



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

CASE OF GÜLEÇ v. TURKEY

(54/1997/838/1044)

JUDGMENT

STRASBOURG

27 July 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1998. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

List of Agents

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

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

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

SUMMARY¹

Judgment delivered by a Chamber

Turkey – alleged unlawful killing by security forces during a demonstration and lack of an appropriate investigation into the circumstances

I. GOVERNMENT'S PRELIMINARY OBJECTION (non-exhaustion of domestic remedies)

Argument raised for the first time before the Court – estoppel.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 2 OF THE CONVENTION

A. Applicant's son's death

Reference to Court's case-law concerning role of Commission in establishment of facts.

Case file had not revealed any reason to cast doubt on establishment of facts as set out in Commission's report.

Demonstration was far from peaceful – confronted with acts of violence which were, admittedly, serious, security forces called for reinforcements and armoured vehicles were deployed – allegation that shots were fired at crowd corroborated by fact that nearly all wounded demonstrators had been hit in legs, which was perfectly consistent with ricochet wounds from bullets with a downward trajectory which could have been fired from turret of an armoured vehicle.

Use of force might have been justified in present case under paragraph 2 (c) of Article 2, but a balance must be struck between aim and means – gendarmes had used a very powerful weapon, apparently not having any batons, riot shields, water cannon, rubber bullets or tear gas – lack of these all the more incomprehensible and unacceptable because province of Şırnak was in a region where a state of emergency had been declared, and where, at the material time, disorder could have been expected.

Question whether there were terrorists among demonstrators: Government produced no evidence to support assertion.

Force used to disperse demonstrators, which had caused death of Ahmet Güleç, not absolutely necessary within the meaning of Article 2.

Conclusion: violation (unanimously).

B. Investigation conducted by the national authorities

Reference to Court's case-law concerning procedural obligation contained in Article 2 requiring Contracting States to conduct an effective investigation when individuals are killed by State's agents.

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

Authorities responsible for the investigation convinced that victim's death was caused by a shot fired by PKK terrorists but did not verify whether this was so.

Neither the prevalence of violent armed clashes nor the high incidence of fatalities could displace the obligation under Article 2 to ensure that an effective, independent investigation was conducted into deaths arising out of clashes involving the security forces or, as in the present case, a demonstration, however illegal it might have been – authorities had not complied with this obligation in present case.

Conclusion: violation (unanimously).

III. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary damage not proved.

Non-pecuniary damage: compensation awarded.

B. Costs and expenses

Applicant's claim allowed in part.

Conclusion: respondent State to pay applicant specified sums for non-pecuniary damage (seven votes to two) and costs and expenses (unanimously).

COURT'S CASE-LAW REFERRED TO

27.9.1995, *McCann and Others v. the United Kingdom*; 18.12.1996, *Aksoy v. Turkey*; 25.9.1997, *Aydın v. Turkey*; 28.11.1997, *Menteş and Others v. Turkey*; 19.2.1998, *Kaya v. Turkey*

In the case of Güleç v. Turkey¹,

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 A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr L. WILDHABER,

Mr G. MIFSUD BONNICI,

Mr U. LÖHMUS,

Mr M. VOICU,

Mr V. TOUMANOV,

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

Having deliberated in private on 30 March and 26 June 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 28 May 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 21593/93) against the Republic of Turkey lodged with the Commission under Article 25 by a Turkish national, Mr Hüseyin Güleç, on 16 March 1993.

The Commission’s request referred to Articles 44 and 48 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 Article 2 of the Convention.

Notes by the Registrar

1. The case is numbered 54/1997/838/1044. 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 lawyer 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. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 3 July 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr C. Russo, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr U. Löhmus, Mr M. Voicu and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently the Vice-President of the Court, Mr R. Bernhardt, replaced Mr Ryssdal, who died on 18 February 1998 (Rule 21 § 6).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Turkish Government (“the Government”), the applicant’s lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant’s and the Government’s memorials on 27 January and 17 February 1998 respectively.

5. On 28 January 1998 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President.

6. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 March 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M. ÖZMEN,	<i>Agent,</i>
Mr A. KAYA,	<i>Counsel,</i>
Mr K. ALATAŞ,	
Mrs A. EMÜLER,	
Mrs M. ANAYAROĞLU,	<i>Advisers;</i>

(b) *for the Commission*

M. H. DANELIUS,	<i>Delegate;</i>
-----------------	------------------

(c) *for the applicant*

Mr H. KAPLAN, of the Istanbul Bar,	<i>Counsel,</i>
Mr Ş. YILMAZ, of the Diyarbakır Bar,	<i>Adviser.</i>

The Court heard addresses by Mr Danelius, Mr Yılmaz and Mr Özmen, and their replies to questions from two judges.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

7. On 4 March 1991 there were a number of incidents such as spontaneous unauthorised demonstrations, shop closures and attacks on public buildings in the town of İdil in Şırnak Province. Two people were killed – one of whom was Ahmet Güleç, aged 15, a pupil at İdil Senior High School and the applicant's son – and twelve others were wounded.

8. The owners of thirteen rifles confiscated after the incidents, spent cartridges from which had been collected by the security forces, were prosecuted in the Diyarbakır National Security Court, but acquitted because they had proved that they had not taken part in the events concerned.

9. According to the Government, Ahmet Güleç was hit by a bullet fired by armed demonstrators at the gendarmes.

According to the applicant, his son was killed by the security forces, who fired on the unarmed demonstrators to make them disperse.

10. On 5 April 1991 the applicant filed a criminal complaint with the İdil public prosecutor's office against a person or persons unknown and against the commander of the security forces, Major Mustafa Karatan.

11. On 19 April 1991 the public prosecutor's office, after noting that the criminal complaint was directed against Major Karatan, declared that it had no jurisdiction to deal with it and transferred the case file to Şırnak Provincial Administrative Council for a preliminary investigation.

On 18 October 1991 Şırnak Provincial Administrative Council halted the proceedings by means of a discontinuation order which was never served on the applicant's lawyer. It found that the victim had died of bullet wounds received in the course of a confrontation between the demonstrators and the security forces. However, it found that it was impossible to identify those responsible.

12. On 13 November 1991 the Supreme Administrative Court, to which the case had been automatically referred by law, upheld the above decision, holding that it was impossible to bring a prosecution against civil servants where the identity of those responsible and their status as civil servants had not been established.

13. On 20 January 1993 Mr Güleç's lawyer wrote to the Chairman of İdil District Administrative Council enquiring what had been done about the applicant's complaint. On 3 March 1993 the Şırnak Provincial Authority sent the applicant's lawyer copies of the discontinuation order of 18 October 1991 and the Supreme Administrative Court's judgment of 13 November 1991.

B. The evidence before the Commission

1. Documentary evidence

14. The applicant and the respondent Government submitted various documents relating to the investigation carried out after the death of Ahmet Güleç to identify those responsible. They also produced documents relating to the criminal proceedings brought against persons who were suspected of taking part in the demonstration.

(a) The criminal complaint lodged by the applicant on 5 April 1991 with the İdil public prosecutor's office

15. The applicant alleged that his son had been shot and killed by the security forces in the course of the incidents of 4 March 1991. He stated that eyewitnesses had seen the killing and asked that the gendarmes who had killed his son be identified.

(b) Petition lodged with the İdil public prosecutor's office by four local councillors and eight leading members of the İdil branches of various political parties

16. The petitioners, who had all witnessed these events, alleged that during an unauthorised demonstration the gendarmes had opened fire on unarmed demonstrators. Two people had been killed and more than twenty wounded. The gendarmerie commander had given the order to fire at will on unarmed people. In particular, the local councillors, who had been in a meeting in the district authority offices, had seen the security forces opening fire on young people. One senior-high-school pupil had been killed and others wounded in the shooting. The petition stated that the gendarmerie had acted without reference to the District Commissioner, the public prosecutor or the police. The signatories requested the public prosecutor to take the necessary steps to bring those responsible to justice.

(c) Report on the incidents of 4 March 1991 drawn up by the commanding officers of the gendarmerie, the İdil police and the army

17. This document contains a detailed description of the events by the commanding officers of the various security forces present in İdil.

It states that, on the morning of the day in question, the shopkeepers all closed the shutters of their shops. The security forces had been informed that a group of between 1,000 and 1,500 people from the neighbouring villages was advancing on İdil. The demonstrators said that they were going to a funeral. When they reached the middle of the Atakent district of the town, more people joined the group. The crowd then set off towards the town hall. The gendarmerie commander, the district chief of police and other civil servants intercepted them and made several announcements to the effect that the demonstration was illegal. However, the demonstrators continued to advance along Atatürk Street, shouting slogans like “Long live the PKK”, “Long live freedom”, “Long live Kurdistan” and “Freedom for Kurdistan”. The group, composed of men, women and students, was more than 3,000 strong. When they reached the junction with Milli Egemenlik Avenue, some demonstrators began to attack the police and gendarmes with stones and sticks and firearms. When the demonstrators reached the centre of town they began to break the closed shutters, windows and doors of the shops. At that moment, four reinforcement units sent in by the gendarmerie and police again barred the demonstrators’ way, requiring them to disperse. Sticks and stones were thrown at the security forces who were trying to disperse the demonstrators. Certain unidentified demonstrators opened fire on the security forces with the aim of spreading panic and disorder.

After the shooting the demonstrators began to disperse through the centre of town. One group went to İdil Senior High School, the adult education centre, the gendarmes’ quarters, the police station, the gendarmerie headquarters and the security police offices. When they reached the post office, the group threw sticks and stones, breaking all the windows, and set fire to a post-office minibus. The windows of the school and adult education centre were broken and damage caused to the interior of both buildings. When the same group started to attack the gendarmes’ quarters and the town hall, the gendarmes and police fired warning shots and gave warnings over the town hall loudspeakers. The security forces began to disperse the group.

In the course of these events Ahmet Güleç, a senior-high-school pupil, was killed on the spot by a shot fired by armed troublemakers who had mingled with the demonstrators. A number of civilians were wounded and taken to the public hospital in Cizre. Ekrem Oruç died in hospital. Seven soldiers were injured by flying stones. Some fifty men and seventeen women who had taken part in the unauthorised demonstration were taken into police custody. Twenty-nine spent cartridges from Kalashnikov-type weapons were found at the scene of the demonstration.

(d) Report on the medical examination and autopsy performed on Ahmet Güleç

18. "Medical examination

... The body was stripped.

At the mid-point of the right axillary line towards the victim's back there was a wound 1 cm in diameter caused by a bullet fired from some distance. The exit wound measures 2 cm in diameter and is 20 cm lower, about 10 cm in from the outside of the groin. Approximately 5 cm below the entry wound on the same right axillary line there is a further wound caused by a bullet fragment measuring 1 cm by 1.5 cm.

The body was still warm when the examination commenced. Rigor mortis had not set in and there was no cyanosis. It was concluded from this that death had occurred approximately one hour earlier.

... Two expert opinions were requested. These confirmed the public prosecutor's finding (see above), that is that there is no exit wound relating to the bullet fragment which entered through the middle of the thorax, underneath the right arm. Further, they confirmed that, 5 cm above the point of impact of the fragment, there is an entry wound caused by a bullet striking at an oblique angle, with an exit wound on the same trajectory. Since neither the bullet nor the fragments touched any vital organ, the experts recommended that a full autopsy be carried out in order to determine the precise cause of death."

"Autopsy

The ribcage and abdominal cavity were opened according to the usual procedures. A large quantity of accumulated blood was observed in the thoracic cavity. Approximately 3 litres of blood were pumped out. The left lung had been lacerated by the bullet fragment which, as noted above, struck the victim at the mid-point of the right axillary line. The bullet whose entry and exit wounds were identified and whose trajectory did not touch any vital organ could not have caused death. We conclude that death was caused by the bullet fragment which struck the victim at the mid-point of the right axillary line; this followed a horizontal trajectory, hitting the left lung and causing death by internal haemorrhaging and hypovolaemic shock. In the course of the full autopsy, the bullet fragment which struck the left lung was found in the left armpit and was placed under seal as an exhibit..."

(e) Statement of Abdülvehap Öner, a resident of İdil, taken on 28 March 1991 by the İdil public prosecutor

19. The witness gave the following version of events:

“On 4 March 1991 ... I came across the crowd of demonstrators. I did not join them, but went back the way I had come. At that moment I saw that shots were being fired at the ground from the armoured military vehicle, presumably to disperse the demonstrators. Something – I suppose pieces of lead – anyway, bits of metal – hit my left arm, right thigh and the inside of my left calf. I fell to the ground. I must have lost consciousness... I did not see who fired the shots which hit me, or what weapon they came from. However, shots did come from the Condor military vehicle.”

(f) Declaration of lack of jurisdiction *ratione materiae* made on 19 April 1991 by the İdil public prosecutor

20. The İdil public prosecutor declared that he had no jurisdiction to examine the applicant’s complaint against the İdil gendarmerie commander, Major M. Karatan, for reckless and negligent homicide. The public prosecutor found that Major Karatan had been acting in the performance of his duties and observed that civil servants were subject to special provisions. He accordingly sent the case file to the İdil District Commissioner, who forwarded it to the Şırnak Provincial Administrative Council for investigation.

(g) Declaration of lack of jurisdiction made on 7 June 1991 by the İdil public prosecutor regarding the wounding of Abdülvehap Öner

21. This declaration states:

“On 4 March 1991 the security forces fired into the air from the armoured vehicle belonging to the İdil gendarmerie with the aim of dispersing the demonstrators. One person was wounded by the shooting... The bullets which hit the demonstrator were fired by civil servants acting in the performance of their duties. It has not been possible to identify the persons in question.”

(h) Letter of 12 June 1991 from the İdil District Commissioner to the İdil gendarmerie commander

22. In this letter, the İdil District Commissioner stated:

“On 4 March 1991 an illegal demonstration took place in [İdil]. In order to make the demonstrators disperse, the security forces fired into the air from the armoured vehicle belonging to the gendarmerie of our district. One citizen was wounded. An investigation into the conduct of the gendarmes has been opened.”

The District Commissioner also requested the gendarmes to inform him of “the identity and addresses of those gendarmes in the armoured vehicle who allegedly opened fire, wounding citizens”. He added: “This information will serve as a basis for the investigation to be carried out by my officials.”

(i) Letter of 14 June 1991 from the İdil gendarmerie, replying to the letter of 12 June 1991 from the İdil District Commissioner

23. In this letter, the gendarmerie state, firstly:

“Your authorities know perfectly well that this illegal demonstration was organised by terrorist PKK militants. It was not simply a demonstration, since the offices of public authorities were attacked. Moreover, the infiltration of armed militants among the people and the use of weapons during the demonstration show how serious the situation was. The District Commissioner’s office asked us for backup in order to prevent the situation getting out of hand; in view of the urgency and dangerousness of the situation, all our available personnel were sent to the scene.”

24. The gendarmerie gave the following reply to the District Commissioner’s request:

“We hereby inform you that, as stated above, given the sudden and serious nature of the events in question, the exact position of each of our men was not noted in the log-book. We are no longer in a position to verify their position on the day in question, given that more than three months have since elapsed.”

(j) Documents relating to the investigation carried out by the military investigators

25. On 11 April 1991 the Governor of Şırnak Province instructed Mr Celal Uymaz, a gendarmerie lieutenant-colonel, to hold a preliminary investigation into the events of 4 March 1991. Lieutenant-Colonel Uymaz took evidence from the following witnesses:

Şakir Ece, mayor of the Atakent district of İdil (statement of 22 July 1991):

“... We heard children’s voices coming from the Midyat road. The children carried on marching towards the centre. They were not carrying anything, but simply making “V” signs and chanting slogans... The major arrived. He was in front of the Ziraat Bank. The demonstrators, who had become more agitated, carried on marching. The major then gave the order to fire. We heard shots from all sides. I took refuge on the second floor of the building with the people who had been in front of the District Commissioner’s offices. Through the window I could see that four or five people had fallen to the ground as a result of the shooting, but I did not recognise them. Subsequently, the gendarmes and police arrived, dispersed the demonstrators and took the wounded to hospital...”

Hüseyin Güleç (statement of 23 July 1991):

“I live in the Asağı Mahalle district; the place where the events took place is 250 metres from my house. The sound of shots gradually intensified, lasting approximately two hours. I did not leave the house, I was afraid. I was unable to see anything of what was happening. Around noon, the sound of shooting stopped. Women passing my house in tears told me that my son Ahmet had been killed in the confrontation. That was how I learned that my son had been killed... According to what I was told, my son was killed in front of the bakery ... in the central market... He was on his way to school but, when he saw the demonstrators, he followed them. In the confrontation which arose during this demonstration, soldiers opened fire, killing my son. The district gendarmerie major, Mustafa Karatan, gave the order to fire. He is responsible for the death of my son.”

Habip Aslançiçek (statement of 23 July 1991):

“On the day in question, at about 8.30 a.m. ... I saw a group of demonstrators coming up Midyat Avenue towards the central market. There were men, women and children in the group. Most of the demonstrators had scarves over their faces. They were armed with stones and pieces of wood and were very worked up. Most of them went past the post office, but others stopped there and broke the windows. The Condor vehicle from the battalion arrived to make the crowd disperse. The men in the vehicle opened fire on the agitated demonstrators – or, rather, fired at the ground. Ahmet Güleç, a relative of mine, who died later in hospital, fell to the ground. I believe he was hit by a bullet which was fired at the ground but ricocheted and hit him, because if the shots had been aimed at the crowd, everyone in the group would have been killed. When Ahmet Güleç fell, wounded, I took him to the medical centre in the town hall taxi. In the meantime, other people had been wounded. I did not see the soldiers who were in the Condor, nor the person who fired. However, the shots fired to disperse the demonstrators did come from the Condor. I repeat, they did not open fire on the crowd. Stray bullets could have caused the death.”

Celal Sabuk (statement of 24 July 1991):

“On the day in question, I had gone ... to the centre of town to do some shopping. I was making my purchases when I saw a large group of demonstrators approaching. They were chanting slogans, but I could not understand what they were saying. I heard shots. I saw that shots were being fired from an armoured military vehicle. In the ensuing confusion and surprise I was hit by three bullets, which I think were fired from the armoured vehicle. I was wounded and fell to the ground. I fainted and so I do not know what happened afterwards.”

On 1 August 1991 Mr Uymaz had to withdraw from the investigation, as he had been transferred.

26. On 8 August 1991 the Provincial Governor then appointed Mr Osman Kurt, the gendarmerie battalion's commanding officer.

(k) Summary of the investigation, filed on 14 October 1991 by investigator Osman Kurt

27. This document contains the results of the investigation carried out by the two investigating officers.

Mr Kurt, who was at the material time a gendarmerie major, made the following findings of fact:

“On 4 March 1991 an unauthorised demonstration started in the early morning and lasted into the afternoon. The demonstrators were chanting PKK slogans and shouting defiance of the Turkish Republic. This demonstration grew to a crowd of 3,000 people. The demonstrators then began to damage public buildings and vehicles and related property. They fired shots in all directions. Since there were not enough police officers, reinforcements were requested. The gendarmerie company command and the district gendarmerie headquarters responded to this request in accordance with the provisions of Law no. 2803 on the duties and powers of the gendarmerie. In the course of these events two citizens were killed and approximately thirteen others injured. The majority of the persons taken into custody were arrested after initial questioning. Twenty-seven officers, warrant-officers, sergeants and men from the security forces were also injured in the same incidents.”

With regard to the identity of those responsible, he concluded:

“The statement of Abdülvehap Öner ... reveals that he did not see, and does not know, who opened fire... Hüseyin Güleç, the father of the victim [Ahmet Güleç] ... makes gratuitous and inopportune accusations against Major M. Karatan, who was simply obeying orders. The fact that the major has been made the target of the accusations, despite the fact that he was armed only with his handgun, reveals an ideological outlook and a complete lack of objectivity. The security forces did not aim at the citizens and have twice as many wounded as the demonstrators. The law was applied in order to prevent further incidents. There is, nevertheless, an imbalance (between the numbers of wounded on each side). The security forces did not reply ... to the shots from the crowd. In such circumstances, it is impossible to determine who was responsible for the incidents. In total, 200 police officers and gendarmes were deployed.”

In the covering letter to the summary of the investigation he asserted: “The investigation has shown that the complaints filed by Hasip Kaplan [the applicant’s lawyer] and his fifteen friends contain unfounded and regrettable statements reflecting a lack of objectivity.”

(l) Discontinuation order of 18 October 1991 made by Şırnak Provincial Administrative Council

28. This order stated that there were no grounds to commit for trial any civil servants belonging to the security forces responsible for maintaining order during the demonstration of 4 March 1991. According to this document, the material facts were as follows:

“On the day in question, all the shops in the centre of İdil were closed. Their suspicions having been aroused by this situation, the security forces took security measures at the points of entry to the town, on the roads coming from the villages of Dirsekli, Yarbaşı and Bereketli. As they were doing this, a crowd of between 1,000 and 1,500 people was seen approaching İdil. The security forces personnel asked them what they were doing. The marchers replied that they were going to a funeral and carried on towards the centre of İdil. As they went through the Atakent district, a large number of men, women and children joined the group. It must then have numbered 3,000 persons, heading for the town hall. The district chief of police and the gendarmerie commander made several announcements to the effect that the march was illegal and that the participants should disperse. However, the unauthorised demonstration continued, accompanied by the chanting of slogans such as ‘Long live the PKK’ and ‘Freedom for Kurdistan’. The demonstrators fired shots at the security forces and attacked them with stones and sticks. Subsequently, they broke the windows of public buildings and housing and burned the post-office minibus parked outside the post office. The security forces, confronted with a situation which was becoming stormy, fired shots in the air in order to calm the demonstrators down and make them disperse. However, shots were also fired by demonstrators. Several persons died from wounds caused by shots fired during the demonstration; the medical report also proves that the wounds were caused by gunshots. A search of the scene of the incidents and the surrounding streets and alleyways after the demonstration produced fifty-two spent cartridges from bullets of various calibres coming from weapons registered with the security forces. An analysis of the cartridges showed that the bullets had come from thirteen different weapons. It was concluded that the demonstrators had used firearms.”

The Administrative Council held that it was “not possible on the basis of the evidence on the case file to identify who had killed and injured the victims”.

(m) Judgment of the Supreme Administrative Court of 13 November 1991

29. The Supreme Administrative Court upheld the above discontinuation order on the following grounds:

“Offences committed by civil servants acting in the performance of their duties or by virtue of their powers must be dealt with in accordance with the procedures governing the prosecution of civil servants ..., [whereby] an administrative investigator is appointed by ordinance to carry out the investigation...

... Before an investigation can be opened into the conduct of a civil servant, the suspect must be precisely identified. In the absence of a precise identification, no judicial investigation can be carried out, no summary of such investigation can be prepared and no competent court can give a ruling on the matter.

On 4 March 1991, in the course of a demonstration in the town of İdil, there were a number of confrontations between the security forces and the demonstrators, as a result of which two persons were killed and twelve others wounded. It has not been possible to identify those responsible. Although no judicial investigation can be carried out into this matter, the investigator appointed opened a preliminary investigation and prepared a summary of its findings, on the basis of which the Provincial Administrative Council made a discontinuation order. Since those responsible for the deaths and woundings are unknown, it is impossible for this Court to look into the case and give judgment. Having examined the case file, we hold that the Administrative Council's decision was in accordance with the law and procedurally valid."

2. *Oral evidence*

(a) **Hüseyin Güleç (the victim's father)**

30. Mr Güleç stated that he had not been in İdil at the time of the events of 4 March 1991. When he returned home in the evening he was informed that his son was dead and told that he had been shot. He heard that his son had gone to the scene of the demonstration to look for his younger brothers, at which point he was hit by a bullet. He did not know who had shot his son.

Mr Güleç said that he had not made any statement to the authorities. He remembered being in shock after the incident. Many people had come to visit him, including journalists and members of parliament. He did not know exactly where the body of his son had been found. He had seen it for the first time at the hospital.

As regards the investigation opened after the death of his son, he confirmed that he had signed the criminal complaint filed with the İdil public prosecutor's office, but afterwards he had shut himself up at home. He did not know the details of how his son died. He did not know that he was entitled to compensation as a result of his son's death. Even if his lawyer had advised him to apply for this, he was not in a fit state to understand anything at all at the time of the incidents.

(b) **Abdüselam Güleç (civil servant in Bor (Niğde Province), the victim's cousin)**

31. Mr Güleç had been present in İdil during the incidents, visiting a sick uncle. He had remained in his uncle's house throughout the demonstration and so was not an eyewitness. He had only heard the demonstrators and the shots. When told of Ahmet Güleç's death, he had gone to the hospital where he had looked for but failed to find the body. Later, he had brought the body back to the village for the funeral, which he had attended.

Some of the leading citizens of İdil, together with the PKK, had organised the demonstration and publicised it energetically. All the villagers had taken part (both adults and children), except for the elderly, since those who did not take part in these demonstrations were killed or punished by the PKK. The victim, Ahmet Güleç, had been a pupil at the town's senior high school and, as such, like all the pupils of the school, had been obliged to take part in the demonstration. If he had not done so, he would have been punished by the PKK.

At that time, İdil was a "protected" area: that is, the PKK controlled people's movements. If he, Abdülislam Güleç, had been found in his uncle's house, he would have been forced to participate in the demonstration.

The population of İdil district was essentially made up of nomads, who lived in İdil in winter and moved up into the mountains in summer. These people were armed, possessing one or two guns per family in order to protect themselves from the wolves and thieves in the region. There were contacts between members of the PKK and these nomads. In March winter was not yet over and the village nomads did not migrate to the mountains until May. At the time of the demonstration there must therefore still have been a large number of nomads in İdil.

Mr Güleç asserted that the victim had told him, on an unspecified date, that the PKK had contacted him to try to persuade him to join their movement.

(c) Abdurrahman Abay (mayor of İdil at the material time) (statement taken over the telephone)

32. On 4 March 1991 he had been in his office. The demonstration had taken place about a kilometre away. He had not realised it was happening until he heard shots. He had telephoned the police who had informed him that there were two dead and a number of wounded. He had not left his office. He was not responsible for security in the town. That was the responsibility of the police and the gendarmerie.

Mr Abay acknowledged that he had signed the complaint lodged by leading citizens of İdil against the gendarmerie commander. At first, he had thought that the gendarmes had used excessive force against the demonstrators. However, on reflection, he recognised that the gendarmes had acted in the way they had in order to avoid losing control of the situation, so he had withdrawn his complaint.

(d) Derviş Abay (civil servant at İdil town hall at the material time) (statement taken over the telephone)

33. Mr Abay said that he had not met Ahmet Güleç. The town hall was 800 to 900 metres away from where the demonstration took place. The demonstration and associated incidents had taken place in the centre of town. He had not been present at these incidents, nor had he seen the demonstration. He had heard noises and shots.

He had been placed in police custody and held for two days after the incidents. He had been charged when he claimed not to have taken part in the demonstration. The charge-sheet stated that he had taken part in the demonstration, that spent cartridges from the weapons used during the demonstration had been found at the scene and that one of these weapons belonged to him.

Two months after being released from police custody he had been remanded in custody for one month. At the end of the criminal proceedings brought against him and many other inhabitants of İdil, the Diyarbakır National Security Court had acquitted them all.

He had a gun licence. On the day of the incident he had been working in the town hall and the gun in question had been at his house. He had been told that the security forces had gone to his house, taken the gun and fired shots from it inside their barracks, thus obtaining spent cartridges.

(e) Şeymuz Kaplan (town councillor)

34. Mr Kaplan stated that during the demonstration of 4 March 1991 he had been at home and had not gone out. He was therefore not an eyewitness. His house was about 400 or 500 metres from where the demonstration took place, so he had only heard the demonstrators and gunshots. He did not know the exact reason for the demonstration.

With regard to the complaint filed with the İdil public prosecutor, he had signed it, but had done so as an emotional response in the heat of the moment.

He had not been interviewed in the course of the investigation conducted following the demonstration.

(f) Yahya Zerey (head of the security police in İdil at the material time)

35. Mr Zerey stated that on 4 March 1991 the shutters of all the shops in İdil had been lowered very early in the morning. At the request of the İdil District Commissioner, the police had taken measures to prevent any untoward occurrences.

While he was at the district authority offices the gendarmes had informed him by walkie-talkie that a group of three to four thousand people was heading towards the centre of town. Mr Zerey and his men had gone out to meet the demonstrators in order to inform them that they were demonstrating illegally and should stop. However, the demonstrators had continued their march. Mr Zerey and his men had returned to the district authority offices.

After the arrival of the gendarmes, Mr Zerey had remained in the District Commissioner's office and had not witnessed the incidents. Following a call from a group of gendarmes led by Mr Ersöz and stationed in front of the post office, the armoured vehicle had been sent to their assistance. Mr Zerey had not seen the shooting. The demonstrators had been armed and violent. They had damaged a post-office vehicle and other public property. The security forces had returned fire from the demonstrators.

The security forces had not been equipped with batons or riot shields which could have helped them to quell the demonstrators. They had been armed with handguns and rifles. Mr Zerey also asserted that if the security forces had fired directly on the crowd, more than two people would have been killed.

He also stated that the cartridges found in the streets after the incidents belonged to inhabitants of İdil. It was routine procedure for the security forces to pick up spent cartridges.

According to Mr Zerey, the MG-3 gun mounted on the armoured vehicle could not possibly have been used against a crowd. If it had been, at least twenty people in the front ranks of the crowd would have been killed.

(g) Güven Ersöz (commanding officer of the 8th İdil Gendarmerie Company at the material time)

36. Mr Ersöz stated that on the morning of 4 March 1991 he had learned that shops in the town had lowered their shutters. Finding this unusual, he had awaited developments in his brigade's building. When he saw that the number of demonstrators had increased and that, despite warnings, they were continuing to advance towards the building, he had taken up position at its entrance with about thirty gendarmes.

Mr Ersöz stated that the crowd of demonstrators had been made up of women and children surrounding armed men with scarves over their faces. He had warned the demonstrators that the demonstration was illegal and advised them to disperse. The women and children had tried to obey but the armed men had forced them to go on.

He had given a second warning, but the armed men had continued to advance. Stones and sticks were then thrown at the gendarmes. The demonstrators had chanted many slogans, such as, "We want to enter the brigade building". Mr Ersöz and some of his men in the front line had been wounded by flying stones.

The armed demonstrators had taken advantage of this to try and seize the gendarmes' weapons. Mr Ersöz had fired warning shots in the air, which had made the women and children disperse. He himself, his second lieutenant and his orderly had each fired about five shots. Consequently, between the three of them they would have fired about fifteen bullets, which the witness considered sufficient to make the demonstrators disperse. He and his men had then retreated to the side of the road. Ten seconds later they had come under very heavy fire from Kalashnikov-type automatic weapons fired by the armed men, who were also shooting with the weapons which they had stolen from the gendarmes.

Mr Ersöz had used his radio to call up the Condor armoured vehicle as backup. The Condor had been standing about one kilometre away from his brigade building. When it reached his position it had managed to disperse the demonstrators without firing a shot. It had come from the gendarmes' quarters and, in order to get to the brigade building, it must have gone past the post office, where the victim had been killed. However, Mr Ersöz did not know whether the Condor had opened fire on its way, but did remember that he had requested that the Condor be sent in exclusively as a deterrent and that the weapons mounted on the vehicle should not be used against the crowd. He knew the Condor crew but could not identify the person who had been driving the vehicle at the time.

Mr Ersöz emphasised that PKK members provoked and built up this kind of incident, and threatened the local population to force them to participate in PKK-organised demonstrations. Refusing to take part could be fatal.

There was a distance of 500 to 600 metres between the spot where the victim's body was found and the place where he had taken up position with his men to defend his brigade's building. They had been out of range of the place where the victim's body was found and 100% of the spent cartridges found there had belonged to PKK members.

Lastly, in relation to the investigation, Mr Ersöz said that he had made the necessary statements to the Diyarbakır National Security Court, the Principal Public Prosecutor and the lawyers.

(h) Nazım Ayhan (gendarmerie warrant-officer at the material time and driver of the Condor vehicle)

37. Mr Ayhan stated that the commanding officer of İdil gendarmerie was Major Karatan. The second in command was a lieutenant and he was third in rank.

He remembered that on the day of the incident, at 7.30 a.m., he had received a telephone call informing him that there was an unauthorised demonstration in town. He had gone round to the office of the İdil District Commissioner. The head of the security police and the gendarmerie commander had also been present. The crowd of demonstrators was coming towards the centre of town from the district behind the town hall and the immigrant districts. Mr Ayhan had ordered his men not to intervene.

By then, the crowd was 3,500 strong. At that point, the Condor armoured vehicle was standing near the gendarmes' quarters, with a view to preventing any attack on them. It was parked in a narrow lane 50 metres from the main street where the demonstration was taking place. On the order of a young man whose face was masked, the crowd had begun to advance, chanting slogans like "Up the PKK". They were heading for the centre of town. At that moment handgun shots had been heard coming from the crowd. Shots had also been fired at the security forces from the surrounding alleys and roofs of houses. The Condor had not moved.

At some point, the district gendarmerie commander (Major Karatan) had informed him by walkie-talkie that the demonstrators were attacking the school where his wife was teaching. The PKK militants were demanding that she be handed over to them. The commander had ordered Mr Ayhan to go and get his wife from the school. In order to get to the school, the Condor, driven by Mr Ayhan, had turned left into the main street, towards the centre of town, then took the first street on the right, which ran alongside the school. In that narrow street Mr Ayhan had fired two or three times in the air in order to gain the demonstrators' attention. Shots were being fired at the vehicle from all sides. The windows of the school and of the adult education centre had been broken by stones. The Condor had been driven towards the demonstrators in order to disperse them, and a second armoured vehicle (a Land Rover) had succeeded in picking up the commander's wife at the other entrance to the school and getting her away from the scene. The Condor had then returned to its position near the gendarmes' quarters. Ten or fifteen minutes later Mr Ayhan had been informed by walkie-talkie that Lieutenant Ersöz was requesting assistance. He had started out for the infantry regiment barracks in the Condor. He had to go through the centre of town. In the middle of the main street, between the baker's and the post

office, he had seen a body stretched out on the ground. There was no one with it. Mr Ayhan had told the driver of the armoured vehicle to keep well away from the body because it could have been a trap. When the Condor came up behind the crowd, which had already got as far as the infantry regiment barracks, the people had moved aside. The demonstrators had run away and the disturbances had ended. When the Condor again returned to its position near the gendarmes' quarters, the body was no longer lying in the main street.

Mr Ayhan stated that the Condor was equipped with an MG-3 automatic rifle. This was the weapon he had used to fire into the air. He had pressed the trigger two or three times. He did not know the exact number of bullets he had fired but he estimated that it must have been between fifty and sixty. The MG-3 machine gun was a combat weapon. If he had fired on the crowd, many people would have been killed.

Mr Ayhan stated that he knew that an investigation into these events had been opened but did not remember giving a statement to anyone in authority. He did not remember whether the spent cartridges from the weapon he had used had been passed on to the judicial authorities. If not, they would have been kept in the gendarmerie depot and handed over to superior officers.

In response to a question concerning the death of another demonstrator, Mr Ayhan stated that the Condor had fired in the air in a narrow street. As soon as the trigger of an MG-3 machine gun was pressed, it immediately fired at least ten bullets. Mr Ayhan thought the victims had been killed by bullets fired by the PKK. PKK militants were not professionals and often hit the wrong targets.

(i) Bekir Rayif Aldemir (İdil public prosecutor at the material time)

38. Mr Aldemir stated that on 4 March 1991 he was in İdil and had seen the demonstration. While on his way to his office, he had heard shots and slogans and had taken refuge in the gendarmerie building. At that moment, he had heard numerous gunshots coming from the centre of town.

From the garden of the gendarmerie building he could see the Condor armoured vehicle moving along Atatürk Street, firing in the air in order to disperse the crowd. Shots fired in the air made a different sound than straight shots. He had also heard Kalashnikov and MG-3 fire coming from the gendarmerie building.

As regards the investigation, he had conducted an inquiry following the criminal complaint filed with the İdil public prosecutor's office by Hüseyin Güleç. He had taken a statement from Mr Güleç and other witnesses. He had ordered an autopsy on the victim's body.

The autopsy, which was a full one, had been performed in İdil paramedical health centre and produced the following findings: the victim had been dead for about one hour as rigor mortis had not yet set in. The victim had been hit by a single bullet. The point of impact was below the right armpit and the bullet had lodged in the left shoulder, causing internal bleeding. The bullet had been found in the victim's body. It had followed a rising trajectory.

Mr Aldemir considered that it was not impossible, in view of the trajectory followed by the bullet-core found in the victim's body, that it had been fired from the Condor armoured vehicle and had then ricocheted. He referred to the autopsy report, which he had in front of him, and which stated that the fatal bullet must have ricocheted off a building or wall. The bullet-core found in the victim's body had been knocked out of shape, and this could not be accounted for by the bullet's passage through the victim's body.

A ballistic report on the spent cartridges had been drawn up by the regional criminal police laboratory. According to that report, a bullet fragment which had passed through the body had been found and compared to twelve specimen bullets. No match had been found. Since the other fragments of the bullet had not been found, it had been impossible to identify the weapon which had caused the victim's death. However, the bullet-core, which was an important piece of evidence, had been preserved as an exhibit, in accordance with the relevant procedure.

Mr Aldemir had seen to it that the wounded were examined by doctors. Ten medical reports had been filed and placed on the case file sent to the District Commissioner. According to those reports, certain demonstrators had wounds between the feet and the knees. None of them had been wounded on the upper body.

The position of these wounds might have been due to crossfire and bullets ricocheting off the ground or buildings.

Since the criminal complaint concerned civil servants, Mr Aldemir had made a declaration on 19 April 1991 to the effect that he had no jurisdiction to deal with it, in accordance with the legislation on prosecution of civil servants. He had then transferred the investigation file to the District Commissioner.

(j) Osman Kurt (head of general security at Şırnak gendarmerie headquarters at the material time)

39. When appointed as the investigator in the Güleç case, he had opened an inquiry and compiled a case file. He had taken witness statements from Abdurrahman Abay, Hüseyin Demir and the other civil servants working in the town hall, who had taken part in the demonstration.

In his report he stated that the accusations against Major Karatan were unfounded and did not reflect what had actually happened. Before arriving at that conclusion, he had taken evidence from witnesses, read expert reports and gathered other evidence from various official and private sources. Finally, he had taken a decision on the basis of his personal conviction. He had put himself in the place of the security forces faced with the demonstrators. He had thought about the case for days before reaching his decision, weighing all the possibilities.

Mr Kurt had also taken evidence from the gendarmes and Major Karatan. He did not remember whether he had taken evidence from Güven Ersöz and had not taken a statement from Abdurrahman Abay, the mayor of İdil, whom he had seen by chance on his way to İdil town hall. Mr Abay had only told him that if the gendarmes had intervened sooner, they would have prevented most of the incidents.

In his statement, Hüseyin Demir had told Mr Kurt that he had not seen exactly what had happened. He had only heard shots and seen the crowd but had not seen people being killed or wounded. Mr Kurt's case file also contained statements from demonstrators. These statements had been taken by the public prosecutor and the previous investigator.

Mr Kurt did not remember taking evidence from Mr Ayhan, the driver of the Condor vehicle. Nor did he remember how many shots had been fired in the air from the Condor.

Before reaching his conclusion, he had taken into account not only witness statements, but also the results of his own investigations. These indicated that the young man had been killed before the security forces intervened. The PKK militants had been in the middle of the crowd of demonstrators, surrounded by women and children. They had fired shots in all directions in order to create an atmosphere of terror. Some bullets had ricocheted and hit Ahmet Güleç. The gendarmes had not even been there when he was wounded.

He had found that the security forces had taken all necessary precautions. Those who had come forward as witnesses were reliable people. The mayor of İdil was one of them.

There had been three or four thousand demonstrators. If firearms were discharged haphazardly, accidents could happen, even in a group of twenty to twenty-five people. In the case in point, the three or four thousand demonstrators had not been aware of the danger. It had even been inevitable that someone would be killed. He had interviewed everyone, even the victim's relatives, who had explained to him that Ahmet Güleç had very probably been killed by PKK bullets.

Mr Kurt had not immediately ruled out the possibility that the security forces had fired on the demonstrators. He had been completely impartial and had begun his investigation with an open mind. He had come to the conclusion that the gendarmes had intervened after the victim's death. The complaint filed against the gendarmerie commander had really been an emotional reaction intended to tarnish his reputation. Major Karatan had been armed only with a handgun.

The crew of the Condor armoured vehicle had controlled the situation effectively. If the machine gun mounted on the vehicle had been fired towards or at the crowd, there would have been a large number of deaths.

The fifty-two spent cartridges referred to in the Administrative Council's decision had come from bullets fired in the air by the gendarmes. The twenty-nine spent cartridges referred to in the report on the incidents and in the public prosecutor's report of October 1991 had come from weapons used by the demonstrators. The reference to "weapons registered" related to the weapons seized during searches and preserved as exhibits.

Mr Kurt had interviewed only those people who had been listed by the gendarmerie commander as injured. The difference between the number of injured referred to in his report and the number mentioned by the chief of police could be explained by the fact that some people had gone to hospital and received immediate attention there whereas others had been admitted. Some people did not immediately realise that they had been injured, while others did not inform all the relevant authorities.

He had seen the injured gendarmes in their barracks. Their injuries had been caused by stones and other hard objects which had been thrown at them, not by bullets.

The commanding officer was responsible for operations. The troops had taken up their positions on his orders. If a subordinate misapplied one of the commanding officer's orders, or acted outside the scope of that order, the subordinate was answerable for the consequences.

He thought that the commanding officer of the district gendarmerie had given appropriate orders. When the police proved to be unable to handle the situation, the gendarmerie had intervened. Major Karatan had therefore intervened in good time and taken the appropriate steps.

Where the investigating officer was not a gendarmerie officer, the chief of police or his deputy could investigate the case. If no such person was available, someone else, an engineer for example, could act as the investigating officer.

Mr Kurt confirmed that he had worked in Şırnak from 1991 to 1993. He also confirmed that Major Karatan had worked in Şırnak for part of that period and stated that he had taken over the investigation in the case long after the events in question.

(k) Nurettin Güven (Deputy Governor of Şırnak at the material time)

40. Mr Güven had been standing in for the Governor as Chairman of Şırnak Provincial Administrative Council when it discontinued the proceedings against the commanding officer of the gendarmerie forces ordered to suppress the demonstration of 4 March 1991. He himself had not been present at the scene of the incidents.

He described the rules governing prosecution of civil servants, which were as follows. The Governor appointed an investigator, who gathered all the evidence and submitted his conclusions to the Administrative Council. The case file was examined at a meeting of the Administrative Council at which each member expressed his or her views. The investigator did not attend that meeting. A decision to commit for trial or discontinue proceedings could be taken either unanimously or by a majority. The Administrative Council's decision was transmitted to the Supreme Administrative Court which, after examining the case file, upheld or quashed it. These special rules governing the prosecution of civil servants applied in regions where a state of emergency was in force. A state of emergency had to be declared according to the democratic process by the National Assembly, by a majority vote.

In the present case, the Administrative Council had unanimously discontinued the proceedings, on the ground that the persons responsible had not been identified. No one had testified to seeing how Ahmet Güleç had died. In Turkey, gendarmes did not fire on citizens except when driven by necessity to do so.

(l) Cengizhan Uysal (Şırnak Director of Public Health at the material time)

41. Mr Uysal did not remember the particular circumstances of the case. At the time there had been disturbances in İdil almost every day.

The Administrative Council based its decisions on the documents which the investigator had placed on the case file, and was not strictly speaking empowered to conduct an investigation itself. That power belonged to the Governor. In general, the Administrative Council met once a month, although some months there was no meeting. If so, the Governor circulated a draft decision among the members of the Council for signature.

When the Administrative Council met, it was chaired by the Governor or his representative. The Council's Secretary read the case file aloud. The members of the Council could examine the documents on the file. They were then invited to express their views and to sign a draft decision. In theory, the members could oppose the Governor's proposal. Those who were not convinced of the correctness of what was proposed could ask for further investigations to be carried out. However, in the final analysis, the procedure was based on the trust placed in the Governor. Either the members of the Council were convinced and signed the decision, or they were replaced by others who were willing to sign it. In practice, it was not possible for the decision, as proposed by the Governor, not to be signed.

Mr Uysal stated that he thought the decision given in the present case had not been a discontinuation order but a decision not to commence criminal proceedings against civil servants and to transfer the case file to the public prosecutor for him to carry out a further investigation with a view to identifying those responsible. He had not been informed of subsequent developments in the case.

(m) Şükrü Süsin (shopkeeper and local councillor (*muhtar*) for one of the districts of İdil at the material time)

42. Mr Süsin stated that the local population had spontaneously organised a demonstration on 4 March 1991 in order to protest against acts of brutality committed by the gendarmes two days earlier in the village of Kömür. The District Commissioner had called him to the town hall. On his way there, he had seen the demonstrators in the street, and also the security forces and their armoured vehicles. When he got to the town hall, the demonstrators were already assembled.

At the town hall, the witness had seen and heard gendarmerie major, Mustafa Karatan, give the order to open fire by walkie-talkie. As the town hall was the tallest building in İdil he had seen a Panzer-type armoured vehicle open fire while travelling along Atatürk Street in front of the town hall. All the demonstrators were trying to run away. One of his friends had been killed before his eyes. He had seen shots being fired from the armoured vehicle. The vehicle was following the demonstrators and the soldiers manning it were firing at the ground, in the direction of the demonstrators.

More than fifty people had been wounded in the abdomen and chest by ricocheting bullets. Some of the wounded had refused to be taken to hospital because they were afraid of the authorities' reaction.

Mr Süsin had not seen how Ahmet Güleç had been killed. With others, he had signed a complaint filed with the İdil public prosecutor's office against Mustafa Karatan. A gendarmerie officer, Major Osman, had taken his statement in the course of an investigation into the incidents. But the investigation had come to nothing.

Mr Süsin had been arrested, in relation to another matter, in January 1993. In 1994 he had left Turkey while proceedings against him were pending. He had eventually been sentenced to twelve years and six months' imprisonment under Article 168 § 2 of the Criminal Code for membership of an armed group, namely the PKK.

After examining the photograph of the armoured vehicle on the case file, Mr Süsin stated that it was a Panzer and that the Condor was smaller. In fact, a Condor was a jeep equipped with a machine gun. The Condor had fired for four or five minutes.

(n) Hüseyin Demir (chairman of the İdil branch of the People's Social Democratic Party (SHP) at the material time)

43. Mr Demir stated that he had been at home when the demonstration started. His house was one kilometre from the centre of town. From his balcony, he had been able to see the route taken by the demonstrators (mainly Atatürk Street) and the armoured vehicles belonging to the security forces following them.

The demonstration had been called to protest against what gendarmes had done to certain inhabitants of a village in Mardin Province. The demonstrators were not armed. At about 9 a.m. he had heard shots. From his balcony, he could see the armoured vehicles firing in all directions. Later he had gone to the health centre where there were a number of wounded people and Ahmet Güleç's body. He had helped to take the wounded to various hospitals in the region.

The soldiers inside the armoured vehicle were not necessarily shooting to kill but might have been trying to disperse the demonstrators. However, they had fired without concern for the risk to the demonstrators' lives. Most of the wounded had not gone to hospital for fear of being prosecuted for demonstrating illegally. Mr Demir had not seen any gendarmes injured in the course of the incidents.

While Mr Demir was at the health centre in the social security hospital he had been arrested by gendarmes and held in police custody for three days before being brought before one of the public prosecutors at the Diyarbakır National Security Court. Two members of his family had later been charged but then acquitted. The gendarmes had seized weapons and cartridges from citizens and fabricated evidence. However, this ploy had not fooled anyone for long.

(o) Cüda Demir (born in Turkey in 1975, now living in Germany)

44. Ms Demir stated that the demonstration had been called in protest against searches carried out by the army and arrests made on 2 March 1991 in a village near İdil.

Ms Demir had taken part in the demonstration together with Ahmet Güleç, who had been a school friend of hers. There were no lessons because of the demonstration. They had decided to take part with other pupils from the senior high school. There had been many demonstrators and they were not acting under anyone's orders. They were not carrying weapons or stones.

With regard to the circumstances surrounding the death of Ahmet Güleç, Ms Demir stated that she was with him in the middle of the crowd when they found themselves trapped between the gendarmes who were barring the road in front of them (about 150 metres away) and a Panzer tank which was following close (5 or 6 metres) behind the demonstration, having come from the centre of town. The armoured vehicle had fired from behind the demonstrators, many times, at random and directly at the demonstrators, although this was not necessary to bring them under control. She had seen Ahmet Güleç fall to the ground beside her when the shooting first started. He had remained lying on the ground while the demonstrators were running off into the adjacent streets. She had taken refuge in a house from which she had called her father. She had got home about two hours later. At that time, she could still hear shots. She had later found out that her friend had died.

(p) Hüsni Demir (born in 1966, manager of a café opposite the Turkish Electricity (TEK) building in Atatürk Street, İdil, at the material time, currently living in Germany)

45. On the day in question Mr Demir had gone to his café at 6 a.m. At about 8 a.m. the demonstration began. It was a large one. The demonstrators did not have weapons, or stones or sticks. They were chanting slogans such as, "Stop the torture, stop the repression".

The soldiers had formed a barricade in front of the demonstrators. The Panzer, which suddenly appeared behind the crowd, fired into the air, at the ground and in the direction of the demonstrators. One person was hit by a bullet and fell to the ground about ten to twenty metres in front of Mr Demir's café. All the other demonstrators dispersed. The Panzer had been about 100 to 150 metres from the café. Ahmet Güleç was lying on the ground in front of the café, before the post office.

When the soldiers inside the Panzer opened fire, they were not concerned to preserve human life. The MG-3 machine gun mounted on the vehicle was a very powerful weapon. A number of people were wounded.

Shots could be heard in all the streets of İdil until 8 o'clock that evening. Mr Demir had been trying to get home when he was arrested and held in police custody for three or four days. Mr Demir's café and other buildings in İdil had been damaged during the incidents. On 29 April 1991 Mr Demir had made a statement to the İdil public prosecutor to the effect that he had stayed in bed on the day of the incidents and had not opened his café, but this was a lie.

(q) Beşir Arı (born in Turkey in 1963, now living in Germany)

46. Mr Arı stated that he had arrived in İdil on the morning of 4 March 1991 at 8 a.m. from the village of Yarbaşı. He had taken part in the demonstration.

With regard to the circumstances of Ahmet Güleç's death, Mr Arı had seen him fall under fire from the Panzer. At that time Mr Arı had been in the middle of the demonstration and had seen soldiers and police officers open fire in the direction of the crowd, without giving any warning. The Panzer, which had come from the centre of town, had been behind the demonstrators when it fired several times, in their direction, at the ground and in the air. Five or six people had fallen close to him and the demonstrators had dispersed. Ahmet Güleç, who was 50 metres from the Panzer, had also fallen to the ground. Mr Arı had run away into the surrounding streets and helped the injured to make their way to the health centre. He had been arrested and taken to the gendarmerie headquarters.

The demonstrators had not been acting on anyone's orders.

(r) Sabri Aslan (student at the Ankara University Faculty of Political Science at the material time)

47. Mr Aslan's parents lived in a village 15 kilometres from İdil, and he had been on holiday in the region in March 1991. He had not seen what took place in the centre of town, in Atatürk Street. He had arrived in İdil early that morning and seen people coming away from the scene of the incidents. Armoured vehicles were patrolling the streets. One of the vehicles had opened fire on him. He had hidden behind a rock, but his leg had been burned by bullet fragments. According to Mr Aslan, the gendarmes were out of control and were taking absolutely no precautions to preserve human life. They were acting like hunters.

(s) Emin Aslan (present in İdil at the material time)

48. Mr Aslan stated that he had taken part in the demonstration. He had seen the Panzer fire at the crowd from a distance of about 150 to 200 metres. The demonstrators had separated into two groups, but the firing had continued and he had received a bullet wound.

As regards the circumstances of Ahmet Güleç's death, he had not been near him but about 400 to 500 metres away. He had seen a large Panzer and a small one. He had seen the large Panzer fire at the crowd without prior warning. He had been treated in secret after the incident by a doctor. More than fifty people who had been injured did not go to see a doctor for fear of being arrested.

II. RELEVANT DOMESTIC LAW

49. Article 125 of the Turkish Constitution Turkey provides:

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

The administration shall be liable to indemnify any damage caused by its own acts and measures.”

The above provision is not subject to any restrictions, even in a state of emergency or war. The second paragraph does not necessarily require proof of the existence of any fault on the part of the administration, whose responsibility is of an absolute, objective nature, based on the theory of “social risk”. Thus the administration may indemnify people who have suffered damage from acts committed by unidentified persons where the State may be said to have failed in its duty to safeguard individual life and property.

50. Under the Turkish Criminal Code, torture and ill-treatment are criminal offences (Articles 243 and 245 deal with torture and ill-treatment inflicted by civil servants respectively).

51. Under Articles 151 and 153 of the Code of Criminal Procedure, complaints may be lodged with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may also appeal against a decision not to institute criminal proceedings.

52. Under Article 4 § 1 of Legislative Decree no. 285 (which introduced the office of Governor of a State of Emergency Region), criminal offences committed by members of the security forces within the area covered by the state of emergency must be dealt with under the procedure for prosecuting public servants. Under this procedure, the administrative investigatory authorities conduct the preliminary investigation. If this investigation implicates an agent of the State or a civil servant, authorisation to initiate criminal proceedings must be given by the local administrative council (the executive committee of the provincial administrative authorities). Administrative councils' decisions may be appealed to the Supreme Administrative Court; a decision not to proceed is subject to an automatic appeal of this kind.

53. Under section 1 of Law no. 466, a person who has been wrongfully held in police custody may apply to the local assize court for compensation within three months of a decision to drop the charges against him.

54. Furthermore, any illegal act by a civil servant, whether a crime or a tort, which causes pecuniary or non-pecuniary damage may be the subject of a claim for compensation before the ordinary civil courts.

55. Proceedings against the administration may be brought before the administrative courts, whose proceedings are in writing.

PROCEEDINGS BEFORE THE COMMISSION

56. Mr Güleç applied to the Commission on 16 March 1993. He relied on Article 2 of the Convention, alleging that his son's death had been caused by bullets fired by the security forces during a demonstration and complaining that he had not been able to lodge a complaint with the criminal courts because of the administrative authorities' decision to discontinue proceedings against members of the gendarmerie.

57. The Commission declared the application (no. 21593/93) admissible on 30 August 1994. In its report of 17 April 1997 (Article 31), it expressed the opinion that there had been a violation of Article 2 (thirty-one votes to one). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

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.

FINAL SUBMISSIONS TO THE COURT

58. The applicant's lawyer asked the Court to hold that there had been a breach of Article 2 of the Convention and to order the respondent State to pay compensation for the pecuniary and non-pecuniary damage sustained by his client, and to reimburse the costs and expenses he had incurred.

59. The Government asked the Court, as their principal submission, to rule that domestic remedies had not been exhausted in the present case, and for the rest to hold that there had been no breach of the Convention.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

60. The Government objected that domestic remedies had not been exhausted, in that the applicant had not brought an action for damages in the appropriate administrative court.

61. The Delegate of the Commission observed that during the proceedings before the Commission the Government had requested and obtained two extensions of the time-limit they had been given for submitting observations on the admissibility and merits of the application. These observations, which had been submitted on 26 January 1994, argued that the application should be rejected, firstly because it was an abuse of the right of petition – being, in the Government's opinion, "highly political" and, in their view, seeking to impute the applicant's son's death to the security forces – and secondly because there had been no breach of Article 2, as the fatal bullet had been fired by the demonstrators, not by the security forces. As the argument concerning non-exhaustion had been put forward for the first time before the Court, the Government were estopped from relying on it.

62. The Court sees no reason to disagree with that submission.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

63. The applicant asserted that his son had been killed by a bullet fired by the security forces during the demonstration of 4 March 1991, while he was trying to make his way home. He further complained that the gendarmes had used excessive force and that there had been no proper investigation into the circumstances of his child's death. He argued on that account that there had been a twofold violation 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.”

64. The Government contested the version of the events given by the applicant. Ahmet Güleç had been hit by a bullet fired by terrorists positioned among the demonstrators. The relevant authorities had properly conducted their investigations into his death.

65. The Commission submitted that Article 2 had been breached on account of the use of disproportionate force by the gendarmes and the lack of a real investigation.

A. The applicant's son's death

1. Arguments of the participants in the proceedings

(a) The applicant

66. The applicant stated in the first place that the unauthorised demonstration of 4 March 1991, in which approximately 3,000 – unarmed – residents of İdil and nearby villages had taken part, had been called to protest against ill-treatment inflicted on the people of a neighbouring village, some of whom had been taken into police custody, during an operation by the security forces.

Secondly, his son had not been demonstrating but had been killed while he was returning from school by shots fired from one of the armoured vehicles used by the gendarmes. The Government's allegations, to the effect that Ahmet had been a member of the PKK and had knowingly participated in events orchestrated by terrorists belonging to that illegal organisation, were not backed up by any evidence. Numerous witnesses had testified that the crowd had been composed of men, women and children and that only the security forces had opened fire.

Consequently, the Turkish State bore full responsibility for his son's death.

(b) The Government

67. The Government maintained that the demonstration of 4 March 1991 had quickly lapsed into insurrection and vandalism, owing to the presence of masked PKK terrorists who had fired at random, using women and children as a human shield. The demonstrators had been ordered to stop by means of a loudspeaker announcement, but at the instigation of these terrorists they had not done so. When some people realised that they were not attending a funeral (see paragraph 17 above) but rather taking part in a mass assault on public buildings and the security forces, they had tried to leave the demonstration, but had been prevented from doing so by the terrorists. The report on the incidents, the report on the official investigation and the discontinuation order made by the Administrative Council on 18 October 1991 all showed that it had been a violent demonstration, and that shots had been fired at the security forces.

The applicant's son and another person had been killed, fifteen other civilians and twenty-four members of the security forces had been wounded; many non-military buildings, both private and public, had been damaged.

The autopsy carried out on the deceased confirmed that, as the bullet that caused death had followed a horizontal trajectory, it had come from a levelled weapon and had ricocheted off a solid surface – such as a wall. A number of spent Kalashnikov cartridges found at the incident scene proved that the applicant's son had been killed by a shot fired from a Kalashnikov rifle (a weapon used exclusively by the terrorists). If the bullet had been fired by the Condor armoured vehicle, as the applicant alleged, it would have to have followed a downward trajectory, since the gun carried by the Condor was mounted on its turret, at least 220 cm above the ground. Moreover, if such a weapon had been used against the crowd, it would certainly have claimed many more victims.

The witness statements heard by the Commission's delegation simply indicated that the armoured vehicle had fired in the air to disperse the demonstrators, not to return fire from the terrorists hiding among them.

The level of force used to restore public safety could not therefore be criticised. Faced with a serious situation obliging them to intervene to put a stop to acts of violence, the gendarmes had used the means at their disposal in such a way as to try to avoid loss of life.

(c) The Commission

68. After conducting an investigation on the spot and hearing oral evidence in Strasbourg, the Commission concluded that it had been established that the armoured vehicle had opened fire in the main street, where the demonstration was taking place, either in the air or at the ground, in order to disperse the demonstrators, and that Ahmet Güleç had been hit by a fragment of a bullet fired from that vehicle that had ricocheted off the ground or a wall. However, the Commission did not believe that the machine gun, a combat weapon with a very rapid rate of fire, had been used to kill demonstrators intentionally. It accepted that the form the demonstration had taken was such that it could be described as a riot within the meaning of Article 2 of the Convention, but expressed the view that the use of a combat weapon during a demonstration for the purpose of restoring order could not be regarded as proportionate.

2. The Court's assessment

69. The Court has been given two contradicting versions of the events of 4 March 1991. According to its settled case-law, the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 § 1 of the Convention). While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it, it is only in exceptional circumstances that it will exercise its own powers in this area (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2272, § 38, the *Aydın v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, pp. 1888–89, § 70, the *Menteş and Others v. Turkey* judgment of 28 November 1997, *Reports* 1997-VIII, pp. 2709–10, § 66, and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, p. 321, § 75).

70. The file on the present case has not revealed any reason to cast doubt on the establishment of the facts as set out in the Commission's report.

As the Commission rightly pointed out, the demonstration was far from peaceful, as was evidenced by the damage to moveable and immoveable property in the town and the injuries sustained by some gendarmes. Confronted with acts of violence which were, admittedly, serious, the security forces, who were not present in sufficient strength, called for reinforcements, and at least two armoured vehicles were deployed. Whereas the driver of the Condor, warrant-officer Nazım Ayhan, asserted that he had fired into the air, several witnesses, including some of the leading citizens of

the town, said that shots had been fired at the crowd. Although this allegation was categorically denied by the Government, it is corroborated by the fact that nearly all the wounded demonstrators were hit in the legs; this would be perfectly consistent with ricochet wounds from bullets with a downward trajectory which could have been fired from the turret of an armoured vehicle.

71. The Court, like the Commission, accepts that the use of force may be justified in the present case under paragraph 2 (c) of Article 2, but it goes without saying that a balance must be struck between the aim pursued and the means employed to achieve it. The gendarmes used a very powerful weapon because they apparently did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province of Şırnak, as the Government pointed out, is in a region in which a state of emergency has been declared, where at the material time disorder could have been expected.

72. As to the question whether there were armed terrorists among the demonstrators, the Court notes that the Government produced no evidence to support that assertion. In the first place, no gendarme sustained a bullet wound either in the place where the applicant's son died or in other places passed by the demonstration. Secondly, no weapons or spent cartridges supposed to have belonged to PKK members were found on the spot. Moreover, prosecutions brought in the Diyarbakır National Security Court against the owners of thirteen rifles confiscated after the incidents, from which spent cartridges had been collected by the security forces, ended in acquittals, because the defendants had not taken part in the events in issue (see paragraph 8 above).

73. In conclusion, the Court considers that in the circumstances of the case the force used to disperse the demonstrators, which caused the death of Ahmet Güleç, was not absolutely necessary within the meaning of Article 2.

B. The investigation conducted by the national authorities

1. Arguments of the participants in the proceedings

(a) The applicant

74. The applicant asserted that those responsible for his son's death had been protected by their superiors during the administrative inquiry. Firstly, investigating officer Kurt had not made a list of the names of the gendarmes who had opened fire from the armoured vehicle. Secondly, the discontinuation order made by Şırnak Provincial Administrative Council,

and upheld on 13 November 1991 by the Supreme Administrative Court, on the ground that it had not been possible to identify those responsible, was not at all pertinent, since the complaint of 5 April 1991 had been lodged against Mustafa Karatan.

The right to life was one of the most important Convention rights, and the Government had failed to fulfil its obligation to protect it by not bringing proceedings in the courts against the offender whenever anyone infringed it.

(b) The Government

75. The Government replied that if there had been the slightest prima facie evidence, the Administrative Council would have decided to prosecute. In any event, the Regional Administrative Court, a judicial body which had a legal duty to review all discontinuation orders made by administrative councils, would have set aside the order and ordered the prosecution of the suspects. In the last two years administrative councils had brought criminal proceedings in 4,955 cases. During the same period, the Regional Administrative Courts and the Supreme Administrative Court, two courts composed of professional judges who could not be removed from office, had set aside no fewer than 439 discontinuation orders.

As regards the lack of a public hearing during the review procedure, the Government submitted that, even if the law provided for a hearing, the court concerned would uphold the administrative council's conclusion, since this reflected the truth as established on the basis of the evidence obtained during the investigation.

In conclusion, it could not be argued that the right to life had been infringed because there were no remedies or because existing remedies were ineffective, unavailable and inaccessible.

(c) The Commission

76. In the Commission's view, the authorities responsible for the investigation lacked the requisite independence and impartiality. The two investigating officers appointed by the Provincial Governor, Celal Uymaz and Osman Kurt, were gendarmerie officers and the hierarchical superiors of the gendarmes whose conduct they had to investigate. As to the Administrative Council, it was composed of the District Commissioner and senior civil servants of the provincial administration, all under the orders of the Provincial Governor, who was in charge of the local gendarmerie.

In the present case, there had been not only a lack of objective impartiality as defined in the Court's case-law, but also of subjective impartiality. Certain phrases in investigating officer Kurt's report, to the effect that the applicant had made "gratuitous and inopportune accusations against Major M. Karatan, who was simply obeying orders" and that "[t]he fact that the major has been made the target of the accusations ..., reveals an

ideological outlook and a complete lack of objectivity”, scarcely reflected an objective attitude and a determination to investigate the accusations against the gendarmes seriously.

Analysing a number of aspects of the way in which the investigation was conducted in the present case, the Commission noted several serious shortcomings and expressed the opinion that Article 2 had been breached as regards its procedural implications also.

2. The Court's assessment

77. The general legal prohibition of arbitrary killing by the agents of the State laid down in Article 2 would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, 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 by, *inter alios*, agents of the State (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. 324, § 86).

78. The procedural protection for the right to life inherent in Article 2 of the Convention means that agents of the State must be accountable for their use of lethal force; their actions must be subjected to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances (see, most recently, the Kaya judgment cited above, p. 324, § 87).

79. The Court observes that the Government blamed the PKK for Ahmet Güleç's death. In the first place, the report on the incidents drawn up by the commanding officers of the gendarmerie, the İdil police and the army indicates that the security forces were convinced that this death was the result of a “shot fired by armed troublemakers who had mingled with the demonstrators” (see paragraph 17 above). Similarly, in its letter of 14 June 1991 replying to the İdil District Commissioner's letter of 12 June, the gendarmerie asserted without any reservation that the demonstration had been “organised by terrorist militants from the PKK” and that “the infiltration of armed militants among the people and the use of weapons during the demonstration show how serious the situation was” (see paragraph 23 above). This same document also reveals the lack of cooperation by the gendarmerie, which announced that it could not supply the names of the soldiers who had been on board the armoured vehicle.

The investigating officer does not seem to have had any doubt about the official version of events when, in his inquiry report, he maintained, *inter alia*, that the victim's father had made "gratuitous and inopportune accusations against Major M. Karatan" which revealed "an ideological outlook and a complete lack of objectivity". He maintained that the security forces had not aimed at the citizens or returned fire from the crowd, and that they had twice as many wounded as the demonstrators. On that basis he argued that it was impossible "to determine who was responsible for the incidents" (see paragraph 27 above).

In addition, investigating officer Kurt merely interviewed a few people without bothering to summon warrant-officer Ayhan or other witnesses, such as Cüda Demir. The Court considers that the statements of the two last-mentioned witnesses are of fundamental importance, since Mr Ayhan was the driver of the Condor and Ms Demir was standing at the applicant's son's side when he was hit by the bullet fragment which caused his death.

A reconstruction of the events would have made it possible to determine the trajectory of the bullet fragment and the position of the weapon that had fired it. Similarly a metallurgical analysis of the fragment would have made it possible to identify its maker and supplier, and consequently the type of weapon used. Furthermore, no one seems to have taken any interest in the source of the bullet which passed through Ahmet Güleç's body, following a downward trajectory, which is perfectly consistent with fire having been opened from the Condor's turret.

80. The Court further observes that Şırnak Provincial Administrative Council decided, on 18 October 1991, that there was no case to refer to the criminal courts, on the ground that it was "not possible on the basis of the evidence on the case file to identify who had killed and injured the victims" (see paragraph 28 above). Such a conclusion cannot be accepted, regard being had to the subjectivity shown by investigating officer Kurt and the nature of the administrative authority concerned, which was chaired by the Provincial Governor (who appointed the investigating officers and was in charge of the local gendarmerie) or his deputy, and composed of local representatives of the executive (the Director of Public Health and the Director of Agriculture, for example). Subsequently, on 13 November 1991, the Supreme Administrative Court noted that the Administrative Council had made a discontinuation order. Consequently, "[s]ince those responsible for the deaths and woundings [were] unknown", it was "impossible [for the court] to look into the case and give judgment" (see paragraph 29 above).

81. Loss of life is unfortunately a frequent occurrence in south-east Turkey in view of the security situation there (see the above-mentioned Kaya judgment, p. 326, § 91). However, neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces, or, as in the present case, a demonstration, however illegal it may have been.

82. That being so, the Court, like the Commission, concludes that the investigation was not thorough nor was it conducted by independent authorities. What is more, it was conducted without the participation of the complainant, who did not receive notice of the order of 18 October 1991 or the decision of 13 November 1991.

C. Conclusion

83. Consequently, there has been a breach of Article 2 of the Convention on account of the use of disproportionate force and the lack of a thorough investigation into the circumstances of the applicant's son's death.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

84. Under Article 50 of the Convention,

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

A. Damage

85. The applicant claimed 400,000 French francs (FRF) for pecuniary damage and FRF 100,000 for non-pecuniary damage. His son Ahmet, who was a senior-high-school pupil and the family's eldest child, worked after school. His death had deprived the applicant of valuable financial support and had caused him very great distress.

86. The Government asked the Court to dismiss these claims, arguing that there had been no breach of the Convention. The finding of a violation, if that were the Court's decision, would be sufficient to make good the non-pecuniary damage, but no sum should be awarded for pecuniary damage.

87. The Delegate of the Commission did not express an opinion.

88. The Court notes that the applicant has not proved that he suffered the pecuniary loss he alleged. Accordingly, it is not appropriate to award compensation. As to non-pecuniary damage, it notes that the applicant's son died during a violent demonstration. However, having regard to the finding of a breach of Article 2, on account of the use of disproportionate force by the agents of the State and the shortcomings of the investigation into the death, the Court awards the applicant FRF 50,000.

B. Costs and expenses

89. The applicant claimed FRF 238,000 for the costs and expenses he had incurred before the Convention institutions. The case had required lengthy, complex work. In addition, having commenced in 1991, it was still not concluded in Turkey. Long days of work had been spent on the hearings of witnesses in Ankara and Strasbourg. Three representatives and four advisers had accompanied Mr Kaplan throughout the proceedings before the Commission and the Court. The sum claimed was therefore reasonable.

90. The Government considered that these costs should be borne by the applicant, as there had been no violation of the Convention in the present case. If the Court should decide to the contrary, no costs should be awarded, as an itemised bill had not been presented.

91. The Delegate of the Commission made no comment.

92. The Court notes that the applicant obtained legal aid before the Commission (FRF 20,348) and later before the Court (FRF 16,351). Making an assessment on an equitable basis, the Court awards the applicant FRF 10,000, together with any value-added tax that may be chargeable.

C. Default interest

93. The Court deems it appropriate to adopt the statutory rate of interest applicable in France at the date of adoption of the present judgment, which is 3.36% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there has been a breach of Article 2 of the Convention;
3. *Holds* by seven votes to two that the respondent State is to pay the applicant, within three months, 50,000 (fifty thousand) French francs for non-pecuniary damage;
4. *Holds* unanimously that the respondent State is to pay the applicant, within three months, 10,000 (ten thousand) French francs for costs and expenses, together with any value-added tax that may be chargeable;
5. Holds unanimously that these sums are to be converted into Turkish liras at the rate applicable on the date of settlement and that simple interest at an annual rate of 3.36% shall be payable on them from the expiry of the above-mentioned three months until settlement.
6. *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 27 July 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 joint partly dissenting opinion of Mr Gölcüklü and Mr Matscher is annexed to this judgment.

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

JOINT PARTLY DISSENTING OPINION
OF JUDGES GÖLCÜKLÜ AND MATSCHER

(Translation)

We voted against the award of 50,000 French francs for non-pecuniary damage, in particular because the applicant's son had been killed while deliberately taking part in an illegal and violent demonstration.

Moreover, for reasons of principle, we disapprove of the award of compensation for non-pecuniary damage – irrespective of the amount – to the relatives of a victim, finding it rather unseemly to derive financial gain from the death of a relative, and we are not at all impressed by the astronomical sums claimed by the applicant.