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

SECOND SECTION

CASE OF ŞEKER v. TURKEY

(Application no. 52390/99)

JUDGMENT

STRASBOURG

21 February 2006

FINAL

21/05/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Şeker v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 1 February 2005 and 31 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 52390/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Mehdi Şeker ("the applicant"), on 4 November 1999.

2. The applicant was represented by Mr P. Leach, succeeded by Ms A. Stock, Mr M. Muller, Mr T. Otty and Mr K. Yıldız, lawyers attached to the Kurdish Human Rights Project ("KHRP") in London. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that his son had been abducted and killed by agents of the State and that the national authorities had failed to conduct an adequate and effective investigation. He invoked Articles 2, 3, 5, 6, 8, 13 and 14 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 1 February 2005, the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1957 and lives in Bismil. The application concerns the disappearance of the applicant's son, Mehmet Şah Şeker, who was 23 years old at the time of the events giving rise to the application. The facts surrounding the disappearance of the applicant's son are disputed between the parties.

A. Facts as presented by the applicant

9. On 9 October 1999 at around 6 p.m. the applicant's son, Mehmet Şah Şeker, left his workplace in Bismil, where he was working as a plumber, to return home. The journey on foot usually took around ten minutes. However, he never arrived home. The route took Mehmet Şah Şeker through a central part of town, past the police headquarters, the Council building, the Governor's residence and other Government buildings.

10. On 12 October 1999 the applicant was informed by two people that they had seen four persons forcing someone into a white car on or around 9 October 1999. He believed that the latter was his son.

11. Between 11 October 1999 and 5 November 1999 the applicant filed numerous petitions with the public prosecutor's offices in Bismil, in Diyarbakır, at the Diyarbakır State Security Court, the governor's office of the state of emergency region and the regional gendarme command in Diyarbakır, the Human Rights Commission of the Turkish Grand National Assembly and the Ministry of the Interior. He requested that the authorities carry out an investigation into the disappearance of Mehmet Şah Şeker and that he be informed of his son's whereabouts.

12. In 2000 the public prosecutor at the Diyarbakır State Security Court contacted the applicant and requested him to give a blood sample in order to compare his DNA with that of corpses found in houses of *Hizbullah* members. The applicant did so on 21 February 2000.

13. On 14 October 2004 he was informed by the Diyarbakır public prosecutor that a DNA analysis could not be carried out as there was insufficient DNA in the bones of the corpses.

14. In March 2005 one of the applicant's legal advisers informed the applicant that he had seen a copy of the university identity card of Mehmet Şah Şeker in the file of the case brought against the leaders of the *Hizbullah* before the Diyarbakır State Security Court. The applicant subsequently requested the public prosecutor at the Diyarbakır State Security Court to provide him with this document. The public prosecutor however was unable to find it in the case file.

B. Facts as presented by the Government

15. On 11 October 1999, after having received the applicant's petition, the Bismil public prosecutor requested the Bismil Security Directorate to examine the allegations.

16. Following this request, two police officers from the Bismil Security Directorate took statements from the applicant, the employer and two colleagues of Mehmet Şah Şeker.

17. On 20 October 1999 the Diyarbakır public prosecutor initiated an investigation following the receipt of the applicant's petition. The public prosecutor took statements from the applicant concerning the disappearance of his son. He also contacted the Diyarbakır Security Directorate and requested an investigation into the disappearance.

18. On different dates in 1999 and 2000, the Security Directorates in Bismil and Diyarbakır informed the public prosecutor's office that Mehmet Şah Şeker had not been taken into custody and that the search was continuing.

19. On 7 July 2000 the Diyarbakır public prosecutor declined jurisdiction *ratione loci,* holding that the events in question occurred in Bismil, and sent the case file to the Bismil public prosecutor's office.

20. Until February 2002 little attempt was made by the security forces to obtain evidence in respect of the alleged abduction. In particular, the authorities took no steps on their own initiative to identify possible witnesses. Nor did they obtain statements from the persons who were in police custody at the time of the disappearance of the applicant's son.

21. On 15 February 2002 the International Law and Foreign Relations Directorate of the Ministry of Justice requested the public prosecutor's office in Bismil to conduct an effective investigation into the disappearance of Mehmet Şah Şeker.

22. Following this request, the Bismil and Diyarbakır public prosecutors examined the custody records and took statements from the applicant, as well as from those who had been in custody at the Security Directorates in Diyarbakır and Bismil.

23. The investigation into Mehmet Şah Şeker's disappearance is still continuing.

C. The documents submitted by the parties

24. The parties submitted various documents with a view to substantiating their claims. These documents, in so far as they are relevant, may be summarised as follows.

1. The documents submitted by the applicant

25. The following information appears from documents submitted by the applicant.

26. On 11 October 1999 the applicant filed a petition with the public prosecutor's office in Bismil. He requested that the authorities carry out an investigation into the whereabouts of his son.

27. On 20 October 1999 the applicant lodged further petitions with the public prosecutor's office at the Diyarbakır State Security Court and the public prosecutor's office in Diyarbakır. He requested to be informed of his son's whereabouts. He further requested the Diyarbakır public prosecutor to refer his petition to the regional gendarme command.

28. On the same day, the applicant filed petitions with the governor's office of the state of emergency region and the regional gendarme command. In his petitions he stated that his son had been missing for twelve days and requested information.

29. On 24 and 27 October 1999 the applicant filed petitions concerning his son's disappearance with the Human Rights Commission of the Turkish Grand National Assembly. In his petitions, the applicant stated that his son had been involved in a fight with a plain-clothes policeman one month prior to his disappearance and that he had since been followed and threatened by the police. The applicant further maintained that he had applied to various authorities but received no response to his petitions. The applicant requested the Human Rights Commission to conduct an investigation into the circumstances of his son's disappearance.

30. On 2 November 1999 the head of the Organisation for Human Rights and Solidarity for Oppressed People *(Mazlum-Der),* Mr Yılmaz Ensaroğlu, petitioned the Ministry of the Interior informing the latter about the disappearance of Mehmet Şah Şeker and requesting that an investigation be conducted.

31. On 5 November 1999 the applicant lodged a further petition with the Ministry of the Interior and requested to be provided with information.

32. On 21 December 1999 the chair of the Human Rights Commission of the Turkish Grand National Assembly, Ms Sema Pişkinsüt, sent a letter to Mr Ensaroğlu stating that the Diyarbakır Security Directorate had prepared a form for missing persons with regard to Mehmet Şah Şeker and sent copies of it to the Bismil District Security Directorate.

33. On 14 October 2004 the applicant filed a petition with the public prosecutor's office in Diyarbakır and requested information as regards the outcome of the DNA analysis.

34. On the same day, the Diyarbakır public prosecutor notified him that it could not be established whether or not one of the corpses was his son as there was insufficient DNA in the bones of the corpses and the existing DNA had deteriorated.

2. The documents submitted by the Government

35. The following information appears from documents submitted by the Government.

36. On 11, 14 and 15 October 1999 two police officers took statements from the applicant, the employer and two colleagues of Mehmet Şah Şeker and his cousin. In his statement, the applicant maintained that he did not suspect anyone regarding his son's disappearance. Mehmet Şah Şeker's colleagues and cousin had no information concerning his whereabouts. His employer maintained that, on the day of his disappearance, Mehmet Şah Şeker had gone to a building owned by A.Y., in order to carry out a repair.

37. On 15 October 1999 the Bismil Security Directorate reported to the Bismil public prosecutor that the investigation into the circumstances of Mehmet Şah Şeker's disappearance was continuing, but that he could not be found.

38. On 20 October 1999 the public prosecutor took statements from the applicant concerning the disappearance of his son. In his statement, the applicant maintained that he was told by a number of people that his son had been taken into custody by police officers and later transferred to the Diyarbakır Security Directorate. He further stated that his son might have been abducted by persons who had presented themselves as police officers. He finally requested that the custody records of the security directorate be examined. On the same day, the Diyarbakır public prosecutor sent a letter to the security directorate in Diyarbakır requesting an investigation.

39. On 10 November 1999 the Diyarbakır Security Directorate reported to the Diyarbakır public prosecutor that the applicant's son had not been taken into custody.

40. On 17 November 1999 the Bismil public prosecutor requested the Bismil Security Directorate to inform all security directorates in the country of Mehmet Şah Şeker's disappearance.

41. On 22 November 1999 the Bismil Security Director sent a letter to the Bismil public prosecutor stating that the Diyarbakır Security Directorate had been informed of Mehmet Şah Şeker's disappearance and that a form concerning missing persons had been prepared. He further stated that the search for the applicant's son was continuing.

42. On 24 December 1999 the Bismil public prosecutor took statements from the applicant, who maintained that his son was still missing and that he did not know his whereabouts.

43. On 8 March 2000 the Bismil public prosecutor requested the Security Directorate and the Gendarmerie Command in Bismil to provide the custody records of 8-11 October 1999. According to the copies of these records, the applicant's son was not in police or gendarme custody during the relevant period.

44. On 7 July 2000 the Diyarbakır public prosecutor declined jurisdiction *ratione loci,* holding that the events in question occurred in Bismil. He therefore sent the case file to the Bismil public prosecutor's office.

45. On 15 February 2002 the International Law and Foreign Relations Directorate of the Ministry of Justice sent a letter to the public prosecutor's office in Bismil, requesting the latter to conduct an effective investigation into the disappearance of Mehmet Şah Şeker. The Ministry particularly requested the public prosecutor to obtain statements from others who were in police custody at the time of the disappearance of the applicant's son and also from those who had allegedly witnessed his abduction. The Ministry further stated that the *Hizbullah*, an illegal organisation, was responsible for several abductions and disappearances in the region and requested that the investigation be carried out with particular regard to the *Hizbullah*'s activities. It finally requested that the security forces be invited to give information concerning any developments in the investigation.

46. On 27 February 2002 the Diyarbakır public prosecutor requested the Anti-Terror Branch of the Diyarbakır Security Directorate to provide the custody records of 9, 10 and 11 October 1999. On the same day, he took statements from the applicant, who maintained his previous declarations. The applicant said that he did not want to give the names of the persons who had informed him about his son's abduction.

47. On 8 March 2002 the deputy director of the Anti-Terror Branch of the Diyarbakır Security Directorate sent a copy of the above-mentioned custody records to the Diyarbakır public prosecutor, and informed the latter that a search warrant had been issued for Mehmet Şah Şeker as he was suspected of involvement in *Hizbullah* activities.

48. Between March and November 2003 the Diyarbakır public prosecutor took statements from fourteen persons who had been in custody in the Diyarbakır Security Directorate on different dates between 10 and 18 October 1999, and from one person who had been in custody between 7 and 9 October 1999. These fifteen people confirmed that they had not seen Mehmet Şah Şeker in the Diyarbakır Security Directorate on the days in question. Statements of a certain M.Ç. who had been in the Bismil Security Directorate on 10 October 1999 were also taken. He stated that he had not seen the applicant's son during his custody.

49. On 30 October 2003 the Bismil public prosecutor took further statements from the applicant who maintained his previous declarations and requested that his son be found.

50. Between 1999 and 2005 there were communications between the International Law and Foreign Relations Directorate of the Ministry of Justice, the Bismil and Diyarbakır public prosecutors and the security forces. The Ministry of Justice requested information from the public prosecutors as to the outcome of the investigation. The public prosecutors in turn requested the security directorates and gendarmerie commands to provide information as to the outcome of the search for Mehmet Şah Şeker. In reply to these requests, the police and gendarmerie notified the public prosecutors that the missing person could not be found and that the investigation was continuing. The Ministry of Justice was also informed by the public prosecutors of the responses given by the security forces.

II. RELEVANT DOMESTIC LAW

51. A description of the relevant domestic law at the material time can be found in *Tekdağ v. Turkey* (no. 27699/95, §§ 40-51, 15 January 2004).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

52. The Government argued that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. In this connection, they pointed out that the investigation into the disappearance of the applicant's son was continuing.

53. The applicant contended in reply that he had filed numerous petitions with the authorities and requested that the circumstances surrounding the abduction of his son be investigated. The applicant contended that, in any event, he was under no obligation to exhaust domestic remedies since, in the circumstances of the case, any such remedies were illusory, ineffective and inadequate.

54. The Court reiterates that, in its decision of 1 February 2005, it considered that the question whether the criminal investigation at issue could be regarded as effective under the Convention was closely linked to the substance of the applicant's complaints and that it should be joined to the merits. Noting the arguments presented by the parties on this question, the Court considers it appropriate to address this point in its examination of

the substance of the applicant's complaint under Article 2 of the Convention.

55. Consequently, the Court joins the preliminary objection concerning the effectiveness of the criminal investigation to the merits of the applicant's complaint under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

56. The applicant alleged that the circumstances surrounding the abduction and disappearance of Mehmet Şah Şeker gave rise to a violation of Article 2 of the Convention. He further contended that the authorities had failed to carry out an adequate and effective investigation into the circumstances of his son's disappearance. Article 2 § 1 of the Convention reads as follows:

> "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."

A. Submissions of the parties

1. The applicant

57. The applicant maintained that plain-clothes police officers had abducted his son, who had then died while in police custody. He further submitted that the national authorities had failed to conduct an independent, effective and thorough investigation into his son's disappearance and subsequent death at the hands of the security forces. In particular, the authorities failed to obtain evidence from family members, friends and colleagues of the applicant's son, as well as from A.Y. and other persons living in the building owned by A.Y., where Mehmet Mehdi Şeker worked on the day of his disappearance. The applicant further contended that the authorities had not made any attempt to locate a possible eye-witness to the abduction of his son. In this connection, he stated that he had not given the names of the persons who had witnessed his son's abduction as they feared intimidation by the authorities. The applicant also alleged that the authorities had failed to question the police officers who had been on duty in the police stations of the region on the day that Mehmet Mehdi Şeker disappeared. Moreover, the taking of statements from the fifteen people who had been in custody in the Diyarbakır Security Directorate between 9 and 11 October 1999 was deficient since most of them had been arrested on 11 November 1999. The applicant submitted that the Government had not offered any explanation concerning the arrest warrant issued for his son. The applicant further submitted that the authorities had failed to compare

his DNA with that of corpses found in houses of *Hizbullah* members. Finally, the applicant maintained that the authorities failed to take into account the finding of the copy of his son's identity card in the file of the case brought against the leaders of the *Hizbullah.*

2. The Government

58. The Government denied the factual basis of the applicant's allegation under Article 2 of the Convention. They submitted that Mehmet Şah Şeker was not taken into custody by the police as alleged. They contended that there was no reason to arrest the applicant's son since he had not been involved in any criminal offence. However, in their post-admissibility observations, the Government maintained that a search was conducted for the applicant's son, both as a missing person and as a suspect, and that, had he been arrested, this fact would have been entered in the custody records. The Government submitted that the domestic authorities fulfilled their obligation to take effective steps to discover the whereabouts of the applicant's son.

B. The Court's assessment

1. The alleged failure to protect the right to life

59. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions of the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII).

60. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see *Tekdağ*, cited above, § 73).

61. The Court will examine the issues that arise in the light of the documentary evidence put forward in the present case, as well as the parties' written observations.

62. The applicant alleges that his son was abducted and killed by agents of the State. In this respect, he relies on the search warrant issued for Mehmet Şah Şeker on the ground of his suspected involvement in *Hizbullah* activities (see paragraph 47 above). Thus, the applicant's allegation that his

son was arrested and killed by State agents cannot be discarded as *prima facie* untenable.

63. In this connection, the Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey,* no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161; and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 142, 16 July 2002).

64. The Court considers that the applicant's allegation that the abduction of his son was carried out by agents of the State is not supported by any cogent evidence. In this connection, the Court points out that it has not been provided with any eyewitness accounts or evidence corroborating the applicant's account to a decisive extent. Moreover, the applicant refrained from giving to the national authorities the names of the persons who had allegedly witnessed Mehmet Şah Şeker's abduction by plain-clothes police officers.

65. In the light of the above, the Court considers that the actual circumstances in which the applicant's son disappeared remain a matter for speculation and supposition and that, accordingly, there is an insufficient evidentiary basis on which to conclude that the applicant's son was, beyond reasonable doubt, abducted and subsequently killed by State agents in police custody as alleged by the applicant.

66. Accordingly, there has been no violation of Article 2 of the Convention on that account.

2. The alleged inadequacy of the investigation

67. The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 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. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of an individual gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with

regard to the practical realities of investigation work (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, and *Ülkü Ekinci*, cited above, §144).

68. There is also a requirement of promptness and reasonable expedition implicit in this context (*Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV, *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a disappearance may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Türkoğlu v. Turkey*, no. 34506/97, § 120, 17 March 2005).

69. The Court notes that there is no proof that Mehmet Şah Şeker has been killed. However, the above-mentioned procedural obligations extend but are not confined to cases which concern intentional killings resulting from the use of force by agents of the State. The Court considers that these obligations also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening. In this respect, it must be accepted that the more time passes without any news of the person who has disappeared, the greater the likelihood that he or she has died (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-III).

70. In the present case, an investigation was indeed carried out into the disappearance and alleged death of the applicant's son. However, there were important shortcomings in the conduct of the investigation.

71. The Court observes that within the context of the investigations initiated in October 1999 by the Bismil and Diyarbakır public prosecutors into the disappearance of Mehmet Şah Şeker, the only serious step that the public prosecutors took was to obtain statements from four persons and to request the custody records of 8-11 October 1999 from the Security Directorate and the Gendarmerie Command in Bismil (see paragraphs 15-19 above).

72. However, the Court notes that the applicant refrained from disclosing the names of the persons who had allegedly witnessed Mehmet Şah Şeker's abduction. The Court does not find convincing the applicant's assertion that these persons had feared reprisal from the authorities since he failed to submit any evidence in support of such fears. In the Court's view, such lack of cooperation with the national authorities must be considered to have adversely affected the effectiveness of the investigations into the disappearance of Mehmet Şah Şeker (see *Nesibe Haran v. Turkey*, no. 28299/95, § 76, 6 October 2005).

73. Nevertheless, the conduct of the applicant does not absolve the national authorities from their obligation to conduct a meaningful investigation into the circumstances surrounding a disappearance within the

limits of the practical realities of investigation work (see *Nesibe Haran*, cited above, § 77). In the instant case, the Bismil and Diyarbakır public prosecutors took no steps on their own initiative to identify possible witnesses. Nor did they attempt to obtain evidence in the area where the applicant's son had allegedly been abducted.

74. The Court further observes that between October 1999 and February 2002 no serious attempts were made to obtain evidence in respect of the alleged abduction and disappearance. It was not until February 2002, following the communication of the application by the European Court of Human Rights to the Government and upon the request of the International Law and Foreign Relations Directorate of the Ministry of Justice, that the Diyarbakır public prosecutor took action and requested the Security Directorate in Diyarbakır to provide the custody records of 9, 10 and 11 October 1999, with a view to obtaining statements from the persons detained there during the relevant period.

75. Subsequently, between March and November 2003, the Diyarbakır public prosecutor took statements from fifteen persons. Yet, the majority of these persons had been taken into custody on 11 October 1999. The authorities failed to obtain evidence from persons who were in the Diyarbakır Security Directorate on the day of the disappearance of the applicant's son. Furthermore, no evidence was obtained from the police officers who were on duty in the Diyarbakır and Bismil Security Directorates at the relevant time.

76. The Court considers that the deficiencies described above are sufficient to conclude that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of Mehmet Şah Şeker. There has therefore been a breach of the State's procedural obligation under Article 2 to protect the right to life.

77. The Court accordingly dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies (see paragraph 52 above) and concludes that there has been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

78. The applicant submitted that the abduction and disappearance of his son by the security forces, and the suffering that he has endured on account of his son's disappearance, was in violation of Article 3 of the Convention, which reads as follows:

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

A. Submissions of the parties

79. The applicant submitted that his son had disappeared in circumstances where there had been a warrant for his arrest. The applicant further maintained that there had been a series of disappearances and unexplained deaths at the hands of members of the State security forces. He finally submitted that the way in which the authorities had responded to his attempts to uncover information as to the whereabouts of his son had constituted ill-treatment.

80. The Government maintained that there had been no violation of Article 3 of the Convention since no State agent had been implicated in the disappearance of the applicant's son.

B. The Court's assessment

81. As regards the complaint that Mehmet Şah Şeker was subjected to ill-treatment by security forces, the Court refers to its conclusion that it has not been established beyond reasonable doubt that the applicant's son was abducted and detained in the circumstances alleged by the applicant (see paragraphs 65-66 above). Neither is there a sufficient evidentiary basis to conclude that the applicant's son was subjected to ill-treatment or torture by the security forces.

82. As to the complaint concerning the suffering which the applicant has endured on account of his son's disappearance, the Court points out that whether or not a family member is a victim of a Convention breach will depend on the existence of special factors giving his or her suffering a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements include the proximity of the family tie – in this context, a certain weight is attached to the marital bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the missing person and the way in which the authorities responded to those enquiries. The essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitude to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (*Çakıcı,* cited above, § 99).

83. In the instant case, the Court observes that there is nothing in the content or tone of the authorities' replies to the enquiries made by the applicant that could be described as inhuman or degrading treatment. Although the inadequacy of the investigation into the disappearance of his son may have caused the applicant anguish and mental suffering, the Court

considers that it has not been established that there were special factors which would justify finding a violation of Article 3 of the Convention in relation to the applicant himself (see *Tahsin Acar*, cited above, § 239).

84. Accordingly, there has been no violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 5, 6 AND 8 OF THE CONVENTION

A. Submissions of the parties

85. The applicant alleged under Article 5 of the Convention that his son had been arbitrarily deprived of his liberty since his detention had not been recorded and that there had been no prompt or effective investigation into his allegations. He maintained under Articles 6 and 8 of the Convention that his son had been denied access to a lawyer and contact with members of his family while in police custody. In his post-admissibility observations, the applicant further submitted under Article 8 of the Convention that the authorities had withheld information from him which might have shed light on the circumstances of and reasons for his son's abduction.

86. The Government submitted that the applicant's allegations were unsubstantiated since his son had not been taken into police custody.

B. The Court's assessment

87. As regards the applicant's complaint under Article 8 of the Convention concerning the authorities' failure to provide him with information which might have shed light on the circumstances of and reasons for his son's abduction, the Court notes that this complaint was not specified or elaborated early enough in the proceedings to allow an exchange of observations between the parties on the subject. It considers that, in the circumstances of the case, it is not appropriate to examine the matter separately at this stage in the proceedings (see *Nuray Şen v. Turkey (no.* 2), no. 25354/94, § 200, 30 March 2004).

88. As regards the applicant's other complaints under Articles 5, 6 and 8 of the Convention, the Court reiterates that it has not been established beyond reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the alleged abduction and detention of the applicant's son (see paragraphs 65-66 above).

89. There is thus no factual basis on which to conclude that there has been a violation of either Article 5 (the right to liberty and security), Article 6 (the right to a fair hearing) or Article 8 of the Convention (the

right to respect for private and family life; see *Tahsin Acar*, cited above, § 242).

90. It follows that there has been no violation of these provisions.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

91. The applicant complained that he had been denied an effective remedy within the meaning of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions of the parties

92. The applicant maintained that, although he had taken every reasonable step in order to ensure that his son's disappearance was properly and thoroughly investigated by the State, the investigation conducted by the authorities had been insufficient to meet the requirements of Article 13 of the Convention. He also alleged that the respondent State tolerated the practice of ineffective investigations into allegations of disappearances involving Kurds.

93. The Government submitted that the domestic authorities conducted an effective investigation into the disappearance of the applicant's son.

B. The Court's assessment

94. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Tekdağ*, cited above, § 95).

95. Given the fundamental importance of the right to the protection of life, Article 13 requires, in addition to the payment of compensation where

appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure (see *Tekdağ,* cited above, § 96).

96. The Court reiterates that it has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the disappearance of the applicant's son. However, according to its established case-law, that does not preclude the complaint in relation to Article 2 from being "arguable" for the purposes of Article 13 (see *Orhan*, cited above, § 386, and *Tekdağ,* cited above, § 97).

97. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the disappearance of the applicant's son. For the reasons set out above (see paragraphs 71-77), no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see *Orhan, cited above,* § 387, *Tanrıkulu*, cited above, § 119, and *Tekdağ,* cited above, § 98).

98. The Court therefore concludes that there has been a violation of Article 13 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14, READ IN CONJUNCTION WITH ARTICLES 2, 3, 5, 6, 8 AND 13 OF THE CONVENTION

99. The applicant alleged that there was an administrative practice of discrimination on grounds of ethnic origin. He relied on Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

100. The applicant maintained that the differences between the investigation into his son's disappearance and the investigation into the murder of the Diyarbakır police chief, Gaffar Okkan, in 2001 demonstrated the discriminatory practice against Kurds.

101. The Government submitted that the applicant's allegations were untrue and unsubstantiated.

102. The Court has examined the applicant's allegation. However, it finds that no evidence whatsoever in the case file to support it or which might disclose any appearance of a violation of this provision.

103. It follows that there has been no violation of Article 14 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

104. In his post-admissibility observations, the applicant invited the Court to find that the respondent Government had failed in their duty to assist the Court in the case. In particular, he contended that the Government had failed to submit crucial documents concerning his son's disappearance to the Court, namely the arrest warrant issued in respect of Mehmet Şah Şeker, the relevant custody records, information about the DNA testing conducted on the corpses found in houses of *Hizbullah* members and the copy of his university identity card which had been seen in the file of the case brought against the leaders of the *Hizbullah*. The applicant relied on Article 38 of the Convention which, in the relevant part, provides:

> "1. If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
>
> ..."

105. The Government did not address the issue.

106. The Court observes that on 15 June 2004 the Government were requested to submit all documents in their possession concerning the investigation conducted by the Bismil public prosecutor into the disappearance of the applicant's son, and that the Government submitted the requested documents on 23 August 2004. The Court therefore does not consider that the Government have fallen short of their obligations under Article 38 § 1 (a) of the Convention in this respect.

107. As regards the documents that were mentioned by the applicant (see paragraph 104 above) concerning the investigation into Mehmet Şah Şeker's disappearance and the adverse effect of the absence of these documents on the adequacy and effectiveness of the investigation in question, the Court points out that it has found a violation of Articles 2 and 13 of the Convention on account of the absence of an effective investigation and an effective remedy in the case (see paragraphs 77 and 98 above). It therefore considers that a further examination of the applicant's submissions under Article 38 of the Convention is not necessary.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. Article 41 of the Convention provides:

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

A. Pecuniary damage

109. The applicant submitted that his son had worked as a plumber and, as the eldest of ten children, had contributed significantly to his family's upkeep. He claimed 12,300 euros (EUR) on behalf of the beneficiaries of the estate of Mehmet Şah Şeker, and on behalf of himself, for loss of earnings over five years and five months. He further claimed EUR 12,300 on account of the failure of the authorities to conduct an effective investigation. The applicant also requested that, in the case of a finding of a violation of Article 14 of the Convention, these figures be increased by 50%.

110. The Government maintained that the claims were unsubstantiated.

111. The Court's case-law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Toğcu v. Turkey*, no. 27601/95, § 154, 31 May 2005).

112. However, the Court finds no causal link between the matters held to constitute violations of the Convention – the absence of an effective investigation and an effective remedy – and the pecuniary damage alleged by the applicant. Consequently, it dismisses the applicant's claim under this head.

B. Non-pecuniary damage

113. The applicant claimed, on his own behalf, EUR 61,000 in respect of the disappearance and death of his son, as well as the inadequacy of the investigation. He claimed a further EUR 61,000 on the same grounds on behalf of the beneficiaries of his son's estate.

114. The Government maintained that the claims were excessive.

115. The Court reiterates that the authorities failed to carry out an effective investigation into the circumstances surrounding the disappearance of the applicant's son, contrary to the procedural obligations under Article 2 of the Convention. It also found that the applicant did not have an affective remedy, in violation of Article 13 of the Convention. Consequently, and having regard to the awards made in comparable cases (see *Toğcu*, cited above, § 158, and *Dündar v. Turkey*, no. 26972/95, § 109, 20 September 2005), the Court, on an equitable basis, awards the applicant and the beneficiaries of the estate of Mehmet Şah Şeker, jointly, EUR 10,000 for non-pecuniary damage.

C. Costs and expenses

116. The applicant claimed a total of 8,281.66 pounds sterling (GBP) (approximately EUR 12,090) for the fees and costs incurred in bringing the application. In support of his claims for the fees of his lawyers, the applicant submitted a detailed schedule of costs.

117. The Government contested this claim.

118. The Court may make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see *Sawicka v. Poland,* no. 37645/97, § 54, 1 October 2002). The Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. In particular, it finds that it has not been proved that all the legal costs including the total number of hours of legal work done by four different lawyers and one legal intern were necessarily and actually incurred.

119. Making its own assessment based on the information available, the Court awards the applicant EUR 7,000 in respect of costs and expenses – exclusive of any value-added tax that may be chargeable – which amount is to be converted into pounds sterling and paid into the bank account of the applicant's representatives in the United Kingdom, as indicated by him.

D. Default interest

120. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection and *dismisses* it;

2. *Holds* that there has been no violation of Article 2 of the Convention as regards the applicant's allegation that his son was abducted and killed by State agents;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of the applicant's son;

4. *Holds* that there has been no violation of Article 3 of the Convention;

5. *Holds* that there has been no violation of Articles 5, 6 and 8 of the Convention;

6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds* that there has been no violation of Article 14 of the Convention;

8. *Holds* that the respondent State has complied with its obligations under Article 38 of the Convention;

9. *Holds*

(a) that the respondent State is to pay within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage to the applicant and the beneficiaries of the estate of Mehmet Şah Şeker, jointly; this sum is to be converted into new Turkish liras at the rate applicable at the date of settlement and to be paid into the bank account of the applicant;

(ii) EUR 7,000 (seven thousand euros) to the applicant in respect of costs and expenses; this sum is to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the bank account of the applicant's representatives in the United Kingdom;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President