed to launch an immediate, impartial and thorough investigation with a view to identifying the culprits.

192. The Court notes that in its admissibility decision of 11 September 2001 it decided to join the objection to the merits, as it considered that the Government had failed to produce a copy of the documents pertaining to the investigation that had been started in the instant case by the Silopi public prosecutor.

193. A large amount of relevant information was deleted from the investigation file furnished by the Government.

194. Since the Government's preliminary objection raises issues that are closely linked to those raised by the applicants' complaints under Articles 2 and 13 of the Convention, the Court joins it to the merits (see paragraph 211 below).

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

195. Article 2 of the Convention provides:

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

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

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

A. The parties' submissions

1. *The applicants*

196. The applicants stressed that their relatives, Serdar Tanış and Ebubekir Deniz, had disappeared in circumstances in which their lives were in danger. They submitted that account should be taken not only of the specific context in which the men had disappeared, but also of the broader context of a large number of such disappearances in the province of Şırnak. In their submission, there had been a grave violation of Article 2 of the Convention, as the Government had been unable to furnish a plausible explanation for their disappearance.

197. Further, referring to the order made by the judge restricting access to the investigation file, the applicants said that they had not been informed of progress in the investigation into the complaint they had lodged on 26 January 2001. They said that the authorities had failed to comply with their procedural obligation under Article 2, as they had not carried out a thorough, adequate and effective investigation into the disappearance of the two men.

2. *The Government*

198. The Government contested the applicants' version of events and maintained that Serdar Tanış and Ebubekir Deniz had at no stage been taken into custody at the Silopi district gendarmerie command. They pointed out that the investigation by the public prosecutor was still pending. They

asserted that the State authorities had done everything in their power to find the two men.

B. The Court's assessment

1. General considerations

199. Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention, and one from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Makaratzis v. Greece* [GC], no. 50385/99, § 56, ECHR 2004-XI).

200. In addition, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which Article 3 will be applicable (see paragraph 160 (d) above). In the same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention (see *Kurt*, cited above, p. 1185, § 124). Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody (see *Çakıcı*, cited above, § 85, and *Ertak v. Turkey*, no. 20764/92, § 131, ECHR 2000-V).

201. In this respect the period of time that has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead. The Court considers that this situation gives rise to issues which go beyond a mere irregular detention in violation of Article 5. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention (see, among other authorities, *Timurtaş*, cited above, § 83).

202. The State's obligation under Article 2 of the Convention to protect the right to life, read in conjunction with its general duty under Article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined

[therein]”, 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 *Çakıcı*, cited above, § 86).

203. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is a relative, not an absolute, obligation. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident (see *Tanrıkulu*, § 109, and *Salman*, § 106, both cited above). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see *Aktaş v. Turkey*, no. 24351/94, § 300, 24 April 2003).

204. There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, § 82; *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III; and *McKerr v. the United Kingdom*, no. 28883/95, § 148, ECHR 2001-III).

205. The above-mentioned procedural obligations extend, but are not confined, to cases that concern intentional killings resulting from the use of force by agents of the State. The Court considers that these obligations also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-III).

2. *The disappearance of Serdar Tanış and Ebubekir Deniz*

206. The decisive factor for the Court in the present case is that Serdar Tanış and Ebubekir Deniz attended Silopi district gendarmerie command after receiving a call from a gendarme (whose name was identified by the public prosecutor) at about 2 p.m. on 25 January 2001 and have not been seen since. The Court has found that there is sufficient evidence to show that the two men had received threats by the commanding officers of the Silopi and Şırnak gendarmeries on account of their political activities as members of HADEP. It also found credible Eyüp Tanış's evidence that he had witnessed the attempted abduction of Serdar on the day he disappeared (see paragraphs 165-83 above).

207. In the circumstances of the present case and having regard to the limited scope of the proceedings in the domestic courts, the authorities' reluctance to investigate allegations of misconduct on the part of the security forces and their acceptance of the security forces' denials without verification, the Court is not satisfied that the explanations furnished by the Government, which merely refer to the outcome of the domestic

proceedings, suffice to cast reasonable doubt on the applicants' allegations (see paragraphs 184-89 above).

208. The apathy displayed by the investigating authorities poignantly bears out the importance attached to the prompt judicial intervention required by Article 5 §§ 3 and 4 of the Convention which may lead to the detection and prevention of life-threatening measures in violation of the fundamental guarantees contained in Article 2 (see, among other authorities, *Timurtaş*, cited above, § 89). No criminal proceedings were instituted to determine those responsible for the disappearance of the missing men. The investigations into the conduct of the commanding officer of the Şırnak gendarmerie and of the gendarmes ended with a decision that there was no case to answer (see paragraphs 150-53 above). Although the investigation has not yet been officially completed, there is nothing to indicate that effective additional measures will yet been taken to redress this issue.

209. It follows that the authorities have failed to set in motion the machinery which in theory would be adequate to investigate the disappearance of Serdar Tanış and Ebubekir Deniz.

210. The circumstances in which Serdar Tanış and Ebubekir Deniz went missing (see the Court's assessment of the facts), the fact that four years later their fate is still unknown, and the lack of a proper investigation and plausible explanation from the authorities about what happened lead the Court to conclude that the responsibility of the respondent State is engaged in respect of the disappearance of the two men.

There has therefore been a violation of Article 2 of the Convention on that account.

3. The alleged inadequacy of the investigation

211. In the light of the foregoing (see paragraphs 206-09 above), the Court finds that the investigation carried out into the disappearance of the applicants' next-of-kin was inadequate and, therefore, in breach of the State's procedural obligations to protect the right to life.

The Court accordingly dismisses the Government's preliminary objection (see paragraphs 190-91 above) and holds that there has also been a breach of Article 2 of the Convention on that account.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

212. The applicants submitted that the disappearance of their relatives gave rise to multiple violations of Article 5 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

213. The applicants alleged that since the authorities had concealed information regarding their relatives' fate, their relatives were beyond the reach of the law and had therefore been deprived of the protection afforded by the guarantees set out in Article 5.

214. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a very grave violation of Article 5. In that connection, the Court refers to its case-law cited in paragraph 160 (d) above.

215. The Court notes that the Government have failed to furnish a credible or substantiated explanation of what became of Serdar Tanış and Ebubekir Deniz after they were seen for the last time entering Silopi district gendarmerie command. It has found that the investigation by the public prosecutors was negligent and based on preconceived ideas and concluded

that the respondent State's responsibility was engaged in respect of the disappearance of the two men (see paragraphs 209-10 above).

216. Consequently, the Court finds that an unexplained disappearance in such circumstances constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

217. The applicants complained that they themselves had suffered inhuman and degrading treatment in violation of Article 3 of the Convention as a result of their relatives' disappearance. Article 3 provides:

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

218. The applicants submitted that, as the father, brothers and wife of the missing men, they had suffered severe mental distress and anguish as a result of the manner in which the authorities had treated them and responded to their enquiries.

219. The Court notes that whether a family member is also a victim will depend on the existence of special factors which gives the suffering of the family member 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 factors will include the proximity of the family tie, 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 missing person and the way in which the authorities responded to those enquiries. The essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather in the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Çakıcı*, cited above, § 98).

220. In the instant case, the applicants' concern is attested by the numerous efforts they made in an attempt to find out what had happened to the missing men. They made various requests for information from the authorities. However, the investigation into their complaint was slow and inefficient. As a result of the ruling by the domestic court that certain information was confidential, they were unable to gain access to the documents in the investigation file or to play an active part in the domestic proceedings.

221. Lastly, the Court notes that the applicants' anguish concerning their relatives' fate continues to the present day and finds that they have

personally suffered inhuman and degrading treatment contrary to Article 3 of the Convention as a result of their disappearance.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

222. The applicants asserted that they had been denied access to an effective domestic remedy and alleged a breach of Article 13 of the Convention, the relevant part of which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

223. Referring to the restriction on access to the investigation file imposed by the judge, the applicants maintained that they had not been informed of progress in the investigation. They argued that, as the official investigation into their complaint was insufficient, they had been deprived of access to an effective remedy to deal with the disappearance of the members of their families and that that failure on the part of the authorities attested to the lack of an effective system of remedies in the respondent State enabling complaints to be made of grave violations of the rights protected by the Convention.

224. The Government pointed out that the investigation into the disappearance of Serdar Tanış and Ebubekir Deniz was still pending.

225. Article 13 of the Convention guarantees the availability at 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. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *İrfan Bilgin v. Turkey*, no. 25659/94, § 156, ECHR 2001-VIII, and the other authorities cited there).

Further, where relatives have an arguable claim that a member of their family has disappeared at the hands of the authorities, or where a right with as fundamental an importance as the right to life is at stake, 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 and including effective access for the relatives to the investigatory procedure (see *Timurtaş*, cited above, § 111, and the other authorities cited there).

226. In view of the fact that the Court has found that the domestic authorities failed in their obligation to protect the lives of the applicants' relatives, the applicants were entitled to an effective remedy within the meaning outlined in the preceding paragraph.

227. Accordingly, the authorities were under an obligation to conduct an effective investigation into the disappearance of the applicants' relatives. Having regard to paragraphs 208-11 above, the Court finds that the respondent State has failed to comply with this obligation.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

228. 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

229. The applicants claimed the following amounts for pecuniary damage:

(a) Selma Güngen, Serdar Tanış's wife, claimed for herself and her two children 150,000 euros (EUR) for the loss of financial support following her husband's disappearance;

(b) Divan Arsu, Ebubekir Deniz's partner and the mother of four children, and Zehra Deniz, Ebubekir Deniz's wife, claimed for themselves and the four children, EUR 100,000 each for the loss of financial support.

230. The Government contested those claims. They submitted that they were without foundation and exaggerated.

231. It is established under the Court's case-law that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that the award may, in an appropriate case, include compensation for loss of earnings (see, among other authorities, *Abdurrahman Orak v. Turkey*, no. 31889/96, § 105, 14 February 2002).

The applicants did indeed suffer losses as a result of the violations in this case and a clear causal link exists between the violations and the alleged pecuniary damage, which may include compensation for the loss of a source of earnings (see *Salman*, cited above, § 137).

232. Ruling on an equitable basis, the Court awards Selma Güngen EUR 40,000 and Divan Arsu and Zehra Deniz EUR 50,000 jointly.

B. Non-pecuniary damage

233. The applicants claimed the following amounts for non-pecuniary damage, arguing that they had suffered acute anxiety and deep distress as a result of the disappearance of their next-of-kin:

- (a) Selma Güngen EUR 250,000;
- (b) Yakup Tanış EUR 50,000;
- (c) Şuayip Tanış EUR 75,000;
- (d) Divan Arsu and Zehra Deniz jointly EUR 250,000;
- (e) Mehmet Ata Deniz EUR 50,000.

234. The Government submitted that the claim was excessive and liable to lead to unjust enrichment, contrary to the spirit of Article 41 of the Convention.

235. The Court has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the disappearance of the missing men, in breach of their procedural obligation under Article 2 of the Convention. It has also found a breach of the applicants' own rights under Article 3.

The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Ruling on an equitable basis, it awards each applicant EUR 20,000.

C. Costs and expenses

236. The applicants sought EUR 29,600 for costs and expenses and submitted an hourly breakdown of the work performed by their representatives. That amount included costs incurred in attending the hearing in Ankara at which the delegates of the Court took evidence.

237. The Government argued that in the absence of vouchers, the claim should be dismissed as being unfounded and that in any event the expenses were excessive and unnecessary.

238. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In addition, under Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see *Zubani v. Italy* (just satisfaction), no. 14025/88, § 23, 16 June 1999).

In the light of these principles and having regard to the material before it, the Court considers it reasonable to award the applicants jointly the sum of EUR 20,000, less EUR 2,004.71 already received in legal aid.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection and *dismisses* it;
2. *Holds* that there has been a failure to comply with Article 38 of the Convention;
3. *Holds* that the respondent State's responsibility is engaged in respect of the disappearance of Serdar Tanış and Ebubekir Deniz, in violation of Article 2 of the Convention;
4. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances in which Serdar Tanış and Ebubekir Deniz went missing;
5. *Holds* that there has been a violation of Article 3 of the Convention with respect to the applicants personally;
6. *Holds* that there has been a violation of Article 5 of the Convention;
7. *Holds* that there has been a violation of Article 13 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of payment:
 - (i) EUR 40,000 (forty thousand euros) to Selma Güngen and EUR 50,000 (fifty thousand euros) jointly to Divan Arsu (Ebubekir Deniz's partner and the mother of four children) and Zehra Deniz (Ebubekir Deniz's wife) for pecuniary damage;
 - (ii) EUR 20,000 (twenty thousand euros) to each of the applicants in respect of non-pecuniary damage;
 - (iii) EUR 20,000 (twenty thousand euros) to the applicants jointly for costs and expenses, less EUR 2,004.71 (two thousand and four

euros seventy-one cents) already received from the Council of Europe in legal aid;

(iv) any tax that may be chargeable on the above amounts;

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

9. *Dismisses* the remainder of the applicants' claims for just satisfaction.

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President