



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

FORMER SECOND SECTION

CASE OF TERENCE AKSAKAL v. TURKEY

(Application no. 51967/99)

JUDGMENT

[Extracts]

STRASBOURG

11 September 2007

FINAL

06/07/2009

In the case of Terek Aksakal v. Turkey,

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

Jean-Paul Costa, *President*,

Ireneu Cabral Barreto,

Rıza Türmen,

Mindia Ugrekhelidze,

Antonella Mularoni,

Elisabet Fura,

Dragoljub Popović, *judges*,

and also of Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 51967/99) 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, Mrs Terek Aksakal (“the applicant”) on 29 July 1999.

2. The applicant was represented by Mr M.A. Kırdök, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 15 March 2005 the Court decided to notify the Government of the application. Relying on the provisions of Article 29 § 3, it decided to rule on the admissibility and the merits of the application at the same time.

4. On 14 November 2006 the Second Section gave notice of its intention to refer the case to the Grand Chamber. In a letter of 11 December 2006, the Government opposed that proposal. The case therefore remained before the Chamber (former Second Section).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Istanbul. She is the widow of Mr Cengiz Aksakal (“C.A.”), who died on 12 November 1980.

6. On 12 September 1980 martial law was declared in Turkey following military intervention by the army.

7. On 18 October 1980 C.A., who was a teacher in the village of Veliköy, in the province of Artvin, surrendered to the police during a military operation and was taken into custody. He was suspected of belonging to the illegal organisation *Dev-Yol* (Revolutionary Way). He spent the first three days in custody at the headquarters of the gendarmerie in Veliköy and the following five at the headquarters of the gendarmerie of the district of Şavşat. C.A., who was in good health at the time of his detention in both locations, was not questioned.

8. On 26 October 1980 he was transferred to Artvin, where he was interrogated in a sports hall until the following 2 November. On that date, he was imprisoned in the martial law detention facility (*sıkıyönetim gözetim evi*).

9. After having been taken ill on 3 November 1980, C.A. was admitted to hospital in a pre-comatose state. On 5 November 1980, he was transferred by ambulance to Trabzon Hospital where he died on 12 November.

10. According to the autopsy report drawn up on 13 November 1980, the following marks were found on the body of the deceased:

“Abrasions measuring 3 x 3 cm, going from the outside towards the inside of the eighth and ninth ribs, the scabs of which were coming off; on the right wrist and on the inside of the wrist, a purple mark in the form of two parallel bracelets 1.5 cm wide and on the mark, two wounds, the scabs of which were coming off; on the left wrist, the same mark, 1.5 cm wide; on the left side of the penis, a wound without a scab; on the left foot, a wound with a scab measuring 2 x 1 cm, with, underneath, a bruise measuring 3 x 3 cm; four wounds with scabs under the left knee, a wound with a scab measuring 5 x 1 cm inside the left tibia ...; bruising on the top and lateral surface of the right foot.”

11. Since the cause of death could not be established on the basis of this information, a conventional autopsy was performed. An examination of the skull and ribcage revealed “ecchymosis measuring 3 x 4 cm at the back, a large haematoma inside the cervical cavity; an infection of the lungs ...” A post-mortem examination was deemed necessary.

12. In her complaint lodged with the public prosecutor on 28 January 1981, the applicant stated:

“Two soldiers, accompanied by the village schoolmaster came to our house on the day before the religious holiday. They took my husband away saying that the lieutenant wanted to talk to him. He was held at the village gendarmerie for approximately four days. During that time, I was able to visit him and he was well. He was then transferred to the gendarmerie in the district of Şavşat; I was no longer able to visit him. I was told that he remained there for six days and was then taken to Artvin When they returned his body to me, I noticed abrasions and signs of injuries. His tongue was as big as that of an animal, three of his teeth were broken, ... there were marks of torture all over his body. Before being arrested, he had been in good health.”

13. According to the administrative investigation report (*idari tahkikat raporu*) of 15 February 1981 signed by three officers, during the course of a

military operation on 18 October 1980 C.A. had been arrested after having obeyed an order to surrender. On the same date he had been placed in custody at the Veliköy gendarmerie, where he remained for three days. He spent the following five days at the gendarmerie of the district of Şavşat. During this period no sign of any health problem was recorded. On 26 October 1980 C.A. was transferred to the police headquarters at Artvin where he was questioned. After having been held at the police headquarters for seven days, he was transferred, on 2 November 1980, to the surveillance facility (*Gözetim evi*) attached to the martial law command. According to the records of that establishment, no sign of illness had been noted upon his arrival. On the following day, at his request, he was transferred to Artvin Hospital. The head physician at that hospital stated that he had asked C.A. if he had been hit on the head or on the body; C.A. allegedly replied that he had not. According to the report drawn up by the hospital, meningitis and pneumonia were diagnosed. Two days later, the patient was transferred to Trabzon Hospital where he died on 12 November. The report concluded that this was a “natural death” (*ecel*).

14. On 15 June 1981 three police officers, S.A., İ.Ü. and H.Ö., were questioned as suspects by the martial law prosecutor. They were the police officers who had taken C.A.’s statement on 21 October 1980 in a room at the sports hall. The police officers stated that they had not subjected C.A. to any mistreatment and had not found any evidence against him during questioning. H.Ö. stated that on 26 October 1980, when the report was being drawn up in the presence of C.A., the latter was groaning. When the police officer asked what the matter was, the applicant replied that he had caught a chill and that he had pains in his chest. The three police officers stated that they had brought C.A. to the gendarmerie on 26 October 1980, that on the same day he was to have been placed in the military prison at Artvin, but was detained in custody by the gendarmerie until the following 1 November, notwithstanding the orders of the martial law commander.

15. On 11 November 1981, at the request of the Şavşat public prosecutor’s office, the body of C.A. was exhumed in order to examine the deceased’s skull. According to the report dated 21 September 1982 drawn up by the forensic institute, the skull showed no sign of trauma, apart from separation at the right temporo-occipital suture.

16. According to the report of 3 December 1982 issued by the Istanbul forensic institute upon completion of the post-mortem examination of samples of tissue taken from C.A.’s body, the latter had died of pneumonia with spinal haemorrhaging (*subaraknoidal kanama*) having lasted seven days, and showed no signs of traumatic injury.

17. In an indictment dated 19 April 1983 drawn up by the military prosecutor at the martial law command, the three police officers (see paragraph 14 above) on duty at the material time at Artvin police station were accused of having caused the death of C.A. after torturing him. The

prosecutor stated that the accused had interrogated C.A. in a sports hall instead of in the customary location and that they had concealed their names at the foot of his statement, in breach of the relevant regulations. He also referred to the statements of several witnesses who had seen C.A. on the premises of Artvin police station, once attached to the wall, his arms outstretched, and another time in a deplorable condition, paralysed and unable to speak.

18. The applicant joined the criminal proceedings brought before Erzurum Military Court No. 2 attached to the martial law command ("the military court").

19. On 31 August 1983, a gendarme, F.I., examined as a witness before the Military Court, stated that he had "maybe seen" C.A.'s interrogation but had not participated in it. He stated that he had not noticed any ill treatment during the interrogation, which had been conducted on the top floor of gendarmerie premises or in the sports hall. He stressed that as commander of the gendarmerie centre (*jandarma merkez komutanı*), his role was limited to appointing the interrogation team guards.

20. The report of 17 February 1984, unanimously adopted by the plenary meeting of the forensic institute, reads:

"On 3 November 1980, while in police custody, C.A. was taken to Artvin Hospital in a comatose state. First aid was administered on the basis of the diagnosis of meningitis and pneumonia. On the following 5 November, he was transferred to Trabzon Hospital in a comatose state, with hemiplegia on the left-hand side. He died on 12 November 1980. The ecchymoses noted at the autopsy revealed that violence and assault had been involved and that the party concerned had died of an intracranial haemorrhage. As regards the clinical presentation, a pre-existing underlying condition was noted which prepared the ground for the haemorrhage which was triggered by the trauma. Since a causal link has been established between the cranial trauma and the death, Articles 451 or 452 § 2 of the [Turkish] Criminal Code are applicable in the instant case."

21. The accused denied the charges against them throughout the proceedings. They declared that they had never had any contact with C.A. save at the start of the interrogation. Certain witnesses who had initially testified against the accused subsequently retracted their statements.

22. In a judgment of 15 May 1984, the accused were each sentenced to three years and four months' imprisonment under Articles 243 and 452 § 2 of the Criminal Code.

23. The accused, the applicant and the martial law commander appealed on points of law.

24. In a judgment delivered on 28 December 1984, the Military Court of Cassation quashed the first-instance judgment on the ground that the degree of responsibility of the other persons, notably officers and members of the National Intelligence Organisation (*Millî İstihbarat Teşkilatı*, hereafter "the MIT") having taken part in the interrogation of C.A., had not been established and that the defence witnesses had not been heard.

25. After having conducted a more thorough investigation and having examined further witnesses, in a new judgment of 4 March 1986 the first-instance court acquitted the three police officers on grounds of insufficient evidence.

26. The applicant again appealed on points of law.

27. By a judgment of 15 October 1986, the Military Court of Cassation again overturned the judgment at first instance. In its judgment it stated that the records of the Veliköy command contained no entry concerning C.A. and that there was therefore no accurate information on the dates of his arrival or transfer or the identity of the officers in charge of his case. It added that, furthermore, the case file contained no details of the place and conditions of the initial interrogation conducted on 21 October 1980, or the actual conditions of the interrogation of 26 October. It pointed out that even though the accused had stated that the deceased was not “a significant suspect” the fact that agents of the MIT had participated in his interrogation suggested the opposite. In the opinion of the court, the treatment subsequently inflicted on the party concerned confirmed this argument. The Court of Cassation concluded that given that C.A. had been interrogated and tortured during his detention on the gendarmerie premises and up until 2 November by the accused and other persons whose functions had not been ascertained, the omissions in the investigation had to be remedied and, in particular, the gendarmes, the members of the MIT and any other persons present at the material time and place should be questioned.

28. On 28 January 1987 Turkey’s recognition of the right of individual petition became effective.

29. The case file was returned to the Military Court, which, after having re-examined it in the light of numerous new witness statements, confirmed its decision of 16 August 1988 acquitting the accused. It concluded that the act of torture had been committed between 26 October and 2 November 1980 by persons other than the accused. It gave notice (*ihbar*) that a new investigation was to be opened by the Artvin public prosecutor’s office. That decision became final on 21 December 1988.

30. The investigation and correspondence between the military courts and the Artvin public prosecutor’s office continued. However, a gendarme, M.C., examined as a witness on 3 April 1990 before the Akyazı Criminal Court, following a request for judicial assistance, stated that he had taken leave on 12 October 1980 for a period of one year.

31. By an indictment of 21 June 1990, the prosecutor at the Artvin Assize Court (“the Assize Court”) charged two new accused, F.I. and M.C., gendarmes at the Artvin gendarmerie, who had been examined as witnesses before the military courts (see paragraphs 19 and 30 above) with the acts of torture having caused the death of C.A.

32. The applicant sought to intervene in the proceedings before the Assize Court.

33. Monthly hearings were conducted before this court. Ten or so witnesses were questioned, some following a request for judicial assistance. Some hearings were postponed as a result of problems in ensuring the appearance of witnesses who for the most part had been co-detainees of the deceased and present on the premises on which he had been subjected to the torture. All the witnesses stated that they had seen C.A. being tortured and some stated that they had seen the accused at the scene of the crime.

34. At the hearing of 8 October 1990 the applicant stated, *inter alia*, that her husband had been unrecognisable when she saw him at Trabzon Hospital. She filed a complaint against the first doctor who had examined him in Artvin and who had drawn up a certificate, which, according to her, was untruthful, concealing C.A.'s condition.

35. By a decision of 30 January 1991 the Assize Court sentenced both of the accused to four years and two months' imprisonment under Articles 243 § 2 and 452 § 2 of the Criminal Code. They were also banned from public office for the same period.

36. On an appeal by the accused, the Court of Cassation overturned that decision in a judgment of 10 July 1991 on grounds of shortcomings in the investigation. An inconsistency between the leave dates of the accused needed to be resolved and verification was required that the dates on which the witnesses and C.A. had been detained actually did coincide.

37. After having remedied the shortcomings highlighted by the Court of Cassation, the Assize Court decided, on 16 September 1992, to acquit both of the accused on grounds of insufficient evidence.

38. The applicant appealed on points of law against that decision.

39. By a judgment of 6 July 1993, the Court of Cassation overturned the decision on the ground that under Article 253 of the [Turkish] Code of Criminal Procedure, the accused, who were officers at the material time, could not be tried without authorisation from the Ministry of Justice.

40. By a decision of 19 January 1994, the Assize Court suspended the proceedings for the same reason.

41. The authorisation in question having been granted by the Ministry of Justice on 24 November 1994, a new indictment was issued on the following 7 December in respect of the same two accused, this time by the Public Prosecutor at the Ardahan Assize Court.

42. During these proceedings, around twenty hearings were held. As they had done previously, the accused denied any responsibility in the death of C.A., stating that they had never taken part in his interrogation. F.I. stated that on the day in question he had been involved in operations in the Şavşat and Ardanuç mountains, and M.C. stated that he had been on leave. The same witnesses (see paragraph 33 above) were examined again, some following a request for judicial assistance, and repeated the statements made at the start of the proceedings.

43. On 30 December 1997 the Ardahan Assize Court delivered its judgment, referring in particular to the testimony of the co-detainees who had been present at Artvin police station at the same time as C.A. Four of these witnesses stated that they had seen C.A. naked, attached to the radiator, wet and trembling, with injuries to his hands and wrists. Two of them stated that officer F.I. had threatened them, pointing at C.A. and saying “Look at what has happened to him; if you don’t sign, the same thing will happen to you.” A detainee who had been in the neighbouring cell stated that he had heard C.A. moaning constantly, that in the evenings they would take him away for questioning naked, and that officers M.C. and F.I. and three men in civilian clothing would beat him in the middle of the room as a lesson to the others. Another witness stated that he had seen F.I. and others beat C.A. with truncheons while he was lying on the ground in a pool of water, all the while continuing to spray him with water. He stated that he had heard the sound of a magneto (a magneto-electric machine) and the delirious voice of C.A. uttering the names of his children, unable to walk, his body covered in wounds. These eyewitnesses stated that they had generally had their eyes covered but that sometimes the blindfold had come off, or they had recognized the officers’ voices. Four other detainee witnesses stated that they had seen that the applicant had been tortured, but did not know who had done it. The court considered that the testimony of the co-detainees was only partially credible given their status as detainees and the fact that they would normally have had their eyes covered. In the reasons for the judgment, the court observed that the leave records relating to M.C. kept by the gendarmerie command had been falsified and declared that his statements were not credible. As for F.I., the court pointed out an inconsistency between his statement of 31 August 1983 (see paragraph 19 above) and his subsequent statements. According to the court, the accused were indirectly responsible for the death of C.A. It added that “a team of three civilians” had also taken part in the interrogations, but gave no details of the identity, function or action of these three individuals. It concluded that it had not been definitively established that the accused had themselves tortured the deceased but that they had acted as accomplices to the illegal act by issuing orders (*talimat vermek*), by procuring the premises (*yer tedarik etmek*) and by failing to intervene [to prevent the illegal act] (*göz yummak*). It found that the accused, together with civilians, had participated in the interrogation of C.A. and that the latter had died as a result of his pre-existing condition (*önceki hastalığı*) and as a result of the torture inflicted by one or more of these civilians whose identity could not be established. The court sentenced M.C. and F.I. to two years and one month’s imprisonment under Articles 243 and 452 § 2 of the Criminal Code. The court accepted two mitigating circumstances to reduce the sentences: the personality of the accused as evidenced by the case file (*dosyadaki*

kişilikleri) and the fact that they were mere accomplices (*fer'î fail*) rather than the main perpetrators of the crime.

44. The accused officers and the applicant appealed on points of law.

45. By a judgment of 22 December 1998, the Court of Cassation upheld the judgment of the Assize Court.

46. On 28 January 1999 the Court of Cassation rejected an application for “rectification of the judgment” (*karar düzeltme*) lodged by the convicted officers.

47. On 6 April 1999 the officers applied to the Assize Court for renewal of the judgment (*yargılamanın yenilenmesi*), an exceptional review procedure. The result of this application, accepted by the Assize Court for consideration on the basis of various written testimonies submitted by civilians and military personnel and a letter from the General Gendarmerie command, was that execution of the sentences was suspended.

48. At the request of the accused, the Assize Court gave a decision on 12 January 2001 referring a matter concerning the discriminatory nature of a provision governing the content of an amnesty law to the Constitutional Court.

49. By a decision of 18 July 2001, the Constitutional Court declared that the provision in question was by no means unconstitutional.

50. By a judgment of 23 October 2002, after having heard new defence witnesses, notably six officers, the Ardahan Assize Court dismissed the application lodged by the two officers on the ground that the new evidence was not such as to create a favourable situation for the convicted officers. It lifted the stay of execution of their sentences.

51. The officers finally referred their case to the Minister of Justice for the latter to lodge an appeal with the Court of Cassation (*Yazılı emir ile bozma*) against their conviction. Having accepted their application, on 8 January 2003 the Minister of Justice ordered the Principal Public Prosecutor at the Court of Cassation to lodge an appeal in the interests of the law on the ground that the evidence had not been properly assessed by the Assize Court.

52. By a judgment of 30 January 2003, the Court of Cassation dismissed the officers’ application.

53. The officers continued to serve in the army throughout the proceedings until their retirement. Their sentences have not been executed to date.

II. RELEVANT DOMESTIC LAW

54. The relevant parts of the above-mentioned provisions of the Criminal Code in force at the material time read as follows:

Article 243

“... any public servant who tortures an accused or employs cruel, inhuman or degrading treatment to make him confess to a crime shall be liable to a maximum term of five years’ imprisonment plus a permanent or temporary ban on holding public office. ...”

Article 452

“Should death occur as a result of assault or violence inflicted with no intent to kill, the perpetrator shall, in the cases listed in Article 448 ... be liable to a minimum term of eight years’ imprisonment ...

Where death results from circumstances which had existed prior ... to the offence and were unknown to the offender or from chance circumstances that the offender could not foresee, he shall, in the cases listed in Article 448, be liable to a minimum term of five years’ imprisonment ...”

55. Article 152 of the Turkish Constitution provides that where a claim of unconstitutionality is referred to a court by one of the parties to the proceedings, and where that court considers that the question should be referred to the Constitutional Court, that referral shall suspend the proceedings before it for a period of five months. If the Constitutional Court fails to reach a decision within that period, the court shall deliver its judgment under the existing legal provisions. However, if the Constitutional Court gives a ruling before the lower court has given its final decision, the lower court is obliged to comply with it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

A. The subject-matter of the dispute

56. The applicant complained firstly of acts of torture inflicted on her husband by the authorities responsible for his custody and which led to his death in 1980. Secondly, she complained of various shortcomings in the

criminal proceedings which came to an end in 2003, resulting in the *de facto* impunity granted to her husband's torturers and murderers. According to the applicant, such impunity in itself contravened the very essence of the right enshrined in Article 2 of the Convention and the absolute prohibition laid down in Article 3. These Articles are worded as follows:

Article 2

"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 for 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."

Article 3

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

57. Furthermore, relying on Articles 6 and 13 of the Convention, the applicant complained that at no point during the proceedings, which had lasted twenty-two years, were the accused, who were agents of the State, suspended from their duties, and that they had thus retained the power to influence the conduct of the proceedings. The Court considers that this complaint is absorbed by the complaint made in relation to the positive legal duty to protect the life and physical and moral integrity of the person, within the meaning of Articles 2 and 3.

B. As to admissibility

58. The Government raised two objections of inadmissibility based respectively on lack of jurisdiction *ratione temporis* and failure to comply with the six-month deadline, and submitted them together in support of their argument that the application was inadmissible because the six-month deadline had not been met. The Court will examine the two objections separately.

1. As to the objection on grounds of lack of jurisdiction ratione temporis

59. The Government maintained firstly that the application was inadmissible for lack of jurisdiction *ratione temporis*, given that the facts giving rise to the case dated back to 1980 and that Turkey had recognised the jurisdiction of the Commission in 1987 and that of the Court in 1990.

60. The applicant replied that this objection could not be used in the instant case because the proceedings at issue had finished long after the critical date. She maintained that the respondent State had not fulfilled its obligation to conduct effective criminal proceedings capable of ensuring adequate protection within the framework of Articles 2 and 3 of the Convention, notwithstanding the fact that after that date the domestic courts had had solid evidence in the case file before them to support her allegations.

a) Limitations on the Court's temporal jurisdiction

61. The Court observes first of all that as regards applications made against Turkey, its jurisdiction *ratione temporis* commences on 28 January 1987, the date of recognition by that State of the right of individual petition (see, recently, *Surp Pirgiç Ermeni Hastanesi Vakfı v. Turkey* (dec.), no. 50147/99, 14 June 2005, and *Akılı v. Turkey*, no. 71868/01, § 18, 11 April 2006).

62. Consequently, as regards applications lodged against the respondent State, the Court has no jurisdiction to deal with complaints that contain allegations of violations based on facts occurring before the above-mentioned critical date.

It remains to be seen whether, in the light of the relevant criteria, such is the case regarding the circumstances of the present case.

b) The appropriate test

63. It can be seen from the Court's case-law, notably its judgment in the case of *Blečić v. Croatia* ([GC], no. 59532/00, ECHR 2006-III), that its temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The Court has thus established that it was essential to identify in each specific case the exact time of the alleged violation. In so doing the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated, which may cause some difficulty where the complaints are based on events that are presented as the extension of a situation or chain of events, part of which occurred before the date of ratification or, as the case may be, the date of recognition by the respondent State of the individual right of petition, when this was still merely optional (compare, for example, *Blečić*, cited above, §§ 77 and 82; *Ilaşcu and Others*

v. Moldova and Russia [GC], no. 48787/99, §§ 402, 403, 459, 462 and 463, ECHR 2004-VII; *Yağcı and Sargin v. Turkey*, 8 June 1995, § 40, Series A no. 319-A; and *Broniowski v. Poland* [GC], no. 31443/96, § 122, ECHR 2004-V).

64. The applicant complained in the instant case of two separate, though connected, events: firstly the acts of torture inflicted on her husband which had led to his death and secondly the ineffectiveness of the proceedings in the case, which, in her opinion, had granted neither the protection “by law” guaranteed in the first sentence of Article 2 nor that arising from the absolute prohibition stipulated in Article 3.

c) Application of the test to the facts complained of in the instant case and the scope of the different rights relating thereto

i. Acts of torture and murder

65. As regards the acts defined, in chronological order, as “torture” and “murder”, it is not contested that these events date back to 1980 and therefore pre-date 28 January 1987, the date on which Turkey recognised the right of individual petition.

66. The Court observes that this part of the complaint concerns the substantive negative obligations of the respondent State (to refrain from torture and intentional killing). Since the scope of the right relied on is thus limited to events occurring in 1980, the Court can only hold that it has no jurisdiction *ratione temporis* to deal with this part of the complaint.

ii. Criminal proceedings concerning the acts of torture and murder

67. The same is not true of the complaint concerning the events relating to the various phases of the proceedings complained of in the instant case (see paragraphs 56 and 57 above). The Court observes that, as formulated by the applicant, this part covers the period starting when the authorities were advised of the acts of torture and murder and ending when the proceedings in which they had the opportunity to correct the violations alleged against the State ended (see also *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V), on 30 January 2003, that is to say, long after the date on which Turkey recognised the right of individual petition.

68. Under Article 1 of the Convention, the High Contracting Parties “shall secure to everyone within [their] jurisdiction the rights and freedoms defined in [...] this Convention”. The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention (see *Broniowski*, cited above, § 143), which is the case as regards the rights under Articles 2 and 3 of the Convention. The second part of the complaint in the instant case specifically concerns such “procedural” obligations, which, it must be stressed, require that there should be some form of official investigation by the authorities of

the State (see, for example, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II, and, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII; compare, in contrast, *Blečić*, cited above, §§ 77-81 and 88-92).

69. The fact that the State's substantive and procedural obligations are autonomous in scope is not open to debate when examining the merits of these obligations under Articles 2 and 3 of the Convention (for Article 2, see for example *A.K. and V.K. v. Turkey*, no. 38418/97, 30 November 2004, and *Fatma Kaçar v. Turkey*, no. 35838/97, 15 July 2005; for Article 3, *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV; see also, for the case of a criminal conviction that the Court did not consider sufficient to deprive the applicant of his status as a victim as regards the procedural aspect of Article 3, *Mikheyev v. Russia*, no. 77617/01, §§ 61, 89, 90, 26 January 2006).

70. The Court reiterates the simple and clear test that it has always applied in its judgments, whether in relation to the procedural obligations arising out of Articles 2 and 3 of the Convention or those arising out of Article 13: where an individual has an arguable claim that there has been a violation of Article 3 (or of Article 2), the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni*, cited above, § 79).

71. An arguable complaint or allegation, in other words well founded *prima facie*, is characterised by there being sufficient evidence in the file before the domestic authorities to create a factual basis for the purposes of the applicants' claims. When examining certain cases, the Court has concluded that the information available in the case file did not attain this level and accordingly declared that it did not have temporal jurisdiction to examine the complaints as it was unable to verify their factual basis (compare *Voroshilov v. Russia* (dec.), no. 21501/02, 8 December 2005, and *Kholodov and Kholodova v. Russia* (dec.), no. 30651/05, 14 September 2006).

72. The Court considers it necessary to point out that the arguable nature of a claim under the relevant provisions of the Convention does not depend upon formal recognition by the national courts. There may be other circumstances which enable the Court to verify the arguable nature of a claim or the truth of the statements made under Articles 2 and 3 of the Convention (for the arguable nature, see *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, and *Labita*, cited above; for a finding of the truth of the statements and violation notwithstanding the absence of a final decision of the national court, see *Bati and others v. Turkey*, nos. 33097/96 and 57834/00, §§ 94, 114, 117, ECHR 2004-IV (extracts)).

73. In fact, a determining factor in assessing the arguable nature of these claims is corroboration of the applicants' account of the allegations by the evidence produced before the national courts and before the Court (see, for example, *Bati and Others*, cited above, § 114).

74. The Court notes that in the instant case, not only have the allegations made on the basis of Article 3 (and *a fortiori* Article 2) of the Convention proven to be arguable, but the facts have also been admitted in full by the national authorities in a final decision delivered long after the date of ratification. The Court cannot discern in the case file any facts capable of casting doubt on the domestic courts' findings (see, for example, *Caloc v. France*, no. 33951/96, § 97, ECHR 2000-IX).

75. It concludes that where complaints based on Articles 2 and 3 of the Convention are corroborated before the Court by a sufficient level of evidence, the national authorities are bound by the procedural obligations arising out of these provisions if and in so far as the evidence in question was available in the file before them at the relevant time.

76. To hold otherwise would mean that the Turkish courts, which, from 28 January 1987, were obliged to take account of the Convention in all cases pending before them, had *carte blanche* to depart from it in those cases where the facts of the case preceded that date.

77. Consequently, and given the autonomous scope of the positive obligations arising out of Articles 2 and 3 of the Convention, the plea of inadmissibility raised by the Government for lack of jurisdiction *ratione temporis* must be rejected (see *Balasoïu v. Romania* (dec.), no. 37424/97, 2 September 2003).

2. Objection based on failure to comply with the six-month time-limit

78. The Government maintained furthermore that the application had been lodged outside the six-month time-limit laid down in Article 35 § 1 of the Convention. Referring to the cases of *Bulut and Yavuz v. Turkey* ((dec.), no. 73065/01, 28 May 2002) and *Bayram and Yıldırım v. Turkey* ((dec.), no. 38587/97, ECHR 2002-III), in which the Court stressed that if no domestic remedies were available or if they were judged to be ineffective, the six-month time-limit ran from the date of the act complained of, the Government considered that in the instant case it had started on 12 November 1980.

79. The Court observes that the Government have failed to explain how this case is in any way similar to those which they have cited, given that those cases concerned almost total inactivity on the part of the national courts and failure on the part of the applicants to react thereto, whereas the instant case involves lengthy criminal proceedings that ended in 2003, that is to say, after the application was filed. The Court therefore deems it appropriate to reject this preliminary objection by the Government as well.

...

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, that the substantive complaints based on Articles 2 and 3 of the Convention are inadmissible on grounds of lack of jurisdiction *ratione temporis*;
2. *Declares*, by a majority, the remainder of the application admissible;

...

Done in French and notified in writing on 11 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Jean-Paul Costa
President

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

