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

THIRD SECTION

CASE OF NESİBE HARAN v. TURKEY

(Application no. 28299/95)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

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

In the case of Nesibe Haran v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 28299/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ms Nesibe Haran ("the applicant"), on 22 June 1995.

2. The applicant was represented by Ms A. Stock, a lawyer attached to the Kurdish Human Rights Project ("KHRP") in London, Mr M. Muller, Mr T. Otty, and Ms J. Gordon, lawyers practicing in London, and Ms R. Yalçındağ and Mr C. Aydın, lawyers practicing in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention organs.

3. The applicant alleged, in particular, that State officials were responsible for the disappearance of her husband in 1994. She invoked Articles 2, 3, 5, 13, 14 and 18 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

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

7. By a decision of 22 June 1999 the Court declared the application admissible.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1971 and lives in Diyarbakır.

A. Introduction

11. The facts surrounding the disappearance of İhsan Haran are disputed between the parties. The facts as presented by the applicant are set out in Section B below (see paragraphs 13-22). The Government's submissions concerning the facts are summarised in Section C below (see paragraphs 23-26).

12. A summary of the relevant documents submitted by the parties have been set out separately in Sections D **(**see paragraphs 27-29**)** and E (see paragraphs 30-53) respectively. In summarizing the documents submitted by the parties, the Court has used the names of persons as cited in these documents. They do not necessarily reflect the correct spelling of the names of these persons.

B. The applicant's submissions on the facts

13. On an unspecified date one of the applicant's brothers and a paternal cousin joined the PKK. At that time the applicant and İhsan Haran approached the Lice public prosecutor's office and told the prosecutor that they were not in the least responsible for anything the brother and the cousin did and that the brother and the cousin had become involved in the PKK without the knowledge of the applicant or İhsan Haran. The public prosecutor said that he did not intend to open any kind of case against the applicant or İhsan Haran because of these events. In any event, İhsan Haran would hide in the forest when soldiers would come to the Arıklı village where they were residing.

14. On 12 May 1994 the applicant and her husband together with their children moved from their village to Diyarbakır after their village was destroyed by the security forces. They did not consider it appropriate to give their new address to the authorities.

15. On 24 December 1994 the applicant's husband İhsan Haran did not return from the construction site of the Diyarbakır underground market where he had been working for the previous eight days. The applicant and other family members did not find this unusual because if there was extra work he would remain at work and not return home.

16. On 27 December 1994 Mr Fahri Hazar, a co-villager, came to the applicant's house and told her that on the morning of 24 December 1994 an identity check had been carried out by uniformed police officers at the construction site where İhsan Haran had been working and that while they were checking İhsan Haran's identity papers, they started arguing amongst themselves. This argument lasted for some ten minutes and then the police officers took İhsan Haran away.

17. On 30 December 1994 Mr Fahri Hazar was arrested and taken into police custody.

18. After learning that her husband was arrested by the police officers, the applicant tried to file a petition with the public prosecutor's office at the State Security Court in order to learn of his whereabouts. However, she was prevented from submitting her petition by the police officers standing in front of the State Security Court. She and other family members tried to see the public prosecutor for about a month without success.

19. The applicant then started visiting several prisons in order to find out whether anyone had seen her husband. She met one person, whom requested from the applicant not to be named, who was placed in the Dormitory 31 at the Diyarbakır E-type prison and who told her that he had seen İhsan Haran in custody.

20. On 1 February 1995 İhsan Haran's brothers were taken into custody. In a statement dated 7 September 2004 given to their own legal representative, they said that while they were held in police custody they were threatened by the police officers that they would also be killed like their brother İhsan Haran (see paragraph 27 below).

21. In 1997 the applicant's sister-in-law was harassed by the police officers.

22. On 15 December 1998 the applicant was approached by a man who claimed to be a policeman. He told her to get into a nearby car. She refused. He knew information about her family and offered her financial support in return for information. On 21 December 1998 the applicant told her lawyer that she had been refused a new identity card and that she had often been forced to change her home because of harassment by the security forces, including raids on her homes.

C. The Government's submissions on the facts

23. Following the communication of the application by the European Commission on Human Rights on 26 February 1996 to the Government, the

Diyarbakır public prosecutor's office opened an investigation into the applicant's allegations.

24. On 21 January 1998 the Diyarbakır public prosecutor held that there was no need for a further investigation as there was no evidence showing that İhsan Haran had disappeared in police custody (see paragraph 36 below). He observed that since 1994 there was no record of any complaint made to the offices of the Diyarbakır public prosecutor and of the public prosecutor at the Diyarbakır State Security Court and of the Lice public prosecutor. He noted that no record had been found that İhsan Haran had been taken into custody by the Diyarbakır Security Directorate, Anti-terror branch, and the Provincial Gendarmerie Commander. It further observed that İhsan Haran was being searched for by the Diyarbakır Anti-terror branch. The applicant did not object to this decision.

25. The investigation into the circumstances surrounding the disappearance of İhsan Haran still continues without success (see paragraphs 38-47 below).

26. On 12 April 2004 the General Security Directorate of the Ministry of Internal Affairs informed the Ministry of Justice that İhsan Haran was sought for his involvement in an illegal organisation following testimonies of certain suspects. In the same letter, the Ministry of Justice was informed that Nesibe Haran and İhsan Haran were not married (see paragraph 50 below).

D. Relevant documentary evidence submitted by the applicant

1. Statements of İhsan Haran's brothers made to their lawyer dated 7 September 2004

27. In their statements, Seyithan Haran and Abdullah Haran submitted that they had been arrested in Diyarbakır on 1 February 1995 by police officers. They averred that they had been subjected to ill-treatment while they were held in police custody and that they had been told that they would undergo the same treatment as their brother İhsan. They submitted that they were also told that if they did not confess their crimes they would be eliminated and face the same fate as their brother İhsan.

2. Report of Human Rights Association of Turkey dated March 2004

28. The extracts of the relevant part of the report is as follows:

> "Azad code name İhsan Haran was from Lice. He was either a militant or militia. He was taken outside town, interrogated and executed. Some information on his case: He was detained on 28 December 1994 on his way to his shop. His wife Nesime Haran stated that she had approached the State Security Court repeatedly, but had not received a response (Azadi, 12 February 1995). Mehmet Haran stated that (...) his nephew İhsan Haran had 'disappeared' (Evrensel, 26 December 1995). After the news in the press, Nesibe Baran stated: "The first time my husband was taken from the village to Hazro was in 1993. He stayed in custody for thirteen days. Later on we

moved to Diyarbakır. Four months later plain clothes people kidnapped him. Over five months I constantly requested information from the prosecutor, but he did not accept that my husband had been detained. One day, on my way home, a person stopped me and wanted to talk. When I disagreed, he said that he was a police officer. He told me that my husband had been killed; he did not know the place but who did it. He asked me question about many people and I said that I did not know them. He wanted me to work for them, in a way to be their agent. I complained to the HRA and they did not disturb me anymore."

3. Video-tape pertaining to the interview given by Mr Abdulkadir Aygan in the Rojname programme on ROJTV

29. On 4 May 2004 Mr Abdulkadir Aygan, an ex-PKK and alleged ex-JITEM (Intelligence branch of the Gendarmerie) member, gave an interview on ROJ TV where he claimed that JITEM conducted extra-judicial killings of prominent Kurdish intellectuals. In the last part of the programme he gave a list of names of those others who were also allegedly killed by JITEM. İhsan Haran's name was also mentioned by Mr Abdulkadir Aygan who stated without giving any details that he was interrogated and killed by the JITEM. The extracts of the relevant part of the video-tape is as follows:

"Azad code name İhsan Haran was from Lice. He was either a militant or militia. He was taken outside the town, interrogated and executed."

E. Relevant documentary evidence submitted by the Government

1. Custody reports

30. The custody reports of the Diyarbakır Security Directorate for the period between 22 January 1994 and 31 December 1995 do not contain the name of İhsan Haran.

2. Statements of İhsan Haran's brothers in police custody, dated 20 February 1995

31. On 20 February 1995 Abdullah Haran was taken into custody. The extract of the relevant part of his statement is as follows:

"Abdullah Haran (forged identity papers in the name of Mehmet Sedat Gökmen): We are nine siblings, my father works as a guardian in construction sites, my mother is a cleaner, my siblings are as follows; İhsan Haran: born in 1968. He is involved in PKK activities in rural areas since 1993. His code name is Azat (K). He is still active in the Lice region."

32. On 20 February 1995 Seyithan Haran was taken into custody. The extract of the relevant part of his statement is as follows:

"Seyithan Haran (code names Behzan, forged identify papers in the name of Refik Manay): We are nine siblings, my father works as a guardian in construction sites, my mother is a house wife, my siblings are as follows; İhsan Haran: born in

1968. In 1993 he joined PKK's rural branch. He is still active in the rural areas. His code name is Azat (K)."

3. Letter from General Directorate of Security of the Ministry of Internal Affairs to the Ministry of Foreign Affairs, dated 22 May 1996

33. The General Directorate of Security of the Ministry of Internal Affairs informed the Ministry of Foreign Affairs that an investigation had been conducted into the applicant's allegations before the European Commission of Human Rights. They found no record that İhsan Haran had been taken into custody between 24 December 1994 and 1 February 1995. They further informed that İhsan Haran did not figure in any of the archives.

4. Birth Records of the applicant and of İhsan Haran

34. According to the birth certificate of the applicant, she is single and her maiden surname is Haran. She has eleven siblings and three children who were registered with the birth registry on 2 August 1996 pursuant to Article 290 of the Civil Code. The name of the father of her children is stated to be İhsan.

35. According to the birth certificate of İhsan Haran, he is single and has eight siblings.

5. Decision of the Diyarbakır public prosecutor's office, dated 21 January 1998

36. On 21 January 1998 the Diyarbakır public prosecutor held that there was no need for further investigation on account of lack of evidence. He observed that since 1994 there was no record of any complaint made to the offices of the Diyarbakır public prosecutor and to the public prosecutor at the Diyarbakır State Security Court and to the Lice public prosecutor. He noted that no record had been found that İhsan Haran had been taken into custody by the Diyarbakır Security Directorate, Diyarbakır Anti-terror branch, and the Provincial Gendarmerie Commander. It further observed that İhsan Haran was sought for by the Diyarbakır Anti-terror branch.

6. Letter from the public prosecutor at the Diyarbakır State Security Court to the Diyarbakır public prosecutor's office, dated 3 April 2000

37. The public prosecutor at the Diyarbakır State Security Court informed the Diyarbakır public prosecutor's office that İhsan Haran was being searched on suspicion of membership in an illegal organisation, namely the PKK, following the statements of Mr N.Z. before the State Security Court. He submitted that there was no information or documents indicating that İhsan Haran had disappeared or that he had been taken into custody.

7. Investigation conducted by the Diyarbakır principal public prosecutor's office

38. On 16 October 2000 the public prosecutor's office requested from the Diyarbakır Municipality to provide them with the names of the companies involved in the construction of the Diyarbakır underground market in 1994. On 30 October 2000 the Diyarbakır Municipality sent the requested information.

39. On 27 October 2000 the Diyarbakır public prosecutor informed the Diyarbakır principal public prosecutor's office that the investigation into the disappearance of İhsan Haran was continuing.

40. On 23 March 2000 the Diyarbakır Security Directorate submitted its custody records pertaining to the years 1994-1995.

41. On 29 February 2000 the Diyarbakır principal public prosecutor's office stated that Nesime Haran had lodged an application with the European Commission on Human Rights claiming that her husband had disappeared in police custody and that there had been two eye-witnesses and that she had been prevented by the police to file a complaint with the public prosecutor's office. Accordingly, it ordered the Lice principal public prosecutor's office to conduct the following investigations:

(a) To obtain a statement of Nesime Haran in respect of her complaint pertaining to the disappearance of her husband;

(b) To request the applicant to provide the names of eye-witnesses and to determine the identity and open addresses of the witnesses;

(c) To obtain a statement of Nesime Haran in respect of her complaint that the police had prevented her from filing a complaint with the public prosecutor's office;

(d) To request the applicant to provide the names of potential eye-witnesses to the above-mentioned event;

(e) To request the applicant to clarify to where she had tried to file a complaint and was prevented from doing so.

42. On 21 December 2001 the Diyarbakır public prosecutor's office requested from the Lice Population Directorate the birth records of Nesibe Haran.

43. On 15 May 2001 the Diyarbakır public prosecutor's office requested the Lice public prosecutor's office to locate the applicant in order to obtain statements from the latter in respect of the disappearance of her husband. He further requested an inquiry on whether her new address was registered with the authorities in the event that the applicant would not be found in her village. Finally, it requested the Lice public prosecutor's office to locate the addresses of the close relatives of the applicant.

44. On 21 November 2002 the Diyarbakır public prosecutor's office requested the Diyarbakır Security Directorate to provide the names of workers employed by three construction companies between 1994 and 1995.

45. On 29 January 2003 and 25 September 2003 the public prosecutor at the Diyarbakır public prosecutor's office informed the Diyarbakır principal

public prosecutor's office that the investigation into the disappearance of İhsan Haran was continuing.

46. On 1 December 2003 the Diyarbakır public prosecutor informed the Diyarbakır principal public prosecutor's office that they were still awaiting a response from the Diyarbakır Traffic Registry Office, State Hospital, Diyarbakır Land Registry, Diyarbakır Birth Registry, Lice Birth Registry and Lice Land Registry on whether İhsan Haran had accomplished any acts since 1 December 1994.

47. On 3 January 2004 the Diyarbakır public prosecutor informed the Diyarbakır principal public prosecutor's office that they were still awaiting a response from the Lice Land Registry on whether İhsan Haran had accomplished any administrative acts since 1 February 1994 before various administrative authorities.

8. Letter of the Diyarbakır public prosecutor's office to the Lice Gendarmerie Command, dated 21 June 2001

48. The public prosecutor requested the Lice Gendarmerie Command to bring, as soon as possible, the complainant Nesime Haran before the public prosecutor's office in order to obtain her testimony. Her open address was stated as: Arıklı village.

9. Testimonies of Mehmet Ali Kızıl and Bünyamin Keskin before the public prosecutor, dated 13 December 2002

49. Both witnesses affirmed that they had been held in custody between 15 December 1994 and 2 January 1995 in the anti-terror branch of the Security Directorate and that they had not seen or known of a person named İhsan Baran during that time.

10. Letter from General Security Directorate of the Ministry of Internal Affairs dated 12 April 2004

50. The General Security Directorate informed the Ministry of Justice that İhsan Haran's name was mentioned in the statements of seventeen suspects arrested in the course of an operation conducted against the PKK/KONTRA-GEL and that therefore, he was currently being sought. They further submitted that, despite the allegations that İhsan Haran had been seen in custody, his brothers in their statements of 20 February 1995 before the Diyarbakır Security Directorate had submitted that their brother had joined the PKK in 1993 and that he was continuing his activities under the code name of Azad. They finally stated that according to the Birth Records of the Diyarbakır Population Office, İhsan Haran and Nesime Haran were not married.

11. Minutes of the hearings held between 20 March 1995 and 16 June 1996 before the Diyarbakır State Security Court in the criminal proceedings against İhsan Haran's brothers

51. Before the Diyarbakır State Security Court, Seyithan Haran claimed to have given his statements in police custody under duress and Abdullah Haran claimed that the statement which was read out to him before the court was not the statement that he had given in police custody.

52. Ihsan Haran's brothers were tried before the Diyarbakır State Security Court together with eight other co-accused, including a certain Fahri Hazar from Arıklı village. Seyithan Haran and Abdullah Haran were convicted on 16 June 1996 and sentenced to three years and nine months' imprisonment.

12. List of workers employed by the RE-HA Construction Company from September 1994 to April 1995

53. İhsan Haran's name does not figure in the list of workers who worked for RE-HA Construction Company.

II. RELEVANT DOMESTIC LAW AND PRACTICE

54. For the relevant domestic law and practice, the Court refers to the judgments of *Ülkü Ekinci v. Turkey* (no. 27602/95, §§ 111-118, 16 July 2002) and *Tepe v. Turkey* (no. 27244/95, §§ 115-122, 9 May 2003).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

55. In supplementary observations submitted by the Government to the Court following the decision on admissibility, they elaborated on their claim that the applicant had failed to exhaust domestic remedies. In this connection the Government referred to the availability of a number of remedies, in particular civil ones. They pointed out that the applicant had not at any time petitioned the authorities in respect of the disappearance of İhsan Haran and that she had failed to object to the public prosecutor's decision of 21 January 1998.

56. The Court, noting that this issue has been dealt with in its decision on admissibility, does not deem it necessary to re-examine it. It therefore rejects the Government's preliminary objection.

B. Lack of victim status

57. In a letter dated 26 November 2004, in response to the letter sent by the applicant on 11 August 2004 (see paragraph 62 below), the Government made the following remark:

> "The applicant submits that her name and the name of İhsan Haran should be on the same page of the family records. The Government would like to bring to the attention of the Court that the applicant's and İhsan Haran's name appear on separate pages as they are not married."

58. The Court would point out that this fact does not in itself deprive the applicant of her victim status (see, for example, *Ceyhan Demir and Others v. Turkey*, no. 34491/97, §§ 81-85, 13 January 2005). In the absence of any explanations by the parties, the Court cannot speculate on the nature of the relationship the applicant had with İhsan Haran. However, since the Government have not submitted any arguments to the contrary, the Court cannot exclude that the applicant was at least İhsan Haran's partner and had three children with him (see paragraph 34 above).

59. Accordingly, the Court considers that the applicant, as İhsan Haran's partner, could legitimately claim to be a victim of an act as tragic as the disappearance of her partner. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

60. The applicant alleged that there was a substantial risk that her husband had been secretly detained by agents of the State in life threatening conditions and that the domestic law did not provide for adequate protection for the right to life. She relied on Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Parties' submissions

1. The applicant

61. The applicant averred that the State was responsible for the disappearance of her husband since a co-villager told her that he had been taken into custody by police officers. She further alleged that when she and her family had began to make prison visits she had been informed by another eyewitness that her husband had been in detention. The applicant stated that the denial of having taken a person into detention was part of the nature of a disappearance and that such a complaint required the conduct of a thorough, effective and objective investigation. She claimed that this was not done in the case of her husband's disappearance. In this regard, she referred to case-law of the Court, where the Court had found compelling evidence that those who had disappeared had been detained by the State despite assertions to the contrary.

62. By a letter dated 11 August 2004 the applicant reiterated that the Government had failed to conduct any meaningful investigation into the disappearance of her husband and that the documents related to the case were mainly correspondence between different State authorities and departments. She also submitted that the birth certificates did not show her and İhsan Haran together on one document and that this was not correct since she and her disappeared husband were married.

2. The Government

63. The Government contended that the applicant failed to bring her allegations to the attention of the relevant authorities and that the authorities were only aware of the disappearance of İhsan Haran following the communication of the application on 5 March 1996, i.e. two years after the alleged disappearance. They maintained that they were never aware of the existence of the alleged witnesses and that their identities were never disclosed to them. The Government pointed out that the applicant's failure to object to the public prosecutor's decision of 21 January 1998 showed once again the reluctance of the applicant to exhaust the domestic remedies available to her. They maintained that the applicant had failed to provide any evidence in respect of her allegations under this heading and that since they were unaware of the address of the applicant, it was impossible to verify whether or not her husband was still missing.

B. The Court's assessment

1. The disappearance of İhsan Haran

64. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions

in the Convention and, together with Article 3 of the Convention, enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among others, *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV, and *Finucane v. the United Kingdom*, no. 29178/95, § 67-71, ECHR 2003-VIII). In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002).

65. The Court will examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular the documents submitted by the Government with respect to the judicial investigations carried out in the case as well as the parties' written observations. Moreover, the Court reiterates that the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant interferences or of similar unrebutted presumptions of fact (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, §§ 160-161, and *Ülkü Ekinci,* cited above, §§ 141-142).

66. The Court observes that the applicant's allegations concerning the circumstances leading to the disappearance of İhsan Haran rest on the alleged eye-witness account of Mr Fahri Hazar. However, the applicant has failed to submit Mr Hazar's testimony to the Court. As to her assertion that her husband was seen in custody, the applicant has again failed to submit the testimony of the witness whose identity was not disclosed to the Court. Furthermore, the Court does not find credible the statements of İhsan Haran's brothers (see paragraph 27 above) since this information was not submitted either to the domestic authorities or to the Court until 27 September 2004. Accordingly, the applicant's allegation that the disappearance of İhsan Haran was organised by the agents of the State is based on hearsay rather than any cogent evidence.

67. As to the statements of Mr Aygan to ROJTV on 24 May 2004, where he implicated JITEM in extra-judicial killings, during which Ihsan Haran was also mentioned as being one of the victims, the Court notes that the said statement does not contain any details or dates other than what was mentioned above (see paragraph 29 above) in respect of İhsan Haran. Accordingly, the Court cannot attach any decisive importance to it since this is untested and at the most circumstantial evidence (see *Issa and Others v. Turkey*, no. 31821/96, § 79, 16 November 2004).

68. In the light of the foregoing, the Court considers that the actual circumstances in which İhsan Haran disappeared remain a matter of speculation and assumption and that, accordingly, there is an insufficient evidentiary basis on which to conclude that he was, beyond reasonable doubt, secretly detained and killed by or with the connivance of State agents in the circumstances alleged by the applicant.

69. Accordingly, there has been no violation of Article 2 on that account.

2. The alleged inadequacy of the investigation

70. The Court reiterates that the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161). This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of the applicant's husband gave rise *ipso facto* to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV).

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

72. In this connection, the Court reiterates that the nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, and *Ülkü Ekinci*, cited above, § 144).

73. There is also a requirement of promptness and reasonable expedition implicit in this context (*Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI,§§ 102-04; *Çakıcı, cited above,* §§ 80, 87 and 106, *Tanrıkulu*, cited above, § 109 and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force or a disappearance may generally be regarded as essential

for maintaining public confidence in the maintenance of the rule of law and for preventing any appearance of collusion in or tolerance of unlawful acts (see, in general, *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, and *Avşar v. Turkey*, no. 25657/94, §§ 390-395, ECHR 2001-VII (extracts)).

74. In the present case, the Court notes that there is no proof that İhsan Haran has been killed. However, the above-mentioned procedural obligations extend to 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. In this respect, it has previously held that the disappearance and unacknowledged detention of a person suspected by the authorities of PKK involvement could be considered as life-threatening in the general context of the situation in south-east Turkey in 1993 (see *Timurtaş v. Turkey*, no. 23531/94, § 85, ECHR 2000-VI). Having regard to the cases involving disappearances which it has been called upon to examine and which occurred in 1994, the Court concludes that the general context persisted in that year (see, for instance, *Çiçek v. Turkey*, no. 25704/94, 27 February 2001; *İrfan Bilgin v. Turkey*, no. 25659/94, ECHR 2001-VIII; *Orhan,* cited above; *İpek v. Turkey*, no. 25760/94, ECHR 2004- ...). It further appears, despite the fact that the exact date cannot be determined by the Court, that the authorities indeed suspected İhsan Haran of PKK involvement (see paragraphs 36-37 and 50 above). In these circumstances, the Court considers that the disappearance of İhsan Haran could be regarded as life-threatening. In this respect, it must be reiterated that the more time goes by without any news of the person who has disappeared, the greater the likelihood that he or she has died (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-...).

75. The Court notes that an investigation into the applicant's allegations commenced following the communication of the application to the respondent Government, i.e. two years after the events. It further observes that this investigation was concluded with the public prosecutor's decision of 21 January 1998 finding that there was no need for a further investigation on account of lack of evidence. However, it also appears from the case-file that official inquiries concerning the disappearance of İhsan Haran still continue without success.

76. In this connection, the Court is struck by the reluctance of the applicant or any other member of the family of İhsan Haran to be involved in the ongoing investigations. Since the disappearance of İhsan Haran in 1994, no evidence was provided by the applicant showing that the applicant or any member of his or her family undertook any steps to inquire about the state of the investigations relating to the disappearance of İhsan Haran. In this respect, the Court notes that the applicant did not object to the public prosecutor's decision of 21 January 1998. Nor did she petition any national authority requesting information about the investigation. In particular, the

Court observes that by failing to submit her new address in Diyarbakır, the applicant made it difficult for the national authorities to find her and, accordingly, to take her testimony concerning the events. In the Court's view, such lack of cooperation with the national authorities must be considered to have adversely affected the effectiveness of the investigations into the circumstances surrounding the disappearance of İhsan Haran.

77. However, the conduct of the applicant does not absolve the national authorities from their obligation to conduct a meaningful investigation into the circumstances surrounding a disappearance within the limits of the practical realities of investigation work. In the present case, it is Court's view that there were striking omissions in the conduct of the investigation. In this connection, the Court observes that the initial investigation conducted by the Diyarbakır public prosecutor appears to have consisted solely of checking custody records of the Diyarbakır Security Directorate (see paragraph 36 above) and that it was not until 29 February 2000 and 15 May 2001 that the Diyarbakır public prosecutor's office tried to obtain statements of the applicant and other family members (see paragraphs 41 and 43 above). In the Court's opinion this would have been the logical starting point in an investigation into an alleged disappearance. In particular, the Court finds it difficult to understand why the statements of İhsan Haran's brothers who were sentenced to a prison sentence in 1996 and, hence, under the full authority of the State, were never taken (see paragraph 52 above). Moreover, the Court observes that while the identity of one of the eye-witnesses was never disclosed to them, they, nonetheless, were aware of Mr Fahri Hazar who, according to the applicant, was the only eye-witness to the alleged apprehension of İhsan Haran by police officers on 24 December 1994. The documents submitted by the Government show that he too was never heard by the authorities.

78. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of İhsan Haran. There has therefore been a breach of the State's procedural obligation under Article 2 to protect the right to life.

3. Alleged lack of protection in domestic law for the right to life

79. The Court considers, on the basis of its examination of the parties' submissions, of its findings in respect of the circumstances surrounding the disappearance of İhsan Haran and that the authorities were in breach of Article 2 of the Convention on account of their failure to carry out an effective investigation, that it is not necessary in the circumstances of this case to reach any separate finding on this issue.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

80. The applicant complained that her anguish at the inability to discover what has happened to her husband amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which provides:

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

81. The Government, beyond denying the factual basis of the applicant's allegations, did not specifically deal with the complaint under Article 3.

82. The Court reiterates that whether a family member is a victim will depend on the existence of special factors giving his or her suffering 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 (see *Çakıcı,* cited above, § 98). Relevant elements will include the proximity of the family ties, the extent to which the family member witnessed the events in question, the involvement of family members in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not so much lie in the fact of the disappearance of the family member but rather concerns the authorities' reactions and attitudes when the situation was brought to their attention (see *Orhan,*, cited above, § 358).

83. In the present case, the Court observes that the applicant was not present and did not witness the alleged events leading to the disappearance of İhsan Haran. Nor can she be considered to have undertaken the pursuit of numerous enquiries and petitions to find out about İhsan Haran's fate (see *Akdeniz and Others v. Turkey*, no. 23954/94, § 102, 31 May 2001; *Çakıcı***,** cited above, § 99, *a contrario, Orhan*, cited above, § 359). In this connection, the Court reiterates that the applicant has failed to demonstrate that she was involved in the ongoing investigations pertaining to the disappearance of İhsan Haran.

84. In view of the above, the Court considers that while the uncertainty and apprehension suffered by the applicant over a prolonged and continuing period caused her anguish and suffering, it cannot be held, in the circumstances of the present case and in light of the case file, that her suffering reached 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. Accordingly, the Court finds no violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

85. Invoking Article 5 of the Convention, the applicant alleged that her husband had been detained in complete disregard of the safeguards

contained in paragraphs one to five of this provision, which guarantees the right to liberty and security. Article 5 reads as follows:

> "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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 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."

86. The Government, beyond denying the factual basis of the applicant's allegations, did not specifically deal with the complaint under Article 5.

87. The Court refers to its above finding that it has not been established beyond reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the alleged abduction of İhsan Haran (see paragraph 69 above). There is thus no factual basis on which to conclude that there has been a violation of this provision as alleged by the applicant.

88. Accordingly, the Court finds no violation of Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicant complained on account of an independent national authority before which the above-mentioned complaints can be brought with a prospect of success. She relied on Article 13 of the Convention, which reads:

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

90. Both parties did not make any specific submissions under Article 13 of the Convention. However, they submitted lengthy arguments in respect of the effectiveness of the domestic remedies. In this respect, the applicant claimed, in particular, that she had tried to petition to the public prosecutor at the State Security Court but was prevented from seeing him by the police. She further alleged that her family continued trying to submit a petition for a month and after failing, turned to conduct prison visits to see if they could get information. Moreover, she argued that despite her persistent efforts to find out about her husband's detention, the authorities did not carry out any investigation. The applicant maintained that a complaint to the public prosecutor was the appropriate remedy to exhaust for the nature of her complaint and that there was no evidence that there was an effective remedy available to her.

91. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 2 in relation to its procedural aspect (see paragraphs 75-78 above), the Court considers that no separate issue arises under Article 13 of the Convention.

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

92. The applicant alleged that there was an administrative practice of discrimination on grounds of ethnic origin. She relied on Article 14 of the Convention, which provides:

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

93. In the initial application form, the applicant's representatives referred to their submissions in the *Akkum and Others v. Turkey* (no. 21894/93, ECHR 2005-... (extracts)). In later submissions, they did not make any specific submissions under Article 14.

94. The Government did not specifically deal with the complaint under Article 14 of the Convention.

95. The Court has examined the applicant's allegation in the light of the evidence submitted to it, but considers it unsubstantiated. In particular, the applicant has not adduced any evidence to substantiate her allegations that İhsan Haran was a deliberate target of a forced disappearance on account of his ethnic origin. There has therefore been no violation of Article 14 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

96. The applicant alleged that the restrictions on her and on her husband's rights and freedoms set forth in the Convention had been applied for purposes not permitted under the Convention. She relied on Article 18 of the Convention, which reads:

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

97. The Court, in the light of the evidence submitted to it, finds that the applicant's allegations under this article are unsubstantiated. Accordingly, the Court finds no violation of Article 18 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

98. In her final observations on the merits submitted on 8 October 1999, the applicant's representative from the United Kingdom informed the Court that they had been unable to contact the applicant and requested the Court to take into account three incidents (see paragraphs 21-22 above) which they considered to be an unacceptable interference with her right to consideration of her complaints by the Court.

99. The Court considers it appropriate to examine this complaint under Article 34 of the Convention, which reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

100. The Court notes that this complaint was not specified or elaborated early enough to allow an exchange of observations between the parties on the subject. It considers that, in the circumstances of the case, it is not necessary to examine the matter separately at this stage in the proceedings (see *Nuray Şen v. Turkey (no. 2)*, no. 25354/94, §§ 199-200, 30 March 2004).

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicant, referring to the awards made by the Court in the cases of *Aksoy v. Turkey* (judgment of 18 December 1996, *Reports* 1996-VI), *Kurt v. Turkey* (judgment of 25 May 1998, *Reports* 1998-III) and *Kaya v. Turkey* (judgment of 19 February 1998, *Reports* 1998-I), claimed that she would hold any sum awarded by way of pecuniary damages for the benefit of her husband. She did not specify any sum under this head.

103. The Government did not express an opinion.

104. The Court notes that the applicant has not specified any particular sum or produced any arguments or documents in support of her claim under this head. The Court accordingly dismisses this claim.

B. Non-pecuniary damage

105. The applicant claimed 40,000 pounds sterling (GBP) in respect of the damage suffered by her husband and GBP 10,000 for herself in relation to the violation of Article 3 of the Convention. She referred to the awards made in similar cases and in particular in the cases of *Kurt* and *Kaya (*cited above).

106. The Government did not comment on the applicant's claim.

107. The Court reiterates that it has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the disappearance of İhsan Haran contrary to the procedural obligation under Article 2 of the Convention. In light of the established case-law in similar cases (see *Tahsin Acar,* cited above, § 264) and having regard to the circumstances of the case, the Court awards the applicant the sum of 10,000 euros (EUR) under this head.

C. Costs and expenses

108. Finally, the applicant claimed GBP 6,704 for fees and costs in the preparation and presentation of her case before the Convention institutions. This included legal work and administrative costs incurred by her British representatives (GBP 2,250 and GBP 89,50 respectively), legal work and administrative costs incurred by her Turkish representatives (GBP 1,800 and GBP 560 respectively) and fees and administrative costs such as

telephone calls, postage, photocopying and stationary of the KHRP (GBP 1,000 and 280 respectively), including translations and summaries from English into Turkish/ Turkish into English (GBP 725). In support of her claims, the applicant submitted a detailed schedule of costs prepared by her representatives and the KHRP.

109. The Government did not express an opinion.

110. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see *Sawicka v. Poland,* no. 37645/97, § 54, 1 October 2002). The Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. In particular, it finds that it has not been proved that all those legal costs including the total number of hours of legal work done by six different lawyers were necessarily and actually incurred. On the other hand, the Court considers that the claims made in respect of translations, summaries and administrative costs may be regarded as having been necessarily incurred and reasonable in their amounts. However, the Court observes that the applicant failed to submit any receipts in respect of these costs. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, it awards the sum of EUR 4,000 in respect of fees and expenses claimed, such sum to be converted into pounds sterling at the date of settlement and to be paid into the bank account in the United Kingdom indicated by the applicant.

D. Default interest

111. 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. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been no violation of Article 2 of the Convention as regards the applicant's allegation that İhsan Haran was abducted and killed by State agents or persons acting on behalf of the State authorities;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of İhsan Haran;

4. *Holds* that it is not necessary to consider the applicant's complaint under Article 2 of the Convention regarding the alleged lack of protection in domestic law of the right to life;

5. *Holds* that there has been no violation of Article 3 of the Convention;

6. *Holds* that there has been no violation of Article 5 of the Convention;

7. *Holds* that no separate issue arises under Article 13 of the Convention;

8. *Holds* that there has been no violation of Article 14 of the Convention in conjunction with Articles 2, 3 and 5;

9. *Holds* that there has been no violation of Article 18 of the Convention;

10. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 34 of the Convention;

11. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the bank account identified by the applicant in the United Kingdom;

(iii) 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;

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

Done in English, and notified in writing on 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President