



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

SECOND SECTION

**CASE OF UÇAR v. TURKEY**

*(Application no. 52392/99)*

JUDGMENT

STRASBOURG

11 April 2006

**FINAL**

*11/07/2006*

*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 Uçar v. Turkey,**

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

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

Mr A.B. BAKA,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 January 2005 and 21 March 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 52392/99) 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 a Turkish national, Mr Seydo Uçar (“the applicant”), on 4 November 1999.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mrs L.K.N. Claridge, Mr K. Yıldız and, until 2002, by Mr P. Leach, lawyers attached to the Kurdish Human Rights Project (“KHRP”) in London, and by Mr İ. Sağlam and Mr Ş. Ülek, lawyers practising in Turkey. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that his son had been abducted and ill-treated by State agents or persons who had acted with the support, knowledge or acquiescence of the authorities, for twenty-eight days before he was handed over to the police in Diyarbakır. He contended that his son had been kept in police custody for nine days without being brought before a judge and without having access to his family and a lawyer, prior to his transfer to Diyarbakır E-type prison, where he died. The applicant maintained that regardless of whether his son had been killed in prison or committed suicide, the authorities were responsible for his death since they had not taken precautions to safeguard his right to life.

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

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

6. By a decision of 4 January 2005, the Court declared the application admissible.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1948 and lives in Gaziantep. The application concerns the alleged abduction and ill-treatment of Cemal Uçar, the applicant's son, by unknown persons and his death in Diyarbakır E-type prison. At the time of the events giving rise to the application, Cemal Uçar was 26 years old. The facts surrounding the detention and death of the applicant's son are disputed between the parties.

#### **A. The alleged abduction of Cemal Uçar**

##### *1. Facts as presented by the applicant*

9. On 5 October 1999 at around 11 a.m. Cemal Uçar left his house to buy water. Four plain-clothes persons carrying weapons and radios attempted to abduct him. Cemal Uçar tried to run away. However, he was caught behind his house. These persons told him that they were policemen. He was then blindfolded and put in a vehicle. The applicant claims that a neighbour witnessed the abduction. According to this witness, Cemal Uçar resisted arrest but was dragged into a dark red car. After being driven around for some time Cemal Uçar was taken to an unknown location.

10. Between 11 and 26 October 1999, the applicant filed petitions with the public prosecutor's office at the Diyarbakır State Security Court and the Diyarbakır public prosecutor. He requested that the authorities carry out an investigation into the abduction of Cemal Uçar and that he be informed of his son's whereabouts.

11. Between 5 October and 2 November 1999 Cemal Uçar was detained by the kidnappers. He was kept blindfolded, deprived of food and was subjected to electric shocks.

12. On 2 November 1999 the kidnappers took Cemal Uçar to the city stadium in Diyarbakır and left him outside. A balaclava was put over his

head and he was made to lie on the ground. The kidnappers told him that they would send the police shortly.

*2. Facts as presented by the Government*

13. On 11 October 1999, after having received the applicant's petition, the Diyarbakır public prosecutor requested the security directorate to examine the allegations. He took statements from the applicant concerning the alleged abduction of Cemal Uçar.

14. On 22 November 1999 the Diyarbakır public prosecutor sent letters to the public prosecutor's office in Nusaybin, the Security Directorate, the Gendarmerie Command and the Population Office in Diyarbakır, requesting these offices to conduct an investigation.

15. On 26 November 1999 the Diyarbakır Security Directorate reported to the Diyarbakır public prosecutor that Cemal Uçar had been taken into police custody on 2 November 1999 by police officers from the Diyarbakır Anti-Terror Branch and that on 10 November 1999 his detention on remand had been ordered after he had been brought before the public prosecutor at the Diyarbakır State Security Court.

16. On 29 November 1999 the deputy chief of police in Diyarbakır notified the Diyarbakır public prosecutor that on 24 November 1999 Cemal Uçar had committed suicide in Diyarbakır E-type prison.

17. On 10 December 1999 the Diyarbakır public prosecutor issued a decision not to prosecute in respect of the applicant's allegations.

18. On 23 December 1999 the decision of 10 December 1999 was served on the applicant.

**B. The detention of Cemal Uçar in police custody**

*1. Facts as presented by the applicant*

19. On 2 November 1999, at 3.30 a.m., within 3 to 5 minutes after the kidnappers had left, police arrived at the stadium and arrested Cemal Uçar. The police officers found a forged identity card in Cemal Uçar's pocket. It had been placed there by his kidnappers. He was then taken to the Diyarbakır State Hospital and examined by a doctor who noted that there were several injuries on various parts of his body.

20. On 10 November 1999 Cemal Uçar was forced by the police to sign a statement, according to which he had been responsible for the organisation of *Hizbullah* activities in Diyarbakır.

21. On 11 November 1999 Cemal Uçar, along with nine other persons, was taken to a medical expert who noted that none of the ten persons had sustained any injuries.

22. On the same day, Cemal Uçar made statements before the public prosecutor at the Diyarbakır State Security Court and denied the truth of the statements taken from him on 10 November 1999 by the police. Subsequently, he was taken to the Diyarbakır State Security Court before which he repeated the statements that he had made to the public prosecutor. The court ordered his detention on remand.

*2. Facts as presented by the Government*

23. On 2 November 1999, at around 3.15 a.m., in the course of a routine police check, Cemal Uçar was seen sitting in front of the city stadium. As he appeared suspicious, the police officers asked him to show them his identity card. A forged identity card was seized and Cemal Uçar was taken into custody.

24. On 4 November 1999 the public prosecutor at the Diyarbakır State Security Court extended Cemal Uçar's custody period for two days. On 6 November 1999 the period was extended for a further six days by the Diyarbakır State Security Court.

25. In his statement to the police dated 10 November 1999, Cemal Uçar acknowledged his involvement in *Hizbullah* activities in Diyarbakır.

26. On 11 November 1999 the Diyarbakır State Security Court ordered his detention on remand. Cemal Uçar was then transferred to Diyarbakır E-type prison.

**C. The alleged solitary confinement and suicide of Cemal Uçar in prison**

*1. Facts as presented by the applicant*

27. After being transferred to Diyarbakır E-type prison, the applicant was placed in a cell where he remained for eleven days.

28. On 24 November 1999 Cemal Uçar died in Diyarbakır E-type prison.

29. In a letter dated 27 September 2000, the applicant's representatives informed the Court that the applicant believed that police officers had killed his son. In their submissions of 15 September 2005, the representatives claimed that Cemal Uçar could have been killed by other inmates of the ward where Cemal Uçar had been detained.

*2. Facts as presented by the Government*

30. On 24 November 1999 during the regular morning inspection, at around 8.15 a.m., Cemal Uçar was discovered by prison officers hanging from a bunk bed by a belt in ward no. 1 in Diyarbakır E-type prison. The prison officers called the prison doctor who established that Cemal Uçar

was dead. They drafted a report immediately after the incident which stated that Cemal Uçar had been hung by a belt. They then informed the prison director and his deputy.

31. On the same day, at 9.30 a.m., the public prosecutor, the prison director, his deputy and one prison officer prepared a further report describing the ward in which the applicant's son had died.

32. At 11.30 a.m. a further report was drafted by technical police officers from the Diyarbakır Security Directorate.

33. Subsequently, an autopsy was carried out on the deceased. According to the autopsy report, no indication of ill-treatment, such as scars or bruises, was identified on the corpse. The report revealed that the cause of death was mechanical asphyxia resulting from suspension.

34. On the same day, statements were taken from the three prison officers who had found the body of Cemal Uçar and from the two other inmates of the ward in which Cemal Uçar had been found dead.

35. On 2 December 1999 the Diyarbakır public prosecutor issued a decision not to prosecute, finding that Cemal Uçar had committed suicide and that there was no offence to prosecute.

36. On the same day, the public prosecutor at the Diyarbakır State Security Court issued an additional decision not to prosecute in respect of the charges against Cemal Uçar, given the latter's demise.

#### **D. The documents submitted by the parties**

37. The parties submitted various documents with a view to substantiating their claims. These documents, in so far as they are relevant, may be summarised as follows.

##### *1. The documents submitted by the Government*

38. The following information is disclosed in the documents submitted by the Government.

##### **(a) Statement of the applicant taken by the Diyarbakır public prosecutor on 11 October 1999**

39. The applicant maintained before the Diyarbakır public prosecutor that his son had been abducted, that he did not know whether the persons who had abducted his son had been police officers and that he feared for his son's life.

##### **(b) Letter dated 11 October 1999 from the Diyarbakır public prosecutor to the Diyarbakır Security Directorate**

40. The Diyarbakır public prosecutor informed the security directorate of the alleged abduction of Cemal Uçar and requested that an investigation be conducted into his disappearance.

**(c) Letters dated 22 November 1999 from the Diyarbakır public prosecutor to the Nusaybin public prosecutor, the Diyarbakır Security Directorate, the Diyarbakır Gendarmerie Command and the Nusaybin Population Office**

41. On 22 November 1999 the Diyarbakır public prosecutor sent letters to the public prosecutor's office in Nusaybin, the Security Directorate, the Gendarmerie Command and the Population Office in Diyarbakır, requesting these offices to conduct an investigation and transmit certain information regarding Cemal Uçar.

**(d) Letters dated 26 and 29 November 1999 from the Diyarbakır Security Directorate to the Diyarbakır public prosecutor**

42. On 26 November 1999 the Diyarbakır Security Directorate reported to the Diyarbakır public prosecutor that Cemal Uçar had been taken into police custody on 2 November 1999 by police officers from the Diyarbakır Anti-Terror Branch, and that on 10 November 1999 his detention on remand had been ordered after he had been brought before the public prosecutor at the Diyarbakır State Security Court.

43. By a further letter dated 29 November 1999, the deputy chief of police in Diyarbakır notified the Diyarbakır public prosecutor that on 24 November 1999 Cemal Uçar had committed suicide in Diyarbakır E-type prison.

**(e) Decision taken on 10 December 1999 not to prosecute**

44. On 10 December 1999 the Diyarbakır public prosecutor issued a decision not to prosecute in respect of the applicant's allegations, finding that Cemal Uçar had been taken into police custody and, consequently, no offence had been committed or offender sought. On 23 December 1999 the decision of 10 December 1999 was served on the applicant.

**(f) Statement of Cemal Uçar taken by police on 10 November 1999**

45. In his statement to the police dated 10 November 1999, Cemal Uçar acknowledged his involvement in *Hizbullah* activities in Diyarbakır.

**(g) Medical reports dated 2 and 11 November 1999**

46. On 2 November 1999, following his arrest, Cemal Uçar was taken to the Diyarbakır State Hospital and examined by a doctor who noted the following:

“An abrasion on the nose, scars on the right wrist, right hand and left foot, an oedema on the right foot and injuries to various parts of the body have been identified...”

47. On 11 November 1999 Cemal Uçar, along with nine other persons, was taken to a medical expert in a health clinic in Diyarbakır who noted that none of the ten persons had sustained any injuries.

**(h) Petition dated 11 November 1999 by Cemal Uçar addressed to the directorate of Diyarbakır E-type prison**

48. On 11 November 1999 Cemal Uçar requested to be placed in the same prison ward as the other persons who were charged with membership of the *Hizbullah*.

**(i) Reports dated 24 November 1999, drawn up by prison officers in Diyarbakır E-type prison**

49. According to two reports drawn up by prison officers, on 24 November 1999, during the regular morning inspection at around 8.15 a.m., Cemal Uçar was discovered by prison officers hanging from a bunk bed by means of a belt. The prison officers called the prison doctor who established that Cemal Uçar was dead. They then informed the prison director and his deputy.

**(j) On-site inspection report, dated 24 November 1999**

50. On 24 November 1999, at 9.30 a.m., the public prosecutor, the prison director, his deputy and a prison officer prepared a further report describing the ward in which the applicant's son had died. According to this second report, there were six bunk beds in the 36 m<sup>2</sup> ward where Cemal Uçar was kept. One of these six beds was turned upright so that it could be used as a wardrobe. The deceased was hanging from the upright bunk bed by a blue belt. There were two pillows, a bottle of water and two glasses placed under his feet. There was no sign of a struggle in the ward, such as broken objects or traces of blood.

**(k) Scene of incident report, sketch plan, photographs and a film of the scene of the incident, dated 24 November 1999**

51. At 11.30 a.m. a report was drafted by technical police officers from the Diyarbakır Security Directorate. They established that Cemal Uçar had committed suicide by hanging himself from a bunk bed, positioned vertically, by means of a black belt. They took photographs of the scene of the incident, drew a plan and filmed the ward with a video camera.

**(l) Body examination and autopsy report, dated 24 November 1999**

52. An autopsy was carried out on the deceased at Diyarbakır State Hospital by Dr Lokman Eğilmez, the director of the Diyarbakır Forensic Medical Branch Office. According to the examination of the body and autopsy report, no indication of ill-treatment, such as scars or bruises, was identified on the corpse. At the end of the examination, Dr Lokman Eğilmez concluded that the cause of death was mechanical asphyxia resulting from suspension.

**(m) Statements, dated 24 November 1999 and taken by the Diyarbakır public prosecutor, of three prison officers, H.M., A.T., and M.Y.S., as well as two inmates of the ward, S.K. and E.F., where Cemal Uçar was found dead**

53. According to the documents submitted to the Court, the prison officers testified that Cemal Uçar had taken breakfast at around 6.45 a.m. and that at around 8.15 a.m. they had found him dead during the inspection of the ward. One of the officers stated that the other inmates were asleep when they arrived at the scene of incident. The officers stated that they then informed the prison authorities. The two inmates stated that they had been woken up at around 8 a.m. by a noise in the ward and had found that Cemal Uçar had hung himself and that prison officers had been in the ward. They both testified that Cemal Uçar had been depressed and had talked about killing himself prior to his death. They affirmed that Cemal Uçar had talked about his previous suicide attempts during his detention in police custody.

**(n) Decisions dated 2 December 1999 not to prosecute issued by the Diyarbakır public prosecutor and the public prosecutor at the Diyarbakır State Security Court**

54. On 2 December 1999 the Diyarbakır public prosecutor issued a decision not to prosecute, finding that Cemal Uçar had committed suicide and that there was no offence to prosecute.

55. On the same day, the public prosecutor at the Diyarbakır State Security Court issued an additional non-prosecution decision in respect of the charges against Cemal Uçar, given the latter's demise.

*2. The documents submitted by the applicant*

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

**(a) The applicant's petitions submitted to the public prosecutor's office at the Diyarbakır State Security Court and the Diyarbakır public prosecutor**

57. In his petition dated 11 October 1999 addressed to the public prosecutor at the State Security Court, the applicant submitted that his son had been arrested by persons claiming to be police officers. He requested the authorities to inform him whether his son had been taken into police custody. On the same day, after having been notified that Cemal Uçar had not been taken into police custody, the applicant lodged a further petition with the public prosecutor's office in Diyarbakır, requesting the authorities to ascertain the whereabouts of his son.

58. In his second petition dated 26 October 1999, addressed to the Diyarbakır public prosecutor, the applicant repeated his allegation concerning his son's abduction. The applicant further stated that two plain-clothes police officers had gone to his son's house two days after the abduction and that, on the same day, a plain-clothes police officer had gone

to his house, searching for his son. The applicant contended that he had been unable to obtain information about his son from the Diyarbakır Security Directorate. He requested the public prosecutor's office to ascertain his son's whereabouts.

**(b) Letter dated 2 November 1999 from the head of the Organisation for Human Rights and Solidarity for Oppressed People (*Mazlum-Der*), Mr Yılmaz Ensaroğlu, to the Ministry of the Interior**

59. In his letter, Mr Ensaroğlu informed the Minister of the Interior of the disappearance of Cemal Uçar and requested that an investigation be conducted.

**(c) Statements made on 11 October 1999 by Cemal Uçar before the public prosecutor at the Diyarbakır State Security Court and the Diyarbakır State Security Court**

60. In his statements to the public prosecutor, Cemal Uçar claimed that he had been kidnapped and taken somewhere close to the Diyarbakır prison. There he had been tortured by the kidnapers, who said they were working for Mahmut Yıldırım, an individual also known as "*Yeşil*", who carried out unlawful acts in the south-east in the 1990s and whose activities were allegedly known to the police and the Turkish intelligence service. He denied the truth of the statements taken from him by the police. He maintained that he had been forced to sign them.

61. In his statements before the Diyarbakır State Security Court, Cemal Uçar repeated the statements that he had made to the public prosecutor.

**(d) Report dated 2 November 1999 of house search and seizure**

62. According to the report drafted at 5.45 a.m. on 2 November 1999 about the search conducted in Cemal Uçar's house, the house was searched in the course of a police operation carried out against the *Hizbullah* and seven books were found. This report was signed by eight police officers and Cemal Uçar.

**(e) Statement by Mr İ. Sağlam concerning the abduction and death of Cemal Uçar**

63. Mr İ. Sağlam stated that Cemal Uçar sent a letter to his family, informing them that he had been taken into police custody and, subsequently, detained in Diyarbakır E-type prison. After having received the letter, the applicant went to the prison and saw his son. Subsequently, he asked Mr İ. Sağlam to visit his son. On an unspecified date, Mr İ. Sağlam visited Cemal Uçar, who maintained that he had been kidnapped by security forces and that he had made statements before the public prosecutor about his abduction. Cemal Uçar refrained from informing the public prosecutor about the place where had been kept for almost a month as he feared for

himself and his family. Mr İ. Sağlam further stated that he did not have the impression that Cemal Uçar was disturbed psychologically. However, he had feared the possibility of being taken to the security directorate again.

**(f) Expert reports dated 30 August 2005 of Dr A.M. Anscombe**

64. Two reports were prepared on behalf of the applicant by Dr A.M. Anscombe, a consultant forensic pathologist practising in the United Kingdom. The applicant instructed Mr Anscombe to review the autopsy report on Cemal Uçar, the police reports on the inspection and verification of the scene of the incident, the plan of the ward, the video and photocopies of photographs of the scene, with the deceased *in situ*, and to comment on the adequacy of the autopsy examination.

65. In his reports Dr Anscombe maintained that his main criticism was the absence of autopsy photographs. He stated that autopsy photographs were a standard part of any forensic post-mortem examination since without photographs, one was reliant upon the description by the pathologist and there was no other means of corroborating what the pathologist had found or described. He further maintained that the autopsy report would be considered to be inadequate in the United Kingdom because of its brevity and lack of detail. As regards the cause of death of Cemal Uçar, Dr Anscombe stated that there was nothing in the disposition of the body, the manner of dress, and disposition of the scene which raised suspicion of anything other than suicide. He however opined that it was possible that the deceased could have been suspended by another person or persons, the assessment of which likelihood in turn rested on the accuracy and reliability of the autopsy report. He concluded that that was why an adequate autopsy description with documentation, including photographs, was so important.

## II. RELEVANT DOMESTIC LAW

66. At the time of the events, Turkish law did not contain any provision regulating communications between persons held in custody and their relatives.

On 6 February 2002 the third paragraph of Article 128 of the Code of Criminal Procedure was amended by Law no. 4744 and currently reads as follows:

“When a person is arrested, following the public prosecutor’s decision, a family member or another person designated by the arrested person shall be promptly informed of the arrest or the prolongation of the custody period.”

67. A description of the other relevant domestic law at the material time may be found in the judgments of *Tekdağ v. Turkey* (no. 27699/95, §§ 40-51, 15 January 2004), and *Akdoğdu v. Turkey* (no. 46747/99, §§ 28 and 29, 18 October 2005).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

68. The applicant alleged that the death of Cemal Uçar in Diyarbakır E-type prison gave rise to a violation of Article 2 of the Convention. He further contended that the authorities had failed to carry out an adequate and effective investigation into his death. Article 2 of the Convention reads as follows:

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

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

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

#### A. Submissions of the parties

##### 1. *The applicant*

69. The applicant maintained that the State was responsible for Cemal Uçar’s death in prison since they could not provide a plausible explanation for it. According to the applicant, his son was either killed by the State authorities or by the inmates of the prison ward where he had been incarcerated. He maintained in this connection that his son should not have been placed in the same ward as the other persons who had been accused of membership of the *Hizbullah*. The applicant further submitted that, if his son had indeed committed suicide, then the authorities should be considered liable for his death since they had failed to safeguard his son’s right to life.

70. The applicant further alleged that the authorities had failed to conduct an adequate and effective investigation into the death of Cemal Uçar in Diyarbakır E-type prison. In particular, the autopsy carried out on the body of Cemal Uçar was far from adequate. In this connection, the applicant maintained that the Court had found other autopsies and medical examinations conducted by the medical expert in question to be inadequate in its judgments of *İkincisoy v. Turkey* (no. 26144/95, § 79, 27 July 2004),

*Elci and Others v. Turkey* (nos. 23145/93 and 25091/94, § 642, 13 November 2003), and *Kişmir v. Turkey* (no. 27306/95, § 85, 31 May 2005). Furthermore, no photographs of the body were taken and there was no impartial observer present, independent of the authorities, during the autopsy. The applicant also maintained that the public prosecutor who had conducted the investigation had not given appropriate consideration to alternative causes of death. The investigation was too brief and limited in scope.

## 2. *The Government*

71. The Government denied the factual basis of the applicant's allegation that his son had been killed while in prison. They further submitted that the investigation carried out by the security directorate and the public prosecutor's office in Diyarbakır into his death had revealed that Cemal Uçar had committed suicide. They maintained that the authorities had not been and could not have been aware of the psychological problems of Cemal Uçar, especially because he had committed suicide only fifteen days after he was placed in Diyarbakır E-type prison. The Government finally submitted that the domestic authorities fulfilled their obligation to conduct an effective investigation into the death of Cemal Uçar.

## **B. The Court's assessment**

### 1. *The death of the applicant's son*

#### **a. The alleged intentional killing**

72. 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 *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). In the light of the importance of the protection afforded by Article 2 of the Convention, the Court must subject the complaints concerning the right to life to the most careful scrutiny (see *Akdoğdu*, cited above, § 36).

73. The Court will examine the issues that arise in the light of the documentary evidence put forward in the present case, as well as the parties' written observations.

74. The Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of

18 January 1978, Series A no. 25, p. 65, § 161, and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 142, 16 July 2002).

75. The applicant alleged that his son was killed either by State agents or by inmates of the prison ward where he was found dead.

76. The Court considers that the applicant's allegation that his son was killed by agents of the State or the inmates of the ward no. 1 of Diyarbakır E-type prison is not supported by any conclusive evidence. In this connection, the Court points out that it has not been provided with any eyewitness accounts or evidence corroborating the applicant's account to a decisive extent.

77. It appears from the case file that, on 24 November 1999 at 8.15 a.m., the corpse of Cemal Uçar was found by prison officers, who then called the prison doctor. The doctor established that Cemal Uçar was dead.

78. At 9.30 a.m. on the same day, the Diyarbakır public prosecutor conducted an on-site inspection. Subsequently, an autopsy was conducted on Cemal Uçar by the director of the Diyarbakır Forensic Medical Branch Office, who concluded that the applicant's son had died as a result of mechanical asphyxia resulting from suspension.

79. The Court further notes that the Diyarbakır public prosecutor heard three prison officers and the inmates of ward no. 1 at Diyarbakır E-type prison. The statements of the prison officers were consistent with each other, as well as with the statements of the inmates.

80. Moreover, as to the applicant's allegation that his son was killed by other inmates who had been accused of membership of the *Hizbullah* and that the authorities were responsible for his death as they placed Cemal Uçar in ward no. 1, the Court notes that Cemal Uçar had requested to be placed in the ward in question (see paragraph 48 above). The Court is not therefore convinced by the applicant's assertion.

81. In the light of the above, the Court finds that there is insufficient evidence to conclude that the applicant's son was, beyond reasonable doubt, killed by State agents or by the two inmates of the prison ward where Cemal Uçar was found dead, as alleged by the applicant.

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

**b. The alleged failure of the authorities to supervise the detainee**

83. The Court recalls that the first sentence of Article 2 § 1 requires the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of judgments and decisions* 1998-III, p. 1403, § 36). The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the life of the applicant's son from being, avoidably, put at risk. The Court further

considers that, in appropriate circumstances, Article 2 of the Convention also imposes a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual, or from self-harm (see *Akdoğdu*, cited above, § 44).

84. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising (see *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III, and *Akdoğdu*, cited above, § 45).

85. The Court considers that, faced with the allegation that the authorities failed to fulfil their positive obligation to protect the life of a prisoner, in the context of their duty to supervise detainees and prevent suicide, there must be convincing evidence that the authorities should have known at the time that the person concerned was at risk and that they did not take the measures which could reasonably be expected of them to allay that risk (see *Tanribilir v. Turkey*, no. 21422/93, § 72, 16 November 2000, and *Akdoğdu*, cited above, § 46). The answer to that question depends on all the circumstances of the case.

86. Consequently, the Court will examine whether the authorities knew or ought to have known that Cemal Uçar posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably have been expected of them to prevent that risk.

87. First, there is nothing in the case file which demonstrates that the prison authorities failed to conduct the routine monitoring of the prison ward in which Cemal Uçar was incarcerated. Nor is there any evidence that the prison authorities knew that Cemal Uçar posed a risk to his own life and, therefore, he should have been supervised more closely than an ordinary detainee. In this connection, the Court notes that although, following the death of Cemal Uçar, the inmates of the ward stated that he had been depressed and talked about killing himself, the two medical reports drawn up as regards the applicant's son, which are dated 2 and 11 November 1999, did not refer to any psychological disturbance. Furthermore, the Court observes that, in the material before it, there is no evidence that Cemal Uçar gave any cause for caution or alarm to the national authorities regarding his mental state.

88. In the circumstances of the case, the Court is not persuaded that the prison authorities knew that Cemal Uçar's mental state was such that he posed a potential risk to his own life.

89. Accordingly, there has been no violation of Article 2 of the Convention on that account.

*2. The alleged inadequacy of the investigation into the death of Cemal Uçar*

90. The Court recalls that, according to its case-law, 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. 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 an individual gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). This involves, where appropriate, an autopsy which provides a complete and accurate record of possible signs of ill-treatment and injury, and an objective analysis of clinical findings, including the cause of death (see *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII, and *Akdoğan*, cited above, § 54). 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).

91. In the present case, an investigation was indeed carried out into the death of the applicant's son.

92. According to the documents submitted by the parties, very shortly after the corpse of Cemal Uçar had been found, the Diyarbakır public prosecutor conducted an on-site inspection in the prison and a detailed report was drafted. Subsequently, a further report was drafted by technical police officers from the Diyarbakır Security Directorate. They took photographs and drew a plan of the scene of the incident. They also filmed the ward with a video camera.

93. On the same day, an autopsy was conducted by a medical expert who concluded that the cause of death had been mechanical asphyxia resulting from suspension. Although photographs of the body were not taken during the autopsy, the report explicitly stated that no indication of ill-treatment, such as scars or bruises, was found on the corpse.

94. The public prosecutor took statements from the inmates of the ward where Cemal Uçar had been incarcerated, as well as from three prison officers.

95. As regards the applicant's submissions that no photographs of the body were taken and that there was no impartial observer independent of the authorities present during the autopsy, the Court observes that the applicant could have challenged the decision not to prosecute issued by the Diyarbakır public prosecutor of 2 December 1999 before the assize court, but he failed to do so. In fact, the applicant and his representatives remained totally passive on the national level following the death of Cemal Uçar.

96. In the light of the foregoing, the Court considers that the investigation conducted into the death of Cemal Uçar could be described as adequate and effective.

97. Accordingly, the Court finds that there has been no violation of Article 2 of the Convention under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION

98. The applicant submitted that the abduction and torture of his son by State agents or person acting with their support, knowledge or acquiescence, and the suffering which he endured on account of his son's disappearance between 5 October and 2 November 1999, was in violation of Articles 3 and 5 of the Convention. He further maintained that the authorities had failed to carry out an adequate and effective investigation into the abduction and torture of his son. The applicant finally contended under Article 5 §§ 3 and 5 of the Convention that Cemal Uçar had been kept in police custody for nine days without being brought before a judge or other officer authorised by law to exercise judicial power, and that there was no remedy in domestic law to obtain compensation for his son's unlawful detention.

### A. The period between 5 October and 2 November 1999

#### *1. Submissions of the parties*

##### **a. The applicant**

99. The applicant submitted that his son had been abducted and tortured by kidnappers who were acting with the support, knowledge and acquiescence of the authorities, and that there had been no effective investigation into his son's abduction and ill-treatment.

100. The applicant finally contended that he had suffered anguish and distress on account of the disappearance of his son and the failure of the authorities to investigate the disappearance.

**b. The Government**

101. The Government contended that Cemal Uçar had not been in police custody between 5 October and 2 November 1999 and that his kidnappers had not been State agents. They maintained that Cemal Uçar had been tortured by members of *Hizbullah* between these dates. They submitted that the medical reports revealed that the applicant's son had not been ill-treated in police custody and, consequently, the authorities had not been responsible for the ill-treatment that he had allegedly suffered.

*2. The Court's assessment*

**a. The alleged abduction and torture of Cemal Uçar by or with the connivance of State agents**

102. The Court reiterates that Article 3 of the Convention ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. 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 rights requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII (extracts)). Where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinci*, cited above, § 135) and will do so on the basis of all the material submitted by the parties.

103. The Court's case-law also stresses the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals to be free from arbitrary detention by the authorities. It has reiterated in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5 (see *İpek v. Turkey*, no. 25760/94, § 187, ECHR 2004-II (extracts)).

104. The Court further reiterates that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, cited above, § 264). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ülkü Ekinci*, cited above, § 142).

105. In the instant case, the Court observes that between 5 October and 2 November 1999 the applicant filed several petitions with the national authorities, maintaining that his son had been kidnapped by four persons and that a neighbour had witnessed the abduction. Furthermore, according

to the medical report dated 2 November 1999, Cemal Uçar bore marks of ill-treatment on his body, after his release from his kidnappers. The Court notes that Cemal Uçar maintained before the public prosecutor and the Diyarbakır State Security Court that he had been kidnapped and tortured by persons who had first introduced themselves as police officers and who had then told him that they worked for Mahmut Yıldırım (see paragraph 60 above).

106. However, the Court considers that, even assuming that Cemal Uçar's assertion that he had been abducted by persons describing themselves as working for Mahmut Yıldırım were accurate, in the light of the evidence in the case file it cannot be established that the kidnappers were State officials. Nor could it be shown that State officials were implicated in the abduction.

107. The Court therefore concludes that the actual circumstances and the identity of the kidnappers remain a matter for speculation and assumption. Accordingly, it finds that there is insufficient evidence on which to conclude that the applicant's son was, beyond reasonable doubt, abducted and tortured by or with the connivance of State agents in the circumstances alleged by the applicant.

108. Accordingly, there has been no violation of Articles 3 and 5 of the Convention on that account.

**b. The suffering that the applicant endured on account of his son's disappearance**

109. The Court reiterates that whether a family member may be considered to be a victim of a violation of Article 3 of the Convention, on account of a relative's disappearance, 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. Relevant elements will include the proximity of the family tie – in this context, a certain weight will attach to the marital bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information on 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 concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (*Çakıcı*, cited above, § 99).

110. In the instant case, the Court observes that there is nothing in the content or tone of the authorities' replies to the enquiries made by the applicant that could be described as inhuman or degrading treatment. Although the alleged inadequacy of the investigation into the disappearance of his son may have caused the applicant feelings of anguish and mental

suffering, the Court considers that it has not been established that there were special factors which would justify finding a violation of Article 3 of the Convention in relation to the applicant himself (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 239, ECHR 2004-III).

111. Accordingly, there has been no violation of Article 3 of the Convention on that account.

**c. The alleged inadequacy of the investigation into the abduction and ill-treatment of Cemal Uçar**

112. The Court considers that the applicant's allegation concerning the authorities' failure to carry out an adequate and effective investigation into the abduction and ill-treatment of Cemal Uçar is more appropriately examined under Article 13 of the Convention.

**B. Cemal Uçar's detention in police custody**

*1. Submissions of the parties*

**a. The applicant**

113. The applicant submitted under Article 3 of the Convention that Cemal Uçar had been subjected to coercion while in police custody. He further maintained under Article 5 § 3 of the Convention that his son had been kept in police custody for nine days without being brought before a judge or other officer authorised by law to exercise judicial power. The applicant finally contended under Article 5 § 5 of the Convention that there was no remedy in domestic law to obtain compensation for the alleged violation of Article 5 § 3.

**b. The Government**

114. As to the applicant's allegation under Article 3, the Government submitted that the medical reports reveal that the applicant's son had not been ill-treated in police custody. As regards the complaints under Article 5 of the Convention, the Government argued that the length of the applicant's detention in police custody was in conformity with the legislation in force at the time.

*2. The Court's assessment*

**a. The alleged ill-treatment of Cemal Uçar while in police custody**

115. The Court reiterates that where an individual is taken into custody in good health but is found to be injured at the time of release, it is

incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are supported by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see, among others, *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004, and *Çelik and İmret v. Turkey*, no. 44093/98, § 39, 26 October 2004).

116. In the instant case, the Court observes that according to the medical report of 11 November 1999, Cemal Uçar did not sustain any injury. The Court further observes that the applicant has not produced any other cogent evidence in support of his allegation that Cemal Uçar had been subjected to ill-treatment by State officials. Furthermore, in his statements before the public prosecutor and the Diyarbakır State Security Court, Cemal Uçar did not give a detailed account of the abuse to which he was allegedly subjected while in police custody.

117. The Court concludes that there is no evidence to support this complaint. Accordingly, there has been no violation of Article 3 of the Convention in respect of the ill-treatment to which Cemal Uçar was allegedly subjected while in police custody.

**b. The length of Cemal Uçar's detention in police custody**

118. The Court repeats that Article 5 in general aims to protect the individual against arbitrary interference by the State with the right to liberty. Article 5 § 3 is intended to secure the rule of law by requiring the judicial control of the interference by the executive (see the *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports 1997- VII*, p. 2623, § 44).

119. The Court notes that Cemal Uçar's detention in police custody lasted nine days. It recalls that in the case of *Brogan and Others v. the United Kingdom* (judgment of 29 November 1988, Series A no. 145-B) it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict time constraints of Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism (*Brogan and Others*, cited above, § 62).

120. In the light of the principles enunciated in the *Brogan* case, the Court cannot accept that it was necessary to detain the applicant's son for nine days without judicial intervention. The Court therefore concludes that there has been a breach of Article 5 § 3 of the Convention.

**c. The inability to obtain compensation for the excessive length of detention in police custody**

121. The Court reiterates that Article 5 § 5 of the Convention guarantees an enforceable right to compensation only to those who have been the

victims of arrest or detention contrary to Article 5 of the Convention (see *Benham v. the United Kingdom*, judgment of 10 June 1996, Reports 1996-III, p. 755, § 50, and *İkincisoğlu*, cited above, § 111).

122. In the instant case, the Court notes that the length of Cemal Uçar's custody period was in conformity with the domestic law in force at the material time. Accordingly, a request for compensation for a period of nine days in police custody would not have succeeded before the domestic courts.

123. In the absence of an enforceable right to compensation in the circumstances of the present case, there has been a violation of Article 5 § 5 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

124. The applicant complained that his son had been denied access to a lawyer when he was in police custody. He invoked Article 6 of the Convention, which, in relevant part, provides as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

125. The Government contended that Cemal Uçar had not made a request to consult a lawyer. They submitted that detainees in police custody had the opportunity to see their lawyers.

126. The applicant maintained his allegation.

127. The Court recalls that whether Article 6 § 3 (c) applies to the preliminary investigation stage depends on the special features of the proceedings involved and the circumstances of the case. In order to determine whether the aim of Article 6 – a fair trial – has been achieved, regard must be had to the entirety of the proceedings conducted in the case (see *Dikme v. Turkey*, no. 20869/92, § 109, ECHR 2000-VIII).

128. In this connection, the Court observes that the charges against the applicant's son were dropped after his death. Consequently, the Court is not in a position to make an examination of the proceedings as a whole or assess the impact of the absence of representation at the initial stage of the proceedings.

129. Accordingly, there has been no violation of Article 6 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

130. The applicant submitted under Article 8 of the Convention that he had not had access to his son when he had been in police custody. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life,...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime ...”

131. The Government contended that Cemal Uçar had not made any attempt to see his family members while police custody.

132. The applicant maintained his allegation.

133. The Court underlines the essential object of Article 8 - to protect the individual against arbitrary interference by public authorities. There may in addition be positive obligations inherent in effective “respect” for family life. Whilst the boundaries between the State’s positive and negative obligations under this provision do not lend themselves to precise definition, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII).

134. Furthermore, in the Court’s opinion, “family life”, within the meaning of Article 8 of the Convention, includes at least the ties between close relatives. Respect for family life implies an obligation for the State to act in a manner calculated to allow such ties to develop normally (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, § 45). These obligations arise when there is a direct and immediate link between the measures sought by an applicant and the latter’s private and/or family life (see *Zehnalova and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 17, § 32, *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 23, *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 55, § 55, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p 227, § 58).

135. Since the concept of respect is not precisely defined, States have a wide margin of appreciation regarding the choice of the means to be employed to discharge such obligations in relevant legislation (see *Zehnalova and Zehnal*, cited above).

136. The Court considers that when a person is arrested his ability to communicate rapidly with his family may be of great importance. The unexplained disappearance of a family member, even for a short period of time, may provoke great anxiety (see *McVeigh and Others, O’Neill*, and

*Evans v. the United Kingdom*, nos. 8022/77, 8025/77 and 8027/77, Commission's report of 18 March 1981, Decisions and Reports (DR) 25, p. 52, § 237).

137. The Court further considers that the situation complained of in the instant case concerns not an interference with the applicant's right under Article 8, but the State's inaction to regulate the communications between persons in custody and their relatives. Therefore, the Court will examine the applicant's complaint in the light of the general rule enunciated in the first paragraph of Article 8, which protects the right to respect for private and family life.

138. In the instant case, the Court notes that Cemal Uçar disappeared on 5 October 1999 and that the applicant only learned about his whereabouts after Cemal Uçar had been detained in the Diyarbakır prison. In this connection, the Court observes that although the applicant filed numerous petitions with the authorities, he did not receive any reply as to his son's whereabouts. It was not until 11 November 1999, the date on which Cemal Uçar was detained on remand, that the applicant was informed by his son of his whereabouts.

139. The Court further notes that Cemal Uçar's detention in police custody lasted nine days, between 2 and 11 November 1999 (see paragraphs 19, 22 and 26 above), which undoubtedly caused anxiety for the applicant, bearing in mind the unexplained disappearance of his son since 5 October 1999. Furthermore, at the material time there was no legal provision in Turkish law governing the question of contact between a person held in police custody and the members of his or her family. The legislative amendment which provided the notification of the arrest of a person to a family member or another person designated by the detainee only entered into force in 2002.

140. The Court observes that there is nothing in the case file which would prove that the applicant and his son had requested to be authorised to contact each other and that their requests had been dismissed. However, given the absence of pertinent regulations, the Government have not specified the means at Cemal Uçar's disposal which would have enabled him to communicate rapidly with his family following his detention in police custody.

141. In the absence of a legislative framework providing concrete and effective protection against a violation of Article 8 of the Convention at the material time, the Court considers that, in the circumstances of the case, the detention of Cemal Uçar in police custody for nine days without contact with his family constituted a violation of Article 8.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

142. The applicant alleged that he had been denied an effective domestic remedy in respect of his complaints concerning Cemal Uçar's abduction and ill-treatment, in violation of Article 13 of the Convention. He further complained under the same head about the ineffectiveness of the investigation into the death of his son. Article 13 of the Convention provides as follows:

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

### A. Submissions of the parties

#### *1. The applicant*

143. The applicant maintained that neither of the investigations had met the requirements of Article 13 of the Convention. He contended, in particular, that the disappearance and ill-treatment of Cemal Uçar between 5 October and 2 November 1999 had never been investigated although his son had told the authorities that he had been subjected to torture between 5 October and 2 November 1999. In this connection, the applicant contended that the prosecution authorities and the police had failed to take a detailed statement concerning his allegations of torture from Cemal Uçar. Nor did they make any efforts to obtain other evidence, such as forensic evidence and witness statements.

#### *2. The Government*

144. The Government maintained that the domestic authorities had conducted effective investigations into the abduction, the allegations of ill-treatment and the death of the applicant's son.

### B. The Court's assessment

#### *1. The alleged inadequacy of the investigation into the death of Cemal Uçar*

145. Having regard to its conclusion on the applicant's complaint under Article 2 of the Convention (see paragraph 97 above), the Court does not consider it necessary to examine the applicant's complaint under Article 13 of the Convention separately.

2. *The alleged inadequacy of the investigation into the abduction and the alleged ill-treatment of Cemal Uçar*

146. The Court recalls that Article 13 guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (*Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, § 95, *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 103, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, § 89).

147. In addition, where the relatives of a person have an arguable claim that the latter has disappeared and/or been subjected to ill-treatment, the notion of an effective remedy for the purposes of Article 13 entails, 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 effective access for the relatives to the investigatory procedure (see *İpek*, cited above, § 198, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

148. On the basis of the evidence adduced in the present case, the Court observes, at the outset, that Cemal Uçar had been abducted and subjected to ill-treatment between 5 October and 2 November 1999. The Court has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the abduction of the applicant's son. However, that does not preclude the complaint under Articles 3 and 5 from being an "arguable" one for the purposes of Article 13 of the Convention. These complaints were not declared inadmissible as manifestly ill-founded and therefore necessitated an examination on the merits (see *Nuri Kurt v. Turkey*, no. 37038/97, § 116, 29 November 2005). Furthermore, the Court observes that it is not in dispute between the parties that the applicant's son was the victim of an abduction and ill-treatment. The Court therefore considers that the applicant's complaints raised arguable claims of violations of the Convention for the purposes of Article 13 of the Convention. Consequently, the authorities had an obligation to carry out an effective investigation into the circumstances of the abduction and ill-treatment of the applicant's son.

149. The Court observes that no attempts were made to find the applicant's son. The authorities, in particular the security forces, remained passive between 11 October and 22 November 1999, although the applicant applied to the public prosecutor's office at the Diyarbakır State Security Court, the public prosecutor's office in Diyarbakır and the security directorate in Diyarbakır. It was not until 26 November 1999, two days after Cemal Uçar's death, that the Diyarbakır security directorate informed the public prosecutor's office about Cemal Uçar's whereabouts.

150. Furthermore, no attempts were made to obtain evidence in respect of the alleged abduction. In particular, no attempts were made to take the testimony of Cemal Uçar's neighbour, who allegedly witnessed the event.

151. The Court further notes that, after having been arrested by police officers on 2 November 1999, Cemal Uçar was taken to Diyarbakır State Hospital and examined by a doctor who noted that there were several injuries on various parts of his body (see paragraphs 19 and 46 above).

152. The Court is struck by the fact that although Cemal Uçar's medical examination of 2 November 1999 revealed that he had been ill-treated and, despite his complaints to the State Security Court that he had been tortured for almost a month, no attempts were made to investigate his allegations. On the contrary, the Diyarbakır public prosecutor issued a decision not to prosecute in respect of the allegations of abduction and ill-treatment, finding that Cemal Uçar had been taken into police custody and, consequently, no offence had been committed or offender sought.

153. The serious shortcomings thus identified are sufficient for the Court to conclude that the applicant was denied an effective remedy in respect of the disappearance and ill-treatment of his son between 5 October and 2 November 1999, and was thereby denied access to any other available remedies at his disposal, including a claim for compensation.

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

## VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

155. The applicant alleged that there was an administrative practice of discrimination on grounds of ethnic origin. He 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.”

156. The applicant maintained that his son's disappearance, ill-treatment, subsequent death and the failure of the authorities to conduct an effective investigation were motivated by his ethnic origin.

157. The Government submitted that the applicant's allegations were untrue and unsubstantiated.

158. The Court has examined the applicant's allegation. However, it finds that no violation of this provision can be established on the basis of the evidence before it.

159. It follows that there has been no violation of Article 14, read in conjunction with Articles 2 and 3 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

160. In his post-admissibility observations, the applicant invited the Court to find that the respondent Government had failed in its duty to assist the Court in the case. He maintained that the respondent State failed to disclose all the evidence and information requested by the Court on 12 January 2005. The applicant relied on Article 38 of the Convention which, in relevant part, 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; ...”

161. The Government maintained that they had replied to the questions put by the Court and submitted the evidence requested.

162. The Court observes that on 12 January 2005 the Government was requested to reply to four questions and to submit photographs and the video of the prison ward where Cemal Uçar had been found dead and that the Government submitted the requested information and materials on 30 May and 7 June 2005. The Court therefore does not consider that the Government have fallen short of their obligations under Article 38 § 1 (a) of the Convention in this respect.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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. Damage

164. The applicant sought reparation for pecuniary and non-pecuniary damage, but left the amount to the discretion of the Court.

165. The Government submitted that the applicant had not provided any evidence in support of any alleged damage and requested the Court not to accede to the applicant's claims.

166. As regards the alleged pecuniary damage sustained by the applicant, the Court observes that he has not produced any documentation in support of his claim, which the Court, accordingly, dismisses.

167. With regard to the non-pecuniary damage, the Court notes that it has found violations of Articles 5 §§ 3 and 5, 8 and 13 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant 10,500 euros (EUR) under this head.

### **B. Costs and expenses**

168. The applicant claimed a total of 8,981.50 pounds sterling (GBP) (approximately EUR 13,171) for fees and costs incurred in respect of his lawyers in the United Kingdom. He further claimed 6,800 new Turkish liras (YTL) (approximately EUR 3,860) for the fees and costs in respect of Mr İ. Sağlam, one of his representatives in Turkey. The applicant submitted detailed schedules of costs in support of his claims for his lawyers' fees.

169. The Government contested these claims.

170. 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 these legal costs, including the total number of hours of legal work effected by four different lawyers, were necessarily and actually incurred.

171. Making its own assessment based on the information available, the Court awards the applicant EUR 8,000 for costs and expenses – exclusive of any value-added tax that may be chargeable – in respect of his lawyers attached to the Kurdish Human Rights Project, to be paid into the bank account of the applicant's representatives in the United Kingdom, as indicated by the applicant. The Court further awards the applicant EUR 2,500 for the costs and expenses incurred in respect of Mr İ. Sağlam.

### **C. Default interest**

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 2 of the Convention;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been no violation of Article 5 of the Convention in respect of the disappearance of the applicant's son between 5 October and 2 November 1999;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention with respect to the length of the detention of the applicant's son in police custody;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention as regards the inability of the applicant's son to obtain compensation for the excessive length of detention in police custody;
6. *Holds* that there has been no violation of Article 6 of the Convention;
7. *Holds* that there has been a violation of Article 8 of the Convention;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the disappearance and ill-treatment of the applicant's son between 5 October and 2 November 1999;
9. *Holds* that there has been no violation of Article 14 of the Convention;
10. *Holds* that there has been no violation of Article 38 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 10,500 (ten thousand and five hundred euros) in respect of non-pecuniary damage to be paid into the bank account of the applicant; this sum is to be converted into new Turkish liras at the rate applicable at the date of settlement;
    - (ii) EUR 2,500 (two thousand and five hundred euros) for costs and expenses incurred in respect of Mr İ. Sağlam, one of the applicant's representatives in Turkey, to be paid into the bank account of the applicant; this sum is also to be converted into new Turkish liras at the rate applicable at the date of settlement;

(iii) EUR 8,000 (eight thousand euros) for costs and expenses in respect of the applicant's representatives in the United Kingdom; this sum is to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the applicant's representatives' sterling bank account in the United Kingdom;

(iv) any tax that may be chargeable on all 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 11 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President