CASE OF AYDIN v. TURKEY

(57/1996/676/866)

JUDGMENT

STRASBOURG

25 September 1997

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
B - 1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher
(place de Paris), B.P. 1142, L - 1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat
A. Jongbloed & Zoon (Noordeinde 39, NL - 2514 GC 's-Gravenhage)

SUMMARY

Judgment delivered by a Grand Chamber

Turkey – alleged rape and ill-treatment of a female detainee and failure of authorities to conduct an effective investigation into her complaint that she was tortured in this way

I. GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

Government failed to raise this objection at the admissibility stage of the proceedings before the Commission – estoppel.

Conclusion: objection dismissed (eighteen votes to three).

B. Abuse of process

Government also failed to raise this objection at the admissibility stage – estoppel.

Conclusion: objection dismissed (unanimously).

II. article 3 of the convention

A. Court's assessment of the facts

Reiteration of Court's case-law on the role assigned to Commission in regard to the establishment of facts – Court accepts facts as established by the Commission having regard to its own careful examination of the evidence on which Commission based its findings – Commission justified in concluding that evidence proved beyond reasonable doubt that applicant detained by security forces and raped and ill-treated while in detention.

B. Merits

Evidence adduced proved beyond reasonable doubt that applicant raped and ill-treated in custody – rape of a detainee by an official of the State an especially grave and abhorrent form of ill-treatment – applicant 17 years old at the time – also subjected to other forms of physical and mental suffering – terrifying and humiliating experiences – accumulation of acts ofviolence, especially act of rape, amounted to torture – Court would have reached this conclusion on either ground taken separately.

Conclusion: violation (fourteen votes to seven).

III. Article 6 § 1 of the Convention

Applicant's complaint that the failure of the authorities to conduct an effective investigation into her alleged suffering while in detention resulted in her being denied access to a court to seek compensation – essence of complaint concerns inadequacy of official investigation – Court considers it appropriate therefore to examine complaint at issue under Article 13.

Conclusion: not necessary to consider complaint (twenty votes to one).

IV. Article 13 of the convention

Reaffirmation of Court's case-law that where an individual has an arguable claim that he has been tortured by agents of the State, notion of an effective remedy entails, in addition to payment of compensation where appropriate, the conduct of a thorough and effective investigation capable of leading to identification and punishment of culprits – in instant case authorities only carried out an incomplete inquiry – no meaningful measures taken to establish veracity of allegations – corroborating evidence not sought – medical reports perfunctory and not focused on whether applicant had in fact been raped – a thorough and effective investigation into an allegation of rape in custody implies also that victim be examined by competent, independent medical professionals – requirement not satisfied in instant case.

Conclusion: violation (sixteen votes to five).

V. article 25 § 1 of the convention

Alleged intimidation and harassment of applicant and her family in connection with her proceedings before the Convention institutions – reaffirmation of importance of ensuring that applicants and potential applicants are able to exercise their right of individual petition without being subjected to any form of pressure from authorities to withdraw or modify their complaints – however in case at issue insufficient factual basis to conclude that applicant or members of her family had been intimidated or harassed.

Conclusion: no violation (unanimously).

VI. Articles 28 § 1 (a) AND 53 OF THE CONVENTION

Alleged failure of authorities to respect their Convention obligations by persisting in acts of intimidation and harassment against the applicant and members of her family.

Conclusion: not necessary to examine this complaint in view of conclusion under Article 25 (unanimously).

VII.article 50 of the convention

Non-pecuniary damage

Compensation awarded having regard to seriousness of violation under Article 3.

Conclusion: respondent State to pay applicant specified sum (eighteen votes to three).

Costs and expenses

Claim awarded in part.

Conclusion: respondent State to pay applicant specified sum (sixteen votes to five).

court's case-law referred to

18. 1. 1978, Ireland v. the United Kingdom; 9. 12. 1994, The Holy Monasteries v. Greece; 23. 3. 1995, Loizidou v. Turkey (*preliminary objections*); 16. 9. 1996, Akdivar and Others v. Turkey; 18. 12. 1996, Aksoy v. Turkey

In the case of Aydın v. Turkey,

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A, as a Grand Chamber composed of the following judges:

Mr R. Ryssdal, *President*,
Mr R. Bernhardt,
Mr Thór Vilhjálmsson,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr J. De Meyer,
Mr N. Valticos,
Mrs E. Palm,
Mr R. Pekkanen,
Mr A.N. Loizou,
Sir John Freeland,
Mr A.B. Baka,
Mr M.A. Lopes Rocha,
Mr L. Wildhaber,
Mr J. Makarczyk,
Mr D. Gotchev,
Mr K. Jungwiert,
Mr P. Kūris,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,

Having deliberated in private on 24 April and 26 August 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 April 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 23178/94) against the Republic of Turkey lodged with the Commission under Article 25 by Mrs Şükran Aydın, a Turkish national, on 21 December 1993.

The Commission's request referred to Articles 44 and 48 (a) of the Convention and to the declaration of 22 January 1990 whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain the Court's decision on the question whether or not the applicant was the victim of a violation of the rights guaranteed by Articles 3, 6 and 13 of the Convention and whether or not Turkey failed to comply with its obligations under Article 25 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyers who would represent her (Rule 30).

On 23 September 1996 the President of the Chamber granted leave, pursuant to Rule 30 § 1, to Ms Françoise Hampson, a Reader in Law at the University of Essex, to act as one of the applicant's representatives.

3. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 27 April 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr J. De Meyer, Mrs E. Palm, Mr A.N. Loizou, Mr D. Gotchev and Mr K. Jungwiert (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Turkish Government ("the Government"), the applicant's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 12 November 1996 and the Government's memorial on 19 November 1996.

5. On 20 June 1996 the President of the Chamber refused the applicant's request under Rule 27 for interpretation in an unofficial language at the hearing, having regard to the fact that two of the applicant's representatives used one of the official languages of the Court.

6. On 2 September 1996, the President of the Chamber granted leave, pursuant to Rule 37 § 2, to Amnesty International to submit written comments on specified aspects of the case. These were received on 4 November 1996 and communicated for observation to the applicant's lawyers, the Agent of the Government and the Delegate of the Commission. No observations were received.

7. By letters dated 1, 7 and 18 November 1996 the applicant's lawyers informed the Registrar that they were concerned about the pressure being brought to bear by the authorities on the applicant and her family to secure her attendance at a medical examination in Istanbul. They requested the Court to indicate to the Government under Rule 36 of Rules of Court A that the authorities instruct officials in and around Derik not to contact the applicant regarding anything connected with her application or the events which gave rise to it.

8. By letter dated 23 November 1996 the Agent of the Government informed the Registrar that his authorities denied that the applicant had been intimidated or subjected to pressure, and that she was not obliged to undergo a further medical examination. The Government's observations were communicated to the applicant's lawyers in a letter dated 23 November 1996.

9. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 January 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

for the Government

Mr A. Gündüz, Professor of International Law,
University of Marmara, *Agent*,
Mr A.S. Akay, Ministry of Foreign Affairs, *Counsel*,
Mr M. Özmen, Ministry of Foreign Affairs,
Ms M. Gülşen, Ministry of Foreign Affairs,
Ms A. Emüler, Ministry of Foreign Affairs,
Mr A. Kaya, Ministry of Justice,
Mr A. Kurudal, Ministry of the Interior,
Mr O. Sever, Ministry of the Interior, *Advisers*;

(b) *for the Commission*
Mrs J. Liddy, *Delegate*;

(c) *for the applicant*
Ms F. Hampson, University of Essex,
Mr K. Boyle, Barrister-at-Law, *Counsel*,
Mr O. Baydemir, *Adviser*.

The Court heard addresses by Mrs Liddy, Ms Hampson, Mr Gündüz and Mr Özmen.

10. Following deliberations on 19 February 1997 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 51 § 1).

11. The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr R. Bernhardt, the Vice-President, together with the other members and the three substitute judges of the original Chamber, the latter being Mr J. Makarczyk, Mr M.A. Lopes Rocha and Mr L. Wildhaber (Rule 51 § 2 (a) and (b)). On 25 February 1997, the President, in the presence of the Registrar, drew by lot the names of the eight additional judges needed to complete the Grand Chamber, namely Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr N. Valticos, Mr R. Pekkanen, Sir John Freeland, Mr A.B. Baka and Mr P. Kūris (Rule 51 § 2 (c)).

12. Having taken note of the opinions of the Agent of the Government, the applicant's representatives and the Gelegate of the Commission, the Grand Chamber decided on 24 April 1997 that it was not necessary to hold a further hearing following the relinquishment of jurisdiction by the Chamber (Rule 38, taken together with Rule 51 § 6).

AS TO THE FACTS

1. The applicant

13. The applicant, Mrs Şükran Aydın, is a Turkish citizen of Kurdish origin. She was born in 1976. At the time of the events in issue she was 17 years old and living with her parents in the village of Tasit, which is

about ten kilometres from the town of Derik where the district gendarmerie headquarters are located. The applicant had never travelled outside her village before the events which led to her application to the Commission.

2. The situation in the south-east of Turkey

14. Since approximately 1985, serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has so far, according to the Government, claimed the lives of 4,036 civilians and 3,884 members of the security forces.

At the time of the Court's consideration of the case, ten of the eleven provinces of south-eastern Turkey had since 1987 been subjected to emergency rule.

I. Particular circumstances of the case

15. The facts in the case are disputed.

A. The detention of the applicant

16. According to the applicant, a group of people comprising village guards and a gendarme arrived in her village on 29 June 1993. Although the applicant put the time of their arrival at 5 p.m., the Commission, relying on the recollection of the applicant's father and sister-in-law, found that it was more likely that this occurred early in the morning of 29 June at around 6 a.m.

17. Four members of the group came to her parents' home and questioned her family about recent visits to the house by PKK members (see paragraph 14 above). Her family were threatened and subjected to insults. They were then taken to a village square where they were joined by other villagers who had also been forcibly taken from their homes.

18. The applicant, her father, Seydo Aydın, and her sister-in-law, Ferahdiba Aydın, were singled out from the rest of the villagers, blindfolded and driven away to Derik gendarmerie headquarters.

19. The Government have disputed the applicant's claim that she and two members of her family were detained in the circumstances described above. In his oral evidence to the Commission delegates who heard evidence from witnesses in Ankara from 12 to 14 July 1995 (see paragraph 40 below), Mr Musa Çitil, the commander of Derik gendarmerie headquarters in 1993, stated that no operations had been conducted in or immediately around the village on the day in question and no incidents had been recorded. Furthermore,

in support of their challenge to the applicant's account of the events the Government drew attention to the inconsistencies in the evidence concerning the time of the incident and the number of village guards involved as well as to the fact that the applicant and her family failed to recognise any of the village guards although they all would have come from neighbouring villages.

B. Treatment of the applicant during detention

20. The applicant alleges that, on arrival at the gendarmerie headquarters, she was separated from her father and her sister-in-law. At some stage she was taken upstairs to a room which she later referred to as the "torture room". There she was stripped of her clothes, put into a car tyre and spun round and round. She was beaten and sprayed with cold water from high-pressure jets. At a later stage she was taken clothed but blindfolded to an interrogation room. With the door of the room locked, an individual in military clothing forcibly removed her clothes, laid her on her back and raped her. By the time he had finished she was in severe pain and covered in blood. She was ordered to get dressed and subsequently taken to another room. According to the applicant, she was later brought back to the room where she had been raped. She was beaten for about an hour by several persons who warned her not to report on what they had done to her.

21. The Government have challenged the credibility of the applicant's account of the events. They pointed out that there was no indication in the custody register kept at Derik gendarmerie headquarters that anyone had been detained on 29 June 1993. Had the applicant and the members of her family been taken into custody on that date the responsible duty officer would have followed the proper procedure and entered the details in the custody register. The station commander and the custody officer on duty at the time had been heard by the Commission delegates as witnesses and both had confirmed that no one had been taken into custody at that time. Furthermore, interrogation of terrorist suspects never took place at the Derik headquarters but at the provincial headquarters in Mardin**.** The Government also found it significant that the applicant failed to recognise photographs of the premises when shown to her. Furthermore, the Government highlighted several inconsistencies in the way in which the applicant reported on the details of the alleged rape and assault to the public prosecutor and to the Diyarbakır Human Rights Association (see paragraph 23 below).

C. Release from detention

22. According to the applicant, she, her father and her sister-in-law were

taken away from the gendarmerie headquarters on or about 2 July 1993. They were driven by members of the security forces to the mountains where they were questioned about the location of PKK shelters. They were subsequently released separately. The applicant made her own way back to her village.

The Government argued that the applicant's account of her release also undermined the credibility of her allegations. They contended that it would have been extremely naïve on the part of the security forces to take the applicant and the members of her family to a location within ten minutes of Tasit after three days of detention to ask about the whereabouts of terrorists.

D. The investigation of the applicant's complaint

23. On 8 July 1993 the applicant together with her father and her sister-in-law went to the office of the public prosecutor, Mr Bekir Özenir, in Derik to lodge complaints about the treatment which they all alleged they had suffered while in detention. The public prosecutor took statements from each of them. The applicant reported that she had been tortured by being beaten and raped. Her father and sister-in-law both alleged that they had been tortured. According to the applicant, she confirmed her account of what happened to her in a statement given to the Diyarbakır Human Rights Association on 15 July 1993, which was submitted, undated, to the Commission along with her application.

1. Medical examination of the applicant

24. All three were sent the same day to Dr Deniz Akkuş at Derik State Hospital. The public prosecutor had requested Dr Akkuş to establish the blows and marks of physical violence, if any, in respect of Seydo and Ferahdiba. In respect of the applicant, he requested that she be examined to establish whether she was a virgin and the presence of any marks of physical violence or injury.

In his report on the applicant dated 8 July 1996, Dr Akkuş, who had not previously dealt with any rape cases, stated that the applicant's hymen was torn and that there was widespread bruising around the insides of her thighs. He could not date when the hymen had been torn since he was not qualified in this field; nor could he express any view on the reason for the bruising. In separate reports he noted that there were wounds on the bodies of the applicant's father and sister-in-law.

25. On 9 July 1993 the public prosecutor sent the applicant to be examined at Mardin State Hospital with a request to establish whether she had lost her virginity and, if so, since when. She was examined by Dr Ziya Çetin, a gynaecologist. According to the doctor's report, dated the same day, defloration had occurred more than a week prior to her examination. No swab was taken and neither the applicant's account of what had happened to her nor whether

the results of the examination were consistent with that account were recorded in his report. Dr Çetin did not comment on the bruising on her inner thighs on account of the fact that he was a specialist in obstetrics and gynaecology. He did not frequently deal with rape victims.

26. On 12 August 1993 the public prosecutor took a further statement from the applicant who by that stage was married. On the same day he referred the applicant to Diyarbakır Maternity Hospital requesting that a medical examination be carried out to establish whether the applicant had lost her virginity and, if so, since when. The medical report dated 13 August 1993 confirmed Dr Çetin's earlier findings (see paragraph 25 above) that the hymen had been torn but that after seven to ten days defloration could not be accurately dated.

2. Other investigatory measures

27. On 13 July 1993 the public prosecutor wrote to Derik gendarmerie headquarters enquiring as to whether the applicant, her father and her sister-in-law had been held in custody there and, if so, as to the dates and duration of the detention and the names of those who carried out the interrogations. By letter dated 14 July 1993, the commander of the gendarmerie headquarters, Mr Musa Çitil, replied that they had not been taken into custody. On 21 July 1993, he supplied the public prosecutor with a copy of the entries for 1993. There were only six entries for that year.

28. On 22 July 1993 the public prosecutor wrote to Derik gendarmerie headquarters requesting that the custody register for the months June-July 1993 be sent to him for inspection. The register contained no entries for the months in question.

29. The public prosecutor sent the applicant's file to the Forensic Medicine Institute in Ankara. By letter dated 22 December 1993, the chief coroner requested that the applicant attend for an examination.

30. The public prosecutor wrote to the chief of security in Derik on 18 January and 17 February 1994 requesting that the applicant be brought to the office of the Attorney-General. In a follow-up letter of 18 April 1994 the public prosecutor referred to the fact that he had received no reply to his earlier letters. In a further letter dated 13 May 1994, the public prosecutor informed the chief of security at Derik that the applicant, her father and her sister-in-law should attend at his office.

31. By report dated 13 May 1994 in reply to a request for information of 9 May 1994, the public prosecutor informed the office of the Attorney-General in Mardin that there was no evidence to support the applicant's claims but that the investigation continued.

32. On 18 May 1994 the public prosecutor in Derik took two further statements from the applicant's father who confirmed his earlier account of the events of 29 June 1993. Her father also declared that the applicant and her husband had left the district in March 1994 to find work elsewhere and that he did not know of their whereabouts.

33. On 19 May 1994 the public prosecutor, Mr Bekir Özenir, interviewed Mr Harun Aca, a former PKK activist. Mr Aca alleged that the PKK members used the applicant's home as a shelter and that around April and May 1993 she was having a sexual relationship with two PKK members.

34. On 25 May 1995, after the applicant's complaint had been declared admissible by the Commission, a public prosecutor, Mr Cahit Canepe, took a statement from Mr Ali Kocaman who commanded Derik gendarmerie headquarters from 1992 to 1994. Mr Kocaman, who admitted to memory loss as a result of a road accident, stated that he had no recollection of any incident of rape or torture at the time in question and denied any involvement.

E. Alleged interference with the applicant's right of individual petition

35. The applicant also alleged that she and her family have been subjected to intimidation and harassment following the communication by the Commission of her application to the Government and particularly following the Commission's decision to invite her to give oral evidence. Her father was repeatedly asked her address by the public prosecutor and, on occasion, by the police. The applicant and her husband were also repeatedly called to the police station for no apparent reason, their house had been searched (once before 19 October 1995 and again on 1 and 8 November 1995) and they were questioned about her application to the Commission. The applicant was also made to sign a statement of the contents of which she is ignorant. Further, on or about 14 and 18 December 1995, the applicant's husband was taken into custody. On the first occasion, he was slapped, kicked and severely beaten with truncheons by three police officers, one of his teeth being broken in the process. On the second occasion, he was again severely beaten by the same three officers.

36. Furthermore, the applicant alleged that on 16 January 1996, the applicant, her husband, father and father-in-law were called to Derik police station from where they were sent to the public prosecutor. He showed them the applicant's husband's statement of 19 October 1995 and asked questions about it. The applicant's husband was asked whether the police were intimidating them, to which he replied "Yes". While they were not ill-treated on this occasion, the applicant's husband strongly considered that they all felt intimidated by the very fact of being called by the police and that the constant calls by the police to their homes were making their situation very difficult. The applicant also referred to incidents of harassment, including the stoning of her

father-in-law's house which neighbours attributed to the security forces.

37. The Government were requested by the Commission to respond to the above allegations. By letter and comments dated 12 January 1996, the Government referred to the provisions of Turkish criminal procedure whereby it is the duty and unavoidable obligation of public prosecutors to investigate the facts of crimes, which involves finding and questioning witnesses. In this context, police officers function as assistants to the public prosecutors. The public prosecutor who conducted the investigation instigated by the applicant and her father, and the police officers who acted under his authority, contacted the applicant and her father with the sole purpose of investigating the facts of the allegations and assembling the evidence. They submitted that the statements taken by the public prosecutor revealed no element of pressure being exerted and it was in the interests of the applicant for further evidence to be gathered. There was, they contended, no substantiation of the allegations of intimidation and harassment, the statements submitted by the applicant's representatives having been taken by extra-judicial means and their authenticity disputed. They submitted a letter from the Ministry of the Interior (Gendarmerie Department) stating that no search took place at the applicant's house and that the purpose of the police officers' visit to Seydo Aydın was to communicate to the applicant the summons to attend the Commission's hearing. Since she was not there, he was asked for her address and there was no persecution involved. In an earlier communication of 16 June 1995 in response to the first allegations of harassment of the applicant's father, the Government had responded that they rejected these allegations categorically and that they formed part of a campaign to influence the course of the proceedings and the holding of hearings to take evidence.

38. At the taking of evidence before delegates of the Commission in Strasbourg on 18 October 1995, the Agent of the Government responded to allegations made orally by the applicant's representative concerning the repeated questioning of the applicant's father. He stated that it was the duty of the Turkish Government to facilitate the proceedings of the Commission and that they had to notify the applicant. To avoid any problems of non-attendance or the waste of expenditure of coming to Strasbourg if she did not intend to comply with the summons, it was necessary to obtain her address from her father and that was why he was continually asked for the address. Requesting that information from her father could not, in his view, be regarded as harassment.

F. The Commission's evaluation of the evidence and findings of fact

39. In the absence of any findings of fact reached by the domestic authorities on the applicant's complaint, the Commission assessed the evidence and established the facts on the basis of:

1. written and oral submissions on the admissibility and merits of the complaint;

2. oral evidence of eight witnesses taken by three delegates of the Commission in Ankara from 12 to 14 July 1995;

3. oral evidence of the applicant taken by those delegates in Strasbourg on 19 October 1996;

4. medical reports provided by the three doctors who examined separately the applicant at the public prosecutor's request on 8 July, 9 July and 13 August 1993; a medical report on the findings in those reports which the applicant's representatives had had prepared by an English doctor (dated 7 July 1995); a report dated 13 October 1995 prepared by professors at the Faculty of Medicine of the University of Hacettepe, Turkey, disputing the findings reached by the English doctor;

5. documents and statements from the applicant and witnesses, plans as well as a video film of Derik gendarmerie headquarters and the original custody register for 1993.

40. The Commission's findings can be summarised as follows:

1. While it was true that there were inconsistencies in the applicant's account of the time of the arrival of the village guards in Tasit and that she had failed to recognise photographs of Derik gendarmerie headquarters, these elements did not impinge on her credibility. Her evidence as to the time of arrival of the guards was basically consistent with her father's testimony and it was likely that she had relied on her father's identification of the station.

2. There were serious doubts as to the accuracy of the custody register in respect of the period in question. The Commission delegates had been able to examine the custody register for 1993 and noted that the total of seven entries for that entire year represented a drop of almost 90% on previous years' entries. The explanations given by the commander of Derik gendarmerie headquarters as well as by the duty custody officer to account for this drop were less than satisfactory. The Commission concluded:

"... the evidence of these officers as regards the facilities for taking persons into custody and the practice regarding taking persons into custody during 1993 has been less than frank. It finds itself left with serious doubts as to whether the gendarmerie custody register is an accurate record of persons taken into custody during 1993. In these circumstances, the Commission considers that the lack of any official confirmation of the applicant's detention is insufficient evidence to discredit the account of the applicant and her father, which it finds to be credible and on the whole consistent." (paragraph 172 of the Commission's report)

3. While the commander of Derik gendarmerie headquarters and the duty custody officer had failed to mention the existence of a basement or cellar when describing the layout of the building, it clearly emerged from a video of the building and a plan of the premises that there was in fact a basement used as a security area comprising two custody rooms and an office.

4. Having regard to her evidence and her demeanour before the delegates, and having given due consideration in particular to the medical reports drawn up by Dr Akkuş, Dr Çetin and the doctor from Diyarbakır Maternity Hospital, the Commission found it established that during her custody at Derik gendarmerie headquarters

"... the applicant was blindfolded, beaten, stripped, placed inside a tyre and sprayed with high-pressure water, and raped. It would appear probable that the applicant was subjected to such treatment on the basis of suspicion of collaboration by herself or members of her family with members of the PKK, the purpose being to gain information and/or to deter her family and other villagers from becoming implicated in terrorist activities". (paragraph 180 of the Commission's report)

5. The Commission examined the applicant's complaints of interference with her right of individual petition, which allegedly occurred before November 1996 (see paragraphs 35–38 above). As regards those complaints, the Commission was satisfied that the applicant and her family were genuinely complaining of harassment and intimidation (see paragraph 215 of the Commission's report). Having regard to the unsatisfactory response of the Government to the applicant's complaints, the Commission found that she and her family

"... have been subjected to significant pressure from the authorities in circumstances which threaten to impinge on their continued participation in the proceedings before the Commission and that this has rendered the exercise of the applicant's right of individual petition more difficult". (paragraph 217 of the Commission's report)

II. Relevant domestic law and practice

A. The Turkish Criminal Code

41. The Turkish Criminal Code makes it a criminal offence

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

– to issue threats (Article 191),

– to subject anyone to torture or ill-treatment (Articles 243 and 245 respectively),

– to commit rape (Article 416 concerning persons over 15).

B. The Turkish Code of Criminal Procedure

42. Under Article 153 of the Turkish Code of Criminal Procedure, the public prosecutor must investigate the facts on being informed of the commission of a crime. He must conduct the necessary inquiries to identify the perpetrators, hear witnesses, take statements from suspects, issue search warrants, etc.

Article 154 of the Code authorises the public prosecutor to conduct a preliminary investigation into an offence either directly or with the support of the police.

According to Article 163 the public prosecutor may institute criminal proceedings if he decides that the evidence justifies the indictment of a suspect. If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, he may close the investigation. However, the public prosecutor may decide not to prosecute if and only if the evidence is clearly insufficient. Under Article 165 a complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

43. Decree no. 285 modifies the application of Law no. 3713, the Anti-Terror Law (1981), in those areas which are subject to the state of emergency, with the effect that the decision to prosecute members of the administration or of the security forces is removed from the public prosecutor and conferred on local administrative councils.

These councils are composed of civil servants. Decisions of the local council may be appealed to the Supreme Administrative Court; a refusal to prosecute is subject to an automatic appeal. If the offender is a member of the armed forces, he would fall under the jurisdiction of the military courts and would be tried in accordance with the provisions of Article 152 of the Military Criminal Code.

1. Administrative liability

44. Article 125 of the Turkish Constitution provides as follows:

> "All acts or decisions of the administration are subject to judicial review.
>
> …
>
> The administration shall be liable to indemnify any damage caused by its own acts and measures."

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

46. The principle of administrative liability is reflected in the additional section 1 of Law no. 2935 of 25 October 1983 on the state of emergency, which provides:

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

2. Civil liability

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

III. International material

A. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

48. Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984

requires that a State party

"shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to and have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of evidence given".

Article 12 of the Convention requires each State party to ensure

"that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

B. Public statements adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

49. In its public statement on Turkey adopted on 15 December 1992 (CPT/ inf (93) 1), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"), following three visits to Turkey, found:

"In light of all the information at its disposal, the CPT can only conclude that the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey ..." (paragraph 21)

It emphasised the words "persons in police custody", having heard fewer allegations and finding less medical evidence of torture and other forms of premeditated severe ill-treatment by members of the gendarmerie (paragraph 24). It considered that "the phenomenon of torture and other forms of ill-treatment of persons deprived of their liberty in Turkey concerns at the present time essentially the police (and to a lesser extent the gendarmerie). All the indications are that it is a deep-rooted problem" (paragraph 25).

50. In its second public statement issued on 6 December 1996 the CPT noted that some progress had been made in implementing the remedial measures which it had recommended but that "the translation of words into deeds is proving to be a highly protracted process" (paragraph 2).

The committee noted in its statement that in the course of visits to Turkey in 1996 its delegations had found clear evidence of the practice of torture and other forms of severe ill-treatment by the Turkish police (paragraph 2). It concluded that the information at its disposal

"... demonstrates that resort to torture and other forms of severe ill-treatment remains a common occurrence in police establishments in Turkey. To attempt to characterise this problem as one of isolated acts of the kind which can occur in any country – as some are wont to do – is to fly in the face of the facts". (paragraph 10)

C. Submissions of Amnesty International

51. In their written submissions to the Court (see paragraph 6 above) Amnesty International noted that the rape of a female detainee by an agent of the State for purposes such as the extraction of information or confessions or the humiliation, punishment or intimidation of the victim was considered to be an act of torture under current interpretations of international human rights standards. They referred in this respect to the Fernando and Raquel Mejia v. Peru decision of 1 March 1996 (Report no. 5/96, Case 10,970) of the Inter-American Commission on Human Rights taken under Article 5 of the American Convention on Human Rights, to the reports published by the United Nations Special Rapporteur on Torture and to the fact that the International Criminal Tribunal for Former Yugoslavia had approved bills of indictment against individuals for torture based on allegations that they had raped female detainees.

Amnesty International also drew attention to current international legal standards on the investigation of allegations of rape made by detainees, in particular Articles 11 and 12 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984 (see paragraph 48 above).

PROCEEDINGS BEFORE THE COMMISSION

52. In her application to the Commission (no. 23178/94) introduced on 21 December 1993, the applicant complained that she was subjected to physical ill-treatment and rape amounting to torture under Article 3 of the Convention, and that she was denied an effective right of access to a court as guaranteed by Article 6. She also complained that there was no effective domestic remedy in regard to the violations of her rights, contrary to Article 13.

53. The Commission declared the application admissible on 28 November 1994. In its report of 7 March 1996 (Article 31), it expressed the opinion that there had been a violation of Article 3 of the Convention (twenty-six votes to one); that there had been a violation of Article 6 § 1 of the Convention (nineteen votes to eight); that no separate issue arose under Article 13 of the Convention (nineteen votes to eight); and that Turkey had failed to comply with its obligations under Article 25 § 1 of the Convention (twenty-five votes to two). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment.

FINAL SUBMISSIONS TO THE COURT

54. In both their memorial and oral submissions before the Court, the Government contended that the applicant's case should be dismissed for failure to exhaust domestic remedies and for abuse of the right of individual petition. In the alternative, they requested the Court to find that the applicant's allegations were unsubstantiated.

The applicant, for her part, requested the Court to rule that she had been the victim of violations of Articles 3, 6, 13 and 25 of the Convention and that the Government had failed to respect their obligations under Articles 28 § 1 (a) and 53 of the Convention. She also requested the Court to award her just satisfaction under Article 50 of the Convention.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

55. In their memorial the Government requested the Court to reject the applicant's complaints on account of her failure to have normal recourse to effective domestic remedies which were available to her under Turkish law. They criticised the Commission's decision to declare her application admissible although she had not even attempted to pursue a claim for compensation before the civil or administrative courts in respect of the harm which she allegedly suffered while in detention (see paragraphs 44–47 above).

56. In support of their assertion that the complaints should be declared inadmissible, the Government relied heavily on the fact that at the time the applicant lodged her application with the Commission a criminal investigation had been opened by the public prosecutor into her allegations. This investigation was in fact still being actively pursued. The decision of the Commission to declare the application admissible and its subsequent pronouncement on the merits completely disregarded the steps which were being taken under Turkish criminal procedural law (see paragraphs 42 and 43 above) to establish the veracity of the applicant's account of the events at the relevant time and were in contradiction to the principle of subsidiarity which underpinned the functioning of the Convention system.

57. The Delegate of the Commission reminded the Court that in accordance with its usual procedure the Commission had invited the Government to submit observations on the admissibility of the application. They failed to respond and they should now be estopped from challenging the admissibility of the complaints before the Court.

58. The Court agrees with the view of the Delegate. It notes from the Commission's decision on the admissibility of the application that the Government were in fact granted an extended time-limit by which to comment on the issue of admissibility. Notwithstanding this facility, they failed to submit any observations on this question. They are therefore estopped from raising objections to the admissibility of the application before the Court (see the Loizidou v. Turkey judgment of 23 March 1995 (*preliminary objections*), Series A no. 310, p. 19, § 44).

B. Abuse of process

59. Related to their first objection, the Government further asserted that the alleged complaints had been fabricated and the application to the Strasbourg institutions deliberately manipulated at the instigation of certain associations hostile to government policy in south-east Turkey in order to circumvent local remedies and the corresponding Convention requirement. The application was in reality brought for propaganda purposes to denigrate the image of Turkey by promoting the view that local remedies were ineffective.

60. The Court finds that, as for the first preliminary objection, the Government must be considered to be estopped from raising their second objection at this juncture since they failed to assert the above argument at the admissibility stage of the proceedings before the Commission.

61. The Government's preliminary objections must therefore be dismissed. The Court will now proceed to examine the merits of the applicant's

complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Establishment of the facts

62. The Commission found that the applicant's account of the alleged events between 29 June and 1 July 1993 had been borne out by the evidence which it had carefully evaluated (see paragraph 40 above). The applicant requested the Court to accept the facts as found by the Commission. The Government challenged the way in which the Commission assessed the evidence before it and strenuously disputed the conclusions which it reached.

B. Arguments of those appearing before the Court

1. The Commission

63. The Delegate of the Commission stressed before the Court that the Commission had reached its conclusions on the basis of a meticulous assessment of the evidence and in application of the evidentiary test enunciated by the Court in the case of Ireland v. the United Kingdom (judgment of 18 January 1978, Series A no. 25, pp. 64–65, §§ 160–61) for finding a violation of Article 3 of the Convention, namely whether the evidence proved beyond reasonable doubt that the applicant had been taken to Derik gendarmerie headquarters on the date in question and raped and ill-treated during the period of her detention.

The Delegate reminded the Court that the Commission had appointed three delegates to conduct hearings in Ankara in July 1995 and in Strasbourg in October of the same year (see paragraph 39 above). They heard the evidence of the key witnesses, including the testimony of the applicant and her father. They were able to cross-examine the public prosecutor about the conduct of his investigation, question the doctors who had examined the applicant, probe the veracity of the account given by the two gendarmes on duty at Derik gendarmerie headquarters at the time of the events and inspect the entries in the custody register kept at the headquarters. The Commission carefully cross-checked the statements given by the applicant to the public prosecutor, to the Diyarbakır Human Rights Association and to the delegates against the various statements made by her father as well as her sister-in-law. There were inconsistencies, but they were not such as to impinge on the credibility of the

applicant and of her father. There was strong, clear and concordant evidence which entitled the Commission to conclude that the applicant had in fact been detained over the relevant period and while in detention raped and ill-treated in the way described in the Commission's report (see paragraph 40 above).

2. The applicant

64. The applicant requested the Court to accept the facts as found by the Commission. She had been taken from her village along with her father and sister-in-law by the security forces on 29 June 1993 and held at Derik gendarmerie headquarters until 1 July 1993. While in custody she was tortured by being raped and severely ill-treated.

3. The Government

65. In their memorial the Government criticised the way in which the Commission had evaluated the evidence. They contended that the Commission's finding that the applicant had been tortured by being raped and ill-treated while in custody could not be sustained by the evidence which the delegates had collected.

66. Before the Court the Government sought to undermine the facts as established by the Commission by highlighting the inconsistencies and contradictions in the evidence given by the applicant and by her father to the delegates. The evidence was seriously deficient as regards, firstly, the date and time of the alleged taking into custody of the Aydın family and, secondly, the alleged rape and ill-treatment of the applicant while in detention. As regards the alleged detention, none of the villagers was able to confirm her account and surprisingly no one was able to recognise any of the local village guards who were supposed to have been present at the relevant time. The applicant's father had told the delegates at the hearing in Ankara that one of the villagers had also been detained along with his family. However he failed to name this person. The Commission had chosen to disregard the applicant's failure to recognise photographs of Derik gendarmerie headquarters although she testified that her blindfold was removed when she was taken outside. Furthermore, the Commission had impugned without justification the credibility of the gendarmes who were on duty at the time of the alleged detention and wrongly criticised the accuracy of the custody register.

67. As to the alleged rape and ill-treatment while in detention, the Government stressed that neither Dr Akkuş nor Dr Çetin had found any bruising or injury to the applicant's body which was consistent with rape or violent assault. The applicant maintained that she struggled during the alleged rape. However, there were no signs of bruising to her wrists or back or genitalia which would have suggested the use of violence to overcome her resistance. The bruising found on her inner thighs could be explained by factors other than the forcing apart of her legs to effect a sexual assault. In fact, the report drawn up by the Faculty of Medicine of the University of Hacettepe (see paragraph 39 above), which the Government had submitted to the Commission, indicated that the bruising could have been attributed to the fact that the applicant rode a donkey. While it was true that the medical examinations confirmed that her hymen had been torn, this could not justify a conclusion that defloration had resulted from the alleged rape. It was in fact medically impossible to estimate the date of defloration after a lapse of seven days from the date of the initial tear of the hymen. Had the applicant not waited as long as she did before going to the public prosecutor the medical evidence may have yielded further results. However, her delay in so doing led to the loss of vital evidence and was fatal to any medical corroboration of her account.

68. In addition, the applicant's claim that she was raped did not prevent her from marrying and conceiving a child shortly after the alleged event. In the view of the Government her decision to marry and her ability to be sexually active so soon after her claimed traumatic experience were scarcely consistent with the behaviour of a rape victim. It was equally surprising that, given the cultural context, her alleged loss of virginity did not create any obstacle to her marriage.

69. The Government accordingly requested the Court to reject the Commission's findings together with the applicant's allegations on account of the absence of convincing proof.

C. The Court's assessment of the evidence and the facts established by the Commission

70. The Court observes that under its constant case-law the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it, it is only in exceptional circumstances that it will exercise its powers in this area (see,

inter alia, the Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2272, § 38). Such exceptional circumstances may arise in particular if the Court, following a careful examination of the evidence on which the Commission has based its facts, finds that those facts have not been proved beyond reasonable doubt.

71. In the instant case, it must be recalled that the Commission reached its findings of fact after three delegates had heard the evidence of the key witnesses in the course of hearings held in Ankara and Strasbourg. At those hearings the delegates had the advantage of putting questions to the witnesses, observing their reaction and demeanour and assessing the veracity and the probative value of their statements and overall credibility. They were also in a position to assess whether the credibility of the applicant and her father as witnesses withstood the questions put to them by the Government representatives at the hearings.

72. The Commission reached its conclusions on the basis of the appropriate evidentiary requirement, namely proof beyond reasonable doubt. Admittedly there were inconsistencies in the testimony of the applicant and her father, as the Government have noted. However, it is to be observed that the Commission was also aware of such inconsistencies but did not consider them to be of such a fundamental nature as to undermine the credibility of the applicant's account (see paragraph 40 above). From its own careful examination of the evidence gathered by the Commission, it would appear to the Court that there is in fact a high degree of consistency between the accounts given by the applicant, her father and sister-in-law to the public prosecutor and by the applicant and her father to the delegates, which makes it highly unlikely that the applicant's allegations were fabricated.

73. The Court considers that it should accept the facts as established by the Commission, having been satisfied on the basis of the evidence which it has examined that the Commission could properly reach the conclusion that the applicant's allegations were proved beyond reasonable doubt, it being recalled that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (see the Ireland v. the United Kingdom judgment cited above, pp. 64–65, § 161). It would also note in this regard that the Government have been unable to adduce any evidence collected in the course of the criminal investigation into the applicant's allegations (see paragraph 56 above) which would have served to contradict this conclusion and that the medical evidence which they rely on cannot be taken to rebut the applicant's assertion that she was raped while in custody (see paragraph 67 above).

1. Arguments of those appearing before the Court

(a) The applicant

74. The applicant contended that the rape and ill-treatment to which she had been subjected gave rise to separate violations of Article 3 of the Convention, both of which should be characterised as torture. Article 3 provides:

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

75. She was 17 years old at the time of her detention. She was kept blindfolded and isolated from her father and sister-in-law throughout the period of detention. During that time she was debased by being raped and has suffered long-term psychological damage as a result of that particular act of torture.

Furthermore, she was stripped naked, questioned by strangers, beaten, slapped, threatened and abused. She was forced into a tyre, spun around and hosed with ice-cold water from high-pressure jets. Having regard to her sex, age and vulnerability she requested the Court to find that the deliberately inflicted and calculated physical suffering and sexual humiliation of which she was the victim was of such severity as to amount to an additional act of torture.

76. Finally, she contended that the failure of the authorities to carry out an effective investigation into her complaint of torture was in itself a violation of Article 3 of the Convention.

(b) The Government

77. The Government maintained that the allegations had not been proved (see paragraph 65 above).

(c) The Commission

78. The Commission concluded that the deliberate ill-treatment inflicted on her by being beaten, being placed in a tyre and hosed with pressurised water, combined with the humiliation of being stripped naked, fell clearly within the scope of the prohibition of Article 3. The Commission also found that rape committed by an official or person in authority on a detainee must be regarded as treatment or punishment of an especially severe kind. Such an offence struck at the heart of the victim's physical and moral integrity and had to be characterised as a particularly cruel form of ill-treatment involving acute physical and psychological suffering.

79. The Commission found that the applicant had been the victim of torture at the hands of officials in violation of Article 3.

2. The Court's assessment

80. The Court recalls that it has accepted the facts as established by the Commission, namely that the applicant was detained by the security forces and

while in custody was raped and subjected to various forms of ill-treatment (see paragraph 73 above).

81. As it has observed on many occasions, Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such it prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Article 3 admits of no exceptions to this fundamental value and no derogation from it is permissible under Article 15 even having regard to the imperatives of a public emergency threatening the life of the nation or to any suspicion, however well-founded, that a person may be involved in terrorist or other criminal activities (see, for example, the Aksoy judgment cited above, p. 2278, § 62).

82. In order to determine whether any particular form of ill-treatment should be qualified as torture, regard must be had to the distinction drawn in Article 3 between this notion and that of inhuman treatment or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment cited above, p. 66, § 167).

83. While being held in detention the applicant was raped by a person whose identity has still to be determined. Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.

84. The applicant was also subjected to a series of particularly terrifying and humiliating experiences while in custody at the hands of the security forces at Derik gendarmerie headquarters having regard to her sex and youth and the circumstances under which she was held. She was detained over a period of three days during which she must have been bewildered and disoriented by being kept blindfolded, and in a constant state of physical pain and mental anguish brought on by the beatings administered to her during questioning and by the apprehension of what would happen to her next. She was also paraded naked in humiliating circumstances thus adding to her overall sense of vulnerability and on one occasion she was pummelled with high-pressure water while being spun around in a tyre.

85. The applicant and her family must have been taken from their village and brought to Derik gendarmerie headquarters for a purpose, which can only be explained on account of the security situation in the region (see paragraph 14 above) and the need of the security forces to elicit information. The suffering inflicted on the applicant during the period of her detention must also be seen as calculated to serve the same or related purposes.

86. Against this background the Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention. Indeed the Court would have reached this conclusion on either of these grounds taken separately.

87. In conclusion, there has been a violation of Article 3 of the Convention.

88. As to the applicant's contention that the failure of the authorities to carry out an effective investigation into her treatment while in custody constituted a separate violation of Article 3 (see paragraph 76 above), the Court considers that it would be appropriate to examine this complaint in the context of her complaints under Articles 6 and 13 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

89. The applicant pleaded that she was denied an effective access to a court to seek compensation for the suffering which she experienced while detained at Derik gendarmerie headquarters on account of the inadequacy of the investigation into her complaints. She asked the Court to find that Turkey was in breach of Article 6 § 1 of the Convention.

90. She also requested the Court to find a violation of Article 13 of the Convention on account of the ineffectiveness of the system of remedies in the respondent State to secure her right not to be subjected to torture.

91. Article 6 § 1 provides to the extent relevant:

> "In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …"

92. Article 13 states:

> "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."

93. The applicant, while asserting that an award of compensation was only one element in the discharge of the respondent State's obligation under Article 3, submitted that any prospect of obtaining reparation before the civil or administrative courts was dependent on the conduct of a proper criminal investigation into the complaint. Irrespective of the fact that Turkish administrative law absolved her from the civil-law requirement to establish fault on the part of an agent of the State (see paragraphs 44–47 above), she would still have to prove before the administrative courts that she had been tortured while in custody. However, the criminal investigation as conducted was wholly inadequate to enable her to adduce such proof. The public prosecutor failed to question the gendarmes at Derik gendarmerie headquarters where she had been held, neglected to seek out possible eyewitnesses in Tasit to the events which occurred in the village on 29 June 1993 and made no attempt whatsoever to ascertain whether there was a case to answer. The various medical examinations ordered by the public prosecutor and the corresponding doctors' reports also failed to meet the needs of an effective investigation into a complaint of rape, focused as they were on the question as to whether or not she was a virgin as opposed to a rape victim.

94. The applicant further argued that the domestic law of the respondent State did not guarantee her an effective remedy in respect of other wrongs committed against her which constituted violations of her Convention rights but which could not be characterised as civil rights within the meaning of Article 6 § 1. By way of example, she referred to the fact that she had been kept blindfolded throughout her period of custody. The applicant also requested the Court to find that the inadequacy of the criminal investigation violated not just Article 6 but also Article 13 of the Convention since that inadequacy disclosed problems with the system of remedies as a whole. In particular, it revealed the absence of an independent and rigorous investigative and prosecution policy, the prevalence of intimidation of complainants, their advisers and witnesses, and the lack of professional standards for taking medical evidence.

95. The Government insisted that the domestic criminal, civil and administrative law provided the applicant with adequate means of redress in respect of her complaints. Referring to the relevant provisions of the Code of Criminal Procedure (see paragraphs 42 and 43 above) they stressed that the public prosecutor was under a legal duty to investigate alleged offences, to gather evidence, to question witnesses and, as appropriate, to prosecute where the evidence pointed to the guilt of a suspect. As to the alleged inadequacy of the criminal investigation into the applicant's case, they emphasised that the public prosecutor took immediate action on receipt of her complaint by sending her for a medical examination first to Dr Akkuş and then to a gynaecologist, Dr Çetin (see paragraphs 24 and 25 above). Both doctors had concluded that it

was impossible by that stage to date when her hymen had been torn. A third medical examination followed and the results supported this view (see paragraph 26 above). The Government insisted that the applicant's delay in lodging a complaint with the public prosecutor had resulted in a missed opportunity to obtain medical evidence confirming or refuting the veracity of her account. In parallel to his attempts to secure medical evidence, the public prosecutor sought information from Derik gendarmerie headquarters as to whether the applicant and members of her family had been detained at the relevant time and instructed that the custody register be forwarded to him for inspection (see paragraphs 27 and 28 above).

96. The Government stressed that the disappearance of the applicant from the Derik region impeded the investigation, including the carrying out of a psychological examination of the applicant. Notwithstanding, the investigation was still being pursued and it would be open to the applicant to take a legal challenge against any decision not to lay charges against a suspect.

97. Moreover, in accordance with the principle of the objective liability of the administration, Turkish administrative law enabled an aggrieved individual such as the applicant to be compensated for rape and ill-treatment at the hands of an official of the State without having to identify the culprit (see paragraphs 44–46 above).

98. The Commission agreed with the applicant's assertion that the conduct of a proper criminal investigation into her complaints was a vital precondition to obtaining reparation before the civil or administrative courts. The public prosecutor manifested an unacceptable degree of restraint with regard to the security forces by not questioning the gendarmes who were present at the Derik headquarters at the time of the alleged incident. Furthermore, he failed to explore other lines of enquiry which may possibly have corroborated the applicant's account of her detention. The manner in which the medical evidence was taken and the content of the medical reports were also deficient having regard to the nature of the offence under investigation. The overall and serious inadequacy of the criminal investigation resulted in the applicant being denied effective access to a court or tribunal to have a determination of her civil right to compensation, in breach of Article 6 of the Convention. In the light of this finding the Commission did not consider it necessary to examine the applicant's complaint under Article 13.

A. Article 6 § 1 of the Convention

99. The Court recalls that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect (see, for example, the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, pp. 36–37, § 80). Furthermore, Article 6 § 1 applies to a civil claim for compensation in respect of ill-treatment allegedly committed by State officials (see, for example, the Aksoy judgment cited above, p. 2285, § 92).

100. The applicant has never instituted proceedings before either the civil or administrative courts to seek compensation in respect of the suffering to which she was subjected in custody. On the other hand she has been prepared to invoke the criminal process in order to bring the offenders to justice and, at least in the initial stages of the criminal investigation, to cooperate with the investigating authority. She has sought to explain her failure even to attempt to pursue a claim for compensation on the grounds that she would have no prospect of success in the absence of proof that she had been raped and ill-treated at the hands of agents of the State, and such proof was impossible to adduce on account of the manner in which the public prosecutor conducted the investigation.

101. It appears to the Court that the essence of her complaint under Article 6 § 1 of the Convention is the failure of the public prosecutor to conduct an effective investigation, which, if not giving rise to a prosecution, at the very least would prove that she had suffered harm while in custody, thus enhancing the prospects of success of her claim for compensation.

102. The Court considers therefore that it is appropriate to examine this complaint in relation to the general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention. It notes in this respect that the applicant has indicated that an award of compensation would not in itself redress the gravity of the violation which she suffered, nor absolve the respondent State from respecting other aspects of its obligations under Article 3 of the Convention.

B. Article 13 of the Convention

103. The Court recalls at the outset that Article 13 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. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate

relief, although Contracting States are

afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of the obligation under Article 13 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 the Aksoy judgment cited above, p. 2286, § 95).

Furthermore, the nature of the right safeguarded under Article 3 of the Convention has implications for Article 13. Given the fundamental importance of the prohibition of torture and the especially vulnerable position of torture victims (see paragraphs 81 and 83 above), Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation of incidents of torture.

Accordingly, where an individual has an arguable claim that he or she has been tortured by agents of the State, the notion of an "effective remedy" entails, 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 complainant to the investigatory procedure. It is true that no express provision exists in the Convention such as can be found in Article 12 of the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which imposes a duty to proceed to a "prompt and impartial" investigation whenever there is a reasonable ground to believe that an act of torture has been committed (see paragraph 48 above). However, such a requirement is implicit in the notion of an "effective remedy" under Article 13 (see the Aksoy judgment cited above, p. 2287, § 98).

104. Having regard to these principles, the Court notes that the applicant was entirely reliant on the public prosecutor and the police acting on his instructions to assemble the evidence necessary for corroborating her complaint. The public prosecutor had the legal powers to interview members of the security forces at Derik gendarmerie headquarters, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of her account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm she suffered. The ultimate effectiveness of those remedies depended on the proper discharge by the public prosecutor of his functions.

105. The applicant, her father and her sister-in-law complained to the public

prosecutor about the treatment they suffered while in custody. In her statement she specifically referred to the fact that she was raped and tortured at Derik gendarmerie headquarters (see paragraph 23 above). Although she may not have displayed any visible signs of torture, the public prosecutor could reasonably have been expected to appreciate the seriousness of her allegations bearing in mind also the accounts which the other members of her family gave about the treatment which they alleged they suffered. In such circumstances he should have been alert to the need to conduct promptly a thorough and effective investigation capable of establishing the truth of her complaint and leading to the identification and punishment of those responsible.

106. The provisions of the Turkish Code of Criminal Procedure taken together with the Criminal Code impose clear obligations on the public prosecutor to investigate allegations of torture, rape and ill-treatment (see paragraphs 41–43 above). Notwithstanding, he only carried out an incomplete inquiry to determine the veracity of the applicant's statement and to secure the prosecution and conviction of the culprits. While he may not have been provided with the names of villagers who may have seen the Aydın family being taken into custody on 29 June 1993, he could have been expected to take steps of his own initiative to ascertain possible eyewitnesses. It would appear that he did not even visit Tasit to familiarise himself with the scene of the incident which occurred on that date and whether the locations were consistent with those mentioned by the applicant or the other members of the family in their statements. Furthermore, he took no meaningful measures to determine whether the Aydın family were held at Derik gendarmerie headquarters as alleged. No officers were questioned in the critical initial stages of the investigation. The public prosecutor was content to conduct this part of the inquiry by correspondence with officials at the headquarters (see paragraphs 27 and 28 above). He accepted too readily their denial that the Aydın family had been detained and was prepared to accept at face value the reliability of the entries in the custody register. Had he been more diligent, he would have been led to explore further the reasons for the low level of entries for the year 1993 given the security situation in the region (see paragraphs 27 and 28 above). His failure to look for corroborating evidence at the headquarters and his deferential attitude to the members of the security forces must be considered to be a particularly serious shortcoming in the investigation.

107. It would appear that his primary concern in ordering three medical examinations in rapid succession was to establish whether the applicant had lost her virginity. The focus of the examinations should really have been on whether the applicant was a rape victim, which was the very essence of her complaint. In this respect it is to be noted that neither Dr Akkuş nor Dr Çetin had any particular experience of dealing with rape victims (see paragraphs 24

and 25 above). No reference is made in either of the rather summary reports drawn up by these doctors as to whether the applicant was asked to explain what had happened to her or to account for the bruising on her thighs. Neither doctor volunteered an opinion on whether the bruising was consistent with an allegation of involuntary sexual intercourse (see paragraphs 24 and 25 above). Further, no attempt was made to evaluate, psychologically, whether her attitude and behaviour conformed to those of a rape victim.

The Court notes that the requirement of a thorough and effective investigation into an allegation of rape in custody at the hands of a State official also implies that the victim be examined, with all appropriate sensitivity, by medical professionals with particular competence in this area and whose independence is not circumscribed by instructions given by the prosecuting authority as to the scope of the examination. It cannot be concluded that the medical examinations ordered by the public prosecutor fulfilled this requirement.

108. It has been contended that the investigation is still being conducted and that the applicant's absence from the vicinity of Derik impeded the investigation for a certain period (see paragraph 96 above). She has also refused to undergo a further examination involving psychological testing (see paragraph 96 above). In the view of the Court, this cannot justify the serious defects and inertia which characterised the crucial phase immediately following receipt of the complaint. The public prosecutor had at that stage the legal means to act promptly and gather all necessary evidence including, as appropriate, psychological and behavioural evidence; nor can the decision to suspend the investigation on account of the applicant's absence be justified given the gravity of the offence under investigation.

109. In the light of the above considerations, it must be concluded that no thorough and effective investigation was conducted into the applicant's allegations and that this failure undermined the effectiveness of any other remedies which may have existed given the centrality of the public prosecutor's role to the system of remedies as a whole, including the pursuit of compensation.

In conclusion, there has been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 25 § 1 OF THE CONVENTION

110. The applicant complained that the authorities had harassed and intimidated both her and members of her family in various ways on account of her decision to bring proceedings before the Convention institutions. There had

accordingly been an interference with her right of individual petition in breach of Article 25 § 1 of the Convention, which provides:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

111. In support of her claim, she described how she and members of her family had been repeatedly summoned to the police station, the Security Directorate and the office of the public prosecutor and questioned about the nature of her application to the Commission. After leaving her village, her father was constantly questioned about her whereabouts. Her own home had been searched on two occasions and her husband had been twice taken into custody and beaten by police officers. She further alleged that neighbours had reported that the security forces had stoned her father-in-law's house. In November 1996, following the publication of the Commission's report and while the hearing in her case was pending before the Court, the authorities tried to pressurise her into undergoing a fourth medical examination in Istanbul, threatening to take her there by force if she refused (see paragraphs 7 and 8 above). She requested the Court to find that this most recent act of intimidation should be considered a new violation of Article 25.

112. The Government firmly rejected the applicant's interpretation of the contacts which the authorities had with her and members of her family over the relevant period. No independent evidence had ever been adduced in support of her allegation that she and members of her family had been subjected to intimidation and harassment or that her home had been searched. The Government in fact had rejected these allegations in a letter sent to the Commission on 12 December 1995 in response to the Commission's request for an official reaction to them and they stood by that official denial. They recalled that under the Turkish Code of Criminal Procedure the public prosecutor together with the police were and continue to be under an obligation to conduct an investigation into the complaint which the applicant herself had made. The fact that the applicant had invoked the Convention system to seek redress in respect of her allegations did not bring an end to the investigation at the domestic level. It was of crucial importance to the success of that investigation to interview the applicant and her father about the events which they alleged took place and to check the veracity of their account. No pressure was ever exerted on the applicant and her family. In fact the authorities had endeavoured to facilitate her appearance before the delegates in Strasbourg in October 1995 both by trying to contact her through her father about the impending hearing and by expediting the issue of a passport.

113. As to the applicant's allegation that the authorities had tried to pressurise her in November 1996 into undergoing a fourth medical examination in Istanbul, the Government once again highlighted the need to further the criminal investigation into her rape allegation by submitting her to a psychological examination. She was under no obligation to submit to any such examination and indeed the authorities have respected her wish not to be examined.

114. The Commission found that the applicant and her family were genuinely complaining of harassment and intimidation and had been subjected to significant pressure in circumstances which threatened to impinge on her continued participation in the proceedings before it and that this had rendered the exercise of her right of individual petition more difficult. While it was true that there was no independent evidence to support the allegations, the Commission considered nevertheless that the Government had on no occasion provided any plausible reasons which could justify the contacts which the authorities had with the applicant and her family. Furthermore, although invited by the Commission to address the factual allegations of intimidation and harassment, the Government had failed to do so.

115. The Court stresses that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 25 of the Convention that applicants or potential applicants are able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see the Akdivar and Others v. Turkey judgment of 16 September 1996, Reports 1996-IV, p. 1219, § 105).

116. It is to be noted that neither the applicant nor her family have adduced any concrete and independent proof of acts of intimidation or harassment calculated to hinder the conduct by her of the proceedings which she brought before the Convention institutions. The Commission has relied heavily on the failure of the authorities to provide more than a simple denial of the substance of her allegations that her house was raided, her husband beaten by police officers and that she and members of her family were repeatedly and without due justification contacted and questioned by the authorities about her application to the Commission. However, before the Court the Government reaffirmed that the allegations of intimidation and harassment had not been substantiated. They acknowledged that contacts and questioning did take place but have sought to justify these by referring to the needs of the criminal investigation being conducted into her complaints and to facilitate her attendance at the delegates' hearings.

117. Against this background, the Court's evaluation of the evidence before it leads it to find that there is an insufficient factual basis to enable it to conclude that the authorities of the respondent State have intimidated or harassed either the applicant or members of her family in circumstances which were calculated to induce her to withdraw or modify her complaint or otherwise interfere with the exercise of her right of individual petition.

Accordingly, there has been no breach of Article 25 § 1 of the Convention.

V. ALLEGED VIOLATIONS OF ARTICLEs 28 § 1 (a) AND 53 OF THE CONVENTION

118. The applicant in her memorial requested the Court to find that the Government had failed to comply with their obligations under Articles 28 § 1 (a) and 53 of the Convention. Article 28 § 1 (a) provides:

> "In the event of the Commission accepting a petition referred to it:
>
> (a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;"

Article 53 provides:

> "The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties."

119. In support of her request the applicant contended that she was the victim of further acts of intimidation and harassment following the adoption of the Commission's report on 7 March 1996 wherein the Commission had found the Government to be in violation of Article 25 of the Convention. Moreover, intimidation and harassment in connection with the proceedings before the Court continued despite the ruling of the Court on 16 September 1996 in the Akdivar case (cited at paragraph 115 above) that the respondent Government were found to be in breach of Article 25 of the Convention. In these circumstances the good faith of the Government and their willingness to abide by their commitments under the Convention were seriously in question.

120. Having regard to its conclusion on the applicant's complaint under Article 25 (see paragraph 117 above), the Court considers that it is unnecessary to examine the applicant's complaints under Articles 28 § 1 (a) and 53.

VI. ALLEGED ADMINISTRATIVE PRACTICE OF VIOLATING THE CONVENTION

121. In addition to finding individual violations of Articles 3, 6 § 1, 13 and

25 of the Convention, the applicant requested the Court to find that she was the victim of aggravated violations of these Articles on account of the existence of an officially tolerated practice of violation.

122. The applicant pointed to, *inter alia,* the public statement released by the CPT in December 1992 wherein it concluded that the practice of torture and other forms of ill-treatment of persons in custody was widespread in Turkey (see paragraphs 49 and 50 above). Before the Court she drew attention to the CPT's most recent public statement of 6 December 1996 which confirmed that torture and ill-treatment remained a common occurrence in police establishments in Turkey (see paragraph 50 above). The authorities have not taken action to improve the situation. The pattern established was for the authorities to deny such allegations with the result that adequate and independent investigations were not conducted to bring culprits before the criminal courts. This in turn resulted in the denial of effective remedies, including access to a court to claim compensation. Complainants and those assisting them were also routinely subjected to intimidation, thus discouraging use of the domestic legal system to obtain redress and rendering domestic remedies illusory in practice.

123. Furthermore, the applicant maintained that there was a high incidence of cases involving the respondent State before the Convention institutions in which applicants have alleged that they have been subjected to threats, intimidation and harassment as a result of the exercise of their right under Article 25 of the Convention. Doctors and lawyers assisting applicants with their claims were also subjected to such pressures.

124. The Court is of the view that the evidence established by the Commission is insufficient to allow it to reach a conclusion concerning the existence of any administrative practice of the violation of these Articles of the Convention relied on by the applicant.

VII. APPLICATION OF ARTICLE 50 OF THE CONVENTION

125. The applicant claimed just satisfaction under the provisions of Article 50 of the Convention, which provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary and non-pecuniary damage

126. The applicant stated that she incurred costs amounting to 50 pounds sterling (GBP) through having to leave Derik and travel to another town to avoid the intimidation and harassment to which she had been subjected (see paragraph 111 above). She claimed this amount by way of compensation for pecuniary damage.

127. As to non-pecuniary damage she claimed GBP 30,000 by way of compensation for the mental anguish and physical pain which she suffered as a result of the ill-treatment to which she was subjected while in custody, and an additional GBP 30,000 in respect of the physical and enduring psychological suffering resulting from the rape. In addition she requested the Court to award a further GBP 30,000, to be paid to a charitable institution in Turkey, by way of aggravated damages for the practice of ill-treatment amounting to torture and of intimidation in relation to proceedings under the Convention. Finally, she invited the Court to express its condemnation of the serious violations of Articles 3 and 25 of the Convention of which she had been the victim by awarding the sum of GBP 30,000 by way of exemplary or punitive damages.

128. Before the Court the applicant requested that the total amount claimed – GBP 120,050 – by way of compensation for pecuniary and non-pecuniary damage should be expressed in sterling to be converted into Turkish liras at the exchange rate applicable at the date of payment. Alternatively, if the award of compensation were to be expressed in Turkish liras the Court should set the level of default interest at 95%, having regard to the extremely high rate of inflation in Turkey.

129. The Government requested the Court to reject the applicant's claim since she had failed to prove her allegations. Without prejudice to this position, they suggested that in the event of a finding by the Court that Turkey had breached the Convention such a conclusion would in itself constitute just satisfaction. In any event the Court should avoid making any award which would unjustly enrich the applicant, having regard to salary levels in Turkey as well as the general state of the country's economy.

130. The Delegate of the Commission stated that the award of compensation made by the Court should be significant, having regard to the gravity of the violation under Article 3 and the fundamental importance of the

right guaranteed therein.

131. In view of the Court's finding that Article 25 has not been breached (see paragraph 117 above), the applicant's claim for compensation in respect of pecuniary damage must be rejected. In addition, the applicant's claim for compensation for non-pecuniary damage must be limited to the finding that the applicant was the victim of a violation of Article 3 of the Convention. In that respect, and having regard to the seriousness of the violation of the Convention suffered by the applicant while in custody and the enduring psychological harm which she may be considered to have suffered on account of being raped, the Court has decided to award a sum of GBP 25,000 by way of compensation for non-pecuniary damage, to be converted into Turkish liras at the exchange rate applicable at the date of settlement.

B. Costs and expenses

132. The applicant claimed a total amount of GBP 43,360 by way of reimbursement of costs and expenses which she maintained were necessarily and reasonably incurred in bringing her complaints before the Convention institutions. This sum represented the reasonable legal fees charged by her United Kingdom representatives (GBP 30,000), and by her Turkish representatives (GBP 3,000), as well as fees for research and assistance provided by the Kurdish Human Rights Project (GBP 6,000) and other necessarily and reasonably incurred costs and disbursements (translation, photocopying, telecommunications, medical report, etc., including direct costs incurred by the applicant – GBP 4,360).

At the hearing the applicant requested that the amount to be awarded by way of legal costs to her United Kingdom-based representatives be paid directly to them in sterling, and that the other itemised costs and expenses expressed in sterling be converted into Turkish liras on the date of payment, in both cases on the basis of an 8% rate of default interest.

133. The Government considered that the amount claimed by the applicant had been unnecessarily inflated as a result of her decision to appoint representatives based in the United Kingdom. Turkish lawyers could have dealt with her application at more modest rates than those charged by her United Kingdom lawyers and their appointment would have avoided expenditure on interpretation, translation and telecommunications. They also disputed the entitlement of the Kurdish Human Rights Project to costs and expenses since this organisation had no authority to represent the applicant.

134. The Delegate did not comment on the amounts claimed.

135. The Court considers the amounts claimed by the applicant's duly appointed United Kingdom-based representatives for costs and expenses to

have been necessarily and reasonably incurred (GBP 34,360). The Court therefore awards the amounts claimed in full together with any value-added tax (VAT) which may be chargeable, less the amount received by way of legal aid from the Council of Europe which has not already been taken into account in their claim. Moreover, it awards the full amount claimed by her Turkish representatives in respect of costs (GBP 3,000). As to the costs claimed by the Kurdish Human Rights Project, the Court is not persuaded that the extent of that association's involvement in the proceedings justifies the making of any award. It therefore dismisses their claim.

C. Default interest

136. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8% per annum. The Court considers that this rate of default interest should apply to the amount awarded by way of costs and expenses to the applicant's United Kingdom-based representatives and to the amount awarded in sterling to her Turkish representatives to be converted into Turkish liras at the exchange rate applicable at the date of payment.

FOR THESE REASONS, THE COURT

1. *Dismisses* by eighteen votes to three the preliminary objection concerning the exhaustion of domestic remedies;
2. *Dismisses* unanimously the preliminary objection concerning abuse of process;
3. *Holds* by fourteen votes to seven that there has been a violation of Article 3 of the Convention;
4. *Holds* by sixteen votes to five that there has been a violation of Article 13 of the Convention;
5. *Holds* by twenty votes to one that it is not necessary to consider the applicant's complaint under Article 6 § 1 of the Convention;
6. *Holds* unanimously that there has been no violation of Article 25 § 1 of the Convention;
7. *Holds* unanimously that it is not necessary to consider the applicant's complaints under Articles 28 § 1 (a) and 53 of the Convention;
8. *Holds* by eighteen votes to three
   (a) that the respondent State is to pay the applicant, within three months, in respect of compensation for non-pecuniary damage, 25,000 (twenty-five

thousand) pounds sterling to be converted into Turkish liras at the rate applicable on the date of settlement;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

9. *Holds* by sixteen votes to five

(a) that the respondent State is to pay directly to the applicant's United Kingdom-based representatives, within three months, in respect of costs and expenses 34,360 (thirty-four thousand three hundred and sixty) pounds sterling together with any VAT that may be chargeable, less 19,145 (nineteen thousand one hundred and forty-five) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment; and her Turkish representatives 3,000 (three thousand) pounds sterling to be converted into Turkish liras at the rate applicable on the date of settlement;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

10. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 September 1997.

Signed: Rolv Ryssdal
President

Signed: Herbert Petzold
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

(a) partly concurring, partly dissenting opinion of Mr Matscher;

(b) partly concurring, partly dissenting opinon of Mr Pettiti;

(c) joint dissenting opinion of Mr Gölcüklü, Mr Matscher, Mr Pettiti, Mr De Meyer, Mr Lopes Rocha, Mr Makarczyk and Mr Gotchev (on the alleged ill-treatment (Article 3 of the Convention));

(d) joint dissenting opinion of Mr Gölcüklü, Mr Pettiti, Mr De Meyer, Mr Lopes Rocha and Mr Gotchev (on domestic remedies (Article 13 of the Convention));

(e) individual dissenting opinion of Mr Gölcüklü;
(f) individual dissenting opinion of Mr De Meyer.

Initialled: R. R.
Initialled: H. P.partly concurring, partly DISSENTING OPINION OF JUDGE matscher

(*Translation*)

1. I approve of the Grand Chamber's decision to dismiss the respondent Government's preliminary objections.

2. There can be no doubt that the matters alleged would, if proved, constitute an extremely serious violation of Article 3 of the Convention.

But in my opinion that condition is far from satisfied even though I recognise that the delegates of the Commission who conducted the inquiry at the scene were faced with a difficult position in view of contradictory statements on both sides, the conflicting interests of those concerned and in particular the lack of any effective cooperation by the respondent Government. However, where, as occurred here, contradictory statements are made, a "criminal" inquiry must be conducted in much greater detail and more objectively and regard must be had to all relevant factors so that reliable conclusions are reached.

I shall not comment on the inconsistencies and errors of detail which appear in the depositions made by witnesses on both sides, save to say that there are aspects, which are referred to in the joint dissenting opinions (see below), that are puzzling and cast serious doubt on the truthfulness of the version of events put forward by the applicant with the support of the Diyarbakır Human Rights Association and accepted in substance by the Commission and the Court.

In these circumstances, and without being able to say what the "truth" of the matter was in this case, I am far from convinced that the applicant's allegations have been proved beyond all reasonable doubt. I therefore conclude that no violation of Article 3 of the Convention can be found, for want of sufficient proof of the facts relied upon.

3. I concur with the majority of the Grand Chamber in their finding of a violation of Article 13 of the Convention.

4. I concur, too, in the majority's finding that there has been no violation of Article 25 § 1 and with their decisions on Article 6 § 1, Article 28 § 1 (a) and Article 53 of the Convention.

5. I agree that there should be an award of compensation for non-pecuniary damage (see point 8 of the operative provisions of the judgment), but I voted against awarding a large sum to cover the fees of the applicant's representatives

in the United Kingdom because, in my view, it was unnecessary for her to have instructed them (see point 9 of the operative provisions of the judgment).

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PETTITI

(*Translation*)

I voted with the majority on points 1, 2 (preliminary objections), 5 (Article 6), 6, 7, 8, 9 and 10 of the operative provisions.

I voted with the minority in favour of finding that there had been no violation of Articles 3 and 13.

As to Article 3 of the Convention

I concur in the joint dissenting opinion as regards Article 3 (see below). In common with my colleagues in the minority, I consider that the investigation did not provide the necessary certainty that the events alleged really took place, as customarily required by the Court's case-law.

If the facts had been established with certainty, it is obvious that there would have been an extremely serious violation.

As to Article 13 of the Convention

The applicant had a remedy which she used (complaint to the prosecuting authorities), which gave rise to an investigation that has not been closed.

I agree with the observations made in the joint dissenting opinion concerning Article 13 (see below) on the shortcomings of the investigation, the negligence of the prosecuting authorities and the mistakes and negligence of the complainant. Admittedly, the remedy has not been effective so far, but the responsibility for this lack of effectiveness is to some extent a shared one, so that it would appear that the requirements for the application of Article 13 have not been satisfied in this case.

JOINT DISSENTING OPINION OF JUDGES GÖLCÜKLÜ, MATSCHER, PETTITI, DE MEYER, LOPES ROCHA, MAKARCZYK AND GOTCHEV

(ON THE ALLEGED ILL-TREATMENT (ARTICLE 3 OF THE CONVENTION))*

(*Translation*)

1. Detention of the three people concerned

The applicant, her father and her sister-in-law Ferahdiba said that they were deprived of their liberty from 29 June to 2 July 1993 and were detained for those three days at Derik gendarmerie headquarters.

The Derik gendarmes' bare denial and the absence of any entry concerning the three in the custody register do not suffice to prove the contrary.

That, however, does not alter the fact that the only accounts the Court has of the arrest, detention and release of the three members of the Aydın family are the accounts of the three people concerned, uncorroborated by any evidence from third parties.

They said that they were first taken to the "village square" or to "the square near the school" with "the other villagers". One of the other villagers, "a young man", was, according to a statement made by the applicant's father in July 1995, taken away with the three members of the Aydın family.

The case file contains no statement on that subject by any of the "other villagers" or, in particular, the "young man". Similarly and more generally, there are no statements in the case file by anyone other than the relevant three people about their arrest, three-day absence and return to the village.

Neither Mr Özenir, the public prosecutor at Derik at the time of the alleged incidents, nor the Diyarbakır Human Rights Association nor the Commission itself obtained any statements on the matter other than those of the three people concerned.

On what may reasonably be considered a vital point there is thus a regrettable gap in the evidence.

2. Ill-treatment

The applicant, her father and her sister-in-law alleged that they had been ill-treated during their detention and lodged a complaint with the Derik public prosecutor on 8 July 1993.

The public prosecutor had them examined by Dr Akkuş at Derik State Hospital on the day they made their complaint. The applicant was also examined the following day by Dr Çetin, a gynaecologist at Mardin State Hospital, and just over a month later, on 13 August 1993, by a doctor at Diyarbakır Maternity Hospital.

The reports and statements of Dr Akkuş and Dr Çetin indicate that all three presented various injuries six or seven days after the date given as being that of

their release.

The doctors' findings on what were no longer very recent injuries are not inconsistent with the allegations of the three people concerned, but they do not enable any precise conclusion to be drawn as to how the injuries were caused.

3. The specific case of the applicant

The most serious accusation is undoubtedly that the applicant was raped while in detention. She made a statement to that effect to the Derik public prosecutor as early as 8 July 1993, adding that her "virginity had been destroyed".

When he examined her that afternoon, Dr Akkuş found that the hymen was torn and the insides of her thighs bruised. The following day Dr Çetin likewise noted defloration marks, which had already healed, and that defloration must have occurred more than a week earlier.

One or more acts of sexual intercourse or attempts at sexual intercourse had therefore taken place before 2 July 1993. The question is where, when and with whom? Was the applicant acting under duress or not?

The somewhat summary findings of Dr Akkuş and Dr Çetin, and *a fortiori* the findings of Diyarbakır Maternity Hospital more than a month later, were made when it was no longer possible to say with any certainty when the acts of penetration had occurred. In any event, they do not suffice to show rape or attempted rape by any of the Derik gendarmes or at Derik gendarmerie headquarters.

Matters are made somewhat complicated in that, firstly, according to her own statements in 1993 and 1995, the applicant married her cousin Adidin Aydın only a few days after the alleged events at Derik gendarmerie headquarters – which is surprising in the cultural context of the region – and that, secondly, she would appear to have had her first child very shortly after the marriage.

In this connection, it is worth noting that, according to her statement of 1 April 1994 to the Diyarbakır Human Rights Association, the applicant had herself been examined shortly after her marriage by a Diyarbakır gynaecologist, Dr Önat, in order to establish by "various methods" whether the child she was carrying at that time was indeed her husband's.

It is a pity that she did not, immediately after the alleged ill-treatment, likewise consult a more diligent, better-qualified or better-equipped doctor than Dr Akkuş and Dr Çetin. It may also be felt that the Diyarbakır Human Rights Association could have thought of that at the appropriate time.

4. Conclusion

It follows from the above that no evidence has been adduced from an independent source in support of the allegations made by the applicant, her father and her sister-in-law and that it has not been shown "beyond reasonable doubt" that the allegations were true.

Proof of the detention, ill-treatment and, more particularly, rape has not been adduced with the degree of rigour that the Court must require.

In a matter as serious as this, particularly in view of the background of conflict, an impression of "credibility" such as that made on the Commission by the applicant and her father cannot suffice.

JOINT DISSENTING OPINION OF JUDGES GÖLCÜKLÜ, PETTITI, DE MEYER, LOPES ROCHA AND GOTCHEV (ON DOMESTIC REMEDIES (ARTICLE 13 OF THE CONVENTION))*

(*Translation*)

1. Chronology in brief

The incidents are alleged to have taken place between 29 June and 2 July 1993.

The applicant, her father and her sister-in-law lodged complaints at the office of the Derik public prosecutor, Mr Özenir, on 8 July 1993.

He carried out various investigative measures, in particular on 8, 9, 13 and 22 July, 12 August and 9 December 1993, and 18 January, 17 February, 18 April and 13, 18 and 26 May 1994. His successor or another public prosecutor carried out further measures in January and May 1995.

"After they had been released", the Aydın family left Tasit for Derik-Kale, which they appear to have reached by 15 July 1993. The applicant and her husband, together with Ferahdiba and her husband, left there in March or April 1994, without leaving an address.

The application to the Commission was lodged on 21 December 1993 by the Diyarbakır Human Rights Association, which on 15 July 1993 had been

given authority to represent the applicant.

2. Investigation by the public prosecutor

The difficulties in the present case arise primarily from the inadequacy of the investigation carried out (in so far as it was carried out) by the Derik public prosecutor following the complaints lodged by the three people concerned.

The investigation was deficient in two fundamental respects; firstly, the public prosecutor was too ready to accept the gendarmes' denials and the information contained in (or missing from) their registers and did not take the trouble to question other villagers from Tasit or have them questioned.

As to the latter point, Mr Özenir stated in July 1995 that the Aydıns never mentioned other villagers. It is indeed true that there is no reference to other villagers in the interview records, but that does not necessarily prove that the Aydıns did not mention any to him and, even if they did not, it is surprising that the public prosecutor does not appear to have obtained or sought to obtain information in Tasit about what happened.

In fact, the public prosecutor did little more than ask for medical examinations, which became increasingly pointless with the passage of time.

Thus, this case, in which there is insufficient evidence to enable us to find beyond all reasonable doubt a violation of the rights protected by Article 3, raises rather questions concerning the right of access to a tribunal as guaranteed by Article 6 and the right to an effective remedy as guaranteed by Article 13.

3. Conduct of the applicant and the Diyarbakır Human Rights Association

But that creates problems of a different sort.

Firstly, the applicant only lodged a complaint some eight days after the alleged events had taken place, when it was no longer possible to determine with any precision the date of penetration. With regard to the rape, she did not arrange to be examined by a qualified gynaecologist as she did shortly afterwards in connection with the paternity of her eldest child. She disappeared from the region some time after the alleged events.

Secondly, there is nothing to indicate that the Diyarbakır Human Rights Association, which said that the case was referred to it on 15 July 1993 (approximately fifteen days after the alleged events) and which thereafter had authority to represent the applicant, did anything to cause the investigation to be pursued more actively; it could, for example, have contacted Mr Özenir's superiors or other Turkish authorities and, more particularly, could have obtained or attempted to obtain statements from other villagers on the events alleged to have taken place at Tasit on 29 June 1993.

The applicant had already expressly referred to the presence of other

villagers at the time of arrest in her first statement to the Association (also, according to her representatives, on 15 July 1993). That being so, why did the Association not try to find any of them?

Furthermore, the Association does not appear at any time to have considered bringing a civil or administrative action.

It merely allowed the case to tick over for a little more than five months before applying directly to the Commission on 21 December 1993, less than six months after the alleged events.

In these circumstances it is difficult to conclude that domestic remedies had been exhausted. It is even understandable that there should be talk of abuse of process in that regard.

Even if it is considered that an estoppel has arisen on these issues because the respondent State failed to raise these objections before the Commission when the admissibility of the application was being examined, the conduct of the Association concerned considerably lessens the force of its submissions that there has been a violation of Articles 6 and 13.

4. Conclusion

Do the manifest shortcomings of the investigation justify the conclusion that there has been a violation of the right of access to a tribunal or of the right to an effective remedy?

We consider that it is not possible in the present case to disregard the applicant's and, especially, her representatives' conduct. It did not make the investigation any easier and was more a factor contributing to its failure. It prevents us from finding a violation of Article 6 or Article 13.

INDIVIDUAL DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(*Translation*)

1. Although the conclusion I arrive at in the joint dissenting opinion (see above) makes it unnecessary for me to consider the other aspects of this case under, in particular, Article 6 and/or Article 13, I nevertheless think it useful to set out the Turkish system as regards domestic remedies.

2. The applicant complains that there are no adequate, effective domestic remedies and that there has therefore been a violation of Article 6 and/or Article 13 of the Convention.

3. I should like to state in this connection that where allegations, as in the instant case, are made of torture and ill-treatment, three types of proceedings are available in Turkish law that could have remedied the applicant's complaint. Firstly, there are criminal proceedings. The applicant indeed complained to the appropriate authorities and sought to institute criminal proceedings against those allegedly responsible for the acts complained of.

4. However, the applicant did no more than complain of the alleged facts, moreover in an incomplete manner, and did nothing else to assist the prosecutor's investigation. Not only was she of no assistance for that purpose but she also did everything she could to hamper the proceedings by disappearing for nearly a year without leaving any address. It is contrary to all legal logic to interpret that negative behaviour on the part of the applicant to her advantage.

5. I should like to point out that the criminal investigation launched by the

prosecutor following the applicant's complaint is still pending, as far as I am aware. If the prosecutor decided that there was no case to answer, on whatever ground, it would be open to the applicant to lodge an objection with the president of the local assize court.

6. Secondly, the applicant could have brought *an action for damages*, either *in the administrative courts* against the State or *in the ordinary courts* against those responsible for the alleged ill-treatment.

7. If the applicant had applied to the administrative courts, they could, on the basis of the State's strict liability or of fault committed by a public servant, have ordered the administrative authorities to compensate for the damage caused to the applicant during her police custody. Such administrative proceedings would, in addition, have had positive effects on the criminal investigation under way, the two actions being based on the same acts.

8. As regards effectiveness, especially the effectiveness of the administrative proceedings, I should like, in addition to referring in particular to my dissenting opinion in the Akdivar and Others v. Turkey judgment of 16 September 1996 (*Reports of Judgments and Decisions* 1996-IV, p. 1234, §§ 16 et seq.), to give below some significant examples to show that I cannot concur in the majority conclusion as regards Article 6 and/or Article 13.

9. The following observations apply to all the judgments submitted for consideration, which reflect the same concerns as the judgments of the French administrative courts.

(a) In all the appended judgments, which are only non-exhaustive examples of administrative case-law, the courts ruled in the victims' favour.

(b) These judgments are based on very detailed operative provisions revealing a legal reasoning which is extremely sensitive to the rights and interests of those claiming compensation as the victims of various terrorist acts.

(c) The facts underlying these decisions are very varied and include violent death, shooting from aircraft (see A24), assault, wounding and physical damage.

(d) In most cases the operative provisions of the judgments concerned refer to Article 125 of the Constitution, which provides that all administrative decisions shall be subject to review by the courts.

(e) The decisions make no distinction between acts committed by the PKK (see, for example, A13), by the security forces (see A5) or by unidentified persons (see, for example, A3, A17 and A24) since they follow a more general approach going beyond determination of fault in the execution of one's duty (see A25) or even objective liability on the administrative authorities' part; the argument which underpins the reasoning of the administrative courts' judgments is based on the theory of "social risk".

(f) The theory of social risk as developed in the judgments submitted includes the following elements:

(i) the State must ensure public order and the well-being of the population;

(ii) in a context of terrorist violence it sometimes happens that the State cannot perform this essential function, even when special powers have been conferred on the security forces under state of emergency legislation (see in particular A3, A13 and A14);

(iii) if, in such circumstances, some people suffer violence, civil wrongs, damage, bodily injury or physical damage, they must be compensated even where they have been guilty of negligence or imprudence and irrespective of the identity of the person responsible for the acts concerned, whether these were criminal or lawful. *The only causal connection to be established in these cases is that between the alleged damage and the act which caused that damage, not between the damage and the alleged perpetrator* (see, for example, A17). The issue involved (particularly in A14) is the collective

reponsibility of a State under the rule of law towards an individual who becomes a victim through the mere fact that he belongs to the community (see in particular A14 and A16).

In a judgment where the facts of the case involved damage through firing by unidentified aircraft, the court held: "*Since the facts have been established, liability for making good the damage sustained when shots were fired, either by aircraft belonging to the Turkish armed forces or – through inadequate protection of Turkish airspace – by unidentified aircraft, lies with the administrative authorities*" (judgment of Van Administrative Court, 30 March1994, case no. 1992/407, 1991/171).

(g) The judgments delivered by the Supreme Administrative Court *rightly reject appeals by the administrative authorities, namely the Ministry of the Interior, and uphold judgments given by the administrative courts in accordance with the principles set out above.*

(h) It should moreover be noted that these judgments also comply with the "reasonable time" requirement.

(i) Furthermore, these judgments are very revealing in another way, which goes beyond their perfectly consistent conclusions on the theory of the administrative authorities' collective responsibility; a study of the factual background to these decisions shows the scale of the problem of terrorism, its violence and the "blind", underhand and treacherous tactics it often adopts with a view to sowing panic and insecurity among the population, sparing neither human lives nor property.

(j) Since these judgments the theory of social risk has been developed and applied to situations which have arisen in other regions. For example, the Fourth Division of the Ankara Administrative Court in its judgment (no. 1996/1319) in case no. 1995/460, which concerned the murder by persons unknown of the journalist Uğur Mumcu, applied the principle of social risk and ordered the administrative authorities to pay the deceased's family a large sum in damages.

Naturally, the theory of social risk has not replaced the theory of administrative fault in cases where the latter can be proved. For example, the Supreme Administrative Court (case no. 1996/6148 and judgment no. 1996/8745, case no. 1995/831 and judgment no. 1996/845 of Sivas Administrative Court), in two cases concerning plaintiffs disabled as a result of shots fired by soldiers, ruled that the administrative authorities were liable, being at fault, and awarded compensation.

(A3)

DIYARBAKIR ADMINISTRATIVE COURT
Case no. 1992/223
Judgment no. 1994/21

Plaintiffs: 1. Hüsna Kara. 2. Ahmet Kara. 3. Meryem Kara. 4. Leyla Kara. 5. Gülbehar Kara. 6. Salih Kara. 7. Hami Kara. 8. Hamit Kara
Town of Hilâl Kasabasi, Uludere – Şırnak

Lawyer: Mr Nusret Senem, Karanfil Sok. no. 3/34, Kızılay – Ankara

Defendants: 1. Ministry of the Interior – Ankara. 2. District of Şırnak – Şırnak

Summary of the claim: Action in damages for loss of financial support on the grounds that the authorities negligently failed to ensure the safety of citizens in an incident in which a relative of the plaintiffs was killed by persons unknown. The plaintiffs claimed pecuniary damages of 120 million Turkish liras (TRL) and non-pecuniary damages of TRL 50 million for the deceased's widow; pecuniary damages of TRL 30 million and non-pecuniary damages of TRL 20 million for each of the deceased's six children; and non-pecuniary damages of TRL 50 million for the deceased's brother, making a total of TRL 300 million for pecuniary damage and TRL 220 million for non-pecuniary damage plus interest at the statutory rate from the date of the killing.

Summary of the defence: The deceased, the mayor of Hilâl, had not informed any civilian or military authority of his journey or requested protective measures, in spite of continuing terrorist activities in the area; he had acted rashly. The incident had not been foreseeable and the authorities had not been at fault in any way; they could not be held liable in damages on the grounds that they had taken only general measures; regard was to be had to the fact that, as it would not have been possible for the deceased continually to be re-elected mayor for the rest of his life, the amount of damages assessed by the expert in his report was excessive; for all those reasons, the authorities requested that the case be dismissed.

IN THE NAME OF THE TURKISH NATION

The Administrative Court of Diyarbakır, to which this case was referred, holds as follows:

The present action was brought for a total of TRL 300 million pecuniary damages and TRL 220 million non-pecuniary damages, plus interest at the statutory rate from the date of the killing on the ground that the plaintiffs have been deprived of the financial support of the deceased, who was killed by persons unknown.

The court file shows that a vehicle (registration no. 06-S-63S1) in which Yakup Kara, mayor of the town of Hilâl in Uludere district, Şırnak province, and the [father,] husband and brother of the plaintiffs, was travelling along the Uludere-Şırnak main road at about 10 a.m. on 28 June1991 was stopped by armed persons of unknown identity, and that Yakup Kara was killed with five people who were with him after being taken to a mountainous area. Although it was impossible to establish the identity of the assailants, it appears from the Şırnak Principal Public Prosecutor's decision of 10 July 1991 (that the case was outside his jurisdiction) and from the preliminary investigation file no. 1991/1239 of Diyarbakır State Security Court that the incident was carried out by members of the separatist terrorist organisation.

It is a well-known principle of administrative law that the authorities must compensate for special and extraordinary damage sustained by individuals through the acts of public servants. Liability in law does not stem only from the principle of fault or the theory of negligence in the performance of public duties; the authorities can be held strictly liable. As a rule, the authorities are liable in damages where a causal link can be established as a direct result of the acts of the public servant. However, as an exception to this rule, the authorities must pay compensation – irrespective of any causal link – for damage connected with its field of activity which it has been unable to prevent despite its responsibility for so doing. This principle, which is based on the concept of collective liability and is known as the "social risk" principle, is recognised in the case-law and legal opinion.

It is a well-known fact that terrorist acts, particularly in one part of the country, are directed against the State, the aim being the overthrow of the constitutional order of the State; they do not stem from personal hostility towards the victims, whether individuals or institutions.

Persons who sustain damages as a result of such actions and who have not been involved in any way in acts of terrorism are victims not of their own fault or actions but of the social unrest our society is going through. In short, they sustain damage because they are members of that society. Compensation for the damage must thus be paid according to the principle of social risk by the

authorities who, though responsible for preventing terrorist activity, proved incapable of doing so. In fact the authorities' association of society in the payment of compensation for damage thus sustained is both just and in accordance with the principle of the social State.

The facts of the case show that the damage sustained by the plaintiffs was not the result of their own actions but of their role as members of a State whose territorial integrity is threatened by large-scale terrorist activity. Consequently, even though no fault can be imputed to the authorities in the incident, they must compensate any extraordinary damage sustained by individuals in areas where a state of emergency has been declared.

Consequently, even though loss of financial support is a hypothetical concept, it will be necessary to take into account in the calculation of pecuniary damage the level of the deceased's income at the date of death and the criteria set out in the expert's report of 7 February 1993 and, furthermore, to grant the claim for non-pecuniary damage in order to compensate, if only in part, the suffering, sorrow and mental distress suffered by the young widow, children and brother of the deceased as a result of his death.

For the reasons set out above, this Court has decided:

(i) to grant the claim of TRL 300 million for pecuniary damage, as follows: TRL 120 million to the widow and TRL 30 million to each of the six children plus interest at the statutory rate from the date the proceedings were issued (7 April 1992);

(ii) to grant the claim of TRL 220 million for non-pecuniary damage in part, as follows: TRL 9 million to the widow, TRL 6 million to each of the six children, and TRL 5 million to the brother Hamit Kara; the remainder of the claim for non-pecuniary damage is dismissed.

[The court also ruled on various taxes and court expenses]

Judgment delivered on 25 January 1994 (unanimity):

President	Member	Member
Bilâl Uslu	Ahmet Çoranoğlu	Ali iza Yeğenoğlu
Matricule 26692	Matricule 32807	Matricule 32918
Signature	Signature	Signature

(Schedule of costs and expenses

Total: TRL 5,176,400)

(A5)

DIYARBAKIR ADMINISTRATIVE COURT
Case no. 1990/870
Judgment no. 1994/31

Plaintiff: Sabriye Kara (for herself and her five children)

Lawyer: Mr Fethi Gümüs – Diyarbakır

Defendant: Ministry of the Interior – Ankara

Summary of the claim: Claim for payment of compensation of TRL 50 million for pecuniary damage and TRL 7 million for non-pecuniary damage suffered by the plaintiffs as a result of the death of the head of the family, Sabri Kara, who was killed by gendarmes near Diyarbakır.

Summary of the defence: The incident did not occur as a result of administrative fault and therefore the claim should be dismissed.

IN THE NAME OF THE TURKISH NATION

The Administrative Court of Diyarbakır, to which this case was referred, holds as follows:

A claim has been brought for payment of compensation of TRL 50 million for pecuniary damage and TRL 7 million for non-pecuniary damage suffered by the plaintiffs as a result of the death of the head of the family, Sabri Kara, who was killed by gendarmes near Diyarbakır.

It is stressed in the preamble to the Constitution of the Turkish Republic that every Turkish citizen enjoys the rights and fundamental freedoms stated in the Constitution in accordance with the imperatives of equality and social justice, and possesses from birth the right and opportunity to lead a decent life within the national culture, civilisation and legal system and to pecuniary and spiritual self-fulfilment on this path. Article 125 of the Constitution provides that the authorities are required to pay compensation for any damage arising from its activities, acts and decisions. This provision encompasses not only faults committed by public servants but also the strict liability of the authorities.

It emerges from an examination of the present case that the head of the plaintiffs' family was ordered by gendarmes to stop at a road block near Diyarbakır at 11 p.m. on 11 August 1989. He was killed at the wheel of his vehicle by warning shots when he failed to heed their orders. The case was

referred to the district administrative council, which decided that the gendarmes responsible for Sabri Kaya's death should be put on trial. This decision was upheld by the Supreme Administrative Court but was then set aside by the Third Diyarbakır Assize Court, which held that the accused should be acquitted. The plaintiffs referred the present case to this Court and claimed non-pecuniary damage sustained as a result of the death of the head of their family and pecuniary damage arising out of the loss of his support.

In accordance with an expert opinion obtained by this Court, it is held that total compensation of TRL 42,098,574 shall be paid for pecuniary damage, made up of TRL 14 million to the deceased's widow, Sabriye Kara, TRL 8 million to Kutbettin, TRL 6 million to Cebelli, TRL 5 million to Mahmut, TRL 4 million to Ramazan and TRL 3 million to Gülistan, the deceased's children.

Further, taking into consideration the pattern of the modern family formed of father, mother and children, it is obvious that loss of one of the members of the family produces negative effects from a pecuniary and non-pecuniary standpoint for the rest of the family. In this respect, payment of compensation for non-pecuniary damage sustained by members of the family amounts to a measure aimed at family protection. Consequently, it is held that compensation for non-pecuniary damage of TRL 7 million shall be awarded to the deceased's family.

In the light of the above observations, the plaintiffs' claim for compensation is held to be admissible and it is ordered that the relevant authorities shall pay TRL 42,098,574 for pecuniary damage and TRL 7 million for non-pecuniary damage suffered by the plaintiffs ...

Deputy President Member Member

(Costs)

…

(A13)

DIYARBAKIR ADMINISTRATIVE COURT
Case no. 1990/263
Judgment no. 1991/658

Plaintiff: Behiye Toprak

Lawyer: Zafer Akdag

Defendant: Ministry of the Interior – Ankara

Summary of the claim: Claim for payment of compensation of TRL 45 million for pecuniary damage and TRL 7 million for non-pecuniary damage suffered by the plaintiff and two children as a result of the death of her husband, Mehmet Toprak, who was killed by terrorists while on the road from Midyat to Dargeçit on 30 August 1988.

Summary of the defence: The incident was an isolated act of disturbance of the public order that could not have been foreseen by the authorities, who were thus unable to take preventive measures. The killing of Mehmet Toprak was not a result of administrative fault. It was for the plaintiff to bring legal proceedings against the culprits. There was no damage which the authorities were required to compensate. The claim should be dismissed.

IN THE NAME OF THE TURKISH NATION

The Administrative Court of Diyarbakır, to which this case was referred, holds as follows:

Under Article 125 of the Constitution the authorities are required to compensate damage caused by their acts. The obligation arises not only where the authorities have been at fault, but also where they have strict liability.

It is well known that acts of anarchy and terrorism are committed in our country against the State with the objective of destroying the constitutional order of the State, and breaking up and dividing the country. Individuals or corporations do not suffer damage through their own fault or acts and cannot be held responsible for them; such damage is suffered as a result of armed action by terrorist organisations. These are not isolated public-order incidents, but actions planned in advance by illegal organisations.

Citizens become victims of such actions simply by being members of society. The authorities' liability is not confined to cases where public

servants have been at fault, but may also arise through the principle known as the "social risk" principle. According to this principle, the authorities are required to remedy any damage which, though not caused by their acts, arises out of the acts of third parties which the authorities are unable to prevent in spite of their obligation to do so.

In accordance with section 2 (a) of Law no. 2559 on the attributions and powers of the police and section 7 (a) of Law no. 2803 on the attributions and powers of the gendarmerie, the authorities have an obligation to set up beforehand whatever system may be necessary for the performance of the public services for which they have jurisdiction and responsibility, to provide the necessary resources for its functioning and to prevent damage occurring by taking appropriate measures.

Clearly, citizens cannot be expected to know in advance when and where such incidents will occur and to inform the authorities so that the latter can take the necessary measures.

The authorities must take measures effectively to protect the people's lives and property from such incidents.

Mehmet Toprak was stopped in his car on his way from Midyat to Dargeçit and killed by terrorists on 30 August 1988. It is clear in the instant case that the defendant authorities failed to take appropriate security measures on the road from Midyat to Dargeçit. In that regard, they did not carry out their legal duty to protect the safety of citizens. Consequently, the authorities must compensate the pecuniary and non-pecuniary damage suffered by the plaintiffs.

...

10 December 1991

(A14)

SUPREME ADMINISTRATIVE COURT – Tenth Division
Case no. 1992/3066
Judgment no. 1993/3774

Appellant: Ministry of the Interior – Ankara

Respondent: Behiye Toprak

Summary of the appellant's case: On 10 December 1991 Diyarbakır Administrative Court awarded TRL 45 million for pecuniary damage and TRL 7 million for non-pecuniary damage to the respondent, Behiye Toprak and her two children, who have suffered as a result of the killing of Mehmet Toprak, the respondent's husband, by terrorists while on the road from Midyat to Dargeçit on 30 August 1988. The appellant authorities have appealed to the Supreme Administrative Court to have the award of compensation set aside.

...

State Counsel at the Supreme Administrative Court: Ülkümen Osmanağaoğlu

State Counsel's opinion: The personal damage suffered by the family of Mehmet Toprak, who was killed by terrorists, did not result from a failure by the authorities to provide protection. Nevertheless, the incident had to be considered against the background of terrorist and separatist action being conducted in Turkey. The principle of strict liability had to be taken into account and the appellant's request for compensation accepted in accordance with the principles laid down in the Preamble to the Constitution and in Articles 2, 3, 17 and 125 of the Constitution.

…

The Tenth Division of the Supreme Administrative Court holds as follows:

Diyarbakır Administrative Court held in its judgment that the damage sustained by the respondents was not the result of a fault on the part of the deceased. It was rather the result of actions planned in advance by illegal organisations with the objective of destroying the constitutional order of the State, and breaking up and dividing the country. The court held that the authorities must pay compensation for damage caused by the actions of third

parties.

In accordance with the "social risk" principle, the authorities have a duty to prevent damage of this type by preventive, protective and dissuasive measures. It has been clearly established that Mehmet Toprak was stopped in his car on his way from Midyat to Dargeçit and killed by terrorists on 30 August 1988. He became a victim of terrorist action simply because he was a member of the community. It is clear in the instant case that the authorities failed to take appropriate security measures on the road from Midyat to Dargeçit. In that regard, they did not carry out their legal duty to protect citizens. Consequently, the authorities must pay compensation for the pecuniary and non-pecuniary damage suffered by the plaintiffs.

...

In its decision Diyarbakır Administrative Court referred to the principle of commission of a fault by a public servant and to the concept of "social risk" in deciding that the authorities must compensate the respondent for the damage sustained.

The present case must be considered in the light of the specific facts and the relevant principles.

It is a well-known principle of administrative law in States governed by the rule of law that compensation must be paid by the authorities for damage caused by third parties. Liability in law does not stem only from the notion of fault or the theory of negligent acts by public servants; the authorities can be held strictly liable. The authorities are liable in damages where a causal link can be established as a direct result of a public servant's acts.

The authorities must also pay compensation – irrespective of any causal link – for damage connected with its field of activity which it has been unable to prevent despite its responsibility for so doing. This principle, which is based on the concept of collective liability and is known as the "social risk" principle, has been developed through the case-law.

It is a well-known fact that some parts of the country are facing terrorist acts directed against the State with the aim of destroying the constitutional order. Losses sustained from such acts do not stem from personal hostility towards the victims or the victims' fault. They become victims simply by being members of the community ...

The authorities must share the burden and mitigate the effects of terrorist acts by paying compensation for the damage in accordance with the principle of equality and the social State.

The award of compensation was justified.

The Supreme Administrative Court decides unanimously to dismiss the request for the judgment to be set aside.

13 October 1993

(A16)

DIYARBAKIR ADMINISTRATIVE COURT
Case no. 1991/720
Judgment no. 1992/616

Plaintiffs: Cemil Kaya, Osman Kaya

Lawyer: Ismet Milli, Gevran Cad. 29 – Diyarbakır

Defendant: Ministry of the Interior – Ankara

Summary of the claim: Claim of TRL 60 million in damages for loss sustained following the destruction by fire of the plaintiffs' house, barn, stable and furniture during a confrontation in February 1990 between police and terrorists in the village of Batı Karakoç, plus interest at the statutory rate.

Summary of the defence: Action to be dismissed for want of any legal basis.

IN THE NAME OF THE TURKISH NATION

On 19 November 1991, after being summoned by post and communiqué to attend Diyarbakır Administrative Court, the plaintiff Osman Kaya and lawyer Necat Andaç attended a public hearing following which it was held that:

A claim has been made for TRL 30 million for pecuniary damage following loss sustained in the course of a confrontation between police and terrorists in the village of Bati Karakoç in the province of Diyarbakır.

Article 125 of the Constitution provides that "the administration shall be liable to indemnify any damage caused by its own acts and measures".

State officials and institutions admit that acts of anarchy and terrorism are committed in our country against the State with the objective of destroying the constitutional order of the State and breaking up and dividing the country. The Court is aware and so finds that in fact damage suffered by individuals and institutions does not occur as a result of acts of personal hostility directed against them.

It follows that individuals or corporations do not suffer such damage through their own fault or acts; such damage is suffered as a result of armed action by groups formed to use violence to create social disruption, destroy the constitutional order and break up the country through violent acts which have been carefully premeditated and are designed to achieve this end. These are not isolated public-order incidents, but actions planned in advance

by illegal organisations. In short, it is not the individual who causes the damage.

It is possible to argue that since it is not the authorities' act which causes the damage, they cannot be held liable for any fault.

However, nowadays the authorities' liability is not exclusively confined to cases where they have been at fault, but may also arise through the principle known as the "social risk" principle. According to this principle, the authorities are required to remedy any damage which, although not caused by their acts, arises out of the acts of third parties which the authorities are unable to prevent in spite of their obligation to do so.

The authorities have an obligation to set up beforehand whatever system may be necessary for the performance of the public services for which they have jurisdiction and responsibility. They are required to provide physical, human and financial resources and to prevent this type of damage occurring by preventive, protective and dissuasive measures to be taken by the police and the gendarmerie in accordance with section 2 (a) of Law no. 2559 on the attributions and powers of the police and Law no. 2803 on the attributions and powers of the gendarmerie.

Clearly, the authorities cannot be expected to know in advance when and where such incidents, which have continued over a number of years and have resulted in the declaration of a state of siege and emergency, will occur and to take the necessary measures. Further, it is clear that the authorities must take measures effectively to protect the life and property of persons from incidents which are *known or expected*.

From an examination of the documents on file it emerges that Osman Kaya's house was destroyed; that eight beds, supplies, fertiliser, kilims and curtains were totally destroyed by fire together with seven chairs; that the value of the house was TRL 20 million, of the supplies TRL 5 million, of the goats TRL 700,000; that Cemil Kaya did not suffer any damage; that according to the report drawn up by the Diyarbakır Prefecture relying on the declarations of people who had sustained damage, Osman Kaya's damage amounted to TRL 26,500,000, and that it had to be admitted that Osman Kaya had sustained pecuniary damage of TRL 26,500,000.

The plaintiffs' lawyer claimed TRL 30 million for Cemil Kaya, Osman Kaya living in a house which belonged to him. However, taking into account the fact that Cemil Kaya has at no material time claimed to have suffered damage, the sum of TRL 20 million will be paid to Osman Kaya.

For the reasons stated above, it is unanimously decided to dismiss Cemil Kaya's action; to grant Osman Kaya's claim for damages in part, to pay him TRL 26,500,000 and to dismiss the remainder of his claim, to award interest at

the statutory rate on TRL 26,500,000 with effect from 27 October 1991,

when his claim was turned down by the authorities; as regards court fees paid at the commencement of proceedings, to cancel the TRL 150,000 and make up the sum of TRL 155,000; with respect to legal costs amounting to TRL 181,700 to divide them pro rata between the plaintiff and the defendant, to the extent of TRL 167,948 for the defendant and TRL 213,752 for the plaintiff; and a contribution by the defendant of TRL 1,564,000 to be paid to the plaintiff in respect of his lawyer's fees.

Delivered on19 November 1992

President	Member	Member
Orhan Erdost Nilgün	Kurtoğlu	Mehmet Gökpinar
26375	27475	32730
Signature	Signature	Signature

Legal costs

Registration	7 700	
Judgment		265 000
Postal charges		8 900
Case file costs		15 000
Funds		5 000
		381 700

(A17)

SUPREME ADMINISTRATIVE COURT – Tenth Division
Case no. 1993/1740
Judgment no. 1994/2555

Appellant: Cemil Kaya, 19 May District, Road 1034, no. 61, Yüreğir – Adana

Respondent: Ministry of the Interior – Ankara

Summary of the appellant's case: Following the trial of this case involving a claim for payment of compensation of TRL 60 million with interest at the statutory rate for damage sustained as a result of the destruction of the house, loft and stables of the plaintiffs and the moveable property in the house at the time of fighting in February 1990 between security forces and terrorists in the village of Batıkaraç, Diyarbakır Administrative Court held in its judgment no. 1992/616 (case no. 1991/720) that the authorities are liable not only in cases involving a fault committed by a public servant or strict liability where specific conditions are met but also in cases involving the principle known as the "social risk" principle; that in accordance with this principle, the authorities were required to pay compensation for the damage caused by third parties which they had the obligation to prevent, even if such damage had not occurred through their fault; that in the present case the house of one of the applicants, Osman Kaya, had been destroyed and his moveable property such as eight mattresses, the entire stock of food, fertiliser, rugs and curtains had been totally damaged, and his seven goats had been killed. The court took into account the plaintiff's valuation of his house at TRL 20 million, of the foodstuffs at TRL 5 million and the goats at TRL 700,000; the court stated that another plaintiff, Cemil Kaya, had been unable to prove that he had sustained damage, that in the report drawn up by the Diyarbakır Prefecture in accordance with the plaintiffs' statements, it is stressed that the damage sustained by Osman Kaya is TRL 26,500,000, that there exists no reference to Cemil Kaya who at no stage in the proceedings claimed to have suffered damage, that his claims should therefore be dismissed; that Osman Kaya's claim being partially accepted, it was held that the authorities concerned should pay compensation of TRL 26,500,000 with interest at the statutory rate calculated from 27 October 1991, when the authorities rejected the claim.

Cemil Kaya has requested that the judgment dismissing his claim be quashed on points of law. He alleged that the house which was destroyed at the material time was his property and that Osman Kaya was living there temporarily.

Summary of the respondent's case: The appeal on points of law is not founded and should be dismissed.

Judge responsible: Yakup Bal

State Counsel at the Supreme Administrative Court: Ülkümen Osmanağaoğlu

S*tate Counsel's opinion*: The points stressed in the appeal on points of law fall outside the scope of the grounds set out in sub-paragraph 1 of section 49 of Law no. 2577 relating to the procedure for administrative court judgments. They are not such as to require that the judgment under appeal be quashed having regard to the arguments in law which support it. For these reasons, the Administrative Court judgment should be upheld and the appeal on points of law dismissed.

IN THE NAME OF THE TURKISH NATION

The Tenth Division of the Supreme Administrative Court, to which this case has been referred, holds as follows:

Final judgments of the administrative courts and of the tax authorities can only be set aside on the grounds set out at section 49 of Law no. 2577 relating to the procedure for administrative judgments, as amended by Law no. 3622.

As the judgment was delivered in accordance with the rules of procedure and law, and because the grounds set out in the appeal on points of law are not such as to require that the judgment be quashed, the Supreme Administrative Court finds unanimously on 6 June1994 that the application to quash the judgment of the court below should be dismissed.

President Member Member Member Member

(A24)

VAN ADMINISTRATIVE COURT
Case no. 1992/408
Judgment no. 1994/170

Plaintiff: Mizgin Yılmaz

Lawyer: Mehmet Ekinci

Defendant: Ministry of Defence – Ankara

Summary of the claim: Claim for payment by the authorities concerned of the sum of TRL 60 million for damage caused to the plaintiff's vehicle by shots fired by aircraft flying over the Silo region in Hakkari, on 29 June1992.

IN THE NAME OF THE TURKISH NATION

The Administrative Court of Van has decided as follows:

Under Article 125 of the Constitution the authorities are required to pay compensation for damage caused by their acts. The obligation arises not only where the authorities have been at fault, but also where they incur strict liability.

Section 35 of Law no. 211 on the Turkish armed forces provides that their role is to ensure the protection of the Turkish homeland and of the Turkish Republic.

It has been established that three people were killed and thirteen others injured and damage was caused to property by shots fired by aircraft flying over the Silo region in Hakkari on 29 June 1992. There is no doubt that the incident occurred.

The principal obligations of a State are to protect the existence and independence of the State, and the life and property of its citizens. The State has a duty to protect the country's territorial waters, airspace and land and to take all necessary steps to provide protection against external dangers. It must institute all appropriate organisation to protect and safeguard the country.

In accordance with the constitutional obligations highlighted above, the authorities, which are under an obligation to perform their duties in an effective manner, are responsible in law for any malfunctioning or omissions arising in the performance of their duties. In the present case, it is said that the national identity of the aircraft could not be established. Nevertheless, the Turkish

armed forces, who have an obligation to protect the country, must also exercise effective control over the national airspace in order to safeguard the life and property of citizens.

The authorities are liable for making good the damage sustained either as a result of aircraft of the Turkish armed forces opening fire, or as a result of their failure sufficiently to protect the airspace from unidentified aircraft. For it follows from the legal provisions that in the performance of their duty to protect the country, the armed forces are liable for damage caused to individuals and damage sustained by them during air raids occurring as a result of their failure to perform this duty adequately.

In conclusion, the authorities have a legal obligation to pay compensation for damage arising out of faults committed by public servants in that they failed to take the necessary steps to ensure the protection of the lives and property of citizens.

...

(A25)

VAN ADMINISTRATIVE COURT
Case no. 1994/492
Judgment no. 1994/365

Plaintiffs: Gül Akkuş, action on her own behalf and as guardian of her minor children Cafer Kaplan, Serkan Kaplan, Mehmet Siddik Kaplan and Dilaver Kaplan
Pertefküle village – Tatvan

Lawyers: Mr Sevket Epözdemir and Mr Levent Nasir, Cumhuriyet Avenue – Tatvan

Respondent: Ministry of the Interior – Ankara

Summary of the claim: Claim for damages totalling TRL 200 million (TRL 190 million for pecuniary damage and TRL 10 million for non-pecuniary damage), plus interest at the statutory rate, to the plaintiffs, whose protector, Macit Kaplan, was injured on 25 January 1991 when the security forces opened fire in an attempt to disperse a group of people who were holding an unauthorised demonstration in front of the offices of the governor of Tatvan District, and who died later in hospital.

Summary of the defence: In the incident in which the plaintiffs' protector was killed by a bullet from a police officer's gun, the authorities did not open fire on the crowd or aim at any individual or at the crowd and were acting on the authority vested in them by law to disperse the crowd, who were holding an unauthorised demonstration; the case should therefore be dismissed.

IN THE NAME OF THE TURKISH NATION

After considering the file and following a public hearing attended by both parties, Van Administrative Court has decided to *confirm* its initial judgment. The defendant authorities had appealed against that judgment on points of law and it had been reversed in part by the Tenth Division of the Supreme Administrative Court on 29 November 1993 (case no. 1992/4259, judgment no. 1993/4754) on the ground that the appellant, Gül Akkuş, was not officially married to the deceased with whom she had only been cohabiting, and consequently, as no lawful marriage had taken place according to the Civil Code, no compensation could legally be awarded to her by this Court as it had

done in its judgment of 16 June 1992 (case no. 1991/259, judgment no. 1992/157).

The action was brought claiming pecuniary damages of TRL 190 million and non-pecuniary damages of TRL 10 million on the ground that the plaintiffs' protector had been killed when the security forces opened fire in an attempt to disperse an unauthorised demonstration in Tatvan on 25 January1991.

Protecting individuals and their property is one of the State's principal duties. The authorities are required to pay compensation for any damage resulting from their own acts and procedures, and that rule is laid down in Article 125 of the Constitution.

In the incident in question, the plaintiffs' protector, Macit Kaplan, was injured when security forces opened fire in an attempt to disperse a group of people who were holding an unauthorised demonstration, and died later in hospital. The authorities must pay compensation on the basis of the fault, albeit unintentional, of the security forces in the performance of their duties.

Though not involved in the demonstration, Macit Kaplan was killed when hit by a bullet fired by security forces seeking to prevent an unauthorised demonstration; he had been cohabiting with the plaintiff Gül Akkuş. Although she was not his lawful wife, it was not disputed that their cohabitation was socially recognised, they had four officially registered children and the deceased provided for the plaintiff.

Having regard to the social realities in our country, it was held that as the deceased and the plaintiff had lived together for many years as husband and wife and had had four children, and as the deceased was the family bread-winner, pecuniary and non-pecuniary damages had to be awarded to the plaintiff.

The settled case-law of the Supreme Administrative Court is likewise to the effect that family life which is socially recognised on the basis of a religious marriage entitles persons sustaining damage to claim compensation.

For the reasons set out above, this Court has decided not to accede to the decision of the Tenth Division of the Supreme Administrative Court and to confirm its previous decision.

It has been concluded that, as the appeal entered by the authorities is unfounded, the claim for pecuniary damages amounting to TRL 160,626,429 (the amount determined by the expert) must be allowed.

With regard to non-pecuniary damage, the Court considers that it is designed to mitigate the distress caused to individuals on the loss of a relative. Consequently, the plaintiffs should be awarded TRL 800,000 for non-pecuniary damage, while their claim for the remainder should be dismissed.

For the reasons set out above, this Court has unanimously decided on 21 June 1994 to award the plaintiffs TRL 160,626,429 for pecuniary damage plus interest at the rate of 30%, and TRL 800,000 without interest for non-pecuniary damage ...

President	Member	Member
Emine Aktepe	Kalender Türeoglu	Ibrahim Topuz
27053	32730	33626
Signature	Signature	Signature

(Schedule of court fees and expenses)

…

(Total: TRL 2,096,964)

INDIVIDUAL DISSENTING OPINION OF JUDGE DE MEYER

(*Translation*)

For the reasons set out in the joint dissenting opinion on domestic remedies (Article 13 of the Convention) (see above), I consider that:

(1) the preliminary objection of failure to exhaust domestic remedies should have been allowed;

(2) if that objection was dismissed, the applicant's complaint under Article 6 § 1 of the Convention should have been considered and declared unfounded; and

(3) no just satisfaction under Article 50 of the Convention should have been awarded.