



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

FIRST SECTION

CASE OF İRFAN BİLGİN v. TURKEY

(Application no. 25659/94)

JUDGMENT

STRASBOURG

17 July 2001

FINAL

17/10/2001

In the case of İrfan Bilgin v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr L. FERRARI BRAVO,

Mr J. CASADEVALL,

Mr B. ZUPANČIČ,

Mr T. PANȚIRU, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 May 2000 and 26 June 2001,

Delivers the following judgment, which was adopted on that last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25659/94) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr İrfan Bilgin ("the applicant"), on 17 October 1994.

2. The applicant was represented by Ms N. Hatipoğlu and Mr A. Uluk, of the Ankara Bar. The Turkish Government ("the Government") did not appoint an Agent for the proceedings before the Court.

3. The applicant alleged that his brother had disappeared after being detained on 12 September 1994 and had probably been killed by the police during interrogation. He further complained that there had been no effective remedy for the violations of which his brother had been victim. He relied on Article 5 §§ 1 and 3 of the Convention.

4. The Commission declared the application admissible on 30 June 1997. A delegation from the Commission heard witnesses on 17 September 1999 in Strasbourg and from 20 to 22 September 1999 in Ankara. Having been unable to complete its examination of the application before 1 November 1999, the Commission transmitted it to the Court on that date, in accordance with the second sentence of Article 5 § 3 of Protocol No. 11 to the Convention.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of

Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The parties have not lodged memorials on the merits of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The circumstances in which the applicant's brother disappeared are disputed. In accordance with former Article 28 § 1 (a) of the Convention, the Commission conducted an investigation with the assistance of the parties and obtained documentary evidence and oral depositions.

Delegates from the Commission heard witnesses on 17 September 1999 in Strasbourg and from 20 to 22 September 1999 in Ankara. They also visited the offices of the anti-terrorist branch at Ankara Security Directorate on 20 September 1999. Evidence was taken from the following witnesses: the applicant, eleven people who had been in custody at the material time at Ankara Security Directorate and who alleged that they had met Kenan Bilgin there and had witnessed the ill-treatment to which he had been subjected, two public prosecutors who had investigated the case, a deputy director at Ankara Security Directorate and a police officer from the anti-terrorist branch at Ankara Security Directorate.

A. The facts as presented by the applicant

8. At 10 a.m. on 12 September 1994 the applicant's brother, Kenan Bilgin, was arrested at a taxi rank in Dikmen (Ankara) by plainclothes police officers. His family was not informed.

9. The applicant received three anonymous telephone calls from someone who confirmed that his brother was being held at Gölbaşı (Ankara) with three other prisoners. He was told that his brother's condition was serious and that he was being administered serum. During the last conversation, which took place on 15 November 1994, the caller said that the applicant's brother had been moved elsewhere.

10. On 3 October 1994 Kenan Bilgin's lawyer, Ms Hatipoğlu, contacted the Human Rights Commission of the Turkish National Assembly. She and two other lawyers also made a written statement to the press.

11. By an undated letter the applicant requested information from the Principal Public Prosecutor at the Ankara National Security Court about his brother's health, indicating that his brother had been arrested on

11 September 1994. On 4 October 1994 a similar request was made to the Principal Public Prosecutor by Ms Hatipoğlu, who put the date of the arrest at 13 September 1994.

12. In his letters in reply dated 10 October 1994 the Principal Public Prosecutor said that no one by the name of Kenan Bilgin had been interviewed and that no warrant had been issued for his arrest.

13. On 10 October 1994 the applicant made a written statement to the press. The same day, his representatives contacted the Ankara branch of the Human Rights Association about his brother's case. On 11 October 1994 the association issued an appeal to the provincial governor of Ankara for Kenan Bilgin to be brought before the public prosecutor, while the applicant managed to obtain written statements signed by ten prisoners who had also been held at Ankara Security Directorate between 12 and 27 September 1994, in which they confirmed that Kenan Bilgin had been held there between those dates and subjected to ill-treatment.

14. On 12 October 1994 Ms Hatipoğlu wrote to the Principal Public Prosecutor at the Ankara National Security Court to enquire what had become of Kenan Bilgin. She explained that although several witnesses affirmed that they had seen him in police custody, the police denied that he had been detained.

15. On 9 November 1994 the applicant lodged a complaint with the Ankara public prosecutor against the officers who had been on duty while his brother was in custody, namely police officers from the anti-terrorist branch at the Ankara Security Directorate. *Inter alia*, he gave the names of witnesses who had testified that Kenan Bilgin had been held in the same building as them.

16. Furthermore, at a hearing on 21 November 1994 in criminal proceedings before the Ankara National Security Court, one of the defendants, whose name was Mr Yılmaz, testified to having met Kenan Bilgin at the Ankara Security Directorate. Another defendant, Mr Çoban, said in evidence before the court that police officers had threatened him, telling him that unless he made a confession he would meet the same fate as Kenan Bilgin.

17. When making a bail application to the Ankara National Security Court on 1 February 1995, a lawyer, Mr Demir, said that while he and Kenan Bilgin were in custody together they had spoken and Kenan Bilgin had told him that he had been held for twenty-two days and that the police intended to arrange for his disappearance. Kenan Bilgin had also asked Mr Demir to inform his family.

B. The Government's submissions on the facts

18. The Government's position was that while it was true that Kenan Bilgin was a member of the Revolutionary Communist Party of Turkey

(TDKP), he was not wanted by the police and had not been arrested by the security forces. As the Ankara public prosecutor had stated in a letter of 23 December 1994 to the Ministry of Justice, the custody records showed that Kenan Bilgin had not been arrested or detained.

C. The evidence before the Court

1. Written evidence

(a) The written statements of ten prisoners made on 11 October 1994

19. In a statement made on 3 or 4 October 1994, a lawyer, Murat Demir, said that he had spoken with Kenan Bilgin, who had informed him that he had been in custody for twenty-two days and that his name had not been entered on the custody record.

Ercan Aktaş stated that prisoners in custody in the offices of the anti-terrorist branch of the Ankara Security Directorate from 13 to 27 August 1994 had been systematically subjected to ill-treatment and that he had seen Kenan Bilgin during that period through an aperture in the cell-door window.

Talat Abay stated that he had been held at the Ankara Security Directorate from 8 to 23 September 1994, during which period he and his fellow inmates had been constantly subjected to ill-treatment. On 18 or 19 September he had met Kenan Bilgin, whom he already knew, in the toilets.

Bülent Kat stated that he had been held at the Ankara Security Directorate from 8 to 23 September 1994. On 18 or 19 September he had managed to make out through an aperture in the cell-door window a group of police officers dragging a prisoner along the ground to the bathroom. Approximately two hours later he had seen a person carrying a doctor's bag leave the bathroom. He had subsequently learnt that the prisoner's name was Kenan Bilgin.

Cavit Nacitarhan stated that he had been held at the Ankara Security Directorate from 12 September to 6 October 1994 and had seen Kenan Bilgin on several occasions being led away, unclothed, by police officers.

Müjdat Yılmaz stated that he had been held at the Ankara Security Directorate from 12 to 26 September 1994. He had heard the cries of prisoners being subjected to ill-treatment. Through the cell-door window he had seen a prisoner being dragged along the ground by police officers and had later heard his cries of distress and the police officers' questions such as: "What is your name? If you do not tell us your name, we will kill you." Later, he had seen the same prisoner being taken to the toilet and had heard him call out: "My name is Kenan Bilgin! I am registered at the Tunceli

Records Office. The police want to kill me. Make sure that public opinion is informed about this!”

Salman Mazi stated that he had been held from 12 to 26 September 1994, during which period police officers had subjected prisoners to ill-treatment. One day, he had seen a prisoner in the toilets. The man was in poor health. He introduced himself as Kenan Bilgin and told him that he had been held since 12 September 1994, that his name had not been entered on the custody record and that he feared he would be executed.

Emine Yılmaz stated that she had been held from 12 to 25 September 1994. She recalled hearing someone call out: “My name is Kenan Bilgin! I was taken into custody on 12 September, but my name is not on the custody record.”

Ayşe Nur İkiz Akdemir stated that while being held in custody between 13 and 25 September 1994 she had heard someone call out: “My name is Kenan Bilgin! I was taken into custody on 12 September and they want to arrange for me to disappear.” According to her, the prisoner she had seen through the cell-door window was Kenan Bilgin. He had difficulty walking and his body bore marks of torture.

Özer Akdemir stated that he had been held from 12 to 25 September 1994 in the offices of the anti-terrorist branch at the Ankara Security Directorate. During that period all the prisoners had been systematically subjected to torture. He had been in cell no. 6. The prisoner in cell no. 8 was subjected to severe ill-treatment every day. He was taken away naked for torture sessions and dragged back to his cell afterwards. He saw him through an aperture in the cell-door window. The four people who took the prisoner away for interrogation were the same four people who had interrogated him, so he would have no difficulty in recognising them. One day, the prisoner from cell no. 8 cried out from the toilets where he had been taken: “My name is Kenan Bilgin. They want to arrange for me to disappear! My name is not on the custody record.” He had been brought back to cell no. 8 later.

(b) Complaints lodged by the applicant with the public prosecutor at the Ankara National Security Court on 4 and 12 October 1994 and petition by the Ankara Human Rights Association to the provincial governor’s office and the anti-terrorist branch of the Ankara Security Directorate on 11 October 1994

20. The applicant alleged that his brother had been arrested on 11 September 1994 and that eyewitnesses had seen him in custody. He requested information about his brother’s fate. His brother’s lawyer made a similar request alleging that Kenan Bilgin had been taken into custody by police officers from the anti-terrorist branch of the Ankara Security Directorate on 13 September 1994.

In its petition the Ankara Human Rights Association gave the names of the eyewitnesses who had seen Kenan Bilgin at the Ankara Security Directorate.

(c) Documents relating to the investigation by the Ankara public prosecutor

21. In a letter of 21 November 1994 referring to the complaints lodged by the applicant's representatives, the Ankara public prosecutor, Selahattin Kemaloğlu, instructed the public prosecutor's office at Pendik (Istanbul) to question the applicant about the matters raised. He also instructed the Ankara Security Directorate to start an investigation into the applicant's allegations.

22. On 24 November 1994 the Ministry of the Interior informed the Ministry of Foreign Affairs that the Security Directorate had advised that Kenan Bilgin had not been taken into custody, his name had not been entered on the custody record and he was not wanted by the police.

23. On 9 December 1994 the deputy director at the Security Directorate, Ülkü Met, sent a letter to the Ankara public prosecutor's office, the relevant parts of which read:

"... Between 12 September and 21 November 1994 the anti-terrorist branch carried out 249 arrests. Of those arrested, 115 were brought before the principal public prosecutor at the National Security Court and the remaining 134 released. In addition on 16 and 17 October 1994 the Committee for the Prevention of Torture carried out two *ad hoc* visits to the Security Directorate. They did not report any case of unlawful detention there ... In the interests of an effective investigation, persons remanded in custody, whether members of the same or of different organisations, never see each other unless a confrontation becomes necessary. Even for the purposes of answering a call of nature, remand prisoners are taken to the toilets individually and are accompanied by a warder. Furthermore, members of the same organisation are put in cells that are far apart from each other ... The sole aim of the persons whose names appear in the complaint and who claim to have seen the person known as Kenan Bilgin is to mislead the judicial authorities, to discredit the police and to obstruct the operations being carried out against illegal organisations ... The Turkish police are proud of their 149-year history. Certain people seek to destroy the democratic secular Republic; they commit crimes, arguing that such unlawful acts are legitimate, and make allegations such as the present one to discredit the police and the State."

24. On 23 December 1994 the Ankara public prosecutor, Nazmi Şarvan, informed the Ministry of Justice that, while it was true that an investigation had been started into the affairs of members of the TDKP, Kenan Bilgin's name did not appear on the list of its members.

25. On 13 January 1995 the Ankara Principal Public Prosecutor, Özden Tönük, sent a letter to the Ankara public prosecutor's office, which was in charge of the investigation. The relevant parts of the letter read:

"The Committee for the Prevention of Torture (CPT) interviewed prisoners in Ankara Prison who had been transferred from the anti-terrorist branch at the Security Directorate and who said that they had seen Kenan Bilgin in September 1994 in the building where remand prisoners are detained. When we spoke to them, they said that

they had seen Kenan Bilgin between 13 and 25 September 1994 through an aperture in their cell-door windows when he was being taken to the toilets, to the torture room or to be photographed. The investigation reveals that the section of the premises where remand prisoners are held contains individual cells with windows in the cell door that enable police officers to communicate with the prisoners or to pass them their food and which can only be opened from the outside by the warders. The cells are aired by a ventilator attached to the ceiling and it is impossible for prisoners to see what is happening outside. Prisoners are interrogated on the floor above in an interview room that complies with European standards. The cells are not numbered but a small sheet of paper bearing the prisoner's name is attached to the cell door. Persons arrested are photographed and fingerprinted by the technical services at the Security Directorate. Between 1 January and 31 December 1994, 771 people were taken into custody at the anti-terrorist branch of the Security Directorate; of these, 160 were released by the police, 574 brought before a judge and 37 transferred to other branches at the Security Directorate. Thus, with the exception of Kenan Bilgin, there had been no complaints of any disappearances of prisoners being held in custody. According to the inquiry conducted by the CPT on 16 and 17 October 1994, in an unannounced visit to the Security Directorate, there are no reports of unlawful detention on the premises. Considering that the purported witnesses did not know either Kenan Bilgin or his family and that the Security Directorate state that his name was not on the custody record, it can safely be deduced that the allegations of the prisoners regarding the disappearance of the person known as Kenan Bilgin while in custody at the Security Directorate were aimed at misleading public opinion and harming the police as they attempted to mount operations against the illegal organisations."

26. On 17 March 1995 the public prosecutor Selahattin Kemaloğlu took witness statements from Cavit Nacitarhan, Özer Akdemir, Salman Mazi, Murat Demir and Müjdat Yılmaz, who were all accused of being members of an illegal extreme left-wing organisation, the TDKP. The following depositions were taken.

(a) Cavit Nacitarhan: "I was arrested on 12 September 1994 and remained in custody for twenty-four days. I did not know Kenan Bilgin. However, after my second day in custody I saw him every day. He would cry out: 'My name is Kenan Bilgin, I have been in custody since 12 September and my name has not been entered on the records; if anyone is released, please inform the press, lawyers and human rights [associations] about my case.' I do not know why he was arrested but I saw him over a period of twenty-one days. He was dressed only in his underpants. He did not have the strength to stand unaided and had to be supported by two people. After my release, I saw his photograph in newspaper articles about his disappearance and that is how I recognised him."

(b) Özer Akdemir: "I was taken into custody on 26 September 1994. I did not know Kenan Bilgin, but I saw him three times at the Security Directorate. He was dressed only in his underpants. I was in cell no. 6 and he was in cell no. 8. When he was taken to the toilets, he would cry out: 'My name is Kenan Bilgin. They want to arrange for me to disappear. My name has not been entered on the custody records.' Later, he was taken from his cell. That is all I witnessed. [I] certify that the signature on the written statement made on 16 or 17 September 1994 is mine."

(c) Salman Mazi: "I certify that I signed the written statement dated 11 October 1994. When I was in custody at the offices of the anti-terrorist branch at the Security Directorate between 12 and 25 September 1994, I saw Kenan Bilgin on several

occasions. At one stage, I noticed that he was being dragged by his arm to the toilets in his underpants. He was often taken for interrogation and was severely tortured. He was in cell no. 8. On the eighth day I saw him in the toilets. He said to me in a weak voice: 'My name is Kenan Bilgin, I was arrested on 12 September at Dikmen. My name has still not been entered on the records. They are probably going to arrange for me to disappear. If you get out of here, contact the public prosecutor's office and inform the press.' The warder then appeared and reprimanded him for having spoken to me, before taking him away. Later I recognised his photograph in the newspapers."

(d) Murat Demir: "I was taken into custody on 10 September 1994 and was put in cell no. 11. Kenan Bilgin was in no. 13 or 14. I did not know him. We were severely tortured. The remand prisoner in no. 13 stopped me and, as I was known as 'the lawyer', asked me if I really was a lawyer. He gave me his name and continued: 'I have been here for twenty-two days. My name has not been entered on the records. They probably want to arrange for me to disappear. I worked at a printer's. If you are brought before a judge, tell the lawyers that I am here.' He too was tortured. I heard the sounds of torture and groans. I certify that the signature on the written statement is mine and confirm the content. I saw his photograph in the newspapers later. However, he seemed far more exhausted and tired [in custody]."

(e) Müjdat Yılmaz: "I confirm the content of the written statement of 11 October 1994. I do not know Kenan Bilgin, but I saw him on two or three occasions. I was in cell no. 2. I saw him being taken to the toilets by his torturers and heard him call out: 'My name is Kenan Bilgin. They want to arrange for me to disappear.' I saw him like that three times. I am able to recognise these men [the police officers] because they also undressed my wife before my eyes. One of them was smaller than me, approximately 1.80 m tall with a receding hairline and was called 'boss' by the others. He was one of the men who took Kenan Bilgin away. I would recognise him without any hesitation. I made a statement to the public prosecutor who came to the prison."

27. Referring to the statements of these witnesses, the public prosecutor Selahattin Kemaloğlu enquired of the Ankara Principal Public Prosecutor whether an investigation had been started following the allegations that Kenan Bilgin had been tortured and had disappeared after being taken into custody in the offices of the anti-terrorist branch of the Ankara Security Directorate.

28. On the instructions of the public prosecutor Selahattin Kemaloğlu, two police officers from the Security Directorate at Üsküdar (Istanbul) took a statement from the applicant on 5 April 1994. The applicant stated that a cousin had informed him that his brother had been arrested in Ankara on 12 September 1994. He and his brothers had gone to the offices of the Ankara Human Rights Association, had consulted lawyers and had learnt that certain prisoners had claimed that Kenan Bilgin had been in custody in the same building as them but had not been brought before a judge for an order to be made for his detention pending trial.

29. On 16 September 1995 the applicant had given a statement at Kısıklı (Istanbul) police station. He said that he had lodged a complaint with the Ankara public prosecutor's office and had given the names of witnesses who said that they had seen Kenan Bilgin in the offices of the anti-terrorist

branch at the Security Directorate. He had repeated his allegations and asked for news of his brother.

30. By a letter of 27 December 1995 in which he referred to the applicant's complaint and statement, the public prosecutor Selahattin Kemaloğlu requested the Pertek (Tunceli) public prosecutor's office for the locality where the register of births of the Bilgin family was held to conduct an investigation into the alleged disappearance of Kenan Bilgin, and in so doing to have regard to the possibility that he may have taken part in PKK (Workers' Party of Kurdistan) activities. He added that the Security Directorate considered the allegations of the applicant and his lawyers regarding the alleged disappearance at the hands of the police to be an attempt to damage the police's reputation.

31. By letters of 9 October and 27 November 1996 the Pertek public prosecutor instructed the district gendarmerie to make enquiries of the people with whom Kenan Bilgin was in close contact in order to establish whether he had joined the ranks of the PKK.

32. On 3 December 1996 the gendarmes took a statement from someone who lived in the village in which Kenan Bilgin was born. He said that the Bilgin family had left the village forty years earlier and that he did not know whether Kenan Bilgin was a member of the PKK.

33. On 9 July 1997 the public prosecutor Selahattin Kemaloğlu instructed the Ankara Security Directorate to carry out a search for Kenan Bilgin. The relevant part of his letter reads as follows.

"An investigation has been carried out into allegations by İrfan Bilgin that his brother, who was arrested on 12 September 1994 at Dikimevi (Ankara), was taken into custody in the offices of the anti-terrorist branch of the Ankara Security Directorate, that he was seen by other prisoners but has given no signs of life since. Other enquiries have been made into the possibility that Kenan Bilgin belongs to the PKK organisation or that attempts have been made to damage the police's reputation, and enquiries have been made of the authorities of the village where he was born and in the locality where he resides. However, it is not been possible to reach any conclusion in this case.

"I wish to request your department to start an investigation into every eventuality, namely whether Kenan Bilgin disappeared while in police custody, or whether he has joined the ranks of the PKK or has been hiding in secret in Turkey and has in fact been used by people close to him with a view to damaging the reputation of the police. I should be grateful if you would then inform me of the result of your findings."

(d) The findings of the delegates of the Commission on their visit to the Ankara Security Directorate on 20 September 1999

34. The delegation visited the premises in which prisoners were held at the offices of the anti-terrorist branch of the Ankara Security Directorate. It was informed that alterations had been made to the layout of the cells on the ground floor at the end of 1994. There were now thirteen cells (three cells having been converted into a single cell) running along one side of a long,

narrow corridor. The delegation found an empty room at the end of that corridor, with a small corridor leading off to the adjoining toilets. The prisoners' names and numbers were written on cards inserted into slots above the doors with the reverse side facing outwards. The police officer in charge of the premises said: "Prisoners have no possibility of seeing or speaking to each other and their movements in the premises are made in accordance with official regulations. Dishes are passed directly through the door with the prisoners being required to stand back. The police officer in charge of the premises where prisoners are held has a list of the people in custody and of the cell numbers, and prisoners do not change cells while in custody." The delegation carried out two experiments on the premises.

(i) Two delegates were shut in two adjoining cells. One said his name out loud. He was heard by the other and by the group in the corridor.

(ii) A delegate was shut in a cell and a lawyer from the delegation in a cell two doors away. In order to establish what they could hear, they were asked to speak in their cells. The lawyer heard the delegate's voice but said that the noise from the ventilation system prevented him from making out what he said.

The delegation then visited the interrogation room on the first floor.

(e) The custody records

35. The name Kenan Bilgin does not appear on the custody records at the Ankara Security Directorate. The records show that several people were arrested and taken into custody at the Directorate between 8 and 29 September 1994, including Bülent Kat and Talat Abay on 8 September, Salman Mazi, Müjdat Yılmaz and Emine Öğün on 12 September, Sahir Çoban, Ayse Nur İkiz Akdemir, Özer Akdemir and Ercan Aktaş on 13 September, Murat Demir on 27 September, and Cavit Nacitarhan on 25 September.

2. The oral statements

36. On 17 September in Strasbourg and between 20 and 22 September 1999 in Ankara, three Commission delegates took the following depositions.

(a) İrfan Bilgin

37. İrfan Bilgin is the applicant and Kenan Bilgin's brother. He said that his brother had been arrested on 12 September 1994 at Dikmen (Ankara) and that he had been informed of the arrest approximately twenty days later.

His brother had been arrested as part of an operation that had been carried out by the security forces in different localities on the same day against members of the revolutionary movement.

38. Kenan Bilgin had previously been in custody in 1977 and had spent three years in prison. He had been a member of the revolutionary movement since 1976 and had been on the police's wanted list. In 1993 he had been arrested at Gaziantep (a town in south-east Turkey) in possession of false identity papers. He had been held for twenty-five days and severely tortured. He had told his family that the police had made threats on releasing him, warning him: "This time, you are safe, you have escaped with your life, but the next time we catch you, you will not leave here alive."

39. The applicant said that following his brother's disappearance he had received two or three telephone calls from one Coşkun, who had informed him that his brother was being held at Gölbaşı (Ankara) and subjected to torture. He was in very poor shape and on a drip.

40. The applicant said that he had contacted people who claimed to have been held on the same premises as Kenan Bilgin. After speaking to them, he had lodged applications with the Ministry of the Interior, the National Security Court, the Secretary of State for Human Rights and the Security Directorate. However, despite the evidence of several prisoners, those authorities had denied that his brother had ever been in custody.

41. The applicant said that he had lodged a complaint with the public prosecutor's office. However, he was unaware whether an investigation had been started. He had been required to attend the offices of the anti-terrorist branch at the Istanbul Security Directorate either once or twice and had repeated his allegations.

(b) Murat Demir

42. The witness is a lawyer who currently lives in Germany, where he has been granted political asylum. He said that he was arrested by police officers from the Ankara Security Directorate in his office on 27 September 1994 and held by the anti-terrorist branch for thirteen days. He was detained in a small cell and had changed cells on three or four occasions.

43. He gave the following description of the premises where prisoners were held. The cells were not numbered and ran the length of one side of a corridor. On the other side of the corridor was a room used for torture, toilets, a bathroom that was also used for torture, the warders' office and two other cells that were larger and better furnished than the others. The doors were equipped with small windows, approximately 20 to 30 cm across, through which the prisoners could be observed. Both the windows and the cell doors were opened from time to time by the warders. By pressing his head firmly against the aperture in the cell-door window, he was able to see what was going on outside and had thus seen the other prisoners when they were taken away to be tortured.

44. When first taken into custody he had been put in a cell between the toilets and the bathroom that doubled up as a torture chamber. The prisoner in the cell next door was a university lecturer. The witness said that he had

heard groans coming from the cell next to the lecturer's. He explained that he was systematically tortured and that one evening, at the end of the torture session and after he had been taken back to his cell, the prisoner, who was groaning and was in very poor shape had said to him: "I have been detained for twenty-two days. My name is Kenan Bilgin. You are the lawyer of a close relative of mine, Hüseyin Özaslan, who is currently being held in Ankara Prison. My name has not been entered on the custody records. They are going to arrange for me to disappear. Could you inform my family and the lawyers that I have been detained?" On hearing this, the witness had tried to reassure the man, saying that he now had an eyewitness to his detention and that he could no longer be regarded as having disappeared. A few days later, on returning to his cell after another torture session that had lasted all night, he noticed that all the prisoners had changed cells. He had not see Kenan Bilgin again.

45. The witness said that detention in police cells was not always entered on the custody record and that the police officers used that practice as a form of torture. He had heard them tell certain prisoners in custody: "We have not entered your name on the custody record. We can do as we please with you."

46. He said that he did not know Kenan Bilgin personally. Kenan Bilgin's lawyer, Ms Hatipoğlu, had asked him while visiting the prison whether he had met Kenan Bilgin at the police station and he had informed her of their conversation.

(c) Cavit Nacitarhan

47. Cavit Nacitarhan said that he had been arrested on 12 September 1994 by the police for being a member of an illegal organisation, the TDKP. He had been held in custody for twenty-four days. For eighteen or nineteen days he had been taken for interrogation twice daily at 10 a.m. and 10 p.m. During the interrogation sessions he had been systematically tortured. For the remainder of his time in custody he had been given medical attention to remove the marks left by the injuries on his body.

48. He described the events following his arrest as follows: he had firstly been taken to a place called Gölbaşı, where the police officers had threatened to kill him unless he cooperated with them; he had been interrogated there before being taken to the Ankara Security Directorate.

49. The witness gave the names of other people who had been in custody during the same period. He said that he had learnt their names following a confrontation that had been organised with them or after meeting some of them in the prison. He had heard Kenan Bilgin's name while in police custody.

50. He related how, in general, prisoners were taken to the toilets in groups of four or five. However, that did not apply to certain prisoners, including himself and another prisoner. They were only allowed to leave

their cells to go to the toilet when the doors of the other cells had been shut. Prisoners' names, apart from his own and that of another prisoner who he later discovered was Kenan Bilgin, were written on small cards that were fastened to the cell doors. On seeing Kenan Bilgin's photographs in the press, he had immediately realised that it was the same person. One day, when all the cells were closed, he had attempted to see what was going on in the corridor by looking through a small aperture next to the cell-door window. Although his angle of view had been very restricted, he had been able to make out two police officers leading a nearly naked prisoner whose eyes were blindfolded. The prisoner had been taken back to his cell many hours later. He had seen him several times being dragged across the floor to or from his cell.

51. A few days later he had heard a prisoner saying: "My name is Kenan Bilgin. My name has not been entered on the custody record. Please inform my family and public opinion about my case." He had heard the same person cry out several times from the bathroom that had been converted into a torture chamber. The man had been asked repeatedly: "What is your name? Tell us your name. Do not shout."

52. On 26 September a confrontation had been organised with other prisoners who had been arrested as part of the same operation. Kenan Bilgin was not among them. On 3 October 1994 the witness had again seen Kenan Bilgin being led away by police officers. He was in very poor shape. That same evening there seemed to be a panic and the doors had remained closed throughout the evening. Police officers were running in all directions. Since that day, he had not seen Kenan Bilgin again. In his opinion, Kenan Bilgin was executed on 3 October.

53. The witness said that the applicant had visited him in prison in 1996 and that was how he had informed him of the date he was taken into custody. They had had a very short discussion about Kenan Bilgin. He said that he had sent a written statement through his representatives certifying that Kenan Bilgin had been present at the Ankara Security Directorate.

54. According to the witness, although he had been taken into custody on 12 September 1994, his detention had not been recorded until 26 September 1994, after his admission to hospital. He had informed the public prosecutor of that fact but the public prosecutor had merely accepted the police officers' account.

(d) Bülent Kat

55. Bülent Kat said that he had been arrested on 8 September 1994 with two other people and had remained in custody in the offices of the anti-terrorist branch of the Ankara Security Directorate for fifteen days. When first detained, three or four prisoners were being held; a week later, their number had risen to approximately fifty.

56. The first prisoner he noticed was Cavit Nacitarhan, who was the nephew of a member of Parliament and occupied the cell next to his. The police officers had began the torture sessions with Cavit, whose body was swollen and covered in bruises and who had difficulty walking. The witness had a clear view of prisoners being taken to the torture chamber, which was diagonally opposite his cell.

57. He related how, after Cavit Nacitarhan was interrogated, it was the turn of another prisoner to suffer the same treatment. The question he heard most often was: "What is your name?" The prisoner's cries had turned into grunts and groans. The last time he had seen him brought by a group of police officers for a torture session, either on 18 or 19 September, was identical to the others: the same groans, the same question, the same insults, the same cries. The witness went on: "Suddenly, there was total silence. The police officers came out of the torture chamber and a man carrying a black bag went inside. He looked like a doctor, but was probably from the police. They brought the prisoner out, dragging him behind them."

58. The witness said that the warders opened the windows in their cell doors from time to time to give them bread or water. However, the aperture in the windows to the cells of Cavit Nacitarhan and the prisoner referred to above were kept shut.

59. He said that he did not know Kenan Bilgin before his arrest and had identified him from photographs in the press.

60. In practice, detention at the anti-terrorist branch was not entered on the records on the day the prisoner was taken into custody. The practice depended on how the interrogation proceeded.

61. The witness repeated that Kenan Bilgin had been on the same premises as him for at least fifteen days and had been tortured throughout that period.

62. He stated that he had signed a statement on 11 October 1994 as testimony for the benefit of public opinion and had made a statement to the public prosecutor.

(e) Talat Abay

63. Talat Abay said that he had been arrested on 8 September 1994 as a member of an illegal organisation, Rizgari, and had been held in custody for fifteen days at the Ankara Security Directorate. On 12 September a number of people had been taken into custody and all the cells were occupied. While in custody, prisoners were systematically subjected to torture.

64. He had known Kenan Bilgin before September 1994, as he had stayed at the witness's home for almost two years in 1985 and 1986.

65. He had seen Kenan Bilgin on the night of 18 or 19 September 1994, when he was taken to the toilet. They had made eye contact but had not spoken.

66. The witness said that he had made a written statement confirming that Kenan Bilgin had been held in custody. In addition, he added that at his trial before the National Security Court he had testified to meeting Kenan Bilgin at the Ankara Security Directorate.

(f) Ercan Aktaş

67. The witness, who was a student at the material time, had been held in custody from 13 to 27 September 1994, for being a member of the PKK.

68. As he had said in his written statement, he and the other prisoners had been systematically taken for torture sessions. The torture chamber was near his cell. For several nights another prisoner had been taken to the torture chamber after him. He was always asked the same question, “What is your name?”, and he had heard cries and groans. He had seen him once, through an aperture in the cell-door window, for five or six seconds, from the front and distinctly, being supported by two police officers. The prisoner could not walk without assistance and dragged his feet. The witness had subsequently learnt, after being transferred to prison, that the prisoner’s name was Kenan Bilgin.

69. The witness said that he had no difficulty in being certain that the prisoner who had groaned and cried out in agony was Kenan Bilgin, since he had seen almost all of the other prisoners in prison.

70. The police officers would accompany them to the toilet and when they washed their hands and faces in the wash basins, they had an opportunity of meeting other prisoners.

(g) Sahir Çoban

71. Sahir Çoban accompanied the delegates when they visited the offices of the anti-terrorist branch of the Ankara Security Directorate.

72. At the material time he was a teacher. He had been arrested by the police on 12 September 1994 in the village where he taught for aiding and abetting an illegal organisation. He had been detained at the Ankara Security Directorate on 13 September 1994.

73. The witness reported his findings concerning the premises visited by the delegates of the Commission. The premises had been altered. The cells had been ventilated through the open cell-door windows, there being no ventilation through the ceiling. The room where the custody records were made up had been at what was now the entrance. The cells had been smaller and closer together and there had been additional cells along another corridor. The witness had been held in one of those cells and had remained there for approximately seven days. On the second or third day of his detention, he had been able to make out, through the open window in his cell door, two other prisoners in cells diagonally opposite his own, approximately three metres away. He did not know Kenan Bilgin before his arrest. He had seen his photograph in the offices of the Human Rights

Association. He had made a statement that he had seen him in custody at the Security Directorate and had agreed to give evidence to that effect.

74. After making his statement he had been intimidated, in the presence of his wife, by a police officer who had visited him at the school where he taught. The police officer had made threats such as: “You eat from the State’s plate. I will not allow you to dirty that plate. You will suffer the same fate as Kenan Bilgin.” He added that, despite the threats, he had deposed before the National Security Court in November 1994.

(h) Müjdat Yılmaz

75. Müjdat Yılmaz said that he had been accused of being a member of the TDKP. He had been arrested on 12 September 1994 and had remained in custody until 26 September 1994.

76. As his two closest relatives had also been detained on the same premises, he had endeavoured to keep watch through an aperture in the cell-door window to see what was happening in the corridor. On 16 or 17 September he had seen a prisoner in the toilets, with his back to the wall. The prisoner was exhausted and did not have the strength to remain upright. He was being insulted and pulled backwards by his hair. The witness had seen the same prisoner on another occasion, in similar circumstances, being dragged along by police officers. On the third occasion he saw him, the prisoner was in very poor shape and incapable of standing up. He had cried out: “My name is Kenan Bilgin. I am registered at Tunceli. The police want to kill me. When you get out of here, inform public opinion about my case.” The officers in charge had prevented him from saying any more by taking hold of him by his hair and hitting him. After being transferred to prison, the witness had learnt that the prisoner concerned was called Kenan Bilgin.

77. The witness said that it was possible to communicate from one cell to another by raising one’s voice and that he had thus been able to converse from time to time with his niece.

78. In addition to his written statement he had made a deposition in prison in which he had stated that he could identify the police officers who had dragged Kenan Bilgin back to his cell. The same officers had undressed his wife before his eyes and he was certain he would recognise them.

(i) Salman Mazi

79. Salman Mazi said that he had been arrested for aiding and abetting the TDKP and held in custody from 12 to 26 September 1994.

80. He had seen Kenan Bilgin in person three times and for almost fifteen days had heard his groans when he was taken away for interrogation.

81. Two prisoners were treated differently from the others. One was Cavit Nacitarhan. They were taken separately to the toilet, being dragged there by their arms by two police officers. On his eighth day in custody, while the witness was washing his hands in the washroom, one of the two

prisoners had been brought there. He looked exhausted and had whispered: “My name is Kenan Bilgin. I was taken into custody on 12 September and my name has still not been entered on the record. I think they want to kill me or to arrange for me to disappear. Inform public opinion about my case.” The warder had intervened and dragged him back to his cell. He had seen him a second time, lying on his bed in his cell opposite the toilets in his underpants. A day or two later, he had seen him through the window in his cell door. He was being dragged away.

82. The witness affirmed that he had heard Kenan Bilgin cry out from his cell, giving his surname, first name and the name of the province from which he came.

(j) Emine Öğün

83. Emine Öğün said that she had been arrested with her husband on 12 September 1994 for being a member of an illegal organisation and had remained in custody until 25 September 1994.

84. Two days before her release, when asking for water through the window in her cell door, she had seen a prisoner in a bad condition who had said to her: “My name is Kenan Bilgin. I was taken into custody on 12 September.”

(k) Ayşe Nur İkiz Akdemir

85. Ayşe Nur İkiz Akdemir said that she had been arrested on 12 September 1994 at Çanakkale. She had been detained at the Ankara Security Directorate from 13 to 25 September.

86. She affirmed that she had heard someone cry out “My name is Kenan Bilgin”, and had caught a glimpse, through her cell window, of a dark man, bald and with a moustache, whom she had later identified as Kenan Bilgin.

87. The witness said that the public prosecutor had taken a statement from her in prison and had asked her to describe the circumstances in which she had seen Kenan Bilgin.

(l) Özer Akdemir

88. Özer Akdemir said that he had been arrested on 12 September 1994 for being a member of an illegal organisation and had remained in custody until 25 September.

89. He had been systematically subjected to torture while in detention. He had been able to see through an aperture in the cell-door window that the prisoner in cell no. 8 was subjected to more intensive torture than he. He had seen him being dragged along by four police officers, two of them supporting him by the arms. On the same date he had seen a person with a bag go into cell no. 8 and had heard someone say: “He is not taking any milk. He is not drinking any milk.” On another occasion the witness had

seen, again through the window in his cell door, the same prisoner being taken to the toilet. The prisoner had cried out: “My name is Kenan Bilgin. They want to arrange for me to disappear.”

90. The witness explained that in principle prisoners were not allowed to communicate with each other. However, they would either speak in whispers while at the wash basins or attempt to make themselves heard between cells.

91. The witness affirmed that he had drafted his written statement in the prison where he was detained. He had been questioned about it by the public prosecutor .

(m) Özden Tönük

92. Özden Tönük said that at the material time he had been the Ankara Principal Public Prosecutor, a position he still held. He had not been directly responsible for the investigation into the allegations concerning Kenan Bilgin’s disappearance. His letter of 13 January 1995 to the Ankara public prosecutor’s office contained a description of the actual conditions of detention and of the quarters used for holding prisoners at the Ankara Security Directorate.

93. He had been to the Security Directorate and had inspected the premises. He had heard evidence from people who said that they had seen Kenan Bilgin in custody. Without giving details, the witness affirmed that their statements were inconsistent. He declined to comment on the conclusion, which read: “Accordingly, it has been concluded that the statements of the persons held in custody were not true.”

94. The witness explained that he had drafted his report at the request of the Ministry of Justice and had not organised any confrontation between the prisoners who claimed to have seen Kenan Bilgin and the police officers present on the premises at the material time.

(n) Selahattin Kemaloğlu

95. Selahattin Kemaloğlu said that at the material time he had been the Ankara public prosecutor. He was now the public prosecutor for the district of Elmadağ (Ankara).

96. The witness said that it had been another prosecutor, Özden Tönük, who had started the investigation into Kenan Bilgin’s disappearance. The witness had been assigned to the case after a complaint was lodged by Kenan Bilgin’s brother.

97. He summarised his investigation as follows. He had sent a letter to the Ankara Security Directorate enquiring whether Kenan Bilgin had been detained there. The police had replied that he had at no stage been in custody. He had taken evidence from the witnesses whose names had been supplied by İrfan Bilgin and they had repeated their written statements, saying that they had seen Kenan Bilgin, in very poor shape, in custody at

the Ankara Security Directorate. After hearing that evidence he had become convinced that Kenan Bilgin had disappeared like many others.

98. The witness went on to say: “At the material time there had been a number of cases of disappearances and, as a prosecutor, I was very disturbed by this. On hearing the evidence of the witnesses, I realised that the information given by the police did not reflect the truth. I received no replies to the letters I sent to other police departments. I sent the documents from the investigation to the Principal Public Prosecutor, Özden Tönük, with a request for the cases to be joined. However, the case file was returned to me. I asked the Principal Public Prosecutor to institute criminal proceedings against the head of the Security Directorate under the laws that made it an offence to refuse to cooperate with the relevant prosecuting authorities, as he had failed to produce a list of the police officers on duty when the alleged offences were committed. As the authorities did not respond, I was unable to interview the police officers or to arrange a confrontation with the eyewitnesses. The police enjoyed a sort of immunity at the time. I was not able to visit the premises where the prisoners were detained.”

99. The witness explained that 12 September was a relatively sensitive date in Turkey and that, at that time of the year, several thousand people were being held in police custody; some of them later disappeared. He said: “At the material time we, the prosecutors, were unable to inspect prisons or police stations. During a visit to the Security Directorate, I heard certain noises and asked the police officers where they were coming from. They replied that they had recorded the sound of people crying out in pain with a view to subduing prisoners. With regard to the present case, I tried to investigate it to the best of my ability. I had strong suspicions but did not manage to get very far. I am of Kurdish origin and my telephone line was being monitored. I was transferred to Elmadağ (Ankara), the district where I worked thirty years ago.”

(o) Mehmet Karataş

100. Mehmet Karataş said that at the material time he was a police officer with the anti-terrorist branch of the Ankara Security Directorate. He was responsible for compiling the custody records.

101. He described how the custody records were held. The following information was noted on them: the surname and first name of the accused; the surname and first names of the accused’s mother and father; the accused’s date of birth; and the date and time the accused was taken into custody. He said that it was impossible for the name of a person taken into custody to be omitted from the record and that he was under fairly strict instructions in that regard. He said that a custody report was sent every day to the departmental head and to the public prosecutor at the National Security Court.

102. He indicated that the labels attached to the door handles were numbered and that the prisoners' names were written on other labels that were affixed to the cell doors.

103. With regard to the complaint concerning Kenan Bilgin's disappearance, he had not been interviewed by the authorities and had not been the subject of any investigation. The witness was unable to say whether a prosecutor had inspected the premises in connection with the investigation. According to him, all the allegations of torture had been invented by certain movements hostile to the government and were totally unfounded.

104. He said that before the events that had given rise to the present case Kenan Bilgin had been arrested for being a member of the TDKP. He had been charged and had served his sentence. He had also been taken into custody for other activities as a member of that illegal organisation. His name was on file and the anti-terrorist branch had his case file containing details of his criminal record and of his membership of an illegal organisation.

(p) Ülkü Met

105. Ülkü Met said that at the material time he was deputy director at the Ankara Security Directorate.

106. He stated that after Kenan Bilgin's brother had lodged the complaint, the public prosecutor had begun an investigation and had made four or five written requests to the Security Directorate for information, but he had not inspected the premises.

107. The witness stated that the operation carried out by the police against the TDKP between 12 September and 21 November 1994 was routine and had been undertaken on the basis of information and statements received. The police had relatively large numbers of files on persons who were in custody or had been convicted for belonging to illegal organisations. He said that Kenan Bilgin had not been arrested during the operation; his name was not on the custody record and, in his opinion, the other prisoners' claims that Kenan Bilgin had been detained at the Security Directorate had been concocted by militants.

108. He explained that at all times at least two police officers were on duty with the responsibility of carrying out body searches on anyone who had been arrested, collecting their personal effects and getting them to sign a list setting these out. They were also required to enter the names of persons arrested on the custody record.

109. The witness dismissed all allegations of ill-treatment or torture during custody and stated that, while he had been deputy director, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had carried out two *ad hoc* visits to the Security Directorate. He was, however, unable to comment on

the two public statements made by the CPT, in which they had found: “Torture and other forms of ill-treatment were still important characteristics of police custody.”

110. The witness rejected the assertion of the public prosecutor Selahattin Kemaloğlu that the Security Directorate had failed to cooperate with him and said that prosecutors in charge of investigations could inspect the premises at any time.

II. RELEVANT DOMESTIC LAW AND PRACTICE

111. The principles and procedures relating to liability for illegal acts may be summarised as follows.

A. Criminal prosecutions

112. Under the Turkish Criminal Code all forms of homicide (Articles 448-55) and attempted homicide (Articles 61 and 62) constitute criminal offences. It is also an offence for a government employee to subject someone to torture (Article 243) or ill-treatment (Article 245). The authorities’ obligations in respect of conducting preliminary investigations into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or the security forces as well as to public prosecutors’ offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

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

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

113. In the case of alleged terrorist offences, the public prosecutor is deprived of jurisdiction in favour of a separate system of national security prosecutors and courts established throughout Turkey.

114. If the suspected offender is a civil servant and if the offence was committed in the course of his duties, the preliminary investigation of the case is governed by the Law of 1914 on the prosecution of civil servants, which restricts the public prosecutor’s jurisdiction *ratione personae* at that

stage of the proceedings. In such cases it is for the relevant local administrative council (for the district or province, depending on the suspect's status) to conduct the preliminary investigation and, consequently, to decide whether to prosecute. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

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

B. Civil and administrative liability arising out of criminal offences

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

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

“All acts or decisions of the authorities are subject to judicial review ...

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

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

C. Investigations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

117. The CPT has carried out seven visits to Turkey. The first two visits, in 1990 and 1991, were *ad hoc* visits considered necessary in the light of the considerable number of reports received from a variety of sources containing allegations of torture or other forms of ill-treatment of persons deprived of their liberty, in particular, those held in police custody. A third visit took place at the end of 1992. There were further visits in October 1994, August and September 1996, and October 1997. The CPT's reports on these visits, other than the one in October 1997, have not been made public, as the State's consent is required for publication and has not been forthcoming.

118. The CPT has issued two public statements.

119. In its public statement adopted on 15 December 1992, the CPT concluded that torture and other forms of severe ill-treatment were important characteristics of police custody. On its first visit in 1990, the following types of ill-treatment were constantly alleged, namely hanging by the wrists tied together behind the back (Palestinian hanging), electric shocks, beating of the soles of the feet (*falaka*), hosing with pressurised cold water and incarceration in very small, dark, unventilated cells. Its medical examinations disclosed clear medical signs consistent with very recent torture and other severe ill-treatment of both a physical and psychological nature. The on-site observations in police establishments revealed extremely poor material conditions of detention.

On its second visit, in 1991, it found that no progress had been made in eliminating torture and ill-treatment by the police. Many persons made complaints of similar types of ill-treatment – an increasing number of allegations were heard of forcible penetration of bodily orifices with a stick or truncheon. Once again, a number of the persons making such claims were found on examination to display marks or conditions consistent with their allegations. On its third visit, from 22 November to 3 December 1992, its delegation was inundated with allegations of torture and ill-treatment. Numerous persons examined by its doctors displayed marks or conditions consistent with their allegations. It listed a number of these cases. At the Ankara and Diyarbakır Security Directorates, it found equipment that could be used for torture and the presence of which had no other credible explanation. The CPT concluded in its statement that “the practice of torture and other forms of severe ill-treatment of persons in police custody remain[ed] widespread in Turkey”.

120. In its second public statement issued on 6 December 1996, the CPT noted that some progress had been made over the intervening four years. However, its findings after its visit in 1994 demonstrated that torture and other forms of ill-treatment were still important characteristics of police custody. In the course of the 1996 visits, CPT delegations once again found clear evidence of the practice of torture and other forms of severe ill-treatment by police.

THE LAW

I. THE COURT’S ASSESSMENT OF THE EVIDENCE

121. Before examining the applicant’s allegations in the light of any specific provision of the Convention, the Court considers it appropriate to

begin by examining the evidence. It has a number of preliminary observations to make in that connection.

122. In the absence of any findings of fact on the applicant's complaints by the domestic courts, the Court has based its conclusions on the depositions that were made orally before the delegates of the Commission and the evidence submitted in writing in the course of the proceedings. In that connection, it reiterates that for assessments of this type the co-existence 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 (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161; and *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV).

123. In a case such as the present one in which there were contradictory and conflicting factual accounts of events, the Court finds it particularly regrettable that there was no thorough judicial examination or other independent investigation into the relevant facts by the domestic courts. In that connection, it reiterates the importance of the first undertaking given by the Contracting States, in accordance with Article 1, which is to secure the rights guaranteed by the Convention, and in particular the right to an effective remedy laid down by Article 13 of the Convention.

The alleged detention of Kenan Bilgin, the applicant's brother, and the ill-treatment to which he was allegedly subjected

124. The applicant stated in his application and in his oral testimony before the delegates that his brother had been arrested on 12 September 1994 at Dikmen (Ankara) in the course of an operation by the security forces against members of a revolutionary movement. He gave the names of the people who had stated that they had seen his brother while they were in custody and had witnessed the ill-treatment to which he had been subjected.

125. The Court notes, firstly, that the documentary evidence and the witnesses' oral testimony is in the main consistent as regards the general course of events during the operations carried out in September 1994 against illegal extreme left-wing organisations. It is not disputed that the demonstrations organised during September (and especially on 12 September) by such organisations make it a particularly sensitive time. According to the note issued by the Security Directorate, the anti-terrorist branch arrested 249 people between 12 September and 21 November 1994 (see paragraph 23 above), including Bülent Kat and Talat Abay on 8 September 1994, Salman Mazi, Müjdat Yılmaz and Emine Öğün on 12 September 1994, Sahir Çoban, Ayse Nur İkiz Akdemir, Özer Akdemir and Ercan Aktaş on 13 September 1994, Murat Demir on 27 September 1994, and Cavit Nacitarhan on 25 September 1994.

As for Kenan Bilgin, it is common ground that he had been arrested, prior to the events in the present case, for being a member of the Revolutionary Communist Party of Turkey. He had been tried and had served his sentence. He had also been taken into custody for other activities as a member of that organisation. His name was on record and the anti-terrorist branch at the Security Directorate had his case file containing details of his criminal record and of his membership of an extreme left-wing organisation (see paragraph 104 above).

126. The Court notes that all the persons whose names are referred to above, who were named as eyewitnesses by the applicant in his complaints and petitions to the domestic authorities and had given evidence before the delegates of the Commission, stated that they had seen Kenan Bilgin at the Ankara Security Directorate while they were in custody in September 1994. Cavit Nacitarhan has given a detailed account of the circumstances in which he was arrested on 12 September 1994 and of conditions in custody. He said that he had been systematically tortured for approximately nineteen days and that during the remainder of his time in custody he had been given medical attention to remove the marks to his body left by the injuries. He stated that he and another prisoner, Kenan Bilgin, had been subjected to more severe ill-treatment than the others and had been treated differently. He said that he had seen Kenan Bilgin several times surrounded by police officers and had heard his cries of distress coming from the “torture chamber”. The last time he had seen Kenan Bilgin being led away by the police officers, he was in very poor shape. That evening, there had been panic in the building. He had never seen Kenan Bilgin again (see paragraphs 47-54 above).

127. The Court notes that, consistently with their written statements and their depositions before the domestic authorities, the other ten witnesses have described the circumstances in which they saw Kenan Bilgin, most of the time being dragged along by police officers, and heard him call out his name. Talat Abay has explained that he knew Kenan Bilgin before being taken into custody and has affirmed that he was present at the Security Directorate on 18 or 19 September 1994. Müjdat Yılmaz has stressed that he could recognise and identify the police officers who dragged Kenan Bilgin back to his cell and has said that he informed the investigating authorities of that fact (see paragraphs 76-78 above). Salman Mazi has emphasised that two of the prisoners, Kenan Bilgin and Cavit Nacitarhan, were treated differently from the others, thus corroborating the latter’s evidence.

128. Furthermore, the Court would stress that, in his oral statement, Selahattin Kemaloğlu, the Ankara public prosecutor in charge of the investigation at the material time, stated that he had interviewed the eyewitnesses, who confirmed that they had seen Kenan Bilgin at the Security Directorate, and added that after obtaining that evidence he himself had become convinced that Kenan Bilgin had disappeared while in custody

(see paragraphs 96-99 above). He stated that as the Security Directorate had not produced a list of the police officers on duty at the time of the alleged events, he had not been able to interview them or arrange a confrontation with the eyewitnesses.

129. As to the police officers' statements, the Court notes that they amount to a categorical denial of the alleged events but do not provide any explanation for the eyewitnesses' accounts, merely repeating that they had been concocted by militants, while asserting that the names of all prisoners were entered on the custody record and rejecting all allegations of ill-treatment. Nevertheless, the deputy director at the Ankara Security Directorate at the time, Ülkü Met, felt unable to comment on the findings of the CPT after its visit in October 1994 to the premises where prisoners were detained (see paragraph 117 above).

130. As for the manner in which the custody records were kept, Cavit Nacitarhan has said that he was taken into custody on 12 September 1994 during the operations carried out that day. In their oral testimony, Bülent Kat, who was held from 8 to 22 September 1994, and Salman Mazı, who was held from 12 to 26 September 1994, confirmed the treatment inflicted on Cavit Nacitarhan and thus his presence at the Security Directorate. However, the Court notes that the custody record gives 25 September 1994 as the date he was taken into custody. In that connection, the Court notes both its own findings and those of the Commission as to the general unreliability and inaccuracy of custody records (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 105, ECHR 1999-IV, and *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, opinion of the Commission, p. 1941, § 172). Thus, it finds that the fact that Kenan Bilgin's name was not on the custody record at the Ankara Security Directorate does not of itself prove that he was not in custody.

131. In the light of the foregoing, the Court finds that Kenan Bilgin was held in the offices of the anti-terrorist branch of the Ankara Security Directorate following the operations carried out on or about 12 September 1994. It accepts the evidence of the eleven witnesses who stated that they had seen Kenan Bilgin when they were themselves being held on the same premises and that his cries of distress and groans indicated that he was not in good physical condition.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

132. The applicant alleged that his brother, who had been arrested on 12 September 1994, had disappeared while in custody and had in all probability been killed by the security forces. He submitted that the respondent State had to be declared responsible for failing to protect his brother's right to life, in breach of Article 2 of the Convention, which reads:

“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.”

A. Arguments of the parties

1. The applicant

133. The applicant maintained that the detention – which the authorities denied – of his brother, Kenan Bilgin, amounted to an act of murder. He said that there had been ample evidence in many cases of torture and unexplained deaths and disappearances of people in custody. It was reasonable to infer from that that the authorities had not discharged their obligation to protect his brother’s life under Article 2.

134. The applicant observed that the administrative and judicial authorities had taken no action on his complaints concerning his brother’s disappearance.

2. The Government

135. The Government replied that the applicant had not produced any evidence to support his allegations that his brother had been arrested and taken into custody by the security forces and that, therefore, no question arose under Article 2.

136. In the Government’s submission, all the witnesses who said that they had seen the brother’s applicant in custody were members of illegal organisations whose aim had been to misinform public opinion and to put pressure on the machinery of justice which, finding its very foundation undermined, would be minded to show greater clemency in their cases. A serious blow would thereby be dealt to the fight against terrorism. They said in conclusion that the applicant’s brother had at no stage been in custody.

B. The Court's assessment

1. *Whether Kenan Bilgin should be presumed dead*

137. The Court reiterates at the outset that it has found that Kenan Bilgin was detained in the offices of the anti-terrorist branch of the Ankara Security Directorate following the operations carried out on or about 12 September 1994 (see paragraph 131 above). More than six and a half years have passed and no information on his fate has been forthcoming.

138. The Court has previously held that where an individual is taken into custody in good health but is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention (see the following judgments: *Tomasi v. France*, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, pp. 25-26, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). In the same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1175-77, §§ 79-83). Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody (see *Çakıcı*, cited above, § 85, and *Ertak v. Turkey*, no. 20764/92, § 131, ECHR 2000-V).

139. In this respect the period of time which has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead. In this respect the Court considers that this situation gives rise to issues which go beyond a mere irregular detention in violation of Article 5 of the Convention. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention (see *Çakıcı*, cited above, § 86, and *Timurtaş v. Turkey*, no. 23531/94, §§ 82-83, ECHR 2000-VI).

140. As regards the special circumstances of the case, the Court points out that very strong inferences may be drawn from the depositions of Cavit Nacitarhan, Bülent Kat, Talat Abay, Sahir Çoban and Müjdat Yılmaz, with

regard to the conditions in which Kenan Bilgin was held, and of Selahattin Kemaloğlu, the public prosecutor in charge of the investigation into the applicant's allegations, who acknowledged that he had taken evidence from eleven people who affirmed that Kenan Bilgin was present at the Security Directorate in very poor shape. Mr Kemaloğlu said he was convinced that they were telling the truth. The Court also notes that in his oral testimony the prosecutor emphasised that, as the Security Directorate had not provided a list of the police officers on duty at the material time, he had been unable to question the police officers concerned or to arrange a confrontation with the eyewitnesses (see paragraph 98 above). The Court notes in that connection that it has previously held that defects undermining the effectiveness of criminal-law protection in south-east Turkey during the period relevant also to this case permitted or fostered a lack of accountability of members of the security forces for their actions (see *Kılıç v. Turkey*, no. 22492/93, § 75, ECHR 2000-III; *Mahmut Kaya v. Turkey*, no. 22535/93, § 98, ECHR 2000-III; and *Timurtaş*, cited above, § 85).

141. In view of the foregoing findings (see paragraphs 125-31 above) and for the reasons set out above, in particular the timing and circumstances of the disappearance, the Court holds that Kenan Bilgin must be presumed dead following an unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for his death is engaged. Noting that the authorities have not provided any explanation as to what occurred after the applicant's brother's arrest and do not put forward any ground to justify the use of lethal force by their agents, it follows that liability for his death is attributable to the respondent State (see *Timurtaş*, cited above, § 86). There has therefore been a violation of Article 2 of the Convention.

2. *Alleged inadequacy of the investigation*

142. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] 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* 1998-I, p. 329, § 105).

143. In the instant case, the applicant sent requests and put questions to the public prosecutor at Ankara National Security Court concerning the disappearance of his brother, Kenan Bilgin, in the offices of the anti-terrorist branch of the Ankara Security Directorate. Investigations were conducted by the Ankara public prosecutor, Selahattin Kemaloğlu, who

interviewed the eyewitnesses and instructed the Ankara Security Directorate to open an inquiry into the applicant's allegations. However, the public prosecutor's investigation was blocked by police denials that he had been detained and their firmly held opinion that the allegations of the purported eyewitnesses were aimed only at "misleading public opinion and harming the police" in "operations ... against illegal organisations" (see, respectively, paragraphs 25 and 23 above).

144. In addition, the Court is particularly struck by the fact that, although he did not accept the information provided by the police, the public prosecutor Selahattin Kemaloğlu was unable to obtain, in his capacity as an independent civil servant in charge of the investigation, the list of the police officers on duty at the time of the alleged events or to interview them or arrange a confrontation with the purported eyewitnesses. It is also concerned to note the public prosecutor's comment that, in view of the fact that the police enjoyed a sort of immunity at the time, he was not able to visit the premises where prisoners were detained at the Ankara Security Directorate (see paragraphs 97-98 above).

145. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into the applicant's allegations. It finds that the authorities concerned disregarded their essential responsibilities in that respect. There has accordingly been a violation of Article 2 of the Convention on that account also.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

146. The applicant submitted that his brother's disappearance gave rise to multiple violations of Article 5 of the Convention, which, in so far as relevant, provides:

"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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

147. In the applicant’s submission, the very fact that his brother’s detention was not acknowledged meant that he had been arbitrarily deprived of his liberty in breach of Article 5 § 1. Since the authorities had concealed information regarding his fate, he was beyond the scrutiny of the law and had therefore been deprived of the protection afforded by the guarantees set out in Article 5 § 3.

148. The Government affirmed that it had been clearly established by the investigation carried out by the domestic authorities that the applicant’s brother had at no stage been in custody and was not wanted by the police.

149. The Court refers to its reasoning in *Kurt* and in *Çakıcı*, in which it stressed the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It reiterated in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5: protecting individuals from arbitrary detention. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty be amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5. Bearing in mind the responsibility of the authorities to account for individuals under their control, Article 5 requires them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since (see *Kurt*, cited above, pp. 1184-85, § 122-25, and *Çakıcı*, cited above, § 104).

150. The Court notes that its reasoning and findings in relation to Article 2 above leave no doubt that Kenan Bilgin’s detention was in breach of Article 5. Thus, it will be recalled that he was taken into custody in the

offices of the anti-terrorist branch of the Ankara Security Directorate in connection with the operations carried out on or about 12 September 1994. He remained there for a month until 3 October 1994 (see paragraph 52 above). The detention was not recorded on the custody records, nor was there any other official record of his whereabouts or fate. This must be seen as a very serious failing since it enables those responsible for the act of deprivation of liberty to conceal their participation in a crime, to hide their tracks and to escape accountability for the fate of the detainee (see *Kurt*, cited above, pp. 1185-86, § 125). The recording of accurate holding data concerning the date, time and place of detention, as well as the grounds for the detention and the name of the persons effecting it, is necessary for the detention of an individual to be compatible with the requirements of lawfulness for the purposes of Article 5 § 1 (see *Çakıcı*, cited above, § 105).

151. In the light of the above findings (see paragraphs 124-31) the Court notes that the authorities have not provided any plausible explanation regarding the whereabouts of the applicant's brother and what had become of him and that no proper investigation has been carried out, despite the fact that some ten or so people have consistently maintained that Kenan Bilgin was detained at the Security Directorate and that they had seen him in very poor shape.

152. Accordingly, the Court concludes that Kenan Bilgin was held in unacknowledged detention without any of the safeguards contained in Article 5 and that there has been a violation of the right to liberty and security of person guaranteed under that provision.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

153. The applicant asserted that he had been denied access to an effective domestic remedy and alleged a breach of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] 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.”

154. The applicant submitted that the investigation that had eventually been conducted into his allegations had been superficial and inapt to uncover the truth.

155. The Government maintained that all necessary enquiries had been made but that the evidence obtained did not confirm the applicant's allegations.

156. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Article 13 thus requires the provision

of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Çakıcı*, cited above, § 112, and the other authorities cited there).

Further, the Court has previously held that where the relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, or where a right with as fundamental an importance as the right to life is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure (see *Timurtaş*, cited above, § 111, and the other authorities cited there).

157. Turning to the facts of the case, the Court considers for the reasons indicated above (see paragraphs 150-52) that there can be no doubt that the applicant had an arguable complaint that his brother had been taken into custody. He had given the authorities precise information about the place where his brother Kenan Bilgin was held and the duration of the alleged detention. He had also given the names of witnesses who had seen his brother in custody. In view of the fact, moreover, that the Court has found that the domestic authorities failed in their obligation to protect the life of the applicant’s brother (see paragraphs 140-41 above), the applicant was entitled to an effective remedy within the meaning outlined in the preceding paragraph.

158. Accordingly, the authorities were under an obligation to conduct an effective investigation into the disappearance of the applicant’s brother. Having regard to paragraphs 142 to 145 above, the Court finds that the respondent State has failed to comply with that obligation.

There has therefore been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

160. The applicant claimed, for the benefit of Kenan Bilgin's family, 2,000,000 French francs (FRF) for loss of earnings and FRF 1,800,000 for non-pecuniary damage. He said that his mother, a widow, had been a dependant of Kenan Bilgin, who had provided for the family's material needs.

161. As their principal submission, the Government maintained that there was no call for any award of compensation in the present case. In the alternative, they invited the Court to dismiss the applicant's claims for compensation, arguing that they were exorbitant, exaggerated and unjustified.

162. As regards pecuniary damage, the case file contains no details of the support which Kenan Bilgin provided for his family, of the family situation or any other information that might be relevant. That being so, the Court cannot allow the compensation claim submitted under this head (Rule 60 § 2 of the Rules of Court).

163. As regards the claim made by the applicant for non-pecuniary damage for his deceased brother, the Court notes that awards have previously been made to applicants who were surviving parents or siblings (see the following judgments, all cited above: *Kurt*, p. 1195, §§ 174-75; *Çakıcı*, § 130; and *Timurtaş*, § 127). The Court observes that it has found violations of Articles 2, 5 and 13 of the Convention by reason of the unacknowledged detention of Kenan Bilgin, and having regard to the circumstances of the case it decides to make an award of FRF 200,000 for non-pecuniary damage, which the applicant will hold for his brother's heirs.

164. The Court accepts that the applicant, who, like his brother, lived in Ankara at the material time, has himself suffered non-pecuniary damage which cannot be compensated for solely by the findings of a violation. Ruling on an equitable basis, the Court awards the applicant compensation in the sum of FRF 25,000.

B. Costs and expenses

165. The applicant claimed a total of 9,500 United States dollars for fees and costs incurred in bringing the application. That sum included fees and costs incurred for attending the hearings at Ankara and Strasbourg when the evidence was taken before the Commission delegates.

166. The Government considered that those costs should be borne by the applicant as there had been no violation of the Convention in the instant case. If the Court were to disagree with that submission, there should be no award in any event, as no detailed account of costs and expenses had been lodged.

167. The applicant has not produced evidence in support of his claims under this head. Thus, ruling on an equitable basis, the Court awards the applicant FRF 45,000, together with any value-added tax that may be chargeable.

C. Default interest

168. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4.26% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention on account of the death of the applicant's brother and the lack of any adequate and effective investigation into the circumstances of his disappearance;
2. *Holds* that there has been a violation of Article 5 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of payment:
 - (i) FRF 200,000 (two hundred thousand French francs) in respect of non-pecuniary damage, to be held by the applicant for his brother's heirs;
 - (ii) FRF 25,000 (twenty-five thousand French francs) for non-pecuniary damage;
 - (iii) FRF 45,000 (forty-five thousand French francs) in respect of costs and expenses, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 4.26% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in French, and notified in writing on 17 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President