CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

**CASE OF CENNET AYHAN AND MEHMET SALİH AYHAN v. TURKEY**

*(Application no. 41964/98)*

JUDGMENT

This version was rectified on 14 November 2006
under Rule 81 of the Rules of the Court

STRASBOURG

27 June 2006

**FINAL**

*11/12/2006*

*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 Cennet Ayhan and Mehmet Salih Ayhan v. Turkey,**

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

# PROCEDURE

1. The case originated in an application (no. 41964/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mrs Cennet Ayhan and Mr Mehmet Salih Ayhan ("the applicants"), on 26 April 1998.

2. The applicants, who had been granted legal aid, were represented by Mr Medeni Ayhan and Mr Metin Ayhan[1], lawyers practising in Ankara. However, subsequent to the admissibility decision of the Court, the first applicant Mrs Cennet Ayhan dismissed the aforementioned lawyers and appointed Mr Ali Uluk and Mr Hasan Erdoğan as her representatives. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants, who are respectively the wife and brother of a doctor, Mehmet Emin Ayhan, alleged that the latter had been shot dead by State agents or with their connivance and that the authorities had failed to conduct an effective investigation into his killing. They alleged a violation of Articles 2, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

[1] Rectified on 14 November 2006. The name of Mr Metin Ayhan read Mr Metin Ayhan Erdoğan in the former version of the judgment.

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

6. By a decision of 29 February 2000, the Court declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). Thus, the parties replied in writing to each other's observations.

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

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

9. The first applicant, Mrs Cennet Ayhan, is the widow of Mehmet Emin Ayhan, a medical doctor who was killed by unknown assailants. She was born in 1962 in Eskişehir and is resident in Ankara, Turkey. The second applicant, born in 1961 in Nusaybin and resident in Akçatarla Village, Mardin, Turkey, is the deceased's brother. Both applicants are Turkish citizens.

### A. Particular circumstances of the case

10. The facts of the case are in dispute between the parties.

#### *1. Facts as presented by the applicant*

11. Mehmet Emin Ayhan, born in 1954 in Mardin, was a Turkish citizen of Kurdish origin. In 1991 he was appointed to the Silvan State Hospital where he worked as a senior physician. Mardin is located in one of the provinces subject to emergency rule at the relevant time and is heavily populated by Turkish citizens of Kurdish origin. On various occasions he openly expressed his left wing political views and his support "for the recognition of the Kurdish identity and for the democratic rights and liberties of the Kurdish society".

12. In early 1992 the Head of the Silvan Security Department telephoned Mehmet Emin Ayhan and asked him if a member of the special police unit could be accommodated at the hospital for some time. Mehmet Emin Ayhan replied that police officers were not members of the hospital staff and did

not therefore qualify for accommodation at the hospital. The Head of the Security Department expressed his disappointment in strong language and told Mehmet Emin Ayhan that "his day would come". He was subsequently harassed by persons unknown over the telephone. When he picked up the receiver no one answered. He was also informed that he was being secretly observed.

13. On 10 June 1992 around 9.30 p. m., as Mehmet Emin Ayhan and his wife were returning home, three men were sitting in a coffee house located on the ground floor of their apartment building near the hospital. One of the three men approached Mehmet Emin Ayhan while he was locking the doors of his car. The other two men suddenly took out rifles hidden under their raincoats and shot out the street lights. The third man, who was a few metres away, approached Mehmet Emin Ayhan, fired a handgun and shot him through the neck. He died on the spot. The three men then got into a white Renault Toros which was parked at the side of the street and drove away.

14. Members of the security forces arrived at the scene within five minutes. The deceased's widow showed the officers the direction in which the car had left and requested that the streets and houses be searched at once. She also requested orally that the owner of the coffee house be questioned about the identity of the three men. The officers did not follow up these requests.

15. A report was drafted on 10 June 1992 at the scene of the incident by four officers from the Anti-Terror Department. This report described the place of the incident and identified the used cartridges found on the ground as having been fired from a handgun and from Kalashnikov rifles. No reference is made in the report to witness statements having been taken. In a second report also dated 10 June 1992 and signed by the same four officers and a fifth officer, it was stated that there were many people present at the scene of the killing when the police arrived. According to the report no one was able to testify as to what happened.

16. The deceased's body was brought to the Silvan State Hospital where the Silvan Public Prosecutor conducted an autopsy with the participation of two doctors. One of these doctors, Zeki Tanrıkulu, had been a colleague and friend of Mehmet Emin Ayhan and was subsequently killed in a similar manner. The one-page autopsy report contained an identification of the physical features of the deceased. The cause of death was stated to be severe brain damage as a result of gunshot wounds. The doctors who signed the report stated that as the wounds were open, they did not find it necessary to conduct a "classic autopsy".

17. In a statement taken by the Silvan police on 30 June 1992 the first applicant stated that she did not see the faces of the killers and that she had no suspicions as to their identities.

18. On 16 September 1992 the first applicant, for the purposes of claiming her pension rights, wrote to the Silvan public prosecutor stating that her husband had been killed by terrorists while returning from a visit to a patient.

19. On 23 November 1993 the Silvan Public Prosecutor's Office completed its preliminary investigation. It decided, for reasons of jurisdiction, that the crime had to be investigated by the Public Prosecutor's Office at the State Security Court and transferred the case file to the Office. It noted in writing that the decision could be challenged. The applicants state that they did not challenge the decision because they were never notified of it.

20. On 4 April 1994 the first applicant asked the Public Prosecutor's Office of the Diyarbakır State Security Court to inform her about the outcome of its investigation. In its reply of 4 April 1994, the Office notified the first applicant that her husband's murderers were being traced.

21. On 25 November 1994 the Ministry of Health wrote to the Public Prosecutor's Office of the Diyarbakır State Security Court requesting information about the preliminary investigations being conducted into the killings of Mehmet Emin Ayhan and Zeki Tanrıkulu. On 7 December 1994 the Public Prosecutor's Office of the Diyarbakır State Security Court replied to the Ministry of Health stating that they had both been murdered by "the illegal separatist organisation" as part of its plan to intimidate civil servants. The Public Prosecutor added that the murderers were being sought.

22. On 19 November 1997 the applicants again wrote to the Public Prosecutor's Office at the Diyarbakır State Security Court requesting information about the outcome of its investigation. On 26 November 1997 the Public Prosecutor's Office of the Diyarbakır State Security Court wrote to the applicant stating that it had declared itself incompetent on 2 December 1993 and had sent the file to the Diyarbakır Public Prosecutor's Office.

23. On 3 December 1997 the applicants wrote to the Public Prosecutor's Office of the Diyarbakır State Security Court requesting further information about the investigation into the death of Mehmet Emin Ayhan.

24. On 9 January 1998 the Public Prosecutor's Office of the Diyarbakır State Security Court wrote to the first applicant informing her that it had re-examined its own investigation file. The Public Prosecutor stated that the murderers had been identified as members of the Hizbullah, an illegal armed organisation, but could not yet be caught.

25. In a letter of 29 December 2005, the applicants informed the Court that the criminal proceedings against K.A., who is the alleged killer of Dr Ayhan, were still pending before the 6th Chamber of the Diyarbakır Assize Court. According to the Assize Court's hearing minutes dated 13 December 2005, a search warrant has been issued to apprehend M.A.

who is currently a fugitive and that the criminal proceedings are still pending.

*2. Facts as presented by the Government*

26. Subsequent to the killing of Dr Ayhan, the authorities immediately commenced an investigation. Furthermore, the ballistics examination carried out at the Diyarbakır criminal police laboratory established that the cartridges found at the scene of the incident had been discharged from a weapon belonging to a terrorist named Ş.B. who had been captured dead during an operation carried out by the security forces on 11 November 1993 in Düzova hamlet of Sulak village in Silvan district.

27. It appeared from the statements given by three members of the Hizbullah, namely İ.B., M.A. and B.O., that Dr Ayhan had been killed by K.A., who was also a member of the said organisation. Considering the situation in the region at the relevant time, in particular the rivalry between the PKK and Hizbullah terrorist organisations, and the fact that the deceased was a PKK sympathiser, it was highly likely that he was killed by members of the Hizbullah.

28. Accordingly, the authorities initiated an investigation into the allegations made by the above-mentioned Hizbullah members. In this connection, a search warrant was issued to apprehend K.A.

29. On 29 August 2001 K.A. was arrested by police officers in the province of Bursa.

30. In an indictment dated 19 September 2001 K.A. was charged with, among other crimes, the murder of Dr Mehmet Emin Ayhan. The criminal proceedings are still pending against the accused.

## B. Documents submitted by the parties

*1. Documents submitted by the applicant*

31. The applicants have submitted a number of documents in support of their allegations. These documents, in so far as they are relevant, are summarised below.

**(a) Susurluk report of January 1998**

32. Before the Court the applicant referred to the so-called Susurluk Report, which was first produced to the Court in the case of *Yaşa v. Turkey* (judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, pp. 2423-24, § 46). The report became available in February 1998, after counsel had submitted the final pleadings on behalf of the applicant in the proceedings before the Commission. This confidential report was initially intended to be only for the Prime Minister, who had commissioned it on 13 August 1997 from the Board of Inspectors within his Office. After

receiving the report in January 1998, it would appear that the Prime Minister then made it available to the public, although eleven pages from the body of the report and its appendices were withheld.

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

34. The report analysed a series of events, such as murders carried out under orders, the killings of well-known figures or supporters of the Kurds and deliberate acts by a group of "informants" supposedly serving the State. It concluded that there was a connection between the fight to eradicate terrorism in the region and the underground relations that had been formed as a result, particularly in the drug-trafficking sphere.

#### (b) Silvan Chief Public Prosecutor's decision of non-jurisdiction

35. On 23 November 1993 the Chief Public Prosecutor in Silvan issued a decision of non-jurisdiction and referred the investigation into the killing of Mehmet Emin Ayhan to the Chief Public Prosecutor's office at the Diyarbakır State Security Court.

#### (c) Scene of the incident and survey reports of 10 June 1992

36. Four police officers from the anti-terrorist branch of the Silvan Security Directorate drafted two reports at the scene of the murder. The first report described the place of the incident and identified the used cartridges found on the ground as having been fired from a handgun and from Kalashnikov rifles.

37. In a second report which also dated 10 June 1992 and signed by the same four officers and a fifth officer, it was stated that there were many people present at the scene of the killing when the police arrived. According to the report no one was able to testify as to what happened.

#### (d) Sketch-map of the scene of the incident

38. This sketch-map was drafted by the police officers who were at the scene of the murder. It described the location of the body, the cartridges found and the surrounding buildings and streets.

#### (e) Autopsy report of 10 June 1992

39. This report was prepared by a public prosecutor attached to the Silvan Chief Public Prosecutor's office. It contained a description of the physical features of the deceased. The cause of death was stated to be severe

brain damage as a result of gunshot wounds. The doctors who signed the report stated that as the wounds were open it was unnecessary to conduct a "classic autopsy".

**(f) Ballistics report dated 11 June 1992**

40. Ballistics tests on 10 cartridges and 2 bullets retrieved at the scene of the incident were carried out by the Regional Police Laboratory. A comparative examination showed up conformity in various respects, indicating a single source. The cartridges and the bullets were kept in the laboratory archives with a view to comparing them with weapons to be found by the investigators.

**(g) Cennet Ayhan's statements dated 30 June 1992**

41. In her statements to the police concerning the killing of her husband, the applicant explained that her husband had been killed by a person who fired once at her husband in front of their house and that the killer had escaped along with two other persons after the shooting. The police officers had arrived immediately after the shooting and had fired in the air to stop the killers. However, at that moment the city lights had been switched off and the killers had escaped. The applicant further stated that she had not seen the faces of the killers and that there was nobody whom she suspected of being the killer of her husband.

**(h) Diyarbakır Chief Public Prosecutor's letter to the Ministry of Health**

42. In a letter of 7 December 1994 the Chief Public Prosecutor informed the Ministry of Health that Dr Mehmet Emin Ayhan and Dr Zeki Tanrıkulu, who had been working at the Silvan State Hospital, had both been killed by terrorists and that the investigation to find and apprehend the perpetrators of the murder were pending.

**(i) Diyarbakır Chief Public Prosecutor's letter to the applicants' representative**

43. In a letter of 9 January 1998 Diyarbakır Chief Public Prosecutor informed the first applicant through her lawyer that the investigation to find the killers of Mehmet Emin Ayhan was continuing.

**(j) Ballistics report dated 14 December 1999**

44. Ballistics tests on the cartridges retrieved from the scene of the incident were carried out by the Diyarbakır Criminal Police Laboratory. A comparative examination revealed a match with a Tabuk (Kalashnikov) type rifle with no. 8002594 1989 which was found in the possession of a terrorist named Şehmus Bal.

**k) Criminal proceedings against the alleged perpetrators of the killing of Mehmet Emin Ayhan**

45. On 3 May 1995 I.B., M.A. and B.O. were questioned by police officers about their involvement in the Hizbullah. The suspects admitted that they had been involved in illegal activities of the organisation and that they had waged a war against the PKK for the purposes of defending themselves and setting up an Iran-like state. I.B. clarified that he was the person responsible for the military wing of the organisation and that M.A. was his deputy. I.B. further noted that they had killed a number of PKK sympathisers, including Dr Mehmet Emin Ayhan.

46. On 4 May 1995 the three suspects were questioned at the Chief Public Prosecutor's office attached to the Diyarbakır State Security Court. They all denied that they had been involved in the Hizbullah or its illegal activities. They claimed that their statements dated 3 May 1995 had been obtained under duress. On the same day, the suspects were brought before the Diyarbakır State Security and were questioned by the single judge of the court. They all denied the charges and alleged that their statements taken by the police officers were untrue and had been obtained under duress.

47. In an indictment dated 9 June 1995 filed with the Diyarbakır State Security Court criminal proceedings were brought against eleven persons, including I.B. and M.A., for membership of an illegal terrorist organisation, namely Hizbullah, whose aim was to separate part of the country and to set up a Kurdish-Islamic state. These persons were also accused of having killed 40-45 persons, excluding Dr Ayhan, in Silvan.

48. On 29 April 1999 the Diyarbakır State Security Court convicted I.B. and M.A., under Article 168 § 2 of the Criminal Code, of membership of an illegal terrorist organisation and sentenced them to twelve years and six months' imprisonment.

49. On 30 April 1999 the Chief Public Prosecutor's office at the Diyabarkır State Security Court appealed against the judgment of 29 April 1999 and claimed that I.B. and M.A. should have been acquitted given the lack of sufficient evidence for their conviction. On an unspecified date, I.B. and M.A. also appealed against the State Security Court's judgment.

50. On 29 November 1999 the Court of Cassation quashed the State Security Court's judgment of 29 April 1995 on the grounds that there was insufficient evidence to secure the conviction of the accused of membership of the organisation and that the first instance court had failed to convict I.B and M.A. of illegal possession of firearms.

51. In a letter of 4 July 2000 the head of the anti-terrorist branch of the Diyarbakır Security Directorate informed the Chief Public Prosecutor attached to the State Security Court that K.A. was being sought for the murder of Dr Ayhan on orders of M.A. and I.B. (code name Şehmus).

52. In an additional indictment dated 10 July 2000, the Chief Public Prosecutor at the Diyarbakır State Security Court charged I.B. and M.A.

with having planned and ordered the killing of Dr Mehmet Emin Ayhan. The public prosecutor noted that the murder had been perpetrated by K.A.

53. On 6 November 2000, the Chief Public Prosecutor at the Diyarbakır State Security Court filed an indictment with the latter and charged K.A. with having carried out armed attacks on behalf of the Hizbullah terrorist organisation. He alleged that K.A. had killed Dr Ayhan on the orders given by M.A and I.B. He therefore requested that K.A. be punished in accordance with Article 146 of the Criminal Code, that he be detained on remand *in absentia* and that the criminal proceedings against K.A. be joined to those pending against M.A. and I.B.

54. On 17 November 2000 the Diyarbakır State Security Court ordered K.A.'s detention on remand in his absence on account of his alleged involvement in armed attacks carried out by the Hizbullah terrorist organisation.

55. On 29 August 2001, K.A., the alleged killer of Dr Mehmet Emin Ayhan was arrested in Bursa.

56. According to an on-site inspection report of 12 September 2001, K.A., was in detention in police custody at the Diyarbakır Security Directorate. On the same date, police officers, a public prosecutor and a clerk took him to the scenes of the crimes that he had committed. At the scene of the killing of Dr Ayhan, K.A. admitted that he had committed the murder along with M.E. and Z.B. He further explained the details of the murder plan and how they escaped following the murder.

57. In an indictment of 19 September 2001 filed against K.A. and his co-accused, the Chief Public Prosecutor alleged that K.A. had been an active member of the Hizbullah terrorist organisation and had been involved in the killing of five persons, including Dr Mehmet Emin Ayhan. He noted that Dr Ayhan had been shot dead by M.E. and Z.B. for being a PKK sympathiser and that K.A. had acted as an armed look-out at the time of the murder.

58. On 29 January 2002 the State Security Court decided to sever the criminal proceedings against K.A. from those pending against B.O.

59. On 21 January 2002 K.A. was brought before the State Security Court. At the hearing he denied the charges against him and claimed that he was not a member of Hizbullah and that he had not been involved in any of the murders. He asserted that his statements in which he had confessed to the crimes had been obtained under torture inflicted by the police officers during his detention in police custody. Furthermore, when questioned about the on-site inspection report of 12 September 2001, K.A. alleged that the content of the report prepared by the public prosecutor was untrue because he had never been taken to the scene of the murder and had been forced to make prepared statements.

60. On 5 February 2002 I.B., one of the alleged accomplices of K.A. was arrested. In his statements of 6 February 2002 given to the Public

Prosecutor and to the single judge of the State Security Court, I.B. denied that he was a member of Hizbullah or that he had been involved in illegal activities of that organisation.

### II. RELEVANT DOMESTIC LAW AND PRACTICE

61. A full description of the relevant domestic law at the relevant time may be found in *Tanrıkulu v. Turkey* ([GC], no. 23763/94, §§ 52-61, ECHR 1999-IV).

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

62. The Government submitted that the applicants had failed to comply with the exhaustion of domestic remedies rule in Article 35 § 1 of the Convention. In this connection, they submitted that the death of Mehmet Emin Ayhan was still being investigated by the authorities and that the criminal proceedings against the culprits were still pending before the Diyarbakır Assize Court. Furthermore, the applicants at no stage alleged to the authorities that agents of the State were behind the killing and their complaints to the Court were completely at variance with the first applicant's statement to the police on 30 June 1992 and her letter to the public prosecutor of 16 September 1992. The Government submitted in addition that the first applicant had never made a claim for compensation in respect of her husband's death.

63. The applicants asserted with reference to the Court's case-law that domestic remedies in south-east Turkey were ineffective in respect of a complaint of unlawful killing imputed to the authorities. They submitted that had they charged the authorities with the allegations set out in their application their lives would have been placed at risk. They observed in this connection that the wife of Dr Zeki Tanrıkulu had been subjected to pressure when she accused the authorities of involvement in her husband's death. Furthermore, they had not claimed compensation in respect of Mehmet Emin Ayhan's death since his killers had not been identified.

64. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought

subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52; and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

65. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68).

66. The Court recalls that, in its admissibility decision of 29 February 2000, it considered that the first applicant was not required to bring a compensation claim under either civil or administrative law. It further held that the question whether the criminal investigation at issue can be regarded as effective under the Convention was closely linked to the substance of the applicants' 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 complaints under Articles 2 and 13 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

67. The applicants alleged that Dr Mehmet Emin Ayhan had been shot dead by State agents or with their connivance and that the authorities had failed to conduct an effective investigation into his killing. They relied on 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."

## A. Submissions of the parties

### *1. The applicants*

68. The first applicant contended that when she had used the word "terrorists" in her letter of 16 September 1992 to the public prosecutor, she had intended to implicate the State's racist and criminal counter-guerrilla forces in her husband's death. The Government were therefore incorrect in their argument that she had not accused the authorities of involvement in her husband's death. Furthermore, her statement to the police on 30 June 1992 should be seen as an assertion that she had not suspected members of either the PKK or Hizbullah in his death. There was no reason for her to do so.

69. In support of their allegations against the authorities, the applicants drew attention to their belief that agents of the State had cut off the electricity supply to Silvan to allow the killers to make their escape. In addition, the inadequacy of the investigation carried out by the authorities further demonstrated that the intention was to protect Mehmet Emin Ayhan's killers. They maintained that there was no evidence to link his murder to Hizbullah and the statements of İ.B., M.A. and B.O. relied on by the Government had in fact been retracted by them at their trial. Significantly, these persons had never been charged with incitement to murder Mehmet Emin Ayhan. In the applicants' submission, these persons' statements had been obtained under torture. The applicants claimed that K.A. was in fact later arrested and denied that he had carried out the killing of Mehmet Emin Ayhan.

70. The applicants also disputed the accuracy of certain elements in the investigation file. They noted that the map of the scene of the killing omitted any reference to the coffee shop, thus avoiding the need to seek out witnesses who might have been there at the time of the killing. They asserted that the investigation should have commenced at the coffee shop in order to locate witnesses. However, no one in the vicinity had ever been questioned about the incident. They disputed the authenticity of the second incident report supplied by the Government. It was their belief that this report was drawn up after their application had been communicated for observations. According to the applicants, the report supplied by the Government stated that there were many people at the scene of the killing when the police arrived, that they had been questioned about the killing but none of them had been able to testify as to what had happened. The applicants observed that there was no statement to this effect from any of the persons allegedly questioned.

71. The applicants further pointed to the speed with which the incident report and the autopsy reports had been prepared. They maintained that Zeki Tanrıkulu, one of the doctors who had performed the autopsy, informed the first applicant that he had wanted to carry out a full autopsy but under pressure from the security forces he had been unable to do so and

had signed the autopsy report. In addition, no photographs had been taken of the body and no examination had been carried out of the bullets which killed Mehmet Emin Ayhan. These considerations had led the applicants to conclude that, like Dr Zeki Tanrıkulu, Dr Mehmet Emin Ayhan had been a victim of a State-planned execution.

*2. The Government*

72. The Government affirmed that the evidence pointed to the fact that Mehmet Emin Ayhan had been killed by Hizbullah members having regard to the deceased's high profile as a PKK/Kurdish sympathiser and the rivalry between the PKK and Hizbullah. They referred in this connection to the fact that I.B, M.A and B.O., members of Hizbullah who were charged with twenty-two murders, stated that they had ordered a certain K.A., also a Hizbullah member, to kill Mehmet Emin Ayhan. In the Government's submission, the authorities could not be held responsible for failing to take steps to prevent the killing of a person whose life was at risk at the hands of a rival terrorist organisation. They also reiterated that at no stage of the domestic investigation had the applicants sought to place the blame on the authorities for the death of Mehmet Emin Ayhan. The evidence in the case so far proved no causal relationship between the murder of Dr Ayhan and the Government.

73. The Government further claimed that it could not be said that the authorities remained passive or failed to pursue the perpetrators. The alleged killer of Dr Ayhan had been arrested and put on trial and the criminal proceedings were still pending before the Diyarbakır Assize Court.

**B. The Court's assessment**

*1. As to the killing of Dr Mehmet Emin Ayhan*

74. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in 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 *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

75. In the light of the importance of the protection afforded by Article 2, the Court must subject allegations of 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, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002).

76. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (*ibid*., p. 18, § 30). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32; and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)) even if certain domestic proceedings and investigations have already taken place.

77. Bearing in mind the above principles, the Court will examine the issues that arise in the instant case in the light of the documentary evidence adduced by the parties, in particular the documents furnished by the parties in respect of the judicial investigations carried out into the impugned incident, and the parties' written observations on the merits.

78. The Court notes that the applicants made serious allegations about the involvement of State agents in the killing of their relative, Dr Mehmet Emin Ayhan. The applicants placed great emphasis on the fact that their relative had been killed by unknown assailants in the same manner as Dr Zeki Tanrıkulu who had worked in the same hospital and whose case had been examined by the Court (*Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV). In this connection, referring to the so-called Susurluk Report (see paragraphs 32-34 above), the applicants claimed that the killing of Dr Ayhan was part of a State policy to intimidate well-known Kurdish figures in the region. They also relied on the alleged threats issued against Dr Ayhan on account of his refusal to accommodate a police officer at the hospital (see paragraph 12 above). In view of these elements, the Court considers that the alleged events preceding the death of Dr Mehmet Emin Ayhan and the killing of a number of Kurdish figures at the relevant time give some support to the applicants' allegation that Dr Ayhan was killed by, or at least with, the connivance of State agents.

79. However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of “beyond reasonable doubt”, and 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). In this context, the Court reiterates that the responsibility of a State under the Convention arising from the acts of its organs, agents and servants, is not to be confused with the criminal responsibility of any particular individual (see *Avşar*, cited above, § 284).

80. Turning to the particular circumstances of the case, the Court notes that neither the first applicant nor any other person saw the faces of the killers (see paragraphs 15 and 17). It does not appear from the documents furnished by the parties that in their statements to the investigating authorities the applicants named persons whom they suspected of being the killer(s) of Dr Ayhan (see paragraph 41 above). On the contrary, in her letter dated 16 September 1992 the first applicant claimed that her husband had been killed by terrorists, although before the Court she submitted that this was in an attempt to recover her pension rights (see paragraph 18 above). Furthermore, the applicants' allegations that Dr Ayhan had been threatened by State authorities or that there was sufficient reason to believe that his life was at risk prior to his death were based only on their account of what had occurred (see paragraph 12 above).

81. It appears, therefore, that the only evidence available in this connection was the ten cartridges and two bullets retrieved from the scene of the incident (see paragraph 40 above). A forensic examination of these cartridges and bullets resulted in a finding that they matched a rifle which was found in the possession of a terrorist named Şehmus Bal (see paragraph 44 above). However, this finding did not yield any result given that no attempt seems to have been made to broaden the investigation to establish the possible involvement of Şehmus Bal or the possible use by other persons of the rifle in question in the killing of Dr Ayhan.

82. As regards the Government's contention that Dr Ayhan had been killed by members of Hizbullah, the Court notes that the suspects who were allegedly involved in the impugned incident have all denied the charges against them and that, to date, the criminal proceedings initiated against them have not resulted in any such finding (see paragraphs 25, 30, 45-60 above).

83. Moreover, in respect of the applicants' reliance on the Susurluk Report, the Court recalls that in its earlier judgments (*Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, §§ 95-96; *Özgür Gündem v. Turkey*, no. 23144/93, § 40 ECHR 2000-III), it held that that Report could not be relied on to establish, to the required standard of proof, that State officials were implicated in any particular incident. It can only be considered that the Report, which was drawn up at the request of the Prime Minister and which he decided should be made public, must be regarded as a serious attempt to provide information on and analyse problems associated with the fight against terrorism from a general perspective and to recommend preventive and investigative measures.

84. In the light of the above, the Court observes that the allegations concerning the circumstances in which the applicants' relative met his death did not go beyond speculation and assumption. It considers therefore that the material in the case file does not enable it to conclude to the required standard of proof that Dr Mehmet Emin Ayhan was killed by or with the connivance of any State agent or person acting on behalf of the State authorities in the circumstances alleged by the applicants.

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

*2. As to the alleged inadequacy of the investigation*

86. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Cyprus*, cited above, § 131; *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 105, ECHR 2001-III (extracts); *Akdeniz and Others v. Turkey*, no. 23954/94, § 89, 31 May 2001; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII; and *Avşar*, cited above, § 393). Furthermore, the next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Hugh Jordan*, cited above, § 109; and *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III where the family of the victim had no access to the investigation and court documents).

87. For an investigation into an alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; and *Oğur*, cited above, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, where the public prosecutor

investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

88. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya*, cited above, p. 324, § 87) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, a visit to the scene of the crime and a ballistics examination as well as an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, concerning autopsies, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, *Tanrıkulu* [GC], cited above, § 109; concerning forensic evidence, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; concerning a ballistics examination, *Oğur*, cited above). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard.

89. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-2440, §§ 102-104; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80-87 and 106, ECHR 1999-IV; *Tanrıkulu*, cited above, § 109, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, 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 use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

90. In the present case, the Government maintained that there was no evidence that agents of the State had been implicated in the killing of the applicant's relative. Moreover, there was no record of the applicants at any stage having made any explicit accusation to that effect (see paragraph 72 above).

91. In that connection, the Court points out that the obligation mentioned above is not confined to cases where the suspects are agents of the State. Accordingly, even if the applicants' allegations concerning the involvement of the authorities in the killing are unfounded that does not exclude the procedural obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death (see, *Tanrıkulu*, cited above, § 103).

92. Turning to the particular circumstances of the case, the Court notes that the applicants have made a number of complaints concerning the alleged inadequacy of the investigation carried out by the authorities, while the Government claimed that the investigation in question met the requisite standard under Article 2 of the Convention. The Court will therefore examine whether there has been compliance with this procedural aspect of Article 2.

93. The Court observes that an investigation was indeed carried out into the killing of Dr Ayhan. However, there were serious shortcomings from the outset of the investigation.

94. In this connection, the Court would point out that the sketch made of the scene of the killing lacked precision and detail, given that there was no reference to a coffee shop in the vicinity. In this context, it notes with concern that customers at that coffee shop were not questioned by the investigating authorities. Nor does it appear that any statements were recorded of persons in the vicinity of the killing. Furthermore, it does not transpire from the investigation documents that any attempt was made to trace the car alleged by the applicants to have been used by the killers to make their getaway (see paragraph 13 above). Thus, the Court observes that the whole of the investigation was characterised by inadequate and imprecise reporting of the steps taken (see paragraph 15 above).

95. The Court also notes that the ballistics examination carried out on the cartridges and bullets found at the scene resulted in a finding that they matched a rifle which was found in the possession of a terrorist named Şehmus Bal (see paragraph 44 above). However, the investigation did not include any attempt to broaden the investigation so as to establish the possible involvement of this person or the use by other potential assailants of the rifle in question in the killing of Dr Ayhan.

96. As regards the post-mortem examination performed on the body of the deceased by two general practitioners in the presence of a public prosecutor, the Court notes that a limited amount of forensic information was obtained from this examination (see paragraphs 16 and 39 above). It considers it regrettable that no forensic specialist was involved, that no full autopsy was performed and that no photograph of the deceased's body was taken.

97. As noted earlier, the Government relied heavily on the view that the deceased had been killed by members of Hizbullah. In this respect, they pointed to the statements taken from Hizbullah members charged with a series of murders affirming that they had ordered or carried out the killing of the doctor (see paragraph 45 above).

98. However, it does not appear that any meaningful investigation was conducted with a view to establishing the truth of that account. Having regard to the documents in its possession, the Court finds that there was no enquiry into the deceased's background and political connections in order to

establish whether he was at risk from Hizbullah members or other factions. The Court notes that while the suspects admitted that they had killed Dr Ayhan when questioned by the police officers, they later denied the accuracy of those statements before the public prosecutor and the judge, alleging that the statements in question had been extracted under duress (see paragraphs 46, 59 and 60 above). In any event, it cannot be said that the criminal investigation at issue was conducted diligently, given that it was neither prompt nor thorough.

99. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the Dr Ayhan. It accordingly dismisses the Government's objection of non-exhaustion of domestic remedies (see paragraph 66 above) and holds that there has been a violation of Article 2 under its procedural limb.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

100. The applicants complained that they 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."

101. The applicants submitted that the authorities had failed to carry out an effective investigation into the killing of Dr Mehmet Emin Ayhan. They argued that they were denied access to the competent courts because the killing of Dr Ayhan was part of an official State policy.

102. The Government rejected the applicants' submissions and argued that the authorities had carried out a meticulous and effective investigation into the applicants' complaints.

103. 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 in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the

following judgments: *Aksoy*, cited above, p. 2286, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya*, cited above, § 106).

104. Given the fundamental importance of the right to 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 and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).

105. 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 killing of the applicants' relative. However, according to its established case-law, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of the Article 13 (see the following judgments: *Orhan*, cited above, § 386; *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, p. 23, § 52, *Kaya*, cited above, pp. 330-31, § 107; and *Yaşa,* cited above, § 113).

106. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the killing of Dr Ayhan. For the reasons set out above (see paragraphs 86-99), 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, and *Tanrıkulu*, cited above, § 119).

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

## IV. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2 AND 13 OF THE CONVENTION

108. The applicants complained that Dr Ayhan had been killed because of his Kurdish origin in violation of 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."

109. The applicants argued that Dr Ayhan had been eliminated because he held left wing political views and was an opponent of State policies with regard to the rights of citizens of Kurdish origin.

110. The Government did not address these issues beyond denying the factual basis of the substantive complaints.

111. The Court has examined the applicants' allegations in the light of the evidence submitted to it, but considers them unsubstantiated. There has therefore been no violation of Article 14 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. The applicants claimed 2,364,800,000,000 Turkish liras (TRL) (1,465,000 euros (EUR)) in respect of the pecuniary damage suffered by them as a result of the killing by State agents of Dr Mehmet Emin Ayhan. They submitted that this sum consisted of loss of earnings by Dr Ayhan and costs incurred by the deceased's family.

114. The Government contended that the applicants had failed to submit any evidence in support of their claims and that the sum claimed by the applicants was not justified in the circumstances of the case.

115. The Court observes that there is no causal link between the matters held to constitute a violation of the Convention and the pecuniary damage allegedly suffered by the applicants (see *Tepe v. Turkey*, no. 27244/95, § 212, 9 May 2003; and *Adalı v. Turkey*, no. 38187/97, § 284, 31 March 2005). It therefore dismisses the applicants' claim under this head.

### B. Non-pecuniary damage

116. The applicants claimed the same amount as above, namely TRL 2,364,800,000,000 (EUR 1,465,000), in respect of non-pecuniary damage to compensate them for the great stress and anguish they had suffered as a result of the killing of Dr Ayhan.

117. The Government, pointing out that the applicants had failed to establish any State involvement in the death of Dr Ayhan and had not submitted their request for compensation to a domestic authority, rejected the applicants' claims as exaggerated and as likely to lead to unjust enrichment.

118. The Court reiterates that it has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the killing of the applicants' relative, contrary to the procedural obligation under Article 2 of the Convention and in breach of Article 13 of the Convention. In the light of its established case-law in similar cases (see, among others,

*Tanrıkulu*, cited above, § 138) and having regard to the circumstances of the case, the Court awards EUR 21,800 plus any tax that may be chargeable, such sum to be converted into new Turkish liras (YTL) at the rate applicable at the date of settlement and paid into the applicants' bank account.

### C. Costs and expenses

119. Without specifying an amount, the applicants asked the Court to award them compensation for fees and costs incurred in bringing the application. While the first applicant's new representatives, Mr Ali Uluk and Mr Hasan Erdoğan (see paragraph 2 above), did not submit any claims under Article 41 of the Convention, the applicants' initial representatives Mr Medeni Ayhan and Mr Metin Ayhan Erdoğan filed claims for costs and expenses that they had incurred in the preparation and presentation of this case before the Convention institutions. They asked the Court to award them an amount sufficient to cover 250 hours' legal work. In addition, they claimed TRL 1,500,000,000 (approximately EUR 930) for translations and summaries from English into Turkish and from Turkish into English as well as for incidental expenses such as telephone calls, postage, photocopying and stationery. The applicants' initial representatives Mr Medeni Ayhan and Mr Metin Ayhan Erdoğan alleged that they had been unjustly dismissed by the first applicant at the final stage of the proceedings and that therefore the award to be made under this head should be paid separately to their bank account.

120. The Government maintained that in the absence of any supporting evidence, the above claims must be rejected as unsubstantiated and, in any event, were unnecessarily incurred and excessive.

121. The Court notes that the applicants have only partly succeeded in respect of their complaints under the Convention. However, it notes that the present case involved complex issues of fact and law requiring detailed examination. It reiterates in this connection that only legal costs and expenses necessarily and actually incurred can be reimbursed under Article 41 of the Convention. The Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. In particular, it considers excessive the total number of hours of legal work (250 hours) submitted by the applicants' initial representatives. As regards the translations and administrative costs, the Court considers that they may be regarded as necessarily and actually incurred. Furthermore, as regards the representation of the first applicant by Mr Ali Uluk and Mr Hasan Erdoğan in the final stage of the proceedings, the Court finds that it has not been established that the first applicant incurred any legal costs since her new representatives did not make any submissions in the instant case.

122. In view of the above, and having regard to the details of the claims submitted by the applicants, the Court awards the applicants, for the costs

and expenses incurred by their former representatives Mr Medeni Ayhan and Mr Metin Ayhan Erdoğan, the sum of EUR 10,000 plus any tax that may be chargeable, less EUR 625.04 received by way of legal aid from the Council of Europe, such sum to be converted into new Turkish liras at the date of settlement.

### D. Default interest

123. 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. *Dismisses* the Government's preliminary objection of non-exhaustion;

2. *Holds* that there has been no violation of Article 2 of the Convention as regards the killing of the applicants' relative, Dr Mehmet Emin Ayhan;

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 killing of the applicant's relative, Dr Mehmet Emin Ayhan;

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

5. *Holds* that there has been no violation of Article 14 in conjunction with Articles 2 and 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 21,800 (twenty-one thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, to be converted into new Turkish liras (YTL) at the rate applicable at the date of settlement and to be paid into the applicants' bank account;
      (ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses incurred by the applicants' former representatives Mr Medeni Ayhan and Mr Metin Ayhan Erdoğan, plus any tax that may be chargeable on that amount, less EUR 625.04 (six hundred

and twenty-five euros and four cents) such sum to be converted into new Turkish liras at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 27 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President