CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41557/98
by Emrah ÖZCAN
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 9 November 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 2 April 1998,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Emrah Özcan, is a Turkish national, who was born in 1971 and lives in Istanbul. He is represented before the Court by Ms E. Keskin, a lawyer practising in Istanbul.

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

In 1997 the applicant's brother, Ali Özcan, was performing his military service as a gendarmerie soldier in the Gendarmerie Training Regiment No. 13 in the Kırkağaç district within the province of Manisa.

On 26 February 1997 a gendarme soldier, Hakan Çetin, who was serving in Regiment No. 1, had committed suicide by shooting himself with his G3 rifle.

On 27 February 1997 at 8 p.m. a gendarme soldier, Fatih İnekçi, found the applicant's brother dead in a building which was used to hold meetings with the food suppliers to the Regiment ("the commission building"). Fatih İnekçi immediately informed his superiors about the incident.

At around 8.50 p.m. the Kırkağaç public prosecutor and a doctor arrived at the scene of the incident. The body was officially identified by the officers who were present. The public prosecutor conducted an examination of the scene of the incident and the body. In his report, he described the room and noted the details of the rifle and the position of the body. The G3 automatic rifle, together with the spent bullet case and the bullet were sent to the laboratory for the ballistic examinations. Photographs of the scene and the body were taken from several angles. The prosecutor further took statements from the witnesses, including the gendarme soldier Fatih İnekçi, who had found the body.

Fatih İnekçi stated the following:

> "I am responsible for the management of the commission building. The doors of the building are generally locked. There are two sets of keys for this building; I keep one of the sets and the other set is kept by the gendarme soldier Tuncer. I suppose Ali Özcan might have taken the key from Tuncer. Ali Özcan began working at the secretary's office in our regiment only ten days ago. Tonight, at around 8 p.m., while I was on my way to the dormitories, I noticed that the light in the commission building was on. I went to turn the light off and also to inspect the building. I tried to open the door but realised that the door was locked. I then opened the door using my key. When I entered the building, the light in the corridor was on and I realised that the door had been locked from inside. The key was left in the lock. I entered the room on the right side of the corridor and switched the light on. In that room I saw a body lying on the floor. Without looking at who he was, I left the building and informed the duty sergeant Levent Yağbasan. Together we returned to the commission building. At the beginning I was not able to identify the body. Then my colleagues told me that it belonged to Ali Özcan. Ali was a very quiet and shy person. He never talked to others about his personal problems."

Gendarme sergeant Levent Yağbasan stated the following:

"Today I was the duty officer at the Regiment's station. At around 8 p.m., Fatih İnekçi told me that a soldier had shot himself in the next building. I went to the place of the incident together with him. We saw the body lying on the floor. His brain was scattered all around the room. We informed our duty superior officer about the incident and he also arrived at the scene. Shortly after that we reported the incident to the prosecutor. Ali Özcan was from the 13th regiment."

Gendarme soldier Hakan Biberci stated the following:

"I have been serving in the 13th regiment as a secretary. The commission building has two sets of keys. Fatih İnekçi keeps one set of these keys. The other set is generally kept by me or by Tuncer Adamcıl who is also a gendarme soldier. Tuncer started working in a different regiment last week and was therefore replaced by Ali Özcan. From time to time we gave the keys to Ali Özcan. I spent the whole day with him in the office of the 13th regiment. We talked about our work at the secretary's office. I noticed that he looked stressed but he did not tell me what was bothering him. He only said that he was stressed. He did not mention anything about committing suicide. Tonight at around 6 p.m. we had dinner together. He seemed normal. After dinner, he told me that he wanted to go to the office and asked for the keys. I handed the keys to him. These are the keys with which the door of the commission building was locked from inside. He had borrowed the keys to go to our office. He never told me that he was going to go to the commission building. He was a quiet person who did not have any problems with any of the soldiers or the officers here. He once told us that his father had passed away and that his elderly mother had been looking after him. He never mentioned having problems with his family."

Gendarme soldier Ali Avcı stated the following:

"Ali Özcan and I were trained together in the 13th regiment at the beginning of our military service. After a certain period, he commenced serving at the secretary's office and I began serving as an instructor. We had dinner together at 6 p.m. this evening. Ali Özcan told me that he was stressed. I asked him whether he had received any letters lately and he replied that he had not received any. He told me that he was bored. He was a quiet person. He would not talk much about his family. He had never mentioned suicide."

Gendarme Captain Hüseyin Bakır, the commander of the 13th Division, stated the following:

"Ali Özcan was serving in my regiment as a secretary. Today I left the Regiment at around 5 p.m. and went home. I was informed about the incident around 8 p.m. I do not know whether he had any problems with his family or why he might have committed suicide."

Subsequently, the doctor examined the body at the scene of the incident. According to his findings, the G3 rifle was between Ali Özcan's legs. The spent bullet case was found at an approximate distance of 50 cm from the body and the bullet was lodged in the ceiling. The rifle had been adjusted for single firing. There were no other bullets in the charger of the rifle. The rifle had blood stains on it. The body was still dressed in military uniform. The doctor noted the presence of a bullet entry hole under the chin, measuring 9.5 x 6 cm. The bullet had followed a vertical trajectory, destroying the chin and the brain, and then exited at the left apex of the

skull. There were traces of gunpowder between the thumb and the index finger of the left hand. No other marks were observed on the body. Both hands had blood on them. At the time of the examination, the body was still warm and rigor mortis had not set in. There were no signs of poisoning. According to the doctor, Ali Özcan had shot himself at a point-blank range and died as a result of brain trauma. The doctor concluded that a full autopsy was not necessary since the cause of the death was without doubt the destruction of the skull and the brain.

On 28 February 1997 the deceased person's uncle was called to the Regiment, and Ali Özcan's body and his personal belongings were handed over to him.

On 28 February 1997 the Kırkağaç public prosecutor issued a decision of non-jurisdiction as the incident had taken place within military premises. He therefore transferred the case file to the office of the Izmir military prosecutor. The military prosecutor appointed a gendarme officer as rapporteur to investigate the case. During the investigation, the military authorities established that the G3 rifle, which Ali Özcan had used to shoot himself, had in fact belonged to the gendarme officer Fatih İnekçi, who had hidden his rifle in the commission building.

On 1 March 1997 the rapporteur took statements from six gendarmes concerning the incident. Ali Avcı, Hüseyin Bakır and Hakan Biberci mainly repeated their statements taken by the Kırkağaç public prosecutor on the day of the incident. The rapporteur took a further statement from the gendarme soldier Fatih İnekçi, who had found the body of Ali Özcan. He asked him to explain the reason as to why he had left his G3 rifle in the commission building contrary to military orders. He was reminded that according to the rules, he was obliged to confine his rifle in the rifle storehouse. Mr İnekçi explained that he had hidden his rifle in the commission building in order to prevent other soldiers from stealing parts of his rifle. He further maintained that there were no bullets in his rifle when he had hidden it in the commission building. The rapporteur also took a statement from the gendarme soldier Sertan Tapıklama, who was serving in the same regiment. He stated that he knew Ali Özcan quite well. He described Ali as a shy person, who did not like talking. Since Ali Özcan had wanted to serve in the south-east of Turkey, he was frustrated when he was assigned to work as a secretary in the administration division.

On the same day, the rapporteur prepared his report. Taking into account that there were no bruises or other signs on the body of Ali Özcan to indicate the use of force or resistance, and the fact that he might have been affected by the suicide which had taken place the day before, the rapporteur concluded that he had committed suicide. The rapporteur further advised that Fatih İnekçi be prosecuted for disobedience to military orders as he had failed to keep his rifle in the storehouse contrary to military orders.

On 14 March 1997 the Directorate of Izmir Criminal Police Laboratory reported that the bullet which had been sent for ballistic examination had been fired by the G3 rifle which had been found at the scene of incident.

By a decision dated 1 April 1997, the Izmir military prosecutor decided to discontinue the proceedings since the cause of death was clearly established as suicide. In his decision, the prosecutor stated that Ali Özcan had last been seen at the cafeteria where he had his dinner at 6 p.m. He had lately been telling his friends that he was bored at the secretary's office. On the day of the incident, his colleague Fatih İnekçi had left his G3 rifle in the office. At around 8 p.m. Ali Özcan was found dead by Fatih İnekçi in one of the rooms of the commission building. The military prosecutor further stated that the local public prosecutor and the doctor, who had arrived at the scene shortly after the incident, had taken statements from the gendarmes and prepared an incident report. After having reviewed all the evidence, the military prosecutor concluded that there were no indications which would lead him to conclude that the death had been caused by someone else's intent or negligence.

On 3 June 1997 the applicant filed an objection against this decision with the Izmir Military Court. In his petition, the applicant stated that he believed that his brother had been killed and that the investigation carried out by the military prosecutor had not been through enough to establish the true circumstances of his brother's death. He pointed out, *inter alia*, that his brother had been killed by a rifle which was issued to another soldier, namely Mr İnekçi. Furthermore, according to the applicant, there was nothing to suggest that his brother had a tendency to commit suicide. On the contrary, he had good relations with his family and friends.

On 17 June 1997 the Izmir Military Court examined the appeal lodged by the applicant. After having reviewed the evidence, including the ballistic reports of the rifle prepared by the Izmir Forensic Laboratory, the witness statements and the findings of the doctor, the court concluded that further investigations should be carried out in order to eliminate any doubts the deceased person's family may have. It requested the military prosecutor to conduct further investigations and clarify the following points:

a) Was it possible to open the door when it was locked from inside and the keys were still in it?
b) Was there any hostility between Fatih İnekçi and Ali Özcan?
c) When and why did Fatih İnekçi take his rifle from the rifle storehouse?
d) The soldier guarding the rifle storehouse at the time should be questioned about the time and the person removing Fatih İnekçi's rifle.
e) Was there any connection between the death of Ali Özcan and the suicide that occurred the previous day?
f) Which rifle had been issued to Ali Özcan by the army?

g) Did Ali Özcan have any psychological problems and did the public prosecutor consult Ali Özcan's family to verify whether he had any problems?

The case file was accordingly sent back to the office of the Izmir military prosecutor for further investigation.

On 23 July 1997 the military prosecutor conducted an on-site investigation at the scene of incident. He gave one set of keys to his secretary, who then went in the commission building and locked the door from inside. She left the keys in the lock. The military prosecutor then took the second set of keys and opened the door, which had been locked from inside by his secretary. They established that although the door was locked from inside and the keys were left in the lock, it was possible to open the door from outside by using the second set of keys.

The same day, the military prosecutor took a statement from Fatih İnekçi, who mainly repeated his previous statements taken on 27 February and 1 March 1997. He further maintained that he did not have any personal problems with Ali Özcan.

The prosecutor further questioned Hüseyin Bakır, who was the commander of the 13th Regiment. The commander stated that Ali Özcan had arrived at the regiment ten days prior to the incident. He described him as a shy and quiet person. The commander explained that he was in charge of controlling the rifles and that he conducted regular controls everyday. He had no idea how Ali had found a bullet, as normally new soldiers were not allowed to keep bullets in their rifles without supervision. He explained that all rifles were kept in the rifle storehouse. Following the incident, Ali Özcan's rifle was found in this storehouse. The commander indicated that he had further investigated whether there had been a problem between Ali and Fatih, however there was nothing to show that the two soldiers did not get along. Finally, Mr Bakır confirmed that there had been another suicide in Regiment No. 1 the day before. However he explained that it was impossible for Ali Özcan to have seen this incident as the area had been secured immediately after the incident.

The prosecutor then took statements from Ali Avcı, Sertan Tapıklama and Hakan Biberci, all gendarme soldiers from the 13th Regiment. These witnesses mainly reiterated their previous statements.

The prosecutor further heard evidence from two more gendarme officers, Murat Yağız and Can Atkın. Both stated that Ali Özcan had no problems with Fatih İnekçi and described him as a shy person. The witnesses further referred to another suicide which had occurred the day before Ali Özcan's death. They stated that this incident had taken place in another regiment and that they had not been allowed to approach the incident scene.

On 7 August 1997 the military prosecutor took statements from the relatives of Ali Özcan, namely from his cousins Duran Özcan and Niyazi Özcan, his sister Menevşe Özcan, and his nephew İsmail Kaya. The

witnesses stated that Ali had no problems with his family and that they did not believe that he had committed suicide.

Having completed the investigation file, the Izmir military prosecutor transferred the case to the Izmir Military Court for re-examination.

On 25 September 1997 the Izmir Military Court, having examined the complete investigation file, concluded that a thorough investigation had been carried out into the incident, eliminating all uncertainties. While accepting that there seemed to be an undisciplined atmosphere within the regiment due to the fact that a gendarme soldier, namely Fatih İnekçi, was able to keep his rifle in his office rather than in the rifle storehouse, the court concluded that this fact was not in itself sufficient to establish a causal link with Ali Özcan's death. Basing itself on the results of the ballistic examination, the incident report, the autopsy findings and the witness statements, the Military Court concluded that Ali Özcan had committed suicide. It accordingly rejected the applicant's appeal and this decision was served on the applicant on 2 October 1997.

COMPLAINTS

The applicant complains under Article 2 of the Convention that the respondent State have failed to conduct a proper investigation into the circumstances of his brother's death. In this respect, he submits that it was unclear as to why Ali Özcan would use a rifle that belonged to Fatih İnekçi to shoot himself. The applicant further maintains that as another gendarme soldier had committed suicide a day before his brother, the military authorities should have examined whether there was any connection between these suicides.

The applicant also argues that he has suffered psychologically as a result of his brother's death and due to the authorities' negligence to clarify the true circumstances of the incident. In his opinion, this constitutes inhuman and degrading treatment within the meaning of Article 3 of the Convention.

Invoking Article 6 of the Convention the applicant submits that the military authorities did not carry out a thorough and effective investigation to establish the truth concerning his brother's death.

Invoking Article 13 of the Convention the applicant further argues that, as a result of the authorities' failure to investigate his claims under Article 2 of the Convention, he has been denied an effective remedy as required by Article 13 of the Convention.

The applicant finally invokes Article 14 of the Convention in conjunction with the above Articles in that his brother was killed in suspicious circumstances, due to his Kurdish origin.

THE LAW

The applicant complains of violations of Articles 2 (right to life), 3 (prohibition of torture), 6 (right to a fair trial), 13 (right to an effective remedy) and 14 (prohibition of discrimination) in connection with the death of his brother.

1. As to the alleged inadequacy of the investigation concerning the death of the applicant's brother

Referring to Articles 2, 6, and 13 of the Convention, the applicant complains of the alleged inadequacy of the domestic investigation which was commenced following his brother's death. He alleges that his brother's death was not thoroughly examined by the domestic authorities.

The Government submit in the first place that the application should be rejected for non-exhaustion of domestic remedies as the applicant has failed to bring compensation proceedings before the domestic courts.

As regards the merits of the case, the Government maintain that following the death of the applicant's brother, the domestic authorities conducted an effective and thorough investigation. In this respect, they submit that shortly after the death of Ali Özcan, the Kırkağaç public prosecutor and a doctor arrived at the scene of incident. The prosecutor took statements from the witnesses who were present at the scene, took photographs of the body and prepared the incident report, and the doctor conducted an autopsy. He examined the body to find out whether there were any signs or bruises to indicate the use of force or resistance. The cause of death was established as destruction of the skull and the brain. When the case was transferred to the office of the Izmir Military Prosecutor, further statements were taken from the witnesses. Subsequently the investigation was broadened upon request of the Military Court. Further statements were taken from the gendarme officers, including the gendarme officer who had found the body and the relatives of the deceased. The military prosecutor also conducted a second visit at the scene of incident to test whether the door of the building which had been locked from inside, could be opened by using the second set of keys. In the light of the evidence before it, the military prosecutor then concluded that Ali Özcan had committed suicide and that there was no need to continue the investigation. This decision was reviewed by the Military Court which also found it established that the applicant's brother had committed suicide.

The Government further submit that from the position of the body and the photographs, it is clear that Ali Özcan had been sitting and holding the rifle between his legs, when he fired. His hands were also covered with blood and gunpowder. The Government argue that it was impossible for someone else to shoot him in the same position. There were no bruises or any other signs on the Ali Özcan's body which would indicate that he had

been forced or had offered resistance to another person. Finally there is no relation between the death of the applicant's brother and the death of Hakan Çetin who had committed suicide the day before. They were both from different regiments and served in different buildings.

The Court does not consider it necessary to decide whether the applicant can be considered to have complied with the requirements of Article 35 § 1 of the Convention since this complaint should be declared inadmissible as being manifestly ill-founded for the following reasons.

The Court observes that immediately after the incident, the Kırkağaç public prosecutor and a doctor arrived at the scene of incident. The prosecutor took statements from the witnesses, took photos of the deceased and drafted an incident report. The doctor carried out an autopsy on the body, in the presence of the public prosecutor, in order to establish the exact cause and time of the death. He also noted that there were no marks on the body which would indicate the use of force or would show that Ali Özcan had offered resistance to another person before his death. The investigation was subsequently pursued by the military prosecutor as the incident had taken place within military premises. At the end of the preliminary investigation, the Izmir Military Prosecutor decided to discontinue the proceedings as he established the cause of death to be suicide. Upon the applicant's appeal, the case was brought before the Military Court. The court ordered the public prosecutor to conduct further investigations on certain points in order to eliminate any doubts about the death. Accordingly, the prosecutor was asked to take statements from the relatives of the deceased, to investigate whether the door of the room where Ali Özcan had shot himself could be opened from the outside with a second set of keys, to investigate whether there was any connection between the suicide which had taken place a day before Ali Özcan's death and whether there was a problem between him and Fatih İnekçi. The prosecutor carried out an investigation into all of these points and submitted a complementary report to the court. Finally, taking into account the incident and body examination report, the witness statements, the photographs taken at the scene of incident, the ballistic report and the report of the military prosecutor, the Izmir Military Court concluded that Ali Özcan had committed suicide by using a G3 rifle, which had been hidden in the commission building by another gendarme soldier.

The evidence in the investigation file shows that the investigation was not devoid of effect and it cannot be maintained that the relevant authorities took no action with regard to the applicant's allegations that his brother had been killed. The Court observes in this respect that that the military court conducted a thorough investigation which took into consideration the applicant's concerns about his brother's death.

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 applicant's brother may be regarded as satisfying the Convention standards.

In the light of the foregoing, the Court concludes that the applicant's complaints under Articles 2, 6 and 13 of the Convention should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. As to the applicant's complaint concerning Article 3 of the Convention in respect of himself

The applicant submits under Article 3 of the Convention that the failure of the authorities to conduct a proper investigation into his brother's death has caused him emotional pain and distress.

The Government state that the applicant's allegation is unsubstantiated.

Having regard to its findings on the applicant's complaints under Articles 2, 6 and 13 of the Convention, the Court concludes that there is no appearance of a violation of Article 3 of the Convention in respect of the applicant.

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.

3. As to the applicant's complaint concerning Article 14 of the Convention

The applicant finally alleges that his brother's death was connected to his Kurdish identity. In this respect, he invokes Article 14 of the Convention.

The Government did not address this issue beyond denying the factual basis of the complaint.

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

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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President