CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37453/97
by Faysal AKMAN
against Turkey

The European Court of Human Rights (First Section) sitting on 21 September 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, *ad hoc Judge,*

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 July 1997 by Faysal Akman against Turkey and registered on 22 August 1997 under file no. 37453/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 13 January 1999 and the observations in reply submitted by the applicant on 16 March 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish national of Kurdish origin, was born in 1956 and lives in Savur (Mardin). He is the father of Murat Akman, who was killed on 20 January 1997 in circumstances which gave rise to the applicant's application to the Court. The application is brought on behalf of the applicant's deceased son and his surviving family.

The applicant is represented before the Court by Mr Mahmut Sakar and Mr Osman Baydemir, lawyers practising in Diyarbakır, and Mr Nicholas Stewart QC, Mr Andrew Collender QC, Ms Louise Christian and Ms Caroline Nolan, lawyers practising in London.

A. Particular circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Facts submitted by the applicant

From about 10 p.m. on 19 January 1997 until about 3.30 a.m. on 20 January 1997 there was the sound of gunfire in the centre of Savur, a town inhabited by about 15 Kurdish families, the remaining inhabitants being Turkish citizens of Arabic origin. At about 6 a.m. there was a knock on the door of the applicant's house accompanied by a shout: "We are the police, open the door!" The applicant opened the door and five members of the security forces entered the house. Three of them were wearing special operations team uniforms, and one a police uniform. They were led by a chief superintendent, Ömer Yüce, who was wearing plain clothes.

The house was searched. At the request of one of the security force members, the applicant called his son, Murat, to come out of the bedroom which he shared with his common law wife, Şemse.

Murat came out of his bedroom holding his identity card in his hand. A member of the security forces took the card, looked at it and threw it on the floor. He then started to shoot at Murat using an automatic rifle. The applicant, who at this time was being restrained, was taken to another room. The sound of shooting continued. The applicant and the other family members except for Şemse were kept together in the same room. The telephone was cut off. At the request of the applicant, Şemse, who had been taken out of the house, was brought into the room. She said that Murat was dead.

Subsequently, the applicant was allowed to go to the room where the body of his son lay. He saw the body with an automatic rifle and bullet magazines lying on it. There were marks of gunfire on the walls of the room. Money (5,000 German marks) and a ring had been removed from his son's body. The regular police officers who arrived at the house after the incident told the applicant that it was not them but another team which had been involved in the shooting.

The Public Prosecutor went to the house together with a doctor. Statements were taken from the applicant, his other son, Salih, and from Şemse.

After the killing of his son, the applicant left Savur and moved to Mardin because he feared for his safety and that of the remaining family members.

On an unspecified date the applicant filed a complaint with the Chief Public Prosecutor of Savur. The applicant met with the Prosecutor who told him that the file was being sent to the State Security Court of Diyarbakır.

According to the applicant, he is not aware of any investigation having been initiated in respect of the conduct of the security forces at his house on 20 January 1997. In his opinion, no statements have been taken from the members of the security forces whom he alleges were involved in the death of his son, nor has any action been taken against them. The applicant states that he has seen the same members of the security forces walking about freely and on duty.

2. Facts submitted by the Government

On 19 January 1997, around 10.30 p.m., a group of terrorists went to Savur and attacked the police station, the school staff room, the homes of civil servants and gendarme sentry posts. A police officer and a gendarme were killed during the attack. A police officer, a gendarme and three civilians were also injured. Reinforcements had to be brought in from Mardin. Following their arrival, the confrontation ended around 2 a.m. on 20 January 1997.

House searches were subsequently conducted since the security forces had come under fire from houses in the town. Around 5 a.m. the applicant's house was searched. During the search, the security forces were fired on from a bedroom in the upper part of the house which was dark. They were obliged to return fire. When the shooting stopped, the security forces went into the bedroom and found the body of Murat Akman. There was a loaded Kalachnikov rifle close to the deceased's right hand. Three full cartridges and several empty bullets were found beside his body. The Public Prosecutor confirmed these details when he was summoned to the house.

On 27 January 1997 the Public Prosecutor of Savur issued a decision of non-jurisdiction in respect of the alleged unlawful killing of Murat Akman for reasons of competence in favour of the Public Prosecutor's Office at the Diyarbakır State Security Court.

On 2 April 1997 the Office of the Public Prosecutor of Savur decided that it had no jurisdiction in respect of the murder of the gendarme and the police officer and the damage caused to public buildings and sent the file to the Office of the Public Prosecutor at the Diyarbakır State Security Court, which decided to join it to another file dealing with the same matter.

As to the complaint introduced against the members of the security forces who had taken part in the search operation on the applicant's house, the Savur Public Prosecutor issued a decision of non-jurisdiction and on 4 July 1997 forwarded the file to the local administrative council of Savur in accordance with the law governing proceedings against civil servants. On 24 December 1997 the local administrative council issued a decision of non-jurisdiction.

3. Investigative measures taken by the authorities

(a) The police reports drawn up at the scene of the incident

On 20 January 1997 a seizure report (*Zapt Etme Tutanağı*) was drafted by a commanding officer (*komiser*) and two police officers, none of whom had been involved in the incident which led to the shooting of Murat Akman. Also on the same day an incident report (*Olay Tutanağı*) was drafted by four other high-ranking police officers. These reports stated, *inter alia*, that in the early hours of 20 January 1997 planned house searches were conducted in Savur in order to locate PKK terrorists who might have been involved in the attacks which took place the previous night. According to the seizure report, the police officers examined and seized the Kalachnikov rifle and the ammunition which, in their opinion, Murat Akman had used against the house search team. According to the incident report, the early morning house searches conducted in Savur resulted in eight suspects being detained and brought to the county security department.

(b) The report on the examination of the deceased's body and the autopsy report

In the early hours of 20 January 1997 the Savur Public Prosecutor and a doctor went to the scene of the incident. The Public Prosecutor conducted a forensic examination of the scene and of the corpse. He ordered a police officer to take measurements in the house and to draw up a sketch of the scene (*kroki*). The applicant was briefly called into the room to identify Murat Akman. The Public Prosecutor then drafted the first part of a report to which the autopsy report was later added. The Public Prosecutor described in his report, *inter alia,* the room, the details of the Kalachnikov rifle, the bullets spent and unspent as well as the bullet marks on the walls of the room. The report did not specifically identify the bullets fired by the members of the special operations team.

The doctor was subsequently called into the room where the body lay. He was neither a specialist nor a pathologist. At the material time there were no other more qualified doctors in Savur. He conducted an external autopsy at the scene of the incident. He stated that he agreed with the findings of the Public Prosecutor with regard to the latter's external examination of the deceased. He repeated the same findings in his own words.

According to the examination of the deceased and autopsy report (*Ölü Muayene ve Otopsi Tutanağı*) of 20 January 1997, one bullet had struck Murat Akman in the head and exited, causing parts of his brain to come out of his skull and stick to his hair. No other external wounds were found on his body. According to the doctor, Murat Akman died as a result of the loss of blood. As the cause of death was clear, the doctor did not find it necessary to conduct a classical autopsy. The report containing the forensic examination of the body and autopsy findings was signed, *inter alia*, by the Public Prosecutor and the doctor.

(c) Statements taken from Murat Akman's family

On 20 January 1997 the Savur Public Prosecutor took the statements of the applicant, his other son Salih and Murat Akman's common law wife, Şemse, at the scene of the incident. These statements have not been submitted to the Court.

(d) Decision of non-jurisdiction of the Savur Public Prosecutor

On 27 January 1997 the Office of the Savur Public Prosecutor issued a decision of non-jurisdiction (*Görevsizlik Kararı*) in respect of the "deceased-accused Murat Akman with regard to his armed combat against the security forces in pursuit of ideological aims". In his decision the Public Prosecutor noted that the relatives of Murat Akman had alleged that he was unlawfully killed by members of the security forces and that the investigation of that complaint fell to the Office of the Public Prosecutor of the Diyarbakır State Security Court. For that reason the file was transferred to the latter Office.

(e) Decisions of the Public Prosecutor of the Diyarbakır State Security Court

On 10 March 1997 the Office of the Public Prosecutor of the Diyarbakır State Security Court decided that there was no need to investigate the death of Murat Akman. On the same day the Office issued a supplementary decision (*Ek Görevsizlik Kararı*) stating that it had no jurisdiction to bring charges against the members of the security forces who had allegedly killed Murat Akman. The file was therefore transferred back to the Office of the Public Prosecutor of Savur.

(f) Statements given by the members of the special operations team

On 28 May 1997 the Savur Public Prosecutor took the statements of three police officers who had fired at Murat Akman on 20 January 1997. No statement was taken from the team commander.

The police officers stated in similar and consistent language that as they entered the dark interior of the house, they heard the sound of a gun being prepared for firing. They affirmed that the commanding officer shouted: "We are the police, who is there?" Single shots were fired followed by automatic gunfire. The police officers stated that they returned fire. They added that after a while the firing from the inside stopped. They further added that when they entered the room from where the shooting had come, they found Murat Akman dead on the floor with a Kalachnikov rifle next to him. According to the three police officers, they had already conducted two house searches by that stage and, after informing the regular police of this incident, carried on with other planned house searches. They denied the applicant's accusation that they unlawfully killed Murat Akman and manipulated the evidence by placing a Kalachnikov rifle next to his body.

(g) Decision of non-jurisdiction of the Savur Public Prosecutor

On 4 July 1997 the Office of the Public Prosecutor of Savur issued a decision of non-jurisdiction (*Görevsizlik Kararı*) with regard to the team commander and the three police officers. According to that decision, *inter alia*, the accused officers as well as other members of the security forces who had taken part in the operation had been heard as witnesses and had stated that the armed clash had been caused by Murat Akman's resistance (*karşılık vermesi*). The decision further stated that at the time of the incident the accused officers were on duty. As such, the acts alleged against them were committed in the course of their administrative duties. The Public Prosecutor found that a criminal investigation could be initiated against the accused civil servants only if the competent administrative council considered it necessary. The investigation file was therefore transferred to the Mardin Provincial Administrative Council for further investigation.

(h) Decision of the Mardin Provincial Administrative Council not to prosecute the members of the search team

On 24 December 1997 the Mardin Provincial Administrative Council, with reference to the investigation file, stated that Murat Akman had opened fire on the accused officers who had entered his house in the context of a planned house search. According to the Administrative Council, the accused had acted in accordance with domestic law and were justified in resorting to the use of their weapons, having regard to the situation which confronted them. The accused did not unlawfully kill Murat Akman either with respect to their intention at the time or their conduct. The Administrative Council found that the evidence as it stood was not sufficient to authorise the bringing of charges against the accused police officers (*men'i muhakeme*).

B. Relevant domestic law

1. Criminal prosecutions

Under the Criminal Code all forms of homicide (Articles 448 to 455) and attempted homicide (Articles 61 and 62) constitute criminal offences. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or members of the security forces as well as to Public Prosecutors' offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

If there is evidence to suggest that a death is not due to natural causes, members of the security forces who have been informed of that fact are required to advise the Public Prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public official who fails to report to the police or a Public Prosecutor's office an offence of which he has become aware in the course of his duty is liable to imprisonment.

A Public Prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 of the Code of Criminal Procedure).

If the suspected offender is a civil servant and if the offence was committed during the performance of his duties, the preliminary investigation of the case is governed by the Law of 1914 on the prosecution of civil servants, which restricts the Public Prosecutor's jurisdiction *ratione personae* at that stage of the proceedings. In such cases it is for the relevant local Administrative Council (for the district or province, depending on the suspect's status), which is chaired by the governor, to conduct the preliminary investigation and, consequently, to decide whether to prosecute. Once a decision to prosecute has been taken, it is for the Public Prosecutor to investigate the case.

An appeal to the Supreme Administrative Court lies against a decision of the Council. If a decision not to prosecute is taken, the case is automatically referred to that court.

By virtue of Article 4, paragraph (i), of Legislative Decree no. 285 of 10 July 1987 on the authority of the governor of a state of emergency region, the 1914 Law also applies to members of the security forces who come under the governor's authority.

If the suspect is a member of the armed forces, the applicable law is determined by the nature of the offence. Thus if it is a "military offence" under the Military Criminal Code (Law no. 1632), the criminal proceedings are in principle conducted in accordance with Law no. 353 on the establishment of courts martial and their rules of procedure. Where a member of the armed forces has been accused of an ordinary offence, it is normally the provisions of the Code of Criminal Procedure which apply (see Article 145 § 1 of the Constitution and sections 9-14 of Law no. 353).

The Military Criminal Code makes it a military offence for a member of the armed forces to endanger a person's life by disobeying an order (Article 89). In such cases civilian complainants may lodge their complaints with the authorities referred to in the Code of Criminal Procedure or with the offender's superior.

2. Circumstances entitling the security forces to open fire

Pursuant to Article 23 of Decree no. 285 (instituting the state of emergency), security forces, special forces on duty and members of the armed forces are, in the circumstances stipulated in the relevant Act, empowered to use their weapons when carrying out their duties. The security forces thus empowered may open fire and shoot at a person if a command to surrender is not accepted, is disobeyed or met with counter-fire or if they have to act in self-defence.

The plea of self-defence is enacted in Article 49 of the Turkish Criminal Code which, in so far as relevant, provides:

"No punishment shall be imposed if the perpetrator acted ...

(2) in immediate necessity to repel an unjust assault against his own or another's person or chastity."

3. Civil and administrative liability arising out of criminal offences

Under section 13 of Law no. 2577 on administrative procedure, anyone who sustains damage as a result of an act by the authorities may, within one year after the alleged act was committed, claim compensation from them. If the claim is rejected in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

Article 125 §§ 1 and 7 of the Constitution provides:

"All acts or decisions of the authorities shall be subject to judicial review...

...

The authorities shall be liable to make reparation for all damage caused by their acts or measures."

That provision establishes the State's strict liability, which comes into play if it is shown that in the circumstances of a particular case the State has failed in its obligation to maintain public order, ensure public safety or protect people's lives or property, without it being necessary to show a tortious act attributable to the authorities. Under these rules, the authorities may therefore be held liable to compensate anyone who has sustained loss as a result of acts committed by unidentified persons.

Article 8 of Legislative Decree no. 430 of 16 December 1990 specifies in this connection:

> "No criminal, financial or legal liability may be asserted against ... the governor of a state of emergency region or by provincial governors in that region in respect of decisions taken, or acts performed, by them in the exercise of the powers conferred on them by this legislative decree, and no application shall be made to any judicial authority to that end. This is without prejudice to the rights of individuals to claim reparation from the State for damage which they have been caused without justification."

Additional section 1 of Law no. 2935 of 25 October 1983 on the state of emergency provides:

> "… actions for damages in respect of the exercise of powers conferred by this statute shall be brought against the administrative authorities in the administrative courts."

Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages for pecuniary loss (Articles 41-46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal court on the issue of the defendant's guilt (Article 53).

However, under section 13 of Law no. 657 on State employees, anyone who has sustained loss as a result of an act done in the performance of duties governed by public law may, in principle, only bring an action against the authority by whom the civil servant concerned is employed and not directly against the civil servant (see Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. When an act is found to be illegal or tortious and, consequently, is no longer an "administrative" act or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

COMPLAINTS

The applicant alleges a violation of Article 2 and of Article 6 taken together with Article 13 of the Convention, as well as of Articles 8, 14 and 18 of the Convention.

He complains firstly that his son was a victim of an extra-judicial execution and that no effective investigation has been carried out into the circumstances surrounding his death. He maintains that there is an administrative practice of unlawful killings by the security forces. He invokes Article 2 in this connection.

He further contends that the lack of any effective investigation into the death of his son deprived him of his right of access to a court to claim compensation as well as an effective remedy. He relies on Article 6 taken together with Article 13 of the Convention.

The applicant also alleges that the killing of his son in his home and in front of his family violated Article 8 of the Convention, that the respondent State has unjustifiably discriminated against him and his son on account of their Kurdish origin in breach of Article 14 of the Convention, and that the respondent State pursue a policy of unlawful killing of individuals in south-east Turkey, in violation of Article 18 of the Convention.

PROCEDURE

The application was introduced on 8 July 1997 and registered on 22 August 1997.

On 29 June 1998 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 13 January 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 16 and 18 March 1999, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

A. As to whether the applicant has exhausted domestic remedies (Article 35 § 1 of the Convention)

The Government maintained that the applicant has not exhausted domestic remedies as required under Article 35 § 1 of the Convention and for that reason his application should be declared inadmissible. With reference to Articles 125 and 129 of the Constitution and the detailed provisions of Law no. 2577 on administrative procedure, the Government submitted that the authorities were obliged in accordance with the theory of social risk to compensate any victim of a failure by the State to maintain public order and security or to protect life or property. Thus, it was open to the applicant to sue the administration for damages in respect of the subject matter of his application to the Court. However, he failed to do so.

The Government further asserted than the applicant could also have sought reparation for the harm he allegedly suffered by instituting a civil action against those whom he held responsible for the harm suffered. This remedy was not pursued.

In addition, the Government pointed out that members of the security forces may be prosecuted under Article 89 of the Military Criminal Code in circumstances where they have failed to respect orders and have committed offences against the person or property. A victim could lodge a complaint against the culprit with the competent authorities referred to in the

Code of Criminal Procedure or with the culprit's superior officer. The Government stressed in this connection that the applicant had never brought a complaint under either Articles 151 and 153 of the Code of Criminal Procedure or sections 93 and 95 of Law no. 353 on the establishment of courts martial and their rules of procedure. Furthermore, an appeal may be taken against a decision not to prosecute a suspect by virtue of Article 165 of the Code of Criminal Procedure.

The Government also observed that the applicant failed to avail himself of the remedies provided for in the Code of Obligations. At no stage did he sue the authorities for damages in respect of the illegal act which he imputed to the security forces.

Having regard to the above considerations the Government insisted that the application should be rejected for failure to exhaust domestic remedies.

The applicant replied with reference to the Court's Akdivar and Others v. Turkey judgment of 16 September 1996 (*Reports of Judgments and Decisions* 1996-IV), that he should be considered absolved from invoking any of the remedies referred to by the Government since their effectiveness was contingent on the conduct of a proper and effective investigation into the circumstances surrounding the death of Murat Akman. Although the Public Prosecutor of Savur knew early on of the killing and had taken statements from the deceased's family, no investigation had been carried out and there was no likelihood of one being carried out in the future. In this latter regard, the applicant drew attention to the fact that the Convention institutions had repeatedly found in applications against the respondent State concerning alleged destruction by the security forces of villages in south-east Turkey that the authorities had failed to carry out an effective investigation into the circumstances or brought proceedings against members of the security forces alleged to be responsible. In the instant case, the security forces were embittered over losing two of their members and took their revenge on the applicant's family. The investigation into the death of his son had not progressed and inevitably gave rise to the decision of the Mardin Provincial Administrative Council that there was no evidence on which to lay charges against the police officers involved in the shooting incident.

The applicant also drew attention to the fact that the Mardin Provincial Administrative Council which issued the decision not to prosecute the accused police officers was composed of State officials and that the Public Prosecutor had surrendered his investigative powers to a non-independent authority. He contended that there is no investigation pending before the Diyarbakır State Security Court, contrary to what the Government alleged. On the other hand, the decision of the Mardin Provincial Administrative Council is awaiting approval by the Council of State.

The applicant concluded by affirming that the remedies relied on by the Government were illusory, ineffective and inadequate to redress his grievances.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and

in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the Tanrikulu v. Turkey judgment of 8 July 1999, to be published in *Reports of Judgments and Decisions* 1999, § 76; and the above-mentioned Akdivar and Others judgment, p. 1210, §§ 65-67).

The Court notes the Government's assertion regarding the availability in domestic law of a range of civil, administrative and criminal law remedies against illegal and criminal acts attributable to members of the security forces. It further notes that the applicant's complaint is directed against known members of the special operations team who searched his home on 20 January 1997 and who, according to the Government's account, shot dead Murat Akman in an act of self defence.

The Court stresses that remedies aimed at securing financial compensation before the civil or administrative courts for the family of a victim of an alleged unlawful killing by the security forces are subsidiary to the authorities' primary obligation to conduct an effective investigation into that allegation. If this were not the case, a Contracting State would escape its procedural obligation under Article 2 to protect the right to life simply by paying compensation to victims (see *mutatis mutandis* the above-mentioned Tanrikulu judgment, § 79; and the Aytekin v. Turkey judgment of 23 September 1998, *Reports* 1998-VII, p. 2828, § 84).

The Court observes that the Public Prosecutor of Savur conducted an investigation into the death of Murat Akman and took statements from the applicant and other members of the deceased's family. On 4 July 1997 he relinquished jurisdiction in favour of the Mardin Provincial Administrative Council which in turn ruled on 24 December 1997 that the security forces had been justified in killing Murat Akman in the circumstances which confronted them at the applicant's home. Although the Government have drawn attention to the fact that there are proceedings pending before the Diyarbakır State Security Court it would appear from the case file that these proceedings do not bear on the applicant's complaint but on the circumstances surrounding the deaths of the police officer and the gendarme during the clash with the PKK. In the Court's opinion the decision taken by the Mardin Provincial Administrative Council on 24 December 1997 effectively brought the investigation to an end. It would also add that that decision, exonerating as it did the actions of the security forces, excluded any possibility open to the applicant to pursue a remedy in damages in civil or administrative law. In these circumstances it must be concluded that the applicant was not required to exhaust any of the other remedies referred to by the Government.

For the above reasons the Court rejects the Government's contention.

B. As to the merits of the applicant's allegations

1. Article 2 of the Convention

The applicant states that Murat Akman was unlawfully killed by the security forces and that the authorities failed to investigate the circumstances of his death. The respondent State is therefore in breach of its substantive and procedural obligations under Article 2 of the Convention, which provides:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

The applicant submits that there was an administrative practice of unlawful killing in south-east Turkey which amounted to an aggravated breach of Article 2. He argues that Murat Akman died as a result of an intentional use of force in the context of a planned and organised operation. He was unarmed at the time. The circumstances surrounding his killing were consistent with many other such attacks against life and formed part of a pattern of incidents which were condoned by the authorities.

The Government state in repy that the Diyarbakır State Security Court is still seized of the murder of Murat Akman. Accordingly, and with reference to the principle of subsidiarity, they maintain that the Court is not competent to examine the complaint.

The applicant asserts that there is no investigation currently pending before the Diyarbakır State Security Court into his complaint that Murat Akman was unlawfully killed by the security forces. On the other hand, the decision of the Mardin Provincial Administrative Council finding that there was insufficient evidence on which to lay charges against the accused police officers was awaiting approval before the Supreme Administrative Court.

2. Article 6 of the Convention

The applicant asserts that no criminal proceedings had been taken against the members of the security forces responsible for the death of Murat Akman, with the result that any prospects of bringing a civil action against the culprits had been seriously prejudiced. In his view this state of affairs gave rise to breach of Article 6 of the Convention, which provides as relevant:

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. …"

The Government aver that it is not open to the applicant to complain under Article 6 of the Convention that the authorities have failed to carry out an adequate investigation into the circumstances surrounding the death of Murat Akman. They reiterate in this regard that an investigation was initiated into the death of Murat Akman and that the proceedings are still pending before the Diyarbakır State Security Court.

3. Article 8 of the Convention

The applicant contends that the intentional killing of Murat Akman in his home and in front of his family violated Article 8 of the Convention, which provides as relevant:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence. ..."

The Government reiterate that there was an on-going investigation into the death of the applicant's son and that the authorities could not be held directly responsible for any interference with Murat Akman's right to respect for his family life.

4. Article 13 of the Convention

The applicant maintains that the authorities' failure to carry out an effective investigation into the death of Murat Akman gave rise to a breach of Article 13, which states:

> "Everyone whose rights and freedoms as set forth in this 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."

For the reasons given in support of their objection to the admissibility to the application, the Government stress that the applicant had an effective range of remedies which satisfied the requirements of Article 13 of the Convention.

5. Article 14 of the Convention

The applicant states that he is and his deceased son was a victim of discrimination in breach of Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in this 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."

In the applicant's submission both he and his deceased son were of Kurdish origin and on that account they were perceived by the authorities to be "terrorists" or "collaborators with terrorists". He contended that his son was killed because of the discriminatory practice of treating all Kurds as holding certain opinions and beliefs. The applicant contended that his son had no connection with any illegal organisation and had completed his military service shortly before his death. In the applicant's submission the fifteen Kurdish families living in Savur are persecuted after every incident involving the security forces in the vicinity.

The Government refute the applicant's claim. They state that by virtue of Article 10 of the Constitution, all Turkish citizens are equal before the law regardless of language, race, colour, sex, political opinion, religious or other belief. In their submission, the applicant has not substantiated that either he or his deceased son were discriminated against on account of their ethnic origin and for that reason the complaint under this head should be declared inadmissible as being manifestly ill-founded.

6. Article 18 of the Convention

The applicant complains that the respondent State pursue a policy of restricting the rights laid down in the Convention in a manner which was incompatible with the limitations which the Convention prescribed in respect of those rights. He invokes Article 18 of the Convention in this respect, which provides:

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

The Government state in reply that the applicant had failed to substantiate that the authorities were pursuing any policy of the kind described.

7. Conclusion

The Court considers in the light of the parties' submissions that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Michael O'Boyle
Registrar

Elisabeth Palm
President