



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38187/97
by Ilkay ADALI
against Turkey

The European Court of Human Rights (First Section), sitting on 31 January 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr R. TÜRMEŒ,

Mr P. LORENZEN,

Mrs N. VAJIC,

Mr E. LEVITS,

Mr A. KOVLER,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 12 September 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the Commission's decision of 19 October 1998,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the parties' oral submissions at the hearing on 31 January 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Ilkay Adali, who was born in 1944, is a Turkish Cypriot living in the “Turkish Republic of Northern Cyprus” (“TRNC”). She is represented before the Court by Bindman & Partners, a law office in London. At the oral hearing on 31 January 2002 the applicant was represented by Lord Lester of Hernhill, Counsel, assisted by Ms Monica Carss-Frisk, Counsel, together with Mr Stephen Grosz, Adviser. The respondent Government were represented by Professor Zaim Necatigil, Agent, Ms Sulen Karabacak, Counsel, Mr Ergin Ulanay, Counsel, Mrs Deniz Akçay, Co-Agent, Ms Alev Günyakti, Counsel, and Mr Ali Riza Güder, Counsel.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Applicant’s version of the facts

The applicant’s husband, Mr Kutlu Adali, was a Turkish Cypriot writer and journalist who was known for having written and published articles strongly criticising the policies and practices of the Turkish Government and the authorities of the “TRNC”. He had always claimed that Cyprus should not be divided and that Turkish and Greek Cypriots should live in a united republic based on a pluralist democratic system.

Apart from his writing and journalism, Mr Kutlu Adali had also held various civil service posts in the past. Between 1961 and 1972 he was employed as the Private Secretary to Mr Rauf Denktas, who later became the President of the “TRNC”. In 1972 the applicant’s salary was suspended because he had wished to write an article about policies of Mr Denktas with which he disagreed.

At that time, Mr Denktas wanted the applicant’s husband, Kutlu Adali to work for a radio station, called the Bayrak (Flag), which was under the control of the Turkish Resistance Movement. Mr Kutlu Adali refused to work for this radio station and was imprisoned without any charge or trial for one week because of his refusal. After his release, he started to work for the Bayrak radio station in order for his salary to be restored.

In 1974, Mr Adali was appointed to the post of Head of Identity Cards Section of the Department for the Registration of the Population. In December 1979 he was suspended, and was reinstated in 1986, when he was given the post of adviser in the Tourist Office of the “TRNC”. His career as a civil servant ended in 1987, when he was compelled to take early retirement at the age of 50.

During his public service and after his retirement Mr Kutlu Adali continued his career as a writer and a journalist. Initially, he wrote under a pseudonym (Kerem Atli), because it was dangerous for him to express his political views about a unified Cyprus using his real name. In 1981, he started using his real name. For the last seven years before his death he wrote regularly for the "Yenidüzen", a left-wing newspaper.

The applicant and her husband received various threats intended to deter him from continuing to express those beliefs. Between January 1980 and July 1996 unknown persons subjected the applicant's husband to various forms of harassment. His house was attacked with machine guns and he received frequent threatening phone calls. Unknown people entered his house looking for copies of his articles, to be able to start criminal proceedings against him, as he was writing his articles under a pseudonym.

On 17 March 1996 the "Yenidüzen" newspaper printed an article by Kutlu Adali about an incident in which thieves had broken into a tomb in the monastery of St Barnabas and stolen various objects of cultural significance. He had written that the licence plates and the colour of the thieves' cars had been noted, and the licence plates had been traced as belonging to two members of the Civil Defence Organisation. After the publication of this article, the editor of the newspaper received a threatening phone call from the head of the Civil Defence Organisation. Mr Adali also began to receive frequent threatening phone calls.

On 4 July 1996 the Yenidüzen Newspaper published another article by Mr Adali which strongly criticised the "Mother Country- Child Country" policy of the Government of Turkey and that of the "TRNC".

On 6 July 1996, at around 11.35 p.m., the applicant's husband was shot and killed in front of his house in the "TRNC" by unknown persons. The applicant was in Istanbul on the night when he was killed. When she had telephoned her husband at about 11.15 p.m., he had told her that "they" had been threatening him. The "TRNC" authorities refused to show the applicant her husband's body. She was told by the doctor in charge of the mortuary, Dr Ismail Bundak, that no post mortem had been carried out, although the body had been x-rayed. She has never been permitted to see the x-rays. The applicant was informed that a post mortem had been carried out by the Government's observations of 1 April 1999, and a copy of the post mortem report was provided.

The applicant has attempted to investigate her husband's death herself. She found out from her neighbours that shortly before her husband's death, a black car parked in the street. This black car was of the same model as the car driven by A.S, a retired police officer who had become friendly with the family in the last months of the applicant's husband's life. This retired police officer A.S. did not appear for ten days following the death of her husband.

The applicant's neighbours told her that around the time her husband was shot they had heard him begging his killers for his life. They said that they had heard a man say that the applicant's husband deserved to die. The neighbours also informed her that the electric lighting in the street outside the applicant's home went out at about 10.30 p.m., causing the area to be in darkness and was only switched on again shortly after Mr Adali had been shot. The applicant learned also from her neighbours that within only a few minutes of the shooting about twelve military cars came and sealed off the area and the "special teams" of the police threatened the neighbours with guns to force them to go back inside their houses.

On 8 July 1996 the pro-"TRNC" government newspaper "Kibris" reported that they had received a statement from a fascist group calling itself the Turkish Revenge Brigade claiming that they had killed Kutlu Adali. According to the applicant, this group is linked with so-called "Grey Wolves", who are the youth movement of the Turkish Nationalist Movement Party. They have close and long-standing links with members of the Turkish armed forces, the Turkish police, The Turkish National Intelligence Service (MIT), the Turkish paramilitary apparatus, Turkish Ministers and the Turkish Mafia.

Three days after her husband was killed, the applicant's family received a telephone call from an anonymous caller, a woman, who gave the names of two individuals who she said were responsible for Mr Adali's murder, a Mr Hüseyin Demirci and a man whose first name is Orhan. The applicant informed the police about this phone call but the police refused to start an investigation, stating that this woman was known for making false allegations to the police. The applicant discovered that Mr Demirci was a member of the "Grey Wolves" and of the Civil Defence Organisation and that the security forces were paying him. Orhan was a colonel in the Turkish armed forces on the island.

On 14 July 1996 the applicant's children arranged a meeting with the President of the "TRNC". They requested him to take steps to ensure that effective action was taken to find their father's killer and the President promised to take effective action.

There have also been repeated allegations in the press that a man called Abdullah Çatli, an extreme right-wing activist who was linked with the "Grey Wolves", a movement of the Turkish Nationalist Movement Party, and who was allegedly instructed by some Turkish officials to kill people suspected of being PKK members, was involved in the death of the applicant's husband. According to the applicant's personal information, Abdullah Çatli had come to the "TRNC" at the beginning of July 1996 under a false identity.

In December 1996 the applicant went to see the Security Forces Commander and complained that they were not investigating her husband's death properly.

On 5 March 1997 the Yenidüzen Newspaper published a letter signed by the head of the “Grey Wolves”, which contained a threat that left-wing journalists and writers would be killed like the applicant’s husband. The applicant gave copies of this article to the police to investigate, but she did not receive any response.

On 26 June 1997 the applicant wrote to Commander G. pointing out that nearly one year had passed since her husband’s assassination and that the perpetrators had not yet been found, but she could not receive any concrete information.

Plain-clothes policemen are still following the applicant and her daughter, their phones are tapped and their correspondence is monitored. They receive anonymous phone calls and their telephone and fax line is disconnected from time to time. In this respect, she submits that she has received very few condolence letters following her husband’s death. She maintains that the water supply of her house was cut on several occasions and the Council Water Department told her that it was due to technical faults.

She contends that in November 1996 she received an invitation from southern Cyprus to receive an award in her husband’s name. However, a day before the meeting she received a phone call from an official in the “TRNC Ministry of Foreign Affairs” and being scared by this phone call she decided not to attend the meeting.

On 18 July 1996 the applicant requested from President Denktas that the status of martyr be awarded to Kutlu Adali. On 9 September 1996 her request was rejected.

The “TRNC” regime also refused to register the foundation, which is called “Kutlu Adali Foundation”, whose objects include the furthering of the ideas of Kutlu Adali regarding peace, democracy, human rights and freedom.

The applicant also requested from the authorities to keep her husband’s press card that entitled her to certain privileges, like discounts in airfares, etc. However, this request was also rejected.

On 20 June 1997 the public authorities prevented the applicant and her daughter from attending a meeting organised by a radio station in southern Cyprus, by not giving permission to cross over to that side.

On the anniversary of Kutlu Adali’s death, the applicant organised a ceremony to commemorate her husband. On the day of the ceremony, the municipality brought in digging machines to dig up the road just under their street. She also submits that a picture of Kutlu Adali, which was being displayed in their garden, was stolen.

On 10 August 1997 she heard three gun shots outside her home. Subsequently, before she left for England, a real estate agent came to meet her daughter and told her to sell their house and accept any offer he would

make to buy it. The applicant believes that this real estate agent was sent by the “TRNC” authorities to persuade her to leave the country.

The applicant further contends that following her application to the European Court of Human Rights, her daughter was dismissed from her post in a bank. In connection with her daughter, the applicant further submits that although she ranked 15 amongst 68 candidates in the exam to become a civil servant, she was not given a post.

Moreover, the applicant’s representatives informed the Court on 21 January 2000 that in December 1999 the applicant had a meeting with Professor Bakir Çağlar about her application before the Court. Professor Çağlar, who is a former agent of the Turkish Government in the cases before the European Court of Human Rights, allegedly told the applicant that she could be assassinated, if she wins her case before the Court and that the scholarship of her daughter would be cut.

B. Government’s version of the facts

1) Events preceding the murder of Mr Kutlu Adali

The Government submit that at the time when Kutlu Adali was employed as the Private Secretary of President Denktas, he requested the President’s support to evade military service. His request was rejected and Mr Adali had to do his military service, which consisted of a short period of basic training and a remaining period of office work, which he performed at the Bayrak Radio Station. When he completed his military service, he was appointed as the Director of Registration. In December 1979, he was removed from his post by an instrument signed by the responsible minister, the Prime Minister and the Head of State pursuant to Article 93 of the Constitution of Turkish Federated State of Cyprus and he was appointed to the Ministry of Foreign Affairs, Defence and Tourism in his capacity as adviser. Mr Adali initiated proceedings in the High Administrative Court and requested the annulment of this action. Eventually, the courts accepted Mr Adali’s arguments and he was reinstated to his post in 1983.

The Government maintain that Mr Adali pursued his career as a writer and a newspaper journalist while he was in the public service. He used to write under the pseudonym of “Kerem Atli” not because it was dangerous for him to express his political views, but because there was a legal provision that civil servants should not be involved in daily politics and act impartially. A vast majority of the Turkish Cypriots did not agree with the views expressed by Mr Adali.

2) *Investigation into the killing of Mr Adali*

The Government submit that on 6 July 1996 at 11.40 p.m. a tip-off was received at the communications section of the Lefkosa Police Headquarters on telephone no. 155 from an unidentified caller, stating that there had been a murder at the point where the Ardiç street crosses the Akasya street.

Following the tip-off two Land Rovers belonging to the special unit (*çevik birlik*) of the nearby Yenisehir Police Station, attached to the Lefkosa Police Headquarters came to the incident scene within a short time. They were followed by police vehicles bringing Criminal Investigation Department personnel from the Yenisehir and Lefkosa Police Stations. The immediate area and surroundings of the incident were cordoned off by the police officers who started to work in order to identify the culprits. The Government underline the fact that all the vehicles used by the police and those by the Turkish Cypriot security forces are of similar type and colour.

The investigation began immediately after the death of Kutlu Adali. Early in the morning of 7 July 1996, at 3 a.m., police officers brought a doctor from the Nicosia (Lefkosa) State Hospital to the scene of the incident. The doctor examined the body and established that Mr Adali had died at the scene of the incident as a result of two bullet wounds in the areas of his left temple and left shoulder. A photographic fingerprinting officer took photographs of the scene of the incident. A sketch map of the scene of the incident indicated the positions of the empty cartridges. The body was then sent to the Nicosia State Hospital morgue for the purposes of an autopsy. Mr Adali's corpse was shown to his brother-in-law by police officers at the hospital morgue.

On 7 July 1996 police officers drew up a list of residents, including the applicant's neighbours, in the Akasya and Ardiç streets. On the same day statements were taken from thirty-three persons as to their knowledge about the incident.

Following the autopsy carried out by Dr Ismail Bundak on 7 July 1996, the cause of death was identified as dismemberment of the internal organs, internal haemorrhage and supratentorial bleeding at the head as a result of the wounds sustained by being shot with a firearm. After the autopsy, the blue coloured shirt, striped T-shirt, one pair of slippers and a pair of glasses, which Mr Adali was wearing, were taken as evidence.

Between 8 and 31 July 1996 twenty-six further statements were taken from potential witnesses, including the members of the applicant's family.

The investigation report of 13 July 1996 indicated persons who were not at home in the night of the impugned incident and where they were found at that time.

On 17 July 1996 Deputy to the Head of Security Forces Command in Lefkosa sent a bloodied T-shirt and a shirt belonging to Mr Adali to the State Laboratory for an analysis of the blood.

On 18 July 1996 in an article, which appeared in the “Milliyet” newspaper under the heading “The murderer was someone he knew: Kutlu Adali’s wife”, it was alleged that a few days before the murder, a Timur Ali from the Nationalist Thought Association had made statements in the “Birlik” newspaper such as “Kutlu Adali must be destroyed like a dog by the council”.

On the same day, statements were taken by the police officers from Ali Tekman, a columnist who used the pen-name “Timur Ali”. In his statements the latter denied the allegations that he has made such allegations and claimed that he had never written for the “Birlik” newspaper and that he is not a member of the Nationalist Thought Association. It is to be noted that the Court has not been forwarded a copy of any such newspaper article.

The authorities investigated into the applicant’s allegations that at the time her husband was killed the streetlights at the scene of the incident and in the vicinity were extinguished. Subsequent to the enquiries made by Mr Ali Horoz, an equipment engineer at the Turkish Cyprus Electricity Company, it has been established that the streetlights at the place of the incident and in the nearby Akasya, Akalan, Bagarasi, Söğüt and Altinova streets were supplied from the “Sidika Çatozlu” power box and not from the box of the Civil Defence Organisation as alleged by the applicant. It has been found out following the hearing of the residents in the area that there was no power cut in the night of Mr Adali’s murder and that even if, as alleged by the applicant, the power box in the courtyard of the Civil Defence Headquarters had been interfered with in order to affect the street lamps, it would not have been possible to switch off the street lights at the scene of the incident or in the streets in the vicinity.

A ballistic examination was also carried out on the used cartridges. Upon the examination of 14 used cartridges, the ballistics report of 6 August 1996 stated that they were 9 mm. parabellum type that had been fired from one single gun from a close range. It was further noted in the report that the cartridges and the bullet cores are not linked to any other cartridges or bullet cores found until that time within the territory of the “TRNC” or recorded in the files on the murders by unknown assailants.

On 15 October 1996 the applicant submitted a petition to the Telephone Directorate in Nicosia stating that she and her family had been disturbed by calls made from a number. At the applicant’s request a listening device was put on to the applicant’s telephone line (no. 2274089).

On 12 November 1996 a call received from telephone number 2271851, the authorities found out that the number belonged to a certain Mr Cahit Güray, whose telephone line was then cut off. Following a request made by a B.K., the telephone was reconnected on the payment of a certain amount of money. The owner of the telephone line, Mr Hüray, sent a petition to the Telephone Directorate on 18 November 1996 stating that he had never dialled the applicant’s number. Mr Hüray requested an inquiry to be made

into this disturbance. Thus, on 22 November 1996, an assistant police inspector took statements from the head of the technical section at the Telephone Directorate to clear this matter up.

On 4 March 1998 the police assistant inspector, Ahmet Soyalan, concluded his report on the investigation. In his concluding remarks, the inspector stated that it had not been possible to identify the culprits of the murderer(s) and that therefore he could not reach a positive result in the investigation.

On 29 April 1998 the case was referred to the Attorney General of the "TRNC".

On 1 July 1998 the Attorney General's office advised that the matter be transmitted to a coroner's inquest.

On 31 July 1998 the Nicosia Police Chief informed the Nicosia Coroner of the result of the investigation into the killing of Mr Adali. He transmitted the full investigation file containing the statements of the witnesses and the investigating officer's report.

The hearing in Lefkosa before the Coroner commenced on 20 October 1998 and following the hearing of witnesses, was concluded on 11 December 1998 with the delivery of the verdict. The coroner found that Kutlu Adali was shot dead on 6 July 1996 by unidentified person(s), the death was caused by organ dismemberment, internal haemorrhage and supural haemorrhage in the head. The coroner stated that the murderer(s) of the deceased could not be identified and declared the case closed.

3) Government's observations in response to the applicant's allegations

The Government maintain that the allegation about the involvement of Abdullah Çatli is no more than a speculation. In this respect, they submit the "TRNC" records according to which Abdullah Çatli's last visit to TRNC had been between 26 April 1996 and 1 May 1996. The Government emphasise the fact that Abdullah Çatli was not in the "TRNC" on 6 July 1996 when Kutlu Adali was killed.

The Government explain that public opinion has been supportive of the loss of applicant's husband. Public statements have been made by the President, the Speaker of the Legislative Assembly, the Prime Minister and political party leaders, condemning the killing and calling for assailants to be found. Moreover, Mr Adali's name was dedicated to the street where he lived by the Municipal Council of Lefkosa.

As regards the events that occurred after the death of the applicant's husband, the Government maintain that most of the applicant's allegations are highly exaggerated. In this respect, the Government note in the first place that the applicant herself asked protection from the "TRNC" authorities and she was told that she was already under the protection of plain-clothes policemen.

The Government further submit that in order to register a foundation in the name of Kutlu Adali, an application should be made to the competent court and a court order should be obtained. However, the applicant has failed to do so.

In respect of the refusal of the applicant's request to cross to the southern part of Cyprus, the Government submit that the crossings of the Green Line to and from Ledra Palace Gate between the "TRNC" and the southern Cyprus are regulated by the rules and regulations of the "TRNC" and crossings are subject to restrictions due to security precautions. The "TRNC" authorities have the right to suspend permission to cross the border.

The Government further submit that the St. Barnabas incident which occurred in March 1996 was a security operation. There was no damage to the icons or to the archaeology museum. Upon receipt of the intelligence reports to the effect that illegal arms have been hidden in the tomb, security forces conducted an operation in the scene. The Government state that the Civil Defence Organisation was not involved in the incident.

The Government explain that pursuant to Law No. 7/1974 Providing for Aid to families of Martyrs and victims of events, a martyr denotes a person who lost his life in the performance of duties given to him by lawful orders, in the protection of the rights of the "TRNC" in the struggle against illegal acts.

Moreover, the Government contend that the applicant's daughter was dismissed from her post in the Erbank due to disorderly conduct on 12 October 1998. The application was communicated to the Government on 26 December 1998, therefore as the dismissal of the applicant's daughter occurred before the communication of the application, this incident cannot be attributed to the authorities. The Government also state that the applicant's daughter had ranked 52nd (not the 15th as alleged) amongst 68 candidates in the exam to become a civil servant. The result of this exam was published in the official gazette dated 23 September 1998.

COMPLAINTS

The applicant invokes Articles 2, 3, 6, 8, 10, 11, 13, 14 and 34 of the Convention.

As to complaints concerning the murder of the applicant's husband

The applicant alleges under Article 2 of the Convention that her husband's murder was a manifestation of a continuing practice on the part of the Turkish-controlled authorities of the "TRNC", the aim of which is to suppress and discourage dissent by causing or encouraging the

disappearance of dissenters. She also complains that the authorities failed to carry out an impartial and effective investigation into the murder of her husband. The applicant maintains in this respect that she could not attend the Coroner's inquest as she was never informed of such an inquest and that she was never sent a copy of the official verdict of the inquest.

The applicant submits under Article 6 of the Convention that because of the failure to conduct a prompt, thorough, impartial and effective investigation of the circumstances of her husband's murder, she has been denied effective access to the courts to determine her civil right to compensation for her husband's murder, allegedly committed by agents of the "TRNC" or Turkey. She also submits that the courts in the "TRNC" are not sufficiently independent from Government influence to make it likely that they would act independently and impartially considering the particular circumstances of her case.

The applicant alleges under Article 10 of the Convention that her husband was killed because of his public expression of views strongly critical of the policies and practices of the Turkish Government. She submits that his killing was the most extreme interference with his right to freedom of expression and that she is an indirect victim of this violation.

Under Article 13 of the Convention, the applicant states that the failure of the public authorities, for which Turkey is responsible, to conduct a prompt, impartial, thorough and effective investigation into the circumstances of her husband's murder indicate that those responsible for the investigation and the public prosecution have a blinkered approach to the allegations of a politically motivated killing by the agents of the "TRNC". Accordingly, the applicant alleges that she has been denied any effective remedy.

The applicant also complains under Article 14 of the Convention that the treatment they have been subjected to was due to Kutlu Adali's political opinions.

As to complaints concerning the treatment the applicant has been facing after the death of her husband

The applicant complains of the continuing practices of monitoring, harassment, intimidation and discrimination by the "TRNC" authorities. In this respect, the applicant submits that plain-clothed policemen are following her and her telephone calls are being monitored. She contends that she receives several threatening phone calls and her telephone and fax lines are disconnected from time to time. The applicant further submits that her correspondence is being monitored. In this respect, she contends that she has received very few letters of condolence following Kutlu Adali's death. She alleges that her friends and relatives are afraid to visit her. The applicant also alleges that the water supply of her house was cut on several occasions. Although she was told by the Council Water Department that it

was due to technical faults, she believes that this is a part of the “TRNC” authorities’ harassment policy. The applicant further claims that in November 1996 she was invited to southern Cyprus to receive an award in her husband’s name. However, a day before the meeting, she received a phone call from a high ranking official in the “TRNC Ministry of Foreign Affairs” and being frightened by this call, she decided not to go to the meeting. Subsequently on 20 June 1997 a radio station in southern Cyprus organised a meeting to which the applicant and her daughter were invited. They applied for permission to cross over to southern Cyprus but the authorities refused to give permission to them. On the anniversary of Kutlu Adali’s death, on 6 July 1997, the applicant organised a ceremony to commemorate her husband’s death and inaugurate a foundation in his memory. On the day of the ceremony, the municipality brought in digging machines to dig up the road just under the street. The applicant believes that the real reason why the digging started that day was to prevent or deter people from attending the ceremony. She further submits that a commemorative picture of Kutlu Adali which was displayed in their garden was stolen. The applicant further complains that the “TRNC” authorities refused to register a foundation in Kutlu Adali’s name. On 18 July 1996 the applicant requested from President Denktas that the status of martyr be awarded to Kutlu Adali. On 9 September 1996 this request was rejected. The applicant’s request to keep her husband’s press card, which had entitled them to certain privileges like discount rates on hotels, airfares etc., was also rejected.

On 10 August 1997 she heard three gunshots outside her house. Subsequently, before she left for England a real estate agent came to meet her daughter and told her to sell their house and to accept any offer he would make to buy it. The applicant believes that this real estate agent was sent by the “TRNC” authorities to persuade her to leave the “TRNC.”

In the light of the foregoing the applicant invokes Articles 3, 6, 8, 10, 11, 13 and 14 of the Convention.

As to Article 34 of the Convention

The applicant alleges under Article 34 of the Convention that the respondent Government tried to hinder the effective exercise of her right to apply to the Court. She maintains that on 4 December 1999 she met Professor Bakir Çağlar, the former agent of the Turkish Republic in a meeting in Cyprus. He questioned her about her application with the European Court of Human Rights and threatened her that if she wins her case before the Court, she would be assassinated and her daughter’s scholarship would be cut.

THE LAW

A. Imputability of the application to the Turkish Government

In their observations, the Government give a detailed historical background about the separate status of the Greek and Turkish Cypriot communities. They maintain that the alleged acts/omissions put forward in the present application are not those of the Turkish republic, but may, if substantiated, concern only the “TRNC”, which is an autonomous entity. The Government aver that the “TRNC” exercises effective and exclusive control in northern Cyprus over the territory north of the UN Buffer Zone, which runs from the east to the west of the island in between the Greek Cypriot and Turkish Cypriot cease-fire lines.

The Government further maintain that the findings of the European Commission of Human Rights in the inter State applications nos. 6780/74, 6950/75 and 8007/77 against Turkey as to jurisdiction under Article 1 of the Convention should not be taken as conclusive on the matter of jurisdiction *vis a vis* the present application. Moreover, the Government contend that the *Loizidou* case (*Loizidou v. Turkey (preliminary objections)*), judgment of 23 March 1995, Series A No. 310) “cannot be a precedent for the present case in determining the issues of actual jurisdiction, imputability or responsibility”.

The Government assert that the finding of jurisdiction for the purposes of Article 1 of the Convention does not create a presumption of actual responsibility. The question of imputability requires an examination of the facts and proof of actual and not presumed involvement of the High Contracting Party with the acts and omissions alleged to constitute violations of the Convention.

In the light of the above, the Government maintain that the various allegations of violations of the Convention put forth by the applicant are not imputable to Turkey and do not involve her responsibility under the Convention.

The Government also refute the allegation that the “TRNC” was a subordinate local administration. They maintain that there is no evidence at all that the “TRNC” authorities exercised state authority upon delegation of power from Turkey or as agents of or on behalf of Turkey. “TRNC” exercises powers of its own right and that the alleged Turkish military presence has nothing to do with the exercise of power by “TRNC”

authorities. The alleged military presence does not in any way effect the exercise of power by the “TRNC” authorities.

The Government further maintain that the applicant cannot bring a shred of evidence in support of her allegations about the involvement of Turkey in her husband’s killing. They conclude that the complaints of the applicant cannot be imputable to Turkey.

The Court recalls that, although Article 1 sets limits on the reach of the Convention, the concept of “jurisdiction” under this provision is not restricted to the national territory of the High Contracting Parties. In addition, the responsibility of the High Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory. Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of a military action- whether lawful or unlawful- it exercises effective control of an area outside its national territory. The obligation, to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration (see the *Loizidou v. Turkey (preliminary objections)* judgment, cited above, p. 23-24, § 62).

In the case of *Cyprus v. Turkey*, the Court further found that having effective overall control over northern Cyprus, Turkey’s responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of the Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey’s jurisdiction must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey (*Cyprus v. Turkey*, [GC], application no. 25781/94, §§ 77, to be published in ECHR-2001).

The Court concludes, accordingly, that the matters complained of in the present application fall within the “jurisdiction” of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State’s responsibility under the Convention.

B. Exhaustion of domestic remedies

The Government allege that the application is inadmissible because the applicant has failed to exhaust the domestic remedies as required by Article 35 of the Convention.

In this respect, they maintain that there are effective, sufficient and practicable remedies that are easily accessible to the applicant within the

judicial system of the “TRNC”. They submit that pursuant to Articles 135-155 of the “TRNC” Constitution, an effective and independent judicial system exists in the “TRNC”. The Government maintain that Article 152 of the “TRNC Constitution” provides for judicial review of administrative action on grounds of excess and/or abuse of power, illegality and unconstitutionality. They further submit that according to Article 158 of the “TRNC Constitution”, the Attorney General is an independent officer of the State who is appointed by the Supreme Council of Law Officers. The Attorney General has power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for any offence against any person in the “TRNC”.

The Government further submit that it was also possible to institute civil cases in the “TRNC Courts” under the Civil Wrongs Law. Accordingly, they state that it was open to the applicant to bring civil cases in the District Courts against persons who allegedly trespassed into her property and harassed her. She could also bring administrative proceedings in the High Administrative Court against any organ of the administration, to annul any act or decision of the administration if she was complaining that her legitimate rights were adversely affected by any such act or decision.

In so far as the applicant complains of the insufficiency of the investigation concerning the death of her husband, the Government also maintain that the applicant could have applied to the Supreme Court of the “TRNC”, sitting as the Court of Cassation for an order of mandamus, to compel the performance of a public duty. Under Article 151 of the “TRNC Constitution” the Supreme Court has original jurisdiction to issue orders in the nature of *habeas corpus*, *mandamus*, prohibition and *certiorari*.

As regards the threats towards the applicant, the Government maintain that the applicant has not filed any criminal complaints with the authorities.

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 that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of remedies must be sufficiently certain, in practice as well as in theory, 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 laid down in domestic law, but not that recourse should be had to remedies which are inadequate and ineffective (*see Ilhan v. Turkey* [GC], no. 22277/93, § 58, ECHR 2000-VIII; the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

The Court recalls that in the case of *Cyprus v. Turkey* (cited above, § 102), it has found that, for the purposes of former Article 26 (current

Article 35 § 1) of the Convention, remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and the question of their effectiveness is to be considered in the specific circumstances where it arises.

The Court considers that this limb of the Government’s objection raises issues that are closely linked with the substance of the applicant’s complaints. Consequently, this objection concerning the exhaustion of domestic remedies should be joined to the merits of the application.

C. Non-compliance with the six months’ time limit

The Government contend that the application was not filed within six months as required by Article 35 of the Convention. They point out that the applicant’s husband was killed on 6 July 1996, whereas the application was submitted assuming that the applicant’s allegations concerning the ineffectiveness of the domestic remedies are correct, the applicant should have lodged her complaint within six months following the death of her husband.

The applicant denies this allegation and contends that she has lodged her application with the Court within the six months time limit as required by the Convention.

The Court recalls in the first place that a criminal investigation may constitute an effective remedy in respect of the allegations of killing by State agents (see the *Aytekin v. Turkey* judgment of 23 September 1998, *Reports* 1998-VII, No. 92, § 83). However, this remedy may become ineffective under special circumstances, such as the excessive length of the investigation (see, *mutatis mutandis*, the *Yasa v. Turkey* judgment, cited above, §115). The Court further notes that the six months period may be calculated from the time when the applicant’s allegations are definitively rejected by the national authorities or when it becomes clear that the remedies are ineffective because of the existence of special circumstances.

As the Government’s objection about the six months’ time limit is clearly linked to the issue of the effectiveness of the domestic remedies, the Court considers that this limb of the Government’s objection should also be joined to the merits of the case.

D. As to the substance of the complaints concerning the murder of the applicant’s husband

The applicant complains of the death of her husband, Kutlu Adali, who was a well-known writer in the “TRNC”. She alleges that her husband was killed on grounds of his political opinions and that following his death the authorities failed to conduct an effective investigation into his murder. In this respect, the applicant alleges violations of Articles 2, 6, 10, 13 and 14 of the Convention.

The Government refute the allegations and maintain that the “TRNC” authorities commenced an investigation into the murder of Kutlu Adali immediately after his death however the perpetrators of the crime could not be identified. They further submit that the applicant cannot bring any evidence in support of her allegations that Kutlu Adali was killed by the authorities on account of his political opinions.

The Court considers, in the light of the parties’ submissions, that in this respect, the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the complaints raised in this part cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

E. As to the complaints concerning the treatment that the applicant has been facing following the death of her husband

The applicant alleges under Articles 3, 6, 8, 10, 11, 13 and 14 of the Convention that, subsequent to the death of her husband, she has been subjected to the continuing practices of monitoring, harassment, intimidation and discrimination by the “TRNC” authorities.

The Government deny the applicant’s allegations and submit that the applicant has failed to report to the “TRNC” police alleged acts of harassment which she is claiming for the first time in her application to have happened. They maintain that there is a contradiction in the applicant’s behaviour in asking the authorities for assistance, or protection, and then accusing them of monitoring and/or harassing her.

The Court considers, in the light of the parties’ submissions that this part of the application also raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. Consequently, the Court concludes that these complaints cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

F. As to the complaint concerning the alleged interference of the authorities with the effective exercise of the applicant’s right to apply to the Court (Article 34)

The applicant alleges that the Government tried to hinder the effective exercise of her right to apply to the Court. She maintains that on 4 December 1999 she met Professor Bakir Çağlar, the former agent of the Turkish Republic in a meeting in Cyprus. He questioned her about her application to the European Court of Human Rights and threatened her that

if she wins her case before the Court, she would be assassinated and her daughter's scholarship would be cut. The applicant was intimidated by the threats of Professor Bakir Çağlar.

The Government repudiate this allegation and submit that Professor Çağlar, who was the agent of the Turkish Government in the case of *Loizidou v. Turkey*, had resigned from his post and therefore he was not representing the Turkish Government in any way.

The Court considers, in the light of the parties' submissions that this part of the application also raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. Consequently, the Court concludes that the complaints raised in this part cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court by a majority

Decides to join to the merits the Government's objections concerning exhaustion of domestic remedies and compliance with the six months' time limit;

Declares the application admissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President