CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 77200/01
by Ali ACAT and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 April 2005 as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 15 September 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ali Acat, Ms Selime Acat, Ms Semire Acat, Mr Arif Acat, Mr Çetin Acat, Ms Nezire Öztürk, Ms Latife Danış, Ms Yıldız Bakır and Ms Bedriye Kartal, are Turkish nationals, who were born in 1965, 1945, 1974, 1980, 1978, 1956, 1976, 1958 and 1970 respectively. The first, third, fourth and the seventh applicants live in İzmir and the other applicants live

in Nusaybin. They are represented before the Court by Mr Medeni Ayhan and Mr Metin Ayhan, lawyers practising in Ankara.

A. Particular circumstances of the case

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

Nezir Acat, the son of the second applicant and the brother of the other applicants, was born in 1962. He had three children and was working in a construction business in the Nusaybin District within the province of Mardin.

On 21 February 1994 at around 4.00 p.m. Nezir Acat was walking along Lozan Street in Nusaybin, when a person approached him from behind, shot and killed him.

Members of the security forces arrived at the scene within a few minutes. The officers drafted an incident report and drew up a sketch map. Two spent bullet cartridges were found at the scene and they were sent for a ballistic examination. The body of the deceased was then taken to the Nusaybin State Hospital, where it was examined by a doctor, in the presence of the Nusaybin public prosecutor. As the cause of death was clearly established as internal bleeding due to gunshot wounds, the conclusion was reached that there was no need to conduct a classical autopsy.

At the hospital a police officer, who spoke Kurdish, heard certain members of the deceased's family say that Nezir Acat had been killed by the PKK as he had refused to join them. The police officer subsequently drew up a report and recorded what he had heard at the hospital. Basing himself on this report, on 25 February 1994 the Nusaybin public prosecutor declared non-jurisdiction and transferred the case file to the Diyarbakır State Security Court Public Prosecutor.

While the investigation into Nezir Acat's death was pending, in 1995 a person named K.A. was arrested in Nusaybin in connection with another ongoing investigation concerning the Hezbollah. In his police statement, K.A. explained that Nezir Acat had been killed by Z.Ş. and N.D. who were Hezbollah members. On 14 May 1995 Z.Ş. was arrested in Nusaybin and on 17 May 1995 he took the police officers to an apartment which had been used as their cell. The police found several guns there. One of these guns matched with the spent cartridges that had been found near the body of Nezir Acat. The trial of Z.Ş., which commenced on 18 July 1995, is still pending. The other suspect, N.D., is still sought by the authorities.

On 10 April 2000 the applicants instructed a lawyer to follow up their case and a written petition was filed with the Nusaybin Public Prosecutor for information about the outcome of the investigation.

On 18 April 2000 the Nusaybin public prosecutor informed the applicants about the non-jurisdiction decision of 25 February 1994. On

5 May 2000 the applicants were informed by the Diyarbakır State Security Court that Z.Ş., allegedly responsible for the killing of 41 persons including Nezir Acat, had been arrested and indicted on 18 July 1995.

The applicants joined the ongoing criminal proceedings against Z.Ş. before the Diyarbakır State Security Court as interveners and attended the hearing on 17 August 2000. After examining the case file, the applicants concluded that Z.Ş. could not have been the real killer. Accordingly, on 21 September 2000, they submitted a petition to the trial court and withdrew from the criminal proceedings. They asked the court to apprehend and punish the real assassin.

B. Relevant domestic law

The relevant domestic law is set out in the judgment of *Tanrıkulu v. Turkey* ([GC], no. 23763/94, §§ 53-61, ECHR 1999-IV).

COMPLAINTS

Invoking Article 2 of the Convention, the applicants maintain that Nezir Acat was unlawfully killed by or with the connivance of agents of the State. They further refer to the failure of the authorities to conduct an effective investigation into the circumstances surrounding his death.

The applicants submit under Article 6 of the Convention that the domestic authorities failed to carry out a thorough and effective investigation to establish the truth concerning Nezir Acat's death.

The applicants further argue that, as a result of the authorities' failure to investigate the killing of their relative, they have been denied an effective remedy as required by Article 13 of the Convention.

The applicants finally submit that Nezir Acat was killed as a result of his Kurdish origin. In this respect, they invoke Article 14 of the Convention.

THE LAW

The applicants complain of violations of Articles 2 (right to life), 6 (right to a fair hearing and access to court), 13 (right to an effective remedy) and 14 (prohibition on discrimination) of the Convention in connection with the death of their relative.

The Government submit that the applicants have failed to exhaust the domestic remedies available to them, as required by Article 35 § 1 of the Convention. They assert, in the alternative, that the applicants have failed to comply with the six-month rule prescribed by Article 35 § 1.

The applicants submit that they were not required to exhaust domestic remedies since none were adequate or effective. Furthermore, they assert that the pending criminal proceedings were ineffective in many respects.

As regards the merits of the case, the Government submit that the death of the applicants' relative could not be attributable to the authorities. According to the Government, the evidence points to the fact that Nezir Acat was killed by two Hezbollah members. They further maintain that the authorities have fulfilled their obligation to carry out an effective and adequate investigation into the killing.

The applicants allege that Nezir Acat was killed by or with the connivance of the State agents. They further maintain that the domestic investigation was not conducted in a manner which is capable of establishing the identity of the killers and bringing them to justice. In this respect, they state that the authorities failed to take photographs of Nezir Acat's body or fingerprints. Nor did they conduct a classical autopsy.

The Court does not find it necessary to determine whether the applicants complied with the requirements of Article 35 § 1 of the Convention, since the case should anyway be declared inadmissible as being manifestly ill-founded for the following reasons.

As to the death of the applicants' relative

The Court notes that it is confronted with a factual dispute. While the applicants maintain that Nezir Acat was killed with the connivance of State agents, the Government deny this.

In this respect, the Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161, and *Ülkü Ekinci v. Turkey*, no. 27602/95, §§ 141-142, 16 July 2002). Accordingly, the Court must reach its decision on the basis of the evidence submitted by the parties (see *Pardo v. France,* judgment of 20 September 1993, Series A no. 261-B, p. 31, § 28). It will thus examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular the documents submitted by the Government with respect to the domestic investigation, as well as the parties' written observations.

The Court notes that Nezir Acat was killed while he was walking along Lozan Street in Nusaybin. It is clear from the case-file that the deceased had no previous criminal record; he had not been involved with any illegal organisation or been threatened by anyone; nor was there reason to believe that his life was at risk prior to the murder. The Court observes that the applicants waited until April 2000, almost six years, before inquiring of the public prosecutor about the investigation into the death. Furthermore, at no

stage in the domestic proceedings did the applicants allege any involvement of State agents in the death of Nezir Acat.

Following the examination of documents in the domestic investigation, the Court finds that it has been established that, during another investigation into the Hezbollah, Z.Ş and N.D. were strongly suspected of involvement in the killing of Nezir Acat. As the murder weapon was found in their apartment, criminal proceedings were immediately initiated against Z.Ş., and the second suspect,N.D., is still sought by the authorities.

In view of the above and, in particular, taking into account the applicants' failure to provide any substantiation of their allegations, the Court finds no evidence which might disclose an appearance of a violation of the Convention attributable to State authorities.

It follows that this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

As to the alleged inadequacy of the investigation into the death

The Court recalls that the obligation to protect the right to life under Article 2, read in conjunction with 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", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 329, § 105).

In the present case there is no dispute over the steps that were taken by the investigating authorities during the preliminary investigation.

The Court observes that, immediately after the incident, security forces arrived at the scene of the incident. They drafted the incident report, drew up a sketch map and collected two spent bullet cartridges from the scene, which were subsequently sent for a ballistic examination. The body was immediately taken to hospital for an examination, at which it was established that death had occurred as a result of internal bleeding due to gunshot wounds.

While the investigation into Nezir Acat's death was pending, in 1995 a person named K.A. was arrested in Nusaybin in connection with another ongoing investigation concerning the Hezbollah. In his police statement, K.A. explained that Nezir Acat had been killed by Z.Ş. and N.D. upon instructions of that illegal organisation. When Z.Ş. was arrested, he assisted the police officers in locating the apartment which had been used by Hezbollah members. Following the ballistics examination, one of the guns which was found in the apartment matched with the spent cartridges that

had been found near the body of Nezir Acat. The public prosecutor concluded that Z.Ş had been involved in the murder of Nezir Acat and immediately commenced criminal proceedings against him. The second suspect, N.D., is still sought by the authorities.

In view of the above, the Court concludes that the evidence in the investigation file shows that the investigation was not devoid of effect and it cannot be maintained that the authorities took no action with regard to the killing of the applicants' relative. The absence of photographs, fingerprints or a classical autopsy of the deceased, whilst regrettable, do not, in the Court's opinion, have weighty significance in the circumstances of the present case.

In the light of the aforementioned findings and having examined the various measures that were taken in the instant case, the Court finds that the investigation into the death of the applicants' relative may be regarded as satisfying Convention standards.

It follows that the applicants' complaints under Articles 2, 6 and 13 of the Convention should be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

As to the applicants' complaint of discrimination

The applicants finally allege that their relative's death was connected to his Kurdish identity. In this respect, they invoke Article 14 of the Convention.

The Government contested this allegation.

The Court has examined the applicants' allegations in the light of the evidence submitted to it, and considers them wholly unsubstantiated. It follows that this part of the application should also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

A.B. BAKA
President