CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 48804/99
by Muhyettin OSMANOĞLU
against Turkey

The European Court of Human Rights (First Section), sitting on 15 June 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President,*
Mr R. TÜRMEN,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S.QUESADA, *Deputy Section Regitrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 25 September 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Muhyettin Osmanoğlu, is a Turkish national of Kurdish origin who was born in 1942 and lives in Diyarbakır. He is represented before the Court by Mr M. Muller, Mr T. Otty, Ms F. McKay and Mr K. Yıldız, lawyers attached to the Kurdish Human Rights Protect in London, and Mr O. Baydemir, Ms R. Yalçındağ and Mr C. Aydın, lawyers practicing in Diyarbakır.

A. The circumstances of the case

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

On 25 March 1996, around 11.00 a.m., the applicant arrived at his shop in Diyarbakır and saw two men escorting his son, Atilla Osmanoğlu, out of the shop. The men were armed and carried walkie-talkies and introduced themselves to the applicant as police officers. They told him that they were taking his son to the Security Directorate to discuss some business deal and that his son would return in about half an hour. However, his son did not return that evening.

On 26 March 1996 and 16 May 1996 the applicant filed petitions with the Diyarbakır Governor's Office and requested information as to the whereabouts of his son.

In the meantime, on 1 April 1996, the applicant filed a petition with the public prosecutor's office at the Diyarbakır State Security Court. In his petition, the applicant stated that his son had been taken into custody on 25 March 1996 and that he had not heard from him since. He requested information as to his whereabouts.

On 4 April 1996 the public prosecutor informed the applicant that his son's name did not figure in the custodial records.

On 20 May 1996 the applicant's statement was taken by two police officers at the Diyarbakır Security Directorate. In his statement, the applicant gave a detailed account of the events and the physical description of the two men who had abducted his son. The applicant requested that those who had abducted his son be found and tried.

On 4 July 2004 an article relating to the confessions of Abdulkadir Aygan, a former member of JITEM (the Gendarme Intelligence Service), was published in the *Özgür Gündem* newspaper. In this article, Mr Aygan stated that Atilla Osmanoğlu was one of the persons who had been abducted and killed by JITEM. He explained that Mr Osmanoğlu's body had been thrown into a petrol tank, about three hundred metres away from the Cizre-Silopi motorway in Silopi.

The Government submitted that the public prosecutor, after having examined the custody records of the Security Directorate, concluded that it

was unnecessary to initiate an investigation. They further submitted that Atilla Osmanoğlu was registered as a missing person and that a search was carried out throughout the country to find him.

B. Relevant domestic law and practice

The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Ülkü Ekinci v. Turkey* (no. 27602/95, §§ 111-118, 16 July 2002) and *Tepe v. Turkey* (no. 27244/95, §§ 115-122, 9 May 2003).

COMPLAINTS

The applicant alleges that the circumstances surrounding the abduction and disappearance of his son gave rise to a violation of Article 2 of the Convention. He further maintains that the authorities failed to carry out an adequate and effective investigation into these matters.

The applicant complains that his anguish due to his son's disappearance at the hands of the State authorities and his inability to discover what has happened to his son as a result of the authorities' failure to initiate a full investigation amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

The applicant complains under Article 5 of the Convention that his son was arbitrarily deprived of his liberty since his detention had not been recorded and there had been no prompt or effective investigation into these matters.

The applicant submits under Article 8 of the Convention that there has been an unjustified interference with his family life on account of the fact that he and his family have suffered the loss of a family member.

The applicant maintains that he has been denied an effective domestic remedy in respect of his complaints, in breach of Article 13 of the Convention.

The applicant alleges under Article 14 in conjunction with Articles 2 and 5 of the Convention that his son was the victim of an enforced disappearance on account of his Kurdish ethnic origin.

THE LAW

The applicant alleges violations of Articles 2, 3, 5, 8, 13 and 14 of the Convention.

The Government did not submit any specific comments on the merits of the case. They suggest that the applicant's allegations are unsubstantiated and ask the Court to declare the application inadmissible in accordance with Article 35 §§ 1 and 3 of the Convention.

The applicant maintains his complaints and his account of the events.

The Court considers, in the light of the parties' submissions, that the complaints raise complex issues of law and fact, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that these complaints cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention in the present case;

Declares the application admissible, without prejudging the merits of the case.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President