

**EUROPEAN COMMISSION OF HUMAN RIGHTS**

**Application No. 23657/94**

**Izzet Çakici**

**against**

**Turkey**

**REPORT OF THE COMMISSION**

(adopted on 12 March 1998)

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**I. INTRODUCTION**

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

**A. The application**

2. The applicant is a Turkish citizen resident in Diyarbakır and born in 1953. He is represented before the Commission by Professor K. Boyle and Ms. F. Hampson, both lecturers at the University of Essex.

3. The application is directed against Turkey. The respondent Government were represented by their Agents, Mr. A. Gündüz and Mr. S. Alpaslan.

4. The applicant complains that his brother Ahmet Çakır has been taken into custody by the security forces and has "disappeared". He invokes Articles 2, 3, 5, 13, 14 and 18 of the Convention.

**B. The proceedings**

5. The application was introduced on 2 May 1994 and registered on 9 May 1994.

6. On 27 June 1994, the Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on its admissibility and merits before 11 November 1994.

7. The Government's observations were received on 2 January 1995. The applicant's observations in reply were submitted on 8 March 1995.

8. On 15 May 1995, the Commission declared the application admissible.

9. The text of the Commission's decision on admissibility was sent to the parties on 18 May 1995 and they were invited to submit such further information or observations on the merits as they wished. They were also invited to indicate the oral evidence they might wish to put before delegates.

10. The applicant's representatives made submissions on 7 July 1995.

11. On 21 October 1995, the Commission decided to take oral evidence in respect of the applicant's allegations. It appointed three delegates for this purpose: MM. Pellonpää, Cabral Barreto and Bratza. It notified the parties by letter of 26 October 1995, proposing certain witnesses.

12. By letter dated 6 December 1995, the applicant made proposals as regards witnesses.

13. By letter dated 1 March 1996, the Government submitted further documents. On 1 April 1996, the Government submitted further observations and information relating, inter alia, to the report that the applicant's brother's body had been found.

14. By letter dated 2 May 1996, the Secretariat, on behalf of the Delegates, requested the Government, inter alia, to provide investigation file documents referred to in their observations, to identify previous documents annexed and to clarify whether the body referred to had been identified by the family, providing a copy of any record of identification of the body. The applicant's representatives were requested at the same time to clarify whether they had any information relating to the finding or identification of a body.

15. By letter dated 15 May 1996, the applicant submitted a statement and information, including the location of the witness Hikmet Aksoy. He made further proposals as to witnesses.

16. On 22 May 1996, the applicant provided further documents.

17. By letter dated 24 May 1996, the Government provided further factual clarifications relating to earlier information.

18. By letter dated 3 June 1996, the Delegates requested the Government to provide the original custody records for three places of detention (Hazro, Diyarbak\_r provincial gendarmerie and Kavakl\_bo\_az).

19. By letter dated 24 June 1996, the Government provided information about official witnesses.

20. By letter dated 27 June 1996, the Commission's Secretariat reminded the Government of the Delegates' request to see the original custody records when they were in Ankara.

21. By letter dated 27 June 1996, the Government informed the Commission that the witnesses Bayettin El and Abdurrahman Al were not in prison and that they could not establish the address of Hikmet Aksoy.

22. Evidence was heard by the Commission's Delegates in Ankara from 3-5 July 1996. Before the Delegates the Government were represented by Mr. A. Gündüz and Mr. S. Alpaslan, Acting Agents, assisted by Mr. A. ölen, Mr. A. Kurudal, Ms. N. Nerdim, Mr. A. Emülser, Mr. C. Çakir, Mr. O. Sever, Ms. B. Pekgöz, Ms. M. Gül\_en and Ms. A. Emüler. The applicant was represented by Ms. F. Hampson and

Mr. O. Baydemir, as counsel, assisted by Ms. A. Reidy and Mr. Mahmut Kaya (interpreter). At the conclusion of witnesses' testimony, and later confirmed by letter of 10 July 1996, the Delegates requested the Government to provide certain information and documents, including documents relating to the identification of the body of Ahmet Çak\_c\_ and to provide an explanation for the failure to provide the requested custody records and to make proposals as to their disclosure.

23. On 7 September 1996, the Commission decided to call additional witnesses to an oral hearing to be held in Strasbourg and to summon the witness Hikmet Aksoy to appear before Delegates in Ankara in November 1996. By letter dated 13 September, the parties were informed of these decisions and the Government reminded that no explanation had been received in respect of the custody records which had been requested. The summons in respect of the witness Hikmet Aksoy who was in prison in Konya was served on the Government, requesting their co-operation in securing his presence on 20 November 1996 before the Commission Delegates in Ankara.

24. By letter dated 8 October 1996, the Government provided a further document and by letter dated 20 October 1996, identified certain official witnesses by name and proposed additional witnesses.

25. By letters of 15 and 30 October 1996, the Commission's Secretariat reminded the Government of the Delegates' requests concerning original custody records.

26. By letter dated 8 November 1996, the Government informed the Commission that copies having been provided they did not consider it necessary to provide the original custody records.

27. From 18-23 November 1996, three Commission Delegates, including Mr. Bratza, were in Ankara hearing witnesses in other cases. The witness Hikmet Aksoy did not appear. On 21 November, the Government provided the information that Hikmet Aksoy had been released from prison on 18 November. The Government Agent undertook to provide a fuller explanation and the relevant documents.

28. By letter dated 25 November 1996, the Commission's Secretariat informed the Government that the Commission had given instructions that the original custody records be produced and that a failure to produce them might be taken into account in any eventual consideration of the merits.

29. By letter dated 29 November 1996, the Commission's Secretariat informed the Government of the Delegates' concern that the original custody records be provided in the context of the examination of certain witnesses.

30. Evidence was heard by the Commission's Delegates in Strasbourg

on 4 December 1996. Before the Delegates, the Government were represented by Mr. A. Gündüz and Mr. S. Alpaslan, Acting Agents, assisted by Mr. A. Akay, Mr. M. Özmen, Mr. A. Kaya and Ms. M. Gül\_en. The applicant was represented by Ms. F. Hampson as counsel, assisted by Ms. A. Reidy. One of the three requested original custody records was provided by the Government. Further documentary material was submitted by the Government during the hearing. During the hearing, the Delegates requested the Government to provide certain information and documents, namely, to provide an explanation for the failure to provide the requested custody records and proposals as to their disclosure and to provide clarifications as to the release of the witness Hikmet Aksoy.

31. On 12 December 1996, the Government submitted a letter explaining the absence of an official witness and on 24 December 1996, the documents relating to Hikmet Aksoy.

32. By letter dated 24 January 1997, the Commission's Secretariat reminded the Government of their undertaking at the hearing on 4 December 1996 to provide the two outstanding original custody records and reminded them that documents had still not been provided in respect of the identification of Ahmet Çak\_c\_'s body. The Government were requested to provide these materials by 28 February 1997 and it was drawn to their attention that one of the Delegates, Mr. Bratza, would be in Ankara from 3-8 February 1997.

33. By letter dated 29 April 1997, the Commission requested the parties to submit their final observations on the merits by 20 June 1997. At the request of the applicant this was extended to 1 July.

34. On 19 June 1997, the Government submitted their final observations.

35. On 1 July 1997, the applicant submitted his final observations.

36. On 18 October 1997, the Commission considered the state of proceedings in the case.

37. On 3 March 1998, the Commission decided that there was no basis on which to apply Article 29 of the Convention.

38. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. Between July and October 1997, proposals to settle the case were under consideration. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

### **C. The present Report**

39. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM	S. TRECHSEL
	J.-C. GEUS
	M.P. PELLONPÄÄ
	E. BUSUTTIL
	G. JÖRUNDSSON
	A.S. GÖZÜBÜYÜK
	A. WEITZEL
	J.-C. SOYER
	H. DANELIUS
Mrs	G.H. THUNE
MM	F. MARTINEZ
Mrs	J. LIDDY
MM	L. LOUCAIDES
	M.A. NOWICKI
	I. CABRAL BARRETO
	B. CONFORTI
	N. BRATZA
	I. BÉKÉS
	J. MUCHA
	D. ŠVÁBY
	G. RESS
	A. PERENI_
	C. BÎRSAN

P. LORENZEN  
E. BIELI\_NAS  
E.A. ALKEMA  
M. VILA AMIGÓ  
Mrs M. HION  
MM R. NICOLINI  
A. ARABADJIEV

40. The text of this Report was adopted on 12 March 1998 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

41. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- (i) to establish the facts, and
- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

42. The Commission's decision on the admissibility of the application is annexed hereto.

43. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

## II. ESTABLISHMENT OF THE FACTS

44. The facts of the case, particularly concerning events on or about 8 November 1993 and concerning the alleged detention of the applicant's brother Ahmet Çak\_c\_, are disputed by the parties. For this reason, pursuant to Article 28 para. 1 (a) of the Convention, the Commission has conducted an investigation, with the assistance of the parties, and has accepted written material, as well as oral testimony, which has been submitted. The Commission first presents a brief outline of the events, as claimed by the parties, and then a summary of the evidence submitted to it.

### A. The particular circumstances of the case

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

45. The various accounts of events as submitted in written and oral statements by the applicant and other members of his family are summarised in Section B: "The evidence before the Commission". The version as presented in the applicant's final observations on the merits is summarised briefly here.

46. On 8 November 1993, the applicant's brother was detained during an operation in the village of Çitlibahçe carried out by gendarmes and village guards under the command of Lieutenant Alt\_noluk. When the operation commenced early in the morning, Ahmet Çak\_c\_ hid in a house near the fountain while the other men were gathered in an open area. The security forces began setting fire to the houses. Ahmet Çak\_c\_ retrieved money (approximately 4-5 million lira) which he had hidden in the roof of the house and was caught leaving the house, probably because it had been set on fire. Ahmet Çak\_c\_ was taken from the village by the security forces.

47. Ahmet Çak\_c\_ was taken to Hazro where he was kept in a common room or hall overnight before being taken to Diyarbak\_r. In Diyarbak\_r, he was detained in the provincial gendarme headquarters where, after 6-7 days, he was held for 16-17 days in the same room as Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_, who had been taken into custody on 8 November 1993 by the security forces in an operation at Ba\_lan. Ahmet Çak\_c\_ had been beaten, a rib being broken and his head split open. He was taken out of the room for interrogation on several occasions and received electric shock treatment and was beaten. At the end of this period, the other three detainees were brought before the court. Engin and Demirba\_ were released and Aburrahman Al was remanded in custody. Engin did not see Ahmet Çak\_c\_ again.

48. After 85 days in the provincial gendarme headquarters, in or about late January-early February 1994, Ahmet Çak\_c\_ was taken back to Hazro where he was detained for several months. From there he was moved to the gendarme station at Kavakl\_bo\_az where Hikmet Aksoy saw

him in detention in or about spring or early summer of 1994. During a period of 13 days, Hikmet Aksoy, who was also detained, saw Ahmet Çak\_c\_ when they were taken out of the cells for meals. At the end of that period, Hikmet Aksoy was transferred to Lice.

49. In May 1996, following the transmission of Government submissions from the Commission, the applicant learned for the first time that it was claimed that Ahmet Çak\_c\_ had been killed in a clash between 17 and 19 February 1995 on K\_ll\_bo\_an hill, Hani. The identification appears based solely on the claim that Ahmet Çak\_c\_'s identification card was found on one of the bodies.

## 2. Facts as presented by the Government

50. The Government's account of events as based on their observations are summarised as follows.

51. Ahmet Çak\_c\_ was not taken into custody by the security forces who carried out an operation at Çitlibahçe on 8 November 1993 and was not in detention over the subsequent period. The custody records indicate that he was not held at Hazro or at Diyarbak\_r provincial gendarme headquarters. He was not taken to Kavakl\_bo\_az (the name given to the gendarme station at Tekneba\_). The allegations with regard to his alleged movements in detention are baseless, since, inter alia, a person would not be transferred from a high ranking detention facility to one of lower degree.

52. On 27 May 1995, it was reported to the Ministry of Justice that Ahmet Çak\_c\_ was a militant member of the PKK organisation and that following an armed clash between the PKK and the security forces, he was found dead with 55 other militants at K\_ll\_bo\_an hill, Hani. Ahmet Çak\_c\_ had been implicated in the killing of five teachers from Dada\_ whom he reportedly described as "servile dogs of the State". He most probably disappeared after this incident with the intention of escaping justice and continuing his activities for the PKK.

## 3. Proceedings before the domestic authorities

53. Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_, who had been taken into custody on 8 November 1993 during an operation in Ba\_lan village, were questioned by gendarmes, who provided signed statements by them during their period of detention.

54. In his statement of 15 November 1993, Abdurrahman Al is recorded as saying that he had listened to talks given by the PKK in the village. Ahmet Çak\_c\_ used to bring members of the PKK to the village occasionally and he used to go around with them. The PKK used to stay in a hideout in the woods in the hills above the village. He took them provisions and Ahmet Çak\_c\_ used to make him keep watch. On 23 October 1993, when he was chopping wood, Ahmet Çak\_c\_ told him to come over to the PKK group, who had seven people with them. He was

given a gun by Ahmet Çak\_c\_ and told to keep watch. Later, when any of the teachers needed to relieve himself, he took a gun and kept watch on them. Serbahan<sup>1</sup> told him to go home in the evening. He heard the next day that one person had been released and the others killed.

55. In his statement dated 30 November 1993, Tahsin Demirba\_ is recorded as saying that he had PKK sympathies and used to attend meetings held by the PKK in his village. He began participating in PKK activities, acting as guide, collecting "taxes" and procuring weapons for example. On the day that the teachers were kidnapped, the PKK came to the hideout which they used above the village. He visited them. Ahmet Çak\_c\_ from Çitlibahçe was with them, carrying a gun. Tahsin Demirba\_ participated in sentry duty, guarding the teachers. One teacher was brought down to the village and stayed the night with Mustafa Engin. He was not killed like the others, the PKK leader Serhabun saying that he was a Kurd from Tunceli.

56. In his statement dated 30 November 1993, Mustafa Engin is recorded as saying that he had attended meetings held by the PKK in the village and had given them money. He participated in several marches in which the crowds shouted PKK slogans. On 23 October, early in the morning, he went to the hideout used by the PKK near the village, where Serhabun and his group had arrived with 7 civilians. Ahmet Çak\_c\_ was there also, and he gave Mustafa Engin a gun, telling him to go and keep watch. That evening, he took one of the civilians, Ferhat from Tunceli, to his house overnight. Ferhat left at about 04.00 hours. On 8 November 1993, he tried to run away from the security forces because he panicked.

57. Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_ signed further statements on 1 December 1993, taken by a public prosecutor.

58. Mustafa Engin's statement stated as follows. He partially accepted the statement given to the gendarmes. Certain individuals, including some-one called Ahmet, used to talk and meet in his village with members of the organisation. He later learned that the person's surname was Çak\_c\_. On the night of 23-24 October, a man codenamed Serhabun arrived in the village with 7 others. He had heard that a group of teachers had been kidnapped near Hazro. While he was looking for his livestock, Ahmet Çak\_c\_ came up to him, pointed out a man, saying that he was a teacher and that the teacher would stay at his house. Mustafa Engin was scared but forced to accept at his nephew's insistence. The teacher, called Ferhat, stayed in his house overnight and he took him as far as Yolcatin the next day. He denied charges of aiding and abetting, providing food for, and carrying provisions to the PKK.

59. Abdurrahman Al's statement said that Ahmet Çak\_c\_ and other

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<sup>1</sup>.This name, which appears in statements also as Serhabun, Serhabin and Serhabon, is used in respect of the PKK leader of the group.

named residents of his village were involved in activities for the PKK. On 23 or 24 October 1993, seven PKK members brought five teachers, an imam and the imam's brother to the village. Ahmet Çak\_c\_ called him over. The group leader Serhabin told him to keep sentry duty, giving him a gun. Later, he and Ahmet Çak\_ç\_ were sent back to their villages and he did not see what happened to the teachers.

60. In his statement, Tahsin Demirba\_ stated that he had no connection with the incident. He had moved to Diyarbak\_r and had only come back to the village to take his wife and children away. He did not give any such statement to the gendarmes, but was forced to sign an already prepared confession. He did not take any weapon or ammunition to the PKK, or act as sentry on their behalf, or prevent the kidnapped teachers from Dada\_ village from running away.

61. On or about 1 December 1993, Mustafa Engin and Tahsin Demirba\_ were released from custody while Abdurrahman Al was remanded in custody.

62. On 22 December 1993, Tefvik Çak\_c\_, the father of the applicant and Ahmet Çak\_c\_, submitted a handwritten petition to the Diyarbak\_r State Security Court in Diyarbak\_r requesting information as to what had happened to Ahmet Çak\_c\_ who had been taken into custody on 8 November 1993 by the security forces, along with Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_, who had been released 24 days later. An oral reply was given that Ahmet Çak\_c\_ was not on the list of persons in custody.

63. On 28 July 1994, the Diyarbak\_r State Security Court (No. 3) acquitted Tahsin Demirba\_ due to lack of evidence and acquitted Mustafa Engin and Abdurrahman Al, taking into account their evidence that they had aided the PKK through fear. An order for Al's release from prison was issued.

64. By letter dated 4 April 1994, the Hazro public prosecutor (33344 - Aydın Tekin) informed the Chief Public Prosecutor's Office at the Diyarbak\_r State Security Court that, on examination of their records, Ahmet Çak\_c\_ had not been taken into police custody or detained on 8 November 1993.

65. By letter dated 19 April 1994 to the Chief Public Prosecutor's Office at the Diyarbak\_r State Security Court, the Hazro public prosecutor Aydın Tekin confirmed the above letter of 4 April and stated that no application had been filed by Ahmet Çak\_c\_'s relatives to the effect that he was missing.

66. By letter dated 30 June 1994, the Chief Public Prosecutor Bekir Selçuk informed the Ministry of Justice (General Directorate for International Law and External Relations), that Ahmet Çak\_c\_ and sixteen other named persons had not been taken into custody or questioned in relation to any offence falling within the jurisdiction

of the State Security Court. There was no investigation file in their office concerning these persons. Having made enquiries with the provincial and district authorities following the Ministry's letter of 14 June 1994, they were informed that those persons were not in police custody at that time.

67. By letter dated 18 August 1994, the Ministry of Justice (General Directorate for International Law and External Relations) referring to correspondence from the Foreign Ministry of 19 July 1994 outlining the complaints made by the applicant to the the European Commission of Human Rights, requested the Diyarbak\_r Attorney General to have the applicant's complaints investigated, explained and evaluated according to law.

68. By letter dated 5 October 1994, Hazro central gendarme command informed the Hazro district gendarme command in reply to their letter of 22 September 1994, that an examination of their custody records established that Ahmet Çak\_c\_ was not detained on 8 November 1993.

69. By letter dated 2 November 1994, headed "Very urgent" the Ministry of Justice (General Directorate for International Law and External Relations) informed the Diyarbak\_r Attorney General that they had received no response to their letter of 18 August 1994 and requested that information about the judicial procedure be provided.

70. By letter dated 1 December 1994, Colonel E\_ref Hat\_po\_lu of Diyarbak\_r provincial gendarme command informed the Diyarbak\_r Attorney General, in reply to his letter of enquiry of 22 November 1994, that their records indicated that Ahmet Çak\_c\_ had not been detained on 8 November 1994 <error for 1993>.

71. By letter dated 2 December 1994, the Director of the Prevention of Terrorism branch of police at Diyarbak\_r informed the Diyarbak\_r Attorney General that Ahmet Çak\_c\_ had not been taken into custody by his directorate on 8 November 1993.

72. By letter dated 8 December 1994, Colonel E\_ref Hat\_po\_lu reported to the Diyarbak\_r provincial authorities on the subject of the applicant's application to the European Commission of Human Rights. It was stated that police officers had gone to the applicant's address to take statements from the applicant, his father and Ahmet Çak\_c\_ but it was discovered that they were not living there. It proved impossible to find their addresses or the addresses of Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_. The latter three persons had been arrested by Lice district gendarme headquarters on 9 November 1993 and handed over the same day to the provincial headquarters, from where on 1 December 1993 they were sent to the Diyarbak\_r State Security Court. Ahmet Çak\_c\_ was not taken into custody at the <provincial> headquarters. The homes of Ahmet Çak\_c\_ and Mustafa Engin at Çitlibahçe were not burned down. There were no terrorist incidents there since the people moved to other

places for economic reasons. The houses, which were built of clay and had been abandoned, had decayed rapidly and collapsed. It had been established that Ahmet Çak\_c\_, who was claimed to be missing, was involved with the PKK, having participated in activities and killings. He was reported to have been a member of the PKK mountain team which on 23 October 1993 kidnapped seven persons (five teachers, an imam and the imam's brother) from Dada\_ village and killed five of them. Their headquarters were looking for him.

73. By letter dated 1 March 1995, Colonel E\_ref Hat\_po\_lu of Diyarbak\_r Provincial Gendarme Command enclosed to Hazro district gendarme command documents found within the terrain and upon the bodies of 56 terrorists found dead as a result of an operation carried out in the K\_ll\_bo\_an region, Hani district from 17-19 February 1995.

74. By letter dated 14 March 1995, Hazro public prosecutor Mustafa Turhan (34812) requested that the Lice public prosecutors investigate whether Mustafa Engin and Tahsin Demirba\_, were detained by the gendarmes on 8 November 1993, and seek observations from Mustafa Engin concerning Ahmet Çak\_c\_ who was alleged to have disappeared in custody.

75. By letter dated 14 April 1995, the Hazro public prosecutor Mustafa Turhan (34812) requested the Hazro district gendarme command urgently to inform him concerning the operation carried out in Çitlibahçe on 8 November 1993 and to investigate and establish whether Ahmet Çak\_c\_ was detained along with Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_. If detained, the whereabouts of Ahmet Çak\_c\_ was to be established.

76. By letter dated 17 May 1995, the Hazro district gendarme command informed the Hazro public prosecutor in reply that the operation on 8 November 1993 was intended to capture members of the PKK and those aiding and abetting them and that their records indicated that Ahmet Çak\_c\_, Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_ had not been detained.

77. By letter dated 22 May 1995, the Hazro public prosecutor (35815) requested the Hazro district gendarme command as a matter of urgency to establish the whereabouts of Ahmet Çak\_c\_.

78. By letter dated 23 June 1995 to the Hazro public prosecution, the district gendarme command at Hazro referred to the prosecutors' enquiry dated 22 May 1995 about the whereabouts of Ahmet Çak\_c\_ and to the letter dated 1 March 1995 from the Diyarbak\_r provincial gendarme command. It stated that the investigation resulted in the following. Ahmet Çak\_c\_ was a member of the PKK. Following an operation carried out at K\_ll\_bo\_an hill, Hani district, on 17-19 February which resulted in the capture of 56 terrorists, Ahmet Çak\_c\_'s identity was established by the identity card located amongst the documents found on the body of a terrorist. It was concluded that he was one of the terrorists.

79. By letter dated 27 June 1995, the Hazro public prosecutor (33225) informed the Diyarbak\_r Attorney General, in reference to their letter of 1 December 1994 and the letter of the Ministry of Justice of 18 August 1994, that an operation had been carried out on 8 November 1993 in order to apprehend members of the PKK and those assisting them and that Ahmet Çak\_c\_, Mustafa Engin and Tahsin Demirba\_ were not detained as claimed according to the information from Hazro gendarmes. Referring to the letter of 23 June 1995 above, it was stated that Ahmet Çak\_c\_ was a member of the PKK and found dead during operations carried out in the K\_ll\_bo\_an hill region, Hani district, on 17-19 February 1995. The Lice public prosecutor had been requested to obtain a statement from Mustafa Engin, a response to which was still awaited.

80. By letter dated 4 July 1995, the Hazro public prosecutor's office informed the Ministry of Justice (Directorate of International Law and Foreign Affairs) of the information provided above (para. 78) by the Hazro gendarmes. It stated that a preliminary investigation No. 1994/191 had been started and was still pending.

81. By letter dated 5 March 1996, the Hazro public prosecutor (31562) informed the Ministry of Justice that upon its request Diyarbak\_r Attorney General was instructed to take a statement from Mustafa Engin.

82. By decision of 13 June 1996, the Hazro public prosecutor Mustafa Turhan issued a decision of lack of jurisdiction and transferred the file to the District Administrative Council. The decision named the applicant and Remziye Çak\_c\_, the wife of Ahmet Çak\_c\_, as the complainants and identified the victim as Ahmet Çak\_c\_. The offence was described as ill-treatment, torture and confiscation of money of a detainee and the defendants as unidentified individuals of Hazro gendarme station and village guards. It stated that the complainants claimed that soldiers from Hazro gendarme command arrived in Çitlibahçe on the morning of 8

November 1993 and detained the victim, who was taken to Diyarbak\_r where he was tortured by electric shocks and ill-treated. A lieutenant removed 4,280,000 TL. The decision stated that an investigation was carried out and the following finding established. The victim was a member of the PKK terrorist organisation. The security forces carried out an operation in the K\_ll\_bo\_an hill region, Hani district, on 17 and 19 February which resulted in the capture of the dead victim. The bodies of the dead terrorists were searched and the victim's identity card located on one of the terrorists. Therefore the individual's identity as Ahmet Çak\_c\_ was confirmed without doubt. Mustafa Engin had made a statement and stated that he had not seen Ahmet Çak\_c\_. The suspects fell under the Official Conduct Act and following the withdrawal of duty by the Hazro prosecution the documentation was transferred to the Presidency of Hazro District Administrative Council for the necessary action.

**B. The evidence before the Commission**

**1) Documentary evidence**

83. The parties submitted various documents to the Commission. The documents included reports about Turkey (including Amnesty International report, "Turkey - More people disappear following detention" AI Eue 44/15/94 and extracts on Turkey from the Report of the United Nations Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36)) and statements from the applicant and witnesses concerning their version of the events in issue in this case.

84. The Commission had particular regard to the following documents:

**a) Statements by the applicant**

Statement of 23 December 1993 taken by the Human Rights Association ("HRA"), Diyarbak\_r

85. The applicant's brother Ahmet Çak\_c\_ had moved to Diyarbak\_r about one week before his disappearance. He had returned to pick up the rest of belongings. He was taken into custody by the 400 soldiers and guards who arrived in the village at around 10.00 hours on 8 November 1993. The soldiers came from Hazro district gendarme command and the guards from K\_rmata\_, Sar\_erik, Me\_eba\_lar and Kavakl\_bo\_az villages. The soldiers and guards set fire to the houses. They took Ahmet away in a vehicle. Mustafa Engin and Tahsin Demirba\_ of Ba\_lan village were also taken. They saw Ahmet during their own custody.

86. Their initiatives have so far proved unfruitful. Officials did not accept that Ahmet was taken into custody. There was nothing that the applicant could do in the Turkish legal system.

Statement of 9 September 1994 taken by a public prosecutor at

Diyarbak\_r

87. He was reminded of his petition letter. He stated that his brother was apprehended in their village and detained on 8 November 1993 by Hazro gendarmes. Since then he had been detained at Hazro gendarme station. He had not seen his brother detained but there were eye-witnesses, Mustafa Engin and Abdurrahman Al, who were with him in custody in Diyarbak\_r. He did not know their addresses. A month ago, some-one whose name was unknown to him told him that his brother was still in custody at Hazro gendarme station. He had petitioned the State Security Court prosecutors and the provincial governor but was told that there was no such individual. He was anxious to hear from his brother. He should be arrested if charged or otherwise released.

Statement of 13 May 1996 taken by advocate Osman Baydemir

88. On 8 November 1993, at about 09.00-10.00 hours, his brother Ahmet Çak\_c\_ was taken from their house and placed in custody in front of his father, mother and all the villagers. The applicant made a petition to the prosecutor's office at the Diyarbak\_r State Security Court and the Provincial Governor's Office but was given no information about the fate of his brother, formally or informally.

89. The claim that his brother had been killed in a clash in 1995 was completely false. His brother had been detained in Diyarbak\_r for 24 days together with Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_, who had told him this. If his brother had been killed, why did no-one tell them this? His family had not been informed of this. Also Hikmet Aksoy who had been detained at Kavakl\_bo\_az station had seen Ahmet and spoken with him. Hikmet Aksoy was now in Konya prison.

**b) Statements by other persons**

Remziye Çak\_c\_

Statement of 12 November 1993 taken by the HRA, Diyarbak\_r

90. The residents of Çitlibahçe were forcibly evacuated from their village by the soldiers and guards belonging to the Hazro district gendarme command. They raided the village at around 07.30 hours on 8 November 1993 and set all the houses on fire. Her own house was burned. Her husband Ahmet was roughly treated and detained. Her husband was still detained. She now lived in a rented house with three bedrooms, with her seven children, parents-in-law and two of her husband's brothers.

Statement of 25 November 1994 taken by a public prosecutor at Diyarbak\_r

91. She was the wife of Ahmet Çak\_c\_, whose whereabouts were unknown, and she had seven children. On 8 November 1993, when they

lived in Çitlibahçe, the gendarmes and guards arrived, evacuating the village completely and taking people outside, opposite the village. They searched the houses. There were some empty houses, which were burned. On their way back, they took her husband and another person, whose name she could not remember. They took her husband to Hazro gendarmerie and after that he was taken to Diyarbak\_r. After some time, they brought him back to Hazro. They learned this from Hikmet, who was under arrest in prison. She had petitioned the State Security Court prosecution, the provincial governor and the State of Emergency Governor, without receiving any response. Her husband had no connection with the PKK. She wanted to know what had happened to him.

Mustafa Engin

Statement dated 22 December 1993 taken by HRA, Diyarbak\_r

92. He used to be a resident of Ba\_lan village, Lice district. He was taken into custody in his village by soldiers on 8 November 1993, held overnight in Lice and brought, with hands tied and blindfolded, to Diyarbak\_r. He did not know where he had been taken to. On the night of his arrival, he was tortured. They asked him whether he knew Ahmet. He knew Ahmet very well. He had known Ahmet since he was a child and his daughter was married to Ahmet's brother. When he said that he knew Ahmet, they asked who had brought the teacher who had stayed in his house. He had said Ahmet had brought the teacher. When asked if Ahmet was armed, he said that he was unarmed. The following day, the anniversary of Atatürk's death, he was forced to sing anthems. Seven-eight days after his arrival, he saw Tahsin Demirba\_ there. Six-seven days after the torture he was taken to the second floor along with a number of other people. That night, some-one partially lifted his blindfold and said in Kurdish "Open your eyes, Uncle Mustafa." He saw that it was Ahmet. They could not speak much. In the morning they were taken to the basement. He stayed there with Ahmet Çak\_c\_ for 16-17 days. They were blindfolded all the time. If they removed the blindfolds, they were beaten. When they could, they looked through the gaps and talked with their friends. He had the opportunity to talk to Ahmet many times. Ahmet told him that he was given electric shocks twice, one of his ribs was fractured, and that he was subjected numerous times to severe torture. Ahmet also said that when apprehended a first lieutenant took 4,280,000 Turkish lira from his pocket and he asked the witness to tell his family, which he did. The witness was detained 24 days. He had not seen Ahmet since his release.

Statement dated 12 March 1996 taken by a Diyarbak\_r police officer

93. Mustafa Engin used to live in Ba\_lan village, Lice. He personally knew Ahmet Çak\_c\_ who lived nearby in Çitlibahçe. He had not seen him for three years, did not know his whereabouts or whether he was alive or dead or a terrorist. That was all he could say about Ahmet Çak\_c\_.

Statement dated 13 May 1996 taken by Diyarbak\_r public prosecutor Feyrican Öztürk

94. Certain documents, referred to as the Hazro public prosecutor's instructions dated 17 April 1996, were read out to the witness before his statement was taken. He is recorded as stating that he remembered the matter mentioned in the instructions. Following an operation, he was taken from Lice to Diyarbak\_r security. As Ahmet Çak\_c\_ mentioned, during his detention he was blindfolded. He did not remember whether he was taken into custody with Ahmet. He did not see Ahmet Çak\_c\_ in the custody suite though Ahmet might have seen him. He was given electric shocks once but they did not fracture his ribs. They took his money and clothes but returned them later. They did not torture or beat him. He did not see the named individual Ahmet Çak\_c\_.

Abdurrahman Al

Statement of 14 May 1996 taken by advocate Osman Baydemir

95. Abdurrahman Al used to live in Ba\_lan village. On 8 November 1993, soldiers raided the village, assembling the villagers in the schoolyard and setting fire to some of the houses. During the incident, they brought Ahmet Çak\_c\_ from the village of Çitlibahçe to Ba\_lan. He knew him since he was from a neighbouring village. Abdurrahman Al, Mustafa Engin and Tahsin Demirba\_ were taken to Lice gendarme headquarters while Ahmet Çak\_c\_ was taken towards Hazro. After one night in Lice, they were brought to Diyarbak\_r. They were left in a room, blindfolded. They could lift their blindfolds when the soldiers were not there. After a week, when he lifted his blindfold, he saw Ahmet Çak\_c\_ sitting opposite. They spoke. Ahmet had broken ribs and bruises under his eyes and on his face. He rubbed Ahmet's back a little. They talked frequently after that. Ahmet said that he had been taken to \_ndarköyü, Hazro, where a village guard had hit him with a hammer and broken his ribs. He also said that at Hazro a first lieutenant had hung him by his feet, head down, on a tank. On another occasion, he asked Abdurrahman to take pears to his children and ask his family to make an application for him. On the twenty-fourth day, Abdurrahman and his friends were taken to the Diyarbak\_r State Security Court, Ahmet was still at the police station. While his two friends were released, Abdurrahman was placed under arrest and held as a remand prisoner for ten months. He had had no news since about Ahmet.

Mehmet Bitgin

Statement of 14 May 1996 taken by advocate Osman Baydemir

96. Mehmet Bitgin used to live in Çitlibahçe. On 8 November 1993, soldiers raided the village. All the houses were burned down. He saw

Ahmet Çak\_c\_ being taken into custody.

Fevzi Okatan

Statement of 14 May 1996 taken by advocate Osman Baydemir

97. Fevzi Okatan used to live in Çitlibahce. On 8 November 1993, soldiers raided the village, setting fire to the houses. Ahmet Çak\_c\_ was taken into custody and there was no news of him since. They had to move to Diyarbak\_r when the village burned down.

**c) Official documents and reports**

Concerning the operation on 8 November 1993

Arrest report dated 8 November 1993 by Lice gendarmes

98. The report, written by hand and signed by Lice gendarme officers, states that on 8 November 1993 a force arrived at Ba\_lan village, Lice district, intending to carry out a search of the village and surrounding fields. The search began at 08.00 hours. The villagers were assembled and their identities checked. On 23 October 1993, five teachers, an imam and the imam's brother had been kidnapped, of whom five were killed. The imam's injured brother who had escaped identified Abdurrahman Al as one of his kidnappers. Mustafa Engin was caught trying to escape from the village and the imam's brother stated that he was also one of the kidnappers. A third person, Tahsin Demirba\_, who had aided and abetted the PKK, carrying them on his tractor, was also apprehended and detained for interrogation. The search was completed at 14.00 hours, no incriminating material having been found.

Operation order of Hazro gendarme command dated 7 November 1993

99. The order, signed by Lieutenant Alt\_noluk, is in an abbreviated number format. It indicates the object of the operation as the capture and annihilation of PKK terrorists, identification and capture of collaborators and destruction of shelters; that the forces to be used included four commando teams from the Hazro commando regiment and two GKK teams (village guards) and that the operation was to begin at 05.30 hours on 8 November 1993.

Operation report of Hazro gendarme command dated 8 November 1993

100. The report, signed by Lieutenant Alt\_noluk, is in an abbreviated number format. It indicates the object of the operation as the capture and annihilation of PKK terrorists; that the operation lasted from 05.30 hours to 15.30 hours and was carried out without incident as planned.

Concerning Hikmet Aksoy

Letter dated 19 November 1996 from Director of Konya E-type prison to Ministry of Justice

101. Hikmet Aksoy, arrested as a member of the PKK by order dated 23 November 1995 of the Mersin 2nd Magistrates' Court, was transferred to Konya from Mersin due to the location of his trial. On 25 October 1996, the instructions issued by the Ministry of Justice that he should appear before the Delegates of the European Commission of Human Rights on 20 November 1996 were read out to Hikmet Aksoy and given to him for the purpose of service. He refused to sign the acknowledgement of receipt. On 18 November 1996, Hikmet Aksoy was released from Konya prison by decision no. 1995/291 of the Konya State Security Court.

Release decision 1995/291 dated 18 November 1996 issued by Konya State Security Court to the Chief public prosecutor

102. It had been decided to release Hikmet Aksoy, who was to be released if no other warrant for his arrest existed besides that of 23 November 1995 of the Mersin 2nd Magistrates' Court and if so, that warrant was to be forwarded to the State Security Court.

**d) Custody records**

Hazro central gendarme station

103. The original record was produced for the Delegates. Ahmet Çak\_c\_'s name is not recorded, nor any entry for 8 November 1993. All the persons detained during that year were transferred to Diyarbak\_r provincial gendarme station.

Lice gendarme headquarters

104. A copy of the entries for November 1993 was provided. There was no entry for the date 8 November 1993 and the names of Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_ are not included.

Diyarbak\_r provincial gendarme headquarters

105. A copy of the entries for the period 4 November 1993 until 9 December (entries 2705 to 2792 consecutively) was provided. Abdurrahman Al (entry no. 2725) is recorded as having been detained on 9 November 1993 for aiding and abetting the PKK and as being arrested by the State Security Court on 1 December 1993. Mustafa Engin (no. 2726) and Tahsin Demirba\_ (no. 2727) are recorded as having been detained on 9 November 1993 for aiding and abetting the PKK and as being released by the State Security Court on 1 December 1993.

**2) Oral evidence**

106. The evidence of the 11 witnesses heard by the Commission's Delegates may be summarised as follows:

(1) The applicant

107. The applicant was born in 1953 and was currently living in Diyarbak\_r, where he had lived since 1981. In November 1993, his brother Ahmet lived in Çitlibahçe village. Ahmet lived there all the time, both summer and winter. Later he stated that a month before the incident Ahmet had moved part of his household goods to Diyarbak\_r, where he had rented a house. He had left his children there with his mother-in-law and was in the village with his wife. Ahmet had been taken into custody on a previous occasion about three years before but released after 13-14 days. He denied knowledge concerning Ahmet's alleged PKK activities.

108. He had heard that the security forces used to visit the village but had heard of no incident before November 1993. He was not present in the village on 8 November 1993. The next day, he heard about what had happened from villagers who came from the village to Diyarbak\_r on the minibus. He was told by the villagers, Ramazan Önal and Teyfik Uyanik, that Ahmet had been taken from the village by the Hazro gendarmes. He heard that his brother had been taken alone. After that, he had news of his brother from three persons from Ba\_lan village, Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_. From them, he heard that Ahmet had been at Hazro overnight and then taken to Diyarbak\_r, where they had been held together for 17-18 days. Mustafa Engin's daughter was married to his younger brother Emin.

109. He heard from the villagers that many soldiers from Hazro, with village guards from Sar\_erik, Me\_eba\_lar, K\_rmata\_ and Kavakl\_bo\_az came at about 07.00-8.00 hours. They took all the men outside across from the village, while the women and children stayed in the village. They carried out a search and 60-70 houses were burned, including his own house, his father's house and his brother's house. The soldiers thought that the Çitlibahçe villagers gave food to the PKK. Ba\_lan village was 15 minutes away by foot.

110. When the soldiers arrived, Ahmet was in the coffee house. He hid in a place nearby. When that house was set on fire, he had to come out and he was seized. The commander said to the men, "Go back to your village. We've caught Ahmet Çak\_c\_. We wanted him." They said that he was a member of the PKK militia. The operation ended then. Many villagers, about a hundred, mostly women and children, were around when Ahmet was seized and many saw him taken. After that, the soldiers took Ahmet to Ba\_lan. When Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_ were seized there, they were taken by the Lice gendarmes while Ahmet was taken to \_ndar, then the station at Hazro. A boy, Mehmet Emin Bulan, was taken from the village at the same time

as Ahmet but he was set free and came home. This boy mentioned that they had been taken to \_ndar.

111. Mustafa Engin told him that he was in custody with Ahmet for 15-18 days. Engin told him that one night Ahmet opened his eyes and made himself known. Hikmet Aksoy saw Ahmet at Hazro Kavakl\_bo\_az station in May or June 1994. He met Hikmet about 8-9 months ago after Hikmet had been released from prison. Hikmet came to see him. Hikmet said that Ahmet had told him that he had stayed at Diyarbak\_r for 85 days and then was taken back to Hazro for a few months, before being taken to Kavakl\_bo\_az. Ahmet had told Hikmet that he had been tortured.

112. He applied several times to the State Security Court with a petition but they said that no-one with that name had come to them. He waited outside the court for 60 days, expecting that Ahmet would be brought. He gave a petition to the Regional Governor and to the Provincial Governor. He has received no news from the authorities about his brother. He had not been told anything about a clash in February 1995. He had only heard that his brother was dead a month ago from his lawyer, Osman Baydemir. The authorities knew his address. Once the public prosecutor called for him and he went to make a statement. He confirmed that he had made a statement to the HRA on 23 December 1993.

113. Çitlibahçe, containing about 200 houses, was mountainous on the south, with plain to the north and west, with forest on both sides. Sar\_erik was 20-25 minutes away, Me\_eba\_lar about half an hour, K\_rmata\_ an hour away and Kavakl\_bo\_az half an hour away. No-one lived at Çitlibahçe any more. When asked to name the village guards in the operation, he identified Faki as the chief of the Sar\_erik village guards.

(2) Fevzi Okatan

114. Fevzi Okatan said that he was born in 1931 and had lived in Diyarbak\_r since 1990. He had been muhtar of Çitlibahçe for eight years. In 1989, terrorists burned his house and they had moved to Diyarbak\_r.

115. On 6 November 1993, the district governor of Hazro told him on the telephone that Sunday was to be census day and that he should go to the village where officials would count the population. He went to the village where his wife also was. After the census was finished, he spent the night in the village. (At another point, the witness described an election taking place that day.) Between 07.00-8.00 hours, on 8 November 1993, Hazro soldiers and guards from four villages surrounded the village. There were about 50-55 soldiers and 200 village guards. The company commander called him as muhtar and told him that all the men should come to a flat field near the village. He transmitted the order from the loudspeaker of the mosque.

About 200 men went to the field a 100 metres from the village. All the guards entered the village. A few minutes later, smoke rose from the village. Some-one, a village guard, shouted from the village in Kurdish, "We've caught Ahmet Çak\_c\_". The company commander then ordered the men to go to put out the fires. Everyone began to run towards the village. He was sick, walking slowly. He saw Ahmet Çak\_c\_ in the hands of the village guards, one holding him by the hair and another by the collar. There were guards around him and behind. They took him next to the vehicles. He did not see where they took him after that. (At another point he said that he saw the cars go towards Ba\_lan.) When he saw him with the guards, Ahmet was on the brook road, about 25 metres away. He did not hear him say anything. He did not see anyone else being taken. He heard that Ahmet was caught, when they set fire to a house near the fountain, causing him to be frightened and come out. When the operation started, Ahmet had gone to hide in the house near the fountain.

116. There were two commanders, a commando commander and a gendarmerie commander. He knew the difference in uniforms and, though in the East their ranks were covered, he understood it was the commander who was giving orders. Fifty-four houses were burned. He did not see how it was done. The operation ended before noon. The purpose was to catch Ahmet Çak\_c\_. Ahmet had been wanted for a long time. He agreed that Ahmet and others in the village were militia<sup>2</sup>. It was said that the security forces went to Ba\_lan village next. Three days later, the village was empty. No houses are left intact now. He had not been back to the village himself, but he had sent his wife and she had told him that. Together, the villagers had given about 15 petitions to Ankara, the Governor, everywhere. They were not able to go back to the village due to the village guards. He referred to the village guards having power and to blood feuds.

117. The gendarmes had come to the village on previous occasions, when the terrorist activities increased, telling them not to give the PKK bread or other things.

(3) Remziye Çak c

118. The witness was born in 1956 and had lived in Diyarbak\_r since 1993. In November 1993 she lived in Çitlibahçe, where she had been born. Her husband lived in the village. He grew tobacco, raised animals. The gendarmes had come to the village occasionally. On one occasion three months before they took their tobacco, they had asked for her husband and she had said that he had gone to sell tobacco at the Black Sea. In the summer of 1993, they conducted an operation, taking their tobacco. Her husband had been absent then, taking tobacco to the Black Sea to sell. They had bought a house in Diyarbak\_r, and moved part of their goods there. The children were in Diyarbak\_r and they were in the village planning to take the rest of

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<sup>2</sup>. A term often used to describe persons who assist the PKK.

their goods away.

119. On 8 November 1993, she was at home. Soldiers and village guards arrived at about 07.30- 8.00 hours. Their cars came to a place across from the village. They went into the village and took the men outside, 500 metres across from the village. They made a search and set fire to houses. Ahmet had been in the coffee house and gone to the house near the fountain. When the houses were set alight, he came out of the house next to the fountain and was taken by the soldiers and guards. There were some old women near the fountain, including her sister Makbule U\_urlayan, who shouted "They took Ahmet." They went outside into the street and saw that the house was set on fire and that Ahmet was in the hands of soldiers and guards being taken to the opposite side of the village. The soldiers shouted that the men should return and put out the fires. The soldiers left the village in their cars, taking the M\_\_f road (at another point, the witness says she saw them driving to the \_ndar and Hazro road). They took a 10 or 12 year old boy, Mehmet Emin Bulan, with them up to \_ndar village. The boy was released there and came back the next day. He said that Ahmet had been searched on the road, a first lieutenant taking money that Ahmet had in his sock and that Ahmet was taken towards Hazro. The boy was the son of Haçi Bulan. His mother had tried to stop them burning her house and had been beaten. They had taken the boy because of that.

120. The witness did not see Ahmet being seized but she saw him in the hands of the guards, followed by soldiers, being taken down the road. Some had him by the hair, some by the collar. She was about 25-30 metres away. She did not know the number of soldiers around him. The operation lasted 2-3 hours. She saw the houses, tobacco and goods being set on fire. 60-70 houses were burned, including her own and those of her father-in-law, brother-in-law and uncle. There were empty houses, but intact, where the villagers had moved to Diyarbak\_r when their tobacco was taken. They searched and set the houses on fire before her husband was caught. She was not told that they were looking for him.

121. She had not seen her husband since. About 20-25 days later, she heard news of him from Mustafa, who had told her 4,370,000 Turkish lira had been taken from Ahmet. Ahmet had tried to hide the money in the house but had taken it with him as the houses were being burned. Mustafa said that, one night in Diyarbak\_r, Ahmet opened his blindfold and said "Uncle Mustafa, it's me." They were together 15-16 days. Mustafa said that Ahmet had been tortured. Seven-eight months later, Hikmet, who had been in prison for four months and released, came to see them. He told her that he stayed with Ahmet in the Mülküs station for 13 days, in adjacent cells, seeing him at the evening meal. Ahmet had told Hikmet to come and see his children and had told Hikmet that he had been in Diyarbak\_r for 80-85 days.

122. She had heard no other news. Izzet had taken a petition to the

Governor's Office. She had made a statement to the HRA and the public prosecutor. No-one told her about a clash, where her husband's identity documents were found. She only knew that he was missing. After the incident she had gone to Diyarbak\_r. Six or seven days later, she made a statement to the HRA.

(4) Mustafa Eng\_n

123. The witness was born in 1939 and had lived in Diyarbak\_r since 1993. He used to live in Ba\_lan village, Lice district, which was close to Çitlibahçe. On 8 November 1993, he was in Ba\_lan. He looked out and saw that an operation had come from the direction of Kavak. They caught him and took him, holding him by the arm, down to the lower part of the village in front of the school. He was taken to the Hazro first lieutenant, whose name he did not know. Someone was brought to look at him. The witness was asked if he knew the person but he said that he did not. He was asked if this was the teacher who had stayed at his house. He replied that he did not know him really and that he had come to his house at night. At another point, the witness referred to being confronted with the teacher at the police station.

124. He was taken to Lice as he was registered in Lice. Two others, Abdullah Al and Tahsin Demirba\_ were taken also to Lice from the village. The three of them stayed in Lice that night. In the morning, their statements were taken in writing, they were blindfolded for the first time and taken to Diyarbak\_r. Ahmet Çak\_c\_'s brother Emin was married to the witness's daughter. He did not see Ahmet Çak\_c\_ during the operation or at Lice. The last time he had seen Ahmet was when, a week before, Ahmet handed over the teacher to the witness, asking the witness to let the teacher stay in his house that evening and to let him leave in the morning. The teacher had stayed the night and at 03.00 hours, the witness left him up the road and told him to go back where he had come from.

125. At Diyarbak\_r, he stayed a week in one place and then was taken to a different place. He did not know where this was as he was blindfolded. After a week, they were taken to the second floor of the government building where they had been kept. He was given the number "8" and given a place to sleep. After they had gone to bed, someone took the blindfold from his eyes and told him, "You can open your eyes, Uncle Mustafa." It was Ahmet. They spent the night there and in the morning at about 09.00 hours they were taken down to the basement where they remained for about 17 days. Ahmet told him that he had run away and gone into a house to find 4,700,000 TL which he had hidden. Since they were about to set fire to the houses, he put the money in his sock. After he was caught, the money was discovered on him and the first lieutenant pocketed it. Ahmet told the witness to tell his brother about the money and to get it for his children. He said that he had been beaten by village guards and the first lieutenant. He had

been taken to \_ndar<sup>3</sup>, then to Hazro where he spent the night in the hall (common room) and then brought to Diyarbak\_r. He said that he had been beaten and tortured and that one of his ribs had been broken due to the beating. He said that he had been given electric shocks twice. The witness said that this treatment was received in Diyarbak\_r, not Hazro. He saw that Ahmet was in an awful state, not well. There was dried blood on his clothes. He said that his head had been split open. The witness, though he was old, finished eating his food before Ahmet could. They were in a room containing 45 people, including people from Bingöl and lots from Diyarbak\_r. Al and Demirba\_ were there also.

126. They were blindfolded but when they were alone they took the blindfolds off, replacing them when persons came into the room. They talked together secretly when they were not watched. The witness was taken out for questioning and Ahmet was taken out twice. Once when he came back, Ahmet said that they had given him a terrible beating. One morning at about 09.00-10.00 hours, they called out the witness's name and he was taken to the court. He was brought before the prosecutor of the State Security Court who let him and Demirba\_ go, but detained Al. He was taken before him twice. The witness stated that he was given electric shocks during his detention. The witness had not seen Ahmet since he was taken out of the cell and released. He went to tell the applicant what had happened as Ahmet had asked. He heard that Ahmet was later taken to Hazro from other villagers.

127. About two months previously, he had been called to the public prosecutor in Diyarbak\_r and asked if he knew Ahmet Çak\_c\_. He remembered being asked about why he had been taken into custody, not about when or where he had last seen Ahmet.

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<sup>3</sup>. The witness describes \_ndar as a two hour walk from Hazro; a one to one and a half hour walk from Çitlibahçe.

(5) Ertan Alt noluk

128. The witness was born in 1963. In November 1993, he was the gendarme commander in Hazro district. Çitlibahçe was under his jurisdiction. He went there many times in his two years in office which ended in July 1994. There were terrorist problems throughout his district.

129. Shortly before 8 November 1993, while he was on annual leave, teachers and an imam were abducted by the PKK in Hazro district. Their bodies were found two-three days later. On his return, he had to investigate. In light of information gathered in his absence, an operation was conducted in several villages, including Çitlibahçe, with a view to investigating, finding clues and the culprits. The information gathered included that the teachers had stayed in a village in the Lice district. No names of the persons involved were known, but they had descriptions of the people whom the PKK had asked for help, to guard the teachers, bring provisions and shelter the teachers. These preliminary investigations had been conducted by his gendarme colleagues at Hazro who had contacted the citizens in the district.

130. When referred to the operation order of 7 November 1993 which referred to the aim as being the capture of PKK terrorists and collaborators and the destruction of shelters, the witness stated that they put down all the estimated possibilities and this was standard. They had drawn up an itinerary between the place where the teachers were kidnapped and where the bodies were found. Çitlibahçe and Ba\_lan villages were on that route. He drew, on request, a sketch map, indicating the respective positions of the villages, Çitlibahçe being closer to Hazro and Ba\_lan being further away inside the Lice district boundary. Çitlibahçe was about 30 km from Hazro. Ba\_lan was not mentioned on his operation order as he did not have jurisdiction to plan operations outside his area. When it was pointed out to him that he in fact went to Ba\_lan village on the operation, he explained that if the need arose, as operations developed and with the agreement of commanding officers, they were able to cross boundaries into other districts.

131. Under his command were a gendarme unit, a commando unit of 20 men and two teams of village guards (which he estimated at 30 persons). Village guards have the duty of protecting citizens and property within the boundaries of their villages. On missions, they assign guards from villages along their route to provide security for vehicles and personnel. Village guards are under their command and responsibility at such time. On this operation, they assigned guards to providing security through a mountain pass near the Lice boundary on their route to prevent ambush. The guards were from Kavakl\_bo\_az and Sar\_erik which were on the route. There were none from K\_rmata\_or Me\_eba\_lar as they were not on the route. He refuted the idea that the village guards were part of the operation. Village guards elect

amongst themselves a "chief guard" who liaises with the gendarmes and reports to them.

132. During the operation, in which he was the commander, he recalled that in Ba\_lan, a village in Lice, 600-700 metres from Çitlibahçe, they found persons who had sheltered the teachers on behalf of the PKK. He was present when Ba\_lan village was searched and those persons found. The persons did not deny their involvement but stated that they had been forced to help. They were handed over to Lice personnel and sent to Lice as they were from the Lice district. He did not recall the names of the suspects. When he arrived in Ba\_lan, his Lice colleagues were already there. He saw a unit of about 20. His men provided security around the village while the Lice unit went into the village to search. The persons who were apprehended were brought to him. The Hazro unit had to be involved in the Ba\_lan operation since they knew the descriptions of the persons implicated in helping in the kidnapping of the teachers. No-one tried to run away in Ba\_lan village. He confirmed that the order recorded that the operation began at 5.30 hours and they returned at 15.00 hours. In normal conditions, it took three hours to get to Çitlibahçe from the central Hazro station and taking precautions, he estimated it took four hours. They would stay only briefly in villages, to avoid the possibility of incidents. He estimated a figure of 23-25 minutes for Çitlibahçe.

133. As regarded Çitlibahçe, which they went to before Ba\_lan, no definite clues were found about the incident and no-one was taken. His men had surrounded the village on their arrival. As was the usual procedure, the villagers were gathered at a suitable flat place, an area outside the village opposite the road, and he talked to them, asking them if the teachers had been in the village etc, while his men carried out a search. They were not looking for the perpetrators (since the PKK lived in the mountains) but for clues about the organisation and whether people from the village had helped them. No information was given to him. Though the persons described to them were in Ba\_lan, they went to Çitlibahçe since that was on the direct route from the teachers' village of Dada\_. He was under an obligation to trace their route and find any clues. During the search, they separated the men from the women, only talking to the men, since in that region it was considered improper for strange men to be near or talk to other men's wives. He agreed that anyone walking from the village to where the vehicles were parked would have passed the flat area where the villagers had gathered.

134. He remembered that Fevzi Okatan, the muhtar, was there during the operation and that he assembled the villagers. He described the muhtar as a strange man, who had claimed compensation from the State as his house had been burned by terrorists and that he had later complained of persons in the village, collaborators, helping the terrorists by burning his house. The muhtar was the main person who complained about Ahmet Çak\_c\_ as disturbing the peace and had come to

the witness and the district governor, complaining that the whole village had to leave because of one man and how could he trust the authorities if they could not catch one man. The muhtar was lying when he said that he had seen Ahmet Çak\_c\_ taken into custody. He also perhaps had something to gain from making an application. The witness denied that any damage occurred to the villages during the operation, their duty being to protect persons and property. It was impossible for the security forces to burn houses down as alleged. He visited Çitlibahçe after 8 November 1993 and it did not look any different, and the same people were living there. However, in the spring, due to the decision of the PKK to empty the region and create social problems, the villager evacuated their village, as did other villagers at that time. The villagers wanted to return but the PKK obstructed it. Fevzi Okatan had asked the State to provide military support so they could go back without fear but since they did not get what they wanted, namely a military unit posted there, they did not go back.

135. He had heard of Ahmet Çak\_c\_'s name before 8 November 1993 and knew that he lived in Çitlibahçe. His name was known to him from the date he took up his office. The authorities had to know the names of trouble makers, liable to disturb the peace and in that context he had heard of Ahmet Çak\_c\_. He had no information that Ahmet Çak\_c\_ was directly involved or present at the killing of the teachers. But it was certain that the teachers passed through the village and that one or two villagers contacted them. But in their investigations they did not find out the names of these villagers. He was not aware that the three persons from Ba\_lan had made statements implicating Ahmet Çak\_c\_ as giving instructions about holding the teachers. If he had detained anyone from Çitlibahçe, he would have taken them to Hazro which had the jurisdiction. He never received an instruction from Diyarbak\_r State Security Court prosecution to arrest Ahmet Çak\_c\_ in relation to his committing an offence.

136. He heard of the allegation that Ahmet Çak\_c\_ had been taken into custody while he was still in the region. There was an official enquiry as to whether this had happened and though he was not asked to testify he made an official reply in his capacity as commander. He had never seen Ahmet Çak\_c\_ and did not know what happened to him later. He denied taking any 13 year old boy into custody, stating that he would not have had the authority to take such steps in respect of a minor. He denied taking 4 million lira. Possessions which were removed from detainees were recorded. He would not have lowered himself to take such a sum.

137. The Çitlibahçe region was mountainous. Villagers used to keep livestock but with increase in terrorist activities, they were unable to take the animals to pasture and terrorists used to take the animals. There was another source of income in the region, narcotics which were produced and transported outside and sold. Apart from that, villagers grew their own fruit and vegetables. In Çitlibahçe

and surrounding villages, they grew Indian hemp flowers, grinding the seeds to obtain hashish/cannabis. He had seized and destroyed thousands of heads of hemp flowers in the fields. There was some limited tobacco growing but none around Çitlibahçe, since permits were required. The gendarmerie handled the applications and he had never seen any tobacco at that village, nor any applications for permits.

(6) Mehmet B\_tg\_n

138. The witness said that he had been born in 1926. He now lived in Diyarbak\_r. He used to live in Çitlibahçe but now there was nobody left there. In November 1993, he was living there. He knew the applicant and Ahmet Çak\_c\_.

139. One day, they looked out and saw the place was full of soldiers. They arrived between 07.00-7.30 hours. He had been sitting with Ahmet in the coffee house playing cards. The witness went home to make breakfast, leaving Ahmet there. He saw smoke coming from the house and Ahmet was taken. He was beside the fountain. He had been hiding. He was hit on the head with the butt of a gun. They kept hitting him on the back and on the head. A guard held him and handed him over to the soldiers. The guards and soldiers had him by the arm and he was taken opposite to where they were standing, where there was a pickup truck and soldiers. The soldiers took him away in the pickup to Mi\_if. No-one else was taken. Because the witness was old, he was not required to gather with the other men outside the village. The women stayed where they were. He was close to the fountain where Ahmet was caught.

140. The soldiers and guards had surrounded the whole village. They set fire to the whole village. There was much smoke. There was no house left. He saw the commander but did not remember his name. The commander said that they were going to burn the whole place except for the mosque. The commander did not go into the village but stayed opposite the village. He ordered the soldiers and guards to set fire to the village. When it was over, they got their belongings out of the burning houses and went to Diyarbak\_r. His house was burned. He had received no compensation.

141. He had not seen Ahmet again. He had heard that he had been seen in a police station in Hazro.

(7) Mustafa Turhan

142. The witness said that he had been born in 1964. He was a public prosecutor in Hazro since November 1994. He took over the file about Ahmet Çak\_c\_ from a previous colleague. At that stage, he had to find the addresses of the persons who had complained to the HRA and take their statements. They had moved. Izzet Çak\_c\_'s statement was taken on 9 September 1994 and Remziye Çak\_c\_'s on 25 November 1994. They

said that Ahmet Çak\_c\_ had last been seen in police custody. Mustafa Engin was the last one whom they found. His statement was taken by the Diyarbak\_r prosecution department. In that statement of 13 May 1996, he contradicted his previous statement, saying that he had not seen Ahmet Çak\_c\_ in custody though Ahmet Çak\_c\_ might have seen him. (When the witness was asked to read out this statement, he omitted Engin's reference to having been given an electric shock.) Engin had made a statement to the police on 12 March 1996 but this was not regarded as valid since they required a detailed response to clarify the contradictions. The investigation was on the substance of the complaints to the Commission and was against the security forces. There had been no prior complaint made by any of Ahmet's family or relatives. A petition had been made to the State Security Court but since it was not an offence which the State Security Court would follow up the petition was sent to the Hazro public prosecutor's department.

143. They had investigated the custody records. Ahmet Çak\_c\_ had not been taken to Hazro. He had not seen the original record but a copy had been sent. However, when asked if the copy was in the file, the witness stated that there was no such document in the file. There was a letter from the Diyarbak\_r security headquarters that records had been examined and he had not been in custody there. If a person had been taken at Çitlibahçe, he would have been taken to Hazro gendarme headquarters.

144. They later discovered that Ahmet Çak\_c\_'s body had been recovered in an armed clash with the security forces at K\_ll\_bo\_an hill, Hani district, on 17-19 February 1995. There was a document sent by the gendarmerie that 56 bodies were recovered and one of those was definitely identified as Ahmet Çak\_c\_. His identity card had been found and was sent to be added to the file. There had been no correspondence with Hani about Ahmet Çak\_c\_ prior to this. The procedures were carried out by Hani and the documents sent to Diyarbak\_r, which in turn notified them in Hazro on 23 June 1995.

145. When asked about the identification process, the witness referred to difficulties arising since sometimes identity papers found on terrorists have been taken from ordinary civilians or the identity papers are those issued by the organisation. He agreed that where a terrorist was carrying his ID papers it was not difficult to contact the family and ask for confirmation. There were domestic legislative provisions. In order for a burial licence to be issued, once a body had been identified, the close relatives were summoned and informed so that the person could be buried. When some-one was killed in a clash, a doctor and public prosecutor went to the scene. An autopsy had to be carried out and it was the duty of the public prosecutor to inform the family and obtain the burial licence. For Hani, it was the State Security Court and the Chief Public Prosecutor's office, who were the competent authorities in relation to such incidents and they could only act on their instructions. He

did not know if this procedure was followed for Ahmet Çak\_c\_. He was unaware if Ahmet Çak\_c\_'s fingerprints had ever been taken. He did not ask any questions about what had been done to establish Çak\_c\_'s identity since it was the State Security Court's jurisdiction. The document said that from information received from the gendarme headquarters his identity had been established and he had to accept that the document was correct.

146. As regarded his jurisdiction, Hazro prosecutors had competence to investigate whether the person had disappeared but the question of any prosecution would be referred to the District Administrative Council. The file was duly sent there on 13 June 1996 on grounds of lack of jurisdiction. On five to six occasions he had questioned gendarmes about people taken into custody who had not been put in the custody record but it had subsequently transpired that the State Security Court had authorised the period of detention.

(8) Aytekin Türker

147. The witness said that he had been born in 1961. From July 1993 to August 1994, he was central station commander at Hazro district gendarme headquarters, with three non-commissioned officers, three or four specialist sergeants and fifteen to twenty men. The village of Çitlibahçe was under his jurisdiction. He was responsible for the custody records. It was either himself or two non-commissioned officers, acting on his orders, who kept the records. His own superior was the district gendarme commander, Lieutenant Alt\_noluk.

148. At Hazro station, there were two floors, the lower for the central headquarters and the upper for the district gendarmerie headquarters. There was no wide hall or spare room to put detainees in. The headquarters, built some time ago, had to shelter extra forces and there was insufficient space for them. The commando unit was stationed in a separate building in Hazro.

149. At Hazro, people who were taken into custody entered the security room. When they entered, their exact details were taken down. They would be entered even if staying only for an hour. The room was five square metres roughly, a wide room, containing one bed. It was for one person. They did not hold many people or for a long period. If there was more than one detainee, they were held temporarily in that room together and the procedures speeded up. Persons detained for the purpose of being sent to Diyarbak\_r were held in that room. Persons detained by the commando unit would also be sent to him. The commando headquarters had no custody room, nor did the district gendarmerie. No questioning or interrogation took place at Hazro. They would ask if anyone wanted to make a statement and, if they did, they would take their statements. They were sent to Diyarbak\_r provincial gendarme headquarters for interrogation, nowhere else. He did not know the headquarters layout. There was another gendarmerie building, the regional headquarters building in Diyarbak\_r, but they did not send anyone there. It was a kilometre away from the provincial headquarters. It was impossible and pointless for someone detained at Diyarbak\_r to be sent back to Hazro or Tekneba\_\_.

150. When referred to entries in the custody record (nos. 25-29 where five persons were recorded as being held from 31 December 1992 to 4 January 1993 and nos. 75-80 where six persons were held from 12 to 15 April) he stated that they would all have been held together in the custody room. In answer to questions by the Government agent, he confirmed that in winter there was a lot of snow and a heavy snowfall would close the pass from Hazro to Diyarbak\_r. This could hinder transport. When it was pointed out to him that entry no. 91 recorded a detainee as being taken into custody on 9 July 1992, whereas the next entry no. 92 recorded the detainee as being detained on 6 July 1992, the witness stated that maybe a line had been missed and filled in afterwards to avoid a gap, or that there may have been a mistake in the dates. Normally gaps should not be left and such lines scored out in red pen.

151. Ahmet Çak\_c\_ was a wanted person. If he was wanted then this meant that there must have been a decision by the public prosecutor for him to be apprehended or there would be records at the station. He was wanted before the teacher kidnapping incident from the time the witness took up his office. Ahmet Çak\_c\_ was not taken into custody. He did not remember any operation at Çitlibahçe on 8 November 1993. He did recall preparing the investigation documents concerning the abduction of the teachers, an imam and the imam's brother for the public prosecutor. The commander was on leave and the witness did the investigation, collecting intelligence from their usual sources in the villages and from the villages attached to the station. He recalled that the information included names of specific individuals. He heard that three persons were taken into custody under the jurisdiction of Lice, on suspicion of helping the PKK in the kidnapping.

152. No allegation was ever made over his 14 years that someone had been taken into custody without being recorded in the register.

153. During his time at Hazro, there was great pressure put on the local people by the PKK. The gendarmes were under repeated attacks. It was difficult and stressful. There were about 50 villages and hamlets in their district gendarmerie jurisdiction. Tekneba\_\_ station, under the district gendarmerie command, finished construction in late 1993- early 1994. It became active in 1994. Because it had recently been set up, any persons taken into custody were taken by him to Hazro. It did not use its own custody procedures.

154. Though there were village guards attached to his station, they were absolutely never used in operations. Their function was to protect their villages, and at most, provide security for military units passing through their area. He found it surprising when evidence was put to him by the applicant's representative, that Hasan Cankaya, the commander of the Tekneba\_\_ station, said that he would have used village guards in an operation.

(9) Ahmet Katmerkaya

155. The witness said that he had been born in 1967 and he had been working in the interrogation section at Diyarbak\_r provincial gendarme headquarters since August 1992. This concerned members and militia supporters of the PKK and other illegal organisations. He was not involved in interrogations themselves.

156. It was his responsibility to keep the custody record, which was a single ledger. He personally made the entries. Persons arriving were entered on the day they arrived and when they were released the date was recorded. It was not possible for some-one in custody not to be entered in the custody record or only to be entered a day later, even if they were busy. When some-one arrived, they were recorded, searched, their belongings removed and they were interrogated. A criminal file was prepared and the person brought before the State Security Court. Then he was either released and his belongings returned or remanded in custody. The witness was supervised by the interrogation bureau chief who would inspect the ledger from time to time.

157. There were 10 cells, each of which held only one person. They never put more than one person in such cells. Detainees could not communicate with each other from the cells. They could not see each other in the building either. If one was walking, under supervision in the corridor, no others were let out.

158. There were other gendarmerie buildings. The provincial central company command headquarters had its own facilities for holding

people whom they apprehended. Detainees sent to his own building remained there and were not transferred elsewhere. The custody rooms were in a building, with a lower and upper floor, without a basement. There were five cells on two levels. Interrogations were conducted in another building about 100 metres away. When asked what happened if they had more than 10 detainees, he stated that they would send those ready to court or detainees could be kept waiting in their districts and transferred when vacancies arose.

159. He had heard of Ahmet Çak\_c\_ as a militia man helping the PKK who was wanted by the security forces. He was wanted before the kidnapping but was also wanted as a suspect in the kidnapping. He remembered three persons being brought in November 1993 as having been involved in the kidnapping and murder of teachers and an imam from Dada\_. He recalled Abdurrahman Al and confirmed the names of Mustafa Engin and Tahsin Demirba\_. He did not interrogate them.

160. When shown the copies of the ledger for 1993, he confirmed that the entries were in his handwriting. He confirmed that in filling it in blank lines would not be left. However, noting himself that in the copy in front of him an entry for a detainee taken into custody on 3 November followed an entry for a detainee on 3 December, he explained that errors occasionally occurred. For example, if he was away ill, on his return he would check that the entries had been made for those arriving in his absence and if there was an omission, he would add the person's details. He did not recall how frequently such errors occurred, once a month, or every two or six months. It would not be possible for someone not to be entered for a week, or a month, at most a few days. It was not possible for a person not to be entered at all.

161. On being shown that the entry of a detainee (no. 2728) detained on 9 October 1993 which appeared after entries for detainees for 9 November 1993, he did not know how to explain that, and thought that perhaps it might have been forgotten by himself or his colleague. For example, since this person was a member of the organisation, he might have been taken urgently in an operation to identify other persons and indicate sites used by the PKK. He might have arrived, been interrogated and taken away the same day and an entry might not have been made. When asked where he would have obtained the information on or about 9 November that no. 2728 had been detained on 9 October and released on 4 November 1993, he referred to the custody papers which would have been submitted to the State Security Court. They had no separate notebooks or records. When a person arrived, from Lice for example, there was also a document stating the date on which he was apprehended, taken into custody and the offence concerned. The witness would then enter the date on which he was taken into custody. If a man was taken out to locate a hideout, a document would be prepared and handed over with him and when the man was handed back, the document would be destroyed. The document records why he is handed over, and to whom.

162. If a person taken out to locate a hideout was out over night, he would stay in the district gendarmerie, where he would be entered in the district gendarmerie record.

163. When referred to the entries on 9 November 1993 for Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_, he confirmed that, if they were detained in Lice on the night of 8 November 1993, they should have been entered in the Lice gendarme custody ledger. He could not explain the fact that entry no. 71 in the Hazro custody ledger was noted as being transferred to Diyarbak\_r provincial gendarme headquarters on 12 November but there was no corresponding entry in the Diyarbak\_r register. If the man had arrived, he would have recorded him.

164. When it was pointed out to him that from the records it appeared that on the night of 9 November 1993 there were 21 persons

held at Diyarbak\_r, the witness said that the fact that it was written did not mean the persons were there. He recorded the date when a person was taken into custody in the district. If a man was taken into custody on 8 November 1993 but there was no space at Diyarbak\_r he would wait. The district gendarmerie would enter him in their records and a letter would be sent to the State Security Court stating when he was caught. When the person arrived at Diyarbak\_r, they would note the date on which he was caught and taken into custody. Of the 21 persons, ten might be in their cells, ten or three or five in various districts. The date of arrival in Diyarbak\_r might be different from the date recorded in the Diyarbak\_r ledger. When shown that a detainee was recorded as taken into custody at Lice on 5 November 1993 and the date recorded at Diyarbak\_r was 6 November 1993, he supposed that a mistake had been made or that the document written to the State Security Court might have said 6 November. He confirmed that the fact that it was recorded in the Diyarbak\_r ledger that someone was detained on 6 November 1993, for example, did not necessarily mean that the person was detained in the provincial gendarme headquarters.

165. He was on duty from 8.00 until 17.00 hours. Most detainees arrived in the morning and afternoon. None would arrive from the districts like Lice after that time since the roads were not secure. The districts informed them if they had someone to be transferred. If the ten cells were full, they were put on hold and the suspects waited in the districts.

(10) Kemal Çavdar

166. The witness said that he had been born in 1972. He served at Tekneba\_\_ station from July 1993 to August 1995. The station started operating in January 1994. Until then the personnel were protecting the building which was under construction. The station personnel consisted of two non-commissioned officers and 30 men during the protection period and later two non-commissioned officers, a specialised sergeant and 45 men. Tekneba\_\_ was 15 km from Hazro. Kavakl\_bo\_az was a village about 5 km from the station.

167. He had not heard of the name of Ahmet Çak\_c\_ or Hikmet Aksoy. He did not remember the names of those on the wanted list during that time.

168. The station had a custody room with two cells. No-one was taken into custody in 1994. They did not have the authority since they had recently started operating. Person taken into custody were sent to the district centre without being kept waiting at the station. There was a custody ledger but they did not use it. Persons were entered at the district centre. Also they had no vehicle at the station and were short of manpower, so that when there was an operation it had be conducted jointly with other forces. Persons taken would be carried back to the district centre in the vehicles used in the operation.

169. When persons were detained, they were sent to the district within 24 hours. They informed the district who sent a vehicle to pick them up. If someone was temporarily at the station during the day, his name would have been put in the custody record. He refuted the notion that someone would be sent from a higher unit back to their own low ranking unit. He was not aware of any shortage of space for detaining people in other gendarmeries.

170. The station did not use village guards in their operations.

(11) Abdullah Cebeci

171. The witness said that he had been born in 1967.

172. In late October 1993, he went to visit his brother, an imam, in Dada\_. Terrorists, about 15-20, came and took them and five teachers to the school. The terrorists burned down the school and took them into the mountains. They said that they wanted to show the State their power. At night, they came to a village and villagers brought bread and water. They walked further and rested at about 5.00 hours. At dawn they were near another village. An old man came, keeping watch all day. Two young men came with soup for them to eat. Villagers brought pears. The terrorists took the teacher from Tunceli aside. He remained at the village. They told the others that they would stay with the terrorists for a few days and then would be freed. They walked further on. After dusk, seven terrorists brought them to a place near a main road. They were placed in a single line and systematically shot. He was shot and fell down. When one of the terrorists came back, he pretended to be dead. The teachers died and his brother died crying aloud next to him. In the morning, with difficulty he got up and went down the road. When he came to a village, he was refused water or help to get to a station. When he came to a stream, some women helped him and gave him bread. He asked for the nearest station but was told it was at Lice. He reached there late in the evening. From Lice, he was taken to Diyarbak\_r and was examined. The next day the Lice unit commander asked him to go back. He was taken by helicopter and was asked to show where the teachers' bodies were. The bodies were found and they went back to Lice, then Diyarbak\_r. He then went back to his own village Tokat.

173. The witness stated that he was never confronted with any of the suspects involved from the villages. He had given information to the soldiers about the appearances of those who kept watch and brought food. When asked to describe the man who kept watch, he said that he was 55-60, tall with grey hair, a grey moustache. Of the young men who brought food, he described one as 25-30 and short - both were darkhaired.

174. He was never called in to make a statement and had never been back to Diyarbak\_r.

Witnesses who did not appear

175. The Commission's Delegates had also called as witnesses: Aydin Tekin (Hazro public prosecutor), E\_ref Hat\_po\_lu, Hikmet Aksoy, Tahsin Demirba\_ and Abdurrahman Al. Tefvik Çak\_c\_ was called as a witness but the Commission was informed that he had died before the hearing took place in July 1996. At the hearing in July 1996, the Government Agent stated that as the senior officer in the region it was for Colonel E\_ref Hat\_po\_lu to decide whether he would attend or not and he could not be obliged to attend. While the Government were requested to clarify the reasons for his absence, there has been no further explanation. At the hearing, the Government Agent also stated that they were unable to force public prosecutors to attend.

176. By letter dated 25 June 1996, Mr. Tekin stated that he had not received any claim concerning the detention of the applicant's brother as Hazro public prosecutor and having no direct or indirect knowledge about the incident, submitted that he did not consider himself obliged to attend.

177. By letter dated 10 July 1996, the applicant's representatives stated that Tahsin Demirba\_ had told the applicant that he was too scared to give evidence. While Abdurrahman Al had told the HRA that he would attend, he refused later to meet with HRA officers and told the applicant that he would not attend.

178. As regards the absence of Hikmet Aksoy at the hearing in July 1996, the Government had been provided prior to the hearing with the information that Hikmet Aksoy was in prison in Konya. At the hearing itself, the Government Agent stated that he was unaware of this information and when it was verified, stated that security reasons would make it difficult to bring him but that every convenience would be afforded to the Delegates if they wished to go to Konya (in Central Anatolia, 4-5 hours distant by road). The Delegates requested that Hikmet Aksoy be brought to Ankara during the proceedings. The Government Agent informed them of difficulties, referring to disturbances in the prisons and that he was seeking clarifications as to this possibility. Hikmet Aksoy was not brought before the Delegates and no further explanation was forthcoming. As regards Hikmet Aksoy's absence when called before Delegates in November 1996, the Government Agent explained that Hikmet Aksoy had been served with the summons in prison, had refused to sign an acknowledgment of service and had been released by the court on 18 November 1996. He had been due to appear before the Delegates on 20 November 1996. While the Government were asked to clarify whether his release was due to his own or any other application or due to the motion of the court, this information has not been provided. It is not apparent why he happened to be released two days before the hearing.

**C. Relevant domestic law and practice**

179. The parties have made no separate, detailed submissions with regard to domestic law and practice applicable in this case. The Commission has incorporated relevant extracts derived from, inter alia, its summary of the relevant domestic law and practice as submitted by the parties in the case of Aksoy v. Turkey (No. 21987/93, Comm. Rep. 23.10.95).

180. The Government submit that the following provisions are relevant.

Article 125 of the Turkish Constitution provides as follows:

(translation)

"All acts or decisions of the Administration are subject to judicial review ...

The Administration shall be liable for damage caused by its own acts and measures."

181. This provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the Administration, whose liability is of an absolute, objective nature, based on a theory of "social risk". Thus the Administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

182. The principle of administrative liability is reflected in the additional Article 1 of Law 2935 of 25 October 1983 on the State of Emergency, which provides:

(translation)

"... actions for compensation in relation to the exercise of the powers conferred by this law are to be brought against the Administration before the administrative courts."

183. The Turkish Criminal Code makes it a criminal offence

-to deprive someone unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),

-to issue threats (Article 191),

-to subject someone to torture or ill-treatment (Articles 243 and 245)

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

185. Generally, if the alleged author of a crime is a State official or civil servant, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the Council of State; a refusal to prosecute is subject to an automatic appeal of this kind. If the offender is a member of the armed forces, he would fall under the jurisdiction of the military courts and would be tried in accordance with the provisions of Article 152 of the Military Criminal Code.

186. Any illegal act by civil servants, be it a crime or a tort,

which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts. Pursuant to Article 41 of the Civil Code, an injured person may file a claim for compensation against an alleged perpetrator, who had caused damage in an unlawful manner whether wilfully, negligently or imprudently. Pecuniary loss may be compensated by the civil courts pursuant to Article 46 and non-pecuniary or moral damages awarded under Article 47.

187. Proceedings against the Administration may be brought before the administrative courts, whose proceedings are in writing.

188. The applicant points to certain legal provisions which in themselves weaken the protection of the individual which might otherwise have been afforded by the above general scheme. Decree 285 modifies the application of Law 3713, the Anti-Terror Law (1981), in those areas which are subject to the state of emergency, with the effect that the decision to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. These councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the Regional Governor or Provincial Governors, who also head the security forces.

**D. Relevant international material**

189. The phenomenon of forced or involuntary disappearance has been the concern of a number of other international judicial and human rights investigatory bodies. Extracts and summaries of materials from the Inter-American system and the United Nations were included in Annex II to the Report in the case of Kurt v. Turkey (No. 24276/94 Comm. Rep. 5.12.96 pending before the Court).

**III. OPINION OF THE COMMISSION****A. Complaints declared admissible**

190. The Commission has declared admissible the applicant's complaints:

- that his brother, Ahmet Çak\_c\_, who has disappeared, has been deprived of his life;
- that his brother has been tortured and subjected to inhuman and degrading treatment;
- that his brother has been arbitrarily detained without application of the requisite procedural safeguards;
- that the disappearance of his brother caused the applicant inhuman and degrading treatment;
- that there is no remedy available in respect of these matters;
- that these matters disclose discrimination;
- that these matters disclose restrictions on Convention rights imposed for ulterior purposes.

**B. Points at issue**

191. The points at issue in the present case are as follows:

- whether there has been a violation of Article 2 of the Convention in respect of the alleged disappearance of the applicant's brother;
- whether there has been a violation of Article 3 of the Convention in respect of the applicant's brother;
- whether there has been a violation of Article 5 of the Convention by reason of the circumstances in which the applicant's brother has disappeared;
- whether there has been a violation of Article 3 of the Convention in respect of the applicant;
- whether there has been a violation of Article 13 of the Convention by reason of an alleged lack of an effective remedy before a national authority in respect of the above complaints;
- whether there has been a violation of Article 14 of the Convention

in conjunction with the above provisions;

- whether there has been a violation of Article 18 of the Convention.

**C. The evaluation of the evidence**

192. Before dealing with the applicant's allegations under specific Articles of the Convention, the Commission considers it appropriate first to assess the evidence and attempt to establish the facts, pursuant to Article 28 para. 1 (a) of the Convention. It would make a number of preliminary observations in this respect:

- i. There have been no findings of fact made by domestic courts as regards the subject-matter of the applicant's complaints. The Commission has accordingly based its findings on the evidence given orally before its Delegates or submitted in writing in the course of the proceedings; in the assessment as to whether or not the applicant's allegations are well-founded the standard of proof is that of "beyond reasonable doubt" as adopted by the Court. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact and, in addition, the conduct of the parties when evidence is being obtained may be taken into account (*mutatis mutandis*, Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 161).
- ii. In relation to the oral evidence, the Commission has been aware of the difficulties attached to assessing evidence obtained orally through interpreters (in some cases via Kurdish and Turkish into English): it has therefore paid careful and cautious attention to the meaning and significance which should be attributed to the statements made by witnesses appearing before its Delegates;
- iii. In a case where there are contradictory and conflicting factual accounts of events, the Commission particularly regrets the absence of a thorough domestic judicial examination or other detailed independent investigation of the events in question. It is acutely aware of its own shortcomings as a first instance tribunal of fact. The problems of language are adverted to above; there is also an inevitable lack of detailed and direct familiarity with the conditions pertaining in the region. In addition, the Commission has no powers of compulsion as regards the attendance of witnesses. In the present case, while 17 witnesses were summoned to appear, only 11 in fact gave evidence before the Commission's Delegates. The Commission has therefore been faced with the difficult task of determining events in the absence of potentially significant testimony. It

acknowledges the unsatisfactory nature of these elements which highlights forcefully the importance of Contracting States' primary undertaking in Article 1 to secure the rights guaranteed under the Convention, including the provision of effective remedies as under Article 13.

#### **1. The operation in Çitlibahçe village on 8 November 1993**

193. The Commission notes that Çitlibahçe was in a district in which terrorist activity was intense in 1993. On or about 23 October 1993, PKK terrorists went to the village of Dada\_ in the Hazro district and took away five teachers, the imam and the imam's brother Abdullah Cebeci. They took them across country and stayed briefly in a place of concealment near the the village of Ba\_lan, where villagers brought food and assisted the PKK by standing guard. Mustafa Engin, one of the villagers from Ba\_lan, was required to shelter one of the teachers, of Kurdish origin from Tunceli, in his house overnight, taking him down the road early in the morning to see him on his way. The remaining prisoners were moved further on and shortly after dusk were lined up and shot. The imam's brother, Abdullah Cebeci, though wounded, survived and was able to walk into Lice gendarme headquarters. He recalls giving the gendarmes descriptions of the persons whom he saw, including the villagers who brought food and stood guard. After taking the Lice gendarmes to show them where the bodies were, he returned to his own village in Central Anatolia. Though he suffered shock from his experiences, he made it quite clear to the Delegates that he had never returned to the Diyarbak\_r region, in particular to Ba\_lan, to participate in any identification of persons suspected of involvement. According to the testimony of Mustafa Engin before the Delegates, he was in fact confronted with the teacher whom he had sheltered.

194. Following the discovery of the bodies, the gendarmes at Hazro gathered information from their contacts and sources as to what had happened and who had been involved. They had descriptions of the villagers who had been assisting the PKK holding the group of teachers. Lieutenant Alt\_noluk, the district commander, was adamant that they did not have the names of any of the persons involved and that they were not looking for Ahmet Çak\_c\_ when they went to Çitlibahçe. The Commission finds a number of difficulties arising from this testimony.

195. Firstly, the central gendarmerie commander, Aytekin Türker, who participated in the information-gathering exercise during the Lieutenant's absence at the time of the kidnapping, recalled that they had been given specific names though he did not remember them himself.

196. Secondly, the operation order dated 7 November 1993 drawn up by Lieutenant Alt\_noluk recorded its aim as the capture of PKK terrorists and their collaborators and the destruction of shelters

and named Çitlibahçe as the place of the operation. The Lieutenant's evidence was that a number of activities were specified on the order to cover all eventualities. The aim of the operation was, according to him, to follow the likely route taken by the PKK kidnapping group and to collect any evidence and information en route. The Commission notes however that the Hazro gendarmes in fact only visited two villages, Çitlibahçe and Ba\_lan and that their route via the road did not follow the cross-country route taken by the terrorists. When Lieutenant Alt\_noluk was asked to explain why Çitlibahçe was named on the order when on his account the key part of the operation was taking suspects into custody at Ba\_lan, he stated that Ba\_lan was outside his jurisdiction and that he could not place it on the form. Since however the operation was being co-ordinated with the Lice gendarmes who arrived at the village to assist in the procedures, the Commission does not see any obvious jurisdictional obstacle to recording this on his operation description if it was in fact the principal goal of the operation.

197. Thirdly, on the Lieutenant's account, the main reason for going to Çitlibahçe was to talk to the villagers, though he also stated that it would be a death warrant for them if they gave him any information. He also referred to carrying out a search but that they had only stayed in the village for 23-25 minutes for security reasons. Since the village contained about 200 houses, it is not evident that such a search could have been general or thorough. In such circumstances, the usefulness of a visit to Çitlibahçe is not readily apparent, though it was specified as the destination on the operation order.

198. Finally, the evidence of other gendarme witnesses, Aytekin Türker and Ahmet Katmerkaya, was to the effect that Ahmet Çak\_c\_, who was from Çitlibahçe, was a wanted person even before the kidnapping, and from at least July 1993 according to Aytekin Türker. Lieutenant Alt\_noluk also stated that Ahmet Çak\_c\_ had been a known trouble maker before this incident. The evidence of Remziye Çak\_c\_, Fevzi Okatan and Mehmet Bitgin is consistent as regards their assertion that the soldiers and village guards who came to the village were looking for Ahmet Çak\_c\_; that Ahmet Çak\_c\_ was aware that he was wanted since alone amongst the villagers he took steps to hide; and that the search was called off once Ahmet Çak\_c\_ had been found.

199. The Commission's Delegates found Lieutenant Alt\_noluk to be an evasive witness, with a volubly unhelpful response to questioning. They found a lack of sincerity in the way in which he drowned simple questions in long and complicated explanations, which were often contradictory and inconsistent. On the other hand, the Delegates found the villagers, Remziye Çak\_c\_, Fevzi Okatan and Mehmet Bitgin, who gave eyewitness accounts, were on the whole consistent and credible and that they were convincing in their demeanour and their response to questions. While Lieutenant Alt\_noluk made negative comments as to one of the witnesses, Fevzi Okatan, implying that he

might have things to gain from his allegations, the Commission notes that these were vague and appeared to relate to Fevzi Okatan's attempts to gain compensation from the State alleging its responsibility for his house being burned by the PKK. Before the Delegates, Fevzi Okatan, without evasion or exaggeration, stated that the PKK burned his house and was putting pressure on the villagers. Lieutenant Alt\_noluk's statement that as muhtar Fevzi Okatan had made complaints about Ahmet Çak\_c\_ as a trouble maker does not conflict with his testimony to the Delegates. Indeed the elements to which Lieutenant Alt\_noluk drew attention disclose no ulterior motive or any indication that the evidence which Fevzi Okatan gave to the Delegates in respect of what he witnessed during the operation was anything other than a truthful account.

200. The Commission accordingly finds that in all probability the Hazro gendarmes included Çitlibahçe as a specific goal in their operation since they intended to look for and take into custody Ahmet Çak\_c\_, who as a person already suspected as involved in PKK activities, would be likely to have information about the kidnap group that would have passed through the village. That the gendarmes would not have sought at least to question Ahmet Çak\_c\_, a suspected collaborator, about the kidnapping when visiting the village of Çitlibahçe, when one of their purposes was to identify collaborators involved in the kidnapping, appears incredible.

201. Having regard to the above, the Commission also accepts the evidence of the villager witnesses that Ahmet Çak\_c\_ hid when the soldiers arrived, that he was taken into custody when he was found and that he was last seen by the witnesses being taken by village guards and soldiers to the vehicles. Lieutenant Alt\_noluk's denial that he was taken into custody is not found to be reliable.

202. The Commission recalls that the Lieutenant and other gendarme witnesses denied that the village guards would be used in any search or arrest operation and it has considered whether this casts doubt on the villagers' testimony. It notes however that, despite the apparent official ban on use of village guards in an operational context, the evidence taken by its Delegates in other cases indicates that village guards have been involved in operations and apprehension of persons<sup>4</sup> The Commission notes that the operation order of Lieutenant Alt\_noluk referred in the listing of personnel to two units of village guards. It therefore does not find that this element undermines the villagers' testimony.

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<sup>4</sup>. See eg. Eur. Court HR Aydın v. Turkey judgment of 25 September 1997 to be cited in Reports 1997, Comm. Rep. paras. 103, 108 and 127 where the applicant and her father stated that village guards accompanied the officer who took them into custody and the possibility of such a use of guards was accepted by a gendarme officer; see also Kurt v. Turkey 24276/94 Comm. Rep. 5.12.96 paras. 179 and 210 where village guards were found to have been involved in the taking into custody of the applicant's son during an operation in a village.

## **2. Concerning the alleged detention of Ahmet Çak\_c\_**

203. The Commission notes that, in addition to the evidence of the villagers who saw Ahmet Çak\_c\_ being apprehended, its Delegates heard evidence from Mustafa Engin who described how he saw and spoke to Ahmet Çak\_c\_ in custody in Diyarbak\_r and that the applicant has recounted oral statements by Hikmet Aksoy who allegedly saw Ahmet Çak\_c\_ in detention in Kavakl\_bo\_az station. On the basis of this evidence, the applicant asserts that Ahmet was taken from the village to Hazro where he spent the night, held in Diyarbak\_r for about 85 days and then taken back to Hazro where he stayed for a few months before being brought to Kavakl\_bo\_az in May-June 1994.

204. The Government deny that Ahmet Çak\_c\_ was ever in custody and point to the fact that there is no entry in the custody records of Hazro or Diyarbak\_r. The gendarme witnesses were adamant that all persons in custody were entered into the relevant ledgers and several commented that it would make no sense to transfer someone from a higher security facility to a local low-level facility, namely, bring a detainee from the Diyarbak\_r provincial gendarme headquarters to the rural stations in Hazro and Tekneba\_\_.

205. The Commission considers that the custody records in this case are of crucial importance. It regrets that, despite frequent requests, its Delegates were unable to examine the original custody record of the Diyarbak\_r provincial gendarme headquarters or obtain either a copy of, or sight of, the original custody record for the station at Tekneba\_\_. This was necessary not only to verify the authentic state of the records but also to enable accurate reading, since the quality of those photocopies provided was poor.

206. The Commission finds, on the basis of an examination of the original record of Hazro gendarme headquarters and copies of records of Diyarbak\_r provincial gendarme headquarters and Lice gendarme headquarters, and the testimony of the three gendarme witnesses, who gave evidence about the records at Hazro, Diyarbak\_r and Tekneba\_\_, that the custody registers reveal the following anomalies:

### Concerning the Hazro gendarme records

207. Entry no. 92 records a detainee being taken into custody on 6 July 1994, which predates the previous entry no. 91 where the detainee is recorded as entering custody on 9 July 1994. The witness, Aytekin Türker, who was responsible for the Hazro custody ledger at the relevant time, was unable to explain how this had occurred, beyond suggesting the possibility that a line had been missed and filled in later or that the dates might have been wrong.

208. Entry no. 45 records a detainee being taken into custody on 28 June 1993 which predates the previous entry no. 44 which records the person entering custody on 21 July 1993.

209. Assuming that the other entries were made on the dates stated and gaps were not regularly left to be filled in later, the suspects for entries nos. 45 and 92 were no longer in Hazro gendarme station when their details were entered and the register would not have recorded their presence when they were in fact there. Noting however that groups of detainees were often taken in over the same period (eg. two other persons nos. 89 and 90 were held over the same two days as no. 92; no. 45 was held over the same period as nos. 42 and 43; no. 44 over the same period as nos. 46, 47 and 48) a possible explanation would be that entries were not made contemporaneously but added at a later time from notes, at which moment errors were made in inserting entries in the right order.

Concerning the Lice gendarme headquarters records

210. No record exists on 8 November 1993 for Abdurrahman Al, Mustafa Engin and Tahsin Demirba\_ who, it is uncontested, were taken into custody in Çitlibahçe and taken to Lice headquarters that night before being taken to Diyarbak\_r provincial gendarme headquarters on 9 November 1993.

Concerning the Diyarbak r provincial gendarme records

211. Entry no. 71 in the Hazro gendarme custody register records a detainee as leaving custody at Hazro on 12 November 1993 on being transferred to the provincial gendarme headquarters at Diyarbak\_r. There is no corresponding entry in the Diyarbak\_r register in the copies provided, recording his arrival.

212. Entry no. 2718, Fahri Karatepe, is recorded as being taken into custody on 7 November 1993 while the preceding entries nos. 2713-2717 are recorded as entering custody on 8 November 1993.

213. Entries nos. 2728, Ali Altun and 2729, Ali Celik are recorded as being taken into custody on 9 October 1993, and no. 2730 Ridvan Cakir, on 13 October 1993, although the two preceding pages of entries relate to the month of November. Since the date of their leaving custody on being arrested by the State Security Court is given as 4 November 1993, this does not appear to be a simple error in writing the number of the month wrongly.

214. Entry no. 2746, Sinasi Tur, is recorded as being taken into custody on 15 November 1993, while the preceding entry no. 2745, Sebahattin Acar, is recorded as entering custody on 16 November 1993.

215. Entries nos. 2747 to 2759 are out of sequence. Due to the bad quality of the photocopy, it appears that no. 2747, Mehmet Saliho\_lu entered custody on either 10 or 18 November 1993. If the correct figure is 10 November, the entry is misplaced between entries for 15 November and 18 November. If the correct figure is 18 November, which would correspond with the immediately following entry of 2748, both these entries are of a later date than at least seven of the subsequent entries - Nos. 2749-2750 entering custody on 15 November and Nos. 2751-2755 on 16 November. The following three entries, blurred, could be for 17 November, but not inconceivably 18 November.

216. The dates of entries from 20-26 November are blurred. There are apparent entries out of sequence, for example, an entry No. 2765 for 28 November preceding apparent entries earlier in November. The quality of the photocopy renders it unsafe to identify the figures in this section with certainty.

217. The gendarme witness Ahmet Katmerkaya, who stated that he was responsible for the ledger during this period, gave various explanations for the discrepancies. Though he was initially adamant that all persons brought into custody at the headquarters were entered immediately in the ledger, he acknowledged on being shown certain of the above discrepancies that errors could occur. He referred to the possibility that in his absence on sick leave his colleagues might have failed to record an arrival whose details would have had to be added by himself at that later stage. He also speculated that a person might have been brought in but since they were immediately taken for interrogation or out to locate PKK hideouts, an entry might not have been made. The Commission finds these explanations unsatisfactory. The first does not account for the fact that all the entries were in the witness's handwriting, with no apparent period when another person was filling in entries, unless during the witness' absence no entries were made at all. The second explanation appears to accept the possibility that detained persons could be interrogated or taken away for other purposes without entries being made until up to a month later by which time they might have already been released or transferred elsewhere.

218. The Commission also finds it remarkable that over a three month period all entries were made in the same handwriting, notwithstanding the witness's explanation that suspects were generally brought in during the morning and afternoon. Over that period, the witness was apparently present at the custody register, without sick leave or holiday, and when any persons were brought in during off duty hours. While the witness was questioned as to whether details of suspects were recorded in any informal books or notes pending transcription in the official register, the witness denied the existence of any other written records. It is not apparent however how the witness was able to enter into the register the details of suspects who had been released before the apparent date of the entry. The witness did refer to a document which would be handed over with the suspect from the

district gendarme unit concerned and to the documents sent to the Security Court when the suspect was sent there later. If these documents contained the necessary details, it would appear that it would be possible for the custody ledger to be filled in retrospectively once the outcome of any detention was known.

219. The Commission also notes with concern that the date on which a person is entered in the Diyarbak\_r ledger is surrounded by a certain confusion. The logical procedure, accepted by other witnesses in this and other cases, would be to enter the date in which the apprehended person physically enters custody at the gendarme headquarters. Thus it may be noted that Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_ are entered on 9 November 1993, which was the date on which they actually arrived in Diyarbak\_r. This is also apparent from Lice register entry no. 7, Fahri Aytekin, who is recorded as arriving at Lice gendarme headquarters on 5 November 1993 at 15.00 hours and leaving to be transferred to Diyarbak\_r provincial gendarme headquarters on 6 November 1993 at 13.00 hours, with a corresponding entry in his name in Diyarbak\_r on 6 November 1993. However Ahmet Katmerkaya, in attempting to explain how, according to the ledger on 9 November 1993, 21 persons were detained whereas the capacity in the cells was on his account a maximum of 10, stated that when the cells were full the provincial gendarme headquarters would instruct district headquarters to keep their suspects but that he would nonetheless record the person in the Diyarbak\_r ledger on the basis of the date on which the district gendarmerie had taken the person into custody. On that basis, he purported to explain that the Diyarbak\_r ledger recorded a suspect's period of detention as a whole, not merely his physical presence in the Diyarbak\_r headquarters. The Commission observes that this alleged practice was not followed in the examples above. It also conflicts with evidence from district gendarme personnel that they had even smaller detention facilities and rarely kept detainees overnight, their practice being to transfer to Diyarbak\_r as soon as possible.

220. As regards the numbers of persons held in Diyarbak\_r at a time, the Commission finds the denial of Ahmet Katmerkaya that detainees were ever held anywhere but in the ten single cells to be unconvincing and unreliable. His explanation as to the Diyarbak\_r records including persons held elsewhere makes a travesty of the process of recording detainees. While on 9 November 1993, 21 persons at least are recorded as detained at Diyarbak\_r, at least 44 persons are recorded for 20 November 1993 and at least 37 persons for 29 November 1993. These figures are consistent with the evidence of Mustafa Engin who described how a week after his arrival at Diyarbak\_r he was moved from one place to another where there were over 40 persons. It would seem highly probable that in 1993 when terrorist activity was intense and the security forces heavily engaged in countering it, the Diyarbak\_r provincial headquarters, to which surrounding districts sent suspects for interrogation and to be held pending referral to the State Security Court, would often be

required to cope with more than ten detainees at any one time. In those circumstances, the Commission accepts the evidence of Mustafa Engin that a large room in the headquarters was also used to hold detainees.

221. Having regard to the large numbers of detainees held during this period, the fact that many were held elsewhere than in the custody area with its single cells, the existence of anomalies in the provincial headquarters records and the highly unsatisfactory nature of the explanations given by Ahmet Katmerkaya, the Commission concludes that the Diyarbak\_r register does not constitute an accurate or comprehensive record of the persons who may have been detained there over that period. It notes that Ahmet Katmerkaya agreed when it was put to him that the fact that someone was entered in the Diyarbak\_r register did not mean that he was physically there and that there was no entry made in the Diyarbak\_r register to reflect the absence of any detainee taken out by the security forces to identify others or locate hideouts.

222. As with the Hazro records, the anomalies may be explained by a practice of filling in details in the official register after the events in question. The Commission would observe that a non-contemporaneous record presents a risk of selective as well as anomalous entries.

223. The Commission accordingly concludes that the absence of Ahmet Çak\_c\_'s name on the custody registers disclosed to the Commission is not sufficient in itself to prove that he was not taken into custody.

#### Concerning the evidence of Mustafa Engin

224. As regards the credibility of Mustafa Engin's testimony, the Commission's Delegates found him a convincing witness. His oral testimony was largely consistent with the statement given to the HRA and the account related by the applicant who described how Mustafa Engin had come to see him shortly after his release to tell him about his brother. Of the two other statements made by Mustafa Engin, the first taken by a police officer is brief and consists of general denials of knowledge or having seen Ahmet Çak\_c\_ in the previous three years. The more detailed statement taken by a public prosecutor on 13 May 1996 shortly before the Delegates' hearing is not consistent. It is also brief. It relates the basic fact of his own detention and contains a denial that he saw Ahmet Çak\_c\_ during his custody. It is however a denial which is phrased in contradictory terms since, while he is recorded as stating that he did not see Ahmet, he is recorded as stating that Ahmet might have seen him. He is recorded, strangely, as agreeing with an alleged statement attributed to Ahmet Çak\_c\_ about blindfolding. It also is contradictory since it records that he was submitted to electric shocks but later contains a general denial that he was tortured or ill-treated. The Commission does not consider that this statement can

be regarded as a full or frank reflection of Mustafa Engin's testimony and does not cast doubt on the sincerity of his statements before the Delegates.

225. The Commission regrets that it was unable to hear testimony from the other persons, Abdurrahman Al and Tahsin Demirba\_, who might have been able to throw further light on the period of detention in Diyarbak\_r prison. However, in light of its findings above, the Commission finds that Mustafa Engin's oral testimony is uncontroverted and accepts it as a truthful account.

Alleged detention of Ahmet Çak\_c in Hazro/Tekneba

226. As regards the allegations that Ahmet Çak\_c\_ was taken back to Hazro and Tekneba\_\_ (also referred to as Kavakl\_bo\_az) over the period of about January-May 1994, there is no written statement from the alleged eye-witness Hikmet Aksoy and he did not appear before the Delegates. The only evidence concerning this allegation derives from the applicant's recollection of what Hikmet Aksoy told him eight to nine months previously.

227. The lack of any direct evidence from Hikmet Aksoy is regrettable. The Commission finds that the Government's failure to bring Hikmet Aksoy before the Delegates in their hearing in July 1996 is not matched by any convincing explanation. The Government Agent stated that he was ignorant of Hikmet Aksoy's whereabouts until two days into the hearing, notwithstanding that the information that he was in Konya prison had been passed from the applicant to the Government by the Commission. During the hearing, the Government also failed to explain why it was not possible to arrange for Hikmet Aksoy to be transported to Ankara, as had been done with prisoners on previous occasions notwithstanding security considerations.

228. As regards the failure of Hikmet Aksoy to appear at the hearing in November 1996, the Commission notes that he was released from prison two days before he was due to appear and that the Government explain that he was served with the summons but could not be forced to appear. It views with considerable scepticism the coincidence whereby his release appears to have been ordered shortly before the Delegates had requested to see him, with the result that, on release, he promptly disappeared. The Government have not clarified, as they undertook to do at the hearing of Delegates, why Hikmet Aksoy's continued detention was reviewed at that point. It is not apparent from the brief court document provided that this was in the context of any acquittal or determination of the criminal charges outstanding against him.

229. The Commission recalls that this witness had failed to appear in a previous case (Kaya v. Turkey No. 22727/93 Comm. Rep. 24.10.96 pending before the Court) since the applicant's representatives alleged that he feared that he would be liable to arrest, a fear

borne out by his arrest shortly afterwards. The applicant's representatives have commented that releasing Hikmet Aksoy, who has a history of problems with the authorities, would ensure that he would disappear without giving evidence.

230. In these circumstances, the Commission finds that the Government's submissions as to the inherent unlikelihood of a suspect being returned to a rural station such as Kavakl\_bo\_az is counterbalanced by their failure to take the necessary steps to facilitate the attendance of the witness whose crucial assertions to the contrary could have been tested in oral proceedings. The Commission also notes that there is evidence from Ahmet Katmerkaya that suspects were taken out for the purpose of locating PKK hideouts, for example, and in such circumstances would stay at local district gendarme headquarters.

#### Finding

231. Having regard to the above, the Commission finds that Ahmet Çak\_c\_ was taken after his apprehension at Çitlibahçe to Hazro where he spent the night of 8 November and that he was transferred to Diyarbak\_r provincial gendarme headquarters where he was last seen by Mustafa Engin on or about 2 December when the latter was released.

232. While the Commission does not however make a finding that Ahmet Çak\_c\_ was held in Kavakl\_bo\_az as Hikmet Aksoy is reported as witnessing, the Commission does not consider that in this respect the applicant's case is as lacking in credibility as the Government submit. There is some suspicion that events occurred as alleged by the applicant, but this element is not proved to the requisite standard of proof.

### **3. Concerning the treatment of Ahmet Çak\_c\_ in custody**

233. The evidence with regard to the alleged ill-treatment of Ahmet Çak\_c\_ in detention consists of the oral testimony and written statements of Mustafa Engin and a statement from Abdurrahman Al. There is also the oral testimony of the applicant, reporting what was said to him by Hikmet Aksoy who allegedly saw Ahmet Çak\_c\_ at Kavakl\_bo\_az/Tekneba\_\_.

234. The Commission recalls that it has found Mustafa Engin to be a convincing and sincere witness. While his statement to the public prosecutor was contradictory and ambiguous, it is to be noted that he maintained his allegation that he himself was subject to electric shocks. His oral testimony to the Delegates was clear in describing that Ahmet Çak\_c\_ was in a bad state physically, with dried blood on his clothes and that this was due to treatment received while in custody. Ahmet Çak\_c\_ told him that he had been beaten, one of his ribs had been broken, his head split open and he had been given

electric shock treatment twice. This evidence is supported by the statement from Abdurrahman Al, which recounted that Ahmet Çak\_c\_ had told him that his ribs had been broken by a hammer and that he had been hung upside down from a tank. This statement described Ahmet Çak\_c\_ as having bruises under his eyes and on his face when seen in custody in Diyarbak\_r.

235. The Commission accepts this evidence as reliable and credible.

#### **4. The reports of Ahmet Çak\_c\_'s death**

236. The Government assert that Ahmet Çak\_c\_, who was a member of the PKK, was killed in a clash in February 1995. The Delegates, and the Commission, have requested the Government to provide details of the identification process on which this assertion is based. No documents, by way of record of identification of the body, autopsy, burial certificate or other official notification have been forthcoming. From the oral evidence of the public prosecutor, Mustafa Turhan, it appeared that it was for the Hani public prosecutor, acting under the authority of the Diyarbak\_r State Security Court, to conduct the necessary procedures with regard to identification, autopsy and notification of the relatives. The Commission notes that he did not consider that it was his role to question the assertion of the Hazro gendarmes that Ahmet Çak\_c\_ had been found dead or to verify that proper identification procedures had been carried out.

237. From the few documents provided by the Government, it is only possible to deduce that a clash took place at K\_ll\_bo\_an hill, Hani, from 17-19 February 1995 in which 56 PKK terrorists were reported as killed and that various documents were collected from or near the bodies. There is no document from Hani which records the finding of Ahmet Çak\_c\_'s identity card on any particular body. The only source of this information is the letter of 26 June 1995 from the Hazro gendarmes to the Hazro public prosecutor. It is not immediately apparent from where they obtained this information. By letter dated 1 March 1995, the Hazro district gendarmerie were informed of the clash by Colonel E\_ref Hat\_po\_lu of Diyarbak\_r provincial gendarme command, in a letter which referred to 56 dead terrorists without naming Ahmet Çak\_c\_ and which enclosed a number of unspecified documents. However, notwithstanding an urgent request by the Hazro public prosecutor of 14 April 1995 for information about Ahmet Çak\_c\_, the Hazro district gendarmerie reply of 17 May 1995 made no reference to the clash or to the fact that any identity card of Ahmet Çak\_c\_ had come into their hands. It was only by letter of 23 June 1995 that Hazro district gendarme command made the claim that Ahmet Çak\_c\_'s identity card had been found on the terrorists found dead at K\_ll\_bo\_an hill and that he had died in the clash.

238. The Commission further notes that, while on 1 December 1994 Colonel E\_ref Hat\_po\_lu of the provincial gendarme command reported to the Diyarbak\_r public prosecutor about Ahmet Çak\_c\_, refuting various of the applicant's claims and submitting that Ahmet Çak\_c\_ was involved with the PKK and a wanted person, he also signed the letter of 3 March 1995 transmitting certain documents about the terrorists found dead at K\_ll\_bo\_an hill to the Hazro gendarmes. He apparently did not make any mention or report to any prosecution or judicial authority that any of these documents related to Ahmet Çak\_c\_.

239. The Commission finds as follows. The family of Ahmet Çak\_c\_ were not informed of his alleged death in a clash with the security forces. It draws the strongest inferences from the failure to produce any document indicating the basis on which a body at the scene of the clash at K\_ll\_bo\_an hill was identified as that of Ahmet Çak\_c\_. There is no substantiated link between the identity card produced at Hazro and any deceased person at Hani. Since processes of identification and procedures in respect of releasing bodies for burial exist, the lack of such documentation constitutes a glaring omission. The Commission is accordingly not prepared to find that Ahmet Çak\_c\_ was killed as alleged, or that his body was amongst those found at K\_ll\_bo\_an hill.

#### **5. Other aspects of the operation of 8 November 1993**

240. In the oral testimony of four witnesses, it was stated that the security forces set fire to houses in Çitlibahçe. According to the applicant and Remziye Çak\_c\_, about 60-70 houses were burned, Fevzi Okatan claimed that as an official he counted 54 houses which were burned, whereas Mehmet Bitgin claimed that no house was left standing. As regards the latter's evidence, the Commission recalls that he was an elderly, frail individual and that his evidence was not detailed, with a tendency to broader assertions. The Commission reiterates its findings that the testimony of these witnesses is on the whole consistent and reliable. The evidence of Lieutenant Alt\_noluk on contested issues it has found unreliable. It notes that the Lieutenant alleged that the village remained unaffected until the spring of 1994 when due to PKK pressure on the area it was evacuated. Nonetheless, the applicant and Remziye had already made written statements to the HRA in December 1993 that houses had been burned and the village forcibly evacuated.

241. The Commission recalls however that the destruction of property and evacuation of the village are not subject to complaint in the present application. The Commission makes no formal findings in this case but considers that the evidence given in this application may be used, as relevant, in the factual assessments carried out in other associated applications.<sup>5</sup>

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<sup>5</sup>. See eg. Dula\_ v. Turkey No. 25801/94 dec. 23.5.96, where the applicant alleges that her house

## 6. Official investigation into the disappearance

242. The Commission finds that the applicant and his father made petitions and enquiries to the State Security Court prosecutor in relation to the disappearance of Ahmet Çak\_c\_. The text of the written petition enclosed with the application provides the date of the event and clearly indicates the family's concern at his fate, requesting the State to react. The only steps taken were apparently to verify whether the State Security Court records contained any details of his detention and for an enquiry of some kind to be forwarded to the Hazro public prosecutor who examined the Hazro records.

243. Following communication of the case by the Commission to the Government on 27 June 1994, it appears that further enquiries were pursued by Diyarbak\_r and Hazro prosecutors, pursuant to which statements were taken from Mustafa Engin, Remziye Çak\_c\_ and the applicant. Tahsin Demirba\_ and Abdurrahman Al were not found. The Hazro public prosecutor also sought information from the Hazro district gendarmerie as to the alleged detention. The Commission finds however that the prosecutor did not verify the original custody record but relied at most on the copies sent to him. Nor was any inspection carried out by a public prosecutor of the original Diyarbak\_r records. No steps were taken to verify the information submitted by the Hazro district gendarmerie that Ahmet Çak\_c\_ was one of the persons identified amongst the dead PKK terrorists at K\_ll\_bo\_an hill. Mustafa Turhan accepted this claim and regarded it as a matter which did not concern him.

244. The decision of lack of jurisdiction of 13 June 1996 of the Hazro public prosecutor was based on the statements taken from Mustafa Engin, Remziye Çak\_c\_ and the applicant and information from the gendarmerie with regard to Ahmet Çak\_c\_'s body being allegedly found amongst dead PKK terrorists after a clash. He also may have had documents relating to the applicant's application to the Commission and copies of custody records.

### Concluding remarks

245. The Commission recalls its comments above (paras. 205, 227-229) relating to the Government's failure to provide its Delegates with an opportunity to view original custody records and to facilitate the attendance of the witness Hikmet Aksoy. It also notes that the Government have taken a passive attitude as regards the attendance of official witnesses. They submitted that they had no possibility of securing the attendance of either public prosecutors such as Aydin Tekin or senior security force personnel such as Colonel E\_ref Hat\_po\_lu (see para. 175). The Commission finds it unacceptable that

officials, such as Aydın Tekin, decline to attend on the basis of their own opinion that they have no useful testimony to give (para. 176). It is not apparent that the Government have taken any step with a view to encouraging or advising its officials in regard to the desirability of co-operation with the Convention organs. It considers that in this case the Government have fallen short of their obligations under Article 28 para. 1(a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts of this case.

246. On the basis of its findings above, the Commission will now proceed to examine the applicant's complaints under the various Articles of the Convention.

**D. As regards the disappearance of the applicant's brother**

247. The applicant has invoked a number of provisions in respect of the disappearance of his brother Ahmet Çak\_c\_.

**1. As regards Article 2 of the Convention**

248. Article 2 of the Convention provides:

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

249. The applicant submits that the continuing unacknowledged detention of his brother is a violation of the State's obligations under Article 2 of the Convention. He submits that it is not merely a species of unlawful detention, since in the context of South East Turkey there is a widespread practice of torture and a high rate of deaths in custody combined with, between 1990 and 1994, a dramatic increase in "disappearances". "Disappearances" constitute a crime against humanity and the impunity, and lack of accountability, with which the security forces operate, is contrary to the values of democracy and rule of law which underpin the Convention, including

## Article 2.

250. The Government deny that the applicant's brother was detained by security forces and contend that the applicant's allegations that his "disappearance" occurred in custody are unsubstantiated.

251. The Commission observed in the Kurt v. Turkey case (No. 24276/94 Comm. Rep. 5.12.96 pending before the Court), which was the first case from South East Turkey concerning disappearances, that the cases examined by the Commission under Article 2 had hitherto related to instances where an individual had in fact lost his life or suffered known injury or illness and that there was as yet no precedent for finding a violation of this provision where it was alleged that a situation was such as to place a person's life at risk or to disclose a lack of respect for the right to life. It referred to a previous published disappearance case (Cyprus v. Turkey No. 8007/77 Comm. Rep. 4.10.93 D.R. 72 p. 5) and to various other international texts, which found violations of the right to life in the context of findings of disappearances, or practices of disappearances, combined with extra-judicial executions, or where the disappearance had lasted considerable time. It accordingly found in the Kurt case, where there was no basis on which to conclude that there was a practice of disappearances, that in the absence of any indication as to the fate of the disappeared person, the allegations fell to be considered under Article 5 of the Convention.

252. In the present case, the Commission recalls that it has found that the applicant's brother was taken into custody and held for one night at Hazro and then taken to Diyarbak\_r provincial gendarme headquarters (see paras. 201-231 above). It also accepts the evidence of Mustafa Engin that when he saw Ahmet Çak\_c\_ in the Diyarbak\_r headquarters he was in a bad state, with injuries to his head and ribs. It accepts Mustafa Engin's evidence that he was himself subject to torture while he was at the Diyarbak\_r provincial gendarme headquarters and that Ahmet Çak\_c\_ told him that he had been tortured by being beaten and given electric shocks.

253. The Commission further recalls that the unacknowledged detention of Ahmet Çak\_c\_ occurred more than four years ago, in November 1993. Moreover, the Government rely on the claim, deriving from Hazro district gendarmerie, that Ahmet Çak\_c\_ was killed in a clash in February 1995. His identity card has been produced. In official terms therefore, Ahmet Çak\_c\_ is regarded as dead. In these circumstances, the Commission finds that there is a very strong probability that Ahmet Çak\_c\_ is indeed no longer alive. Since this probability arises in the context of an unacknowledged detention and findings of ill-treatment, the Commission finds that the situation discloses a failure to comply with the obligation under Article 2 that everyone's right to life shall be protected by law. The Commission would emphasise, having regard to the State's general duty under Article 1 of the Convention to "secure to everyone within their

jurisdiction the rights and freedoms defined in [the] Convention", that a general legal prohibition against forced disappearances or extra-judicial executions does not satisfy the requirements of Article 2, where this has not been subject to effective safeguards in practice (mutatis mutandis, McCann and others v. United Kingdom judgment op. cit. p. 49 para. 161).

### **CONCLUSION**

254. The Commission concludes, unanimously, that there has been a violation of Article 2 of the Convention in respect of the applicant's brother Ahmet Çak\_c\_.

### **2. As regards Article 3 of the Convention**

255. Article 3 of the Convention provides as follows:

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

256. The applicant submits that enforced disappearances inflict severe suffering on both the victim and the members of his family. The fact that there is evidence that Ahmet Çak\_c\_ was tortured only serves to emphasise that his disappearance was in itself in breach of Article 3.

257. The Government submit that the applicant's allegations are unfounded.

258. The Commission has had regard to the strict standards applied in the interpretation of Article 3 of the Convention, according to which ill-treatment must attain a certain minimum level of severity to fall within the provision's scope. The practice of the Convention organs has been to require compliance with a standard of proof "beyond reasonable doubt" that ill-treatment of such severity has occurred (see Eur. Court H.R., Ireland v. United Kingdom judgment, loc. cit., p. 65, paras. 161-162).

259. The Commission recalls that it has accepted the evidence, principally derived from the oral testimony of Mustafa Engin, that Ahmet Çak\_c\_ was subject to ill-treatment, including beatings and electric shocks and an injury to his head and ribs (paras. 234-235). While there is no medical evidence or any eyewitness to the ill-treatment as it was inflicted, the Commission would observe that in a case of an unacknowledged detention, further evidence of this kind is unlikely and to require it would render the protection of the fundamental human rights enshrined in Article 3 illusory and theoretical (see eg. Eur. Court H.R. Cruz Varas and others v. Sweden judgment of 20 March 1991, Series A no. 201, p. 36, para. 99 citing Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 34, para. 87 concerning the practical and effective

protection of rights under the Convention). It notes that Mustafa Engin witnessed the immediate after-effects of the ill-treatment to Ahmet Çak\_c\_, and was subjected to electric shock treatment himself. The Commission concludes that the evidence in this case is in the circumstances sufficient to reach the required standard of proof beyond reasonable doubt and discloses treatment which is of a severity to constitute torture contrary to Article 3 of the Convention.

### **CONCLUSION**

260. The Commission concludes, unanimously, that there has been a violation of Article 3 of the Convention in respect of the applicant's brother Ahmet Çak\_c\_.

### **3. As regards Article 5 of the Convention**

261. Article 5 of the Convention provides, as relevant:

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

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

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

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

...

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

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

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness

of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

262. The applicant submits that his brother was taken into custody on 8 November 1993. He was detained for one night at Hazro, taken to Diyarbak\_r provincial gendarme headquarters and then about late January/February 1994 taken to Hazro from where he was moved to Kavakl\_bo\_az, where he was seen and talked to by Hikmet Aksoy. This detention does not fall within any of the specified grounds in Article 5 para. 1, the applicant never having been informed of the grounds of the detention and the lack of any court proceedings indicating that there was no intention to bring him before the competent legal authority. He submits that there is no evidence that his brother was informed of the reasons for his arrest as required by Article 5 para. 2 and that he has never been brought before a judge or other appropriate judicial officer as required by Article 5 para. 3. The refusal of the State to acknowledge his brother's detention also renders nugatory the fundamental safeguards provided for in Article 5 para. 4, since the issues arising out of the detention cannot come before a court.

263. The Government deny that the applicant's brother was ever in the custody of the security forces and submit that he was a PKK terrorist, killed during a clash with the security forces in February 1995. He presumably disappeared after the incident in which he assisted in the kidnapping and killing of five teachers by the PKK, with the intention of escaping justice and continuing his unlawful activities.

264. The Commission is of the view that the disappearance of the applicant's brother raises fundamental and grave issues under Article 5 of the Convention, which guarantees liberty and security of person. Article 5 aims to provide a framework of guarantees against abuse of power in relation to persons taken into custody. Such persons are vulnerable to a wide range of arbitrary treatment and infringements of their personal integrity and dignity. Article 5 plays an essential role in the system of protection under the Convention in effectively preventing the risk of treatment contrary to Article 3 and extra-judicial execution contrary to Article 2 and in holding State authorities accountable to independent judicial control for the detention of persons taken into custody.

265. The Commission has found above (paras. 201, 231) that the applicant's brother was taken into custody by the security forces on 8 November 1993 and detained at Hazro that night and then for a period until at least 2 December 1993 at Diyarbak\_r provincial gendarme headquarters. The Commission finds that the Government have not provided a credible and substantiated explanation of what has happened to Ahmet Çak\_c\_. In particular, it has found that there is no satisfactory evidence linking any body of a deceased terrorist found at K\_ll\_bo\_an Hill with the applicant's brother. In these

circumstances, whatever has happened to the applicant's brother since he was last seen by Mustafa Engin, there is a presumption of responsibility of the Turkish Government for his fate, which has not been rebutted (Cyprus v. Turkey, Nos. 6780/74 and 6950/75, Rep. 10.7.76, para. 351).

266. The Commission has given consideration to what safeguards, if any, exist within domestic law and practice to protect against involuntary disappearances. The Commission observes that the custody records examined in this case have been found not to constitute a reliable record of the persons taken into custody and detained. The records disclose omissions, irregularities and inconsistencies, for which no satisfactory explanations were forthcoming. The Commission must underline its concern at this highly disturbing state of affairs. Reliable and accurate records of persons in custody must be regarded as a prerequisite of any lawful exercise of power to detain. Inaccurate records facilitate, even foster, arbitrariness, unaccountability and the risk of ill-treatment, extra-judicial execution and disappearances.

267. Strict accountability is required in order to prevent abuse of power. Procedures should be in place, and enforced, which allow the physical location of a detainee to be known at all times. Records should indicate not only the dates but the time of movements within or outside the place of detention, transfers and releases. If a detainee is moved, even if only for a matter of hours, from a place of detention, that fact should be recorded. There should be clear rules, in which personnel receive the appropriate training and supervision, as to the circumstances in which a person is to be recorded. The Commission has noted a tendency for gendarmes to take the view that, if a person does not enter the custody area itself or is present for a short time in the station, *inter alia*, for the purpose of making a statement pending transfer elsewhere, such a person is not in fact in custody and/or does not require registration.<sup>6</sup> It must be emphasised that a person may be detained even if no formal judicial order for arrest or other instruction has been received, the key consideration being whether the person has been effectively deprived of his liberty.

268. The Commission concludes that the applicant's brother has been arbitrarily deprived of his liberty contrary to Article 5 and in disregard of the guarantees of that provision concerning the legal justification for such deprivation and requisite judicial control. Further the circumstances in which he has since "disappeared" disclose a violation of his right to security of person, since it is combined with findings as to torture and lack of respect for his life arising out of the detention. Such unaccounted disappearance of a detained person must be considered as a particularly serious

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<sup>6</sup>. See eg. testimony before Delegates in published reports *Aydin v. Turkey* No. 23186/93 Comm. Rep. 7.3.96 para. 124; *Tekin v. Turkey* No. 22496/93 Comm. Rep. 17.4.97 para. 144 pending before the Court.

violation of Article 5 of the Convention taken as a whole.

269. The Commission finds it unnecessary to decide whether or not there is a practice of unacknowledged detention and disappearances as alleged by the applicant.

270. As regards the derogation of 5 May 1992 under Article 15 of the Convention in relation to Article 5, the Commission recalls that the Government have placed no reliance on it in their observations on the merits. The Commission finds that, in the case of unacknowledged detention, a derogation which provides for measures relating to detention pursuant to criminal procedures provided for in law can have no application.

#### **CONCLUSION**

271. The Commission concludes, unanimously, that there has been a violation of Article 5 of the Convention in respect of the disappearance of the applicant's brother Ahmet Çak\_c\_.

#### **E. As regards violation alleged by the applicant on his own behalf under Article 3 of the Convention**

272. The applicant has also complained that the "disappearance" of his brother constitutes inhuman and degrading treatment contrary to Article 3 in respect of himself (see paras. 258-9 above).

273. The Government have not addressed any submissions to this issue, beyond their denials that State authorities were responsible for the disappearance of the applicant's brother.

274. The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Further, the Court has held that the suffering occasioned must attain a certain level before treatment can be classified as inhuman. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see eg. Eur. Court H.R., Ireland v. United Kingdom, loc. cit., p. 65, para. 162).

275. The Commission recalls that the applicant has lived in the uncertainty as to what has happened to his brother for over three years. Even though it now appears that the authorities claim that his brother is dead, no contact was made with the family as regards identification of the body or arrangements for burial. The Commission considers that the uncertainty, doubt and apprehension suffered by the applicant over a prolonged and continuing period of time has caused him severe mental distress and anguish. It has found above that the responsibility of the Government is engaged as regards the disappearance and their failure to account satisfactorily for what has happened to him. The Commission finds as a result that the applicant has been subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

#### **CONCLUSION**

276. The Commission concludes, by 27 votes to 3, that there has been a violation of Article 3 of the Convention in respect of the applicant.

**F. As regards Article 13 of the Convention**

277. Article 13 of the Convention provides as follows:

"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."

278. The applicant submits that the intrinsic character of "disappearances" necessarily involves impunity and an inherent denial of accountability. The lack of an effective remedy is a structural part of the violation. The detainee can neither challenge the lawfulness of the detention, in violation of Article 5 para. 4 and, more fundamentally, nor the very fact of the detention. This is a systemic violation of Article 13. Both the applicant and his brother have been victims of a violation of this provision.

279. The Government deny that the applicant's brother was detained and submit that the applicant has failed to make use of available domestic remedies. The submission of a petition to the Diyarbak\_r State Security Court prosecutor is not sufficient to exhaust such remedies and there is no ground to support any contention that the applicant had any justified basis on which to fear reprisals if he pursued his complaints further.

280. The Commission recalls that Article 13 of the Convention requires the provision of a domestic remedy allowing the "competent national authority" both to deal with the substance of the relevant Convention complaint and to grant the appropriate relief. Where disappearances are concerned, which involve arguable claims of violations of Articles 2, 3 and 5 of the Convention, the Commission considers that Article 13 imposes, without prejudice to any other remedy available in the domestic system, an obligation to carry out a thorough and effective investigation (eg. *mutatis mutandis*, Eur. Court H.R., *Aksoy v. Turkey* judgment of 18 December 1996, Reports 1996-VI, paras. 95 and 98, *Kaya v. Turkey* judgment of 19 February 1998, to be published in Reports 1998, para. 107).

281. The Commission has examined whether the applicant had available to him an effective remedy in respect of his complaint that his brother had "disappeared" in custody. It considers that the substance of the applicant's complaint - that his brother was in custody and that in the absence of information as to his whereabouts the family feared for his well-being - was brought to the attention of the relevant and competent authorities. The Diyarbak\_r State Security prosecutor received at least one petition and this, or its substance, was passed on to the Hazro public prosecutor. The Commission does not accept any suggestion that the public prosecutors had no reason to take any action or conduct any further enquiry in relation to this approach beyond verifying their own records for the places of

detention under their jurisdiction. Where there is an allegation that a person has been taken into custody and has since been missing, this should, notwithstanding lack of entries in official registers, give cause for concern and in the present case should have prompted further action.

282. As regards the efficacy of the public prosecutors' response to the complaint, the Commission recalls that the only steps taken until at least July 1994 were to have the Hazro and State Security Court records checked, and that this was not done by way of direct inspection of the original records. The investigation appears to have taken fresh impetus in or about December 1994 and during 1995, more than a year later and after the present application had been communicated to the respondent Government, when efforts were made to take statements from the applicant, Remziye Çak\_c\_, Mustafa Engin, Abdurrahman Al and Tahsin Demirba\_. While the latter two were not found, the statements from the first three were obtained. These, together with information from Hazro gendarmes relating to the alleged finding of Ahmet Çak\_c\_'s body amongst terrorists killed at K\_ll\_bo\_an hill in February 1995, formed the material on which the Hazro public prosecutor took his decision of lack of jurisdiction on 13 June 1996, more than two and a half years after the disappearance.

283. The Commission recalls that the decision issued on 13 June 1996 included the findings that Ahmet Çak\_c\_ had been a militant member of the PKK, who had been killed in a clash and noted that Mustafa Engin had not seen him in custody as alleged. That the body was Ahmet Çak\_c\_'s was stated as being without doubt. The Commission recalls however its findings (paras. 236-239) that there is no evidence, documentary or otherwise, which connects Ahmet Çak\_c\_'s identity card with any particular body found at K\_ll\_bo\_an Hill. The public prosecutor accepted the claim of the Hazro district gendarmes without requiring, or seeking, any substantiation. It is also to be noted that the statements of the applicant and Remziye Çak\_c\_, who was an alleged eyewitness, supported the disappearance. While Mustafa Engin's statement did not expressly claim to have seen Ahmet Çak\_c\_ in custody, the Commission has found that it is inconsistent and ambiguous (para. 224). Further, it does contain an allegation that electric shock treatment was administered but this does not appear to have raised any concern or led to any further action by the authorities.

284. The Commission considers that allegations of disappearances require prompt and thorough investigation. The investigation in the present case was dilatory and superficial, accepting, without verification, the custody records and the assertion that Ahmet Çak\_c\_'s body had been found. The Commission is not persuaded that the applicant's concerns received sufficiently serious attention by the authorities, the evidence supporting his claims being ignored or discounted.

285. There is no evidence before the Commission to indicate that, in the absence of an effective investigation of the circumstances of the case by the public prosecution authorities, any other remedy would have offered the applicant a possibility of obtaining redress for a disappearance resulting from an unacknowledged detention.

286. The Commission finds that the applicant did not have an effective remedy available to him in respect of his complaints about the disappearance of his brother. This finding, which relates to allegations of violations of the rights of the applicant in the character of both direct victim and indirect victim complaining on behalf of his brother, includes both aspects. It would not however adopt the submission of the applicant that a finding of a "disappearance" automatically entails a violation of Article 13 of the Convention.

#### **CONCLUSION**

287. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention.

#### **G. As regards Articles 14 and 18 of the Convention**

288. Articles 14 and 18 of the Convention provide as follows:

##### Article 14

"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."

##### Article 18

"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."

289. The applicant maintains that the violations alleged, unlawful, life-threatening unacknowledged detention, disappearance and the lack of investigation, occur overwhelmingly against citizens of Kurdish origin and disclose a breach of Article 14 of the Convention. He also claims that unaccountability of the security forces and incompatibility of this situation with the rule of law disclose a breach of Article 18 of the Convention.

290. The Government deny that there is any factual or juridical

basis for these complaints.

291. The Commission has examined the applicant's allegations in the light of the evidence submitted to it, but considers them unsubstantiated.

#### **CONCLUSIONS**

292. The Commission concludes, unanimously, that there has been no violation of Article 14 of the Convention.

293. The Commission concludes, unanimously, that there has been no violation of Article 18 of the Convention.

#### **H. Recapitulation**

294. The Commission concludes, unanimously, that there has been a violation of Article 2 of the Convention in respect of the disappearance of the applicant's brother Ahmet Çak\_c\_ (para. 254 above).

295. The Commission concludes, unanimously, that there has been a violation of Article 3 of the Convention in respect of the applicant's brother Ahmet Çak\_c\_ (para. 260 above).

296. The Commission concludes, unanimously, that there has been a violation of Article 5 of the Convention in respect of the disappearance of the applicant's brother Ahmet Çak\_c\_ (para. 271 above).

297. The Commission concludes, by 27 votes to 3, that there has been a violation of Article 3 of the Convention in respect of the applicant (para. 276 above).

298. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention (para. 287 above).

299. The Commission concludes, unanimously, that there has been no violation of Article 14 of the Convention (para. 292 above).

300. The Commission concludes, unanimously, that there has been no violation of Article 18 of the Convention (para. 293 above).

M. de SALVIA  
Secretary  
to the Commission

S. TRECHSEL  
President  
of the Commission



(Or. English)

**PARTLY DISSENTING OPINION OF MR E.A. ALKEMA,  
JOINED BY MM. S. TRECHSEL and G. RESS**

The reason for my voting against a violation of Article 3 in respect of the applicant (para. 276) is a mainly technical and legal one. Although the emotional consequences for the applicant of his brother's disappearance should not be underestimated, they do not in my opinion raise 'a separate issue'.

The applicant has submitted his application principally on behalf of his disappeared brother with regard to whom the Commission already found that Articles 2 and 3 of the Convention have been violated. Finding, as the majority has done, an additional violation with respect to the applicant himself does not contribute demonstrably to the Convention's effective protection but only gives rise to difficult and thorny questions.

One such question relates to possible consequences for the notion of 'indirect victim', namely the person(s) so closely connected to a victim of alleged human rights violations as to be entitled under Article 25 to submit an application on the latter's behalf. Has not any such 'indirect victim' through the close connection with the direct victim inevitably undergone himself or herself some repercussions from such violations? Usually there are other relatives as well, as in the instant case - ought they have joined the application formally in order to be eligible for any indemnification under Article 50?

With regard to the wide circle of indirect victims and relatives a difficult exercise of sorting out the level of distress and anguish inflicted - conditional for Article 3 being applicable - is unavoidable. Indeed this has been attempted in para. 279 but the manner in which a violation is reasoned by the majority seems rather perfunctory and lacks substance. It shows that extending the circle of victims in this way is likely to water down the criteria for finding a violation of the Convention right.

Generally, the Commission's policy has been cautious and prudent in acknowledging further complaints when it had already found the substance of the claim being a violation under another heading. A similar policy, of course with an exception for clearly dependent third persons, seems advisable with respect to widening the circle of persons who may claim to be victims of violations.

