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

CASE OF YAŞA v. TURKEY

(63/1997/847/1054)

JUDGMENT

STRASBOURG

2 September 1998

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SUMMARY[1]

Judgment delivered by a Chamber

Turkey – alleged murder and attempted murder by security forces – lack of adequate and effective investigation into incidents

I. SCOPE OF THE CASE

Complaints under Articles 3 and 6 not pursued before Court – no reason for Court to consider them of its own motion.

II. GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Whether applicant was a victim

Government estopped from denying that applicant was related to person killed in one of alleged attacks – in light of principles established in its case-law and particular facts of case, applicant could legitimately claim to be a victim of his uncle's murder.

Conclusion: objection dismissed (eight votes to one).

B. Failure to exhaust domestic remedies

First limb (civil action for damages): those responsible for attacks unidentified – not valid.

Second limb (action in administrative law on basis of State's strict liability): identification of State agents responsible was not a prerequisite to bringing an action of that nature – not valid.

Third limb (criminal proceedings): closely linked to complaints on merits.

Conclusion: first two limbs of objection dismissed, third limb joined to merits (eight votes to one).

III. ARTICLE 2 OF THE CONVENTION

A. Attacks on applicant and his uncle

Case file, including new evidence furnished by applicant, did not enable Court to depart from Commission's conclusions – impossible to conclude beyond all reasonable doubt that applicant had been attacked and his uncle killed by security forces.

Conclusion: no violation (unanimously).

B. Inadequacy of investigations

Obligation under Article 2 to carry out an adequate and effective investigation into circumstances of alleged incidents – not confined to cases where implication of State agents had been established – nor was issue of whether a formal complaint about killing had been lodged with competent investigatory authorities decisive: mere fact that

1. This summary by the registry does not bind the Court.

authorities had been informed of murder had given rise *ipso facto* to obligation to carry out effective investigation – same applied to attack on applicant which, because eight shots had been fired at him, had amounted to attempted murder.

Two criminal investigations were pending – no tangible result or real progress more than five years after events – difficulty in conducting investigations in area marked by terrorism could not relieve authorities of their obligations under Article 2 – failure, in spite of circumstances, to have regard to fact that State agents might have been responsible.

Conclusion: violation (eight votes to one).

IV. ARTICLE 13 OF THE CONVENTION

Recapitulation of Court's case-law on "effective remedies" – circumstances enabled complaint under Article 2 to be considered arguable – fact that responsibility of State agents had not been established beyond all reasonable doubt made no difference in that regard – as there had been no adequate and effective investigation for purposes of Article 2, respondent State could not be considered to have complied with Article 13, whose requirements in that respect were stricter still.

Conclusion: violation (eight votes to one).

V. ADMINISTRATIVE PRACTICE

Material on file was not sufficient to enable Court to determine whether authorities had adopted a practice of violating Article 2 or Article 13.

VI. ARTICLES 10, 14 AND 18 OF THE CONVENTION

Complaints arose out of same facts as those considered under Articles 2 and 13.

Conclusion: not necessary to decide that issue (unanimously).

VII. ARTICLE 50 OF THE CONVENTION

A. Pecuniary and non-pecuniary damage

Pecuniary damage: claim dismissed.
Non-pecuniary damage: sum awarded.

B. Costs and expenses

Claim allowed in part.

Conclusion: respondent State to pay applicant specified sums (eight votes to one).

COURT'S CASE-LAW REFERRED TO

18.1.1978, Ireland v. the United Kingdom; 27.4.1988, Boyle and Rice v. the United Kingdom; 20.3.1991, Cruz Varas and Others v. Sweden; 23.3.1995, Loizidou v. Turkey (*preliminary objections*); 8.6.1995, Yağcı and Sargın v. Turkey; 27.9.1995, McCann and Others v. the United Kingdom; 16.9.1996, Akdivar and Others v. Turkey; 18.12.1996,

Aksoy v. Turkey; 25.9.1997, Aydın v. Turkey; 26.11.1997, Sakık and Others v. Turkey; 30.1.1998, United Communist Party of Turkey and Others v. Turkey; 19.2.1998, Kaya v. Turkey; 25.5.1998, Kurt v. Turkey; 28.7.1998, Ergi v. Turkey

In the case of Yaşa v. Turkey[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr THÓR VILHJÁLMSSON,
Mr F. GÖLCÜKLÜ,
Mr R. PEKKANEN,
Mr L. WILDHABER,
Mr D. GOTCHEV,
Mr J. CASADEVALL,
Mr M. VOICU,
Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 April and 28 July 1998,

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 9 July 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22495/93) against the Republic of Turkey lodged with the Commission under Article 25 by a Turkish national, Mr Eşref Yaşa, on 12 July 1993.

The Commission's request referred to Articles 44 and 48 of the Convention and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2, 3, 6, 10, 13, 14 and 18 of the Convention.

Notes by the Registrar

1. The case is numbered 63/1997/847/1054. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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

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. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 27 August 1997, in the presence of the Registrar, Mr R. Ryssdal, the President of the Court, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr R. Pekkanen, Mr L. Wildhaber, Mr D. Gotchev, Mr J. Casadevall, Mr M. Voicu and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, 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 orders made in consequence, the Registrar received the Government's and the applicant's memorials on 2 and 3 March 1998 respectively. A schedule to the applicant's memorial setting out details of his claims under Article 50 of the Convention was received by the Registrar on 20 March 1998. The Government lodged their observations on that schedule on 20 April and the applicant replied on 23 April.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 April 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mrs	D. AKÇAY,	*Co-Agent*,
Mr	A. KAYA,	
Ms	A. EMÜLER,	
Ms	M. GÜLŞEN,	
Mrs	Ş. ÖZKAN,	
Ms	A. GÜNYAKTI,	*Advisers*;

(b) *for the Commission*

Mr	H. DANELIUS,	*Delegate*;

(c) *for the applicant*

Mr	K. BOYLE, Barrister-at-Law,	
Ms	F. HAMPSON, Barrister-at-Law,	*Counsel*,
Ms	A. REIDY, Barrister-at-Law,	*Adviser*.

The Court heard addresses by Mr Danelius, Mr Boyle and Mrs Akçay.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Eşref Yaşa, a Turkish citizen, was born in 1962 and currently lives in Diyarbakır. His uncle, Mr Haşim Yaşa, was born in 1956 and also lived in Diyarbakır. He was killed on 14 June 1993.

7. The applicant lodged an application with the Commission "on his own behalf and on behalf of his deceased uncle" (see paragraph 56 below), in which he complained that they had been victims of armed attacks because they sold the newspaper *Özgür Gündem*. The attacks were part of a campaign orchestrated against that and other pro-Kurdish newspapers with the connivance or even the direct participation of State agents.

Some of the events that led to the application being made are disputed.

A. The applicant's and the Government's versions of the facts

1. The applicant's version

(a) The incidents involving the applicant and his uncle

8. At the material time the applicant rented a newspaper kiosk, known as the Bulvar Buffet, in the town of Diyarbakır. In October 1992 he began to receive death threats from the police because he sold certain newspapers, in particular the pro-Kurdish paper *Özgür Gündem*.

9. In the early hours of 15 November 1992 the applicant's kiosk was set on fire and destroyed. The applicant estimated the damage at 70,000,000 Turkish liras.

10. About a week before that incident, the applicant had been visited by two police officers, one of whom was Superintendent Kemal Fidan of the Diyarbakır Security Branch. The applicant did not know the other officer's name. They had threatened to burn down his kiosk because of the newspapers he sold.

11. After the applicant's kiosk had been burnt down, other newsagents had decided to stage a one-day protest strike and refused to sell anything.

12. At 7.15 a.m. on 15 January 1993 shots had been fired at the applicant while he was in Turistik Street in the Mardinkapı district of Diyarbakır. He had been riding his bicycle from home to the kiosk with his son Diren on the back, when he noticed two suspicious-looking men, one tall and the other of average height, aged about 20–25. Fearing their intentions were hostile, the applicant had attempted to steer his bicycle away but had been struck by a taxi. He and his son had fallen to the ground. At that moment one of the two men had started to shoot at him. In self-defence, the applicant had drawn a pistol from his waist and fired six shots back, none of which had hit the two men. The applicant, however, had been hit by eight bullets fired by the assailant. Three had grazed his back and one his right leg. One had entered his right arm and one his left wrist. One bullet had lodged between the forefinger and middle finger of his left hand and one had gone through his right buttock into his abdomen.

13. The applicant was taken by taxi to Diyarbakır Hospital. He had asked the driver to deliver his pistol to one of his relatives. The driver had given it instead to another taxi driver who knew the applicant's kiosk. He had put the pistol in a scrap-box tin under the counter of the kiosk.

14. The operation to remove the bullets from the applicant's body, which was performed in the intensive care unit of Diyarbakır Hospital, was held up for two hours by the police. His relatives were later subjected to insults and received death threats at the hospital.

15. The applicant spent eleven days in hospital. He still had health problems as a result of the attack. He suffered pain in his left arm and several fingers of his left hand and there was continuing discomfort from the scars. In addition, he had stomach pains caused by an infection contracted following the operation.

16. While in hospital the applicant had made a statement to the police in which he claimed that his assailants were police officers. At no stage had the public prosecutor's office asked him to make a statement about the attack.

17. After coming out of hospital he was prosecuted for carrying an unlicensed firearm. On 24 May 1993 he was convicted and sentenced to one year's imprisonment, later converted by the court to a fine of 1,633,333 Turkish liras, to be paid in instalments over four months. His appeal against the conviction and sentence was dismissed.

18. At about 7.30 a.m. on 14 June 1993 the applicant's uncle, Haşim Yaşa, who had been running the applicant's kiosk since March 1993, was shot in the head and killed by an unknown assailant while walking along Sunay Avenue in Diyarbakır. Haşim Yaşa's seven-year old son, Aziz, was the only witness to the shooting. On the same day, the applicant was arrested, assaulted and threatened with death by the police, who told him that they had carried out the shooting and that he had been the intended target.

19. On 10 October 1993 the applicant's younger brother, Yalçın Yaşa, aged 13, who had been looking after the kiosk following the attacks on the applicant and his uncle, was killed by an unknown assailant near his home. Another of the applicant's brothers, Yahya Yaşa, aged 16, was seriously injured during the attack.

20. Following that attack the applicant was forced to sell his business because there was no one left in his family to manage the kiosk.

(b) The campaign of attacks against people distributing pro-Kurdish newspapers

21. The applicant alleged that he and his uncle had been shot because of their involvement in the distribution of the newspaper *Özgür Gündem*. The incidents had been part of a campaign of persecution and attacks against people engaged in the publication and distribution of that and other pro-Kurdish newspapers. To support that claim, the applicant referred to the following incidents.

(i) Closure of the Özgür Gündem

22. Publication of the *Özgür Gündem* had ceased in April 1994 as a result of a wave of prosecutions brought against it by the State. Since first appearing in May 1992, the newspaper had been the subject of several prosecutions, confiscation orders and temporary closure orders. While the newspaper had never been officially banned from sale, there had been periods when confiscation and closure orders had affected its publication and distribution. The *Özgür Ülke*, the successor to the *Özgür Gündem*, was forced to close in February 1995 and the *Yeni Politika*, which replaced it, ceased publication in August 1995.

(ii) Attacks on the Özgür Gündem *staff*

23. The applicant has supplied lists detailing cases of attacks on, ill-treatment or detention of and threats against staff and distributors of the *Özgür Gündem* and similar newspapers in 1992, 1993 and early 1994. He maintained that those incidents clearly established that there was a pattern of targeting persons working for the *Özgür Gündem*.

24. The applicant stated that at least seven journalists, including Musa Anter, working for the *Özgür Gündem* had been killed, while others had been injured in attacks. Numerous other journalists had been detained and, in some instances, subjected to ill-treatment.

25. There had been numerous prosecutions of the owners, editors and journalists of the *Özgür Gündem* on the basis, *inter alia*, of the provision under the Prevention of Terrorism Act prohibiting propaganda against the indivisible unity of the State. In addition, Behçet Cantürk, one of the principal financiers of the *Özgür Gündem*, was murdered (see paragraph 46 below).

26. The applicant stated that several newspaper kiosks were attacked for selling the *Özgür Gündem*. In addition, on 3 December 1994 the headquarters of the *Özgür Gündem* in Istanbul and its office in Ankara were bombed. One person was killed and eighteen injured.

27. There had also been numerous incidents in which persons and vehicles involved in the distribution of the *Özgür Gündem* had been attacked. The applicant stated that at least eleven vendors or distributors have been killed, including Yalçın Yaşa (see paragraph 19 above) and Haşim Yaşa (see paragraph 18 above). Several others had been beaten or severely injured, while many more had been threatened with violence if they did not stop selling or distributing the newspaper.

28. To support his assertions the applicant referred to various publications containing information and expressing concerns about infringements of freedom of expression in Turkey, including, "What happened to the press in 1993", published by the *Özgür Gündem*, extracts from 1993 *Info-Türk* (E.208-7, E.209-6, E.212-8/9), the United States' State Department Report for Turkey 1994 and "*L'intimidation – rapport sur les meurtres de journalistes et les pressions sur la presse turque*" by *Reporters sans frontières* (January 1993).

2. *The Government's version*

(a) The incidents involving the applicant and his uncle

29. The Government confirmed that the applicant had been shot and his uncle killed on 15 January 1993 and 14 June 1993 respectively. In their memorial they referred to the investigations of the public prosecutors, which commenced on the same day as the attacks (see paragraphs 35 and 41 below). Those investigations, which were being conducted in accordance with the applicable provisions of the Turkish Code of Criminal Procedure (see paragraph 48 below), were still pending.

30. The Government maintained that there was no evidence to support the applicant's contention that members of the security forces were responsible for the attacks on the applicant and his uncle. In addition, they denied all allegations of ill-treatment by the State authorities. They said that the applicant had never officially complained to the relevant authorities that his attackers were agents of the State. Moreover, there was no evidence to support the applicant's allegation that a police officer had told him that it was in fact he who had been the target of his uncle's killers.

(b) The campaign of attacks against people distributing pro-Kurdish newspapers

31. The Government refuted any allegation that there had been official intimidation of persons in any way connected with the sale of newspapers.

They said that such newspapers were sold in hundreds of kiosks and were freely available throughout Turkey. The Government acknowledged that on certain occasions particular editions of those newspapers had been confiscated (see paragraph 22 above). However, the measures, which were neither arbitrary nor repressive, were always made on the basis of judicial decisions.

B. The Commission's findings of fact

32. Noting that the allegations were of a width and character that would not be easily amenable to clarification from oral testimony, the Commission decided, after consulting the parties, to examine the allegations on the basis of the written materials submitted by the parties. The findings of the Commission can be summarised as follows.

1. The findings concerning the shooting of the applicant and the killing of his uncle

33. The Commission observed that the facts at the heart of the application were not disputed. The applicant was shot at and seriously injured in an attack by two men on 15 January 1993. His uncle, Haşim Yaşa, was shot and killed by a gunman on 14 June 1993.

34. The Commission found that there was no evidence before it that proved beyond reasonable doubt that agents of the security forces or police were involved in the shooting of either the applicant or his uncle. It also found that the applicant's complaints concerning police obstruction at the hospital and ill-treatment in custody following his uncle's funeral had not been substantiated. However, having regard to "appeals made for protection and protests made by Mr Yaşar Kaya, [a] journalist and [the] owner of the *Özgür Gündem*, at ministerial level and to the considerable number of attacks on persons connected with that newspaper", the Commission found that the Government had or ought to have been aware that those involved in its publication and distribution feared that they were falling victim to a concerted campaign tolerated, if not approved, by State agents (see paragraph 104 of the Commission's report) .

2. Proceedings before the domestic authorities

(a) Proceedings concerning the shooting of the applicant

35. According to a police report dated 15 January 1993 the shooting took place at about 7.15 a.m. in Turistik Street. Fifteen empty cartridges and

two bullet shells were taken for forensic examination, and a plan of the scene was drawn up. On the day of the shooting the police recovered the applicant's pistol from his kiosk. They arrested Ş. Altunhan at the kiosk and two taxi drivers, one being the driver to whom the applicant had entrusted the pistol and the other being the driver who had taken it to the kiosk (see paragraph 13 above). The police had then taken detailed statements from them.

36. In response to an enquiry of 15 January 1993 from the security police, the hospital doctor recorded the following injuries to the applicant: one bullet entry to the left gluteal region, one bullet entry and exit to the middle left forearm, one bullet scratch to the left index finger, one bullet entry and exit on the middle front upper right arm between the elbow and axillary region and a bullet track slightly below the skin tissue, surfacing under the arm.

37. On 17 January 1993, in the presence of his lawyer, the applicant had given a statement to the police in which he had described the attack. He stated that the assailants had intended to murder him because he ran a newspaper kiosk that mainly sold left-wing newspapers. He explained that, as there had been previous attacks on newsagents selling such papers, he had bought the pistol and had been carrying it with him for three or four days before the attack (see paragraph 16 above).

38. A summary incident report dated 17 January 1993 on the shooting, entitled "crime record no. 1993/C-14", referred to the applicant as an injured suspect and stated that the other (unidentified) suspects were at large.

39. On 20 January and 14 April 1993 the Diyarbakır public prosecutor had requested the relevant security branch to investigate the attack on the applicant and to apprehend the suspects. On the latter date the public prosecutor had also requested that the Principal Public Prosecutor's Office be kept informed of the progress of the inquiries every three months until the end of the statutory prescription period, namely 15 January 1998.

40. An expert ballistics report from the Diyarbakır regional criminal police laboratory dated 11 February 1993 indicated that the cartridges found by the police at the scene of the shooting showed traces and marks identical to those in the shooting of two other people in Diyarbakır on 3 November 1992 and 11 February 1993 respectively.

(b) The killing of Haşim Yaşa

41. A preliminary investigation file no. 1993/2248 had been opened into the killing of Haşim Yaşa. According to an autopsy report dated 14 June 1993, four bullet entry wounds had been found on Haşim Yaşa's body, two of which were fatal.

42. Following the shooting, the police had prepared a sketch of the scene of the incident and had taken statements on 14 June 1993 from two witnesses. According to V. Şimşek, after hearing the shots, he had seen someone, whom he was unable to identify, running behind the people gathering in the street. R. Orhan, who ran a stall in the street, had heard but not seen the shooting. On reaching the scene, he had helped Haşim Yaşa, who was lying on the ground, get into a taxi so that he could be taken to hospital.

43. The record made by the police on questioning Haşim Yaşa's son had indicated that although the boy had seen the assailant he had not recognised him. He said that the assailant – aged 20 to 25 and approximately 1.70 m tall – had continued to fire at his father even though the latter had fallen to the ground after the first shot. The attacker had then made his escape.

44. An expert ballistics report dated 21 June 1993 indicated that the bullet shells retrieved from the scene were too deformed for useful examination.

(c) Subsequent progress in the investigations

45. No other information concerning any investigative measures taken in relation to those incidents was included with the documents from the investigation file provided to the Commission. However, appended to the Government's written observations before the Commission was a letter which the public prosecutor attached to the Diyarbakır National Security Court had sent on 2 November 1995 to the Minister of Justice in which he said:

> "[The] allegation ... is wholly untrue. There are no gunmen working for the State in south-east Anatolia. In [that] region there are armed conflicts between armed organisations and conflicts arising out of the settling of scores within such organisations. The allegation that these incidents are attributable to the State and gunmen acting on its behalf is outrageous..."

C. New evidence produced to the Court

46. Before the Court, the applicant has produced a copy of a recent report by the Board of Inspectors within the Prime Minister's office. That confidential report ("the *Susurluk* report[1]") was initially intended to be only for the Prime Minister, who had commissioned it on 13 August 1997.

1. Susurluk was the scene of a road accident in November1996 involving a car in which a member of parliament, a former deputy director of the Istanbul security services, a notorious far-right extremist, a drug trafficker wanted by Interpol and his girlfriend had been travelling. The latter three were all killed. The fact that they had all been travelling in the same car had so shocked public opinion that it had been necessary to start more than sixteen judicial investigations at different levels and a parliamentary inquiry.

After receiving the report in January 1998, it would appear that the Prime Minister then made it available to the public, although eleven pages from the body of the report and its appendices were withheld. The report continued to be the centre of attention in Turkey while the Court was considering the case.

The introduction states that the report was not based on a judicial investigation and did not constitute a formal investigative report. It was intended for information purposes and purported to do no more than describe certain events that had occurred mainly in south-east Turkey which tended to confirm the existence of a tripartite relation involving unlawful dealings between political figures, government institutions and clandestine groups.

The report analyses a series of events, such as murders carried out under orders, the killings of well-known figures or supporters of the Kurds and deliberate acts by a group of "informants" supposedly serving the State and concludes that there is a connection between the fight to eradicate terrorism in the region and the underground relations that had been formed as a result, particularly in the drug-trafficking sphere. The passages from the report that concern certain matters affecting radical periodicals distributed in the region are reproduced below.

> "... In his confession to the Diyarbakır Crime Squad, ... Mr G. ... had stated that Ahmet Demir[1] (*page 35*) would say from time to time that he had planned and procured the murder of Behçet Cantürk[2] and other partisans from the mafia and the PKK who had been killed in the same way... The murder of ... Musa Anter[3] had also been planned and carried out by A. Demir (*page 37*).
>
> ...
>
> Summary information on the antecedents of Behçet Cantürk, who was of Armenian origin, are set out below (*page 72*).
>
> ...

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1. One of the pseudonyms of a former member of the PKK turned informant who was known by the name "Green Code" and had supplied information to several State authorities since 1973.
2. An infamous drug trafficker strongly suspected of supporting the PKK (see paragraph 25 above).
3. Mr Anter, a pro-Kurdish political figure, was one of the founding members of the People's Labour Party ("the HEP"), director of the Kurdish Institute in Istanbul, a writer and leader writer for, *inter alia*, the weekly review *Yeni Ülke* and the daily newspaper *Özgür Gündem* (see paragraph 22 above). He was killed at Diyarbakır on 30 September 1992 (see paragraph 24 above). Responsibility for the murder was claimed by an unknown clandestine group "*Boz-Ok*".

As of 1992 he was one of the financiers of the newspaper *Özgür Gündem*. ... Although it was obvious who Cantürk was and what he did, the State was unable to cope with him. Because legal remedies were inadequate the *Özgür Gündem* was blown up with plastic explosives[1] and when Cantürk started to set up a new undertaking, when he was expected to submit to the State, the Turkish Security Organisation decided that he should be killed and that decision was carried out (*page 73*).

...

All the relevant State bodies were aware of these activities and operations. ... When the characteristics of the individuals killed in the operations in question are examined, the difference between those Kurdish supporters who were killed in the region in which a state of emergency had been declared and those who were not lay in the financial strength the latter presented in economic terms. ... The sole disagreement we have with what was done relates to the form of the procedure and its results. It has been established that there was regret at the murder of Musa Anter, even among those who approved of all the incidents. It is said that Musa Anter was not involved in any armed action, that he was more concerned with the philosophy of the matter and that the effect created by his murder exceeded his own real influence and that the decision to murder him was a mistake. (Information about these people is to be found in Appendix 9[2]). Other journalists have also been murdered (*page 74*)[3]."

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The principles and procedures relating to liability for acts contrary to the law may be summarised as follows.

A. Criminal prosecutions

48. Under the Criminal Code all forms of homicide (Articles 448 to 455) and attempted homicide (Articles 61 and 62) constitute criminal offences. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or members of the security forces as well as to the public prosecutors' offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151).

If there is evidence to suggest that a death is not due to natural causes, members of the security forces who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public

1. See paragraph 26 above.
2. The appendix is missing from the report.
3. Ibid. for the page following this last sentence.

official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the course of his duty shall be liable to imprisonment.

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

49. If the suspected offender is a civil servant and if the offence was committed during the performance of his duties, the preliminary investigation of the case is governed by the Law of 1914 on the prosecution of civil servants, which restricts the public prosecutor's jurisdiction *ratione personae* at that stage of the proceedings. In such cases it is for the relevant local Administrative Council (for the district or province, depending on the suspect's status) to conduct the preliminary investigation and, consequently, decide whether to prosecute. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

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

50. By virtue of Article 4, paragraph (i), of Legislative Decree no. 285 of 10 July 1987 on the authority of the governor of the state of emergency region, the 1914 Law (see paragraph 49 above) also applies to members of the security forces who come under the governor's authority.

51. If the suspect is a member of the armed forces, the applicable law is determined by the nature of the offence. Thus if it is a "military offence" under the Military Criminal Code (Law no. 1632), the criminal proceedings are in principle conducted in accordance with Law no. 353 on the establishment of courts martial and their rules of procedure. Where a member of the armed forces has been accused of an ordinary offence, it is normally the provisions of the Code of Criminal Procedure which apply (see Article 145 § 1 of the Constitution and sections 9–14 of Law no. 353).

The Military Criminal Code makes it a military offence for a member of the armed forces to endanger a person's life by disobeying an order (Article 89). In such cases civilian complainants may lodge their complaints with the authorities referred to in the Code of Criminal Procedure (see paragraph 48 above) or with the offender's superior.

B. Civil and administrative liability arising out of criminal offences

52. Under section 13 of Law no. 2577 on administrative procedure, anyone who sustains damage as a result of an act by the authorities may,

within one year after the alleged act was committed, claim compensation from them. If the claim is rejected in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

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

> "All acts or decisions of the authorities shall be subject to judicial review…
>
> ...
>
> The authorities shall be liable to make reparation for all damage caused by their acts or measures."

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

54. Article 8 of Legislative Decree no. 430 of 16 December 1990, the last sentence of which was inspired by the provision mentioned above (see paragraph 53 above), provides:

> "No criminal, financial or legal liability may be asserted against … the governor of the state of emergency region or provincial governors in that region in respect of decisions taken, or acts performed, by them in the exercise of the powers conferred on them by this Legislative-Decree, and no application shall be made to any judicial authority to that end. This is without prejudice to the rights of individuals to claim reparation from the State for damage which they have been caused without justification."

55. Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages for pecuniary loss (Articles 41–46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal court on the issue of the defendant's guilt (Article 53).

However, under section 13 of Law no. 657 on State employees, anyone who has sustained loss as a result of an act done in the performance of duties governed by public law may, in principle, only bring an action against the authority by whom the civil servant concerned is employed and not directly against the civil servant (see Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. When an act is found to be illegal or tortious and, consequently, is no longer an "administrative" act or deed, the civil courts

may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

PROCEEDINGS BEFORE THE COMMISSION

56. The applicant applied to the Commission on 12 July 1993, complaining of attacks in which he had been seriously injured and his uncle killed. He also complained that he had been ill-treated by the police while in detention and had not had access to a court or an effective remedy in respect of the attacks and ill-treatment. He relied on Articles 2, 3, 6, 10, 13, 14 and 18 of the Convention.

57. The Commission declared the application (no. 22495/93) partly admissible on 3 April 1995. In its report of 8 April 1997 (Article 31), it expressed the opinion that there had been a violation of Article 2 of the Convention (thirty votes to two); that there had been no violation of Article 3 (unanimously); that the applicant's complaint under Article 6 § 1 did not give rise to any separate issue and that there had been no violation of Article 10 (thirty-one votes to one); that the applicant's complaint under Article 13 did not give rise to any separate issue (thirty votes to two); that there had been no violation of Article 14 or Article 18 (unanimously). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

58. The applicant decided not to proceed with the complaints he had made under Articles 3 and 6 before the Commission. In his memorial and at the hearing, he asked the Court to hold that the facts of the case disclosed breaches of Articles 2, 10 and 13, taken individually or jointly with Article 14, and of Article 18 and that those breaches were aggravated by the existence of a practice tolerated by the respondent State. In that connection, he invited the Court to accept the contents of the *Susurluk* report (see paragraph 46 above) as new evidence relevant to his complaints (see paragraphs 21–28 above).

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1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

He also asked the Court to order the respondent State both to pay a sum by way of compensation for non-pecuniary damage and pecuniary damage he had sustained and non-pecuniary damage suffered by his uncle's close relatives and to reimburse the costs and expenses incurred.

59. The Government, both in their memorial and at the hearing, invited the Court to hold that the application should have been declared inadmissible because the applicant had no standing to make a complaint on behalf of his uncle and domestic remedies had not been exhausted. In the alternative, they submitted with regard to the merits that on the facts of the case there had been no violation of any of the provisions relied on by the applicant. At the hearing, the Government also asked the Court to declare that the *Susurluk* report was inadmissible in evidence.

AS TO THE LAW

I. SCOPE OF THE CASE

60. In their application to the Commission, the applicant's counsel had alleged a violation of Articles 3 and 6 of the Convention also (see paragraphs 1 and 56 above). In their memorial to the Court, however, they accepted the Commission's conclusions that there had been no violation of Article 3 and that no separate question arose under Article 6 § 1 (see paragraph 57 above). Since they did not pursue those complaints in the proceedings before it, the Court sees no reason to consider them of its own motion (see, *mutatis mutandis*, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 28, § 62).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Whether the applicant was a victim

61. As they had done before the Commission, the Government argued that Mr Eşref Yaşa had no standing to submit an application on behalf of his deceased uncle, as it had not been proved that they were uncle and nephew and, even if they were, that did not make them direct relatives. Given the small difference in age and the difficulty of establishing who was related to whom and how in Turkey, it was quite possible that the applicant and Mr Yaşa had merely been second, or even third, cousins. In the instant case, there had been nothing to prevent closer relatives of the deceased – of

whom there were many – from taking part in the proceedings before the Convention institutions. In addition, the Commission's case-law on the subject contained no example of a nephew being allowed to exercise the right of petition under Article 25 of the Convention. Nor was it a valid argument to say that the Commission had based its decision on the business relations between the applicant and his uncle, since they did not carry on the same trade and the complaints made in the instant case were not of a commercial nature.

62. At the hearing, the applicant's counsel confined themselves to saying that throughout the proceedings before the Commission the Government had acknowledged that Mr Haşim Yaşa was the applicant's uncle.

63. In its report, the Commission said that when complaining of the killing of his uncle, the applicant "acts as a person who is himself … affected … and not as his uncle's representative" (see paragraph 88 of the Commission's report). At the hearing before the Court, the Delegate of the Commission expressed the view that if a relative wished to complain about a question as serious as the murder of one of his close relations, that ought to suffice to show that he felt personally concerned by the incident.

64. The Court reiterates that the object and purpose of the Convention, a treaty for the collective enforcement of human rights and fundamental freedoms, requires that its provisions be interpreted and applied in the light of its special character and so as to make its safeguards practical and effective (see the Loizidou v. Turkey judgment of 23 March 1995 (*preliminary objections*), Series A no. 310, pp. 26–27, §§ 70–72).

65. In the present case, the Government submitted for the first time in their written observations on the Commission's decision on admissibility that the applicant was not a victim (see paragraphs 13 and 86 of the Commission's report). The Court observes that the Government did not in those submissions dispute that the deceased was the applicant's uncle. They are therefore estopped from denying before the Court that the deceased and the applicant were so related. It should also be noted that in his application Mr Eşref Yaşa maintained that the facts of the case amounted to a violation, not only of his deceased uncle's rights under the Convention, but also of his rights.

As to whether the applicant and the deceased had business interests in common and the Government's affirmation – which is unsubstantiated – that it was highly likely in practice that Mr Haşim Yaşa had a number of close relatives, the Court does not consider it necessary to examine an argument whose outcome would be of no relevance in this case.

66. The Court shares the opinion of the Commission and the Delegate (see paragraph 63 above and paragraphs 84–88 of the Commission's report). In the light of the principles established in its case-law (see paragraph 64

above) and of the particular facts of the present case, it holds that the applicant, as the deceased's nephew, could legitimately claim to be a victim of an act as tragic as the murder of his uncle.

Consequently, the Court dismisses this preliminary objection of the Government.

B. Failure to exhaust domestic remedies

67. With regard to Articles 2, 3, 6 and 13 of the Convention, the Government objected that domestic remedies had not been exhausted as the applicant had not brought any of the ordinary civil, administrative or criminal proceedings that were available under Turkish law, despite the fact that they were effective.

The Government maintained that the Commission had not correctly decided that objection when considering the admissibility of the application. In particular, the Commission had not taken into account the "deliberate strategy" of the applicant's lawyers, who had sought to avoid seeking any remedy in Turkey and had made allegations of an "administrative practice" merely to provide a legal argument to cover the omission. However, the applicant, who alleged that he and his uncle had been assaulted by the security forces, could have brought administrative proceedings against the authorities to whom those responsible were accountable (see paragraphs 52–54 above) and civil proceedings for damages for the unlawful acts (see paragraph 55). Lastly, the applicant could have brought criminal proceedings (see paragraphs 48–51).

68. The applicant's counsel did not mention the issue of exhaustion of domestic remedies either in their memorial or at the hearing before the Court.

69. At the hearing, the Delegate of the Commission explained that the applicant had asserted that he had made a statement to the police at the hospital where he had been taken after the armed assault to which he had been subject, in which he had said that his assailants were police officers (see paragraph 16 above). With regard to the murder of the applicant's uncle, the Delegate of the Commission surmised that the applicant's arrest and the threats and ill-treatment to which he said he had been subject on the same day as the incident might explain why the applicant had not lodged a complaint with the public prosecutor. The Delegate also observed that whatever the scope of the applicant's complaint at the hospital had been, two separate criminal investigations had been started by the relevant public prosecutor's office. Accordingly, there was no need to require the applicant to have brought other court proceedings or to have waited until the end of those inquiries, which were still under way.

70. In view of its conclusion as to the scope of the case (see paragraph 60 above), the Court will consider the Government's preliminary objection only in so far as it concerns the complaints made under Articles 2 and 13 of the Convention.

71. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 26 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 26 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275–76, §§ 51–52; and the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65–67).

72. The Court notes that Turkish law provides civil, administrative and criminal remedies against illegal and criminal acts attributable to the State or its agents (see paragraph 47 above).

73. As regards a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents (see paragraph 55 above), the Court notes that a plaintiff to such an action must, in addition to establishing a causal link between the tort and the damage he has sustained, identify the person believed to have committed the tort. In the instant case, however, it appears that it is still unknown who was responsible for the acts the applicant complained of (see paragraphs 29 and 35–45 above).

74. With respect to an action in administrative law under Article 125 of the Constitution based on the authorities' strict liability (see paragraphs 52–53 above), the Court reiterates that a remedy indicated by the Government must be sufficiently certain, in practice as well as in theory (see, among other authorities, the Yağcı and Sargın v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 17, § 42). However, the file supplied to the Court contains no example of any person having brought such an action in a situation comparable to the applicant's (see, *mutatis mutandis*, the Sakık and Others v. Turkey judgment of 26 November 1997, *Reports* 1997–VII, p. 2634, § 53). Furthermore, as the Court has already noted, an administrative-law action is a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification is not, by definition, a prerequisite to bringing an action of this nature. However, the investigations which the Contracting States are obliged by

Articles 2 and 13 of the Convention to conduct in cases of fatal assault must be able to lead to the identification and punishment of those responsible (see paragraphs 98–100 below). As the Court has previously held, that obligation cannot be satisfied merely by awarding damages (see, among other authorities, the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105). Otherwise, if an action based on the State's strict liability were to be considered a legal action that had to be exhausted in respect of complaints under Articles 2 or 13, the State's obligation to seek those guilty of fatal assault might thereby disappear.

75. Consequently, the applicant was not required to bring the civil and administrative proceedings in question and the preliminary objection concerning proceedings of that nature is unfounded.

76. Lastly, with regard to the criminal-law remedies, the Court notes that on 17 January 1993, at the Diyarbakır Social-Security Hospital, police officers took the applicant's statement on the incident which had taken place on 15 January (see paragraph 37 above). It would appear from the record that was drawn up as a result that the applicant was questioned – both as a suspect and a victim – about the firearm he was carrying (see paragraph 17 above). He said that unidentified persons had sought to kill him because he sold radical, left-wing newspapers and he requested that those responsible be found and punished. However, the record does not show that the applicant expressly alleged that his assailants were agents from the security forces (see paragraphs 16, 30 and 37 above). That statement nonetheless constitutes a complaint that was validly lodged in the manner laid down by the Code of Criminal Procedure (see paragraph 48 above). Irrespective of the content of that complaint, it is undisputed that two separate criminal investigations were begun by the judicial authorities, one concerning the assault on the applicant (see paragraph 35 above) and the other, the murder of his uncle (see paragraph 41 above).

77. The Court emphasises that the application of the exhaustion of domestic remedies rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means in particular that the Court must take realistic account, not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could

reasonably be expected of him to exhaust domestic remedies (see the Akdivar and Others judgment cited above, p. 1221, § 69, and the Aksoy judgment cited above, p. 2276, §§ 53 and 54).

78. The Court considers that this last limb of the Government's preliminary objection raises issues that are closely linked to those raised by the applicant's complaints under Articles 2 and 13 of the Convention.

79. Consequently, the Court dismisses the Government's preliminary objection in so far as it relates to the civil and administrative remedies relied on (see paragraph 75 above). It joins the preliminary objection concerning remedies in criminal law to the merits (see paragraphs 98–107 and 111-14 below).

III. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

80. The applicant alleged that members of the security forces had attempted to kill him on 15 January 1993 and had murdered his uncle, Haşim Yaşa, on 14 June. He also complained that no adequate and effective judicial investigation had been conducted into the circumstances of either his assault or his uncle's murder. He argued that, in both his and the deceased's cases, there had been a breach of Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

In support of his allegations, the applicant produced the *Susurluk* report (see paragraph 46 above).

81. The Government disputed that argument. The Commission considered that Article 2 had been infringed only in that the authorities had failed to carry out an adequate criminal investigation into the facts of the case.

A. Arguments of those appearing before the Court

1. The applicant

82. The applicant asked the Court to follow the Commission's opinion that there had been a violation of Article 2 of the Convention in that there had been no adequate and effective investigation into the alleged facts. He also invited the Court to find that the assault he had suffered and his uncle's murder had been carried out by State agents.

83. In that connection, the applicant's counsel, relying on Article 28 of the Convention, complained that the Government had not communicated the relevant information to the Commission at the appropriate time, which would have made it easier to establish the truth. They requested in particular that the *Susurluk* report (see paragraph 46 above) be accepted at this stage of the proceedings as new evidence supporting the complaints made in their initial application. In their submission, that report – which had been commissioned by the Prime Minister, who had confirmed its content and credibility in televised interviews – destroyed the Government's case. Although it did not enable those responsible for the relevant attacks to be identified, the report contained very serious admissions and an acknowledgment that attacks for which no one claimed responsibility and which were classified as "*faili meçhul*" (unknown perpetrator) had in fact been ordered by senior figures in the security forces. That information was directly relevant to the incidents at the origin of the present case. Since it called into question the State's denials as to the implication of the State machinery in the killings of and assaults on journalists and sellers of newspapers such as the *Özgür Gündem*, it deprived the statements made and evidence lodged by the Government earlier in the proceedings of all credibility. The *Susurluk* report was consequently of crucial importance in providing an answer to the question – which had been left open in the Commission's report (see paragraph 34 above) – whether the applicant and his uncle were victims of a campaign of violence waged with the State's connivance.

2. The Government

84. The Government maintained that the applicant's allegations were unfounded and that the file produced by him did not contain anything capable of explaining how responsibility for the alleged events could be attributed to the security forces (see paragraph 30 above). The only evidence that had been produced by the applicant's counsel were lists of alleged acts of repression against journalists, which had themselves been drawn up on the basis of press releases emanating from sympathetic organisations.

85. The Government said that they agreed with the Commission’s conclusion that the alleged facts were not attributable to State agents. On the other hand, they contested the reasons which the Commission had given for concluding that there had been a breach of the obligation to carry out an effective investigation. The Government said that the investigations concerned were still pending (see paragraph 29 above) and maintained that the relevant authorities had to date conducted those investigations into the contentious events properly, in accordance with usual practice and in a sufficient and appropriate manner, in spite of the fact that the applicant had at no stage lodged a complaint setting out his allegations, either in his own name or on behalf of his uncle (see paragraph 30 above).

On that point, the Government contended that the Commission had been imprudent in applying Article 2 without “seeking to find out what measures had been taken by the national authorities to prevent a deterioration in security or what judicial and administrative investigations had been carried out to identify the offenders, whom [the Government] presumed were simply terrorists”. Referring to the Commission’s case-law (application no. 9360/81, decision of 28 February 1983, Decisions and Reports 32, p. 211), the Government submitted that regard should have been had in the present case to the principle that Article 2 could not imply a positive obligation to prevent any possibility of violence occurring.

86. The Government also submitted that the Commission had not had proper regard, either, to the fact that in the instant case the judicial authorities had – on the very day the incidents had occurred – initiated of their own motion judicial procedures with a view to identifying the assailants. Although the investigations had been unsuccessful as those responsible had not been identified, that did not of itself show that the Turkish authorities had sought to conceal or distort the events. The Government pointed out that in all European countries “there are crimes of murder or assault that are not cleared up, especially where terrorist or criminal organisations are involved”.

Consequently, they submitted in the alternative that, as regards their obligation under Article 2 of the Convention, the authorities could not have been expected to do more since the events in the instant case had taken place in “the context of the fight against terrorists, who rarely return to the scene of their crime”. In such circumstances, the police and the judicial authorities were “constrained to proceed with caution and to wait until the results of the various investigations had been cross-checked, thus enabling the perpetrators of earlier crimes and acts of violence to be identified”.

87. At the hearing, the Government representative contested the evidential value of the *Susurluk* report. The report currently had no official status. Furthermore, it was not relevant as it had no direct link with the

present case. It had been prepared with the sole aim of examining certain allegations so that judicial investigations could be carried out subsequently. It was not therefore the result of a judicial inquiry as such.

The Government representative also contested the argument under Article 28 of the Convention based on the lack of cooperation. She said that no document or item of evidence had been concealed and that all the Commission's questions had been answered, on the basis of information obtained from the Ministry of Justice.

3. The Commission

88. Referring to its conclusions (see paragraphs 32–45 above), the Commission emphasised that they had been reached on the basis of the written documents lodged on the case file, in particular those submitted by the Government concerning the police inquiries that had been made, and of the observations made by the parties in response to its questions. In the instant case, it had noted that the allegation that the events in issue had taken place as part of a campaign of attacks against people connected with certain newspapers, such as the *Özgür Gündem*, was the subject of fierce debate between the parties; that allegation was so serious that it was hardly likely that the facts that had given rise to it would be elucidated by the evidence of the people apt to be concerned.

The Commission had also noted that certain cases pending before it (applications nos. 22492/93, 22496/93, 23144/93 and 25301/94) likewise concerned measures taken against and attacks on the *Özgür Gündem*, and people connected with its publication and distribution.

89. Notwithstanding its acute concern about the explanations – which, moreover, had not been refuted by the Government – received about the murders of and attacks on several people who had taken part in the distribution of such publications, the Commission had concluded that it could not consider that it had been established beyond all reasonable doubt that members of the security forces or police officers had been implicated in the shootings of the applicant and his uncle.

90. The Commission had nonetheless noted a number of factors that enabled it to consider that the particular circumstances in which the incidents had occurred imposed on the authorities an obligation to carry out an adequate and effective investigation, in order to determine whether the attacks on the applicant and his uncle could have been connected with actions on the part of members of the security forces. In that regard, the Commission observed that, despite the invitations it had sent to the Government, the latter had confined themselves to complaining of the deceitful nature of the allegations and, generally, of a lack of evidence, and had been unable to provide any satisfactory information at all on the measures that had been taken to verify the truth of the applicant's allegations (see paragraph 45 above).

For that reason, the Commission had concluded that there were deficiencies in the investigations such as to amount to a breach of the obligation under Article 2 of the Convention to protect the right to life (see paragraphs 101–07 of the Commission's report).

91. At the hearing, the Delegate of the Commission gave his view on the relevance of the *Susurluk* report to the determination of the facts of the case. He said that while he had doubts as to the weight the Commission could have attached to that document, in his view, it appeared to support the notion that the State had been implicated in a number of serious human rights' violations in south-east Turkey that were to a certain degree comparable to the attacks on the applicant and his uncle. However, reiterating that in such cases the liability of the State can only be inferred from facts that have been proved beyond all reasonable doubt, the Delegate concluded that the *Susurluk* report did not provide a sufficient basis for excluding such doubt and invited the Court to accept that the facts were as the Commission had found.

B. The Court's assessment

1. The attacks on the applicant and his uncle

92. The Court observes that neither the applicant's counsel nor the Government dispute in any material particular the facts as established by the Commission. On the other hand, those appearing before the Court completely disagreed about the conclusions to be drawn under Article 2 of the Convention on the basis of those facts.

93. It is important to remember in this respect that under the Convention system the establishment and verification of the facts are primarily a matter for the Commission (see Articles 28 § 1 and 31 of the Convention). Only in exceptional circumstances will the Court exercise its own powers in this area. However, the Court is not bound by the Commission's findings of fact and remains free to make its own assessment in the light of all the material before it (see the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 50, § 169, and the Kaya judgment cited above, p. 321, § 75).

In the instant case, the Commission was unable to conclude that the allegation that the attacks had been perpetrated by the security forces had been proved beyond all reasonable doubt (see, among other authorities, the Aydın v. Turkey judgment of 25 September 1997, *Reports* 1997-VI, p. 1889, § 72, and the Kaya judgment cited above, p. 322, § 76). However, the applicant pleaded before the Court that new evidence that had not been before the Commission militated in favour of his version (see paragraph 83 above). In that connection, he referred to the *Susurluk* report (see

paragraph 46 above), the evidential value of which was, however, firmly contested at the hearing by the representative of the Government (see paragraph 87 above).

94. The Court reiterates that in determining whether substantial grounds have been shown for believing that the respondent State has not complied with its responsibilities under the Convention, the Court must examine the issues raised before it in the light of the material provided by those appearing before it and, if necessary, of material obtained *proprio motu* (see, *mutatis mutandis*, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 64, § 160, and the Cruz Varas and Others v. Sweden judgment of 20 March 1991, Series A no. 201, p. 29, § 75). Although the Court must refer primarily to the circumstances existing at the time of the incidents complained of, it is not precluded from having regard to information coming to light subsequently (see, *mutatis mutandis*, the Cruz Varas and Others judgment cited above, p. 30, § 76).

95. The Court notes that the *Susurluk* report – which was prepared at the Prime Minister's request – relates to a series of disturbing events that occurred in the south-eastern region of Turkey (see paragraph 46 above). The fate of certain newspaper-publishing companies, in particular the company which published the *Özgür Gündem*, is particularly alarming in that regard. According to the author of the report, the cause of that general situation, which has considerably troubled public opinion, has been the Kurdish problem and the means used to combat the PKK in that part of the country.

96. While it is true that the attainment of the required evidentiary standard (see paragraphs 34 and 91 above) may follow from the co-existence of sufficiently strong, clear and concordant inferences or unrebutted presumptions (see the Aydın judgment cited above, p. 1888, § 70, and the Kaya judgment cited above, p. 322, § 77), their evidential value must be considered in the light of the circumstances of the individual case and the seriousness and nature of the charge to which they give rise against the respondent State.

In the present case, the Court considers that notwithstanding the serious concerns to which it gives rise, the *Susurluk* report does not contain material enabling the presumed perpetrators of the attacks on the applicant and his uncle to be identified with sufficient precision. Indeed, the applicant admits as much in his memorial (see paragraph 83 above).

97. Consequently, the Court does not consider that it should depart from the Commission's conclusions regarding this complaint. It accordingly holds that the material on the case file does not enable it to conclude beyond all reasonable doubt that Mr Eşref Yaşa and his uncle were respectively attacked and killed by the security forces.

It follows that there has been no violation of Article 2 on that account.

2. Alleged inadequacy of the investigations

98. The Court recalls that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, the McCann and Others judgment cited above, p. 48, § 161, and the Kaya judgment cited above, p. 324, § 86).

99. In the instant case, the Government maintained that there was no evidence that State agents had been implicated in the commission of the alleged acts (see paragraph 84 above). Furthermore, the applicant had at no stage made any explicit accusation to that effect, either in his own name, or on behalf of his uncle (see paragraphs 67 and 76 above).

100. In that connection, the Court emphasises that, contrary to what is asserted by the Government, the obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is the issue of whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigatory authorities decisive. In the case under consideration, the mere fact that the authorities were informed of the murder of the applicant's uncle gave rise *ipso facto* to an obligation under Article 2 to carry out an effective investigation (see, *mutatis mutandis*, the Ergi v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82). The same applies to the attack on the applicant which, because eight shots were fired at him, amounted to attempted murder (see paragraph 36 above).

101. In the present case, there is no dispute as to what steps the authorities in charge of the preliminary investigation and the competent public prosecutor's office took following the events in issue (see paragraphs 35–45 above).

Following an armed assault on the applicant, a police investigation started that same day, namely on 15 January 1993. At the end of that initial stage, which lasted only two days, Mardinkapı security directorate concluded, in its report of 17 January 1993, that it had not been possible to find those responsible for the attack, or even to identify them. Consequently, on 20 January the Diyarbakır public prosecutor instructed the directorate to pursue its investigation and to arrest the suspects or, if it was unable to do so, to inform him of progress every three months. On 14 April the public prosecutor issued a second set of similar instructions in which he renewed his request to be informed every three months of the results of the police investigations until such time as prosecution of the offence became statute-barred. According to a note in the instructions, that

would have been on 15 January 1998 (see paragraph 39 above). Before the Convention institutions, however, the Government did not produce copies of the quarterly reports the police had been instructed to draw up (see paragraph 45 above).

The preliminary inquiry into the murder of Mr Haşim Yaşa also began on the day of that incident, namely 14 June 1993. By 21 June the authorities had among other things carried out an autopsy, obtained an expert ballistics report and heard three witnesses, including the deceased's son. The Court has no information on subsequent developments in that investigation (ibid.).

102. Yet the Government were aware of Mr Yaşa's application by 11 October 1993 (see paragraph 6 of the Commission's report) and the Commission invited the Government to provide it with more precise details concerning the investigative measures that had been taken following the attacks on the applicant, his uncle and other persons connected with certain radical periodicals (see paragraphs 34 and 90 above).

103. Despite those requests, the Government provided no concrete information on the state of progress of the investigations (see paragraph 90 above and paragraph 105 of the Commission's report) which, more than five years after the events, do not appear to have produced any tangible result. Admittedly, the Government said that the investigations were still pending, but they did not provide anything to show that they were actually progressing (see paragraphs 29, 35–45 and 86 above). In that regard, the last investigative step of which the Court is aware dates back to 21 June 1993, when the expert ballistics report in the investigation into the murder of Haşim Yaşa was prepared (see paragraph 44 above), whereas the Diyarbakır public prosecutor had on 14 April 1993 requested the police to inform him every three months of progress in the investigation (see paragraph 101 above). The only explanation given by the Government is that the investigations were taking place in the context of the fight against terrorism and that in such circumstances the police and judicial authorities were constrained to "proceed with caution and to wait until the results of the various investigations had been cross-checked, thus enabling the perpetrators of earlier crimes and acts of violence to be identified" (see paragraph 86 above).

104. The Court is prepared to take into account the fact that the prevailing climate at the time in that region of Turkey, marked by violent action by the PKK and measures taken in reaction thereto by the authorities, may have impeded the search for conclusive evidence in the domestic criminal proceedings. Nonetheless, circumstances of that nature cannot relieve the authorities of their obligations under Article 2 to carry out an investigation, as otherwise that would exacerbate still further the climate of impunity and insecurity in the region and thus create a vicious circle (see *mutatis mutandis*, the Kaya judgment cited above, p. 326, § 91).

105. In addition, the Court is struck by the fact that the investigatory authorities appear to have excluded from the outset the possibility that State agents might have been implicated in the attacks. Thus, the public prosecutor at the Diyarbakır National Security Court considered the incidents in question to have been merely "a settling of scores between armed organisations" (see paragraph 45 above and paragraph 61 of the Commission's report), whereas the Government considered that all responsibility for the attacks lay with "terrorists", even though the investigations are not over and no concrete evidence capable of confirming that to be a valid hypothesis has been brought to the attention of the Court (see paragraphs 85 and 86 above).

106. That approach has to be assessed in the light of the fact that the Commission found that there were a number of attacks involving killings in south-east Turkey on journalists, newspaper kiosks and distributors of the *Özgür Gündem* and that some of those incidents had even formed the subject matter of applications to it (nos. 22492/93, 22496/93, 23144/93 and 25301/94 – see paragraphs 52–59 of the Commission's report). The Government have not disputed that the attacks occurred or that they were serious. The Commission also noted that many complaints and requests for protection had been made to the authorities by a journalist, Mr Y. Kaya, who at the time was the proprietor of the newspaper.

After considering all the facts of the case, the Commission did not consider that in the case before it "the authorities [were] or [could] have been unaware that those involved in the publication and distribution of the *Özgür Gündem* feared that they were falling victim to a concerted campaign tolerated, if not approved, by State officials" (see paragraphs 34 and 89 above).

Having carried out its own assessment of this aspect of the case, in the light in particular of the findings of the *Susurluk* report (see paragraph 46 above), the Court considers that observation to be well-founded. In the instant case, it was therefore incumbent on the authorities to have regard, in their investigations, to the fact that State agents may have been implicated in the attacks. In that connection, whether or not the applicant had formally identified the security forces as being the assailants was of little relevance (see paragraphs 30, 37, 76 and 85 above).

107. In short, because the investigations carried out in the instant case did not allow of the possibility that given the circumstances of the case the security forces might have been implicated in the attacks and because, up till now, more than five years after the events, no concrete and credible progress has been made, the investigations cannot be considered to have been effective as required by Article 2.

108. In consequence, the applicant has satisfied the obligation to exhaust domestic remedies. It follows that the Court dismisses the criminal-proceedings limb of the Government's preliminary objection and holds that there has been a violation of Article 2.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant complained that he had not had an effective remedy within the meaning of Article 13 of the Convention, which reads as follows:

> "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."

The Government contested that argument. The Commission considered that it was unnecessary to examine it separately as no separate issue arose under Article 13.

A. Arguments of the parties

110. The applicant, who disagreed with the Commission's conclusion, submitted that an independent examination from the one carried out under Article 2 of the Convention was merited in respect of this complaint. He asserted that the legal order and practice in south-east Turkey, which was subject to the state of emergency, had been changed in order deliberately to make the exercise of remedies against the State more difficult. The special legislation in force in that region had established a system which ensured impunity for the security forces, based on the authorities' strategy of denying the facts and any liability, in order to prevent effective access to domestic remedies.

111. Referring to their observations on the question of the exhaustion of domestic remedies (see paragraph 67 above), the Government confined themselves to saying that the applicant could not complain of a violation of Article 13.

B. The Court's assessment

112. The Court observes that Article 13 of the Convention guarantees the availability at a national level of a remedy to enforce the Convention rights and freedoms, as 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 an

"arguable complaint" under the Convention 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. 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; the Aydın judgment cited above, p. 1895, § 103; and the Kaya judgment cited above, pp. 329-30, § 106).

113. In the instant case, the Court has concluded that it has not been proved beyond all reasonable doubt that the attacks on the applicant and his uncle were carried out by State agents (see paragraph 97 above). That fact, however, does not necessarily mean that the complaint under Article 2 is not arguable (see, among other authorities, the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and the Kaya judgment cited above, pp. 330–31, § 107). The Court's conclusion as to the merits does not relieve the State of the obligation to carry out an effective investigation into the substance of the complaint, which, for the reasons mentioned above (see paragraph 106), was arguable.

114. It is also necessary to reiterate that the nature of the right that is alleged to have been infringed has implications on the extent of the obligations under Article 13. Given the fundamental importance of the right to protection of life, Article 13 imposes, without prejudice to any other remedy available under the domestic system including the payment of compensation where appropriate, an obligation on States to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and in which the complainant has effective access to the investigatory procedure (see, *mutatis mutandis*, the Kaya, Aksoy and Aydın judgments cited above, § 107, § 98, and § 103 respectively).

115. The Court reiterates that the authorities had an obligation to carry out an effective investigation into the circumstances of the attacks (see paragraph 107 above). However, five years after those attacks took place, the investigations have still not produced any results. For the reasons set out above (see paragraphs 98–108 above), the respondent State cannot be considered to have conducted an effective criminal investigation as required by Article 13, the requirements of which are stricter still than the investigatory obligation under Article 2 (see the Kaya judgment cited above, pp. 330–31, § 107 – see paragraphs 98, 112 and 114 above).

Consequently, there has been a violation of Article 13.

V. ALLEGED PRACTICE BY THE AUTHORITIES OF INFRINGING ARTICLES 2 AND 13 OF THE CONVENTION

116. Referring in particular to the *Susurluk* report, the applicant maintained that there existed in Turkey an officially tolerated practice of violating Articles 2 and 13 of the Convention that had aggravated the breaches of which he and his uncle had been victims. In south-east Turkey, criminal proceedings were bound to fail and were incapable of preventing unlawful acts and abuse of power by the authorities. By systematically denying any breaches of the Convention, the authorities were safe from any proceedings brought against them.

117. The Court considers that the material on the file is not sufficient to enable it to determine whether the authorities have adopted a practice of violating any of the Articles relied on by the applicant.

VI. ALLEGED VIOLATION OF ARTICLES 10, 14 AND 18 OF THE CONVENTION

118. Relying on Article 10 of the Convention, the applicant submitted that the attacks on him and his uncle constituted an aggravated violation of their right to freedom of expression, since they had been carried out because they sold the *Özgür Gündem* and were part of a campaign of violence tolerated by the State. He also said that both in his and his uncle's cases there had been a violation of Article 14, taken together with Articles 2, 10 and 13, through discrimination on grounds of ethnic origin and political opinion. Lastly, the applicant complained of a violation of Article 18 in that the facts of the case revealed clear abuses of power by the State.

119. The Government contested the applicant's arguments. The Commission concluded that there had been no violation of Article 10 and considered that the complaints made under Articles 14 and 18 were unfounded.

120. The Court notes that those complaints arise out of the same facts as those considered under Articles 2 and 13. In the light of its conclusion with respect to those Articles (see paragraphs 107 and 115 above), the Court does not consider it necessary to examine those complaints separately.

VII. APPLICATION OF ARTICLE 50 OF THE CONVENTION

121. The applicant sought just satisfaction under 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."

The Government contested the applicant's claims in several respects. The Delegate of the Commission had no specific comments.

A. Pecuniary and non-pecuniary damage

122. The applicant requested the Court to award him 54,000 Deutschmarks (DEM) in total, by way of pecuniary damage: DEM 4,000 for his treatment in hospital and DEM 50,000 for loss of earnings following the attack on him. He also claimed on behalf of Haşim Yaşa's family a sum of DEM 50,000 for loss of earnings and costs entailed by his death.

The applicant claimed a total sum of 150,000 pounds sterling (GBP) for non-pecuniary damage, which he justified as follows:

(i) GBP 70,000 for himself as damages for the attack (GBP 50,000), the failure to protect his right to life (GBP 10,000) and the failure to provide an effective remedy (GBP 10,000);

(ii) GBP 70,000 for the family of the deceased in respect of the latter's murder (GBP 50,000), the failure to protect his right to life (GBP 10,000) and the failure to provide him an effective remedy (GBP 10,000);

(iii) GBP 10,000 for himself and for the deceased as victims of a practice of violations of Article 13 of the Convention.

123. As their main submission, the Government maintained that no redress was necessary in the present case. In the alternative, they invited the Court to dismiss the claims for compensation made by the applicant as being exorbitant and unjustified. As regards the non-pecuniary damage, the Government firstly argued that the claims should not have been split up. They also submitted that there was no causal link between the complaints and the alleged damage. The Government firmly opposed the deceased's family being awarded compensation on the ground that it had not taken part in the proceedings before the Strasbourg institutions.

More generally, the Government maintained that the sums sought had been put forward without regard to the social conditions in south-east Turkey, or to the minimum wage levels in force in the country. On that point, they said that compensation for non-pecuniary damage should not constitute a source of enrichment.

124. The Court observes that it has not been established that the applicant was attacked or his uncle killed by members of the security forces (see paragraph 97 above). It cannot therefore accede to the claims made in that connection for pecuniary and non-pecuniary damage. Secondly, as it has not been established either that there has been a practice of violations of the Convention (see paragraph 117 above), no compensation can be paid under that head.

Like the Government, the Court observes further that the application was lodged by Mr Haşim Yaşa's nephew only (see paragraph 63 above).

In these circumstances, the Court considers that only Mr Eşref Yaşa is entitled to just satisfaction for the non-pecuniary damage suffered as a result of the violations of Articles 2 and 13 of the Convention (see paragraphs 107 and 115 above). Ruling on an equitable basis, the Court decides to award the applicant the sum of GBP 6,000, to be converted into Turkish liras at the rate applicable at the date of payment.

B. Costs and expenses

125. The applicant claimed GBP 16,426.42 in reimbursement of the costs and expenses incurred in the preparation and presentation of his case before the Convention institutions. In his schedule of costs, he set out his claim as follows, after deducting the sums received by way of legal aid from the Council of Europe:

(i)	fees of the British representatives	GBP 13,190.70
(ii)	fees of the Turkish advisers	GBP 725.00
(iii)	various administrative expenses	GBP 985.72
(iv)	administrative costs incurred in Turkey	GBP 250.00
(v)	interpretation and translation costs	GBP 1,440.00

The applicant's counsel requested that any sums awarded in respect of costs and expenses be paid to their bank account in the United Kingdom.

126. The Government opposed reimbursing the costs incurred by the fact that foreign lawyers had been instructed, as the sole result had been that the costs of the case had been inflated. In addition, the amount claimed for costs and expenses was excessive and not supported by documentary evidence.

127. The Court reiterates that, as applicants are free to select legal representatives of their choice, Mr Yaşa's recourse to United Kingdom-based lawyers specialising in the international protection of human rights cannot be criticised (see, *mutatis mutandis*, the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, p. 1212, § 179). The Court, deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, awards him the sum of GBP 12,000 together with any value-added tax that may be chargeable, less the 8,045 French francs which

the applicant has received by way of legal aid from the Council of Europe in respect of the fees and expenses claimed.

C. Default interest

128. The Court considers it appropriate to adopt the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment, namely 7.5% per annum.

FOR THESE REASONS THE COURT

1. *Dismisses* by eight votes to one the Government's preliminary objections;

2. *Holds* unanimously that it has not been established that the applicant was attacked and his uncle killed in violation of Article 2 of the Convention;

3. *Holds* by eight votes to one that there has been a violation of Article 2 of the Convention in that the authorities of the respondent State did not conduct an adequate and effective investigation into the circumstances of the said incidents;

4. *Holds* by eight votes to one that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously that it is unnecessary to examine whether there has been a violation of Articles 10, 14 or 18 of the Convention;

6. *Holds* by eight votes to one
   (a) that the respondent State is to pay to the applicant, within three months, the following sums:
      (i) 6,000 (six thousand) pounds sterling for non-pecuniary damage to be converted into Turkish liras at the rate applicable at the date of settlement;
      (ii) 12,000 (twelve thousand) pounds sterling for costs and expenses together with any sum due by way of value-added tax, less 8,045 (eight thousand and forty-five) French francs to be converted into pounds sterling at the rate applicable at the date of this judgment;
   (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

7. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 2 September 1998.

Signed: RUDOLF BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the partly dissenting opinion of Mr Gölcüklü is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(*Translation*)

To my great regret, I am unable to share the opinion of the majority on the following points.

1. There have been cases in which distant relatives, such as cousins or nephews, claiming to be victims within the meaning of Article 25, have lodged applications with the Commission, which has held that that provision had been complied with. Although Article 25 enables certain blood ties to be taken into account in construing the concept of who is a "victim", it is however necessary to ask oneself how far that approach can be taken without a risk of converting the right of individual petition into a sort of *actio popularis*. In the instant case, no one more closely related to the deceased (such as his wife or children) than the applicant, who was only his nephew, took part in the proceedings before the Convention institutions (see paragraph 123 of the judgment). It must not be forgotten that behind all these cases, which are similar and come from south-east Turkey, are to be found the Diyarbakır Human Rights Association and the Kurdish Human Rights Project from London, which bodies pursue political ends rather than defending the rights of alleged victims. In my opinion, it is therefore going too far to hold that the applicant was also a "victim" of his uncle's death and that the application included that claim too.

2. Likewise the applicant has not in this case exhausted the domestic remedies, that are both effective and efficient, provided by Turkish law. On this point I refer to my dissenting opinions in the following judgments: Akdivar and Others v. Turkey of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, Aydın v. Turkey of 25 September 1997, *Reports* 1997-VI, Menteş and Others v. Turkey of 28 November 1997, *Reports* 1997-VIII, and Selçuk and Asker v. Turkey of 24 April 1998, *Reports* 1998-II. Consequently, I consider that this conclusion makes it unnecessary for me to decide the issues raised on the merits in the present case.

3. Furthermore, with regard to the conclusion that Article 2 has been infringed because of the lack of an effective and efficient investigation into the circumstances of the death, I consider, like the Commission, that no separate issue arises under Article 13. On this point I refer to my dissenting opinions in the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, and in the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III.

4. Lastly, given the particular and specific features of this case, I find the sums awarded to the applicant by the majority to be excessive, as regards both non-pecuniary damage and costs and expenses. To my mind, it was neither absolutely necessary nor helpful for three British lawyers to act in this case, as it did not give rise to any special difficulty.