



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

SECOND SECTION

**CASE OF AHMET ÖZKAN AND OTHERS v. TURKEY**

*(Application no. 21689/93)*

*JUDGMENT*

*STRASBOURG*

*6 April 2004*

This version was rectified on 1 March 2005 under Rule 81 of the Rules of the Court. The rectification necessitated changing the page numbering of the original version.



**In the case of Ahmet Özkan and Others v. Turkey,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 16 March 2004,

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

## PROCEDURE

1. The case originated in an application (no. 21689/93) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former<sup>1</sup> Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 32 Turkish nationals (“the applicants”) on their own and their relatives' behalf on 8 April 1993 and registered on 20 April 1993. The applicants' names and family ties are set out in Appendix I.

2. The applicants, who had been granted legal aid, were represented by Mr Tahir Elçi, a lawyer practising in Cizre (Turkey), who delegated his representation on 24 February 1994 to Mr Kevin Boyle and Ms Françoise Hampson, lawyers practising in the United Kingdom, who were also directly authorised by the applicants. On 23 September 1996 Mr Boyle and Ms Hampson delegated their representation to Mr Tony Fisher of Fisher Jones Greenwood Solicitors in Colchester (United Kingdom), who was later also directly authorised by the applicants. The applicants' United Kingdom representatives engaged the assistance of the Kurdish Human Rights Project (“KHRP”), a non-governmental organisation based in London. The Turkish Government (“the Government”) were mainly represented by their Agent, Mr Munci Özmen, of the Turkish Ministry of Foreign Affairs.

3. Relying on Articles 2, 3, 5, 6 and 8 of the Convention, the applicants complained of a military raid conducted on 20 February 1993 on the village of Ormaniçi and related events, including the death of two children, the taking into detention of the male villagers, the conditions in which these

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<sup>1</sup> The term “former” refers to the text of the Convention before the entry into force of Protocol No. 11 on 1 November 1998.

villagers were held in detention, their treatment in detention and the death of one villager in detention. The applicants further alleged a violation of former Article 25 (now Article 34) and former Article 28 of the Convention (now 38).

4. On 11 May 1993 the Commission decided to bring the application to the notice of the Government, inviting them to submit written observations. The Government submitted their observations on 23 September 1993, to which the applicants responded on 11 June 1995. The application was declared admissible by the Commission on 16 January 1996 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

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. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided on 20 June 2000 that no hearing on the merits was required (Rule 59 § 2 *in fine*) and invited the applicants to submit their claims for just satisfaction within the meaning of Article 41 of the Convention. After receipt of these claims, the Government were given the opportunity to submit comments, an opportunity of which they availed themselves in their submissions of 15 January 2001.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1, and included the appointed *ad hoc* judge Mr F. Gölcüklü.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The case mainly concerns events which took place in 1993 in the village of Ormaniçi in the Güçlükonak district of the Şırnak province in south-east Turkey. The applicants alleged that, on 20 February 1993, security forces had attacked Ormaniçi, as a result of which two children had died. The applicants further alleged that on the same day the security forces

had set fire to houses in Ormaniçi and had taken most of the male villagers into detention. The applicants claimed that these men had been subjected to ill-treatment in detention, resulting in various serious injuries and the death of one villager. They further alleged that the security forces had returned to Ormaniçi later in 1993, when they had burned houses and destroyed harvested crops, and that they had returned once again in the spring of 1994 when they had killed four villagers and forced the villagers to leave Ormaniçi.

9. The facts being disputed by the parties, the Commission appointed Delegates who took evidence in Ankara from 2 to 4 April 1998 and from 5 to 10 October 1998 from 25 applicants, 8 other villager witnesses and 15 officials.

10. The certified transcripts of the oral evidence, together with the documentary evidence provided by the parties to the Commission, have been transmitted to the Court.

11. The parties' submissions on the facts (Sections A and B) and the proceedings conducted before the domestic authorities (Section C) are summarised below. The documentary material before the Court is summarised in Appendix II and the oral evidence to the Delegates in Appendix III, which appendices are available on the Court's website and which are held in the Court's archives.

#### **A. The applicants' submissions on the facts**

12. In the early morning of 20 February 1993, military forces attacked the village of Ormaniçi. Many soldiers were dressed in white camouflage gear. There was snow on the ground and it was very cold. The military forces started attacking the village with rifles and heavy weaponry and later moved into the village, systematically removing each family from their house and taking them to the village square. Many families were unable to dress and were forced into the open with their children without proper clothing and/or shoes.

13. Most of the male villagers were beaten as they were taken to the village square, where they were made to lie face down in the mud and snow, and were subsequently blindfolded. The villagers arrived in the square between 10 a.m. and 12 noon and remained there until just before sunset. The women and children were also assembled near the village square but were not blindfolded.

14. While the villagers were being gathered in the square, a detailed search of all the properties was conducted and the soldiers began systematically setting fire to the homes, using an incendiary agent that they appeared to have brought with them specifically for this purpose. Many of the animals which were kept in stables or were wandering around the village were shot, or burned in their stables.

15. During the raid one soldier threw a bomb into the house of a villager called Mevlüde Ekin. The bomb exploded, causing severe intestinal injuries to her six-year-old-daughter Abide. Ms Ekin and her other children, together with Abide, were then evacuated to the village square. The village *muhtar*<sup>2</sup>, Mehmet Aslan, was taken to the house of Mevlüde Ekin to accompany the soldiers in a search. It was claimed that somebody had been shooting from her house at the soldiers when the bomb was thrown. During this search a soldier inside the house was shot and killed instantaneously. The army commander instructed Mehmet Aslan to indicate that he had been shot by terrorists, whereas he had in fact been shot by another soldier.

16. Just before sunset about twelve people who had been blindfolded, including Mevlüde Ekin's daughter Halime Ekin, were taken from Ormaniçi to Şırnak by helicopter. They were placed in custody in Şırnak. The remainder of the men were roped together and forced to walk blindfolded and, in many cases, without adequate clothing or footwear, from Ormaniçi to Güçlükönak. They had to walk some 7 kilometres in the snow, which took 2½ hours.

17. When the men arrived in Güçlükönak, they were put into a partly constructed military building. The floors were wet and constantly under water to a depth of about 10 cm. There was no heating or furniture. Many of the men were not fed for several days. They were systematically tortured and forced, whilst blindfolded, to fingerprint statements which had been prepared for them. They suffered various forms of torture including electric shock treatment, burning with hot metal bars, beatings, and anal rape with a truncheon and with bottles.

18. As a result of the walk to Güçlükönak and the conditions of detention there, many of the men suffered severe injuries to their feet, some of which required subsequent amputation of toes or feet. The men at Güçlükönak were moved to Şırnak by helicopter on or about 5 March 1993.

19. The persons who had been taken directly to Şırnak were also tortured and forced to sign statements. Allegations were put to them that they were members or supporters of the PKK<sup>3</sup>. One man, İbrahim Ekinci, having been tortured, fell ill and was removed to hospital, where he died of pneumonia on 16 March 1993.

20. On 21 February 1993, military forces returned to Ormaniçi to burn more houses and kill more animals. The women of the village, together with the children, slept in the mosque, in caves, and in some unburned outbuildings. Abide Ekin died in the mosque, without having received medical attention for her injuries. A few days later, another child, Ali Yıldırım, was killed as a result of the explosion of a mortar bomb or

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<sup>2</sup> Village headman.

<sup>3</sup> “*Partiya Karkeren Kurdistan*” (Workers’ Party of Kurdistan).

grenade that had been left in the village by the military forces after the attack on 20 February 1993.

21. Most of the detained villagers were released either on 9 or 16 March 1993. They appeared before public prosecutors at Eruh (Siirt district) and many complained of the torture that they had suffered. On 30 April 1993 a number of the men were charged with terrorist offences, which were to be tried before the Diyarbakır State Security Court. A number of villagers remained in custody until approximately June 1993. Two villagers, Mehmet Nuri Özkan and Ali Erbek, were still in custody at the time of the oral hearing held in October 1998. Mehmet Nuri Özkan has been released since, but Ali Erbek is currently still in custody.

22. Both before and at the time of the transfer of the men from Şırnak to Eruh a number were taken to the Mardin and Diyarbakır State Hospitals, where they were placed in the prison wing. After medical treatment, some had parts of their feet amputated. This was the case of Fahrettin Özkan, who was only 13 years old at the material time.

23. At the time of their release on 9 and 13 March 1993 respectively, the majority of the detained men were taken by bus to Siirt and subsequently to a nearby village. For the most part they returned to Ormaniçi by mule since they were unable to walk. During the period between 9 March 1993 and the summer/autumn of 1993, as they gradually recovered from their injuries, many of the men attempted to rebuild the burnt houses.

24. In the late summer or autumn of 1993 there was a further incident in Ormaniçi. On this occasion all the villagers were assembled near the school. Two women were taken into the school and tortured and the soldiers went to a number of houses and removed all of the harvested crops and destroyed them. Some more buildings were also burnt, and further animals died after eating contaminated food. Many of the villagers had left the village to live in caves nearby but had continued to cultivate their land.

25. A number of other villagers returned to Ormaniçi in the spring of 1994. In or about May 1994 the soldiers came to the village once more and gunfire was heard in the orchards and fields nearby. After that the soldiers arrived in the village indicating that they had killed seven terrorists. In fact four villagers had been killed as well as three alleged members of the PKK. After this incident the villagers were given three days to leave the village, otherwise they would be killed. They all left and moved to various towns in south-east Turkey, including Güçlükönak, Tarsus and Siirt. A number also moved to İstanbul. They have been unable to return to the village since that date. Some have remained in a neighbouring village.

26. In August 1994 the Government carried out an investigation in Ormaniçi into the events which had taken place there in February 1993. No investigation was carried out into the detention of the villagers in Güçlükönak or Şırnak, notwithstanding the injuries they had suffered whilst

in custody. None of the applicants has been offered any compensation for their losses.

### **B. The Government's submissions on the facts**

27. While the security forces were approaching the village of Ormaniçi on 20 February 1993 in order to carry out a search in the valley of the Ormaniçi stream, they came under fire from the village.

28. In the course of the ensuing clash, the roofs of some houses in the village caught fire as a result of being hit by tracer bullets fired in the course of the exchange of fire. No house was deliberately set on fire by members of the security forces involved in the incident. Although some livestock in the village may have died of suffocation caused by smoke, none of the members of the security forces involved deliberately killed any livestock there.

29. Apart from one soldier who was killed when conducting a search in one of the houses of the village, nobody was injured or killed in Ormaniçi on 20 February 1993.

30. Those villagers who were subsequently taken into detention were not ill-treated during their detention. The injuries sustained by a number of these villagers, which in the case of four villagers resulted in the amputation of toes, had been caused by frostbite, for which they received medical treatment while in detention.

31. One of the villagers taken into detention, who suffered from epilepsy, was transferred to hospital while in detention. He subsequently died in hospital of natural causes.

### **C. Proceedings before the domestic authorities**

32. On 31 March 1993 the Eruh public prosecutor issued a decision of lack of jurisdiction in respect of 42 persons who had been taken into detention on 20 February 1993 in the village of Ormaniçi and referred the case to the office of the public prosecutor at the Diyarbakır State Security Court.

33. On 30 April 1993 the public prosecutor at the Diyarbakır State Security Court issued a decision of non-prosecution in respect of 25 Ormaniçi villagers for lack of sufficient evidence of the charges of membership of the PKK or aiding and abetting the PKK. These villagers were consequently released.

34. As regards the other 17 Ormaniçi villagers, on 30 April 1993 the public prosecutor at the Diyarbakır State Security Court issued an indictment committing them to appear before the State Security Court on charges of armed activities on behalf of the PKK, membership of the PKK and/or aiding and abetting the PKK. Although most of these villagers were released at some point in time, the villagers Mehmet Nuri Özkan and

Ali Erbek were still in detention in October 1998. In September 1998 the proceedings before the State Security Court in the case were still pending.

35. On 24 June 1993 the public prosecutor at the Diyarbakır State Security Court took a decision of non-prosecution in relation to the death on 17 March 1993 of İbrahim Ekinci, one of the Ormaniçi villagers taken into detention on 20 February 1993. In this decision it was noted that the cause of death found had been pneumonia and it was held that no offence had been committed in that the incident was due to no one's fault or influence. It was decided that, unless there were any objections, there were no grounds for instituting proceedings.

36. The applicants did not make an official complaint about the destruction of their property and homes or about their treatment in detention. On 12 April 1993 Ayşe Ekinci filed a criminal complaint with the office of the public prosecutor in Cizre in relation to her husband İbrahim Ekinci, who had died in hospital while in detention.

37. On 15 August 1994, on the basis of this criminal complaint, the Eruh public prosecutor took a decision of non-prosecution. In his decision it was pointed out that the cause of death found was pneumonia.

38. After the Commission had communicated the applicants' complaints to the Government, the Turkish Ministry of Justice ordered an investigation into the events of 20 February 1993 in Ormaniçi, including the death of two children in the village.

39. On 10 August 1994 the Siirt public prosecutor carried out an on-site inspection in Ormaniçi in order to establish whether houses had been demolished and burned and to take statements from applicants. He was accompanied by a civil engineer, who drew up a separate report on the conditions of the houses found in Ormaniçi. Also on 10 August 1994, the Eruh public prosecutor went to Ormaniçi in order to carry out an investigation of the death of two children, Abide Ekin and Ali Yıldırım, in the course of which the two children's remains were disinterred.

40. On 27 June 1995 the Eruh public prosecutor issued a decision of lack of jurisdiction in the investigation concerning the death of Abide Ekin and Ali Yıldırım. In his decision it was found to have been established that the children had died as a result of the explosion of explosive devices with which they had played and which had been left unexploded after the incident in Ormaniçi on 20 February 1993. The offence was described as causing the death of two persons by leaving explosive material in the village. According to this decision, the perpetrators – referred to as defendants – were an unspecified number of illegal PKK terrorists. The decision further stated that the case file was to be transmitted to the office of the public prosecutor at the Diyarbakır State Security Court for further proceedings.

41. On 21 July 1995 the public prosecutor at the Diyarbakır State Security Court decided that the Eruh public prosecutor – in co-operation with the Eruh District Gendarmerie Command, the Siirt Directorate of Security and the Siirt Provincial Gendarmerie Command – was to conduct a further investigation into the deaths of Abide Ekin and Ali Yıldırım and to communicate the results of this investigation to the office of the public prosecutor at the Diyarbakır State Security Court at regular intervals. It appears that such reports were sent on a regular basis. According to the wording of the last report made available, a letter of 3 June 1998 from the Siirt Provincial Directorate of Security to the office of the public prosecutor at the Diyarbakır State Security Court:

“the incident occurred as a result of the activities of the outlawed PKK terrorist organisation and upon the establishment of open [as yet unknown] identities and apprehension of the perpetrators information will be submitted separately”.

42. No information has been submitted as to the outcome of the investigation conducted by the Siirt public prosecutor into the destruction of houses in Ormaniçi.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. State of emergency (*Olağanüstü Hal*)

43. Since approximately 1985 serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has, according to the Government, claimed the lives of thousands of civilians and members of the security forces. By 1996 the violence had claimed the lives of 4,036 civilians and 3,884 members of the security forces. In 1987 ten of the eleven provinces of south-eastern Turkey became the subject of emergency rule.

44. Two principal decrees relating to the south-eastern region were made under the Law on the State of Emergency (Law no. 2935, 25 October 1983). Decree no. 285 (of 10 July 1987) established a regional governorship of the state of emergency region in ten of the eleven provinces of south-eastern Turkey. Under Article 4 (b) and (d) of the Decree, all public security forces and the Gendarmerie Public Peace Command were at the disposal of the regional governor. Decree no. 430 (of 16 December 1990) reinforced the powers of the regional governor.

45. The number of provinces affected by the emergency rule decreased over the period between 1987 and November 2002. The state of emergency in south-east Turkey was fully lifted on 30 November 2002 when the emergency rule ceased to apply to the last two provinces affected by it.

## B. Criminal law and procedure

46. The Turkish Criminal Code (*Türk Ceza Kanunu*) makes it a criminal offence, *inter alia*:

- to deprive someone unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants);
- to coerce through force or threats (Article 188)
- to issue threats (Article 191)
- to subject someone to torture and ill-treatment (Articles 243 and 245);
- to commit unintentional homicide (Articles 452 and 459), intentional homicide (Article 448) and murder (Article 450);
- to commit arson (Articles 369, 370, 371, and 372), or aggravated arson if human life is endangered (Article 382);
- to commit arson unintentionally by carelessness, negligence or inexperience (Article 383); and
- to damage another's property intentionally (Articles 526 et seq.).

47. The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities or the security forces as well as to public prosecutors' offices. The complaint may be made in writing or orally. If it is made orally, the authority must make a record of it (Article 151). Pursuant to Article 135a of the Turkish Code of Criminal Procedure, evidence obtained by way of torture or ill-treatment is not admissible in criminal proceedings.

If there is evidence to suggest that a death is not due to natural causes, members of the security forces who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152). By Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the exercise of his duty is liable to imprisonment. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 of the Code of Criminal Procedure). A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

48. In the case of alleged terrorist offences, the public prosecutor is deprived of jurisdiction in favour of a separate system of State Security prosecutors and courts established throughout Turkey. An appeal against a conviction of a terrorist offence by a State Security Court lies with the Court of Cassation (*Yargıtay*).

49. If the suspected offender is a civil servant and if the offence was committed during the performance of his duties, the preliminary investigation of the case is governed by the Law of 1914 on the prosecution of civil servants, which restricts the public prosecutor's jurisdiction *ratione personae* at that stage of the proceedings. Thus, any prosecutor who receives a complaint alleging a criminal act by a member of the security forces must make a decision of non-jurisdiction and transfer the file to the relevant local administrative council (for the district or province, depending on the suspect's status). That council will appoint an investigator (*muhakik*) to conduct the preliminary investigation, on the basis of which the council will decide whether to prosecute. These councils are made up of civil servants, chaired by the governor. If a decision to prosecute has been taken, it is for the public prosecutor to investigate the case. A decision not to prosecute is subject to an automatic appeal to the Supreme Administrative Court.

50. By virtue of Article 4, paragraph (i), of Legislative Decree no. 285, the 1914 Law on the prosecution of civil servants also applies to members of the security forces who come under the governor's authority.

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

### **C. Civil and administrative liability arising from criminal offences**

52. Under section 13 of Law no. 2577 on administrative procedure, anyone who sustains damage because of an act of the authorities may file a claim for compensation within one year after the alleged act was committed. If the claim is rejected in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

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

"All acts or decisions of the authorities shall be subject to judicial review ...

The authorities shall be liable to make reparation for all damage caused by their acts or measures."

54. That provision establishes the State's strict liability, which comes into play if it is shown that in the circumstances of a particular case the State has failed in its obligation to maintain public order, ensure public safety or protect people's lives or property, without it being necessary to show a tortious act attributable to the authorities. Under these rules, the

authorities may therefore be held liable to compensate anyone who has sustained loss as a result of acts committed by unidentified persons.

55. However, Article 8 of Legislative Decree no. 430 of 16 December 1990 (see paragraph 44 above) provided:

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

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

57. However, under section 13 of Law no. 657 on State employees, anyone who has sustained loss as a result of an act done in the performance of duties governed by public law may, in principle, only bring an action against the authority by whom the civil servant concerned is employed and not directly against the civil servant (see Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. When an act is found to be illegal or tortious and, consequently, is no longer an “administrative act” or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

#### **D. Relevant domestic provisions on deprivation of liberty**

58. Article 19 of the Turkish Constitution provides:

“Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with the formalities and conditions prescribed by law: ...

The arrested or detained person must be brought before a judge within forty-eight hours at the latest or, in the case of offences committed by more than one person, within fifteen days... These time-limits may be extended during a state of emergency...

A person deprived of his liberty, for whatever reason, shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.

Compensation must be paid by the State, as the law shall provide, for damage sustained by persons who have been victims of treatment contrary to the above provisions.”

59. Article 168 of the Turkish Criminal Code reads as follows:

“Any person who, with the intention of committing the offences defined in Articles ..., forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.

The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment.”

60. Article 169 of the Turkish Criminal Code provides:

“Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever shall be sentenced to not less than three and not more than five years' imprisonment...”

61. Under section 3 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991), the offence defined in Article 168 of the Criminal Code is classified as a “terrorist act”. Under section 4, the offence defined in Article 169 of the same Code is classified in the category of “acts committed to further the purposes of terrorism”. Pursuant to section 5 of Law no. 3713, penalties laid down in the Criminal Code as punishment for the offences defined in sections 3 and 4 of the Act are increased by one half.

62. Under section 9(a) of Law no. 2845 on procedure in the State Security Courts, only these courts can try cases involving the offences defined in Articles 168 and 169 of the Criminal Code.

63. At the material time, section 30 of Law no. 3842 of 18 November 1992 provided that, with regard to offences within the jurisdiction of the State Security Courts – including those mentioned in paragraph 61 above – any arrested person had to be brought before a judge within forty-eight hours at the latest, or, in the case of offences committed by more than one person, within fifteen days. In provinces where a state of emergency had been declared, these time-limits could be extended to four days and thirty days respectively.

64. Section 1 of Law no. 466 on the payment of compensation to persons arrested or detained provides:

“Compensation shall be paid by the State in respect of all damage sustained by persons

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial; or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only..."

#### **E. The Notice of Derogation of 6 August 1990 and its subsequent amendments**

65. On 6 August 1990 the Permanent Representative of Turkey to the Council of Europe sent the Secretary General of the Council of Europe the following notice of derogation:

"1. The Republic of Turkey is exposed to threats to its national security in South East Anatolia which have steadily grown in scope and intensity over the last months so as to [amount] to a threat to the life of the nation in the meaning of Article 15 of the Convention.

During 1989, 136 civilians and 153 members of the security forces have been killed by acts of terrorists, acting partly out of foreign bases. Since the beginning of 1990 only, the numbers are 125 civilians and 96 members of the security forces.

2. The threat to national security is predominantly [occurring] in provinces of South East Anatolia and partly also in adjacent provinces.

3. Because of the intensity and variety of terrorist actions and in order to cope with such actions, the Government has not only to use its security forces but also take steps appropriate to cope with a campaign of harmful disinformation of the public, partly emerging from other parts of the Republic of Turkey or even from abroad and with abuses of trade-union rights.

4. To this end, the Government of Turkey, acting in conformity with Article 121 of the Turkish Constitution, has promulgated on May 10 1990 the decrees with force of law [nos.] 424 and 425. These decrees may in part result in derogating from rights enshrined in the following provisions of the European Convention [on] Human Rights and Fundamental Freedoms: Articles 5, 6, 8, 10, 11 and 13. A descriptive summary of the new measures is attached hereto..."

66. A descriptive summary of the contents of the Legislative Decrees nos. 424 and 425 was annexed to this notice.

67. According to a note in the notice of derogation, “the threat to national security [was] predominantly occurring” in the provinces of Elazığ, Bingöl, Tunceli, Van, Diyarbakır, Mardin, Siirt, Hakkari, Batman and Şırnak.

68. In a letter of 3 January 1991 the Permanent Representative of Turkey informed the Secretary General that Legislative Decree no. 424 had been replaced by Legislative Decree no. 430, promulgated on 16 December 1990. A descriptive summary of the decree was appended to this letter.

69. On 5 May 1992 the Permanent Representative of Turkey wrote to the Secretary General in the following terms:

“As most of the measures described in the decrees which have the force of law nos. 425 and 430 that might result in derogating from rights guaranteed by Articles 5, 6, 8, 10, 11 and 13 of the Convention, are no longer being implemented, I hereby inform you that the Republic of Turkey limits henceforward the scope of its Notice of Derogation with respect to Article 5 of the Convention only. The derogation with respect to Articles 6, 8, 10, 11 and 13 of the Convention is no longer in effect; consequently, the corresponding reference to these Articles is hereby deleted from the said Notice of Derogation.”

70. On 1 February 2002 the Turkish Government informed the Secretary General that its Notice of Derogation in respect of Article 5 of the Convention had been withdrawn.

### III. RELEVANT INTERNATIONAL MATERIALS

71. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) of the Council of Europe has carried out sixteen visits to Turkey between September 1990 and September 2002. The first two visits, in 1990 and 1991, were *ad hoc* visits considered necessary in light of the considerable number of reports received from a variety of sources containing allegations of torture or other forms of ill-treatment of persons deprived of their liberty, in particular, relating to those held in police custody. A third periodic visit took place at the end of 1992. Further visits took place in October 1994, August and September 1996 and October 1997. The CPT's report on its visit in October 1997<sup>4</sup> was made public on 23 February 1999 with the authorisation of the Turkish Government.

72. In a public statement of 15 December 1992, the CPT reported that on its first visit to Turkey in 1990 it had reached the conclusion that torture and other forms of severe ill-treatment were important characteristics of police custody. It noted that the following types of ill-treatment had been alleged time and time again - *inter alia*, Palestinian hanging, electric shocks, beating of the soles of the feet (*falaka*), hosing with pressurised cold water and incarceration in very small, dark, unventilated cells. It emphasised that

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<sup>4</sup> CPT/Inf (99)2

its medical examinations had disclosed clear medical signs consistent with very recent torture and other severe ill-treatment of both a physical and a psychological nature. The on-site observations in police establishments had revealed extremely poor material conditions of detention. It stated that on its second visit in 1991 it had found that no progress had been made in eliminating torture and ill-treatment by the police. Many persons had made complaints of similar types of ill-treatment. An increasing number of allegations had been heard of forcible penetration of bodily orifices with a stick or truncheon. Once again, a number of the persons making such claims had been found on examination to display marks or conditions consistent with their allegations. The CPT stated that on its third visit (a periodic visit) from 22 November to 3 December 1992 its delegation had been inundated with allegations of torture and ill-treatment. Numerous persons examined by its doctors displayed marks or conditions consistent with their allegations. It listed a number of these cases. In Ankara police headquarters and Diyarbakır police headquarters, it found equipment which was consistent with use for torture and the presence of which had no other credible explanation. The CPT concluded in its statement that “the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey”.

73. In its second public statement issued on 6 December 1996, the CPT noted that some progress had been made over the intervening four years. However, its findings after its visit in 1994 demonstrated that torture and other forms of ill-treatment were still important characteristics of police custody. In the course of visits in 1996, CPT delegations once again found clear evidence of the practice of torture and other forms of severe ill-treatment by the police. A considerable number of persons examined by the delegations' forensic doctors displayed marks or conditions consistent with their allegations of recent ill-treatment by the police, and in particular of beating of the soles of the feet, blows to the palms of the hands and suspension by the arms. It noted the cases of seven persons who had been very recently detained at the Anti-Terror Department at İstanbul Police Headquarters, cases which ranked among the most flagrant examples of torture encountered by CPT delegations in Turkey. The persons examined showed signs of prolonged suspension by the arms, with impairments in motor function and sensation which, in two persons, who had lost the use of both arms, threatened to be irreversible. It concluded that recourse to torture and other forms of severe ill-treatment remained a common occurrence in police establishments in Turkey.

74. In the CPT report on its visit in October 1997, it noted that the existence and extent of the problem of torture and other forms of ill-treatment of criminal suspects by law-enforcement officials – and, more particularly, by police officers – had been established beyond all doubt in the course of previous CPT visits to Turkey between 1990 and 1996.

Further, in recent times, senior political figures had openly recognised the realities of the situation. During the CPT's visit in October 1997, a considerable number of allegations were once again heard of torture and ill-treatment by law-enforcement officials. Those allegations emanated from both ordinary criminal offenders and persons detained in respect of offences falling under the jurisdiction of the State Security Courts. Further, medical evidence of recent ill-treatment by the police was obtained by the CPT delegation.

75. The CPT further observed that several of the police establishments visited still possessed interrogation rooms of a highly intimidating nature and stressed that facilities of this kind had no place in a modern police service.

76. In the CPT report on its visit in September 2001<sup>5</sup>, published on 24 April 2002 with the authorisation of the Turkish Government, the CPT expressed concerns about the continued use in the eastern part of Turkey of interrogation rooms with a highly intimidating character, such as those seen in the Anti-Terror Departments at Ağrı, Elazığ, Erzurum and Van Police Headquarters and in Van Provincial Gendarmerie Headquarters. According to the CPT, such oppressive facilities had no place in a modern police service.

77. The CPT further stated in this report that the findings made in the September 2001 visit indicated that the blindfolding of persons in police/gendarmerie custody remained common practice throughout Turkey and that persons suspected of narcotics or terrorist offences were apparently particularly prone to this practice. It noted that blindfolds were usually applied at the "preliminary questioning" stage prior to the taking of a formal statement, i.e. at the time when ill-treatment was most likely to occur. It could further not be ruled out that blindfolds were also applied at later stages. The CPT had been told by certain persons that they had been obliged to sign statements attributed to them whilst blindfolded. After the CPT delegation had discovered a blindfold in an interrogation room inspected, the delegation was informed by a senior officer that it would be applied to certain suspects undergoing questioning in order to prevent them from seeing the interrogating officers. In its report the CPT stated that it was clear from the information gathered by it over the years that in many, if not most, cases, persons were blindfolded in order to prevent them from being able to identify law-enforcement officials who inflicted ill-treatment upon them. As a result of this practice, legal proceedings against those who tortured and ill-treated could be severely hampered.

78. As regards the medical examination of persons held in custody, as already addressed in considerable detail in previous CPT visit reports, the CPT noted that dialogue with the Turkish authorities on this point had

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<sup>5</sup> CPT/Inf (2002)8.

focused on two issues: the principle that law-enforcement officials should not be present during the medical examination, and possible exceptions to that principle; and the need to ensure that doctors carrying out the medical examination used the standard forensic medical form approved by the Turkish authorities. The CPT delegation that carried out the visit in September 2001 found that there remained much room for progress as regards both these issues, in particular in the eastern part of Turkey, where interviews with detained persons suggested that it was very rare for law-enforcement officials not to be present during medical examinations. Numerous persons stated that they had been warned prior to the examination not to say anything to the doctor about the treatment they had received, and that the presence of law-enforcement officials during the examination had ensured that they heeded that warning. Some persons interviewed stated that when the doctor had inquired as to the origin of injuries they bore the law-enforcement official present had protested. Doctors at the Primary Health Care Centre in Elazığ acknowledged that the examination always took place in the presence of police officers or members of the gendarmerie. In discussion with doctors at Van State Hospital, it was indicated that it was common for two or more persons to be examined simultaneously and that lesions observed might not be recorded “in order to avoid problems with the police”. The CPT further concluded that it was clear that, instead of using the “General Judicial Medical Examination Form” approved by the Turkish authorities, the old practice of very brief findings set out on a piece of paper without any headings, and often covering several detained persons, remained common.

79. Reiterating that no legal safeguard against ill-treatment was more fundamental than the requirement that the fact of a person's deprivation of liberty be recorded without delay, the CPT indicated in its report that the current practice concerning the recording of detention required improvements in certain respects. It appeared that the trigger for making an entry in the book of admissions was the fact of placing someone in a cell. As a person could be deprived of his liberty for several hours in a law-enforcement establishment before being placed in a cell, this initial period of detention often appeared to go unrecorded.

80. In the preliminary observations made by the CPT delegation on its visit carried out in March 2002, it was noted that prison staff were still present during medical examinations. The CPT delegation further indicated that it had gathered compelling evidence of severe ill-treatment of several persons held by the gendarmerie in Diyarbakır in late 2001. This ill-treatment had apparently begun during the initial period of custody and had continued during the period spent in the custody of the gendarmerie. The delegates' visit to the Provincial Gendarmerie Command, where the ill-treatment was said to have occurred, reinforced the credibility of the

allegations made. It was of an oppressive and intimidating nature, not unlike the facilities criticised in the CPT report on its September 2001 visit<sup>6</sup>.

81. The CPT delegates further discovered that, in Diyarbakır, law-enforcement officials were systematically present when suspects were medically examined at the outset and at the end of their custody. Many prisoners interviewed told the CPT delegates that they had been warned not to make any complaints to the doctor about how they had been treated, and that the presence of law-enforcement officials had deterred them from making complaints. Some doctors spoken to indicated that, despite their objections, law-enforcement officials had been present during medical examinations. Moreover, some doctors mentioned cases in which reports which they had drawn up recording injuries had been torn up by law-enforcement officials.

## THE LAW

### I. THE COURT'S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

82. Since the facts of the case are in dispute between the parties, it is necessary for the Court to establish the facts by making its own assessment in the light of all the material before it.

#### A. General principles

83. The Court refers to its case-law confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (see, most recent, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII, and *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002, unreported). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

84. The Court is sensitive to the subsidiary nature of its role and recognises that it 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). Nonetheless, where allegations are made under

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<sup>6</sup> See § 76.

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*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

## **B. The Court's evaluation of the facts in the present case**

### *1. Background*

85. Since approximately 1985, serious disturbances have occurred in the south-east of Turkey, involving armed conflict between the security forces and members of the PKK. The Court observes that the village of Ormaniçi, consisting of about 33 households – located in the administrative district of Şırnak and in the judicial district of Erüh<sup>7</sup> – was situated between, on the one hand, the Gabar mountain chain where in 1993 apparently a number of PKK groups were staying<sup>8</sup>, and, on the other, the towns of Güçlükönak, Akdizgin and Fındık. Various photographs taken in Ormaniçi<sup>9</sup> show that the village was built on the slope of a hill. The lower side of the village lies to the south where there is a dry riverbed descending slightly towards the east along the lower side of the village and subsequently into a deep valley. The upper side of the village lies to the north. A footpath from the north-western side of the village leads to a small pond. In the absence of any roads, Ormaniçi cannot be reached by vehicles. The walking distance between Ormaniçi and Güçlükönak, which are separated by the riverbed, is about 8-10 kilometres and this walk would normally take about two hours<sup>10</sup>.

86. In 1993 there was a fairly sizeable security force presence based in Güçlükönak and Fındık. About 200-250 soldiers were based in Güçlükönak itself. At the material time, the premises of the district gendarmerie headquarters in Güçlükönak were in the process of being enlarged, including the construction of a new station building. A commando unit, attached to the gendarmerie, was stationed on the premises of the Güçlükönak gendarmerie station<sup>11</sup>.

87. The evidence obtained concerning the PKK activity in and around Ormaniçi at the material time is contradictory. A number of Government witnesses testified before the Delegates that the PKK had been regularly

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<sup>7</sup> See Appendix III: Celal Çürek, § 444; Hüseyin Baran, § 520; and Mustafa Taşkafa, § 647.

<sup>8</sup> See Appendix III: İbrahim Kaya, §§ 138 and 150; and İzettin Atar, § 566; see also *Taş v. Turkey*, no. 24396/94, § 11, ECHR 2000-XI.

<sup>9</sup> See Appendix II: §§ 293-295.

<sup>10</sup> See Appendix III: Mehmet Aslan, § 95; Resul Aslan, § 238; and Celal Çürek, § 448.

<sup>11</sup> See Appendix III: Celal Çürek, §§ 445-446.

active or at least present in and in the vicinity of Ormaniçi<sup>12</sup>. Some of the villager witnesses denied that there had been any PKK activity or presence in or near Ormaniçi<sup>13</sup>, whereas others either testified that PKK members had – at least once, occasionally or regularly – come to Ormaniçi demanding provisions or taking shelter in the vicinity of the village or made an implicit reference to the occasional presence of armed individuals in the village<sup>14</sup>. A number of villager witnesses gave evidence that, after having been apprehended and interrogated several times by the authorities, the former *muhtar* of Ormaniçi, Halil Ekin, had been taken away by unknown individuals – possibly PKK members – during the night, had disappeared since and was presumably dead<sup>15</sup>. It further transpires from the evidence of some of the villager witnesses that Ormaniçi had refused to accept the village guard system and that the villagers had felt themselves caught between two fires and preferred not to take a clear stand in order to avoid possible undesirable consequences<sup>16</sup>.

88. From other cases that the Court has dealt with concerning events in south-east Turkey, it has become clear that PKK activity was rife in the early nineties (see, *inter alia*, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1199, § 15, *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2696, § 13, *Ertak v. Turkey*, no. 20764/92, § 131, ECHR 2000-V, and *Taş v. Turkey*, no. 24396/94, § 11, ECHR 2000-XI). The evidence with which it has been presented in the present case does not suggest that this level of PKK activity would have been significantly different in the region around Ormaniçi.

89. The Court further finds credible the evidence – offered by both villager and Government witnesses – according to which there had been either a mere occasional PKK presence or more or less regular PKK activity in and around Ormaniçi, which included the taking of provisions and mules from the villagers. In addition, the Court cannot rule out the possibility that a number of persons in Ormaniçi in fact had fairly close ties with the PKK. It appears from the verbatim records that a number of villager witnesses became hesitant and evasive when questioned about PKK-related activities

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<sup>12</sup> See Appendix III: Celal Çürek, § 450; Hasan Yeşilyurt, § 491; Uğur Kırıkçılar, § 516; Hüseyin Baran, § 521; and Mustafa Taşkafa, § 649.

<sup>13</sup> See Appendix III: Mehmet Özkan, § 11; Kumri Aslan, § 80; Mehmet Aslan, § 96; Tayibet Kurt, § 203; Resul Aslan, § 239; Rahim Arslan, § 271; Ali Özkan, § 282; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 439.

<sup>14</sup> See Appendix II: Zeynep Yıldırım § 130; and Appendix III: Ahmet Özkan § 4; and İbrahim Kaya §§ 138 and 150.

<sup>15</sup> See Appendix II: Halime Ekin § 59; and Appendix III: Mehmet Aslan § 93; İbrahim Kaya § 138; and Mevlüde Ekin § 168.

<sup>16</sup> See Appendix III: Ahmet Özkan § 4; Mehmet Aslan § 96; İbrahim Kaya § 138; Resul Aslan § 240; and Abdurrahman Çetin § 329.

in or near Ormaniçi. This impression is confirmed by the applicants themselves, who – in their final observations filed on 16 March 1998 – submitted that most of the villager witnesses had been naturally cautious concerning questions relating to whether or not the village had been visited by the PKK. Given the geographical location of Ormaniçi, and the fact that it could not be reached by vehicles or telephone<sup>17</sup> and thus was vulnerable, the Court would not exclude the possibility that the villagers preferred not to take a clear stand in the conflict between the PKK and the Government forces.

90. The Court is prepared to accept that those applicants and witnesses who professed to have no knowledge whatsoever of the PKK activities or PKK presence in or near Ormaniçi may well have done so out of fear or to protect members of their families and considers that this does not necessarily affect the credibility of the rest of their testimony.

## *2. The operation in Ormaniçi on 20 February 1993 and related events*

### **The planning of the operation of 20 February 1993**

91. It appears from the evidence that the operation at Ormaniçi, involving five gendarme commando teams and one regular gendarme team from Güçlükonak, was planned on 19 February 1993 on the basis of intelligence reports that PKK members were staying in or near Ormaniçi and in order to apprehend a wanted person who might be present in the village<sup>18</sup>. As neither the operation notification or operation planning order numbered HRK: 7130-108-93/760, as referred to in the related Operation Result Report<sup>19</sup> and the Observation and Establishment Report in the Location<sup>20</sup>, nor the judicial order referred to in Celal Çürek's evidence<sup>21</sup> has been made available to the Court, the identity of this wanted person cannot be established.

92. However, as it appears from the subsequent judicial proceedings that the operation at Ormaniçi was linked to the killing on 19 February 1993 of Mehmet Sevgin, a village guard in the nearby village of Boyuncuk<sup>22</sup>, the Court finds it established that the operation was triggered off by this killing in conjunction with prior intelligence reports about a PKK presence in Ormaniçi on which, given the weather conditions at the time, it had not yet

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<sup>17</sup> See Appendix III: Mehmet Aslan §§ 92 and 95; İbrahim Kaya § 137; Resul Aslan § 238; Celal Çürek § 448; and Mustafa Taşkafa § 649.

<sup>18</sup> See Appendix II: §§ 149, 155-156, 164 and 228; and Appendix III: Celal Çürek, §§ 450-451; Hasan Yeşilyurt, § 491; Uğur Kırıkçılar, § 516; and Hüseyin Baran, § 521.

<sup>19</sup> See Appendix II: § 155.

<sup>20</sup> See Appendix II: § 164.

<sup>21</sup> See Appendix III: § 451.

<sup>22</sup> See Appendix II: §§ 228 and 233; and Appendix III: Resul Aslan, § 241.

been possible for the security forces to take any action<sup>23</sup>. The Court considers improbable the claim that the duties of the security forces were of an administrative or judicial nature<sup>24</sup>. In this connection it notes that six gendarme teams, consisting in total of 102 gendarmes and including 85 commandos, participated in the operation<sup>25</sup>, that both the quantity and quality of the ammunition apparently brought along on this operation can only be described as impressive<sup>26</sup> and that the documentary and oral evidence given has not elucidated the nature of the alleged administrative or judicial duties.

#### **The initial phase of the operation on 20 February 1993**

93. It appears from the evidence that it was initially intended that three commando teams would search the area near to the Ormaniçi stream, whereas the gendarme team and the other two commando teams would approach the village from, respectively, the south-west, north and south. It appears that, shortly after 5.30 a.m., during its approach of the village from its position in the south the 2<sup>nd</sup> Commando Team noticed two persons running towards the stream bed, that two warning shots were fired by the security forces and that upon that the two men ran in the direction of the village<sup>27</sup>.

94. The evidence as to the subsequent events is contradictory. All the evidence submitted by the Government indicates that at that moment shots were fired from the village at the security forces, who returned fire<sup>28</sup>, and that a clash ensued. Almost all of the applicants and their witnesses testified that the security forces had opened fire at the village and that no shots at all had been fired from the village<sup>29</sup>.

95. The Government argued that the testimony of the villagers could not be relied on in that the evidence of the applicants themselves was tainted by the fact that, as parties in the proceedings before the Court, they had a legal interest in presenting their account as favourably as possible. According to

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<sup>23</sup> See Appendix III: Celal Çürek, § 450; Uğur Kırıkçılar, § 516; and Hüseyin Baran, § 521.

<sup>24</sup> See Appendix III: Hasan Yeşilyurt, § 491; Uğur Kırıkçılar, § 517; and Hüseyin Baran, § 521.

<sup>25</sup> See Appendix II: §§ 149, 156 and 164; and Appendix III: Celal Çürek, § 452.

<sup>26</sup> See Appendix II: § 161.

<sup>27</sup> See Appendix II: § 165.

<sup>28</sup> See Appendix II: §§ 149, 156, 165 and 228; and Appendix III: Celal Çürek, § 454; and Hasan Yeşilyurt, § 492.

<sup>29</sup> See Appendix III: Mehmet Özkan, § 13; Fahrettin Özkan, § 27; Hediye Çetin, § 41; Hediye Demir, § 52; Salih Demir, § 63; Kumri Aslan, § 81; Mehmet Aslan, § 97; Abdullah Elçiçek, § 127; İbrahim Kaya, § 140; Besna Ekin, § 181; İbrahim Ekin, § 192; Tayibet Kurt, § 205; Mehmet Sezgin, § 216; Asiye Aslan, § 228; Resul Aslan, § 242; Rahim Arslan, § 273; Ali Özkan, § 283; Ayşe Ekinci, § 304; Fatım Özkan, § 320; Abdurrahman Çetin, § 331; Şükrü Yıldırım, § 344; Hatice Erbek, § 359; Raife Çetin, § 375; Mehmet Nuri Özkan, § 387; Fatma Yıldırım, § 407; Zeynep Yıldırım, § 416; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 435.

the Government, most of these witnesses' evidence was based on the instructions of their representatives and it was apparent from the stereotyped character of the testimonies of the applicants and their witnesses that they had acted as a group, and had been instructed to blame the security forces and to absolve the terrorists of any wrongdoing.

96. The Court considers that, although evidence given by a party in proceedings before the Court must be assessed with care, consistency in various statements about the same event does not necessarily imply that such statements should be regarded as unreliable for having been deliberately co-ordinated or based on instructions. As in the case of all evidence the credibility of evidence given by a party must be assessed in conjunction with other evidence, including documentary evidence.

97. As regards the events of 20 February 1993 in Ormaniçi, the Court's assessment of the principal elements of the evidence given by the applicants and the other villager witnesses is generally positive. In so far as specific details of individual accounts do not tally with other evidence, the Court considers that this might be explained by an attempt to recall details of events that had taken place more than five years ago, by the difficulty of some witnesses in distinguishing with certainty between events witnessed personally and learned through hearsay, and, in some cases, by a degree of exaggeration deriving from a wish to present an individual account as favourable as possible or from apparent feelings of anger, frustration and helplessness. However, the Court cannot find that such differences as to certain details materially undermine the general credibility and reliability of the accounts given by the applicants and the other villager witnesses, although certain elements in their evidence should be assessed with caution where allegations are contradicted by other evidence.

98. As to the evidence given by the gendarme commando commander in charge of the operation, Celal Çürek, and the commander of the 1<sup>st</sup> gendarme commando team, Hasan Yeşilyurt, in respect of the events of 20 February 1993, the Court finds both accounts professional, convincing and reliable in so far as they relate to general issues and, as regards the operation itself, the manner in which it was conducted. The Court is, however, less convinced by their accounts as to specific details of the security forces' activities on 20 February 1993 once these forces had arrived in the village. On a number of points, their descriptions of certain details are not convincing in that they are either contradicted by other evidence or defy logic. The Court therefore considers that the evidence given by Celal Çürek and Hasan Yeşilyurt as to the security forces' activities in the village itself is to be assessed with caution.

99. The Court notes that nearly all the villagers testified that, when the firing started, they and their families were at home, either still sleeping or having just woken up. Most of them were preparing for morning prayer either at home or were on their way to the village mosque for that purpose.

Apart from Hüseyin Sezgin, Hamit Ekin, Ahmet Erbek and Ramazan Yıldırım, who were not in the village at that time<sup>30</sup>, it appears that those who were outside their houses at that moment immediately returned to their homes<sup>31</sup>. It transpires from the evidence of villager witnesses that they sheltered inside their homes during the shooting. As to the testimony of Salih Demir that, once the soldiers had started shooting, he had gone outside and had asked them why they were shooting<sup>32</sup>, the Court considers that this is highly unlikely and, therefore, cannot be relied upon.

100. The Court further notes that, once the security forces were in control of Ormaniçi, an immediate search of the village resulted in the finding of, *inter alia*, one Kalashnikov rifle and nine empty cartridges between the mosque and the toilet, and two Kalashnikov rifles and 26 empty cartridges in front of the house of Ahmet Arslan<sup>33</sup>. Celal Çürek stated that the empty cartridges found near the house had melted in the snow, thus indicating that they had been fired shortly before<sup>34</sup>.

101. Subsequent forensic ballistics examinations found that 34 out of these 35 empty cartridges were identifiable and that these 34 cartridges had in fact been fired from the three rifles found in the village on 20 February 1993 and not from the weapons found in Ormaniçi on later dates<sup>35</sup>.

102. Furthermore, in view of the evidence given by Resul Aslan, who declared that possession of weapons by civilians was a common phenomenon in the region and that, had he resided permanently in Ormaniçi, he would have acquired a weapon<sup>36</sup>, the Court concludes that certain Ormaniçi residents did in fact own weapons and that, therefore, the evidence of Zeynep Yıldırım and Rukiye Erbek<sup>37</sup> that nobody in Ormaniçi had firearms<sup>38</sup> cannot be relied upon.

103. As to the question whether shots had been fired from the village at the approaching security forces, Hasan Yeşilyurt explained that, when security forces came under enemy fire, their tactical response would be to open sustained intensive fire in order to break the enemy's fire power and, if need be, to repeat firing of that magnitude<sup>39</sup>. This evidence is supported by the detailed list of ammunition used in the operation as recorded in the Operation Result Report<sup>40</sup>, as well as by the evidence of Celal Çürek, who

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<sup>30</sup> See Appendix III: §§ 164, 264, 295 and 407.

<sup>31</sup> See Appendix III: İbrahim Kaya, § 140; İbrahim Ekin, § 192; Mehmet Nuri Özkan, § 387; and Zeynep Yıldırım, § 416.

<sup>32</sup> See Appendix III: § 63.

<sup>33</sup> See Appendix II: §§ 151, 159 and 167.

<sup>34</sup> See Appendix III: § 463.

<sup>35</sup> See Appendix II: § 242.

<sup>36</sup> See Appendix III: § 240.

<sup>37</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

<sup>38</sup> See Appendix III: §§ 416 and 435.

<sup>39</sup> See Appendix III: § 494.

<sup>40</sup> See Appendix II: § 161.

stated that the RPG-7 missiles and the various grenades used had been targeted at believed points of fire<sup>41</sup>.

104. As apparently all the villagers present in Ormaniçi had been near to or inside their homes when the firing started and had sheltered inside their houses during the firing, the Court considers it unlikely that the villagers would have been able to make a clear distinction in the undoubtedly deafening noise of the intensive firing between shots fired at the village and shots fired from the village. On the basis of the evidence before it, the Court finds it plausible that, after the 2<sup>nd</sup> Commando Team had fired two warning shots, some shots were fired at the security forces from the village, which in turn were responded to by massive firing from the side of the security forces.

105. However, in the absence of any evidence to the contrary, the Court also finds it established that on 20 February 1993 not more than 35 shots were fired from the village and that these shots were fired from the three rifles found in Ormaniçi on that day. This finding does not, however, imply that all 35 shots were in fact fired during the initial intensive firing. As it appears that the security forces responded more than once to shots fired from the village, the Court considers it likely that in fact fewer than 35 shots were fired from the village during the initial exchange of fire and that some shots from the village were fired at later stages of the security forces' approach to Ormaniçi.

106. Different accounts were given as to the duration of the initial intensive shooting, varying from about 30 minutes<sup>42</sup> or one to two hours<sup>43</sup> to two to three hours<sup>44</sup>. Referring to its finding that in any event not more than 35 shots were fired from the village on 20 February 1993 and that the initial shots fired from the village were met by intensive firing from the security forces, the Court considers it highly unlikely that the initial intensive firing would have lasted longer than one hour.

107. It transpires from the Observation and Establishment Report, the gendarme sketch maps and the evidence given by Celal Çürek and Hasan Yeşilyurt that, after the intensive firing had stopped, the security forces pursued their approach to Ormaniçi and that during this approach further intermittent exchanges of fire occurred. It also appears from this evidence that the 1<sup>st</sup> and 3<sup>rd</sup> commando teams were the first to enter Ormaniçi from

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<sup>41</sup> See Appendix III: § 455.

<sup>42</sup> See Appendix III: Fahrettin Özkan, § 27; Hediye Çetin, § 41; Tayibet Kurt, § 205; Fatım Özkan, § 320; Fatma Yıldırım, § 407; and Zeynep Yıldırım, § 416.

<sup>43</sup> See Appendix III: Mehmet Aslan, § 97; Besna Ekin, § 181; Mehmet Sezgin, § 217; Raife Çetin, § 375; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads "Fatma Erbek"), § 435.

<sup>44</sup> See Appendix III: İbrahim Ekin, § 193; Resul Aslan, § 243; Celal Çürek, § 456; and Hasan Yeşilyurt, § 493.

the north-western side and that these two teams, at around 9 a.m., started their systematic search of the houses in the village from that side<sup>45</sup>.

108. Although the Court accepts that, while the security forces were taking control of Ormaniçi, some occasional shots may have been fired at them, it finds, in the light of the testimony of Celal Çürek and Hasan Yeşilyurt in relation to the duration of the clash, the time of the security forces' arrival in Ormaniçi and the time of the start of the systematic search in Ormaniçi, that the information recorded in the various gendarme reports on the operation to the effect that the clash had lasted until 2 p.m.<sup>46</sup> cannot be relied upon.

**The security forces' arrival and initial activities in Ormaniçi and the wounding of Abide Ekin**

109. According to the testimony of Mehmet Aslan, his house<sup>47</sup> was the first one reached by the soldiers in Ormaniçi on 20 February 1993. As ordered by the soldiers, he had left his house via a back window and had then been frisked. At that moment, a soldier had told the commander present that someone had fired shots from a nearby house and that he had just thrown a rifle grenade into that house to silence the weapon. The house indicated was that of Mevlüde Ekin<sup>48</sup>. The commander had ordered him [Mehmet Aslan] to tell the persons in that house to come out and to assist in the subsequent search of that house. After having called them, Mevlüde and her two children Halime and Abdullah had come out. Mevlüde had been carrying her third child, Abide, who had been injured; her intestines had been hanging out. He had told Mevlüde to take Abide to his house and to wait there. He himself had been ordered to take the soldiers into Mevlüde Ekin's house<sup>49</sup>.

110. Mevlüde Ekin's house, the back of which faces the cemetery, lies in the vicinity of the houses of Mehmet Aslan, Hüseyin Sezgin and Hacı Ekin<sup>50</sup>. Mevlüde Ekin gave evidence that, when the intensive firing had just started, a bomb had been thrown through the window of the bedroom situated on the second floor of her house, where it had exploded. She stated that the bomb had been thrown through the window facing the nearby house of her brother-in-law İbrahim Ekin<sup>51</sup>. The explosion had seriously injured her daughter Abide. She had carried Abide in her arms to the house of her neighbours Mehmet and Kumri Aslan, where she and Kumri had bandaged

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<sup>45</sup> See Appendix II: § 165-166; Appendix III: Celal Çürek, §§ 456-457; and Hasan Yeşilyurt, §§ 493 and 495.

<sup>46</sup> See Appendix II: §§ 150, 157 and 166.

<sup>47</sup> See Appendix II: § 152, No. 7 on this sketch map.

<sup>48</sup> See Appendix II: § 152, No. 8 on this sketch map.

<sup>49</sup> See Appendix III: §§ 98-99.

<sup>50</sup> See Appendix II: § 152, Nos. 7, 9 and 10 on this sketch map.

<sup>51</sup> See Appendix II: § 152, No. 11 on this sketch map.

Abide's wound with a piece of cloth<sup>52</sup>. Mevlüde Ekin did not mention the presence of any soldiers at that point in time.

111. Kumri Aslan stated that, shortly after the soldiers' arrival, Mevlüde had brought Abide to her house and had told her that Abide had been wounded by a bomb that had been thrown into her house about ten minutes after the raid had started<sup>53</sup>.

112. Hasan Yeşilyurt declared that it had been reported by soldiers – he thought by radio during the initial intensive firing – that shots had been fired from Mevlüde Ekin's house, but denied that any explosive device had been thrown into that house. Once the soldiers had arrived in the village, it had been easy to approach the house since at that point in time no shots were being fired from there. Whilst approaching that house, Mehmet Aslan and some women had climbed out of the window of an adjoining house. Mehmet Aslan, Private Servet Uslu and himself had then gone to Mevlüde Ekin's house. He did not remember exactly how many persons had come out of the house, but he recalled seeing one man and at least one woman. He did not remember having seen or heard about an injured child in Ormaniçi on 20 February 1993<sup>54</sup>. Also, Celal Çürek testified that to his knowledge no missiles or grenades had been fired at any houses in Ormaniçi and that he had not seen or heard about any injured child<sup>55</sup>.

113. The Court notes that it is not disputed that Abide was injured by an explosive device fired during the initial clash and that she died of her injuries some days later.

114. According to Mevlüde Ekin's evidence, the grenade that injured Abide had been fired from the direction of İbrahim Ekin's house. This house is located south of Mevlüde Ekin's house and in the vicinity of the mosque<sup>56</sup>. On 20 February 1993 one Kalashnikov rifle, a cartridge clip and nine empty cartridges were found in the vicinity of the mosque. The other two rifles and ammunition (i.e. cartridges, clip holders, belts and four hand grenades) were found in front of Ahmet Arslan's house<sup>57</sup>. There is no evidence that, apart from those cartridges and the four hand grenades, any other kind of ammunition was used by villagers against the security forces.

115. Although no definite findings on this point can be made on the basis of the evidence available, as the gendarme sketch maps contain no indication of scale and – when compared with the photographs taken by the Siirt public prosecutor on 10 August 1994<sup>58</sup> – only appear to give an overall schematic indication of the location of houses in Ormaniçi, the Court finds

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<sup>52</sup> See Appendix III: §§ 169-170.

<sup>53</sup> See Appendix III: § 82.

<sup>54</sup> See Appendix III: §§ 496-498.

<sup>55</sup> See Appendix III: §§ 455, 460 and 465.

<sup>56</sup> See Appendix II: § 152, No. 11 on this sketch map.

<sup>57</sup> See Appendix II: § 152, No. 28 on this sketch map, and §§ 153 and 167.

<sup>58</sup> See Appendix II: §§ 293-294.

it unlikely – on the basis of an overall assessment of the respective distances as apparent from the photographs and sketch maps – that a hand grenade thrown from either the mosque or Ahmet Arslan's house would be able to reach the second floor of Mevlüde Ekin's house.

116. Although Mehmet Aslan's evidence as to the time when the grenade was thrown appears to be incorrect, the Court cannot exclude the possibility that, when he overheard a soldier telling Hasan Yeşilyurt – without giving any indication of the time – that shots had been fired from the house of Mevlüde Ekin and that a grenade had been fired at it, Mehmet Aslan interpreted this as having just happened.

117. On the basis of the above considerations, the Court finds it plausible that the security forces who approached Ormaniçi from the south, shortly after the initial intensive firing had started and believing that shots had been fired from that house, fired a rifle or other grenade at a window in Mevlüde Ekin's house, causing an explosion which seriously injured Abide Ekin. As to the question when Mevlüde Ekin brought her injured daughter to the house of Mehmet and Kumri Aslan, the Court considers it highly unlikely that this would have happened during the various rounds of firing at the village when the security forces were approaching Ormaniçi. The Court accepts as plausible the accounts of Mehmet and Kumri Aslan that Mevlüde Ekin brought Abide to their house when the soldiers first entered the village. As Mevlüde Ekin must have been profoundly shocked at that point in time, the Court cannot exclude the possibility that her sole concern was for her injured daughter and that she failed to notice the presence of anyone else but Mehmet and Kumri Aslan.

118. Given the nature of Abide's injury, which at that moment had only cursorily been attended to and was thus likely to be visible, the Court finds it difficult to accept that none of the soldiers present when Mevlüde left her house, carrying the wounded Abide in her arms, noticed the fact that the child was injured. It does, however, appear that none of the soldiers present paid any attention to the physical condition of Abide at that moment and that, consequently, Hasan Yeşilyurt and Celal Çürek remained unaware of the fact that a child had been injured.

#### **The killing of Private Servet Uslu in Mevlüde Ekin's house**

119. As regards the manner in which the gendarme Private Servet Uslu was killed in the course of the first house search carried out in Ormaniçi, the accounts of Mehmet Aslan and Hasan Yeşilyurt, who were both present, are identical. They both described how, whilst searching a shelf above a small window in a bedroom on the second floor of the house, the gendarme Private Servet Uslu had been fatally injured in the chest by a shot fired from outside. Their accounts are contradictory as to the subsequent events.

120. Mehmet Aslan testified that he had been standing right next to Servet Uslu when the latter was hit. He had immediately looked out of the window and had seen one kneeling soldier pointing his rifle at the window. He had then shouted at the commander present in the room, telling him that Servet Uslu had been hit by another soldier. The commander had replied that soldiers did not shoot other soldiers and had then beaten him unconscious. Mehmet Aslan believed that the soldier outside must have intended to shoot him. He explained that the bookshelf had been covered by a curtain, which – at Servet Uslu's request – he had opened and held. As he had been dressed in local clothes and had been visible in the window of a house from where it was believed that shots had been fired at the security forces, he thought that the soldier had sought to shoot this civilian, believing him to be a terrorist<sup>59</sup>.

121. Hasan Yeşilyurt also testified that he had immediately looked out of the window after Servet Uslu had been hit. He had seen nobody, but there had been houses at a distance of about 30-40 metres. He had seen no soldiers outside in the area from where the shot had been fired. He denied that Mehmet Aslan had looked out of the window. He had then called Celal Çürek, who had been on the ground floor of Mevlüde Ekin's house. Celal Çürek had ordered him to take Servet Uslu's body up to a place in the vicinity of the village and to wait there for the arrival of a helicopter that would be asked for by Celal Çürek. He had never heard any allegation that Servet Uslu had been killed by mistake by a soldier. Although he admitted that it had sometimes happened that soldiers had accidentally shot other soldiers, he considered it impossible that Servet Uslu had been killed by a shot fired by a soldier. In his opinion, Servet Uslu had been killed by a single shot fired by a terrorist<sup>60</sup>.

122. Celal Çürek confirmed that he had been on the ground floor in Mevlüde Ekin's house when Servet Uslu had been shot. After that had happened, he had gone upstairs. Hasan Yeşilyurt and Mehmet Aslan had been upstairs. He had also looked out of the window, which had faced the mosque. There had been houses at a distance of about 80-100 metres from where the shot could have been fired. That area had not yet been secured by the security forces. He denied that Mehmet Aslan had told him at that moment that the shot had been fired by a soldier. Although he did not consider it impossible that Mehmet Aslan had looked out of the window during the time it had taken him to go upstairs, he dismissed as untenable Mehmet Aslan's claim that he had seen a soldier pointing his gun at the window. He explained that a soldier would never turn his back to an unsecured area<sup>61</sup>.

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<sup>59</sup> See Appendix III: §§ 101-102.

<sup>60</sup> See Appendix III: §§ 499-500.

<sup>61</sup> See Appendix III: §§ 457-459.

123. The Court accepts as convincing Celal Çürek's statement that a soldier would never turn his back on an unsecured area and that, at that point in time the gendarmes had not yet secured the part of the village from where the shot was fired. On the basis of the gendarme sketch maps and the photographs of Ormaniçi submitted, the Court further considers that the possibility cannot be excluded that the shot that killed Servet Uslu was in fact fired from either one of the two places where, on 20 February 1993, weapons and empty cartridges were found, i.e. the mosque and in front of Ahmet Arslan's house.

124. On the other hand, the Court finds it difficult to believe that security forces would enter a house to carry out a search when the immediate area around it had not been secured. It therefore has doubts as to Hasan Yeşilyurt's evidence that he had not seen any soldiers when he looked outside. Moreover, the Court considers it unlikely that a terrorist, after having hit a soldier standing in front of a window with his first shot, would not have fired a further shot at another soldier appearing at that window directly afterwards. The Court is not convinced by Hasan Yeşilyurt's theory on this point.

125. Although Mehmet Aslan's account that Servet Uslu was accidentally killed by another soldier cannot be discarded as untenable, it is not supported by any other evidence. As to the testimony of the villager witness Abdurrahman Çetin that, whilst on his way to the village square where soldiers were taking villagers, he had seen a soldier aiming his weapon at a window in Mevlüde Ekin's house and that, after having heard a shot, he had heard someone shouting in Turkish in Mevlüde Ekin's house "What are you doing, you fool? You have shot your friend!"<sup>62</sup>, the Court notes that all the evidence indicates that the security forces had not yet started to take villagers to the village square when Servet Uslu was shot. As it further appears from the verbatim records that this witness was hard of hearing, the Court has serious doubts as to the reliability of this part of Abdurrahman Çetin's testimony.

126. The Court does not, however, doubt that the subsequent conduct of the security forces in Ormaniçi was affected by the fact that one of them had been killed by a person believed to be one of the villagers.

**The villagers' gathering and treatment by the security forces in the village square**

127. All the applicants and villager witnesses who were in Ormaniçi on 20 February 1993 testified that on that day the security forces had systematically gone to all the houses in Ormaniçi, assembled all the persons they found in the village square next to Mevlüde Ekin's house and the cemetery, and kept the villagers there until the late afternoon. All the men

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<sup>62</sup> See Appendix III: §§ 332-333.

were forced to lie face down on the ground, which was a mixture of snow and mud, near to the cemetery wall. The women and children were separated from the men and kept in a different place in the square. In so far as they mentioned the incident and with certain differences in their individual accounts as to details, most of the villager witnesses declared that the men had occasionally been beaten, kicked and trampled on by the soldiers guarding them in the village square and that, in the course of the day, the men had been tied and blindfolded.

128. Celal Çürek confirmed that he had ordered every house in Ormaniçi to be searched and all persons found in them to be assembled. He further stated that the search had been completed around noon and that only 8-12 men had been handcuffed and made to lie face down on the ground in the village square. These men had been caught with weapons or had looked suspicious. He had later ordered these men to stand up. He further denied that soldiers in the square had stepped on, kicked or hit any of the men who had been made to lie down<sup>63</sup>. Hasan Yeşilyurt denied that all the male villagers had been made to lie face down in the village square. He had only seen five or six men in that position and only the hands of those men were tied<sup>64</sup>.

129. On the basis of the evidence before it, the Court finds it established that by noon all the villagers had been taken to the village square, where the women, children and some old men had been separated from the adolescent and adult male villagers, and that all the villagers had been held there while the security forces continued their searches of the houses in the village during the afternoon, with the assistance of the reinforcement troops which had arrived in the meantime from Fındık, Akdizgin and Güçlükönak. As to Abdurrahman Çetin's account that he had gone to the village square, had been sent back home by a soldier, and had gone home after having performed his midday prayers in the village mosque<sup>65</sup>, the Court considers that this is a highly unlikely course of events and that, therefore, this part of his evidence cannot be relied upon.

130. It is undisputed that Celal Çürek ordered Hasan Yeşilyurt and two other soldiers to bring the body of Servet Uslu to a place outside the village and to wait there for a helicopter that would transport the body to Şırnak, and that Hasan Yeşilyurt stayed there until the helicopter had arrived<sup>66</sup>. It can further be concluded from the report on the post-mortem examination of Servet Uslu that this helicopter arrived in Ormaniçi at some time between 3 and 4.40 p.m.<sup>67</sup>. It is equally not in dispute that already, at about 2 p.m., a

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<sup>63</sup> See Appendix III: §§ 457 and 464.

<sup>64</sup> See Appendix III: § 502.

<sup>65</sup> See Appendix III: 333-334.

<sup>66</sup> See Appendix III: § 502, see also Hatice Erbek, §§ 360-361.

<sup>67</sup> See Appendix II: § 171.

PKK “confessor”<sup>68</sup> named Osman Ayan had arrived by helicopter in Ormaniçi, where he identified ten of the villagers held in the square as persons having links with the PKK<sup>69</sup>.

131. As to the number of male villagers who were forced to lie face down in the village square, the Court observes that it was not until 2 p.m. that a number of villagers were identified by Osman Ayan as having links with the PKK and that Hasan Yeşilyurt was not in the village square when the villagers were being held there. He had left the village at the beginning of the security forces' search of Ormaniçi and the assembling of villagers in the square and did not arrive in the square until about 30 minutes before the security forces' departure from the village<sup>70</sup>, and therefore can only have seen what took place in the village square during that half hour and not what occurred there during the preceding hours.

132. As to Celal Çürek's testimony on this point, the Court notes that, according to information set out in the gendarme sketch maps, only three villagers – Zeki Çetin, Ali Erbek and Şehabettin Erbek – were apprehended near the places where the three weapons were found on 20 February 1993<sup>71</sup>. In these circumstances, the Court considers it unlikely that, before the arrival of Osman Ayan at 2 p.m., the security forces would have been able to clearly identify and single out a further 5-9 villagers as being particularly suspect.

133. Referring to its above finding that the conduct of the security forces in Ormaniçi must have been affected by the fact that one of them had been killed by a person believed to be one of the villagers<sup>72</sup>, the Court accepts that it has been sufficiently established that all the adolescent and adult male villagers – with the exception of old men – were made to lie face down on the ground, a mixture of mud and slush, in the village square. It has further found no reason to doubt the villagers' evidence that these men were occasionally beaten, kicked and trampled on by the soldiers guarding them in the square.

134. As regards Abide Ekin, the Court notes that Mevlüde Ekin testified that Abide's intestines had been ripped out by fragments of the explosive thrown inside her house and that she and Kumri Aslan had bandaged Abide's wound with a piece of cloth<sup>73</sup>. Sixteen villagers claimed to have

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<sup>68</sup> The Turkish word “*İtirafçı*” is a term comparable to the notion of “*pentiti*” in Italian; namely a defected member of an illegal organisation who provides the authorities with information about that organisation.

<sup>69</sup> See Appendix III: Hediye Demir, § 56; Asiye Aslan, § 231; Resul Aslan, § 246; Raife Çetin, § 378; Mehmet Nuri Özkan, § 391; Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 439; and Celal Çürek, §§ 466-467; see also Appendix II: §§ 150 and 157.

<sup>70</sup> See Appendix III: §§ 502 and 504.

<sup>71</sup> See Appendix II: §§ 152-153.

<sup>72</sup> See § 126.

<sup>73</sup> See Appendix III: §§ 169-170.

seen Abide's injuries in the course of that day<sup>74</sup>. Most of them testified that Abide's intestines had come out of her belly and that this injury must have been noticed by the soldiers. The villagers Asiye Aslan and Ayşe Sezgin testified that, out of fear, nobody had asked the soldiers to help Abide<sup>75</sup>. Although Rukiye Erbek<sup>76</sup> confirmed that Mevlüde Ekin had not asked the soldiers for help, she also declared that Mevlüde Ekin had shown her daughter's injury several times to the soldiers<sup>77</sup>. Mevlüde Ekin herself did not mention this in her evidence.

135. In the light of the evidence on this point, the Court accepts that Abide Ekin was injured in her abdomen and finds it conceivable that, as a result of this injury, her intestines may have been visible and possibly have partially come out of her abdominal cavity. On the other hand, there is no evidence that she was heavily bleeding, which indicates that no major arteries were severed. Moreover, as testified by her mother and a number of other women, Abide died after three days, which appears to indicate that she did not die of an immediate loss of blood or the injury itself, but of a different cause likely to be directly linked to her injury.

136. The Court finds it established that, after having gone to the house of Mehmet and Kumri Aslan, Mevlüde Ekin and Kumri Aslan provisionally bandaged Abide's injury and that, in the village square, Mevlüde Ekin kept her hand over this injury in order to attempt to keep the intestines in place.

137. Although the Court considers it sufficiently plausible that Mevlüde Ekin did tell some of the other women in the square what had happened to Abide, it cannot exclude the possibility that these women did not in fact see Abide's concealed injury in the village square, but only saw it at some later point in time. The Court further considers it highly likely that, out of fear, Mevlüde Ekin and the other women kept a passive profile in the village square, that they did not draw the security forces' attention to the fact that Abide was injured, and that in the commotion in the village square the security forces did not notice the fact that Abide was injured, which explains why Celal Çürek remained unaware of the fact that a young child had been injured<sup>78</sup>.

138. However, the Court also finds it established that the security forces, once all the villagers were assembled in the square, failed to verify whether there were any casualties amongst the villagers, which was a realistic

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<sup>74</sup> See Appendix III: Hediye Çetin, § 44; Hediye Demir, § 55; Kumri Aslan, §§ 82 and 85; Mehmet Aslan, § 99; Besna Ekin, § 184; Tayibet Kurt, § 207; Asiye Aslan, § 231; Rahim Arslan, § 275; Ali Özkan, § 284; Ayşe Ekinci, § 309; Fatım Özkan, § 323; Hatice Erbek, § 363; Raife Çetin, § 377; Zeynep Yıldırım, § 418; Ayşe Sezgin, § 425; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 438.

<sup>75</sup> See Appendix III: Asiye Aslan, § 231; and Ayşe Sezgin, § 425.

<sup>76</sup> Rectified on 1 March 2005. The previous version reads “Fatma Erbek”.

<sup>77</sup> See Appendix III: Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 438.

<sup>78</sup> See Appendix III: Celal Çürek, § 460.

possibility having regard to the amount and nature of ammunition used by the security forces. It finally observes that it is not disputed that Abide Ekin died of her injuries three days later.

**The burning of houses in Ormaniçi on 20 February 1993**

139. Twenty-one villagers testified that on 20 February 1993 they had seen soldiers deliberately setting fire to houses in Ormaniçi, including the houses of Mevlüde Ekin and/or Mehmet Aslan<sup>79</sup>. Most of them described an incendiary device used by the soldiers when setting fire to houses. Fifteen villagers stated that their own houses had burned on that day<sup>80</sup>, whereas five villager witnesses testified that their own houses had not been burned<sup>81</sup>. Ten male villagers stated that, whilst they were lying face down in the village square, they had noticed that houses – or at least the nearby house of Mevlüde Ekin – were on fire as they could smell burning and/or felt sparks falling on or near to them<sup>82</sup>.

140. The security forces' commander, Celal Çürek, denied that soldiers had deliberately set fire to houses in Ormaniçi or that he had ever seen or heard about the incendiary device described by some of the villager witnesses. He did confirm that, when he had entered Ormaniçi, he had seen that five or six houses or stables near to the mosque were burning but, as the security forces had not yet secured that area of the village, it would have been impossible for the soldiers to have deliberately set fire to those houses. In his opinion these buildings had either been set on fire by the terrorists or had caught fire during the cross-fire, possibly as a consequence of the use of tracer bullets<sup>83</sup>. Hasan Yeşilyurt also denied that soldiers had deliberately set houses on fire<sup>84</sup>.

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<sup>79</sup> See Appendix III: Fahrettin Özkan, § 28; Hediye Çetin, § 43; Hediye Demir, § 54; Kumri Aslan, § 84; Mevlüde Ekin, § 172; Besna Ekin, § 183; Tayibet Kurt, § 207; Asiye Aslan, § 229; Rahim Arslan, § 274; Ali Özkan, § 285; Ayşe Ekinci, § 306; Fatım Özkan, § 322; Abdurrahman Çetin, § 334; Şükrü Yıldırım, § 345; Hatice Erbek, § 364; Raife Çetin, § 376; Mehmet Nuri Özkan, § 389; Fatma Yıldırım, § 408; Zeynep Yıldırım, § 418; Ayşe Sezgin, § 426; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”) § 437.

<sup>80</sup> See Appendix III: Kumri Aslan, § 84; Mevlüde Ekin, § 172; Besna Ekin, § 185; Tayibet Kurt, § 209; Asiye Aslan, § 232; Rahim Arslan, § 276; Ali Özkan, § 287; Ayşe Ekinci, § 306; Fatım Özkan, § 322; Abdurrahman Çetin, § 334; Şükrü Yıldırım, § 345; Hatice Erbek, § 366; Fatma Yıldırım, § 409; Ayşe Sezgin, § 427; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads “Fatma Erbek”), § 440.

<sup>81</sup> See Appendix III: Ahmet Özkan, § 7; Hediye Çetin, § 46; Hediye Demir, § 57; Raife Çetin, § 376; and Zeynep Yıldırım, § 418.

<sup>82</sup> See Appendix III: Mehmet Özkan, § 13; Salih Demir, § 65; Mehmet Aslan, § 104; Abdullah Elçiçek, § 127; İbrahim Kaya, § 141; İbrahim Ekin, § 193; Mehmet Sezgin, § 217; Resul Aslan, § 245; Şükrü Yıldırım, § 346; and Mehmet Nuri Özkan, § 390.

<sup>83</sup> See Appendix III: §§ 461-462.

<sup>84</sup> See Appendix III: § 503.

141. It is recorded in the Observation and Establishment Report in the Location of 20 February 1993 that six or seven houses in Ormaniçi had caught fire as a result of the firing of various kinds of grenades by the security forces<sup>85</sup>. In the report on the on-site inspection in Ormaniçi carried out by the Siirt public prosecutor, Mustafa Taşkafa, on 10 August 1994 it is recorded that thirteen houses in Ormaniçi were damaged on 20 February 1993<sup>86</sup>. With the exception of Rahim Arslan's house, it is recorded in respect of each of the thirteen damaged houses that the wooden structure supporting the roof had burned. Apart from Hamit Ekinci's house – which is not indicated at all – those burned houses are also recorded on the sketch map drawn up by Haydar Sultan, the civil engineer who accompanied Mustafa Taşkafa on the on-site inspection<sup>87</sup>.

142. The Court has noted a number of discrepancies between the sketch map drawn by Haydar Sultan and the gendarme sketch map signed by Celal Çürek<sup>88</sup>. According to the latter map, the houses of Cemal Sezgin<sup>89</sup> and Ayşe Sezgin are attached to each other, whereas on the former map, these houses are separate buildings with the house of Rahim Arslan located between them. According to Haydar Sultan's sketch map, Abdullah Kurt's house is located in the centre of the village, whereas on the gendarme sketch map his house is located on the northern edge of the village. According to the gendarme sketch map, there is no building between the houses of Mevlüde Ekin and Besna Ekin, whereas on Haydar Sultan's sketch map the house of Asiye Aslan is located between those two houses. According to the gendarme sketch map, the house of Ramazan and Fatma Yıldırım is located on the north-eastern edge of the village and attached to the house of Zeynep Yıldırım, whereas on Haydar Sultan's sketch map Ramazan and Fatma Yıldırım each have a house located respectively on the south-eastern and south-western edge of the village. Finally, the houses of the applicants Hamit Ekinci, Mahmut Güler, Şükrü Yıldırım, Hatice Erbek, Raife Çetin, Fatma Özkan, Zeynep Yıldırım and Halime Ekin as well as the village mosque are not indicated on the sketch map produced by Haydar Sultan.

143. The Court therefore considers that the probative value of both sketch maps as to the exact location of the villagers' houses is rather limited. What can, however, be established on the basis of these sketch maps is that the houses which have been recorded as having burned on 20 February 1993 are not solely located in the vicinity of the mosque, as stated by Celal

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<sup>85</sup> See Appendix II: § 170; see also Appendix III: Celal Çürek, § 465.

<sup>86</sup> See Appendix II: §§ 290-292, namely the houses of Mehmet Emin Demir, Kumri Aslan, Hüseyin Sezgin, Mevlüde Ekin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin.

<sup>87</sup> See Appendix II: §§ 292 and 296, as well as § 296.

<sup>88</sup> See Appendix II: §§ 152 and 296.

<sup>89</sup> In whose house also his son Mehmet Sezgin (applicant no. 14) was living; see Appendix III: § 599.

Çürek, but are located in various places in the village and that the houses of Mevlüde Ekin and Mehmet Aslan are located close to each other at the northern entrance to the village and that there is no building between these two houses.

144. In so far as Celal Çürek testified that houses in the village had caught fire as a result of the use of tracer bullets, the Court notes that, unlike the detailed list of used ammunition as set out in the End of Operation Report on the gendarme operation carried out on 5 June 1994 in the Ormaniçi area<sup>90</sup>, the equally detailed list of used ammunition as set out in the Operation Result Report dated 20 February 1993<sup>91</sup> does not make specific mention of any tracer bullets. Furthermore, it does not appear that there were any tracer bullets among the ammunition found in Ormaniçi on 20 February 1993. The Court therefore doubts that such bullets were in fact used on 20 February 1993 and finds that the evidence given by Celal Çürek as to the alleged cause of these fires must be assessed with caution.

145. On the other hand, the Court does not rule out the possibility that a number of houses near the mosque caught fire as a result of the heavy ammunition used by the security forces on 20 February 1993 in the course of several rounds of intensive firing during their approach to Ormaniçi. However, as the intensive firing had ended when the security forces entered Ormaniçi at around 9 a.m., no explanation has become apparent for the houses in other parts of the village which are reported as having been damaged by fire on 20 February 1993.

146. In this connection the Court notes that neither Celal Çürek nor any of the other witnesses who were present near or in the houses of Mehmet Aslan and Mevlüde Ekin in the morning of 20 February 1993 at around 9 a.m. mentioned that fire had broken out in either one of these houses, whereas both houses are recorded in Mustafa Taşkafa's report on his on-site inspection as well as on the technical engineer's sketch map as having been damaged by fire on 20 February 1993. These two houses, which are located in the first area secured by the security forces on 20 February 1993, must therefore have caught fire at a later point in time on that day.

147. Also in the light of the fact that a private was killed in Mevlüde Ekin's house, a fact which, as already found above, must have had an effect on the manner in which the security forces acted, the Court accepts the veracity of the evidence that Mevlüde Ekin's house was deliberately set on fire by the security forces and was burning when the villagers were assembled in the village square. The Court considers it unlikely that Hasan Yeşilyurt would have been able to see whether or not this house had been set on fire by soldiers. He left the house shortly after Servet Uslu had been

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<sup>90</sup> See Appendix II: § 289.

<sup>91</sup> See Appendix II: § 161.

killed in order to take the latter's body outside the village and only returned to the village late in the afternoon.

148. In the absence of any plausible explanation other than that Mehmet Aslan's house must also have caught fire after the security forces had already entered and secured that part of Ormaniçi, the Court finds it established that this house was also deliberately set on fire by the security forces after the persons inside it had been taken outside.

149. As to the question whether other houses in Ormaniçi were also deliberately set on fire by the security forces, the Court considers that the evidence given by Celal Çürek and Hasan Yeşilyurt that this did not happen cannot be relied upon. Having found it established that the houses of Mevlüde Ekin and Mehmet Aslan were deliberately set on fire by the security forces, the Court cannot exclude the possibility that this in fact happened to more houses in the village, as testified to by a number of villagers whose evidence is supported by the reports on the on-site inspection carried out on 10 August 1994.

150. Although, in the absence of any conclusive evidence as to which houses caught fire as a result of firing and which as a result of deliberate acts of the security forces, the Court is unable to make any definite findings on this point, it does find it established, when assessing the oral evidence on this point in the light of the information set out in the Observation and Establishment Report in the Location of 20 February 1993 and the findings in the report on the on-site inspection on 10 August 1994, that in total thirteen houses were destroyed by fire as a result of the activities of the security forces on 20 February 1993, namely those of Mehmet Emin Demir, Kumri Aslan, Hüseyin Sezgin, Mevlüde Ekin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin. It does not find it sufficiently established that the houses of any of the other applicants were destroyed by fire on 20 February 1993.

#### **Further events in Ormaniçi in February 1993**

151. It appears from the evidence given by the villager witnesses who stayed in Ormaniçi after the security forces had left the village in the late afternoon of 20 February 1993 that they had spent the night of 20-21 February 1993 either in the mosque<sup>92</sup>, in nearby caves<sup>93</sup> or in their own homes<sup>94</sup>. They further gave evidence that on 21 February 1993 the

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<sup>92</sup> See Appendix III: Hediye Demir, § 57; Kumri Aslan, § 87; Mevlüde Ekin, § 172; Besna Ekin, § 185; Tayibet Kurt, § 209; Asiye Aslan, § 232; Rahim Arslan, § 276; Ayşe Ekinci, § 309; Fatım Özkan, § 324; Hatice Erbek, § 366; Fatma Yıldırım, § 409; Zeynep Yıldırım, § 419; Ayşe Sezgin, § 427; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads "Fatma Erbek"), § 440.

<sup>93</sup> See Appendix III: Ali Özkan, § 287; Abdurrahman Çetin, § 336; and Raife Çetin, § 379.

<sup>94</sup> See Appendix III: Ahmet Özkan, § 7; and Hediye Çetin, § 46.

security forces had returned to Ormaniçi, where they conducted further searches, killed further livestock and set fire to other houses, including the house and shop of [Feke] Ali and Hediye Çetin<sup>95</sup>.

152. According to the Location Indication and Destruction Report dated 21 February 1993, security forces were sent on that day from Şırnak to Ormaniçi to verify information given by Ali Erbek during his interrogation at the Şırnak provincial gendarmerie station about provisions intended for the PKK which were stored in Ali Çetin's house and the location of two shelters. It is further recorded in this report that the security forces found a stock of provisions in Ali Çetin's house and burned these stocks. The security forces also found and destroyed the shelters that had been indicated by Ali Erbek<sup>96</sup>.

153. The Court further understands from the Location Indication and Seizure Report dated 21 February 1993<sup>97</sup> that security forces were sent on that day from Şırnak to Ormaniçi to verify information given by Mehmet Nuri Özkan during his interrogation at the Şırnak provincial gendarmerie station about the hiding places of weapons belonging to himself and another villager. This report records the finding of two weapons, i.e. one Simonov rifle (serial no. 14102840) and a Bruno-Mauser rifle with Arabic characters in a place about one kilometre south-west of Ormaniçi.

154. As Mehmet Nuri Özkan did not mention anything in his oral evidence about having been taken back to Ormaniçi on the day after the operation and as the wording of the report is ambiguous on this point, the Court considers it doubtful that Mehmet Nuri Özkan was personally present when these two weapons were found by the security forces on 21 February 1993. The Court further finds it plausible that the verification of the information given by both Ali Erbek and Mehmet Nuri Özkan was in fact carried out by the same team of soldiers from Şırnak and that they set fire not only to the provisions found but also to the building in which they were found, namely the house and store of Ali and Hediye Çetin.

155. The Court further finds it established that these activities were carried out by security forces from Şırnak and that no military staff from Güçlükonak took part. It is clear from the evidence that the Şırnak provincial gendarmerie command reported the results of the security forces' activities in Ormaniçi on 21 February 1993 back to the Güçlükonak district gendarmerie command in order to complete the case file on the events of 20 February 1993, which was being compiled in Güçlükonak.

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<sup>95</sup> See Appendix III: Ali Özkan, § 8; Hediye Çetin, § 47; Hediye Demir, § 57; Kumri Aslan, § 88; Besna Ekin, § 185; Tayibet Kurt, § 209; Rahim Arslan, § 277; Ali Özkan, § 288; Fatım Özkan, § 324; Abdurrahman Çetin, § 336; Hatice Erbek, § 367; Raife Çetin, § 379; Fatma Yıldırım, § 409; Zeynep Yıldırım, § 419; Ayşe Sezgin, § 428; and Rukiye Erbek (Rectified on 1 March 2005. The previous version reads "Fatma Erbek"), § 440.

<sup>96</sup> See Appendix II: §§ 191-192.

<sup>97</sup> See Appendix II: §§ 193-194.

156. The Court notes from the Operation Result Report and the Location Indication Report, both dated 25 February 1993, that, on that day, two villagers detained in Şırnak – Hamit Demir and Mehmet Nuri Özkan – were taken from Şırnak to the Güçlükönak district gendarmerie station and that from there, together with three villagers detained in Güçlükönak – Resul Aslan, Abdullah Sezgin and İbrahim Özkan – they were taken by the security forces to Ormaniçi in order to indicate the hiding places of weapons<sup>98</sup>. It is clear from Celal Çürek's evidence that he participated in this operation<sup>99</sup>.

157. Upon indications given by İbrahim Özkan, Abdullah Sezgin and Mehmet Nuri Özkan, three Kalashnikov rifles (serial nos. KO-163195, 1980-WT-45639 and 75-5780), several rounds of ammunition and other items were found and seized in or near to the village<sup>100</sup>. Although this gendarmerie sketch map is not dated, the Court does not doubt that the respective locations where these weapons, ammunition and other items were found were those recorded on the gendarmerie sketch map, signed by Celal Çürek, which mentions the finding of weapons belonging to İbrahim Özkan, Mehmet Nuri Özkan and Abdullah Sezgin<sup>101</sup>.

158. In so far as Ahmet Özkan claimed in his oral evidence that his house had been set on fire when the security forces returned for a second time to Ormaniçi, the Court is of the opinion that this part of his evidence cannot be relied upon, as it has remained unsupported by the evidence given by other villager witnesses and as, according to the Exploration Report in the Location of 10 August 1994, his house was undamaged<sup>102</sup>.

159. It is not in dispute between the parties that a young boy, Ali Yıldırım, died some days after 20 February 1993 as the result of the explosion of a hand grenade which he had found and with which he was playing<sup>103</sup>.

160. As to the question whether this live grenade was accidentally left behind by the security forces after the operation of 20 February 1993, the Court notes on the one hand that, according to the list of ammunition used by the security forces on 20 February 1993, the security forces used ten hand grenades<sup>104</sup>. On the other hand, the Court notes that during the security forces' search of Ormaniçi on 20 February 1993, four hand grenades were found at the location where Şehabettin and Ali Erbek were reportedly apprehended by the security forces on 20 February 1993<sup>105</sup>, namely in the

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<sup>98</sup> See Appendix II: §§ 196-204.

<sup>99</sup> See Appendix III: § 483.

<sup>100</sup> See Appendix II: §§ 200-202.

<sup>101</sup> See Appendix II: § 154.

<sup>102</sup> See Appendix II: § 292 under no. 1.

<sup>103</sup> See Appendix II: Fatma Yıldırım, § 125; İbrahim Kaya, § 309; Ayşe Ekinci, § 314; Hatice Yıldırım, § 320; and Safiye Yıldırım, § 322; and Appendix III: İbrahim Kaya, § 158; and Fatma Yıldırım, § 409.

<sup>104</sup> See Appendix II: § 161.

<sup>105</sup> See Appendix II: §§ 151, 159 and 167.

direct vicinity of Ahmet Arslan's house, which – according to the gendarme sketch maps signed by Celal Çürek<sup>106</sup> – is attached to a stable. According to the Destruction Report dated 25 February 1993, these four hand grenades of foreign origin were destroyed by an explosion carried out by expert gendarmes from the Güçlükönak district gendarmerie command<sup>107</sup>. The Court also notes that, according to the statements taken by the Eruh public prosecutor on 10 August 1994 from Ali Yıldırım's sisters, Ali had found this hand grenade in a shed where wood was kept<sup>108</sup>.

161. In these circumstances, the Court considers that it cannot be established with sufficient certainty whether the hand grenade that killed Ali Yıldırım was left behind by the security forces or whether it in fact had a different origin.

**The taking into detention of the male Ormaniçi villagers on 20 February 1993**

162. The Court considers that it is clear from the evidence that, after Osman Ayan had identified a number of villagers as having links with the PKK, these villagers were taken to Şırnak by helicopter on 20 February 1993. In the late afternoon, all of the remaining male villagers held in the village square, with the exception of some old or sick men<sup>109</sup>, were taken on foot to Güçlükönak. It is further undisputed that these villagers' hands were tied and that the terrain – because of the rocks, mud and slush – was difficult and caused some of the men to slip or fall down<sup>110</sup>.

163. As to the question whether the men were blindfolded and tied together during their walk to Güçlükönak, the Court notes that most of the villager witnesses testified that the men were blindfolded while being held in the village square on 20 February 1993 and that twelve villager witnesses explicitly testified that the men had been both blindfolded and tied together when they were being taken on foot to Güçlükönak<sup>111</sup>.

164. Celal Çürek denied that the men had been blindfolded or tied together. He explained that this would have made it impossible for them to follow the narrow footpath to Güçlükönak and thus would only have delayed their arrival there which would have been undesirable for security

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<sup>106</sup> See Appendix II: §§ 152-153.

<sup>107</sup> See Appendix II: § 205.

<sup>108</sup> See Appendix II: §§ 320 and 322.

<sup>109</sup> See Appendix III: Ahmet Özkan, § 7; Ali Özkan, §§ 286-287; Abdurrahman Çetin, §§ 335-336; and Zeynep Yıldırım, § 419.

<sup>110</sup> See Appendix III: Mehmet Özkan, § 14; Fahrettin Özkan, § 29; Mehmet Aslan, § 105; Abdullah Elçiçek, § 128; İbrahim Kaya, § 142; İbrahim Ekin, § 194; Resul Aslan, § 246; Şükrü Yıldırım, § 347; and Celal Çürek, § 469.

<sup>111</sup> See Appendix III: Hediye Demir, § 56; Salih Demir, § 66; Mehmet Aslan, § 105; Abdullah Elçiçek, § 128; İbrahim Kaya, § 142; Besna Ekin, § 185; İbrahim Ekin, § 194; Asiye Aslan, § 231; Resul Aslan, § 246; Ali Özkan, § 286; Ayşe Ekinci, § 308; and Ayşe Sezgin, § 427.

reasons<sup>112</sup>. Although Hasan Yeşilyurt also denied that the men had been blindfolded, he did confirm that they had been tied together in groups of two or three in order to prevent them from escaping<sup>113</sup>. Dr Fahrettin Parmaksız, who saw the villagers upon their arrival at the Güçlükonak gendarme station on 20 February 1993, testified that some of the men were handcuffed or tied together, but denied that they were blindfolded<sup>114</sup>.

165. In view of the obvious wish to keep the assembled entire population of Ormaniçi under control, the Court considers it very likely that the security forces found it necessary to tie and blindfold the male villagers in order to facilitate guarding them in the village square.

166. The Court further has no doubt that, in order to prevent them from escaping during the journey on foot to Güçlükonak – as indicated by Hasan Yeşilyurt – the security forces decided to tie the men together in groups.

167. Furthermore, on the basis of the evidence, the Court is satisfied that the men were still blindfolded when the security forces led them from the village.

168. The evidence as to the identities and exact number of villagers taken by helicopter to Şırnak on 20 February 1993 as well as the name of one of them is in part contradictory.

169. According to the Preliminary Report on a Terrorist Incident, ten apprehended terrorists were taken by helicopter to the Şırnak Gendarmerie Command<sup>115</sup>. This information, including the names of those ten persons, is repeated in the Operation Result Report<sup>116</sup>. Celal Çürek confirmed that on 20 February 1993 nine men and one woman had then been brought directly by helicopter from Ormaniçi to Şırnak<sup>117</sup>. İzzettin Atar, one of the gendarmes responsible for the custody rooms at the Şırnak provincial gendarme station, also testified that ten suspects from Ormaniçi had arrived in Şırnak by helicopter<sup>118</sup>. However, according to documents submitted, Dr Pehlivanlı examined fifteen persons from Ormaniçi who had been brought to Şırnak on 20 February 1993 at around 8 p.m.<sup>119</sup>. Moreover, according to the Şırnak custody register<sup>120</sup>, fifteen persons were taken into detention there on that day.

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<sup>112</sup> See Appendix III: § 469.

<sup>113</sup> See Appendix III: § 504.

<sup>114</sup> See Appendix III: § 544.

<sup>115</sup> See Appendix II: § 150.

<sup>116</sup> See Appendix II: § 157; namely Ali Erbek, Şemsettin Erbek, Şehabettin Erbek, Mehmet Güler, Zeki Çetin, İbrahim Özkan, Hamit Demir, Mehmet Erden, Mehmet Nuri Özkan and Halime Ekin.

<sup>117</sup> See Appendix III: § 467.

<sup>118</sup> See Appendix III: § 568.

<sup>119</sup> See Appendix II: §§ 254-255.

<sup>120</sup> See Appendix II: §§ 178-179.

*The taking into detention of İbrahim Özkan*

170. The Court notes that it is stated in the Operation Result Report that İbrahim Özkan was amongst the ten villagers taken to Şırnak, whereas in the same report his name is also mentioned in the list of 33 persons who were taken to Güçlükönak<sup>121</sup>. His name does not appear on the list of persons examined by Dr Pehlivanlı in Şırnak on 20 February 1993 and, according to the Şırnak custody register and a body search report<sup>122</sup>, İbrahim Özkan only arrived in Şırnak on 5 March 1993.

171. İbrahim Özkan's name is, however, included on the list of 33 persons who were medically examined by Dr Parmaksız on 20 February 1993 in Güçlükönak<sup>123</sup>. Given the fact that the custody register of the Güçlükönak gendarme station, in so far as there actually was one, has not been made available to the Court<sup>124</sup>, it is impossible to verify the identities of the Ormaniçi men who were taken to Güçlükönak in that manner.

172. However, noting that a statement was taken from İbrahim Özkan in Güçlükönak on 21 February 1993 and that, according to a body search report dated 23 February 1993, he was subjected to a body search in Güçlükönak<sup>125</sup>, the Court finds it established that İbrahim Özkan was not amongst those villagers taken by helicopter to Şırnak on 20 February 1993, but that he was in fact taken to Güçlükönak.

*The taking into detention of Cemal Sezgin*

173. Cemal Sezgin's name is not at all recorded in the Operation Result Report, whereas the Observation and Establishment Report in the Location implies that he was amongst those villagers who were taken to Şırnak on 20 February 1993<sup>126</sup>. It also appears from the medical report of 20 February 1993 by Dr Pehlivanlı and from the Şırnak custody records that Cemal Sezgin arrived in Şırnak on 20 February 1993<sup>127</sup>.

174. His daughter Asiye Aslan declared that she did not know which of the villagers had been taken away by helicopter on 20 February 1993 and seemed to imply that her father was amongst those men who had been taken on foot to Güçlükönak<sup>128</sup>. Without giving any indication of time, Mehmet Aslan testified that, after having been brought from Güçlükönak to Şırnak, he had seen Cemal Sezgin in Şırnak<sup>129</sup>. The Court finally notes that no statement appears to have been taken from Cemal Sezgin in Güçlükönak.

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<sup>121</sup> See Appendix II: §§ 157-158.

<sup>122</sup> See Appendix II: §§ 178-179.

<sup>123</sup> See Appendix II: § 251.

<sup>124</sup> See Appendix II: § 174.

<sup>125</sup> See Appendix II: §§ 12 and 177.

<sup>126</sup> See Appendix II: §§ 168-169 in conjunction with §§ 157-158.

<sup>127</sup> See Appendix II: § 221 under entry no. 326.

<sup>128</sup> See Appendix III: § 231.

<sup>129</sup> See Appendix III: § 493.

175. In the absence of any indication that Cemal Sezgin was taken to Güçlükonak, the Court is satisfied that on 20 February 1993 he was indeed taken by helicopter to Şırnak.

*The taking into detention of Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci, İbrahim Kaya and Resul Çakır*

176. As to the other villagers taken to Şırnak on 20 February 1993, the Court notes that – according to Dr Pehlivanlı's medical report dated 20 February 1993 – Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya were amongst the fifteen persons whom he had medically examined in Şırnak on that day at around 8 p.m. These five persons are also registered in the Şırnak custody records as having arrived in Şırnak on 20 February 1993.

177. However, according to the Operation Result Report and the Observation Establishment Report, Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya had been taken to Güçlükonak and their names are further included in the list of 33 persons reportedly examined by Dr Parmaksız in Güçlükonak on 20 February 1993 at around 8 p.m. and on 4 March 1993.

178. Consequently, according to the above documentary evidence, Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya were medically examined in both Güçlükonak and Şırnak on the same day and at around the same time, which cannot but cast serious doubt on the evidentiary value of those documents.

179. Dr Parmaksız' report dated 20 February 1993<sup>130</sup> on his medical examination of 33 persons and his report dated 4 March 1993<sup>131</sup> on his medical examination of 32 persons contain only general remarks and no individual findings concerning the persons reportedly examined. The absence of individual findings therefore renders his reports inadequate for the purpose of establishing the number and identities of the persons whom he did in fact see and medically examine in Güçlükonak on those dates.

180. Although Dr Pehlivanlı's report dated 20 February 1993<sup>132</sup> does contain individual medical findings in respect of five persons, it likewise cannot be regarded as conclusive evidence on this point, as no individual findings are recorded in respect of the other persons whom he claimed to have examined on that day.

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<sup>130</sup> See Appendix II: § 251.

<sup>131</sup> See Appendix II: § 252.

<sup>132</sup> See Appendix II: §§ 254-255.

Hacı Ekin

181. As regards Hacı Ekin, the testimony given by his wife Besna Ekin implies that he was amongst those men who were taken to Güçlükonak on 20 February 1993<sup>133</sup>. This is supported by the fact that, on 22 February 1993, a statement was taken from him in Güçlükonak<sup>134</sup>, and also by the evidence given by Mehmet Aslan that – after having stayed for three days in Güçlükonak – Hacı Ekin and himself had formed part of a group that was taken to Şırnak<sup>135</sup>, the evidence given by İbrahim Kaya that he had seen Hacı Ekin in Güçlükonak during the first two days of his detention<sup>136</sup>, and the evidence of Mehmet Nuri Özkan, who declared that Hacı Ekin had told him that he had been taken to Güçlükonak<sup>137</sup>. The Court further notes that on 5 March 1993 a statement was taken from Hacı Ekin in Şırnak and that he was confronted with Osman Ayan<sup>138</sup>.

182. In these circumstances, the Court finds it established that Hacı Ekin was indeed taken to Güçlükonak on 20 February 1993.

Mehmet Özkan (son of Ali)

183. Mehmet Nuri Özkan, the brother of Mehmet Özkan, testified that he himself had been taken by helicopter to Şırnak and that he had not seen his brother Mehmet. In his opinion, his brother Mehmet had been taken to Güçlükonak<sup>139</sup>. The evidence given by Mehmet Özkan's wife, Fatım Özkan, that her husband had been taken away on foot<sup>140</sup> also implies that on 20 February 1993 he was taken to Güçlükonak. This is further supported by the fact that on 22 February 1993 a statement was taken from Mehmet Özkan in Güçlükonak<sup>141</sup>.

184. In view of these elements the Court is satisfied that on 20 February 1993 Mehmet Özkan was taken to Güçlükonak and not to Şırnak.

Mehmet Aslan

185. According to his own testimony, Mehmet Aslan was taken to Güçlükonak on 20 February 1993, from where, after three days, he and seven others were transferred to Şırnak<sup>142</sup>. Also, the evidence given by his

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<sup>133</sup> See Appendix III: § 185.

<sup>134</sup> See Appendix II: § 63.

<sup>135</sup> See Appendix III: § 109.

<sup>136</sup> See Appendix III: § 143.

<sup>137</sup> See Appendix III: § 398.

<sup>138</sup> See Appendix II: § 64, and §§ 207 and 219.

<sup>139</sup> See Appendix III: § 391.

<sup>140</sup> See Appendix II: § 105.

<sup>141</sup> See Appendix II: § 102, and Appendix III: Hüseyin Baran, § 530.

<sup>142</sup> See Appendix II: § 44, and Appendix III: § 109.

wife Kumri Aslan indicates that on 20 February 1993 Mehmet Aslan was taken away on foot and not by helicopter<sup>143</sup>.

186. Their evidence is supported by the fact that a statement was taken from Mehmet Aslan in Güçlükonak on 21 February 1993, whereas it was not until 5 March 1993 that a statement was taken from him in Şırnak, where on the same day he was confronted with Osman Ayan<sup>144</sup>.

187. The Court therefore concludes that, on 20 February 1993, Mehmet Aslan was indeed taken to Güçlükonak and not to Şırnak.

Osman Ekinci

188. Hamit Ekinci, the father of Osman Ekinci, testified that his son had told him that he had been taken on foot to Güçlükonak<sup>145</sup>. This is supported by the fact that, on 21 and 22 February 1993 respectively, two statements were taken from Osman Ekinci in Güçlükonak<sup>146</sup>. It was not until 5 March 1993 that a further statement from him was taken in Şırnak, where on the same day he was confronted with Osman Ayan<sup>147</sup>.

189. In these circumstances, the Court is satisfied that on 20 February 1993 Osman Ekinci was taken to Güçlükonak and not to Şırnak.

İbrahim Kaya

190. According to İbrahim Kaya's evidence, he was taken on foot to Güçlükonak on 20 February 1993, from where, after two days, he was transferred to Şırnak by helicopter<sup>148</sup>. His account is supported by the fact that a statement from him was taken in Güçlükonak<sup>149</sup>, although it is not recorded on what date this statement was taken, and that it was not until 5 March 1993 that a statement from him was taken in Şırnak and that he was confronted with Osman Ayan<sup>150</sup>.

191. The Court therefore finds it established that on 20 February 1993 İbrahim Kaya was taken to Güçlükonak and not to Şırnak.

192. In view of its above findings, the Court concludes that on 20 February 1993 Ali Erbek, Şemsettin Erbek, Şehabettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, Mehmet Nuri Özkan, Hamit Demir, Mehmet Erdem and Halime Ekin were directly taken from Ormaniçi to Şırnak by helicopter, and that İbrahim Özkan, Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya were among

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<sup>143</sup> See Appendix III: § 85.

<sup>144</sup> See Appendix II: §§ 40-41, and §§ 207 and 220.

<sup>145</sup> See Appendix III: § 266.

<sup>146</sup> See Appendix II: §§ 84-85.

<sup>147</sup> See Appendix II: § 86, and §§ 207 and 221.

<sup>148</sup> See Appendix III: §§ 142 and 145.

<sup>149</sup> See Appendix II: § 48.

<sup>150</sup> See Appendix II: § 49, and §§ 207 and 222.

those villagers who, on the same day, were taken on foot to Güçlükönak, where upon their arrival they were medically examined by Dr Parmaksız.

193. The Court therefore considers it highly unlikely that Dr Pehlivanlı would have seen and medically examined Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya in Şırnak on 20 February 1993. It considers it far more plausible that on 20 February 1993 he only saw and examined those ten villagers who were taken directly from Ormaniçi to Şırnak and that he did not see and examine the other five until some time later.

194. Further noting that the handwritten date on Dr Pehlivanlı's report appears to have been corrected from "25" to "20"<sup>151</sup>, the Court considers it sufficiently likely that he did not see Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya until 25 February 1993 and merely added his findings in respect of them to the findings set out in his report on the ten persons whom he already had seen on 20 February 1993.

195. As it further clearly appears from other evidence that on 24 or 25 February 1993 Hamit Demir and Mehmet Nuri Özkan had already been taken from Şırnak to Güçlükönak<sup>152</sup> and therefore cannot have been seen by Dr Pehlivanlı on 25 February 1993, the Court finds that Dr Pehlivanlı's evidence as to the timing of his medical examination of the 15 persons referred to in his report cannot be relied upon.

#### Resul Çakır

196. As regards Resul Çakır, the Court observes that his name is not included on the list of 43 persons apprehended in Ormaniçi on 20 February 1993 as set out in the Operation Result Report and the Observation Establishment Report of 20 February 1993<sup>153</sup> or on the list of the 33 persons taken into detention in Güçlükönak on the basis of which Dr Parmaksız conducted his medical examination on 20 February 1993<sup>154</sup>.

197. It further appears from a letter sent on 1 March 1993 by the Deputy Commander of the Güçlükönak gendarmerie station to the Eruh public prosecutor that a further person from Ormaniçi was apprehended and taken into detention in Güçlükönak on or around 27 February 1993 and that the person concerned was Resul Çakır, thus bringing the total number of apprehended persons from 43 to 44<sup>155</sup>. The Court also notes that Resul Çakır's name does not figure on the list of the 33 persons whom

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<sup>151</sup> See Appendix II: § 255 and footnote no. 276.

<sup>152</sup> See Appendix II: §§ 196-197, §§ 199 and 202, and Appendix III: Mehmet Nuri Özkan, § 393.

<sup>153</sup> See Appendix II: §§ 157-158, and §§ 167 and 169.

<sup>154</sup> See Appendix II: §§ 169 and 251.

<sup>155</sup> See Appendix II: § 206.

Dr Parmaksız reportedly examined on 4 March 1993<sup>156</sup>, whereas his name does figure on the list of 15 persons whom Dr Pehlivanlı examined in Şırnak on 5 March 1993 upon their arrival from Güçlükönak<sup>157</sup>.

198. The Court concludes from the above that the list of detained persons on the basis of which Dr Parmaksız conducted his medical examinations in Güçlükönak on 4 March 1993 was not updated and was in fact the same list as the one he had used for his medical examination on 20 February 1993.

199. The Court therefore considers, on the one hand, that it is unlikely that on 4 March 1993 Dr Parmaksız would have seen and medically examined Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya in Güçlükönak as they had already been transferred to Şırnak on 25 February 1993, and, on the other, that it is likely that Resul Çakır, Hamit Demir and Mehmet Nuri Özkan were among the men whom Dr Parmaksız did in fact see and examine on 4 March 1993 in Güçlükönak.

200. Having regard to Dr Parmaksız' evidence on the manner in which he conducted his medical examination on 4 March 1993<sup>158</sup>, the Court considers it plausible that on 4 March 1993 Dr Parmaksız in fact saw 31 instead of the recorded 33 persons and that the fact that in the meantime five detainees had already been transferred to Şırnak, a further person taken into detention and two others transferred from Şırnak to Güçlükönak was not recorded in the list of detainees with which he was provided on 4 March 1993. As he failed to note his findings for each individual examined, this therefore remained undetected by him.

#### **The custody records in Güçlükönak**

201. As was stated in a letter of 24 June 1998 from the Central Gendarmerie Command in Ankara and later confirmed by the Government during the hearing held in October 1998, no custody records for the Güçlükönak district gendarme station exist for the period from 20 February to 9 March 1993<sup>159</sup>. The Court notes that this letter contains no indication as to whether or not such records have ever existed and, if so, what has happened to them and that these points were not clarified by the Government during the taking of evidence before the Delegates either.

202. The Court is willing to accept the firm evidence given by Celal Çürek, Uğur Kırıkçılar and Turan Kolan that custody records were in fact kept at the Güçlükönak district gendarme station during the relevant

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<sup>156</sup> See Appendix II: §§ 252-253.

<sup>157</sup> See Appendix II: § 257.

<sup>158</sup> See Appendix III: § 553.

<sup>159</sup> See Appendix II: § 174.

period<sup>160</sup> since, given the list of names contained in Dr Parmaksız' report of 20 February 1993, the particulars of the apprehended villagers from Ormaniçi appear to have been recorded in some manner or other upon their arrival in the Güçlükönak gendarmerie station on 20 February 1993.

203. However, this does not appear to have been the case with Resul Çakır, Hamit Demir and Mehmet Nuri Özkan, who arrived later in Güçlükönak. Furthermore, the Court has great difficulty in accepting that such records can simply be lost. The apparently passive attitude of the domestic authorities in this respect can only be described as highly unsatisfactory.

#### The custody records in Şırnak

204. It is clear from the custody records of the Şırnak provincial gendarmerie command<sup>161</sup> and the evidence given by the gendarme responsible İzzettin Atar<sup>162</sup>, that it was not until 4 March 1993 that the ten persons who were taken directly from Ormaniçi to the Şırnak provincial gendarme station, were registered in the custody records as having been apprehended on 20 February 1993. It is also clear that it was not until 4 March 1993 that the five persons who were transferred from Güçlükönak to Şırnak on 25 February 1993 at the latest<sup>163</sup> were registered in the Şırnak custody records as having been apprehended on 20 February 1993.

205. Furthermore, it appears from the Şırnak custody records, in conjunction with Dr Pehlivanlı's medical examination reports of 5 March 1993<sup>164</sup>, that on 5 March 1993 a further group of 29 apprehended persons from Ormaniçi were transferred from Güçlükönak to Şırnak, where they were registered as having been apprehended on 5 March 1993 instead of 20 February 1993 or, in the case of Resul Çakır, 27 February 1993.

206. Although these incorrect entries may have been the result of the non-contemporaneous recording of entries at “a chaotic moment”, as was suggested by the gendarme responsible, İzzettin Atar<sup>165</sup>, the Court considers it doubtful, in the light of its findings in other cases about the general unreliability and inaccuracy of custody records (see *Timurtaş v. Turkey*, no. 23531/94, § 105, ECHR 2000-VI, *İrfan Bilgin v. Turkey*, no. 25659/94, § 130, ECHR 2001-VIII, *Çiçek v. Turkey*, no. 25704/94, §§ 137-138, 27 February 2001, *Orhan v. Turkey*, no. 25656/94, §§ 371-372, 18 June 2002, and *Tepe v. Turkey*, no. 27244/95, § 148, 9 May 2003) as well as the

<sup>160</sup> See Appendix III: Celal Çürek, §§ 447 and 472; Uğur Kırıkçılar, § 515; and Turan Kolan, § 536.

<sup>161</sup> See Appendix II: §§ 178-179.

<sup>162</sup> See Appendix III: § 571.

<sup>163</sup> See § 194.

<sup>164</sup> See Appendix II: §§ 256-257.

<sup>165</sup> See Appendix III: § 571.

findings of the CPT in respect of the keeping of custody records in Turkey<sup>166</sup>, that this can be regarded as a merely isolated incident.

**The villagers' treatment and conditions of detention at the Güçlükönak district gendarmerie station**

207. It transpires clearly from the evidence that not all of the Ormaniçi villagers who were taken on foot to Güçlükönak on 20 February 1993 were wearing warm clothes or appropriate footwear, and that – when they arrived in Güçlükönak after two or three hours – some of the men were only wearing one shoe or none at all<sup>167</sup>. Their medical examination by Dr Fahrettin Parmaksız that evening at around 8 p.m. resulted in the finding of various foot injuries caused by having been made to walk from Ormaniçi to Güçlükönak in difficult conditions<sup>168</sup>. It further appears that Dr Parmaksız provided these villagers with basic medical care, recommended that they be kept warm and given exercise, and that he monitored their medical condition every other day<sup>169</sup>.

208. It is further not in dispute that, out of necessity given the lack of detention facilities in Güçlükönak, the Ormaniçi villagers were held in two unfurnished rooms in the basement of a new Güçlükönak gendarmerie station building still under construction. The window openings in these rooms were covered by plastic foil and heating was provided by a coal stove placed in each room.

209. It further appears from the evidence that, at night, the outside temperature dropped below zero and that the temperature in the rooms varied and was generally cool as the coal used for heating the two rooms was of a poor quality in that it burned quickly without giving off much heat<sup>170</sup>. The Court is not convinced by the evidence given by Celal Çürek, Turan Kolan and Fahrettin Parmaksız that the temperature in the detention area was around a normal room temperature of 20° Celsius or slightly lower<sup>171</sup>. Although it accepts that this might have been the situation for a short while after fresh coal was put in the stoves, it considers it highly unlikely that this would have been the constant temperature.

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<sup>166</sup> See § 79.

<sup>167</sup> See Appendix III: Fahrettin Özkan, § 29; Salih Demir, § 66; Abdullah Elçiçek, § 128; İbrahim Ekin, § 194; Resul Aslan, § 246; Şükrü Yıldırım, § 347; Celal Çürek, §§ 469 and 473; Hüseyin Baran, § 523; Turan Kolan, § 537; and Fahrettin Parmaksız, § 544.

<sup>168</sup> See Appendix II: § 251, and Appendix III: Fahrettin Parmaksız, § 546.

<sup>169</sup> See Appendix II: § 251, and Appendix III: Celal Çürek, § 478 and Fahrettin Parmaksız, §§ 548, 550 and 552.

<sup>170</sup> See Appendix III: Celal Çürek, §§ 474 and 485; and Fahrettin Parmaksız, §§ 551 and 555.

<sup>171</sup> See Appendix III: Celal Çürek, § 485; Turan Kolan, § 537; and Fahrettin Parmaksız, § 551.

210. The Court finds it established that there was only one toilet for the detainees held in these two rooms and that they could only go to the toilet when accompanied by a guard. The gendarme witnesses seemed to imply in their evidence that the detainees were regularly taken to the toilet<sup>172</sup>, an indication which is supported by the evidence given by the villager witnesses İbrahim Kaya and Mehmet Sezgin<sup>173</sup>. According to the evidence given by other villager witnesses, the detainees made little use of the toilet as they had not been fed very much and some of them wet themselves, either because they were under the impression that there were no toilets, or because the guards refused to take them to the toilet, or because they preferred not to ask to be taken there<sup>174</sup>.

211. Although the Court accepts that some occasional refusals by guards to take the detainees to the toilet may have occurred, as a result of which some detainees might have soiled themselves, it is not satisfied that toilet visits were arbitrarily denied on a regular basis. The Court would further not rule out the possibility that some of the detained villagers, being intimidated and frightened, preferred to soil themselves rather than ask the guards to take them to the toilet.

212. The Court further considers it established that – for the duration of their stay in Güçlükonak – the detainees were obliged to sit and sleep on the concrete floor in these two rooms without having been provided with appropriate bedding and were not given any exercise, thus remaining immobile for most of the time<sup>175</sup>. As to the question whether or not there were puddles on the concrete floor in the two detention rooms, the Court considers that, although the presence of small puddles on recently concreted floors is a common feature in buildings under construction, no definite findings can be made on this point. However, in the light of the evidence that all of them had lain face down in the snow and slush in the village square and that some of the villagers had fallen down as they walked in the snow and slush to Güçlükonak<sup>176</sup>, the Court considers it likely that the clothes of these villagers were soaked or at least wet upon their arrival in

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<sup>172</sup> See Appendix III: Celal Çürek, §§ 476-477; Hasan Yeşilyurt, § 506; Uğur Kırıkçılar, § 513; and Turan Kolan, § 538.

<sup>173</sup> See Appendix III: §§ 143 and 218.

<sup>174</sup> See Appendix III: Mehmet Özkan, § 15; Fahrettin Özkan, § 30; Salih Demir, § 66; Mehmet Aslan, § 107; Abdullah Elçiçek, § 129; İbrahim Ekin, § 195; Resul Aslan, § 249; Şükrü Yıldırım, § 348; and Mehmet Nuri Özkan, § 394.

<sup>175</sup> See Appendix III: Mehmet Özkan, §§ 15-16; Fahrettin Özkan, § 30; Salih Demir, § 66; Mehmet Aslan, §§ 106-107; Abdullah Elçiçek, § 129; İbrahim Kaya, §§ 143-144; İbrahim Ekin, § 195; Mehmet Sezgin, §§ 218-219; Resul Aslan, §§ 248-249; Şükrü Yıldırım, § 348; Mehmet Nuri Özkan, §§ 393-394; Celal Çürek, §§ 474-477 and 485; Hasan Yeşilyurt, §§ 505-506; Uğur Kırıkçılar, §§ 512-513; Hüseyin Baran, §§ 524-525; Turan Kolan, § 537 and Fahrettin Parmaksız, §§ 551-552 and 555.

<sup>176</sup> See § 133, and Appendix III: Mehmet Aslan, § 105; İbrahim Kaya, § 142; Resul Aslan, § 246; and Celal Çürek, § 469.

Güçlükonak and that this might have given them the impression of sitting in puddles in the detention rooms.

213. In so far as the gendarme officer Turan Kolan testified that all the detainees had been warmly dressed and provided with a blanket, that those who had lost their shoes had been provided with boots, that they had been detained in the officers' mess and that they had been fed three meals per day with a choice of several dishes<sup>177</sup>, the Court considers that this account cannot be relied upon since it is not supported at all by the evidence given by other gendarme officers who were present at the Güçlükonak gendarme station at the material time<sup>178</sup>.

214. In view of the evidence given by both villagers and gendarme witnesses – including the manner in which the Güçlükonak gendarme station obtained its supplies, which must have been affected by the difficult weather and travel conditions in late February 1993<sup>179</sup> – the Court finds it sufficiently established that the detained villagers were not provided with any boots or other clothing and were given soldiers' leftovers and bread to eat<sup>180</sup>.

215. Nine villager witnesses testified or implied in their evidence that they had remained blindfolded during the entire period of their detention in Güçlükonak<sup>181</sup>, whereas according to the evidence given by gendarme officers, the detainees were blindfolded, for security reasons, only when taken to the toilet or for questioning<sup>182</sup>.

216. The Court considers that, as Uğur Kırıkçılar was not present in the Güçlükonak gendarme station at the material time, he cannot have seen whether the detained Ormaniçi villagers were blindfolded during their stay in Güçlükonak. Although the Court cannot rule out the possibility that the evidence given by him and the other gendarme officers as to the blindfolding of detainees reflects the practice in Güçlükonak in normal circumstances, the Court considers it sufficiently likely that the Ormaniçi villagers in fact remained blindfolded during their period of detention in Güçlükonak in order to prevent them from becoming acquainted with their surroundings and to facilitate guarding them. In reaching this finding, the Court has taken into account the fact that they formed a relatively large

<sup>177</sup> See Appendix III: §§ 536-538.

<sup>178</sup> See Appendix III: Hüseyin Baran, § 525; and Fahrettin Parmaksız, §§ 550 and 552.

<sup>179</sup> See Appendix III: Celal Çürek, §§ 448, 450, 475 and 484.

<sup>180</sup> See Appendix III: Mehmet Özkan, § 15; Fahrettin Özkan, § 30; Salih Demir, § 66; Mehmet Aslan, § 107; Abdullah Elçiçek, § 129; İbrahim Kaya, § 144; İbrahim Ekin, § 195; Mehmet Sezgin, § 218; Resul Aslan, § 249; Mehmet Nuri Özkan, § 394; Celal Çürek, § 476; Hasan Yeşilyurt, § 506; and Fahrettin Parmaksız, § 552.

<sup>181</sup> See Appendix III: Fahrettin Özkan, § 30; Salih Demir, § 66; Mehmet Aslan, § 106; İbrahim Kaya, § 143; İbrahim Ekin, § 195; Mehmet Sezgin, § 220; Resul Aslan, § 248; Şükrü Yıldırım, § 348; and Mehmet Nuri Özkan, §§ 393-394.

<sup>182</sup> See Appendix III: Celal Çürek, § 476; Uğur Kırıkçılar, § 513; and Turan Kolan, § 538; see also Fahrettin Parmaksız, § 552.

group of persons who were detained in rooms not designed or equipped for this purpose<sup>183</sup>.

217. The Court therefore finds it established that – with the exception of Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya<sup>184</sup>, Resul Çakır<sup>185</sup>, Hamit Demir and Mehmet Nuri Özkan<sup>186</sup> – all of the Ormaniçi villagers apprehended on 20 February 1993 and taken to Güçlükonak were detained in these conditions until their transfer to Şırnak on 5 March 1993, i.e. for a period of thirteen days. It further finds it established that Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya, who were taken to Şırnak on 25 February 1993, were detained under these conditions for a period of five days, Resul Çakır for six days, and Hamit Demir and Mehmet Nuri Özkan for nine days.

#### **The medical examinations carried out in Güçlükonak**

218. The Ormaniçi villagers detained in Güçlükonak were medically examined by a conscripted general practitioner, Dr Fahrettin Parmaksız, upon their arrival in Güçlükonak and – with the exception of Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci and İbrahim Kaya<sup>187</sup> – for a second time shortly before their transfer from Güçlükonak to Şırnak. Although this is not explicitly stated in the records of those examinations, it is obvious from the context that the primary purpose of the medical examinations was to check and record any visible traces of physical violence resulting from the detainees' treatment by the security forces.

219. On both occasions the detainees were examined together as a group in the detention rooms. They were ordered to remove their shirts and to roll up their trousers and Dr Parmaksız recorded his direct visual findings in one overall report and, with the exception of his examination of Abdülislam Demir on 4 March 1993, without indicating his specific findings for each individual examined<sup>188</sup>.

220. Dr Parmaksız considered it impossible that, in his examination of Mehmet Aslan, he would have overlooked a bruise of 4 cm by 5 cm on the top of Mehmet Aslan's right shoulder, as found by Dr Pehlivanlı<sup>189</sup>. Referring to its finding that Mehmet Aslan was examined by Dr Parmaksız on 20 February 1993 and by Dr Pehlivanlı on 25 February 1993<sup>190</sup>, and to Mehmet Aslan's evidence about his treatment by the security forces in

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<sup>183</sup> See § 208.

<sup>184</sup> See §§ 191-193.

<sup>185</sup> See § 197.

<sup>186</sup> See §§ 191 and 193.

<sup>187</sup> See §§ 198-199.

<sup>188</sup> See Appendix II: §§ 250-253, and Appendix III: Celal Çürek, §§ 478 and 485, and Fahrettin Parmaksız, §§ 545 and 553.

<sup>189</sup> See Appendix III: § 547.

<sup>190</sup> See §§ 192 and 194.

Ormaniçi on 20 February 1993 and his evidence that he had been kicked and hit by a rifle butt in Güçlükonak<sup>191</sup>, the Court has no reason to doubt that this bruise resulted from Mehmet Aslan's treatment by the security forces.

221. It further appears that Dr Parmaksız, in his examinations of 4 March 1993, overlooked the bruise of 3 cm by 3 cm on Abdülislam Demir's left shoulder, the graze marks on the wrists of İbrahim Özkan and Abdullah Elçiçek and the bruise of 10 cm by 6 cm on the rear side of the latter's right thigh and on his right buttock, which were, however, seen and recorded by Dr Pehlivanlı on 5 March 1993<sup>192</sup>. Given its findings as to the treatment of the male Ormaniçi villagers in the village square, including the tying of their hands<sup>193</sup> and the duration of their detention in Güçlükonak, the Court is satisfied that Abdülislam Demir, İbrahim Özkan and Abdullah Elçiçek sustained these injuries as a result of their treatment by the security forces.

222. The fact that Dr Parmaksız failed to notice the bruise of 10 cm by 6 cm on the rear side of Abdullah Elçiçek's right thigh and on his right buttock, or the infected fungal skin disorders on the buttocks of Mehmet Özkan (son of Ali), as found by Dr Pehlivanlı on 25 February 1993<sup>194</sup>, or on the buttocks of İbrahim Ekin and Resul Aslan, as noted by Dr Pehlivanlı on 5 March 1993<sup>195</sup>, is explained by Dr Parmaksız' evidence that he had not examined the detainees' thighs and buttocks<sup>196</sup>.

223. Although the Court cannot make definite findings as to exactly how these three persons developed these fungal skin disorders, it considers that it is quite likely, in view of the evidence given by İbrahim Ekin and Resul Aslan<sup>197</sup>, that this resulted either from their having soiled themselves or from sitting immobile on a concrete floor for several days wearing trousers that were initially soaked or wet.

224. It is clear that on 20 February 1993 Dr Parmaksız noticed and recorded the obvious foot injuries of the detained villagers, which he treated to the best of his abilities with the means at his disposal. However, the Court also concludes that his examinations of 4 March 1993 were apparently mainly focused on these foot injuries and that he failed to carry out a thorough examination of other parts of the villagers' bodies.

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<sup>191</sup> See Appendix III: §§ 102-104 and 108.

<sup>192</sup> See Appendix II: §§ 252-253 and 256-257.

<sup>193</sup> See §§ 132, 162 and 165.

<sup>194</sup> See Appendix II: § 255.

<sup>195</sup> See Appendix II: § 257.

<sup>196</sup> See Appendix III: § 554.

<sup>197</sup> See Appendix III: §§ 195 and 249.

**The foot injuries sustained by Abdülislam Demir, Fahrettin Özkan, Resul Aslan, Nevaf Özkan, Hüseyin Yıldırım, Ahmet Arslan, İbrahim Özkan, Mehmet Tahir Çetin and Mehmet Seyit Erden**

225. As already found above, not all of the Ormaniçi villagers who were taken on foot to Güçlükönak on 20 February 1993 were wearing warm clothes or appropriate footwear and some of these men were wearing only one shoe or none at all when they arrived in Güçlükönak. Their medical examination upon arrival in Güçlükönak resulted in the finding of various foot injuries caused by their having been made to walk from Ormaniçi to Güçlükönak under difficult circumstances, and they were given basic medical treatment for their injuries by Dr Parmaksız, who recommended that they be kept warm and given exercise and who monitored their medical condition every other day<sup>198</sup>.

226. As to how the conditions of detention in Güçlükönak affected the physical health of the detained Ormaniçi villagers, the Court notes that, after Dr Parmaksız examined them again on 4 March 1993, he observed in his reports that he had found oedema, cyanosis and healing lesions with ulcers on their feet and legs and low blood pressure in their legs. He concluded that the lesions found had been caused by the fact that the persons examined had been kept immobile in a cold environment<sup>199</sup>. However, apart from Abdülislam Demir, Dr Parmaksız failed to indicate any individual medical findings.

227. In his oral evidence, Dr Parmaksız explained that low blood pressure in the legs indicated that the blood circulation in that part of the body was slow. In his opinion there was a direct link between the low blood pressure and circulation found by him and the circumstances in which the Ormaniçi villagers had been detained, namely the fact that they had been kept immobile in a room where the temperature would regularly drop. Although he had never heard that any of the detainees had developed gangrene, he confirmed that low blood circulation and pressure were important where the development of gangrene was concerned<sup>200</sup>. He recalled that he had been worried by the state of health of six or seven detainees.

228. When, on the following day, Dr Pehlivanlı examined the same group of Ormaniçi villagers after they had been transferred to Şırnak, he noted in his reports of 5 March 1993, *inter alia*, that the feet of İbrahim Ekinci, Abdülislam Demir, Fahrettin Özkan, İbrahim Özkan, Nevaf Özkan and Resul Aslan were swollen and displayed oedema and/or different degrees of hyperaemia<sup>201</sup>. He had also found this to be the situation of

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<sup>198</sup> See § 207.

<sup>199</sup> See Appendix II: §§ 252-253.

<sup>200</sup> See Appendix III: Fahrettin Parmaksız, § 555.

<sup>201</sup> See Appendix II: §§ 256-257.

Osman Ekinci, whom he had already examined at an earlier stage<sup>202</sup>. According to his oral evidence, Dr Pehlivanlı did not attempt to find the cause of these foot injuries and in any event did not find any indication that they had been caused by frostbite<sup>203</sup>.

229. The Court notes that, when Abdülislam Demir was examined on 6 March 1993 at Mardin State Hospital, he was found to be suffering from gangrene in the 4<sup>th</sup> and 5<sup>th</sup> toes of his right foot, for which he received immediate treatment<sup>204</sup>.

230. It further appears that, on 9 March 1993, Fahrettin Özkan and Mehmet Tahir Çetin were found to require medical treatment for frostbite and that Resul Aslan, İbrahim Ekinci, Nevaf Özkan and İbrahim Özkan also required medical treatment<sup>205</sup>. Each one of them was found to be suffering from necrosis in parts of their feet, necessitating a transfer to and treatment in Mardin State Hospital<sup>206</sup>, where Resul Aslan, Nevaf Özkan and Fahrettin Özkan were indeed admitted on 11 March 1993<sup>207</sup>.

231. Abdülislam Demir, Fahrettin Özkan, Resul Aslan and Nevaf Özkan were discharged from Mardin State hospital on 30 April 1993. Fahrettin Özkan and Resul Aslan had both undergone a metatarsal amputation on both feet. Abdülislam Demir had undergone an amputation of the 4<sup>th</sup> and 5<sup>th</sup> toes of his left foot, and Nevaf Özkan a distal amputation of the 5<sup>th</sup> toe of his left foot<sup>208</sup>. According to the evidence given by Dr Feza Köylüoğlu, who had treated them, they had suffered frostbite. He confirmed that a person having undergone a metatarsal amputation of both feet would be partially incapacitated for work and that a person, who had been made to walk through the snow for seven kilometres without shoes and had subsequently been kept immobile in a cold environment, could end up having feet in the state in which he had found those of Abdülislam Demir, Fahrettin Özkan, Resul Aslan and Nevaf Özkan<sup>209</sup>.

232. The Court further notes that, according to the Şırnak custody records, Hüseyin Yıldırım – who was among the Ormaniçi men taken to Güçlükonak on 20 February 1993<sup>210</sup> – was released from detention on 9 March 1993. It further appears that, on 19 March 1993, he was admitted to the Eşrefpaşa Hospital in İzmir, where he underwent an amputation of the 5<sup>th</sup> toe of his left foot<sup>211</sup>. It also notes that Ahmet Arslan and Mehmet Seyit Erden – who were also among the Ormaniçi villagers taken to Güçlükonak

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<sup>202</sup> See Appendix II: § 255.

<sup>203</sup> See Appendix III: §§ 560 and 562.

<sup>204</sup> See Appendix II: § 258.

<sup>205</sup> See Appendix II: § 260.

<sup>206</sup> See Appendix II: §§ 261-262.

<sup>207</sup> See Appendix II: § 184.

<sup>208</sup> See Appendix II: § 264.

<sup>209</sup> See Appendix III: §§ 581-583.

<sup>210</sup> See Appendix II: §§ 126 and 158.

<sup>211</sup> See Appendix II: § 179 (footnote 361) and § 265.

on 20 February 1993 and who were both released from detention on 16 March 1993<sup>212</sup> – were admitted to the Ankara Council Hospital on 29 March 1993, where they received treatment, in the form of a skin transplant, for gangrene injuries caused by frostbite<sup>213</sup>.

233. The Court finally notes that – together with Resul Aslan, Nevaf Özkan and Fahrettin Özkan – İbrahim Özkan, Mehmet Tahir Çetin and İbrahim Ekinci were initially transferred to Mardin State Hospital but that, owing to a lack of beds in Mardin State Hospital, they were subsequently transferred and, on 12 March 1993, were admitted to the Prisoners' Ward of the Diyarbakır State Hospital<sup>214</sup>. No evidence has been submitted as the nature of the medical treatment of İbrahim Özkan. As regards Mehmet Tahir Çetin, the Court considers that the evidence given by his father-in-law, his wife and his father that he had had both feet amputated<sup>215</sup> has remained unsubstantiated. In these circumstances the Court does not find it established beyond reasonable doubt that Mehmet Tahir Çetin did in fact undergo an amputation of both feet.

234. The Court therefore finds it sufficiently established that the amputations undergone by Abdülislam Demir, Fahrettin Özkan, Resul Aslan, Nevaf Özkan, and Hüseyin Yıldırım and the operations undergone by Ahmet Arslan and Mehmet Seyit Erden directly resulted from their having been made to walk from Ormaniçi to Güçlükonak on 20 February 1993 and from the conditions of their detention in Güçlükonak.

235. Although the Güçlükonak gendarme station commander Uğur Kırıkçılar admitted in his evidence that he had learned some time later that some Ormaniçi villagers had undergone foot amputations as a result of the gangrene they had developed during their detention in Güçlükonak, he also testified that he had never made any enquiries into whether this had resulted from negligence on the part of the gendarme officers in Güçlükonak. He stated that, apart from being unaware at that time of the necessity to make such enquiries, he had not been competent to do so. In his opinion, this should be done by a public prosecutor, which had not been the case<sup>216</sup>.

236. In his evidence to the Delegates, the Eruh public prosecutor Ercan Turan – who was responsible for the preliminary investigation into the Ormaniçi villagers apprehended on 20 February 1993<sup>217</sup> – confirmed that the filing of a criminal complaint was not a condition *sine qua non* for the opening of an investigation by a public prosecutor. Although his case file on the apprehended Ormaniçi villagers contained information that a number of

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<sup>212</sup> See Appendix II: §§ 90, 139, 158 and 179 (footnotes 350 and 351).

<sup>213</sup> See Appendix II: § 266.

<sup>214</sup> See Appendix II: §§ 183-184, 186-187 and 285, and Appendix III: Resul Aslan, § 253.

<sup>215</sup> See Appendix III: Ali Özkan, § 289; Abdurrahman Çetin, § 337; and Raife Çetin, §§ 380-382.

<sup>216</sup> See Appendix III: § 519.

<sup>217</sup> See Appendix II: § 227; and Appendix III: Ramazan Bayrak, § 619.

them had been taken to hospital during their detention, he had not found it necessary to make enquiries about them, as they had not appeared before him. In any event, he said that any investigations in respect of those persons should be carried out by the judicial authorities in whose districts these persons had been or, once the case had been referred to this authority given the nature of the charges, the public prosecutor at the State Security Court<sup>218</sup>.

237. The Court therefore concludes that, although both the Eruh public prosecutor and the Güçlükönak gendarmerie station commander were aware of the fact that some of the Ormaniçi villagers had been taken into hospital in the course of their detention or subsequently for treatment of injuries developed during their detention, they failed to take any steps to verify whether the villagers' hospitalisation was in any way linked to the treatment to which they had been subjected while they were being apprehended and detained.

**The effects of the taking into detention and the conditions of detention in Güçlükönak on the physical condition of İbrahim Ekinçi and the proceedings relating to his death**

238. Ayşe Ekinçi, the spouse of İbrahim Ekinçi, testified that she, her husband and their children had not even had the chance to put on their shoes when on 20 February 1993 the soldiers collected them from their home, and had thus been barefoot when they were taken to the village square<sup>219</sup>.

239. It is undisputed that İbrahim Ekinçi was among the Ormaniçi villagers who were taken on foot to Güçlükönak on 20 February 1993, where on 26 February 1993 a statement was taken from him<sup>220</sup>. According to the Şırnak custody records, he was transferred from Güçlükönak to Şırnak on 5 March 1993, and was medically examined there on the same day by Dr Pehlivanlı, who found that his feet were swollen and displayed slight hyperaemia<sup>221</sup>. He found no further injuries.

240. In a further medical examination carried out on 9 March 1993 by Dr Tuncy Öztürk, it was found that İbrahim Ekinçi had maceration and grazed skin tissue on the 4<sup>th</sup> and 5<sup>th</sup> toes of his right foot, and that he also had a bruise on each buttock<sup>222</sup>. The Court considers that the sudden presence of these injuries on his buttocks admits of no other conclusion than that he must have sustained these injuries during his detention in Şırnak.

241. On the same day, he was referred for further medical treatment to Şırnak Hospital, where it was found that the toes of both his feet, in particular the 4<sup>th</sup> and 5<sup>th</sup> toes of each foot, appeared slightly necrotic. It was

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<sup>218</sup> See Appendix III: §§ 614 and 617.

<sup>219</sup> See Appendix III: § 305.

<sup>220</sup> See Appendix II: §§ 101 and 158

<sup>221</sup> See Appendix II: § 179 (footnote 342) and § 256.

<sup>222</sup> See Appendix II: § 259.

further noted that he appeared to be suffering from some sort of epileptic fits. As he did not respond to his treatment in the Şırnak hospital, he was subsequently transferred to Mardin State Hospital from where, owing to a lack of beds, he was referred to the orthopaedic ward at Diyarbakır State Hospital for treatment of frostbite. He was admitted to Diyarbakır State Hospital on 12 March 1993<sup>223</sup>.

242. As, during his stay there, he was seen to have an epileptic fit – a condition of which the medical staff at Diyarbakır State Hospital were apparently unaware – he was examined and treated by a neurologist. However, as his situation seriously worsened, he was referred to Diyarbakır University Faculty Hospital on 16 March 1993. At the time of his transfer to that hospital İbrahim Ekinci had lost consciousness and he died while being taken there<sup>224</sup>.

243. The post-mortem examination of İbrahim Ekinci's body did not lead to any conclusive findings as to the cause of his death. No traces of any physical violence were found. Given the time that had elapsed since his medical examination of 9 March 1993, the Court finds it conceivable that the bruises found on his buttocks at that occasion had healed in the meantime. A subsequent examination of tissue samples led to the conclusion that İbrahim Ekinci had died of pneumonia<sup>225</sup>.

244. As regards the medical report of 15 March 1996 by the Diyarbakır State Hospital, according to which İbrahim Ekinci had died of suffocation caused by vomit having entered his lungs during an undetected epileptic fit during the night<sup>226</sup>, the Court observes that no traces of vomit were recorded in previous autopsy reports<sup>227</sup> and that this version was contradicted by the evidence given by the officials personally involved in the 1993 investigation into the cause of İbrahim Ekinci's death<sup>228</sup>. It therefore considers that the contents of this report, which was drawn up three years after İbrahim Ekinci's death, cannot be relied upon.

245. On the basis of the finding that İbrahim Ekinci had died of pneumonia, the public prosecutor at the Diyarbakır State Security Court, Abdullah Yıldırım, decided on 24 June 1993 not to bring any criminal proceedings on the basis of his investigation into the cause of İbrahim Ekinci's death that had been opened immediately after the death. The public prosecutor concluded that İbrahim Ekinci's death had not resulted from any offence or from anyone's fault or influence<sup>229</sup>.

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<sup>223</sup> See Appendix II: §§ 261-262, § 184 and § 277.

<sup>224</sup> See Appendix II: § 277.

<sup>225</sup> See Appendix II: §§ 278-282.

<sup>226</sup> See Appendix II: § 285.

<sup>227</sup> See Appendix II: §§ 278 and 281.

<sup>228</sup> See Appendix III: Çetin Seçkin, §§ 586, 588 and 590; and Abdullah Yıldırım, §§ 597-598.

<sup>229</sup> See Appendix II: § 283.

246. In his oral evidence Abdullah Yıldırım confirmed that signs of frostbite had been noted on the body of İbrahim Ekinçi and that he had found this unusual. The police had informed him that İbrahim Ekinçi was a terrorist who had developed frostbite following a lengthy period spent in caves, but that information had not influenced his decision not to take any further action. Given the forensic findings that pneumonia was the cause of death, İbrahim Ekinçi's death had not struck him as suspicious. He confirmed that he had not sought any information about the duration of İbrahim Ekinçi's detention and that, if there had been evidence that İbrahim Ekinçi's pneumonia had been caused by the manner in which he had been detained, it would have been proper to take criminal proceedings. But he himself would not have been competent to do so. In such a situation he would have transmitted the case, together with his decision of lack of jurisdiction, to the public prosecutor in whose judicial district the person concerned had been detained. His competence in the matter was limited to establishing the cause of İbrahim Ekinçi's death. Although he did not exclude the possibility that İbrahim Ekinçi had contracted frostbite by having been made to walk through the snow to Güçlükonak, it would have been impossible for him to say so for certain<sup>230</sup>. Furthermore, being a medical layman, he was unable to say whether the frostbite marks on İbrahim Ekinçi's feet could be linked to the pneumonia that the latter developed<sup>231</sup>.

247. Dr Köylüoğlu declared in his evidence that, although frostbite in itself would not cause pneumonia, what caused the frostbite could equally cause pneumonia<sup>232</sup>. Dr Seçkin testified that being kept immobile and in a cold environment could contribute to the development of pneumonia and that an insufficiently dressed person would be more affected by the cold. However, as his task had only been to determine the cause of İbrahim Ekinçi's death, he had not made any enquiries as to how İbrahim Ekinçi had developed frostbite-related injuries. This was a matter to be examined at another level<sup>233</sup>.

248. Furthermore, the criminal complaint filed on 12 April 1993 by İbrahim Ekinçi's widow Ayşe Ekinçi alleging homicide resulting from torture did not give rise to any criminal proceedings. Referring to the conclusion reached by Abdullah Yıldırım that İbrahim Ekinçi had died of pneumonia, the Eruh public prosecutor, Şenol Önal, issued a decision of non-prosecution on 15 August 1994, holding that there was no offence or offender to prosecute<sup>234</sup>.

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<sup>230</sup> See Appendix III: § 602.

<sup>231</sup> See Appendix III: §§ 595-602.

<sup>232</sup> See Appendix III: § 583.

<sup>233</sup> See Appendix III: §§ 591-593.

<sup>234</sup> See Appendix II: §§ 283-284.

249. On the basis of the above elements, the Court has no doubt that İbrahim Ekinci's injuries and the cause of his death are directly linked to his having been made to walk barefoot through the snow and slush to Güçlükonak and to the conditions of his detention there. The Court further finds that, although the link between frostbite and the development of pneumonia is obvious even for a layman, there is no appearance whatsoever that the Diyarbakır public prosecutor attempted to verify whether the cause of İbrahim Ekinci's death was in any way connected to the treatment he had been subjected to when he was apprehended and detained. Although Abdullah Yıldırım denied this, the Court is persuaded that his decision not to make any further enquiries in relation to the circumstances of İbrahim Ekinci's death was in fact directly influenced by the information allegedly given to him by the police that İbrahim Ekinci was a terrorist who had contracted frostbite during a lengthy stay in caves, and that on the basis of this information he assumed that İbrahim Ekinci had also contracted pneumonia in that way and therefore did not find it necessary to seek any further explanation.

250. The Court further finds it established that, on the assumption that Abdullah Yıldırım had already verified whether or not İbrahim Ekinci had died as a consequence of his treatment in detention, the Eruh public prosecutor Şenol Önal did not find it necessary to open a further investigation into the cause of İbrahim Ekinci's death.

#### **The taking of statements in Güçlükonak**

251. The Court notes that, according to the documentary evidence submitted, five statements from apprehended Ormaniçi villagers were taken in Güçlükonak on 21 February 1993<sup>235</sup>, three on 22 February 1993<sup>236</sup>; two on 25 February 1993<sup>237</sup>, nineteen on 26 February 1993<sup>238</sup>, four on 27 February 1993<sup>239</sup>, two on 28 February 1993<sup>240</sup> and one on 3 March 1993<sup>241</sup>.

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<sup>235</sup> See Appendix II: İbrahim Özkan, § 12; Abdullah Sezgin, § 36; Mehmet Aslan, § 40; Resul Aslan, § 81; and Osman Ekinci, § 84.

<sup>236</sup> See Appendix II: Hacı Ekin, § 63; Osman Ekinci (2<sup>nd</sup> statement), § 85; and Mehmet Özkan (son of Ali), § 102.

<sup>237</sup> See Appendix II: Salih Demir, § 24; and Osman Ekin, § 132.

<sup>238</sup> See Appendix II: Mehmet Özkan (son of Ahmet), § 13; Nedim Özkan, § 18; Hacı Çetin, § 21; Mehmet Şerif Demir, § 27; Abdülislam Demir, § 29; Abdullah Elçiçek, § 45; Mehmet Kaya, § 52; İbrahim Ekin, § 68; Abdullah Kurt, § 71; Mehmet Kurt, § 74; Mehmet Sezgin, § 76; Ahmet Arslan, § 90; Nevaf Özkan, § 96; İbrahim Ekinci, § 101; Şükrü Yıldırım, § 111; Mehmet Tahir Çetin, § 118; Mehmet Nuri Özkan, § 120; Hüseyin Yıldırım, § 126; and Mehmet Seyit Erden, § 139.

<sup>239</sup> See Appendix II: Fahrettin Özkan, § 16; Abdullah Ekin, § 60; Şerif Ekin, § 66; and Ali Erden, § 141.

<sup>240</sup> See Appendix II: Mehmet Sezgin (2<sup>nd</sup> statement), § 77; and Mehmet Yıldırım, § 128.

<sup>241</sup> See Appendix II: Resul Aslan (2<sup>nd</sup> statement), § 82.

252. Although a statement was also taken from İbrahim Kaya in Güçlükonak, the date on which it was taken cannot be established from the copy submitted but, given its findings as to the date of his transfer to Şırnak, the Court is satisfied that this must have taken place between 21 and 25 February 1993<sup>242</sup>.

253. The Court further notes that a second statement in Güçlükonak was taken from only three persons, namely Osman Ekinci (on 22 February 1993), Mehmet Sezgin (on 28 February 1993) and Resul Aslan (3 March 1993)<sup>243</sup>.

254. Of all the statements, two were taken by the gendarme officer Celal Çürek<sup>244</sup>, three by the gendarme NCO Hasan Yılmaz<sup>245</sup>, nine by the gendarme NCO Turan Kolan<sup>246</sup>, and twenty-one by the gendarme NCO Hüseyin Baran<sup>247</sup>. The identity of the gendarme officer who took the first statement from Osman Ekinci on 21 February 1993<sup>248</sup> remains unclear.

255. On the basis of these statements and the oral evidence given on this point, the Court finds it sufficiently likely that, with the exception of Osman Ekinci, Mehmet Sezgin and Resul Aslan, the Ormaniçi villagers were questioned only once in Güçlükonak and that the evidence given by Salih Demir, Abdullah Elçiçek and Resul Aslan that they were interrogated three times or more<sup>249</sup> must be assessed with caution since it is not supported by other evidence.

**The alleged ill-treatment by gendarmes during the taking of statements in Güçlükonak**

256. Nine villager witnesses stated or implied in their evidence that they had been ill-treated during their interrogation in Güçlükonak<sup>250</sup>. Mehmet

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<sup>242</sup> See Appendix II: § 48; and §§ 191-194 above.

<sup>243</sup> See Appendix II: §§ 77, 82 and 85.

<sup>244</sup> The statements taken from Mehmet Özkan (son of Ahmet) and Mehmet Nuri Özkan; see Appendix II: §§ 13 and 120.

<sup>245</sup> The statements taken from İbrahim Özkan and Resul Aslan (1<sup>st</sup> and 2<sup>nd</sup> statements); see Appendix II: §§ 12 and 81-82.

<sup>246</sup> The statements taken from Fahrettin Özkan, Hacı Çetin, Abdullah Elçiçek, Abdullah Kurt, Mehmet Kurt, Mehmet Sezgin (2<sup>nd</sup> statement), Hüseyin Yıldırım, Mehmet Seyit Erden and Ali Erden; see Appendix II: §§ 16, 21, 45, 71, 74, 77, 126, 139 and 141.

<sup>247</sup> The statements taken from Nedim Özkan, Salih Demir, Mehmet Şerif Demir, Abdülislam Demir, Abdullah Sezgin, Mehmet Aslan, İbrahim Kaya, Mehmet Kaya, Abdullah Ekin, Hacı Ekin, Şerif Ekin, İbrahim Ekin, Mehmet Sezgin (1<sup>st</sup> statement), Osman Ekinci (2<sup>nd</sup> statement), Ahmet Arslan, Nevaf Özkan, Mehmet Özkan (son of Ali), Şükrü Yıldırım, Mehmet Tahir Çetin, Mehmet Yıldırım and Osman Ekin; see Appendix II: §§ 18, 24, 27, 29, 36, 40, 48, 52, 60, 63, 66, 68, 76, 85, 90, 96, 102, 111, 118, 128 and 132.

<sup>248</sup> See Appendix II: § 84.

<sup>249</sup> See Appendix III: §§ 67, 130 and 250.

<sup>250</sup> See Appendix III: Mehmet Özkan, § 16; Fahrettin Özkan, § 31; Salih Demir, § 67; Abdullah Elçiçek, § 130; İbrahim Ekin, § 196; Mehmet Sezgin, § 219; Resul Aslan, § 250; Şükrü Yıldırım, § 349; and Mehmet Nuri Özkan, § 396.

Özkan (son of Ahmet) and Mehmet Nuri Özkan claimed that they had been raped with a bottle<sup>251</sup>. Fahrettin Özkan implied that he had been raped with a truncheon<sup>252</sup>. Salih Demir, Abdullah Elçiçek and Resul Aslan alleged that they had been burned with a hot object<sup>253</sup>. The latter two further claimed that they had been given electric shocks<sup>254</sup>. Abdullah Elçiçek, İbrahim Ekin and Mehmet Sezgin testified that they had been beaten<sup>255</sup>, and İbrahim Ekin and Şükrü Yıldırım alleged that they had been sprayed with or placed in cold water<sup>256</sup>.

257. As to the claims of Abdullah Elçiçek, İbrahim Ekin and Mehmet Sezgin that they had been beaten in Güçlükonak, the Court notes that, to a certain extent, this allegation is supported by the evidence given by Mehmet Aslan, who testified that he had been kicked and hit by a rifle butt in Güçlükonak and that he had heard other detainees being beaten<sup>257</sup>, and by the evidence of İbrahim Kaya, who denied having been ill-treated himself in Güçlükonak but who had heard the sounds of other people being beaten<sup>258</sup>. It is further supported by the report of 5 March 1993 on the medical examination by Dr Pehlivanlı of a group of detainees, including Abdullah Elçiçek, İbrahim Ekin and Mehmet Sezgin, upon their arrival from Güçlükonak. In the report, it is recorded that Abdullah Elçiçek had a bruise of 10 cm by 6 cm on the rear side of his right thigh and right buttock, and that İbrahim Ekin had infected injuries of 2 cm by 1 cm on both buttocks, probably caused by a fungal infection. The report does not mention any injuries found by Dr Pehlivanlı on Mehmet Sezgin<sup>259</sup>. Although the Court cannot rule out the possibility that the bruise found on Abdullah Elçiçek resulted from the manner in which he was treated by the security forces on 20 February 1993, the possibility can equally not be excluded that this injury was caused by one or more blows received by him during his detention in Güçlükonak.

258. In view of the above consideration, the Court accepts that it is sufficiently established that some of the Ormaniçi detainees received kicks or blows while being held in Güçlükonak, but does not, however, find it established that this occurred on a systematic basis whereby all the villagers held in Ormaniçi were beaten.

259. In so far as other forms of ill-treatment in Güçlükonak are alleged, the Court notes that these allegations have remained unsubstantiated. When comparing the dates and contents of the total of nine statements taken in

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<sup>251</sup> See Appendix III: §§ 16 and 396.

<sup>252</sup> See Appendix III: § 31.

<sup>253</sup> See Appendix III: §§ 67, 130 and 250.

<sup>254</sup> See Appendix III: §§ 130 and 250.

<sup>255</sup> See Appendix III: §§ 130, 196 and 219.

<sup>256</sup> See Appendix III: §§ 196 and 349.

<sup>257</sup> See Appendix III: § 108.

<sup>258</sup> See Appendix III: § 144.

<sup>259</sup> See Appendix II: § 257.

Güçlükonak from Mehmet, Fahrettin and Mehmet Nuri Özkan, Salih Demir, Abdullah Elçiçek, Resul Aslan, İbrahim Ekin and Şükrü Yıldırım with the dates and contents of the total of twenty-eight statements taken in Güçlükonak from the other twenty-six villagers who have not made any allegation of ill-treatment in Güçlükonak, the Court finds it difficult to accept that the above-mentioned applicants would have been subjected to ill-treatment during their interrogation in Güçlükonak and the other villagers not. Also, in view of the lack of detail and consistency in the respective accounts given by Mehmet, Fahrettin and Mehmet Nuri Özkan, Salih Demir, Abdullah Elçiçek, Resul Aslan, İbrahim Ekin and Şükrü Yıldırım on this point, the Court considers that there is an insufficient basis to find it established that they were ill-treated in Güçlükonak in the manner alleged.

**The time spent in custody by the apprehended Ormaniçi villagers**

260. The Court has found it established that a total of forty-three Ormaniçi villagers were taken into detention on 20 February 1993, namely the ten villagers Ali Erbek, Şemsettin Erbek, Şahabettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, Mehmet Nuri Özkan, Hamit Demir, Mehmet Erdem and Halime Ekin, who were taken to Şırnak, and the thirty-three villagers Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci, İbrahim Kaya, Abdülselam Demir, Şerif Ekin, Mehmet Kurt, Mehmet Sezgin, Ali Erden, İbrahim Ekinci, Nedim Özkan, Abdullah Ekin, Salih Demir, Mehmet Özkan (son of Ahmet), Abdullah Kurt, Mehmet Şerif Demir, Şükrü Yıldırım, Ahmet Arslan, Mehmet Seyit Erden, Nevaf Özkan, Osman Ekin, Mehmet Tahir Çetin, Mehmet Kaya, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Resul Aslan, İbrahim Özkan, Hüseyin Yıldırım, Abdullah Sezgin, Fahrettin Özkan and Abdullah Elçiçek, who were taken to Güçlükonak<sup>260</sup>. The Court has further found it established that, on or around 27 February 1993, one further Ormaniçi villager was apprehended and taken into detention in Güçlükonak, namely Resul Çakır<sup>261</sup>.

261. It appears from the custody records of the Şırnak provincial gendarmerie command that, after having been transferred from the Güçlükonak district gendarmerie command to the Şırnak provincial gendarmerie command, nineteen Ormaniçi villagers were released from custody on 9 March 1993<sup>262</sup>.

A group of eleven villagers were apparently released on 9 March 1993, after a statement had been taken from them, upon the direct instructions of the Eruh public prosecutor Ercan Turan<sup>263</sup>. Those villagers were Mehmet Özkan (son of Ali), Şerif Ekin, Mehmet Sezgin, Ali Erden, Abdullah Kurt,

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<sup>260</sup> See §§ 168-192.

<sup>261</sup> See § 197.

<sup>262</sup> See Appendix II: § 179.

<sup>263</sup> See Appendix III: § 609.

Şükrü Yıldırım, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Hüseyin Yıldırım and Abdullah Sezgin.

After having taken their statement on 9 March 1993, the Eruh public prosecutor decided to bring a group of sixteen detained Ormaniçi villagers before the Eruh Magistrates' Court for a decision on their further detention. After having heard these sixteen villagers, the Eruh Magistrates' Court ordered the release of eight of them on 9 March 1993, namely Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Resul Çakır and Abdullah Ekin<sup>264</sup>, and ordered the further detention of the remaining eight Ormaniçi villagers, namely Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin<sup>265</sup>.

262. Consequently, Resul Çakır was held in custody for a period of ten days, and Mehmet Özkan (son of Ali), Şerif Ekin, Mehmet Sezgin, Ali Erden, Abdullah Kurt, Şükrü Yıldırım, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Hüseyin Yıldırım, Abdullah Sezgin, Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Resul Çakır and Abdullah Ekin for a period of seventeen days.

263. It also appears from the custody records of the Şırnak provincial gendarme command that, on 16 March 1993, a further group of ten Ormaniçi villagers, who had been transferred on 5 March 1993 from the Güçlükonak district gendarme command to the Şırnak provincial gendarme command, were released from custody<sup>266</sup>, namely Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), Mehmet Şerif Demir, Ahmet Arslan, Mehmet Seyit Erden, Osman Ekin, Mehmet Kaya, and Abdullah Elçiçek<sup>267</sup>. As all of them had given a statement on 16 March 1993 to the Eruh public prosecutor<sup>268</sup>, whereas there is no indication in the case file that they were subsequently brought before the Eruh Magistrates' Court for a judicial decision on the question of their further detention, the Court concludes that these ten villagers were released on 16 March 1993 upon the direct instructions of the Eruh public prosecutor.

264. Consequently, Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), Mehmet Şerif Demir, Ahmet Arslan, Mehmet Seyit Erden, Osman Ekin, Mehmet Kaya and Abdullah Elçiçek were held in custody for a period of twenty-four days.

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<sup>264</sup> See Appendix II: § 224.

<sup>265</sup> See Appendix II: § 223.

<sup>266</sup> See Appendix II: § 179.

<sup>267</sup> See Appendix II: § 179.

<sup>268</sup> See Appendix II: § 75 (Mehmet Kurt); § 19 (Nedim Özkan); § 25 (Salih Demir); § 14 (Mehmet Özkan, son of Ahmet); § 28 (Mehmet Şerif Demir); § 91 (Ahmet Arslan); § 140 (Mehmet Seyit Erden); § 133 (Osman Ekin); § 53 (Mehmet Kaya); and § 46 (Abdullah Elçiçek).

265. Six of the eight Ormaniçi villagers whose further detention had been ordered by the Eruh Magistrates' Court on 9 March 1993 remained in custody until 21 June 1993, when the Diyarbakır State Security Court ordered the release of Şemsettin Erbek, Osman Ekinci, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin<sup>269</sup>. In so far as can be established from the evidence made available to the Court, the two Ormaniçi villagers Ali Erbek and Mehmet Nuri Özkan remained in detention until at least 7 September 1998<sup>270</sup>.

266. The Court therefore finds it established that Şemsettin Erbek, Osman Ekinci, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin were held in custody for a total period of four months and one day, whereas Ali Erbek and Mehmet Nuri Özkan spent a period of at least five years, six months and fifteen days in pre-trial detention.

267. It further appears from the evidence that the Ormaniçi villager Abdülislam Demir, after having been transferred to hospital in custody on 6 March 1993, was discharged from Mardin Hospital on 29 or 30 April 1993<sup>271</sup>. At that moment, noting that no order for his further detention had been received, the Mardin provincial gendarmerie division sought instructions from the office of the public prosecutor at the Diyarbakır State Security Court as, according to information received from the Eruh public prosecutor, the proceedings against the apprehended Ormaniçi villagers had in the meantime been referred to the office of the public prosecutor at the State Security Court. However, as his name was not included in the Eruh public prosecutor's decision of lack of jurisdiction of 31 March 1993, his case was unknown at the office of the public prosecutor at the Diyarbakır State Security Court and the Mardin provincial gendarmerie division was informed accordingly by letter of 30 April 1993<sup>272</sup>.

268. As, according to the testimony of his brother Salih Demir, who had been released on 16 March 1993<sup>273</sup>, Abdülislam Demir had later returned to Ormaniçi, the Court concludes that the Mardin provincial gendarmerie division released Abdülislam Demir from custody on 30 April 1993 since no proceedings against him had been instituted. Consequently, he had been held in custody for a period of two months and ten days.

269. According to the evidence before the Court the Ormaniçi villagers İbrahim Ekinci, Nevaf Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan were transferred from the Güçlükönak gendarmerie station to the Şırnak gendarmerie command on 5 March

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<sup>269</sup> See Appendix II: §§ 223 and 238-239.

<sup>270</sup> See Appendix II: § 249.

<sup>271</sup> See Appendix II: §§ 179, 188 and 264, and Appendix III: Resul Aslan, § 253.

<sup>272</sup> See Appendix II: §§ 188-189.

<sup>273</sup> See § 262.

1993<sup>274</sup> and, on 9 or 11 March 1993, were transferred to hospital in custody<sup>275</sup>.

270. İbrahim Ekinçi died in hospital while in custody on 16 March 1993<sup>276</sup>, twenty-four days after he had been apprehended.

271. As regards Nevaf Özkan, Resul Aslan and Fahrettin Özkan, the Court finds it established on the basis of the evidence that, together with Abdülislam Demir, they were discharged from hospital on 29 or 30 April 1993 and that, in the absence of an order for their further detention, they were released from custody on 30 April 1993<sup>277</sup>, two months and ten days after they had been apprehended.

272. In respect of the Ormaniçi villagers Mehmet Tahir Çetin and İbrahim Özkan, the Court is satisfied on the evidence that they were also discharged from hospital and released from detention on 30 April 1993<sup>278</sup>, two months and ten days after they had been apprehended.

273. The Court has further found no indication in the evidence submitted by the parties that a judicial order for the further detention of Abdülislam Demir, İbrahim Ekinçi, Nevaf Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan was issued.

## II. PRELIMINARY ISSUES

274. The Court has noted that the applicants mentioned in Appendix I under the numbers 4, 5, 13 and 22, namely Ramazan Yıldırım, Mehmet Emin Demir, Abdullah Kurt and Mehmet Özkan respectively, have died in the meantime and that members of their immediate families have indicated that they wish to pursue the application brought by the above applicants.

275. Although the heirs of a deceased applicant cannot claim a general right to have the examination of the application brought by the latter continued (see *Scherer v. Switzerland*, judgment of 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 8, § 2, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI, and *Nerva and Others v. the United Kingdom*, no. 42295/98, § 33, ECHR 2002-VIII).

276. Since Ramazan Yıldırım (applicant no. 4) has brought the application together with his spouse Fatma Yıldırım (no. 28) without raising any different complaints, the Court does not consider it necessary to make a

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<sup>274</sup> See Appendix II: § 180.

<sup>275</sup> See Appendix II: §§ 179, 183-184 and 264.

<sup>276</sup> See Appendix II: § 280, and Appendix III: Abdullah Yıldırım, § 595.

<sup>277</sup> See Appendix II: §§ 188, 190 and 264, and Appendix III: Resul Aslan, §§ 253 and 255; and Ali Özkan, § 289.

<sup>278</sup> See Appendix II: § 187, 190, 230 and 232, and Appendix III: Raife Çetin, § 380.

specific ruling to the effect that Fatma Yıldırım may pursue the application brought by her husband.

277. As regards Mehmet Emin Demir (no. 5), the Court notes that his son Salih Demir has indicated that he wishes to pursue the application in his father's name. The Court accepts that Salih Demir may pursue the application brought by his father.

278. As regards Abdullah Kurt (no. 13), the Court accepts that his widow Tayibet Kurt may pursue the application brought by her husband. The same applies for Mehmet Özkan (no. 22) with regard to his widow Fatim Özkan (see *Nölkenbockhoff v. Germany*, judgment of 25 August 1987, Series A no. 123, p. 77, § 33).

279. The Court has further noted that the applicants Mahmut Güler (no. 18), Fatma Özkan (no. 27) and Halime Ekin (no. 30), who were summoned to give oral evidence before the Commission's Delegates, failed to appear and that no reasons justifying their absence have been provided or have become apparent.

280. In these circumstances, the Court considers that these applicants apparently do not intend to pursue their application and that the application, in so far as it has been brought by Mahmut Güler, Fatma Özkan and Halime Ekin on their own behalf and on behalf of their spouses and minor children (see paragraphs 281-283 below), must consequently be struck out of the Court's list of cases under Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention which require the continuation of the examination of their application.

281. The Court finally observes that, in their submissions filed after the decision of 16 January 1996 on the admissibility of the application, all the applicants whose names are set out in the application form submitted in April 1993 – with the exception of Mahmut Güler (no. 18) – have indicated that their application should also be regarded as having been lodged on behalf of their spouses and minor and/or adult children, in some cases also on behalf of their parents and in one case also on behalf of a grandchild.

282. The Court is willing to accept that the facts complained of have not only affected the applicants on a strictly individual basis, but may also have affected members of their immediate families, i.e. their spouses and their children who were minors at the material time, in so far as these children's names and ages can be established on the basis of the evidence before the Court.

283. However, in so far as the applicants now seek to extend the group of applicants further by including adult relatives and their families and, in one case, a descendant of an adult relative, the Court, having found no indication that it would not have been possible for these adult relatives and/or their spouses to ensure that their names and those of their minor

descendants were included in the list of applicants set out in the application form submitted to the Commission or, in any event, by 11 May 1993 when the Commission commenced its examination of the case, finds that the application cannot be accepted as having been brought also on behalf of these persons (see *Saflatea v. Romania*, no. 48179/99, §§ 25-26, 25 November 2003).

284. Consequently, the Court considers the application as having been brought by the following persons:

- Ahmet Özkan;
- Hediye and Ali Çetin and their children Asya, Abide, Fatma, Zeynep and Mehmet;
- Hediye and Nezir Demir and their children Ferman, Mevlüde, Fevzi and Beytullan;
- Ramazan and Fatma Yıldırım and their children Hüseyin, Safiye, Hatice, Hediye, Ali, Şükran, Emine and Hasan;
- Mehmet Emin and Ayşe Demir and their children Mehmet Şerif and Mehmet;
- Kumri and Mehmet Aslan and their children Abdullah and Asiye;
- Abdullah and Rahime Elçiçek and their children Taybet, Mevlüde, Mehmet, Ayşe, Hamdiye and Suphiye;
- İbrahim and Fatma Kaya and their children Zekiye, Ömer, Gürbet and Şerif;
- Hüseyin and Fatma Sezgin and their children Emin and Ayşe;
- Mevlüde Ekin and her children Halime and Abide;
- Besna and Hacı Ekin and their children Şerif, Tevfik, Zeki, Ahmet, Fatma, Sidika and Hüseyin;
- İbrahim and Hediye Ekin and their children Beşire, Mehmet Emin and Asima;
- Abdullah and Tayibet Kurt and their children Emine, Ahmet, Mahmut, Rabia and Mehmet Emin;
- Mehmet and Aliye Sezgin and their children Şirin, Emin, Fehime, Gülsen, Zozan and Nimet;
- Asiye and Resul Aslan and their children Fatma and Numan;
- Hamit and Rukiye Ekinci and their children Hüseyin, Hasan, Zeynep and Meryem;
- Rahim and Ahmet Arslan and their children Zeynep, Osman, Leyla, Nuriye, Ekrem, Kadriye and Sabri;
- Ali Özkan;
- Ahmet and Kumri Erbek and their children Şahabettin, Nurettin, Ayşe, Fatma and Gül;
- Ayşe and İbrahim Ekinci and their children Halime, Kerime, Mehmet, Ali and Hasan;
- Mehmet and Fatım Özkan and their children Bahaktin, Alkadir, Ezdir, Ayter, Nivan and Mehmet;

- Abdurrahman Çetin;
- Şükrü Yıldırım;
- Hatice and Şemsettin Erbek and their children Mehmet and Meryem;
- Raife and Mehmet Tahir Çetin and their children Hediye, Hatici, Mahmut, Abdullah, Gülsüm, Ahmet and Halat;
- Zeynep and Ömer Yıldırım and their children Asime, Selamet, Halil, Sıddık, Zeki and Sabri;
- Ayşe Sezgin and her children Ali, İlhan, Osman and Remskiye; and
- Rukiye<sup>279</sup> and Ali Erbek and their child Gülcehan.

### III. SCOPE OF THE APPLICATION

285. The Court observes that, at the admissibility stage of the proceedings before the Commission, the applicants complained:

(a) under Article 2 of the Convention that, on 20 February 1993, the security forces had opened fire on the houses in Ormaniçi without advance warning, that two children had been killed and a third injured as a result of the explosion of devices used by the security forces, and that Ibrahim Ekinci, one of the villagers, had been injured while being tortured in custody and had subsequently died as a result of his injuries;

(b) that their treatment by the security forces on 20 February 1993 and during their subsequent detention in Güçlükonak had amounted to treatment contrary to Article 3 of the Convention;

(c) that the detention of the Ormaniçi villagers, in particular the excessive length of time they had spent in custody and their relatives' inability to visit them even though the public prosecutor's office had given its authorisation, had violated their rights under Articles 5 and 6 of the Convention;

(d) that the burning of their homes by the security forces in February 1993 had violated their rights under Article 8 of the Convention; and

(e) under former Article 25 of the Convention that they had been prevented from exercising their right to individual petition by the Turkish authorities' seizure of documents held by one of their representatives, who had needed those documents for the preparation of the applicants' reply to the observations filed by the respondent Government at the admissibility stage of the proceedings under the Convention.

286. The Court further notes that the above complaints were collective complaints in the sense that no individual distinctions were drawn between the different applicants as regards the alleged violations of the Convention.

287. However, in the applicants' final observations on the merits, filed after the case had been declared admissible by the Commission on 16 January 1996, the applicants not only raised new complaints under

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<sup>279</sup> Rectified on 1 March 2005. The previous version reads "Fatma".

Articles 13 and 14 of the Convention and under Article 1 of Protocol No. 1, but – in so far as they alleged a violation of Articles 2, 3, 5, 6 and 8 of the Convention – also extended their complaints under these latter provisions by adding newly specified grievances and relying on facts and circumstances not raised at the admissibility stage. These included, *inter alia*, the treatment of the detained villagers in Şırnak, a further incident in the autumn of 1993 when the security forces returned to Ormaniçi where they assembled all the villagers near the school, ill-treated two women, destroyed harvested crops and set fire to some buildings, and the killing of four villagers by the security forces near Ormaniçi in June 1994, which was mentioned for the first time in the applicants' submissions of 8 December 1997 (see paragraph 453 below).

288. The Court reiterates that the scope of its jurisdiction in cases such as the instant one continues to be determined by the Commission's decision on admissibility, the Court having no power to examine new and separate facts and complaints of breaches of the substantive provisions of the Convention (see, *Okçuoğlu v. Turkey* [GC], no. 24246/94, § 31, 8 July 1999, *Şemse Önen v. Turkey*, no. 22876/93, § 103, 14 May 2002, and *Wierzbicki v. Poland*, no. 24541/94, § 28, 16 June 2002).

289. The Court therefore considers that it has no jurisdiction to examine the applicants' complaints under Articles 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention or the additional complaints under Articles 2, 3, 5, 6 and 8 of the Convention that were not raised at the admissibility stage, including the complaints raised in relation to the killing of four villagers by the security forces in June 1994. As regards the newly specified grievances under Articles 2, 3, 5, 6 and 8 of the Convention, the Court considers that, although it might be argued that some of these grievances were raised in substance, they were not specified or elaborated on prior to admissibility, and they have not been the subject of an exchange of observations between the parties. The Court therefore finds it inappropriate to take those grievances up at this stage of the proceedings.

#### IV. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

290. The applicants complained that, on 20 February 1993, the security forces had opened fire on the houses in Ormaniçi without advance warning, that Abide Ekin and Ali Yıldırım had been killed and the latter's sister Emine Yıldırım injured as a result of the explosion of devices used by the security forces on that day, and that Ibrahim Ekin, one of the apprehended villagers, had been injured while being tortured in custody and had subsequently died as a result of his injuries. 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*

291. The applicants alleged that it was established beyond reasonable doubt that the military operation conducted on 20 February 1993 had been designed to terrorise the population and that it had not been planned and conducted with adequate regard to the need to protect the civilian population of Ormaniçi, as a result of which they had been exposed to life-threatening risk and reckless disregard for their safety.

292. The applicant Mevlüde Ekin argued that it was established beyond reasonable doubt that Government agents had inflicted fatal injuries on her daughter Abide Ekin on 20 February 1993 without a lawful excuse and had failed to secure appropriate medical treatment for her, as a result of which she had died two days later, and that the investigation into her death carried out by the Eruh public prosecutor in August 1994 had been inadequate.

293. The applicant Fatma Yıldırım submitted that it was established beyond reasonable doubt that the death of her son Ali Yıldırım and the wounding of her daughter Emine Yıldırım had been caused by the failure of the security forces to take any steps, or at least any adequate steps, to ensure that Ormaniçi was free of armaments after the end of the military operation conducted on 20 February 1993.

294. The applicant Ayşe Ekinci alleged that it was established beyond reasonable doubt that her husband İbrahim Ekinci had died whilst in the custody of the State as a result of having been made to walk to Güçlükonak in freezing conditions and as a result of the conditions of his subsequent detention in Güçlükonak, which had led to frostbite and pneumonia for which he had received no adequate medical treatment, and that the Turkish authorities had failed to carry out an effective investigation into the death of her husband.

## 2. *The Government*

295. The Government disputed these arguments and submitted that, in view of the evidence, it should be concluded that, while the security forces were approaching Ormaniçi on 20 February 1993, fire had been opened on them from the village, resulting in a clash in the course of which a soldier had been shot and killed by a terrorist during a search of Mevlüde Ekin's house. According to the Government, the death of Abide Ekin was rather obscure in that it had remained unclear how and when she had died, or even when she had been born. The Government further submitted that Ayşe Ekinçi had concealed the fact that her husband İbrahim Ekinçi had been suffering from an illness which had made him “tremble” and for which he had gone to doctors and hospitals, as testified to by İbrahim Kaya.

### **B. The Court's assessment**

296. 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; and *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII).

297. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The use of the term “absolutely necessary” suggests that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is “necessary in a democratic society” under paragraph 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs (a), (b) and (c) of Article 2. In keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. Furthermore, under Article 2 of the Convention, read in

conjunction with Article 1, the State may be required to take certain measures in order to “secure” the effective enjoyment of the right to life. The responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from State agents has killed a civilian. It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimising incidental loss of civilian life (see *Ergi v. Turkey*, judgment of 28 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1776, § 79).

298. In the present case, the Court has found that on 20 February 1993, at around dawn, six heavily armed gendarme teams consisting of a total of 102 gendarmes, including 85 commandos, arrived in the vicinity of Ormaniçi in order to carry out a planned search operation for members of the PKK reportedly staying in or near to Ormaniçi, as well as for a wanted person who was believed to be in Ormaniçi<sup>280</sup>. It was intended that three teams would search an area in the vicinity of Ormaniçi and that the three other teams would approach the village from the south-west, north and south respectively. After having spotted two men running towards Ormaniçi during its approach of the village from the south, two warning shots were fired by the 2<sup>nd</sup> Commando Team, which were met by some shots fired from the village. The security forces' tactical response to these shots from the village consisted of intensive firing, including the use of RPG-7 missiles and various grenades that were fired at perceived points of fire in the village<sup>281</sup>. In the course of the security forces' intensive firing, as it was believed that shots had been fired from the house of Mevlüde Ekin, a rifle or other grenade was fired at a window of that house, the explosion of which seriously injured Abide Ekin<sup>282</sup>.

299. During the security forces' subsequent approach of the village, further intermittent exchanges of fire occurred<sup>283</sup>. At around 9 a.m., the 1<sup>st</sup> and 3<sup>rd</sup> Commando Teams entered Ormaniçi from the north-western side, from where they started a systematic search of the houses in the village<sup>284</sup>. At about the same time, Mevlüde Ekin brought her injured daughter Abide to the house of her neighbours Mehmet and Kumri Aslan. Shortly after Mevlüde and Abide Ekin had arrived there, the security forces reached the house of Mehmet and Kumri Aslan – the first house they searched – and ordered all persons present there to come outside. Mehmet Aslan was ordered to accompany some of the soldiers to Mevlüde Ekin's house, from where shots were believed to have been fired. Together with the others

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<sup>280</sup> See §§ 91-92.

<sup>281</sup> See §§ 103-104.

<sup>282</sup> See § 117.

<sup>283</sup> See § 105.

<sup>284</sup> See § 107.

present in Mehmet Aslan's house, Mevlüde Ekin came out of the house carrying Abide in her arms. None of the soldiers noticed that Abide was injured<sup>285</sup>.

300. In the course of the search of Mevlüde Ekin's house, the gendarme Private Servet Uslu – whilst searching a shelf above a small window in a bedroom on the second floor of the house – was killed by a shot fired from outside by a person whose identity the Court has been unable to establish<sup>286</sup>.

301. After having assembled in the village square all the persons found to be present in Ormaniçi, including Abide Ekin, the security forces did not verify whether there were any casualties amongst the civilians. As Mevlüde Ekin and the other villagers, in so far as they were aware of Abide's injury, chose to keep a passive profile – in all likelihood out of fear – and did not inform any of the soldiers present in the village square that Abide was injured, the security forces remained unaware of Abide Ekin's injury<sup>287</sup>. After the security forces had left Ormaniçi in the late afternoon, Mevlüde and Abide, together with a number of other women, took refuge in the village mosque, where three days later Abide died of her injuries<sup>288</sup>.

302. On 21 and 25 February 1993 the security forces returned to Ormaniçi, where they conducted further searches for provisions intended for the PKK and for concealed weapons<sup>289</sup>.

303. About ten days after 20 February 1993 a young boy, Ali Yıldırım, died in Ormaniçi as a result of the explosion of a live hand grenade he had found and played with. The explosion of the hand grenade also slightly injured his sister Emine Yıldırım<sup>290</sup>. The question whether this live hand grenade had been accidentally left behind by the security forces after the operation on 20 February 1993 or whether it had a different origin could not be determined on the basis of the evidence before the Court.

304. İbrahim Ekinci was among the Ormaniçi villagers who were apprehended in Ormaniçi on 20 February 1993 and who were made to walk through the snow and slush to the Güçlükonak gendarmerie building. On 5 March 1993 he was transferred from Güçlükonak to gendarmerie detention facilities in Şırnak. On 9 March 1993 he was transferred to hospital in custody for treatment of frostbite on his right foot. He died in hospital on 16 March 1993 from undetected pneumonia. Concluding that no one was liable for İbrahim Ekinci's death, the Diyarbakır public prosecutor decided not to institute any criminal proceedings in relation to his death. Furthermore, the criminal complaint subsequently filed by his widow Ayşe

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<sup>285</sup> See §§ 109 and 117-118.

<sup>286</sup> See §§ 119-125.

<sup>287</sup> See §§ 127-129 and 137-138.

<sup>288</sup> See §§ 138 and 151, and Appendix II: §§ 305-307.

<sup>289</sup> See §§ 151-153 and 156.

<sup>290</sup> See §159, and Appendix II: §§ 303-304, 314, 320 and 322.

Ekinci, alleging homicide resulting from torture, did not result in any criminal proceedings<sup>291</sup>.

*1. The use of force by the security forces on 20 February 1993*

305. Reiterating that at the material time there were serious disturbances in south-east Turkey involving armed conflict between the security forces and members of the PKK, that Ormaniçi was located near to the Gabar mountain chain, where in 1993 a number of PKK groups were staying and that the PKK was active in the region around Ormaniçi<sup>292</sup>, the Court accepts, taking due account of all these circumstances, that the security forces' tactical reaction to the initial shots fired at them from the village on 20 February 1993 cannot be regarded as entailing a disproportionate degree of force. In so finding, the Court has also taken into consideration the fact that, apart from Abide Ekin, no civilians were injured as a result of the security forces' intensive firing.

306. It therefore accepts that, in the circumstances of the present case, the security forces' choice to open intensive fire on Ormaniçi in response to shots fired at them from the village was “absolutely necessary” for the purpose of protecting life. It follows that there has been no violation of Article 2 in this respect.

*2. The death of Abide Ekin*

307. The Court has further found that, once the security forces had taken control of Ormaniçi and had assembled its entire population in the village square, the security forces failed to make any attempt to verify whether there were any civilian casualties, which – given the amount and nature of the ammunition used by the security forces – was a realistic possibility<sup>293</sup>.

308. Although Mevlüde Ekin's assertion that her daughter Abide died as a consequence of the security forces' failure to secure appropriate medical treatment for her and that she might have survived if the security forces had taken the necessary initiatives has remained unsubstantiated by any medical evidence and is largely speculative, the Court is nevertheless of the opinion that the callous disregard displayed by the security forces as to the possible presence of civilian casualties amounted to a breach of the Turkish authorities' obligation to protect life under Article 2 of the Convention in respect of Abide Ekin.

*3. The alleged inadequacy of the investigation of Abide Ekin's death*

309. As regards Mevlüde Ekin's complaint that the investigation into the death of her daughter Abide, carried out by the Eruh public prosecutor in

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<sup>291</sup> See §§ 237-249.

<sup>292</sup> See §§ 85 and 88-89.

<sup>293</sup> See § 138.

August 1994, was inadequate, the Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, cited above, p. 49 § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105).

310. 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 (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII). 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, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII).<sup>311</sup> For an investigation into 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 v. Turkey* [GC] no. 21594/93, ECHR 1999-III, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Ergi v. Turkey*, cited above, pp. 1178-79, §§ 83-84, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 70, ECHR 2002-II).

312. 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 v. Turkey*, cited above, p. 324, § 87) and to the identification and punishment of those responsible (see *Oğur v. Turkey*, 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*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV, and *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII). 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 (see *Aktaş v. Turkey*, no. 24351/94, § 300, ECHR 2003-V).

313. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating the 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 (see *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III).

314. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82; *Oğur v. Turkey*, cited above, § 92, and *McKerr v. the United Kingdom*, cited above, § 148).

315. In the present case, the Court notes that, upon the instructions of the International Law and Foreign Relations Directorate of the Ministry of Justice, an investigation into the death of Abide Ekin was carried out by the Eruh public prosecutor Şenol Önal<sup>294</sup>. As Şenol Önal failed to appear before the Commission's Delegates to give oral evidence<sup>295</sup>, the Court can only assess the effectiveness of his investigation on the basis of the documentary and other evidence that has been made available.

316. The Court notes that, notwithstanding the obvious necessity to gather and record the evidence capable of establishing what had happened, the only persons heard by Şenol Önal in relation to the death of Abide Ekin were İbrahim Kaya, Ayşe Ekinçi, Safiye Yıldırım and Osman Ekin, who were not specifically selected for this purpose but who merely happened to be in Ormaniçi during Şenol Önal's on-site investigation on 10 August 1994<sup>296</sup>. As the exhumation of Abide Ekin's remains did not allow the cause of her death to be determined, Şenol Önal apparently based his conclusion that Abide Ekin had died as a result of the detonation of an explosive device on the basis of the oral evidence taken in Ormaniçi on 10 August 1994<sup>297</sup>.

317. The Court has found no indication that Şenol Önal made any serious attempts to find out who had in fact fired the explosive device that had killed Abide Ekin. In particular, it does not appear that he ever sought to find, or to take evidence from Abide's mother Mevlüde Ekin, Abide's siblings or any military personnel present during the operation.

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<sup>294</sup> See Appendix II: §§ 297 and 299.

<sup>295</sup> See Appendix III: § 659.

<sup>296</sup> See Appendix II: §§ 297, 300, 309, 314 and 324.

<sup>297</sup> See Appendix II: §§ 306-307.

318. Furthermore, on 22 August 1994, after his on-the-spot visit to Ormaniçi, Şenol Önal instructed the Güçlükonak District Gendarmerie Command, i.e. the gendarmerie command that had conducted the operation in Ormaniçi on 20 February 1993, to investigate the death of Abide Ekin, but that investigation did not produce any results<sup>298</sup>. Against this background, the Court is struck by the sudden and – in so far as can be established – unsubstantiated conclusion of Şenol Önal in his decision of lack of jurisdiction that an unknown number of PKK terrorists had caused the death of Abide Ekin by having left explosive material behind after the incident<sup>299</sup>.

319. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into the circumstances surrounding Abide Ekin's death. It is mindful, as indicated in various previous judgments concerning Turkey, of the fact that loss of life is a tragic and frequent occurrence in the security situation in south-east Turkey (see *Ergi v. Turkey*, cited above, § 85). However, neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into the deaths arising out of clashes involving the security forces, the more so in cases such as the present where the circumstances are in many respects unclear.

320. The Court is therefore of the opinion that there has also been a violation of Article 2 of the Convention in this respect.

#### *4. The death of Ali Yıldırım and the wounding of Emine Yıldırım*

321. The Court notes that it has not been able to make any findings as to whether the live hand grenade whose explosion resulted in the death of Ali Yıldırım and the injury to his sister Emine Yıldırım had been accidentally left behind by the security forces after the termination of the operation on 20 February 1993 or whether it had a different origin. Furthermore, in the light of the undisputed fact that the security forces searched for weapons and ammunition in Ormaniçi on 20, 21 and 25 February 1993, the Court cannot find that, on this point, the Turkish authorities fell short of their positive obligation to protect life under Article 2 of the Convention. Consequently, there has been no violation of Article 2 in respect of Ali and Emine Yıldırım.

#### *5. The death of İbrahim Ekinçi*

322. The Court has found it established beyond reasonable doubt that İbrahim Ekinçi died in hospital in custody from undetected pneumonia, which he developed while being held in custody, and that in all likelihood

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<sup>298</sup> See Appendix II: §§ 329-330.

<sup>299</sup> See Appendix II: § 331.

he contracted this illness as a result of having been made to walk barefoot through the snow and slush to Güçlükonak and by the conditions of his subsequent detention in Güçlükonak<sup>300</sup>.

323. In the light of the importance of the protection afforded by Article 2, the Court must subject loss of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. In the context of prisoners, the Court has had previous occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent where an individual dies. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their supervision in detention, strong presumptions of fact will arise in respect of injuries and death occurring during the detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey*, cited above, §§ 99-100).

324. İbrahim Ekinici was taken into custody on 20 February 1993 in apparently good health and without any pre-existing injuries or active respiratory illnesses. Although he was medically examined in custody and adequate measures were taken to provide orthopaedic medical treatment for the frostbite on his feet by transferring him to hospital in custody, there is a direct causal link between, on the one hand, his treatment by the security forces on 20 February 1993 and the conditions of his subsequent detention in Güçlükonak and, on the other, his death due to undetected pneumonia. The Turkish authorities must therefore be regarded as liable for the cause of his death.

325. It follows that there has been a violation of Article 2 of the Convention in respect of the death of İbrahim Ekinici.

*6. The alleged inadequacy of the investigation of İbrahim Ekinici's death*

326. Shortly after the death of İbrahim Ekinici, a post-mortem examination was carried out which did not, however, result in any conclusive findings as to the cause of his death. A subsequent examination of tissue samples led to the conclusion that he had died of pneumonia. On the basis of this conclusion, Abdullah Yıldırım, the Diyarbakır public prosecutor in charge of the preliminary investigation into the death of İbrahim Ekinici, decided on 24 June 1993 not to bring any criminal proceedings, since the death had not resulted from any offence or from anyone's fault or influence<sup>301</sup>.

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<sup>300</sup> See § 248.

<sup>301</sup> See §§ 242 and 244.

327. The Court has found that, although the link between frostbite and the development of pneumonia is obvious even for a layman, there was no appearance whatsoever that the Diyarbakır public prosecutor attempted to verify whether the cause of İbrahim Ekinci's death was in any way connected to the treatment to which he had been subjected when he was apprehended and detained, that the public prosecutor's decision not to make any further enquiries in relation to the circumstances of İbrahim Ekinci's death was in fact directly influenced by the information allegedly given to him by the police, namely that İbrahim Ekinci was a terrorist who had contracted frostbite during a lengthy stay in caves, and that – on the basis of this information – he assumed that İbrahim Ekinci had also caught pneumonia in that way, and therefore did not find it necessary to seek any further explanation<sup>302</sup>.

328. The Court has further found it established that, on the assumption that the Diyarbakır public prosecutor had already verified whether or not İbrahim Ekinci had died as a result of his treatment in detention, the Eruh public prosecutor, with whom İbrahim Ekinci's widow, Ayşe Ekinci, had filed on 12 April 1993 a criminal complaint alleging homicide resulting from torture, did not find it necessary to open a further investigation into the cause of İbrahim Ekinci's death<sup>303</sup>.

329. Bearing in mind the vulnerable position in which detainees find themselves and the authorities' obligation to protect them and to conduct an effective investigation where a person dies in detention, the Court finds that, as a result of the failure of the two public prosecutors who conducted an investigation into the death of İbrahim Ekinci to examine whether there existed a causal link between his fatal illness and his treatment in custody – including the failure by the Diyarbakır public prosecutor to verify the information allegedly given by the police about İbrahim Ekinci's personal history –, no effective investigation into İbrahim Ekinci's death was conducted.

330. Accordingly, there has also been a violation of Article 2 of the Convention in respect of the authorities' investigation into the death of İbrahim Ekinci.

## V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

331. The applicants complained that their treatment by the security forces on 20 February 1993 and the treatment of the apprehended Ormaniçi villagers during their subsequent detention in Güçlükonak amounted to treatment contrary to Article 3 of the Convention, which provides:

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<sup>302</sup> See § 248.

<sup>303</sup> See § 249.

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

## **A. Submissions of the parties**

### *1. The applicants*

332. The applicants contended that it was established beyond reasonable doubt that their rights under Article 3 of the Convention had been violated in that:

(i) on 20 February 1993 a military operation had been conducted to terrorise and humiliate the population of Ormaniçi by rounding them up as a collective punishment, which was an inhuman form of punishment proscribed even under the law of armed conflict;

(ii) the male Ormaniçi villagers had been beaten by the security forces as they were being taken to, or held in, the village square on 20 February 1993;

(iii) all persons present in Ormaniçi on that day had been forcibly assembled in the village square, where they had been kept without adequate clothing or protection in freezing conditions;

(iv) the apprehended Ormaniçi villagers had been forced to march, blindfolded and tied together, to Güçlükonak in conditions amounting to treatment proscribed by Article 3;

(v) the authorities had failed to inform the relatives of those taken into detention of their whereabouts;

(vi) the conditions in which those taken to Güçlükonak had been held – including the absence of adequate medical treatment – and the torture to which they had been subjected had amounted to treatment contrary to Article 3;

(vii) the authorities had failed to provide adequate or timely treatment to those villagers held in Güçlükonak to mitigate the effects of the injuries they had suffered as a result of their march to Güçlükonak, which had led to many sustaining a permanent physical disability;

(viii) their homes and property had been intentionally destroyed; and

(ix) the authorities had failed to conduct an investigation into the events.

### *2. The Government*

333. The Government rejected the applicants' allegations, arguing that in view of the evidence it should be concluded that, during the security forces' approach of Ormaniçi on 20 February 1993, shots had been fired at them from the village and an armed clash had ensued, and that the applicants' claims of ill-treatment were unfounded. The Government further pointed out that those who had claimed to have contracted frostbite had only substantiated their physical condition in the form of photographs, and that in

the cases of Abdülislam Demir, Fahrettin Özkan, Resal Aslan and Nevaf Özkan it could be concluded only that frostbite had been the reason why they had undergone amputations to their feet. The Government lastly submitted that, although the roofs of a few houses had been burned as a result of being hit by tracer bullets fired during the security forces' tactical response to the shots fired at them from the village, no house had been set on fire by the security forces.

### **B. The Court's assessment**

334. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic society. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Article 3 makes no provision for exceptions and no derogation from it is permissible even under Article 15 of the Convention in time of war or other national emergency (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79; and *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 909, §§ 75-76).

335. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feeling of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland*, cited above, § 92).

336. In considering whether a particular form of treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, cited above, § 74). The suffering and humiliation involved must in any event go beyond

that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

337. Measures depriving a person of his liberty may often involve such an element. In this connection the Court emphasises that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical care. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-V).

338. Artificially depriving prisoners of their sight by blindfolding them for lengthy periods spread over several days may, when combined with other ill-treatment, subject them to strong psychological and physical pressure. The Court must examine the effect of that treatment in the special circumstances of each case (see, *mutatis mutandis*, *Salman v. Turkey*, [GC], no. 21986/93, § 132, ECHR 2000-VII). Furthermore, where a person is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

*1. The alleged punitive and inhuman nature of the military operation*

339. The applicants claimed that the military operation of 20 February 1993 had been conducted to terrorise and humiliate the population of Ormaniçi by rounding them up as a collective punishment, which, according to the applicants, was an inhuman form of punishment.

340. The Court refers to its above finding in respect of the reasons for planning the military operation at issue and its conclusion that the security forces' tactical reaction to the initial shots fired at them from the village on 20 February 1993 cannot be regarded as entailing a disproportionate degree of force in violation of Article 2<sup>304</sup>. Taking due account of all the surrounding circumstances at the material time, the Court cannot find that the subsequent decision by the security forces to conduct a systematic search of the village<sup>305</sup>, including assembling in the village square all the

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<sup>304</sup> See §§ 296 and 303-304.

<sup>305</sup> See §§ 92-92 and 103-107.

persons found<sup>306</sup>, can be regarded, as such, as amounting to treatment or punishment in violation of Article 3 of the Convention.

*2. The treatment by the security forces of the Ormaniçi villagers held in the village square*

341. The Court has found that, at around noon on 20 February 1993, all the villagers were assembled by the security forces in the village square, where they were kept whilst the security forces continued their searches in the village with the assistance of reinforcement troops that had arrived in the meantime, and where the adolescent and adult male villagers were separated from the women, children and some old men<sup>307</sup>. All the adolescent and adult male villagers – with the exception of some old men – were made to lie face down on the ground, a mixture of mud and slush, in full view of their wives, mothers and young children. These boys and men were further occasionally beaten, kicked and trampled on by the soldiers guarding them<sup>308</sup>.

342. In the absence of any indication that the security forces – apart from the total of 35 shots that had been fired at them when they had approached Ormaniçi in the morning<sup>309</sup> – met with any resistance on the part of the civilian population in Ormaniçi, the Court has found no circumstances capable of justifying such treatment.

343. The Court is of the opinion that this apparently unnecessary treatment, which cannot but be seen as having been intended to intimidate, humiliate and debase the villagers, surpassed the usual degree of intimidation and humiliation that is inherent in every arrest or detention and exceeded the minimum level of severity required for the purposes of Article 3 of the Convention. Consequently, the treatment to which the applicants were subjected in the village square amounts to a violation of this provision of the Convention.

*3. The alleged burning of houses in Ormaniçi*

344. As to the applicants' complaint concerning the destruction of their homes and property, the Court considers it more appropriate, in the particular circumstances of the case, to consider this part of the application in the context of its examination of the applicants' complaints under Article 8 of the Convention, set out below (see *Akdivar v. Turkey*, judgment of 16 September 1996, *Reports 1996-IV*, p. 1216, § 91; and *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports 1997-VIII*, p. 2712, § 77).

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<sup>306</sup> See § 129.

<sup>307</sup> See § 129.

<sup>308</sup> See § 133.

<sup>309</sup> See § 105.

*4. The taking into detention of the Ormaniçi villagers and their conditions of detention in Güçlükonak*

345. In the course of the afternoon, and after having been identified by Osman Ayan as having links with the PKK, nine men and one woman – Ali Erbek, Şemsettin Erbek, Şehabettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, Mehmet Nuri Özkan, Hamit Demir, Mehmet Erdem and Halime Ekin – were taken by helicopter to Şırnak where they were placed in custody in the Şırnak provincial gendarmerie command<sup>310</sup>.

346. In the late afternoon, shortly before nightfall and after having blindfolded and tied them together<sup>311</sup>, the security forces took the remaining thirty-three adolescent and adult male villagers being held in the village square<sup>312</sup> and led them on foot to the gendarmerie station in Güçlükonak. After a walk that lasted about two or three hours over difficult terrain – the rocks, mud and slush causing some of the men to slip or fall down<sup>313</sup> – this group arrived in Güçlükonak. Not all of the men were wearing warm clothes or appropriate footwear and some of them were wearing only one shoe or none at all upon their arrival in Güçlükonak. Dr Fahrettin Parmaksız, who carried out a medical examination of the thirty-three apprehended men at around 8 p.m., found various foot injuries caused by their having been made to walk from Ormaniçi to Güçlükonak under difficult circumstances. He provided the villagers with basic medical care and recommended that they be kept warm and given exercise<sup>314</sup>.

347. It later appeared that the villagers İbrahim Ekinci, Abdülselem Demir, Fahrettin Özkan, İbrahim Özkan, Nevaf Özkan, Resul Aslan, Osman Ekinci, Mehmet Tahir Çetin, Hüseyin Yıldırım, Ahmet Arslan and Mehmet Seyit Erden had developed frostbite on their feet as a result of the conditions in which they had been made to walk from Ormaniçi to Güçlükonak<sup>315</sup>.

348. On or around 27 February 1993 another person from Ormaniçi, Resul Çakır, was apprehended and taken into detention in Güçlükonak<sup>316</sup>.

349. Given the lack of detention facilities in Güçlükonak, the apprehended Ormaniçi villagers were held in two unfurnished rooms in the basement of a new Güçlükonak gendarme station building still under

<sup>310</sup> See §§ 130-131, 162 and 192.

<sup>311</sup> See §

<sup>312</sup> Namely Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci, İbrahim Kaya, Abdülselem Demir, Şerif Ekin, Mehmet Kurt, Mehmet Sezgin, Ali Erden, İbrahim Ekinci, Nedim Özkan, Abdullah Ekin, Salih Demir, Mehmet Özkan (son of Ahmet), Abdullah Kurt, Mehmet Şerif Demir, Şükrü Yıldırım, Ahmet Arslan, Mehmet Seyit Erden, Nevaf Özkan, Osman Ekin, Mehmet Tahir Çetin, Mehmet Kaya, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Resul Aslan, İbrahim Özkan, Hüseyin Yıldırım, Abdullah Sezgin, Fahrettin Özkan and Abdullah Elçiçek; see § 259.

<sup>313</sup> See § 162.

<sup>314</sup> See § 207.

<sup>315</sup> See §§ 225-233, 238 and 240.

<sup>316</sup> See § 197.

construction. The window openings in these rooms were covered by plastic foil and each room was heated by a coal stove. At night, the outside temperature dropped below zero and the temperature in the two detention rooms varied. It was generally cool as the coal used burned quickly without giving off much heat. There was only one toilet for the detained villagers and they could go there only if accompanied by a guard<sup>317</sup>.

350. During their period of detention in Güçlükonak, the apprehended Ormaniçi villagers were fed with soldiers' leftovers and bread<sup>318</sup>, remained blindfolded<sup>319</sup>, were obliged to sit and sleep on the concrete floor in the two rooms without having been provided with appropriate bedding and, despite Dr Parmaksız' recommendation, were not given any exercise, thus remaining immobile for most of the time<sup>320</sup>.

351. Despite the basic medical care provided by Dr Parmaksız with the means at his disposal, these conditions resulted in the development of the various frostbite-related ailments which were found on İbrahim Ekinci, Abdülislam Demir, Fahrettin Özkan, İbrahim Özkan, Nevaf Özkan, Resul Aslan, Osman Ekinci, Mehmet Tahir Çetin, Hüseyin Yıldırım, Ahmet Arslan and Mehmet Seyit Erden and which eventually caused Abdülislam Demir, Nevaf Özkan and Hüseyin Yıldırım to have one or more toes amputated, Fahrettin Özkan and Resul Aslan to undergo a metatarsal amputation of both feet, and Ahmet Arslan and Mehmet Seyit Erden to undergo skin transplant operations<sup>321</sup>. The conditions of detention in Güçlükonak were in all probability also the cause for the development of the fungal skin disorders that were found on the buttocks of Mehmet Özkan (son of Ali), İbrahim Ekin and Resul Aslan<sup>322</sup>.

352. The Court has further found that other injuries, i.e. bruises and graze marks, found on Mehmet Aslan, Abdülislam Demir, İbrahim Özkan and Abdullah Elçiçek resulted from their treatment by the security forces<sup>323</sup> and, although there was no evidence that this occurred on a systematic basis, it has found it established that some of the Ormaniçi villagers were occasionally kicked or struck during their detention in Güçlükonak<sup>324</sup>.

353. As regards the manner in which the apprehended villagers were taken to Güçlükonak and the conditions in which they were subsequently detained, the Court is willing to accept that there was not necessarily a deliberate intention of ill-treating, humiliating or debasing these villagers, and that, for reasons of security, the security forces' main concern was to

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<sup>317</sup> See §§ 208-211.

<sup>318</sup> See §§ 212 and 214.

<sup>319</sup> See § 216.

<sup>320</sup> See § 212.

<sup>321</sup> See §§ 225-233, 238 and 240.

<sup>322</sup> See §§ 222-223.

<sup>323</sup> See §§ 220-221.

<sup>324</sup> See § 257.

take them as soon as possible to Güçlükonak. The Court further accepts that, as the gendarme station in Güçlükonak was not equipped to hold such a large group of detainees, the gendarme authorities made efforts to render tolerable, with the limited means at their disposal at the material time, the conditions in which the apprehended Ormaniçi villagers were held. However, although the question whether the purpose of the treatment complained of was to humiliate or debase the victim is a factor to be taken into account, it is to be reiterated that the absence of any such purpose cannot exclude a finding of a violation of Article 3 (see *Kalashnikov v. Russia*, cited above, § 101).

354. The Court finds, having regard to the conditions in which the Ormaniçi villagers were made to walk from Ormaniçi to Güçlükonak, to the conditions in which they were held in Güçlükonak for periods between six and thirteen days, to the detrimental effects of those conditions on their health and well-being, and to the bruises and graze marks found on Mehmet Aslan, Abdülselem Demir, İbrahim Özkan and Abdullah Elçiçek, that the Ormaniçi villagers who were taken to and detained in Güçlükonak were subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

*5. The alleged failure of the authorities to inform the relatives of the whereabouts of those taken into detention*

355. The Court considers that the alleged failure of the authorities to inform the relatives of the Ormaniçi villagers taken into detention on 20 February 1993 of the latter's whereabouts does not raise, as such, an issue under Article 3 of the Convention but might give rise to an issue under Article 5, and has been considered below in this context (see *Orhan v. Turkey*, no. 25656/94, §§ 354-355, 18 June 2002).

*6. The authorities' alleged failure to conduct an investigation*

356. The Court observes that, according to the evidence given by Ercan Turan, the Eruh public prosecutor who was responsible for the preliminary investigation against the apprehended Ormaniçi villagers, a criminal complaint is not a condition *sine qua non* for the opening of an investigation by a public prosecutor, and that the medical reports that Dr Parmaksız had drawn up in Güçlükonak and those drawn up in Şırnak by Dr Öztürk were a part of his case file when he took statements from the apprehended Ormaniçi villagers on 9 and 16 March 1993. However, in the absence of any complaints of ill-treatment raised by the villagers when they appeared before him, and in the absence of a petition to open an investigation into their treatment during detention or any additional information as to the cause of the injuries recorded in documents in his case file, Ercan Turan had not found it necessary to take any initiatives in this regard. In any event, as

his priority had been to take evidence from these villagers about their involvement with the PKK, he would not have opened a separate investigation into complaints about injuries incurred by these villagers<sup>325</sup>.

357. In respect of the seven apprehended Ormaniçi villagers who had been transferred to hospital in custody, the Eruh public prosecutor declared that he had been aware that they had not been brought before him and that they had been transferred to hospital. However, as they were no longer within his jurisdiction, it would be for the judicial authorities in the places to where these detainees were transferred to enquire about their circumstances.

358. The Court has previously held that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Dikme v. Turkey*, no. 20869/92, § 101, ECHR 2000-VIII).

359. The Court considers that the above principle also applies in situations where judicial authorities are confronted with clear information set out in official documents, such as the medical reports in the present case according to which the apprehended Ormaniçi villagers had sustained various foot injuries, including frostbite, as a direct consequence of having been made to walk seven kilometres in adverse weather and terrain conditions, some without shoes. This is particularly true where, as in the present case, the nature of these injuries subsequently necessitated a transfer to hospital in custody. In so far as the authorities which are confronted with information to this effect are not themselves competent to take any investigative steps, the above principle requires by implication that such information should be brought to the attention of those authorities which are competent in the matter.

360. In view of the total inactivity of the judicial authorities in the present case to investigate the manner in which the apprehended Ormaniçi villagers had sustained their foot injuries, the Court concludes that there has also been a violation of Article 3 of the Convention in its procedural aspect.

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<sup>325</sup> See Appendix III: §§ 605, 607-610 and 614.

## VI. ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION

361. The applicants complained that the custody and the length of time which those villagers apprehended on 20 February 1993 spent in custody and the fact that it was impossible for their relatives to visit them had violated their rights under Articles 5 and 6 of the Convention, which provide, in so far as relevant, as follows:

### Article 5

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial...”

### Article 6

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

## A. Submissions of the parties

### 1. *The applicants*

362. The applicants claimed that almost the entire male population of Ormaniçi had been arbitrarily taken into detention in that, except in the case of those villagers who were taken to Şırnak, there had been no reasonable suspicion that they had been personally involved in any crime, as required by Article 5 § 1. They further considered that it had been established that there had been a violation of Article 5 on account of the length of time the apprehended villagers had spent in custody before they were brought before any judicial authority; the absence of custody records in Güçlükönak and the inaccuracy of the custody records in Şırnak, together with the lack of any evidence of authorisation from the public prosecutor for the detention of any of the villagers; the length of the unacknowledged custody of those men

who were transferred to hospital while still in custody; and the duration of the pre-trial detention of Mehmet Nuri Özkan and Ali Erbek. The applicants further claimed that, in violation of Article 6 of the Convention, the domestic authorities had failed to undertake any investigation into the circumstances surrounding the attack on Ormaniçi in February 1993 or to institute any proceedings on the basis of the complaints raised before the Eruh public prosecutors in relation to the detention of the villagers in Güçlükonak and Şırnak and their treatment during that time.

## 2. *The Government*

363. The Government submitted that, given the situation in south-east Turkey brought about by the violence of the PKK terrorist organisation, there had been no breach of the Convention provisions relied on by the applicants.

### **B. The Court's assessment**

364. The Court's case-law stresses the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It has reiterated in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure (see *Tanli v. Turkey*, no. 26129/95, § 164, ECHR 2001-III).

365. Article 5 § 1 of the Convention requires that any deprivation of liberty must both be “lawful” and comply with “a procedure prescribed by law”. By the use of these terms the Convention essentially refers back to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be in conformity with the purpose of Article 5, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Laumont v. France*, no. 43626/98, § 43-44, ECHR 2001-XI).

366. The “reasonableness” of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and

detention laid down in Article 5 § 1 (c) of the Convention. This requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case. The standard imposed by Article 5 § 1 (c) does not presuppose that the police have sufficient evidence to bring charges at the time of arrest. The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge which comes at the next stage of the process of criminal investigation (see *O'Hara v. the United Kingdom*, no. 37555/97, §§ 34 and 36, ECHR 2001-X).

367. It is true that the Court has accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1998, Series A no. 145-B, p. 33, § 61, *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 58, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2282, § 78, and *Satik, Camlı and Maraşlı v. Turkey*, nos. 24737/94, 24739/94, 24740/94 and 24741/94, § 22, 22 October 2002).

368. This does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence. Similarly, the requirements of the investigation cannot absolve the authorities from the obligation to bring any person arrested in accordance with Article 5 § 1 (c) "promptly" before a judge, as required by Article 5 § 3. Where necessary, it is for the authorities to develop forms of judicial control which are adapted to the circumstances but compatible with the Convention (see the *Demir and Others v. Turkey* judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41). Judicial control of interferences by the executive is an essential feature of the guarantee embodied in Article 5 § 3, which is intended to minimise the risk of arbitrariness and to secure the rule of law, "one of the fundamental principles of a democratic society..., which is expressly referred to in the Preamble to the Convention" (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2623, § 44).

#### 1. *The custody records in Güçlükonak and Şırnak*

369. The Court notes that the Government were unable to submit any custody records for the Güçlükonak district gendarme station in respect of the period from 20 February to 9 March 1993. Although the Court has accepted on the basis of other evidence that – with the exception of Resul

Çakır, Hamit Demir and Mehmet Nuri Özkan, who arrived in Güçlükonak on a later date – the particulars of the apprehended villagers arriving from Ormaniçi had in some manner or another been recorded upon their arrival at the Güçlükonak gendarmerie station on 20 February 1993, it observes that the question whether any proper, formal custody records in respect of the Ormaniçi villagers detained in Güçlükonak ever in fact existed and, if so, what has happened to these records has remained unelucidated<sup>326</sup>.

370. As regards the custody records kept at the Şırnak provincial gendarmerie command, the Court has found several serious flaws in these records in respect of the apprehended Ormaniçi villagers, so that these records may be considered unreliable. The detention of ten persons who had been taken directly to Şırnak on 20 February 1993 was only registered in these records on 4 March 1993, twelve days later. It was also not until 4 March 1993 that five other detainees, who had already been transferred from Güçlükonak to Şırnak on 25 February 1993 at the latest, were registered in the Şırnak custody records. In addition, a further group of twenty-nine apprehended Ormaniçi villagers, who were transferred from Güçlükonak to Şırnak on 5 March 1993, were registered in the Şırnak custody records as having been apprehended on 5 March 1993 instead of 20 February 1993 or, in the case of Resul Çakır, 27 February 1993. In the light of its findings in previous cases about the general unreliability and inaccuracy of custody records as well as the findings of the CPT in respect of the keeping of custody records in Turkey, the Court has found that these flaws cannot be regarded as merely isolated incidents<sup>327</sup>.

371. On this point, the Court stresses that a failure to keep adequate custody records entails a negation of the guarantees contained in Article 5 of the Convention. Having assumed control over a person taken into detention, it is incumbent on the authorities to account for this person's whereabouts, not only at the material time but also in the context of a subsequent control of this detention. Adequately kept custody records are of crucial importance for the administrative or judicial determination of any question or claim in relation to a person taken into detention, including a claim that a person has been ill-treated or killed, or has disappeared after having been apprehended by the authorities. The Court considers that a failure to record accurate holding data concerning the date, time and location of detainees, as well as the grounds for their detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan v. Turkey*, cited above, § 371).

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<sup>326</sup> See §§ 201-203.

<sup>327</sup> See §§ 204-206.

372. Although it cannot be said that the apprehended Ormaniçi villagers were held as such in unacknowledged detention, the Court is struck by the apparent absence of proper custody records in Güçlükonak and the unreliability of the Şırnak custody records at the material time. Traceability of detainees, which goes hand in hand with effective accountability of the authorities for the persons under their responsibility, is an indispensable safeguard. In the circumstances of this case, where the detainees were in a highly vulnerable position (see the Court's above findings under Articles 2 and 3<sup>328</sup> and its findings under Article 5 §§ 1 and 3 below), the Court finds that the lack of proper records infringed the prohibition of arbitrariness implicit in Article 5 of the Convention. Consequently, there has been a violation of this provision on this account.

373. As regards the alleged failure by the authorities to inform the relatives of the Ormaniçi villagers taken into detention on 20 February 1993 of the latter's whereabouts, the Court considers that a refusal by the authorities of a request by relatives of a person taken into detention to be informed of the latter's whereabouts may constitute an aggravated aspect under Article 5 of the Convention. However, in the absence of any indication that the relatives of the Ormaniçi villagers who were taken into detention on 20 February 1993 were unaware that the latter had been taken to either Şırnak or Güçlükonak, or that a request for information about the whereabouts of their detained relatives was ignored or rejected by the authorities, the Court finds that, in this respect, no further issue arises under Article 5.

## *2. Lawfulness of the Ormaniçi villagers' detention*

374. As regards the reasonableness of the suspicion against the apprehended Ormaniçi villagers, the Court notes that, on 20 February 1993, the security forces were shot at from the village and that they found weapons and ammunition in the village<sup>329</sup>. Osman Ayan, a PKK confessor, identified ten villagers as having links with the PKK<sup>330</sup>. These ten villagers were taken on the same day by helicopter to Şırnak, where they were held in custody. Thirty-three other villagers were taken into custody in Güçlükonak. However, in the light of the conclusion reached in the following paragraphs, the Court does not find it necessary to determine the question whether there existed a "reasonable suspicion" in respect of the apprehended villagers.

375. The Court has previously found that, in order to be lawful under Turkish domestic law, the detention of a person suspected of an offence, whether or not the suspected offence falls within the jurisdiction of the State Security Court, requires the authority of a public prosecutor. Such authority

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<sup>328</sup> See §§ 322-323 , 327-328, 352 and 357-358.

<sup>329</sup> See §§ 104-105.

<sup>330</sup> See § 130.

may be given orally and may exceptionally be given after the event, but it will thereafter be recorded in writing (see *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, § 679, 13 November 2003).

376. In the present case, the Eruh public prosecutor Ramazan Bayrak explained that, at the relevant time, gendarmes could – with the authority of the public prosecutor – detain apprehended suspects for a period of fifteen days. If their interrogation could not be completed within that period, the gendarmes could seek an extension of fifteen days. Such an extension was not automatic or mandatory; it depended on the particular circumstances of the case. The granting of an extension would be recorded in writing in the file and, in the present case, there should be evidence of such written authority given by the public prosecutor<sup>331</sup>.

377. The acting Güçlükönak gendarme station commander Celal Çürek testified that he had sought and obtained authorisation from the office of the public prosecutor to detain the villagers for a specific period of time for interrogation purposes<sup>332</sup>. This was confirmed by the evidence given by the gendarme NCO Turan Kolan, who testified that Celal Çürek had obtained authorisation from the public prosecutor to hold the Ormaniçi villagers in custody<sup>333</sup>. The Eruh public prosecutor Ercan Turan, who was responsible for the preliminary investigation of the case, testified that it was general practice at the material time that, if the gendarmes were unable to reach the office of the public prosecutor, messages would be sent. However, he had no clear recollection of having issued a written detention order in respect of the apprehended Ormaniçi villagers<sup>334</sup>.

378. Although it appears from the documentary evidence that various messages were sent by the Güçlükönak gendarme command to the Eruh public prosecutor informing the latter of the events of 20 February 1993 in Ormaniçi, including the fact that ten persons had been taken into detention in Şırnak and that thirty-three others had been taken into detention in Güçlükönak<sup>335</sup>, no documentation has been submitted to the Court containing either a request for authorisation to detain the apprehended Ormaniçi villagers, authorisation by a public prosecutor for the detention of the apprehended Ormaniçi villagers in either Güçlükönak or Şırnak, or an extension of such authorisation.

379. In the absence of any such material, the Court concludes that it has not been sufficiently shown that the Ormaniçi villagers' detention, prior to the judicial order – if any – for their further detention, by the gendarmerie in either Güçlükönak or Şırnak for a period of ten days in the case of Resul Cakır, for a period of seventeen days in the case of twenty-six villagers, for

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<sup>331</sup> See Appendix III: §§ 632-633.

<sup>332</sup> See Appendix III: § 472.

<sup>333</sup> See Appendix III: § 535.

<sup>334</sup> See Appendix III: § 606.

<sup>335</sup> See Appendix II: § 206.

a period of twenty-four days in the case of eleven villagers, and for a period of two months and ten days in the case of Abdüselam Demir, Neval Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan<sup>336</sup> was duly authorised by a public prosecutor in accordance with the requirements of domestic law or “in accordance with a procedure prescribed by law” within the meaning of Article 5 § 1 of the Convention.

380. Although the respondent Government have not relied on their notified derogation under Article 15 of the Convention, the Court has nevertheless examined the question whether the Ormaniçi villagers' unlawful detention could thereby be legitimised.

381. Article 15 § 1 of the Convention provides:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

382. The Court is of the opinion that, in so far as the derogation and the resultant legislative decrees are relevant to the facts of the present case, no facts or circumstances have become apparent to show that the Ormaniçi villagers' detention in Güçlükonak and Şırnak without adequate authorisation was strictly required by the exigencies of the situation envisaged by Article 15 § 1 of the Convention (see *Elçi and Others v. Turkey*, cited above, § 684).

383. It follows that there has been a violation of Article 5 § 1 in respect of the Ormaniçi villagers who were taken into detention on 20 February 1993.

### 3. Judicial control of the Ormaniçi villagers' detention

384. The Court has found that on 20 February 1993 forty-three Ormaniçi villagers<sup>337</sup> were taken into detention and that on 27 February 1993 one further villager<sup>338</sup> was taken into detention.

<sup>336</sup> See §§ 260-273; a period of 17 days in the case of Mehmet Özkan (son of Ali), Şerif Ekin, Mehmet Sezgin, Ali Erden, Abdullah Kurt, Şükrü Yıldırım, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Hüseyin Yıldırım, Abdullah Sezgin, Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Abdullah Ekin, Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin, and a period of 24 days in the case of Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), Mehmet Şerif Demir, Ahmet Arslan, Mehmet Seyit Erden, Osman Ekin, Mehmet Kaya, Abdullah Elçiçek and İbrahim Ekinci.

<sup>337</sup> See § 259; namely Ali Erbek, Şemsettin Erbek, Şahabettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, Mehmet Nuri Özkan, Hamit Demir, Mehmet Erdem, and Halime Ekin who were directly taken to Şırnak, and the thirty-three villagers Hacı Ekin, Mehmet Özkan (son of Ali), Mehmet Aslan, Osman Ekinci, İbrahim Kaya, Abdüselam Demir, Şerif Ekin, Mehmet Kurt, Mehmet Sezgin, Ali Erden, İbrahim Ekinci, Nedim Özkan, Abdullah Ekin, Salih Demir, Mehmet Özkan (son of Ahmet), Abdullah Kurt, Mehmet Şerif Demir,

385. On 9 March 1993 a total of twenty-seven Ormaniçi villagers were brought before the Eruh public prosecutor in order to give a statement. After having heard evidence from them, the Eruh public prosecutor decided to order the immediate release of eleven villagers, namely Mehmet Özkan (son of Ali), Şerif Ekin, Mehmet Sezgin, Ali Erden, Abdullah Kurt, Şükrü Yıldırım, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Hüseyin Yıldırım and Abdullah Sezgin. The Eruh public prosecutor decided to bring the remaining sixteen Ormaniçi villagers before the Eruh Magistrates' Court on the same day for a decision on their further detention. After having heard these sixteen villagers on 9 March 1993, the Eruh Magistrates' Court judge ordered the immediate release of eight villagers, namely Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Resul Çakır and Abdullah Ekin, and ordered the further detention of the remaining eight Ormaniçi villagers, namely Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin<sup>339</sup>.

386. On 16 March 1993, another group of ten apprehended Ormaniçi villagers were brought before the Eruh public prosecutor, who, after having heard evidence from them, ordered their immediate release. These villagers were Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), Mehmet Şerif Demir, Ahmet Arslan, Mehmet Seyit Erden, Osman Ekin, Mehmet Kaya and Abdullah Elçiçek.

387. The Court finally notes that seven of the apprehended Ormaniçi villagers, namely Abdüselam Demir, İbrahim Ekinci, Nevaf Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan, who had been transferred to hospital while still in custody, were never heard by the Eruh public prosecutor or the Eruh Magistrates' Court. İbrahim Ekinci died in hospital while in custody on 16 March 1993 and, in the absence of an order for their further detention, Abdüselam Demir, Nevaf Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan were released from custody on 30 April 1993 when they were discharged from hospital<sup>340</sup>.

388. Even assuming that the Eruh public prosecutor had the power to authorise the detention of persons in a matter falling within the jurisdiction of the State Security Court, the Court reiterates that a public prosecutor cannot be regarded as a "judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see

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Şükrü Yıldırım, Ahmet Arslan, Mehmet Seyit Erden, Nevaf Özkan, Osman Ekin, Mehmet Tahir Çetin, Mehmet Kaya, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Resul Aslan, İbrahim Özkan, Hüseyin Yıldırım, Abdullah Sezgin, Fahrettin Özkan and Abdullah Elçiçek, who were initially taken to Güçlükonak and who were later transferred to Şırnak.

<sup>338</sup> See § 259; namely Resul Çakır.

<sup>339</sup> See § 260.

<sup>340</sup> See §§ 266-271.

*Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3299, § 149). The Court therefore concludes that twenty-eight apprehended Ormaniçi villagers<sup>341</sup> were never brought before a judge or other judicial officer, as required by Article 5 § 3 of the Convention.

389. As regards the sixteen apprehended Ormaniçi villagers who were brought before the Eruh Magistrates' Court on 9 March 1993<sup>342</sup>, the Court notes that this took place seventeen days after they had been apprehended. It refers to its finding in the case of *Brogan and Others v. the United Kingdom* (cited above, p. 33, § 62), that a period of detention of four days and six hours without judicial control fell outside the strict constraints as to time permitted by Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism. It clearly follows that the period of seventeen days during which these sixteen villagers were detained without being brought before a judge or other judicial officer did not comply with the requirement of "promptness" under Article 5 § 3.

390. The Court further reiterates that, in assessing the validity of the Turkish derogation in the cases of *Aksoy v. Turkey* (cited above, pp. 2282 and 2284, §§ 78 and 84) and *Demir and Others v. Turkey* (cited above, p. 2659, § 57), it took into account, in particular, the unquestionably serious problem of terrorism in south-east Turkey and the difficulties faced by the State in taking effective measures to counter terrorism. Nevertheless, in those cases it was not persuaded that the situation necessitated holding the applicant in the *Aksoy* case for fourteen days or more and holding the applicants' in the *Demir* case for between 16 and 23 days in incommunicado detention without access to a judge or other judicial officer.

391. The Court, noting that the Government have not adduced any reasons as to why the situation in south-east Turkey in the present case was different from the situation in the above-mentioned *Aksoy* and *Demir* cases so as to render any judicial intervention impossible, is not persuaded to depart from its conclusions in those two cases.

392. Consequently, and notwithstanding the situation created in south-east Turkey by the actions of the PKK and the special features and difficulties of investigating terrorist offences, the Court considers that the failure to bring twenty-eight apprehended Ormaniçi villagers before a judge or other judicial officer and the detention of sixteen other Ormaniçi villagers for seventeen days before they were brought before a judge or other judicial

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<sup>341</sup> Namely Mehmet Özkan (son of Ali), Şerif Ekin, Mehmet Sezgin, Ali Erden, Abdullah Kurt, Şükrü Yıldırım, İbrahim Ekin, Hacı Çetin, Mehmet Yıldırım, Hüseyin Yıldırım, Abdullah Sezgin, Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), Mehmet Şerif Demir, Ahmet Arslan, Mehmet Seyit Erden, Osman Ekin, Mehmet Kaya, Abdullah Elçiçek, Abdülislam Demir, İbrahim Ekinci, Nevaf Özkan, Mehmet Tahir Çetin, Resul Aslan, İbrahim Özkan and Fahrettin Özkan.

<sup>342</sup> Namely Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Resul Çakır, Abdullah Ekin, Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin.

officer were not strictly required by the situation relied on by the Government.

393. There has accordingly been a breach of Article 5 § 3 of the Convention in these respects.

*4. Length of the pre-trial detention of Ali Erbek and Mehmet Nuri Özkan*

394. Having decided that the application, in so far as it has been brought by Fatma Özkan on her own behalf and on behalf of her husband Mehmet Nuri Özkan and their minor children, must be struck out of the Court's list of cases<sup>343</sup>, the Court will limit its examination of this part of the application to the situation of Ali Erbek, on whose behalf his spouse Rukiye Erbek<sup>344</sup> has brought the application.

395. The Court notes that on 9 March 1993 the Eruh Magistrates' Court judge ordered the further detention of Ali Erbek and that, on 30 April 1993, he was indicted before the Diyarbakır State Security Court in order to stand trial for PKK-related offences. On 3 May 1993, when the proceedings before the Diyarbakır State Security Court started, that court decided to prolong the detention of Ali Erbek. In so far as can be established from the evidence made available to the Court, the Diyarbakır State Security Court – rejecting repeated requests by the defence for his release – prolonged the detention of Ali Erbek until at least 7 September 1998<sup>345</sup>. His pre-trial detention thus lasted for a period of at least five years, six months and fifteen days<sup>346</sup>.

396. The Court reiterates that the reasonableness of the length of detention under Article 5 § 3 of the Convention must be assessed in each case according to its special features. Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty. It falls in the first place to the national judicial authorities to examine the circumstances militating for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish

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<sup>343</sup> See §§ 279-280.

<sup>344</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

<sup>345</sup> See Appendix II: §§ 237-249.

<sup>346</sup> See §§ 264-265.

whether the other grounds given by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of liberty (see *Jėčius v. Lithuania*, no. 34548/97, § 93, ECHR 2000-IX).

397. The only reasons given by the Diyarbakır State Security Court in the present case for prolonging the detention of Ali Erbek were the nature of the charges against him and the available evidence against him. Although the Court accepts that the nature of the charges and the strength of the evidence against him may initially have justified his detention, that cannot of itself constitute a “relevant and sufficient” ground for his being held in detention for a period of more than five years and six months pending first-instance trial proceedings before the Diyarbakır State Security Court.

398. It follows that the length of the detention of Ali Erbek was excessive and that therefore, in this respect, there has been a violation of Article 5 § 3 of the Convention.

*5. Alleged violation of Article 6 of the Convention in relation to the detention of the Ormaniçi villagers*

399. The Court notes that the applicants initially also complained that their rights under Article 6 of the Convention had been violated in respect of the Ormaniçi villagers who were apprehended on 20 February 1993 and held in custody. However, at the admissibility stage the applicants failed to indicate on what grounds they considered this provision to have been violated. It was only in their final observations that the applicants argued that, in violation of Article 6 of the Convention, the domestic authorities had failed to undertake any investigation into the circumstances surrounding the attack on Ormaniçi in February 1993 or to institute any proceedings arising out of the complaints raised before the Eruh public prosecutors in relation to the detention of the villagers in Güçlükönak and Şırnak and their treatment there.

400. In so far as the applicants can be regarded as having raised a complaint under Article 6 in substance at the admissibility stage, the Court does not consider that any separate issue arises under Article 6 of the Convention in relation to the taking into detention of the Ormaniçi villagers and their being held in custody. As regards the newly specified complaints under Article 6 of the Convention, the Court finds it inappropriate to take these grievances up at this stage of the proceedings<sup>347</sup>.

## VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

401. The applicants complained that the burning of their homes by the security forces in February 1993 had violated their rights under Article 8 of the Convention, which reads:

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<sup>347</sup> See § 289.

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

## **A. Submissions of the parties**

### *1. The applicants*

402. The applicants submitted that the deliberate destruction of their homes, property and possessions and the resulting arbitrary expulsion from their homes and village represented a serious violation of their right to respect for private and family life and of their right to respect for their home, as well as a serious interference with their way of life. They further claimed that the destruction of their homes and family life was part of a practice and that, therefore, they had suffered an aggravated violation of their rights under Article 8 of the Convention.

### *2. The Government*

403. The Government submitted that no houses in Ormaniçi had been deliberately set on fire by the security forces, but that the roofs of a few houses had been burned as a result of having been hit by tracer bullets fired during the security forces' approach to Ormaniçi on 20 February 1993.

## **B. The Court's assessment**

404. The Court has not found it established that the security forces used any tracer bullets during their approach of Ormaniçi on 20 February 1993<sup>348</sup>, but has found it established that, on 20 February 1993, two houses, namely those of Mevlüde Ekin and Mehmet and Kumri Aslan, were deliberately set on fire by the security forces<sup>349</sup>, and that on the same day the houses of eleven other villagers – namely Mehmet Emin Demir, Hüseyin Sezgin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin – were also destroyed by fire resulting from acts of the security forces<sup>350</sup>. It has further found it established that on 21 February 1993 the

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<sup>348</sup> See § 144.

<sup>349</sup> See §§ 147-148.

<sup>350</sup> See § 150.

house of Ali and Hediye Çetin was deliberately set on fire by security forces from Şırnak who had come to conduct further searches in Ormaniçi<sup>351</sup>.

405. There can be no doubt that the deliberate burning of houses in Ormaniçi by the security forces constituted grave and unjustified interferences with the right of Mevlüde Ekin, Mehmet and Kumri Aslan, and Ali and Hediye Çetin to respect for their private and family life and home as guaranteed by Article 8 of the Convention.

406. Although no conclusive findings could be made as to whether the houses of eleven other villagers that were destroyed by fire on 20 February 1993 were deliberately set on fire by the security forces or whether they had caught fire as a result of the security forces' intensive firing on the village in the early morning, the Court has found it established that the houses of Mehmet Emin Demir, Hüseyin Sezgin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin were destroyed by fire resulting from acts of the security forces on 20 February 1993<sup>352</sup>. The Court is therefore of the opinion that the respondent Government may be held liable under Article 8 of the Convention for the burning of these eleven homes.

407. Further noting that there is no indication in the case file that the findings made in the investigation carried out by the Siirt public prosecutor Mustafa Taşkafa, as set out in the "Exploration Report in the Location" of 10 August 1994<sup>353</sup>, have resulted in any further domestic proceedings for the purposes of awarding compensation to those Ormaniçi villagers whose houses had been damaged in the incident of 20 February 1993, the Court considers that Mehmet Emin Demir, Hüseyin Sezgin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin were and remain victims within the meaning of Article 34 of the Convention of a violation of their rights under Article 8 of the Convention in respect of the destruction of their homes.

408. It follows that there has been a violation of Article 8 of the Convention in respect of those applicants too.

409. In the light of its above findings under Article 8 of the Convention, the Court does not find it necessary to determine the question whether the destruction of the above homes formed part of a practice adopted by the authorities (see *Dulaş v. Turkey*, no. 25801/94, §§ 74-75, 30 January 2001).

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<sup>351</sup> See §§ 154-155.

<sup>352</sup> See § 150.

<sup>353</sup> See Appendix II: §§ 290-294, and Appendix III: §§ 647-655.

## VIII. ALLEGED VIOLATION OF FORMER ARTICLE 25 § 1 OF THE CONVENTION

410. The applicants alleged that the State had hindered the effective exercise of their right of individual petition under former Article 25 § 1 of the Convention in the proceedings before the Commission in that, on 23 November 1993, the offices of their representative Tahir Elçi had been raided by State agents who had seized, *inter alia*, case files, correspondence and other documents found there. The seized items included records of statements taken by him in the applicants' case and photographs taken of Ormaniçi villagers who had been wounded as a result of their treatment by the security forces. The applicants claimed that these seized documents had never been returned.

411. Ayşe Ekinçi (Applicant no. 21) further complained that her questioning on 10 August 1994 by the public prosecutors of respectively Siirt and Eruh, which had taken place without any notification and in the absence of her legal representative, constituted an unjustified interference with her right of individual petition guaranteed by former Article 25 § 1 of the Convention.

412. The Government have not submitted any arguments in relation to this part of the application.

413. Former Article 25 § 1 of the Convention read as follows:

“The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.”

Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, this provision was replaced by Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

### A. General principles

414. The Court has jurisdiction to examine the applicants' complaints alleging an inappropriate hindrance of the right of individual petition in respect of facts that took place both before and after the Commission's

decision on admissibility of 16 January 1996. It observes that the timing of an applicants' complaint under former Article 25 (now Article 34) of the Convention does not give rise to any issue of admissibility under the Convention (see *Ergi v. Turkey*, cited above, p. 1783-84, §§ 104-105, and *Cooke v. Austria*, no 25878/94, § 46, 8 February 2000).

415. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by former Article 25 (now replaced by Article 34) that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Elçi and Others v. Turkey*, cited above, § 711).

#### **B. As regards the applicants' representative Mr Tahir Elçi**

416. The Court notes at the outset that Mr Tahir Elçi was apprehended on 23 November 1993, one day after the expiry of the time-limit fixed by the Commission in the present case for the submission of his comments in reply to the observations filed by the Government on 23 September 1993, and that no such comments or a request for an extension of the time-limit fixed for this purpose had been filed by Mr Elçi before or on 22 November 1993<sup>354</sup>. The Court further notes that the search of Mr Elçi's offices on 23 November 1993 and subsequent events formed the subject-matter of application no. 23145/93 brought by Tahir Elçi against Turkey in which the Court examined, *inter alia*, Mr Elçi's claim that his client files concerning his Commission work were never returned to him. The Court, however, was satisfied on the evidence that these files were probably returned to Mr Elçi's legal representative Mr Dinler on 10 January 1994 (see *Elçi and Others v. Turkey*, cited above, §§ 537 and 695).

417. In any event, the Court is of the opinion that any adverse consequences the applicants may have suffered as a result of the alleged failure to return any seized documents held by Tahir Elçi concerning their case has been sufficiently and adequately offset by the fact that the applicants have been given ample opportunity to submit both oral and documentary evidence in the subsequent proceedings on the merits. The Court therefore concludes that, on this point, it is no longer necessary to pursue its examination of this complaint.

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<sup>354</sup> See § 431.

### C. As regards the applicant Ayşe Ekinci

418. As regards the questioning of Ayşe Ekinci on 10 August 1994 by the public prosecutors of Siirt and Eruh respectively, the Court considers that whether or not contacts between the authorities and an applicant are to be regarded as unacceptable from the standpoint of former Article 25 of the Convention must be determined in the light of the particular circumstances of the case. In this connection, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities.

419. In previous cases, the Court has had regard to the vulnerable position of applicant villagers and the reality that in south-east Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, and it has found that the questioning of applicants about their applications to the Commission amounts to a form of illicit and unacceptable pressure, which hinders the exercise of the right of individual petition in breach of former Article 25 of the Convention (see *Salman v. Turkey* [GC], 21986/93, § 130 with further references, ECHR 2000-VIII).

420. The Court notes that the aim of the on-site investigation conducted on 10 August 1994 by the Siirt public prosecutor was to verify whether houses in Ormaniçi had been burned, and that the aim of the simultaneous on-site investigation conducted by the Eruh public prosecutor was to establish whether or not the cause of the deaths of Ali Yıldırım and Abide Ekin was linked to the security forces' operation of 20 February 1993 by exhuming their remains.

421. In so far as in the context of these two investigations a statement was taken from Ayşe Ekinci, the Court considers that this apparently only took place because of her coincidental presence in Ormaniçi on that day. The Court has found no indication that the Turkish authorities have deliberately and actively sought to approach her or any of the other applicants with a view to dissuading or discouraging her from pursuing the present application, or that the manner in which her statement was taken on 10 August 1994 was such that it can be regarded as having induced Ayşe Ekinci to withdraw or modify her application or as otherwise having interfered with her right of individual petition.

422. Accordingly the Court finds that the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention in respect of Ayşe Ekinci.

## IX. ALLEGED VIOLATION OF FORMER ARTICLE 28 § 1 OF THE CONVENTION

423. The applicants alleged that the State had failed to comply with its obligations under former Article 28 § 1 of the Convention in the

proceedings concerning the present application by misrepresenting the facts of the case in the Government's initial observations of 23 September 1993 on the admissibility and merits, by its lack of diligence in submitting documents and by its failure to make available a number of vital documents.

424. The Government have not submitted any arguments in relation to this part of the application.

425. Former Article 28 § 1 of the Convention read as follows:

“In the event of the Commission accepting a petition referred to it:

a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission; ...”

Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, this provision was replaced by Article 38 § 1 of the Convention, which reads as follows:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities; ...”

### **A. General principles**

426. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) and that it is of the utmost importance for the effective operation of the system of individual petition instituted under former Article 25 (now Article 34) of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu v. Turkey*, cited above, § 70). It is inherent in proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. The same applies to delays by the State in submitting information which prejudices the establishment of facts in a case (see

*Timurtaş v. Turkey*, cited above, §§ 66 and 70, and *Orhan v. Turkey*, cited above, § 266).

427. In the light of the above principles and having regard to the Government's obligations under Article 38 § 1 (a) of the Convention, the Court has examined the proceedings in the present case and has had particular regard to the Government's cooperation in the determination of the facts of the present case.

### **B. The proceedings concerning the application**

428. The application was lodged in the letter submitted by Mr Tahir Elçi on 8 April 1993. After receipt on 14 April 1993 of a completed application form, the case was registered on 20 April 1993. The application form was accompanied by three black-and-white photographs showing houses in Ormaniçi and seventeen photographs showing persons with foot injuries<sup>355</sup>. Although the application form states that written statements by 32 applicants and a cassette tape containing oral statements about the incident given by women living in Ormaniçi about the incident were also appended, these written statements and the cassette tape were not included in Mr Elçi's submissions of 14 April 1993.

429. On 11 May 1993 the Commission decided to bring the application to the notice of the respondent Government, inviting them to submit their observations on the admissibility and merits of the case. The Government were further requested to provide a detailed description of the search carried out by the security forces in Ormaniçi on 20 February 1993, as well as a chronological and detailed description of the custody of the apprehended Ormaniçi villagers.

430. In their observations submitted on 23 September 1993, the Government stated that, during a search carried out on 19 February 1993 by the security forces, shots had been fired at these forces from the village of Ormaniçi. At the beginning of the resulting clash, one soldier had been killed. After this clash, which had lasted for 23 hours, a total of 42 persons had been apprehended on 20 February 1993. In addition, several weapons had been found in and near to the village, namely 3 Kalashnikov rifles, 14 machine gun magazines, 358 machine gun bullets, 4 grenades and two futher rifles. On 9 March 1993 the Eruh Magistrates' Court had ordered the further detention of eight villagers and the release of all the others. Proceedings against seventeen persons had been instituted before the Diyarbakır State Security Court, which had held its first hearing on 21 June 1993. Six or seven houses in Ormaniçi had caught fire during the clash. Owing to the duration of the clash, it had not been possible to control these fires rapidly. The alleged deaths of two children and one apprehended

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<sup>355</sup> See Appendix II: §§ 2, 272-273 and 295.

villager were still under investigation by the Eruh public prosecutor. As to the amputations undergone by a number of persons, it appeared that they had been suffering from gangrene caused by frostbite.

431. In support of their observations of 23 September 1993, the Government submitted a copy of two medical reports<sup>356</sup>, the decision of non-prosecution of 30 April 1993 and the State Security Court indictment of the same date<sup>357</sup>. The Government further submitted a copy of the letter sent by the Permanent Representative of Turkey to the Secretary General of the Council of Europe on 5 May 1992 in respect of its Notice of Derogation<sup>358</sup>. These observations and the pertaining documents were transmitted on 1 October 1993 to the applicants' representative Mr Tahir Elçi, who was invited to submit comments in reply by 22 November 1993. When this time-limit expired, no comments in reply or request for an extension of the time-limit fixed for this purpose had been submitted by Mr Elçi.

432. On 24 February 1994 Mr Kevin Boyle – to whom, together with Ms Françoise Hampson, Mr Elçi had delegated his representation in the meantime – informed the Commission of the apprehension and detention of Mr Elçi by the Turkish authorities and of the seizure in November 1993 of legal documents in his possession. On 23 March 1994 Mr Boyle informed the Commission that Mr Elçi had been released in the meantime, but that he had been unable, despite numerous requests, to have the seized case files returned to him.

433. On 7 April 1994 the Commission requested Mr Boyle and Ms Hampson to react to the Government's observations of 23 September 1993 in their capacity as the applicants' representatives. In their letters of 8 May 1994 and 3 October 1994 the applicants' representatives informed the Commission that they were unable to submit any reply to the Government's observations, as essential documents concerning the application had been seized on 23 November 1993, when Turkish law enforcement agencies had searched Mr Elçi's office, and these documents had not yet been released.

434. On 27 February 1995, in reply to a request from the Commission and after two reminders, the Government forwarded the list of documents that had been seized from Mr Tahir Elçi; the list did not include any documents relating to the present application. The Government also supplied a copy of the decision given by the Diyarbakır State Security Court on 10 January 1994 ordering the release of the seized documents.

435. On 18 April 1995 the Government submitted supplementary documents, namely a copy of a sketch map of Ormaniçi drawn up by the Güçlükonak gendarme authorities, the report of 17 March 1993 on the post-mortem examination of İbrahim Ekinçi, the burial certificate in respect of İbrahim Ekinçi, the report of 10 August 1994 on the on-site inspection of

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<sup>356</sup> See Appendix II: §§ 264 and 266.

<sup>357</sup> See Appendix II: §§ 232-233.

<sup>358</sup> See § 69.

Ormaniçi by the Siirt public prosecutor, the statements taken on 10 August 1994 by the Eruh public prosecutor, and the decision taken on 15 August 1994 by the Eruh public prosecutor in respect of the death of İbrahim Ekinci<sup>359</sup>. These were transmitted to the applicants' representatives on 9 May 1995, together with copies of Mr Elçi's initial submissions to the Commission. On that occasion, the applicants' representatives were invited to respond to the Government's observations of 23 September 1993.

436. By letter of 11 June 1995 the applicants' representatives challenged the Government's assertions in respect of the documents seized in Mr Elçi's office. They submitted that the Turkish authorities, by confiscating the evidence on the basis of which the application had been lodged, including the written testimonies of 32 applicants, had rendered it impossible for them to reply adequately to the Government's observations.

437. On 16 January 1996 the Commission declared the application admissible. The text of the Commission's decision on admissibility was sent to the parties on 26 January 1996 and they were invited to submit such further information or observations on the merits as they wished. Neither party availed itself of this possibility.

438. On 13 April 1996 the Commission examined the state of proceedings in the application and decided that it should proceed to take oral evidence and appointed three Delegates for this purpose. It notified the parties of this decision by letter of 19 April 1996 and invited them to indicate by 10 May 1996 any person from whom they wished to take evidence before the Delegates.

439. On 10 May 1996 the applicants' representatives submitted proposals as to the persons from whom oral evidence should be taken before the Delegates as well as proposals for additional documents to be submitted by the Government. The applicants' representatives further informed the Commission that, in the meantime, a number of applicants had died. They did not indicate the number or the names of the applicants who had died.

440. On 21 May 1996, the Commission acknowledged receipt of this letter and requested the applicants' representatives to provide the Commission with a list of applicants who were available to give evidence.

441. On 22 May 1996 the Commission transmitted a copy of the applicants' representatives' letter of 10 May 1996 to the Government, reminded the Government of the Commission's request of 13 April 1996 and requested the Government to submit the additional documents suggested by the applicants' representatives, namely the medical files relating to İbrahim Ekinci that had been drawn up during his detention and during his stay in hospital in custody.

442. On 5 June 1996 the Government submitted a copy of two lists of persons apprehended on 20 February 1993, entries nos. 318-365 in the

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<sup>359</sup> See Appendix II: §§ 152, 275-278, 280, 290-292, 308-328 and 284-285.

custody records of the Şırnak provincial gendarmerie station, a letter of 11 March 1993 from Mardin State Hospital to the Şırnak gendarmerie authorities, and a report of 15 March 1996 by Diyarbakır State Hospital on the cause of İbrahim Ekinci's death<sup>360</sup>.

443. On 17 June 1996, the Government requested the Commission to extend the time allowed for the submission of their proposals for the taking of oral evidence. That request was granted on 21 June 1996.

444. On 2 August 1996, the Government submitted proposals as to the persons from whom oral evidence should be taken before the Delegates. A copy of these proposals was transmitted to the applicants' representatives on 14 August 1996. The latter were further reminded of the Commission's request of 21 May 1996 to submit a list with the names of those applicants who were available to give evidence.

445. On 23 September 1996 the applicants' representatives informed the Commission that, owing to unforeseen difficulties in communicating with the applicants, they were not yet in a position to submit a list of applicants available to give evidence. They further informed the Commission that the applicants' representation had been delegated to Mr Tony Fisher. In his letters of 18 October and 7 November 1996, Mr Fisher informed the Commission of the ongoing enquiries as to the current whereabouts of the applicants available to give evidence, as they had moved to different locations in Turkey.

446. On 11 December 1996 the Commission informed the parties that the taking of evidence in the present case had been scheduled for 28 April to 2 May 1997 in Ankara.

447. On 13 March 1997 Mr Fisher informed the Commission that a number of applicants had been located. In view of various communication problems, he requested the Commission to postpone the oral hearing in Ankara until later in 1997.

448. On 20 March 1997, in reply to a query by the Commission as to the possibility of rescheduling the oral hearing by bringing forward other hearings scheduled for June/July 1997, the Government informed the Commission that this was not possible owing to lack of time to prepare adequately for April/May those cases scheduled to be heard in June/July 1997. The Government requested the Commission to strike the application out of its list of cases under former Article 30 of the Convention, on the basis of a finding that the applicants apparently did not intend to pursue their application given their failure to keep their representatives informed of their whereabouts.

449. On 24 March 1997 the Commission informed the parties that the oral hearing scheduled for April/May 1997 had been cancelled. It further

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<sup>360</sup> See Appendix II: §§ 172-173, 178-179 and 184.

requested the applicants' representative to respond to the Government's request for the application to be struck out of the list of pending cases.

450. On 25 April 1997 Mr Fisher submitted information as to the whereabouts of the applicants. He further informed the Commission that three applicants had died in the meantime, but that their relatives wished to pursue their application. Further information about those applicants who were available to give evidence was submitted by Mr Fisher on 4, 8 and 29 September 1997.

451. The Commission informed the parties in a letter of 23 October 1997 that the hearing of witnesses in the case had now been scheduled for the week of 2 to 7 February 1998.

452. In a letter, received by the Commission on 13 November 1997, the Government noted that the applicants' representatives had traced only 15 of the applicants and requested the Commission to strike the application out of its list of cases under former Article 30 of the Convention in so far as it related to those applicants who had not yet been located.

453. On 8 December 1997 the applicants' representatives submitted individual statements from nine applicants<sup>361</sup>.

454. On 16 December 1997 the Commission informed the parties that the oral hearing scheduled for February 1998 would be limited to those applicants and their close relatives in respect of whom individual written statements had been submitted to the Commission by 8 December 1997. The Commission further requested the Government to identify certain gendarmerie officials and to submit relevant custody records for the detention facilities in Güçlükonak as referred to in the applicants' statements filed on 8 December 1997, and to submit photographs of Ormaniçi taken on 10 August 1994 in the context of a domestic investigation by the Siirt public prosecutor. The Commission requested the applicants' representatives to provide the Commission with further factual information on various elements mentioned in the individual statements submitted on 8 December 1997.

455. On 22 December 1997 the Government requested the Commission to extend the time allowed for the submission of the information and documents requested by the Commission on 16 December 1997 and to postpone the oral hearing until March 1998. The Government further reiterated their request that the Commission strike the application in part out of its list of pending cases under former Article 30 of the Convention.

456. On 6 January 1998, the Commission informed the Government that their requests could not be met. The Government's attention was drawn to the fact that the oral hearing had already been postponed once and that the

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<sup>361</sup> See Appendix II: § 39 (Kumri Aslan), § 44 (Mehmet Aslan), § 55 (Mevlûde Ekin), § 80 (Asiye Aslan), § 95 (Ali Özkan), § 105 (Fatım Özkan), § 119 (Fatma Özkan), § 131 (Halime Ekin) and § 134 (Ayşe Sezgin).

rescheduled date had been communicated to the parties on 23 October 1997 without any objections having been received at that time.

457. By letter of 15 January 1998 the Government informed the Commission that they would not be able to participate in the oral hearing scheduled for 2-7 February 1998 as their officials in charge of the case were taking part in proceedings before the Court in Strasbourg between 24 and 27 January 1998 and as the week preceding the taking of oral evidence in the present case was a religious holiday.

458. After having deliberated, the Commission decided to reschedule the hearing for the week of 30 March to 4 April 1998 and informed the parties of this decision by letter of 23 January 1998.

459. On 5 February 1998 the Commission requested the Government to identify and ensure the presence at the oral hearing of at least two of the duty officers or other persons who had guarded the arrested villagers in Güçlükonak and Şırnak.

460. On 13 March 1998 the Government submitted a copy of a request by the Şırnak gendarmerie authorities to examine 15 detainees, and Dr Parmaksız' medical report of 20 February 1993<sup>362</sup>. The Government further provided the Commission with the names of four gendarmes who had guarded the apprehended Ormaniçi villagers, namely Captain Celal Çürek and NCO Staff Sergeant Uğur Kırıkçılar in Güçlükonak, and NCO Senior Staff Sergeant Şinasi Başköy and Senior Sergeant İzzettin Atar in Şırnak.

461. On 16 March 1998 the applicants' representatives submitted individual statements obtained from four other applicants<sup>363</sup> and proposed three further witnesses for the hearing in Ankara.

462. On 25 March 1998 the applicants' representatives proposed seven additional witnesses for the hearing in Ankara.

463. Evidence was heard by three Delegates of the Commission in Ankara on 2-4 April 1998 from Resul Aslan, Mehmet Nuri Özkan, Kumri Aslan, Mevlüde Ekin, Asiye Aslan, Ali Özkan, Ayşe Sezgin, Mehmet Aslan, Ayşe Ekinci, İbrahim Kaya and Şükrü Yıldırım. At the beginning of the hearing, the Government submitted 20 photographs in response to the Commission's request of 16 December 1997<sup>364</sup>. At the end of the hearing, the applicants' representatives submitted individual statements taken from four applicants who had appeared but, for lack of time, could not be heard by the Commission's Delegates<sup>365</sup>.

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<sup>362</sup> See Appendix II: §§ 254 and 251.

<sup>363</sup> See Appendix II: § 79 (Mehmet Sezgin), § 106 (Abdurrahman Çetin), § 117 (Raife Çetin) and § 130 (Zeynep Yıldırım).

<sup>364</sup> See Appendix II: §§ 293-294.

<sup>365</sup> See Appendix II: § 15 (Mehmet Özkan, son of Ahmet), § 79 Mehmet Sezgin), § 105 (Fatım Özkan) and § 135 (Rukiye Erbek (Rectified on 1 March 2005. The previous version reads "Fatma Erbek"))).

464. On 18 April 1998 the Commission considered the state of proceedings and decided that further oral evidence should be taken. The parties were informed accordingly. The applicants' representatives were further informed that only those applicants would be heard who had provided the Commission with an individual written statement and who had not already been given the opportunity to give oral evidence.

465. In the course of the hearing held from 2-4 April 1998, as was confirmed by letter of 5 May 1998, the Commission's Delegates requested the Government to submit a number of further documents, including operation reports, incident reports, medical reports, the statements taken from the apprehended Ormaniçi villagers in Güçlükönak, Şırnak and Eruh, the case files of the Eruh Magistrates' Court in respect of the Ormaniçi villagers, the case file of the Diyarbakır State Security Court in respect of the seventeen indicted Ormaniçi villagers and the case file on the investigation into the deaths of Ali Yıldırım and Abide Ekin. The Government were further requested to identify three officials.

466. Following consultations with the parties, the Commission informed the parties on 19 June 1998 that a further oral hearing had been scheduled for 5-10 October 1998 in Ankara.

467. On 22 June 1998 the Government submitted a copy of the "Operation Result Report" of 20 February 1993, the "Observation and Establishment Report" of 20 February 1993, the "Operation Result Report" of 25 February 1993, the statements taken from the apprehended Ormaniçi villagers in Güçlükönak (see paragraphs 251-255 above), a letter of 1 March 1993 to the Eruh public prosecutor, the "Identification and Confrontation Report" of 5 March 1993, and seventeen statements taken from apprehended Ormaniçi villagers in Şırnak<sup>366</sup>.

468. On 23 July 1998 the Government submitted a copy of the "Preliminary Report on a Terrorist Incident" of 20 February 1993, two further sketch maps of Ormaniçi drawn up by the Güçlükönak gendarmerie authorities, a Güçlükönak gendarmerie report of 20 February 1993, the "Terrorist Incident Preliminary Report" of 22 February 1993, a body search report of 23 February 1993 in respect of Resul Aslan, the "Location Indication Report" of 25 February 1993, Dr Parmaksız' report of 4 March 1993, 17 "Body Search Reports" drawn up by the Şırnak gendarmerie authorities, certified copies of the identity cards of seventeen apprehended Ormaniçi villagers, an undated letter from Şırnak Hospital to the Şırnak gendarmerie authorities, and a letter of 9 March 1993 from the Şırnak gendarmerie authorities requesting medical treatment for six detained Ormaniçi villagers<sup>367</sup>.

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<sup>366</sup> See Appendix II: §§ 155-170, 196-197, 181, 207-222, 56, 136, 114, 41, 86, 49, 30, 121-122, 143, 64, 103, 34, 92, 107, 98 and 146.

<sup>367</sup> See Appendix II: §§149-151, 153-154, 250, 195, 176, 198-204, 252, 180, 186, 261-262 and 260.

469. As some of the copies submitted on 23 July 1998 were illegible, the Government were requested on 29 July 1998 to submit legible copies. The Government were further reminded of the Commission's request of 5 May 1998 to identify a number of officials.

470. On 19 August 1998 the Government submitted a copy of a body search report of 20 February 1993 in respect of Ali Erbek, the report on the post-mortem examination of Private Servet Uslu, two "Location Indication" gendarmerie reports of 21 February 1993, a body search report of 23 February 1993 in respect of İbrahim Özkan, the "Destruction Report" of 25 February 1993, the request for a medical examination of 14 detainees and the report on the examination drawn up by Dr Pehlivanlı on 5 March 1993, a letter of March 1993 on the transfer of the apprehended Ormaniçi villagers, the request for a medical examination of 26 detainees in Şırnak and Dr Öztürk's report on the examination, the statements made on 9 March 1993 to the Eruh public prosecutors and the Eruh Magistrates' Court judge and the decisions taken on 9 March 1993 by the Eruh Magistrates' Court (see paragraph 385 above), the statements made on 16 March 1993 to the Eruh public prosecutor (see paragraph 386 above), the decision of lack of jurisdiction of 31 March 1993, the letter of 29 April 1993 from the Mardin gendarmerie authorities, the Eruh public prosecutor's "Minutes of Exhumation" of 10 August 1994, the letters of 22 August 1994, 18 January 1995 and 22 February 1995 from the Eruh public prosecutor to the Güçlükonak gendarmerie authorities, the gendarmerie reports of 1 and 18 March 1995 and 10 April 1995 to the Eruh public prosecutor, the decision of lack of jurisdiction of 27 June 1995 in respect of the deaths of Ali Yıldırım and Abide Ekin, and various other documents in relation to the investigation of the deaths of Ali Yıldırım and Abide Ekin, and the minutes of hearings nos. 1-40 before the Diyarbakır State Security Court<sup>368</sup>.

471. On 31 August 1998 the Government submitted a copy of two letters sent on 17 March 1993 by the Diyarbakır public prosecutor in relation to the investigation into the death of İbrahim Ekinci, the report of 28 May 1993 by the İstanbul Institute for Forensic Medicine, and the decision of 24 June 1993 by the public prosecutor at the Diyarbakır State Security Court in respect of the death of İbrahim Ekinci<sup>369</sup>.

472. The following documents were not included in the Government's above submissions but were submitted by the applicants on 7 September 1998: a copy of Dr Parmaksız' report of 4 March 1993 in respect of Abdülselam Demir, the request for a medical examination in respect of 15 detainees and the report on the examination drawn up by Dr Pehlivanlı on 5 March 1993, a letter of 6 March 1993 from the Şırnak gendarmerie authorities to Mardin State Hospital in respect of Abdülselam Demir, the

<sup>368</sup> See Appendix II: §§ 175, 171, 191-194, 177, 205, 256, 182, 259, 227-230, 188, 301-307, 329-335 and 237-249.

<sup>369</sup> See Appendix II: §§ 279 and 280-283.

Eruh public prosecutor's request of 9 March 1993 to verify the physical condition of Mehmet Tahir Çetin and Fahrettin Özkan, the "Transfer Record" of 11 March 1993, the request for a medical examination of 11 detainees in Şırnak and Dr Öztürk's report of 11 March 1993 on this examination, the applications for release filed by eight detained Ormaniçi villagers and the relevant letter of 13 March 1993 by the Eruh public prosecutor, the letter of 30 April 1993 by the public prosecutor at the Diyarbakır State Security Court, the further indictment of Ali Erbek, and the minutes of the 41<sup>st</sup> hearing before the Diyarbakır State Security Court<sup>370</sup>.

473. On 9 September 1998, on the basis of the contents of the documents submitted, the Commission requested the Government to secure the appearance of four officials at the hearing in Ankara in October 1998 in order to give oral evidence.

474. On 15 September 1998 the Government submitted more legible copies of certain documents already submitted on 23 July 1998 and provided the name of one official. After having noted a discrepancy between the name stated and information contained in the documents submitted, the Government were requested on 21 September 1998 to confirm that the identified person was indeed the person from whom the Delegates wished to take evidence concerning the events that had taken place in Mevlüde Ekin's house.

475. Further evidence was heard by three Delegates of the Commission in Ankara on 5-10 October 1998 from Ahmet Özkan, Hediye Çetin, Hediye Demir, Abdullah Elçiçek, Hüseyin Sezgin, Besna Ekin, İbrahim Ekin, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin, Hatice Erbek, Raife Çetin, Zeynep Yıldırım, Rukiye Erbek<sup>371</sup>, Mehmet Özkan (son of Ahmet), Fatım Özkan, Salih Demir, Tayibet Kurt, Fahrettin Özkan, Fatma Yıldırım, Celal Çürek, Hasan Yeşilyurt, Uğur Kirikçılar, Hüseyin Baran, Turan Kolan, Fahrettin Parmaksız, İzzettin Atar, Fatih Pehlivanlı, Metin Yücel, Abdullah Yıldırım, Feza Köylüoğlu, Mustafa Taşkafa, Cetin Seçkin, Ercan Turan and Ramazan Bayrak. Two Government witnesses summoned failed to appear and an explanation was offered for their absence. One Government witness was excused with the parties' consent as it appeared, contrary to information provided by the Government on 13 March 1998, that this person had in fact not been on duty at the relevant time.

476. The Commission's Delegates were informed by the Government's representatives in the course of the hearing that the custody records of the Güçlükonak detention facility, the submission of which had been requested by the Commission on 16 December 1997, could not be made available as in all likelihood no such records existed. The applicants' representatives

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<sup>370</sup> See Appendix II: § 253, 257-258, 260, 185, 263, 225-226, 189 and 248-249.

<sup>371</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

submitted three ballistics reports<sup>372</sup>, a statement of 4 October 1998 by Zeki Çetin and a related set of four photographs, and a medical report concerning Zeki Çetin<sup>373</sup>.

477. In the course of the hearing, as was later confirmed in a letter of 16 November 1998, the Delegates requested the Government to submit further operation reports and incident reports concerning events that had taken place in Ormaniçi in August 1993 and May 1994, and, if it existed, a copy of the land register in respect of Ormaniçi or confirmation that no such record existed.

478. On 4 February 1999 the Government informed the Commission that, apart from a final report attached to their letter, there were no further reports concerning the operation in Ormaniçi on 5 June 1994. The Government lastly informed the Commission that there was no land register in respect of Ormaniçi. The letter did not contain any information about events that had taken place in Ormaniçi in or around August 1993.

### C. The Court's assessment

479. The Court notes that the Government were requested as early as 11 May 1993 to provide a detailed description of the search carried out by the security forces in Ormaniçi on 20 February 1993, as well as a detailed chronological description of the detention of the apprehended Ormaniçi villagers. Although the Government's account set out in their observations of 23 September 1993 was obviously based on knowledge derived from various official documents already in their hands at that time, the only documents produced by them at that moment consisted of a Mardin State Hospital record of 11 June 1993 containing the dates of admission and discharge of four Ormaniçi villagers and the nature of the amputations they had undergone, an Ankara Council Hospital report of 24 June 1993 relating to the medical treatment for gangrene provided to two other Ormaniçi villagers, the decision of non-prosecution of 30 April 1993 taken by the public prosecutor at the Diyarbakır State Security Court and the same public prosecutor's indictment of 30 April 1993.

480. It was not until 5 June 1996 that the Government submitted lists containing the names of all the Ormaniçi villagers apprehended on 20 February 1993 and it was only after oral evidence was first taken in April 1998 that the Government submitted, *inter alia*, after an explicit request to this end by the Commission, the relevant official gendarmerie reports on the incident in Ormaniçi on 20 February 1993 and the detention of the apprehended villagers, as well as the preliminary investigation documents drawn up by the gendarmerie and the judicial authorities involved

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<sup>372</sup> See Appendix II: §§ 241-242 and 246-247.

<sup>373</sup> See Appendix II: §§ 110, and 267-270.

(including statements taken from the apprehended villagers). The vast majority of the official documents submitted by the Government between 22 June 1998 and 31 August 1998 had been drawn up in 1993 and apparently had been relied upon by the Government in the preparation of the observations they had submitted on 23 September 1993.

481. It is true that it cannot be said that the Government failed to react with the required diligence in submitting documents once they were explicitly identified and requested by the Commission. However, the Court also considers that the Government's passive attitude in producing documents which were in their possession and which were unquestionably of fundamental importance for elucidating disputed facts, and the Government's failure to submit these documents of their own motion at a much earlier stage in the proceedings, was at best very unhelpful. The same, however, applies to the applicants' failure to keep their representatives informed of their whereabouts, a fact which considerably delayed the proceedings before the Commission.

482. Although the Government could have been more forthcoming in making available relevant documentary evidence in the present case, the Court finds that, on balance, the Government cannot be considered as having fallen short of their obligations under former Article 28 § 1 (a) of the Convention.

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

483. 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.”

484. Having decided that the application, in so far as it has been brought by Mahmut Güler, Fatma Özkan and Halime Ekin on their own behalf and on behalf of their spouses and minor children, is to be struck out of the Court's list of cases<sup>374</sup>, the Court will not take these applicants' claims for just satisfaction into consideration.

### A. Pecuniary damage

485. All the remaining applicants made claims for loss of their homes, livestock, household goods, kitchen utensils and foodstuffs, loss of (future) income and, in a number of cases, also for costs incurred in securing alternative accommodation, in the following total amounts:

- for Ahmet Özkan, 109,891.79 pounds sterling (“GBP”);

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<sup>374</sup> See §§ 281-282.

- for Hediye Çetin, GBP 114,204.60;
- for Hediye Demir, GBP 114,636.09;
- for Ramazan and Fatma Yıldırım, GBP 120,163.50;
- for Mehmet Emin Demir, GBP 113,177.88;
- for Kumri Aslan, GBP 113,474.22;
- for Abdullah Elçiçek, GBP 112,759.92;
- for İbrahim Kaya, GBP 117,504.20;
- for Hüseyin Sezgin, GBP 118,607.12;
- for Mevlüde Ekin, GBP 114,352.96;
- for Besna Ekin, GBP 112,071.45;
- for İbrahim Ekin, GBP 108,311.35;
- for Abdullah Kurt, GBP 111,986.86;
- for Mehmet Sezgin, GBP 116,247.23;
- for Asiye Aslan, GBP 108,320.27;
- for Hamit Ekinci, GBP 121,249.90;
- for Rahim Arslan, GBP 107,839.25;
- for Ali Özkan, GBP 103,769.24;
- for Ahmet Erbek, GBP 110,002.05;
- for Ayşe Ekinci, GBP 110,229.35;
- for Mehmet Özkan, GBP 115,029.28;
- for Abdurrahman Çetin, GBP 104,565.07;
- for Şükrü Yıldırım, GBP 109,683.77;
- for Hatice Erbek, GBP 107,398.84;
- for Raife Çetin, GBP 109,019.84;
- for Zeynep Yıldırım, GBP 109,047.56;
- for Ayşe Sezgin, GBP 108,532.39; and
- for Rukiye Erbek<sup>375</sup>, GBP 113,855.73.

486. Three applicants further claimed to have lost amounts of cash, namely Mehmet Emin Demir (2,006.90 German marks), İbrahim Ekin (10,000,000 Turkish lira (“TRL”)) and Tayibet Kurt (TRL 35,000,000).

487. The Government contested the applicants' claims for pecuniary damage as being unfounded and, taking into consideration the general standard of living in the region, as being excessive.

488. The Court's case-law establishes that there must be a clear causal link between pecuniary damage claimed by an applicant and the violation of the Convention and that this may, where appropriate, include compensation in respect of loss of earnings (see *Barberà, Messegué and Jabardo v. Spain*, judgment of 13 June 1994 (*Article 50*), Series A no. 285-C, pp. 57-58, §§ 16-20, *Selçuk and Asker v. Turkey*, cited above, pp. 916-917, § 112, and *Cakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV).

489. In addition, the Court reiterates that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in

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<sup>375</sup> Rectified on 1 March 2005. The previous version reads “Fatma Erbek”.

respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link between the breach and the damage becomes. The question to be decided in such cases is the level of just satisfaction, in respect of either past and future pecuniary loss, which it is necessary to award to an applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see *Tanlı v. Turkey*, cited above, § 182).

490. The Court has found that the Turkish authorities were liable under Article 2 of the Convention for İbrahim Ekinci's death<sup>376</sup>. In these circumstances, there is a direct causal link between the violation of Article 2 and the loss by his widow and children of the financial support which he provided for them.

491. The Court has also found a violation of Article 3 of the Convention in respect of the conditions in which the apprehended adolescent and adult male Ormaniçi villagers were made to walk to Güçlükonak and the conditions of their subsequent detention, which resulted in the development of various frostbite-related ailments, eventually necessitating the amputation of parts of the feet of five detained villagers<sup>377</sup>. It is beyond doubt that, to a certain extent, these amputations must have affected their capacity for work and thus their earnings. Consequently, in so far as the Court has accepted that the application has also been brought on behalf of these five persons<sup>378</sup>, an award for loss of future income must be made.

492. The Court further accepts that a number of applicants have suffered some loss of earnings on account of the Ormaniçi villagers' detention which has been found to be in breach of Article 5 of the Convention<sup>379</sup>.

493. Lastly, the Court has found that the Turkish authorities were liable under Article 8 of the Convention for the destruction of the homes of the applicants Hediye Çetin, Mehmet Emin Demir, Kumri Aslan, Hüseyin Sezgin, Mevlüde Ekin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekinci, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin.

494. The Court has therefore had regard, on the one hand, to the applicants' detailed submissions and calculations as their claims for pecuniary damage and, on the other hand, to the absence of any independent and decisive evidence of the applicants' income, the size of their houses, the value of their further possessions and their costs in securing alternative accommodation. In such circumstances, the Court's assessment of the

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<sup>376</sup> See §§ 322-323.

<sup>377</sup> See §§ 349 and 352.

<sup>378</sup> See §§ 278-280.

<sup>379</sup> See §§ 376 and 380, and § 395.

necessary awards must, of necessity, be speculative and based on principles of equity (see *Akdivar and Others v. Turkey*, judgment of 1 April 1998 (*Article 50*), *Reports* 1998-II, p. 718, § 18, and *Selçuk and Asker v. Turkey*, cited above, pp. 915-916, §§ 106, 108 and 110).

495. Therefore, making a reasonable estimate, the Court decides that the applicants concerned should receive the following amounts for pecuniary damage sustained by themselves and/or by those on whose behalf they have also brought the application:

- Hediye Çetin (no. 2), 6,500 euros (EUR);
- Mehmet Emin Demir (no. 5), EUR 7,240;
- Kumri Aslan (no. 6), EUR 6,170;
- Abdullah Elçiçek (no. 7), EUR 240;
- İbrahim Kaya (no. 8), EUR 170;
- Hüseyin Sezgin (no. 9), EUR 7,000;
- Mevlüde Ekin (no. 10), EUR 6,170;
- Besna Ekin (no. 11), EUR 6,340;
- İbrahim Ekin (no. 12), EUR 7,170;
- Abdullah Kurt (no. 13), EUR 6,170;
- Mehmet Sezgin (no. 14), EUR 7,170;
- Asiye Aslan (no. 15), EUR 14,360;
- Hamit Ekinci (no. 16), EUR 7,000;
- Rahim Arslan (no. 17), EUR 6,240;
- Ahmet Erbek (no. 20), EUR 6,670;
- Ayşe Ekinci (no. 21), EUR 97,010;
- Mehmet Özkan (no. 22), EUR 170;
- Abdurrahman Çetin (no. 23), EUR 6,000;
- Şükrü Yıldırım (no. 24), EUR 170;
- Hatice Erbek (no. 25), EUR 170;
- Raife Çetin (no. 26), EUR 680;
- Fatma Yıldırım (no.28), EUR 710;
- Ayşe Sezgin (no. 31), EUR 6,000; and
- Rukiye Erbek<sup>380</sup>(no. 32), EUR 1,670.

496. The sums awarded in the preceding paragraph are to be paid into the bank account indicated in the applicants' just satisfaction claim, all sums to be converted to Turkish lira on the date of settlement.

## **B. Non-pecuniary damage**

497. All applicants filed claims for non-pecuniary damage, both for themselves and for those on whose behalf they stated that they had brought the application. To the extent that the Court has accepted that the

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<sup>380</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

application has also been brought by others<sup>381</sup>, and in accordance with the accepted scope of the application<sup>382</sup>, the total amounts of these claims for each applicant are as follows:

- for Ahmet Özkan (no. 1), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 and the consequential negative lasting effects thereof on his health, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for Hediye Çetin (no. 2), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house and shop, her possessions and way of life;

- for her husband Ali Çetin, GBP 8,000 in respect of the violation of Article 3 of the Convention, on account of the destruction of his house and shop, his possessions and way of life;

- for each of her children Asya, Abide, Fatma, Zeynep and Mehmet, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of their home;

- for Hediye Demir (no. 3), GBP 38,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her husband Nezir Demir, GBP 10,000 in respect of the violation of Article 2 of the Convention, on account of the planning and conduct of the military operation and the lack of a domestic investigation;

- for each of her children Ferman, Mevlüde, Fevzi and Beytullan, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst

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<sup>381</sup> See §§ 278-280.

<sup>382</sup> See §§ 283-287.

the village was being burned and the men were being beaten in the village square, and the destruction of their home;

- for Ramazan Yıldırım (no. 4), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the tardy and inadequate investigation into the death of his son Ali, his treatment by the security forces on 20 February 1993 which required him to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for Fatma Yıldırım (no. 28), GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the tardy and inadequate investigation into the death of her son Ali, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of her house, possessions and way of life;

- for their son Ali, GBP 38,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the State's failure to protect his life by removing from the village all live munitions after the military operation, the tardy and inadequate investigation into his death, and his treatment by the security forces on 20 February 1993 which required him to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square;

- for their son Hüseyin, GBP 40,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square, where he was kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, as a result of which he lost a toe (which constituted an aggravating factor), the arbitrariness of his detention, the delay in bringing him before a judicial official, the destruction of his home and the lack of a domestic investigation;

- for each of their children Safiye, Hatice, Hediye, Şükran, Emine and Hasan, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of their home;

- for Mehmet Emin Demir (no. 5), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the

planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 which required him – despite being ill – to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Ayşe Demir, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her – despite being ill – to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of her house, possessions and way of life;

- for his son Mehmet Şerif, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square where he was kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there as a result of which he sustained foot injuries, the torture to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the destruction of his home and the lack of a domestic investigation;

- for his son Mehmet, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 which required him to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of his home;

- for Kumri Aslan (no. 6), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her husband Mehmet Aslan, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square, where he was kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the torture to which he was subjected during his detention, the arbitrariness of his

detention, the delay in bringing him before a judicial official, and the lack of a domestic investigation;

- for each of her children Abdullah and Asiye, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the destruction of their home;

- for Abdullah Elçiçek (no. 7), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square where he was kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there as a result of which he sustained injuries, the torture to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Rahime Elçiçek, as well as for each of their children Taybet, Mevlüde, Mehmet, Ayşe, Hamdiye and Suphiye, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their house and the lack of a domestic investigation;

- for İbrahim Kaya (no. 8), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square, where he was kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the torture to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Fatma Kaya as well as for each of their children Zekiye, Ömer, Gürbet and Şerif, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being

beaten in the village square, the destruction of their house and the lack of a domestic investigation;

- for Hüseyin Sezgin (no. 9), GBP 33,000 in respect of the violations of Articles 3, 6 and 8 of the Convention, on account of the destruction of his house, possessions and way of life, and the lack of an investigation;

- for his wife Fatma Sezgin as well as for each of their children Emin and Ayşe, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their house and the lack of a domestic investigation;

- for Mevlüde Ekin (no. 10), GBP 60,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the death of her daughter Abide and the failure to investigate Abide's death, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day – holding her injured daughter Abide on her lap – whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her daughter Abide, GBP 120,000 in respect of aggravated violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the failure of the security forces to protect her life by seeking medical assistance and treatment for her injury, the authorities' failure to investigate her death, and her treatment by the security forces on 20 February 1993 which required her – despite being injured – to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square;

- for her daughter Halime, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, which had resulted in her being injured, her treatment by the security forces on 20 February 1993, the ill-treatment to which she was subjected during her detention, and the delay in bringing her before a judicial official;

- for Besna Ekin (no. 11), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her husband Hacı Ekin, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the ill-treatment and pressure to which he was subjected during his detention, the delay in bringing him before a judicial official, and the lack of a domestic investigation;

- for her son Şerif, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the pressure to which he was subjected during his detention, the delay in bringing him before a judicial official, and the lack of a domestic investigation;

- for each of her children Tevfik, Zeki, Ahmet, Fatma, Sidika and Hüseyin, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for İbrahim Ekin (no. 12), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there which caused him injuries, the torture to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Hediye Ekin and for each of their children Beşire, Mehmet Emin and Asima, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Abdullah Kurt (no. 13), GBP 65,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he

was made to walk to Güçlükonak and the conditions of detention there, the injuries he sustained as a result of his treatment during detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Tayibet Kurt and for each of their children Emine, Ahmet, Mahmut, Rabia and Mehmet Emin, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Mehmet Sezgin (no. 14), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the beatings to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for his wife Aliye Sezgin as well as for each of their children Şirin, Emin, Fehime, Gülsen, Zozan and Nimet, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Asiye Aslan (no. 15), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her husband Resul Aslan, GBP 115,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, as a result of which he sustained injuries that necessitated a metatarsal amputation of both feet (which constituted an aggravating factor), the

ill-treatment and pressure to which he was subjected during his detention, the arbitrariness of his detention, the failure to bring him before a judicial official during his detention, the destruction of his house, possessions and way of life, and the lack of a domestic investigation;

- for each of her children Fatma and Numan, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Hamit Ekinçi (no. 16), GBP 25,000 in respect of the violations of Articles 6 and 8 of the Convention, on account of the destruction of his house, possessions and way of life and the lack of a domestic investigation;

- for his wife Rukiye Ekinçi and for each of their children Hüseyin, Hasan, Zeynep and Meryem, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 in Ormaniçi, the destruction of their home and the lack of a domestic investigation;

- for Rahim Arslan (no. 17), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of her house, possessions and way of life;

- for her husband Ahmet Arslan, GBP 40,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the village square where he was forcibly kept on the ground with the other men, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there as a result of which he sustained considerable foot injuries (which constituted an aggravating factor), the torture to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, and the lack of a domestic investigation;

- for each of her children Zeynep, Osman, Leyla, Nuriye, Ekrem, Kadriye and Sabri, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 in Ormaniçi, which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten

in the village square, the destruction of their home and the lack of a domestic investigation;

- for Ali Özkan (no. 19), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 which required him to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the lack of a domestic investigation, and the destruction of his house, possessions and way of life;

- for Ahmet Erbek (no. 20), GBP 25,000 in respect of the violations of Articles 6 and 8 of the Convention, on account of the destruction of his house, possessions and way of life and the lack of a domestic investigation;

- for his wife Kumri Erbek, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 in Ormaniçi which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the lack of a domestic investigation;

- for his son Şahabettin, GBP 30,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the treatment and pressure to which he was subjected during his detention, the delay in bringing him before a judicial official, and the lack of a domestic investigation;

- for each of his children Nurettin, Ayşe, Fatma and Gül, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the lack of a domestic investigation;

- for Ayşe Ekinci (no. 21) and her husband İbrahim Ekinci, GBP 155,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the treatment by the security forces on 20 February 1993 to which they were each subjected whilst being held in the village square, the conditions in which İbrahim was made to walk to Güçlükonak and the conditions of detention there with the consequential effects on his health, the failure to provide him with adequate medical treatment in custody, the arbitrariness of İbrahim's detention and the failure to bring him before a judicial official during his detention, İbrahim's death whilst in custody, the destruction of their house, possessions and way of life, and the authorities' failure to investigate the events of 20 February 1993 and İbrahim's death despite the criminal complaint filed by Ayşe Ekinci;

- for each of their children Halime, Kerime, Mehmet, Ali and Hasan, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, and the lack of a domestic investigation;

- for Mehmet Özkan (no. 22), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there as a result of which he sustained various injuries and lost one toe, the pressure to which he was subjected during his detention, the duration of his detention without being brought before a judicial official, the destruction of his house, possessions and way of life, and the lack of a domestic investigation;

- for his wife Fatım Özkan as well as for each of their children Bahaktin, Alkadir, Ezdir, Ayter, Nivan and Mehmet, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Abdurrahman Çetin (no. 23), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 which required him to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of his house, possessions and way of life, and the lack of a domestic investigation;

- for Şükrü Yıldırım (no. 24), GBP 55,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in the Ormaniçi village square, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, the beatings and the pressure to which he was subjected during his detention, the arbitrariness of his detention, the delay in bringing him before a judicial official, the destruction of his home, his possessions and way of life, and the lack of a domestic investigation;

- for Hatice Erbek (no. 25), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the

snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of her house, possessions and way of life, and the lack of a domestic investigation;

- for her husband Şemsettin Erbek, GBP 65,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, the pressure and torture to which he was subjected during his detention and which resulted in permanent disability, the delay in bringing him before a judicial official, the destruction of his house, possessions and way of life, and the lack of a domestic investigation;

- for each of their children Mehmet and Meryem, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Raife Çetin (no. 26), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of her house, possessions and way of life, and the lack of a domestic investigation;

- for her husband Mehmet Tahir Çetin, GBP 115,000 in respect of the violations of Articles 2, 3, 5, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, his treatment by the security forces on 20 February 1993 in Ormaniçi, the conditions in which he was made to walk to Güçlükonak and the conditions of detention there, as a result of which he sustained injuries that necessitated an amputation of both feet (which constituted an aggravating factor), the arbitrariness of his detention, the failure to bring him before a judicial official during his detention, the destruction of his house, possessions and way of life, and the lack of a domestic investigation;

- for each of her children Hediye, Hatici, Mahmut, Abdullah, Gülsüm, Ahmet and Halat, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, the destruction of their home and the lack of a domestic investigation;

- for Zeynep Yıldırım (no. 29), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and

conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, as a result of which her husband suffered a heart attack, the destruction of her house, possessions and way of life, and the lack of a domestic investigation;

- for her husband Ömer Yıldırım and for each of their children Asime, Selamet, Halil, Sıddık, Zeki and Sabri, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten in the village square, as a result of which Ömer Yıldırım suffered a heart attack, the destruction of their home, possessions and way of life, and the lack of a domestic investigation;

- for Ayşe Sezgin (no. 31), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten, the destruction of her house, possessions and way of life, and the lack of a domestic investigation;

- for each of her children Ali, İlhan, Osman and Remsıye, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, their treatment by the security forces on 20 February 1993 which required them to stay out in the snow all day whilst the village was being burned and the men were being beaten, the destruction of their home and the lack of a domestic investigation;

- for Rukiye Erbek<sup>383</sup>(no. 32), GBP 43,000 in respect of the violations of Articles 2, 3, 6 and 8 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten, the destruction of her house, possessions and way of life, and the lack of a domestic investigation;

- for her husband Ali Erbek, GBP 50,000 in respect of the violations of Articles 2, 3 and 5 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993 and the lack of an investigation thereof, his treatment by the security forces on 20 February 1993 in Ormaniçi, the delay in bringing him before a judicial official, and the length of his detention pending trial; and

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<sup>383</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

- for her child Gülcehan, GBP 18,000 in respect of the violations of Articles 2 and 3 of the Convention, on account of the planning and conduct of the military operation on 20 February 1993, her treatment by the security forces on 20 February 1993 which required her to stay out in the snow all day whilst the village was being burned and the men were being beaten, the destruction of her home and the lack of a domestic investigation.

498. The Government, disputing that any violations had occurred, submitted that no award for non-pecuniary damage should be made and that, if such an award was to be made, the Court should take into account the economic circumstances prevailing in Turkey in order to avoid unjust enrichment.

499. The Court considers that an award should be made in respect of non-pecuniary damage, bearing in mind the seriousness of the violations which it has found in respect of Articles 2, 3, 5 and 8 of the Convention. Although it is clear that all the applicants suffered non-pecuniary damage as a consequence of their experiences, the Court considers that distinctions should be made between the applicants, depending on the violations found in each individual case. The Court lastly considers it to be appropriate, in the particular circumstances of the present case, to award an overall amount for non-pecuniary damage to each applicant in respect of the violations found in their own case as well as, where appropriate and unless indicated otherwise, in the case of the members of their family on whose behalf they also brought the application and where this has been accepted by the Court.

500. Therefore, deciding on an equitable basis, the Court considers that the applicants should be awarded the following amounts for non-pecuniary damage suffered by themselves and by those on whose behalf they have also brought the application:

- for Ahmet Özkan (no. 1), EUR 3,000;
- for Hediye Çetin (no. 2) and her family, EUR 19,000;
- for Hediye Demir (no. 3) and her family, EUR 3,500;
- for Mehmet Emin Demir (no. 5), EUR 6,500;
- for Ayşe Demir and her children, EUR 26,100;
- for Kumri Aslan (no. 6) and her family, EUR 27,100;
- for Abdullah Elçiçek (no. 7) and his family, EUR 18,600;
- for İbrahim Kaya (no. 8) and his family, EUR 13,100;
- for Hüseyin Sezgin (no. 9) and his family, EUR 17,500;
- for Mevlüde Ekin (no. 10) and her children, EUR 47,600;
- for Besna Ekin (no. 11) and her family, EUR 40,100;
- for İbrahim Ekin (no. 12) and his family, EUR 30,000;
- for Abdullah Kurt (no. 13), EUR 17,000;
- for Tayibet Kurt and her children, EUR 14,000;
- for Mehmet Sezgin (no. 14) and his family, EUR 31,500;
- for Asiye Aslan (no. 15) and her family, EUR 49,800;
- for Hamit Ekinci (no. 16) and his family, EUR 18,500;

- for Rahim Arslan (no. 17) and her children, EUR 15,000;
- for Ahmet Arslan, EUR 19,100;
- for Ali Özkan (no. 19), EUR 1,500;
- for Ahmet Erbek (no. 20) and his family, EUR 26,600;
- for Ayşe Ekinçi (no. 21) and her children, EUR 68,100;
- for Mehmet Özkan (no. 22), EUR 9,600;
- for Fatım Özkan and her children, EUR 4,500;
- for Abdurrahman Çetin (no. 23), EUR 16,500;
- for Şükrü Yıldırım (no. 24), EUR 12,000;
- for Hatice Erbek (no. 25) and her family, EUR 10,600;
- for Raife Çetin (no. 26) and her family, EUR 32,300;
- for Fatma Yıldırım (no. 28) and her children, EUR 19,000;
- for Zeynep Yıldırım (no. 29) and her family, EUR 7,500;
- for Ayşe Sezgin (no. 31) and her children, EUR 18,500; and
- for Rukiye Erbek<sup>384</sup> (no. 32) and her family, EUR 11,600.

501. The sums awarded in the preceding paragraph are to be paid into the bank account indicated in the applicants' just satisfaction claim, all sums to be converted to Turkish lira on the date of settlement.

### C. Costs and expenses

502. Referring to schedules and invoices, the applicants claimed costs and expenses for their representation by Mr Tony Fisher and Mr Tahir Elçi as well as for those incurred by the Kurdish Human Rights Project (KHRP), which acted as a consultant, prepared translations and provided logistical and administrative support in relation to the taking of oral evidence, amounting to a total of GBP 112,041.66 (excluding value-added tax) plus an amount of 4,950 German marks, and broken down as follows:

- (a) GBP 53,646.67 (excluding value-added tax) for the fees of Mr Tony Fisher (389 hours);
- (b) GBP 14,051.25 (excluding value-added tax) for expenses incurred by Mr Tony Fisher (travel, interpretation, actuarial and administrative costs);
- (c) GBP 22,578.32 for the fees of Mr Tahir Elçi (335 hours);
- (d) GBP 4,424.54 for the expenses incurred by Mr Tahir Elçi (travel, accommodation and administrative costs, including 4,200 US Dollars in fees of two Turkish legal consultants)
- (e) GBP 17,340.88 and 4,950 German marks for the costs incurred by the KHRP (translation, interpretation and administrative costs, and travel and subsistence costs).

The applicants asked the Court to order these amounts to be paid in sterling directly into a sterling bank account in the United Kingdom.

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<sup>384</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

503. The Government considered those sums excessive and submitted that legal fees for foreign and Turkish lawyers should be assessed on the basis of the applicable rates of the İstanbul Bar Association in respect of representing applicants in proceedings under the Convention. The Government further submitted that only documented costs, with receipts, invoices, telephone bills etc., should be taken into consideration. The Government finally objected to any reimbursement of the costs and expenses claimed in respect of the KHRP.

504. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, as a recent authority, *Sawicka v. Poland*, no. 37654/97, § 54, 1 October 2002).

505. The Court observes that this case involved particularly complex issues of fact and law requiring detailed examination and involving the taking of evidence from 48 witnesses in Ankara. Moreover, having regard to the fact that an applicant is free to designate a legal representative of his or her own choosing, the applicants' recourse to a United Kingdom-based lawyer cannot be criticised (see *Kurt v. Turkey*, 25 May 1998, *Reports* 1998-III, p. 1196, § 179). It further notes that Mr Elçi played a key role in bringing the case at the outset and in assisting Mr Fisher in preparing the taking of oral evidence in Ankara.

506. However, the Court considers excessive the total number of hours of legal work (724) for which the applicants have made a claim in respect of their legal representatives and finds that it has not been demonstrated that all those legal costs were necessarily and reasonably incurred. As to the applicants' claim in respect of the expenses incurred by their legal representatives, the Court accepts, with the exception of the expenses claimed in respect of the two Turkish legal consultants in respect of whom the Court is not persuaded that their services were essential, that these were necessary and reasonably incurred in that this was a complex case, involving many applicants and considerable coordination costs.

507. As regards the sum claimed in respect of the KHRP, the Court is not convinced that all costs claimed in respect of the KHRP were necessarily incurred. It accepts, however, that the present case may have involved considerable translation costs as well as a certain amount of administrative costs.

508. Making its own estimate based on the information available and deciding on an equitable basis, the Court awards the applicants EUR 70,000 in respect of costs and expenses, plus any value-added tax that may be chargeable, and minus EUR 11,425.90 paid by the Council of Europe by way of legal aid. The net award is to be paid in sterling into the bank account in the United Kingdom designated by the applicants.

### **C. Default interest**

509. 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. *Decides* to strike the application, in so far as it has been brought by Mahmut Güler, Fatma Özkan and Halime Ekin, out of its list of cases under Article 37 § 1 (a) of the Convention;
2. *Holds* that Salih Demir, Tayibet Kurt, Fatım Özkan – the son of Mehmet Emin Demir, the widow of Abdullah Kurt and the widow of Mehmet Özkan, respectively – have standing to continue the present proceedings in their stead;
3. *Holds* that only those persons named in paragraph 284 can be considered applicants for the purposes of proceedings before the Court;
4. *Holds* that it has no jurisdiction to examine the new and separate facts and complaints that were not raised at the admissibility stage;
5. *Holds* that there has been no violation of Article 2 of the Convention in respect of the security forces' opening of intensive fire on 20 February 1993;
6. *Holds* that there has been both a substantive and procedural violation of Article 2 of the Convention in the case of Mevlüde Ekin as regards the death of Abide Ekin;
7. *Holds* that there has been no violation of Article 2 of the Convention in the case of Fatma Yıldırım in respect of the death of Ali Yıldırım and the wounding of Emine Yıldırım;
8. *Holds* that there has been both a substantive and procedural violation of Article 2 of the Convention in the case of Ayşe Ekinci in relation to the death of İbrahim Ekinci;
9. *Holds* that there has been no violation of Article 3 of the Convention in respect of the security forces' decision to conduct a systematic search of Ormaniçi and to gather its inhabitants in the village square;

10. *Holds* that there has been a violation of Article 3 of the Convention as regards the security forces' treatment of the Ormaniçi villagers held in the village square;
11. *Holds* that there has been both a substantive and procedural violation of Article 3 of the Convention as regards the manner in which the apprehended Ormaniçi villagers were taken to Güçlükonak and the conditions of their detention in Güçlükonak;
12. *Holds* that there has been a violation of Article 5 of the Convention on account of the lack of proper custody records in Güçlükonak and Şırnak;
13. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the detention of the apprehended Ormaniçi villagers;
14. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to bring the apprehended Ormaniçi villagers promptly before a judge or judicial officer;
15. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the length of the detention of Ali Erbek;
16. *Holds* that no separate issues arise under Article 6 of the Convention in relation to the apprehending and the detention of the Ormaniçi villagers;
17. *Holds* that there has been a violation of Article 8 of the Convention in the cases of Hediye Çetin, Mehmet Emin Demir, Kumri Aslan, Hüseyin Sezgin, Mevlüde Ekin, Besna Ekin, İbrahim Ekin, Abdullah Kurt, Mehmet Sezgin, Hamit Ekin, Rahim Arslan, Ahmet Erbek, Abdurrahman Çetin and Ayşe Sezgin on account of the destruction of their homes;
18. *Holds* that there has been no failure to comply with former Article 25 of the Convention;
19. *Holds* that there has been no failure to comply with former Article 28 § 1 (a) of the Convention;
20. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
    - (i) to Ahmet Özkan, EUR 3,000 (three thousand euros) for non-pecuniary damage;

- (ii) to Hediye Çetin, EUR 6,500 (six thousand five hundred euros) in respect of pecuniary damage and EUR 19,000 (nineteen thousand euros) for non-pecuniary damage;
- (iii) to Hediye Demir, EUR 3,500 (three thousand five hundred euros) for non-pecuniary damage;
- (iv) to Salih Demir, EUR 7,240 (seven thousand two hundred and forty euros) in respect of pecuniary damage and EUR 26,100 (twenty-six thousand one hundred euros) for non-pecuniary damage, to be held for Ayşe Demir, Mehmet Şerif Demir and Mehmet Demir, and also EUR 6,500 (six thousand five hundred euros) for non-pecuniary damage, to be held for the heirs of Mehmet Emin Demir;
- (v) to Kumri Aslan, EUR 6,170 (six thousand one hundred and seventy euros) in respect of pecuniary damage and EUR 27,100 (twenty-seven thousand one hundred euros) for non-pecuniary damage;
- (vi) to Abdullah Elçiçek, EUR 240 (two hundred and forty euros) in respect of pecuniary damage and EUR 18,600 (eighteen thousand six hundred euros) for non-pecuniary damage;
- (vii) to İbrahim Kaya, EUR 170 (one hundred and seventy euros) in respect of pecuniary damage and EUR 13,100 (thirteen thousand one hundred euros) for non-pecuniary damage;
- (viii) to Hüseyin Sezgin, EUR 7,000 (seven thousand euros) in respect of pecuniary damage and EUR 17,500 (seventeen thousand five hundred euros) for non-pecuniary damage;
- (ix) to Mevlüde Ekin, EUR 6,170 (six thousand one hundred and seventy euros) in respect of pecuniary damage and EUR 47,600 (forty thousand six hundred euros) for non-pecuniary damage;
- (x) to Besna Ekin, EUR 6,340 (six thousand three hundred and forty euros) in respect of pecuniary damage and EUR 40,100 (forty thousand one hundred euros) for non-pecuniary damage;
- (xi) to İbrahim Ekin, EUR 7,170 (seven thousand one hundred and seventy euros) in respect of pecuniary damage and EUR 30,000 (thirty thousand euros) for non-pecuniary damage;
- (xii) to Tayibet Kurt, EUR 6,170 (six thousand one hundred and seventy euros) in respect of pecuniary damage and EUR 14,000 (fourteen thousand euros) for non-pecuniary damage, and also EUR 17,000 (seventeen thousand euros) for non-pecuniary damage, to be held for the heirs of Abdullah Kurt;
- (xiii) to Mehmet Sezgin, EUR 7,170 (seven thousand one hundred and seventy euros) in respect of pecuniary damage and EUR 31,500 (thirty-one thousand five hundred euros) for non-pecuniary damage;
- (xiv) to Asiye Aslan, EUR 14,360 (fourteen thousand three hundred and sixty euros) in respect of pecuniary damage and EUR 49,800 (forty-nine thousand eight hundred euros) for non-pecuniary damage;

- (xv) to Hamit Ekinci, EUR 7,000 (seven thousand euros) in respect of pecuniary damage and EUR 18,500 (eighteen thousand five hundred euros) for non-pecuniary damage;
- (xvi) to Rahim Arslan, EUR 6,240 (six thousand two hundred and forty euros) in respect of pecuniary damage and EUR 15,000 (fifteen thousand euros) for non-pecuniary damage, and also EUR 19,100 (nineteen thousand one hundred euros) for non-pecuniary damage, to be held for the heirs of Ahmet Arslan;
- (xvii) to Ali Özkan, EUR 1,500 (one thousand five hundred euros) for non-pecuniary damage;
- (xviii) to Ahmet Erbek, EUR 6,670 (six thousand six hundred and seventy euros) in respect of pecuniary damage and EUR 26,600 (twenty-six thousand six hundred euros) for non-pecuniary damage;
- (xix) to Ayşe Ekinci, EUR 97,010 (ninety-seven thousand and ten euros) in respect of pecuniary damage and EUR 68,100 (sixty-eight thousand one hundred euros) for non-pecuniary damage;
- (xx) to Fatım Özkan, EUR 170 (one hundred and seventy euros) in respect of pecuniary damage and EUR 4,500 (four thousand five hundred euros) for non-pecuniary damage, and also EUR 9,600 (nine thousand six hundred euros) for non-pecuniary damage, to be held for the heirs of Mehmet Özkan;
- (xxi) to Abdurrahman Çetin, EUR 6,000 (six thousand euros) in respect of pecuniary damage and EUR 16,500 (sixteen thousand five hundred euros) for non-pecuniary damage;
- (xxii) to Şükrü Yıldırım, EUR 170 (one hundred and seventy euros) in respect of pecuniary damage and EUR 12,000 (twelve thousand euros) for non-pecuniary damage;
- (xxiii) to Hatice Erbek, EUR 170 (one hundred and seventy euros) in respect of pecuniary damage and EUR 10,600 (ten thousand six hundred euros) for non-pecuniary damage;
- (xxiv) to Raife Çetin, EUR 680 (six hundred and eighty euros) in respect of pecuniary damage and EUR 32,300 (thirty-two thousand three hundred euros) for non-pecuniary damage;
- (xxv) to Fatma Yıldırım, EUR 710 (seven hundred and ten euros) in respect of pecuniary damage and EUR 19,000 (nineteen thousand euros) for non-pecuniary damage;
- (xxvi) to Zeynep Yıldırım, EUR 7,500 (seven thousand five hundred euros) for non-pecuniary damage;
- (xxvii) to Ayşe Sezgin, EUR 6,000 (six thousand euros) in respect of pecuniary damage and EUR 18,500 (eighteen thousand five hundred euros) for non-pecuniary damage; and

- (xxviii) to Rukiye Erbek<sup>385</sup>, EUR 1,670 (one thousand six hundred and seventy euros) in respect of pecuniary damage and EUR 11,600 (eleven thousand six hundred euros) for non-pecuniary damage;
- (b) that the respondent State is to pay, within the same three-month period, EUR 70,000 minus EUR 11,425.90 paid by the Council of Europe by way of legal aid, in respect of costs and expenses;
- (c) that the payment of any tax that may be chargeable is to be added to the above amounts under (a) and (b);
- (d) that all the above sums under (a) plus any tax that may be chargeable in respect of these sums are to be converted into Turkish lira at the rate applicable at the date of settlement, and paid into the bank account indicated in the applicants' just satisfaction claim;
- (e) that the above sum under (b) plus any tax that may be chargeable in respect of this sum is to be converted into pounds sterling at the rate applicable at the date of settlement, and paid into the bank account indicated in the applicants' just satisfaction claim;
- (f) that from the expiry of the aforementioned 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;

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

Done in English, and notified in writing on 6 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Deputy Registrar

J.-P. COSTA  
President

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<sup>385</sup> Rectified on 1 March 2005. The previous version reads “Fatma Erbek”.

## APPENDIX I

### LIST OF APPLICANTS AND THEIR IMMEDIATE FAMILY TIES<sup>386</sup>

Where known, the maiden names of married women are stated after their husband's surname.

♦ :	Deceased
(♦):	Presumed dead
<i>Italics:</i>	Indicted on 30 April 1993 before Diyarbakır State Security Court
<u>Underlined:</u>	Mentioned in the decision of non-prosecution of 30 April 1993
<b>Bold:</b>	Gave oral evidence before the Delegates of the Commission

APPLICANT NO.:	SPOUSE OF:	CHILDREN <sup>387</sup> :
<p>1. <b>Ahmet ÖZKAN</b> [brother of no. 19]</p>	<p>Ayşe ÖZKAN</p>	<p><b><u>Mehmet ÖZKAN</u></b> Abdullah ÖZKAN [father of <b><u>Fahrettin</u></b> &amp; <b><u>Nedim ÖZKAN</u></b>] <b><u>İbrahim ÖZKAN</u></b></p>
<p>2. <b>Hediye ÇETİN</b></p>	<p>Ali ÇETİN [son of no. 23]</p>	<p><b><u>Hacı ÇETİN</u></b> <b><u>Meryem ÇETİN</u></b> <b><u>Asya ÇETİN</u></b> <b><u>Abide ÇETİN</u></b> <b><u>Fatma ÇETİN</u></b> <b><u>Zeynep ÇETİN</u></b> <b><u>Mehmet ÇETİN</u></b></p>
<p>3. <b>Hediye DEMİR-DEMİR</b> [daughter of no. 5]</p>	<p>Nezir DEMİR</p>	<p>Ferman DEMİR Mevlûde DEMİR Fevzi DEMİR Beytullan DEMİR</p>
<p>4. Ramazan YILDIRIM ♦ [paternal uncle of no. 24] [brother-in-law of n. 29]</p>	<p>Fatma YILDIRIM [applicant no.28]</p>	<p><b><u>Mehmet YILDIRIM</u></b> <b><u>Hüseyin YILDIRIM</u></b> <b><u>Safiye YILDIRIM</u></b> <b><u>Hatice YILDIRIM</u></b> <b><u>Hediye YILDIRIM</u></b> <b><u>Ali YILDIRIM ♦</u></b> <b><u>Şükran YILDIRIM</u></b> <b><u>Emine YILDIRIM</u></b> <b><u>Hasan YILDIRIM</u></b></p>

<sup>386</sup> As confirmed by the applicants on 22 May 1998.

<sup>387</sup> Only those children are listed who, according to the applicants and in so far as can be established, were present in Ormaniçi at the time of the incident.

<b>APPLICANT NO.:</b>	<b>SPOUSE OF:</b>	<b>CHILDREN:</b>
5. Mehmet Emin DEMİR ♦	Ayşe DEMİR	Hediye DEMİR [no. 3] <b><u>Salih DEMİR</u></b> Abdülislam DEMİR ♦ <b><u>Hamit DEMİR</u></b> <b><u>Mehmet Serif DEMİR</u></b> Mehmet DEMİR
6. <b><u>Kumri ASLAN</u></b>	<b><u>Mehmet ASLAN</u></b> [ <i>muhtar</i> of Ormaniçi] [brother of Resul ASLAN, see under no. 15]	Abdullah ASLAN Asiye ASLAN plus 3 other children [names not stated]
7. <b><u>Abdullah ELÇİÇEK</u></b>	Rahime ELÇİÇEK	Taybet ELÇİÇEK Mevlûde ELÇİÇEK Mehmet ELÇİÇEK Ayşe ELÇİÇEK Hamdiye ELÇİÇEK Suphiye ELÇİÇEK
8. <b><u>İbrahim KAYA</u></b> [son of <b><u>Mehmet KAYA</u></b> ♦]	Fatma KAYA	Zekiye KAYA Ömer KAYA Gürbet KAYA Şerif KAYA plus 2 other children [names not stated]
9. <b><u>Hüseyin SEZGİN</u></b> [brother of nos. 14 & 15, & brother-on-law of no. 22; see under a.]	Fatma SEZGİN	Emin SEZGİN Ayşe SEZGİN
10. <b><u>Mevlûde EKİN</u></b>	Halil EKİN (♦) [former <i>muhtar</i> ] [brother of Hacı, İbrahim & Osman EKİN; see nos. 11, 12 & 30]	<b><u>Abdullah EKİN</u></b> <b><u>Halime EKİN</u></b> [not no.30] Abide EKİN ♦ and 5 other children [names not stated]
11. <b><u>Besna EKİN</u></b> [sister of no. 17]	<b><u>Hacı EKİN</u></b> [brother of Halil, İbrahim & Osman EKİN; see nos. 10,12 & 30]	<b><u>Şerif EKİN</u></b> ♦ Tevfik EKİN Zeki EKİN Ahmet EKİN Fatma EKİN Sidika EKİN Hüseyin EKİN
12. <b><u>İbrahim EKİN</u></b> [brother of Hacı, Halil and Osman EKİN; see nos. 10, 11 & 30]	Hediye EKİN	Beşire EKİN Mehmet Emin EKİN Asima EKİN

<b>APPLICANT NO.:</b>	<b>SPOUSE OF:</b>	<b>CHILDREN:</b>
13. <u>Abdullah KURT</u> ♦	<b>Tayibet KURT</b>	Emine KURT Ahmet KURT Mahmut KURT Rabia KURT Mehmet Emin KURT
14. <u>Mehmet SEZGİN</u> [brother of nos. 9 & 15 brother-in-law of no. 22; see under a.]	Aliye SEZGİN	Şirin SEZGİN Emin SEZGİN Fehime SEZGİN Gülşen SEZGİN Zozan SEZGİN Nimet SEZGİN
15. <b>Asiye ASLAN-SEZGİN</b> [sister of nos. 9 & 14 sister-in-law of no. 22; see under a.]	<u>Resul ASLAN</u> [brother of <i>muhtar</i> Mehmet Aslan; see under no. 6]	Fatma ASLAN Numan ASLAN
16. <b>Hamit EKİNCİ</b>	Rukiye EKİNCİ	<u>Osman EKİNCİ</u> [married with Ayşe Erbek, see under no. 20] Hüseyin EKİNCİ Hasan EKİNCİ Zeynep EKİNCİ Meryem EKİNCİ
17. <b>Rahim ARSLAN</b> [sister of no. 11]	<u>Ahmet ARSLAN</u> ♦	Zeynep ARSLAN Osman ARSLAN Leyla ARSLAN Nuriye ARSLAN Ekrem ARSLAN Kadriye ARSLAN Sabri ARSLAN
18. <u>Mahmut GÜLER</u>	Hanım ? [daughter of Halit]	
19. <b>Ali ÖZKAN</b> [brother of no. 1]	Fatım ÖZKAN	<u>Mehmet Nuri ÖZKAN</u> [spouse of Fatma ÖZKAN; no. 27] <u>Nevaf ÖZKAN</u> [married to Fatma ÖZKAN] <u>Mehmet ÖZKAN</u> ♦ [no. 22] [spouse of Fatım ÖZKAN-SEZGİN; see under a.] Rukiye ERBEK-ÖZKAN <sup>388</sup> [applicant no. 32; married to Ali ERBEK, see under no. 20] Ayşe SEZGİN-ÖZKAN [applicant no. 31]

<sup>388</sup> Rectified on 1 March 2005. The previous version reads “Fatma ERBEK ÖZKAN”.

<b>APPLICANT NO.:</b>	<b>SPOUSE OF:</b>	<b>CHILDREN:</b>
		Raife ÇETİN-ÖZKAN [applicant no. 26]
20. <b>Ahmet ERBEK</b> [father-in-law of no. 25]	Kumri ERBEK	<u>Ali ERBEK</u> (1966) [married to no. 32] <u>Şemsettin ERBEK</u> [married to no. 25] <u>Sahabettin ERBEK</u> (1977) Nurettin ERBEK Ayşe ERBEK [married with Osman Ekinci, see under no. 16] Fatma ERBEK Gül ERBEK
21. <b>Ayşe EKİNCİ</b>	İbrahim EKİNCİ ♦	Halime EKİNCİ Kerime EKİNCİ Mehmet EKİNCİ Ali EKİNCİ Hasan EKİNCİ
22. <u>Mehmet ÖZKAN</u> ♦ [son of no. 19]	<b>Fatım ÖZKAN-SEZGİN</b>	Bahaktin ÖZKAN Alkadir ÖZKAN Ezdir ÖZKAN Ayter ÖZKAN Nivan ÖZKAN Mehmet ÖZKAN
23. <b>Abdurrahman ÇETİN</b>	Hacice ÇETİN ♦	Ali ÇETİN [married to no. 2] <u>Mehmet Tahir ÇETİN</u> [married to no. 26] <u>Zeki ÇETİN</u> Emine ÇETİN Fatma ÇETİN [applicant no. 26] Taybet ÇETİN Ayşeta ÇETİN Şirin ÇETİN
24. <u>Şükrü YILDIRIM</u> [nephew of nos. 4, 28 and 29]		
25. <b>Hatice ERBEK-YILDIRIM</b> [daughter-in-law of no. 20]	<u>Şemsettin ERBEK</u> [son of no. 20]	Mehmet ERBEK Meryem ERBEK

- | <b>APPLICANT NO.:</b>  | <b>SPOUSE OF:</b>  | <b>CHILDREN:</b>  |
|--|--|---|
| 26. <b>Raife ÇETİN-ÖZKAN</b><br>[daughter of no. 19]   | <u>Mehmet Tahir ÇETİN</u><br>[son of no. 23]   | Hediye ÇETİN<br>Hatici ÇETİN<br>Mahmut ÇETİN<br>Abdullah ÇETİN<br>Gülsüm ÇETİN<br>Ahmet ÇETİN<br>Halat ÇETİN                                    |
| 27. <b>Fatma ÖZKAN-ÇETİN</b><br>[daughter of no. 23]   | <u>Mehmet Nuri ÖZKAN</u><br>[son of no. 19]  | Medik ÖZKAN<br>Sebih ÖZKAN<br>Selman ÖZKAN<br>Adnan ÖZKAN<br>Süleyman ÖZKAN<br>Zeynet ÖZKAN   |
| 28. <b>Fatma YILDIRIM</b><br>[wife of no. 4 and aunt of no. 24]  | Ramazan YILDIRIM ♦<br>[applicant no. 4]  | 9 children (see under No. 4)  |
| 29. <b>Zeynep YILDIRIM</b><br>[aunt of no. 24]   | Ömer YILDIRIM<br>[brother of no.4 and<br>uncle of no. 24]                                  | Fatma YILDIRIM<br>Mehmet YILDIRIM<br>Asime YILDIRIM<br>Selamet YILDIRIM<br>Halil YILDIRIM<br>Sıddık YILDIRIM<br>Zeki YILDIRIM<br>Sabri YILDIRIM |
| 30. <b>Halime EKİN</b><br>[not same person as<br>Halime EKİN under no. 10]                             | <u>Osman EKİN</u><br>[brother of Halil, Hacı<br>and İbrahim EKİN;<br>see nos. 10, 11 & 12] |   |
| 31. <b>Ayşe SEZGİN-ÖZKAN</b><br>[daughter of no. 19]   | Abdul Kadir SEZGİN ♦<br>[see under a.]   | Ali SEZGİN<br>İlhan SEZGİN<br>Osman SEZGİN<br>Remsiye SEZGİN  |
| 32. <b>Rukiye ERBEK-ÖZKAN</b> <sup>389</sup><br>[daughter of no. 19, and<br>daughter-in-law of no. 20] | <u>Ali ERBEK</u> (1966)<br>[son of no. 20]   | Gülcehan ERBEK<br>Zindar ERBEK  |

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<sup>389</sup> Rectified on 1 March 2005. The previous version reads “Fatma ERBEK-ÖZKAN”.

**OTHER:**

(not applicants)

**SPOUSE OF:****CHILDREN:**

a. Ayşe SEZGİN-DEMİR Cemal SEZGİN◆  
[sister of no. 5]

Mehmet SEZGİN [no. 14]  
Hüseyin SEZGİN [no. 9]  
Abdullah SEZGİN  
Asiye ASLAN-SEZGİN  
[no. 15]  
Fatım ÖZKAN-SEZGİN  
[wife of no. 22 and  
daughter-in-law of no. 19]  
Abdul Kadir SEZGİN◆  
[husband of no. 31]  
Sabri SEZGİN  
SirineSEZGİN

## APPENDIX II

### DOCUMENTARY MATERIALS BEFORE THE COURT

1. The parties submitted various photographs and documents. The latter included documents from the domestic investigation and court proceedings and statements taken from the applicants and other persons concerning the events at issue.

2. The photographs submitted by the Government show views of Ormaniçi and were taken in the context of an investigation conducted by the Siirt public prosecutor<sup>390</sup>. The applicants submitted photographs showing Ormaniçi villagers with injuries<sup>391</sup> and three black-and-white photographs showing houses in Ormaniçi<sup>392</sup>.

3. The applicants further relied on a report by Ismet Imset entitled “Village Evacuations and Destruction in the South East” as submitted, *inter alia*, in the cases of *Akdivar and Others v. Turkey* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1192) and *Dulaş v. Turkey* (application no. 25801/94, Commission's report of 9 September 1999), as well as on reports by Human Rights Watch/Helsinki, “Forced Displacement of Ethnic Kurds from Southeastern Turkey”, October 1994, Vol. 6 no. 12, and “Forced Evictions and Destructions of Villages in Dersim (Tunceli) and the western part of Bingöl, Turkish Kurdistan”. The applicants also submitted a 1998 report by the Turkish Parliamentary (Temporary) Committee established in order to examine and determine the measures required to address the problems of villagers having migrated on grounds of forced village evacuations in the east and south-east of Turkey.

4. The Court also had before it the report “The humanitarian situation of the Kurdish refugees and displaced persons in south-east Turkey and north Iraq” of June 1998, prepared by the Rapporteur of the Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe, and the pertaining dissenting opinion expressed by the Turkish members of that Committee. The Court has also noted the contents of the Information Report of 15 January 1999 on the honouring of obligations and commitments by Turkey by the Parliamentary Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe<sup>393</sup>. Paragraphs 19-20 of that Report state, *inter alia*:

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<sup>390</sup> See Appendix II: §§ 290-295.

<sup>391</sup> See Appendix II: §§ 271-273.

<sup>392</sup> See Appendix II: § 295.

<sup>393</sup> This Report was drawn up by Mr A. Bársony (Socialist Group) and Mr W. Schwimmer (Group of the European People's Party) and includes comments made by the Turkish

“Another aspect of the rule of law in Turkey is the existence of emergency rule in certain parts of the country, justified by the Turkish authorities as necessary to fight terrorism perpetrated by the PKK. ... Since 1987, emergency rule has been imposed in a number of provinces in Turkey. ... Under these emergency rules a number of villages have been evacuated and even destroyed. ... an accompanying feature of emergency rule in these provinces [Diyarbakır, Hakkari, Siirt, Şırnak, Tunceli and Van] is the existence of a village guard system. The village guards are a force of approximately 50,000 ethnic Kurdish villagers armed and paid by the Government to fight the PKK. Pressure to join the village guards and reprisals by the security forces against those who refuse, or retaliation by the PKK against those who consent, puts the local population in an impossible situation ... “

5. The Court has further noted the contents of the United States Department of State “Country Reports on Human Rights Practices” for 1993<sup>394</sup> and 1994<sup>395</sup> in respect of Turkey.

6. The 1993 Report states, *inter alia*:

“There have been credible reports of forced evacuation and the burning of villages in the southeast by security forces allegedly seeking to prevent villagers from giving aid and comfort to the PKK ... Government security forces on many occasions fired on the homes of villagers suspected of harboring PKK terrorists, causing an unknown number of casualties and destroying villagers' property, including livestock ... In April [1993] Şırnak HEP deputy Selim Sadak submitted an interrogatory motion to the office of the speaker of Parliament, demanding that the Interior Minister investigate allegations by the people of Ormaniçi, a village in Şırnak's Güçlükönak township, that security forces had burned down the village, killed a 5-year-old child, and taken into custody and tortured for prolonged periods 43 villagers, one of whom, İbrahim Ekinci, allegedly died under police torture ... The people of Ormaniçi referred their case to the European Commission of Human Rights ... The Eruh public prosecutor is investigating the deaths of a 7-year-old child and of İbrahim Ekinci, as well as the death of another village child and the wounding of a third, when a munition dump exploded two days after the incident. ... In February [1993] the daily *Hurriyet* reported that the state of emergency coordination committee had decided on several new measures, including evacuation of small, remote settlements, which the Government claimed had been used by the PKK as shelters or bases, and resettlement of the villagers to more centralized places. Other purported reasons for the evacuations included the difficulty in protecting the villages against terrorist attacks; the inhabitants' fear of being caught in the cross-fire; and the refusal of village men to participate in the paramilitary village guard system. In February [1993], the state minister responsible for human rights categorically denied allegations that security forces were following a scorched earth policy in order to force inhabitants to leave their homes. He stated that no villages in the area had been evacuated by force and the villagers left only by 'force of circumstances'.”<sup>396</sup>

7. The 1994 Report states, *inter alia*:

“Government security forces forcibly evacuated and sometimes burned villages, for the purpose of preventing their inhabitants from providing aid and comfort to PKK

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authorities on the draft information report. It was debated in the Parliamentary Assembly of the Council of Europe during its Session held on 25 January 1999.

<sup>394</sup> Report dated February 1994.

<sup>395</sup> Report dated February 1995.

<sup>396</sup> At pp. 1094-1095.

guerrillas or in retaliation for a PKK raid on a nearby Jandarma [Gendarme] post. Some villagers who migrated to the cities told reliable sources that they had been evacuated for refusing to participate in the paramilitary village guard system. Some lost all their belongings when their houses were burned. In May [1994] the Interior Minister, in reply to a question in Parliament, stated that 871 villages and hamlets in the state of emergency region had become empty since July 1987. The Interior Minister asserted that the villages and hamlets were emptied because of PKK pressure or economic reasons. The Minister of Defence that same month stated that to control PKK activity in the region, 50 settlement centers, displacing approximately 10,000 persons around Mount Ararat and Tenduruk would be evacuated ... These statements were the first official confirmations of village evacuations in the southeast, including evacuations at government behest. In October [1994], 17 village evacuations in Tunceli Province finally brought the issue into the national spotlight ... According to a Government report, to date approximately [US]\$227,000 in compensation has been paid to villagers displaced in the southeast, largely as a result of PKK activity, and \$545,000 was to be spent in 1994 to construct housing for displaced villagers in Şırnak and Bingöl provinces. ... The Government organizes, arms, and pays for a civil defense force in the southeast known as the village guards. Participation in paramilitary militia by local villagers is theoretically voluntary, but villagers are caught between the two sides. If the villagers agree to serve, the PKK may target them and their village. If the villagers refuse to participate, government security forces may retaliate against them and their village.”<sup>397</sup>

*a. Individual written statements taken from the applicants and members of their families by the domestic authorities and by the applicants' representatives*

8. In the course of the hearing held from 5 to 10 October 1998, Mr Tahir Elçi explained that, as regards the applicants' statements taken in 1997, he had personally only taken the statements of Mehmet Aslan and Ali Özkan. As to the statements given in 1997 by the other applicants, he had prepared questionnaires which he had then sent to them. These persons had returned their statements, which had been written in their own words.

9. In respect of the individual statements taken from a number of applicants on 4 April 1998, Mr Tony Fisher explained during the hearing held from 5 to 10 October 1998 that those statements had been taken orally via a Kurdish interpreter and that they had been directly recorded in writing in English. These statements had been read back in Kurdish to the persons concerned before the latter had signed or fingerprinted them. Mr Fisher further explained that he himself had taken the statement of Mr Mehmet Sezgin.

10. As to the applicants' statements taken in Diyarbakır, Mr Tahir Elçi explained that those persons had given him their oral accounts in Kurdish, in which he was fluent, and that he had simultaneously recorded these statements in writing in Turkish. After each statement had been recorded, he had explained the contents of the statement in Kurdish to the person

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<sup>397</sup> At p. 1000.

concerned, who had then agreed to it and had signed the statement. Mr Sezgin Tanrıkulu, one of the administrators of the Bar Association, had been present when these statements had been taken in one of the Bar Association's libraries in the Diyarbakır court building.

**Ahmet Özkan (applicant no. 1)**

11. In a fingerprinted statement taken in Diyarbakır, dated 13 April 1998 and co-signed by Tahir Elçi and M. Sezgin Tanrıkulu, Ahmet Özkan gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including what had happened to his sons Mehmet and İbrahim and to his grandson Fahrettin Özkan. In the statement, he also related two further occasions when soldiers returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994. In the statement Ahmet Özkan further declared that his son Mehmet had made his own application to the Commission. Ahmet Özkan further stated that his application to the Commission was also lodged on behalf of his son İbrahim and his grandson Fahrettin.

**İbrahim Özkan (son of Ahmet Özkan)**

12. In a fingerprinted and typed statement taken on 21 February 1993 in Güçlükonak<sup>398</sup> by the Gendarme NCO Hasan Yılmaz<sup>399</sup>, İbrahim Özkan is recorded as stating that PKK members would take provisions from the villagers. He himself had also provided them with provisions. The villagers themselves had organised a schedule for keeping watch. On 20 February 1993 Şemsettin Erbek, Ahmet Erbek and Şehabettin Erbek had kept watch. They had been armed with rifles. He had not seen who had fired. He himself had not. İbrahim Özkan is further recorded as admitting to having a Kalashnikov, which he had hidden. He was willing to indicate where this weapon was hidden. He further stated that most villagers had weapons. Ali Erbek even had a hand grenade. The cassette tape found on him had been brought by the terrorists and had been circulated amongst the villagers. The *muhtar* Mehmet Aslan had organised this.

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<sup>398</sup> It is not recorded in the statements taken by gendarmes that these were taken in Güçlükonak. This appears from other documents submitted.

<sup>399</sup> Only in some of the statements taken by gendarmes in Güçlükonak have the names of the gendarmes concerned been stated in full; for the major part these statements do not contain their names at all or only their initials. The identities of the gendarmes concerned have, in so far as possible, been established on the basis of other documents submitted which contain both their names and their signatures.

**Mehmet Özkan (son of Ahmet Özkan)***1. Statement to Güçlükonak gendarmes dated 26 February 1993*

13. In a fingerprinted statement, taken down in handwriting in Güçlükonak by the District Gendarme Deputy Commander Celal Çürek in the presence of the gendarme NCO Hüseyin Baran, Mehmet Özkan is recorded as stating that PKK members, whose names he did not know, had occasionally come to Ormaniçi. He had given them food too. They would assemble the villagers in the mosque and give speeches. They would tell the villagers not to let soldiers in the village, to stand watch whilst they were in the village and not to help the gendarmes. Anyone who did so would be punished. He himself had been at home when the soldiers had entered the village.

*2 Statement to the Eruh public prosecutor dated 16 March 1993*

14. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mehmet Özkan denied the accusations against him. A long time ago, he and other Ormaniçi villagers had been assembled in the mosque where [PKK] propaganda was made. The *muhtar* had been taken away and, in his opinion, had been murdered by the people who had then arrived in Ormaniçi. Apart from that, he did not know whether or not they [the PKK] frequented the village. He had not aided or sheltered those persons and he had no sympathy for them. He did not know whether people were performing watch duty on behalf of the PKK. He had heard gunshots on the day of the incident, but did not know how the incident had occurred. The soldiers who had carried out the search had taken him away. Being illiterate, he was unaware of the contents of his statement to the gendarmes. When it was read out to him, Mehmet Özkan stated that he did not accept that statement.

*3. Statement given to the applicants' representative dated 4 April 1998*

15. In a signed statement given in the presence of Mahmut Kaya<sup>400</sup>, submitted to the Commission on 4 April 1998, Mehmet Özkan gave a detailed account of what had happened in Ormaniçi on 20 February 1993. The statement further contains a detailed account of how, on 20 February 1993, he had been taken into detention, and of the conditions in which he was detained in Güçlükonak and later in Şırnak until his release. In this statement, Mehmet Özkan also related two further visits by soldiers to Ormaniçi in September 1993 and in the spring of 1994, when four villagers and three strangers had been killed.

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<sup>400</sup> Interpreter attached to the Diyarbakır Branch of the Human Rights Association.

**Fahrettin Özkan (grandson of Ahmet Özkan)***1. Statement to Güçlükönak gendarmes dated 27 February 1993*

16. In a handwritten and fingerprinted statement taken in Güçlükönak the gendarme NCO Turan Kolan, Fahrettin Özkan is recorded as stating that, because he tended livestock, he used to come across armed PKK terrorists in the mountains. He did not know who they were. They had asked him a few times for food and he had given them some. He had heard that the majority of the villagers had weapons, but he did not know which ones did. He had initially heard Kalashnikov shots when the soldiers had entered Ormaniçi. He had been in the house and had not fired.

*2. Statement to the applicants' representatives dated 13 April 1998*

17. In a signed statement taken in Diyarbakır and co-signed by Tahir Elçi and M.Sezgin Tanrıku, Fahrettin Özkan gave a detailed account of what had happened in Ormaniçi on 20 February 1993. The statement further contains a detailed account of how, on 20 February 1993, he had been taken into detention and of his conditions of detention in Güçlükönak, Şırnak and Mardin, and of his medical treatment both in the course of his detention and after his release. In the statement, Fahrettin Özkan also mentioned two further visits by soldiers to Ormaniçi, namely one in September 1993 and one at an unspecified later point in time when the soldiers had killed the villagers Abdülislam Demir, Mehmet Özkan, Mehmet Kaya and Şerif Ekin in the gardens.

**Nedim Özkan (grandson of Ahmet Özkan and brother of Fahrettin Özkan)***1. Statement to Güçlükönak gendarmes dated 26 February 1993*

18. In a handwritten and fingerprinted statement taken in Güçlükönak by the Gendarme NCO Hüseyin Baran, Nedim Özkan is recorded as stating that he lived with his grandfather, that PKK terrorists always came to the village and that his family had supplied them with provisions whenever they came to them. The terrorists assembled the villagers and gave speeches. He had been asleep when the soldiers had been fired at.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

19. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Nedim Özkan declared that he was not guilty. He knew that PKK members – who had come to Ormaniçi a long time ago – had kidnapped and murdered the Ormaniçi *muhtar*. He did not know whether they had returned to Ormaniçi since. He knew nothing about villagers performing watch duty or aiding PKK members. He had heard concentrated gunshots on the day of the incident; he had been afraid. He had further been

taken into detention by soldiers. When his statement to the gendarmes was read out to him, Nedim Özkan denied it. He was illiterate and he had confirmed it without knowing its contents.

**Hediye Çetin (applicant no. 2)**

20. In a fingerprinted statement taken in Diyarbakır, dated 13 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Hediye Çetin gave a detailed account of what had happened in Ormaniçi on 20 February 1993, including how her brother Ali had been taken away in a helicopter. She further related the return of the soldiers to Ormaniçi on 21 February 1993, when the soldiers had burned her shop. In the statement, Hediye Çetin related a further visit by soldiers to Ormaniçi in the autumn of 1993, when they had taken her into the school in order to question her about her husband's whereabouts. She further stated that, after this event, she and her family had permanently left Ormaniçi.

**Hacı Çetin (son of Hediye Çetin)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

21. In a typed and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Hacı Çetin is recorded as stating that PKK members, to whom he had provided food, would come to Ormaniçi every 15-20 days and that they would assemble the villagers in the mosque. He had also taken part in such meetings a few times. Whilst these meetings were being held, a watch duty had been carried out in the surrounding area. He had performed watch duty a few times with a rifle belonging to Abdullah Sezgin. He did not have his own weapon. He had not fired when the soldiers had arrived in the village on 20 February 1993<sup>401</sup>. He had been at home at that moment.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

22. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Hacı Çetin stated that no guilt or fault could be attributed to him in the incident. He did not deal with any kind of PKK business. He certainly had not aided or abetted the PKK. On the day of the incident, the soldiers had come to Ormaniçi, where they had conducted a search. Gunshots had been heard for about [illegible] minutes. Afterwards, the soldiers had assembled all the villagers in the village square. He and some other villagers had later been taken to the station. He did not accept the statement he had given to the gendarmes.

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<sup>401</sup> The date recorded in the statement (20.02.1992) is likely to be a clerical error.

**Hediye Demir (applicant no. 3)**

23. In a fingerprinted statement taken in Diyarbakır, dated 17 April 1998 and co-signed by Tahir Elçi and M. Sezgin Tanrikulu, Hediye Demir gave a detailed account of what had happened in Ormaniçi on 20 February 1993, including how her husband Nezir Demir had hidden himself in the ruins of a barn. She further mentioned the return of the soldiers to Ormaniçi on 21 February 1993. In this statement, Hediye Demir also related a further visit by soldiers to Ormaniçi in the late summer of 1993. She further stated that, after that incident, she and her family had permanently left Ormaniçi.

**Salih Demir (son of Mehmet Emin Demir, applicant no. 5)***1 Statement to Güçlükonak gendarmes dated 25 February 1993*

24. In a handwritten and fingerprinted statement and taken in Güçlükonak by the Gendarme NCO Hüseyin Baran, Salih Demir is recorded as stating that the PKK used to come to Ormaniçi, where they took provisions and money from the villagers, made speeches and then left. When the PKK came to the village, villagers would perform watch duty. He himself did not possess a Kalashnikov. When it was his turn for watch duty, he would borrow Mehmet Kaya's Kalashnikov. Without giving any explanation, he requested that the following part of his statement be kept secret. He had seen that Abdullah Kurt, İbrahim Ekin, Ali Erbek and Mehmet Kaya had Kalashnikovs and had heard that Mehmet Aslan, Hasan Yıldırım, Hacı Sezgin, Mehmet Özkan, Cemal Sezgin, Ömer Yıldırım, Ramazan Yıldırım and Resul Aslan possessed rifles.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

25. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Salih Demir denied the accusations against him. He stated that PKK militants occasionally came to Ormaniçi, where they would assemble the villagers in the mosque for propaganda speeches. They had forced some villagers to keep a watch duty during such speeches. Although the militants had been armed, they had not given weapons to the villagers. Apart from that, he did not know whether there were villagers performing watch duty or which villagers had arms. He had been forced to confirm his statement to the gendarmes, including the names cited in that statement. He did not accept that statement.

*3. Statement to the applicants' representatives dated 13 April 1998*

26. In a signed statement taken in Diyarbakır and co-signed by Tahir Elçi and M.Sezgin Tanrikulu, Salih Demir gave a detailed account of what had happened in Ormaniçi on 20 February 1993. The statement further contains a detailed account of how, on 20 February 1993, he was taken into

detention and of his conditions of detention in Güçlükonak and later in Şırnak. He further gave a detailed account of what had happened when he had been brought before the public prosecutor in Eruh, and mentioned the medical treatment of his hands and feet after his release from detention. In this statement, Salih Demir also mentioned two further visits by soldiers to Ormaniçi, namely one in the autumn of 1993 and one at an unspecified later point in time, when the soldiers had killed his brother Abdülselam Demir as well as Şerif Ekin and two other villagers in the gardens.

**Mehmet Şerif Demir (son of Mehmet Emin Demir)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

27. In a handwritten and fingerprinted statement taken in Güçlükonak by the Gendarme NCO Hüseyin Baran, Mehmet Şerif Demir is recorded as stating that the PKK often came to Ormaniçi. Like everyone else, he had also given them food whenever they wanted. He denied being active in the PKK. Like all the other villagers, he himself also kept watch in order to stop the soldiers from entering the village. He had heard that many villagers, including his brother Hamit, had weapons, but as nobody would show these weapons to anyone else, he did not know any names.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

28. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mehmet Şerif Demir denied the accusations against him. He had been in the province of İstanbul for 6-7 months and had only returned to Ormaniçi 20 days earlier. Therefore, he did not know whether or not PKK members had come to Ormaniçi or whether or not watch duty had been performed. On the day of the incident, after having got up for morning prayer, he had seen that soldiers, who were approaching the village, were firing. He had then stayed at home and had waited. At that stage, the soldiers had taken him and other Ormaniçi villagers away. He did not accept his statement to the gendarmes. As he was illiterate, the gendarmes had had him fingerprint it.

**Abdülselam Demir (son of Mehmet Emin Demir)**

29. In a handwritten and fingerprinted statement taken in Güçlükonak on 26 February 1993 by the gendarme NCO Hüseyin Baran in the presence of the gendarme Turan Kolan, Abdülselam Demir is recorded as stating that PKK terrorists would come to Ormaniçi every 10-15 days. They would collect provisions. They would also arrange propaganda meetings. Attendance at such meetings was compulsory. He thought that his brother Salih had a weapon. He himself had no weapon. He did not know who had

fired when the soldiers had entered the village. He himself had been at home.

**Hamit Demir (son of Mehmet Emin Demir)**

*1. Statement to Şırnak gendarmes dated 5 March 1993*

30. In a typed and fingerprinted statement taken in Şırnak on 5 March 1993 by two unidentified gendarmes, Hamit Demir is recorded as stating that a PKK member with the codename “Bahos” had come to his house and had told his family to help the PKK. Believing “Bahos”, he had started participating in activities. As a result of the activities of the villagers Ali and Şehabettin Erbek and Halime Ekin, who had received training from the PKK, a village committee and armed militia had been formed in Ormaniçi.

Hamit Demir identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. Together with these persons, he had supplied the PKK with provisions. Ali and Şehabettin Erbek had told the villagers to resist when the security forces would arrive in Ormaniçi. On 20 February 1993 he had woken up to the sound of gunshots being fired by those who were on watch duty. The villagers had immediately taken their weapons and had either taken up positions by their houses or assembled at the mosque. A clash had taken place and the villagers had had to retreat. Some villagers had wanted to run away, but had been apprehended.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

31. In a signed statement given to the Eruh public prosecutor Ramazan Bayrak, Hamit Demir stated that no guilt could be attributed to him for the incident. He explained that he had found temporary employment in Ümraniye (province of Konya) and – without giving any precise indication as to the year in which that had taken place – that he had returned to Ormaniçi 20 days prior to the feast of Ramadan. About one week after his arrival in Ormaniçi, a PKK militant with the codename “Bahos”, who was in charge of the region of Haruna (Güçlükonak), had come to his house together with four militants. His parents and siblings had also been there. The militants had told him that the Ormaniçi villagers should help them and arm themselves. If not, he would be killed. Despite these threats, he and his family had not helped them. He did not know the members of Ormaniçi village committee and militia. He himself was not an armed militia member. Ali Erbek and Şahabettin Erbek had joined the PKK in the past and had later returned to the village. Ali Erbek had carried out PKK activities for six months; Şahabettin had stayed in the PKK for about ten days. He did not know whether Halime Ekin had carried out any such PKK activities.

On the day of the incident, the security forces had come to Ormaniçi in the morning. They had knocked on the door and had said that they were

going to conduct a search for which he had given permission. At that point in time, he had heard gunshots which had lasted for about 15 minutes. After the gunshots had stopped, the soldiers had assembled all the villagers in the village square. Later, some of the villagers had been taken to the station. He did not accept the statement he had given to the gendarmerie.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

32. According to the record of questioning before the Eruh Magistrates' Court (*Sulh Ceza Mahkemesi*), Hamit Demir - when brought before Judge Filiz Yalçın on 9 March 1993 - made a statement that was nearly identical to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he had not given such a statement; he had been forced to fingerprint it.

**Cemal Sezgin (brother-in-law of Mehmet Emin Demir)**

*1 Statement to Şırnak gendarmes dated 5 March 1993*

33. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Cemal Sezgin is recorded as stating that he had been involved with the PKK for 1½ years. He had met the PKK members with the codenames "Bedri" and "Hayri", who had been active in the Gabar region. He identified the villagers Ali and Şahabettin Erbek and Halime Ekin as trained PKK members. He further stated that he was the head of the Ormaniçi village committee and identified by name the members of the Ormaniçi men's village committee as well as the PKK militia members in Ormaniçi. The villagers had continuously kept watch for soldiers approaching the village in order to resist any attempt by soldiers to enter Ormaniçi. Ali Erbek, who had been on watch duty on 20 February 1993, had seen the soldiers when they were about to enter the village and he had fired shots to attract attention. After having woken up to these shots, the villagers had taken their weapons and had assembled. He had taken up a position in the toilets in the mosque and had fired at the security forces. Almost all the persons whom he had identified by name had been there and had been armed. However, they had been forced to retreat. He had hidden his weapon in the mosque and had learned that it had been found during the security forces' search.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

34. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Cemal Sezgin denied the charges against him and stated that he was certainly not the head of a PKK village committee in Ormaniçi. He

denied any involvement with the PKK or having a weapon belonging to the PKK. He did not know whether watch duty was carried out; he himself had never kept watch. Whilst his eyes had been closed, he had been forced to fingerprint his statement to the gendarmes. He did not know the contents thereof. When the public prosecutor read it out to him, Cemal Sezgin stated that he did not accept it. On the day of the incident, he had been performing his morning prayer in the mosque together with some persons from Boyuncuk, who had come to Ormaniçi to buy cattle. They had then heard gunshots and had waited in the mosque. Later, the security forces had come and had taken them into detention. He did not know how the incident had taken place.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

35. According to the record of questioning before the Eruh Magistrates' Court, Cemal Sezgin – when brought before Judge Filiz Yalçın on 9 March 1993 – made a similar statement to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement; he had never given such a statement and he had been forced to sign it. He denied that he had been confronted with anyone at the gendarmerie. That was why he did not know the “confessor”<sup>402</sup> with the codename “Lokman” whose name he had just heard.

**Abdullah Sezgin (son of Cemal Sezgin and nephew of Mehmet Emin Demir)**

*1. Statement to Güçlükonak gendarmes dated 21 February 1993*

36. In a fingerprinted and typed statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Abdullah Sezgin is recorded as stating that PKK members frequently came to Ormaniçi where they forcibly took provisions from the villagers. He himself had also given them food. He had further heard that İbrahim Özkan, Mehmet Özkan, Hasan Yıldırım and [illegible] Yıldırım possessed Kalashnikov weapons.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

37. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Abdullah Sezgin stated that on the day of the incident, after he had finished his morning prayer, the soldiers had arrived at the village in order to conduct a search, but an armed clash had taken place.

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<sup>402</sup> The Turkish word used “*İtirafçı*” is a term comparable to the notion of “*pentiti*” in Italian; namely a defected member of an illegal organisation who provides the authorities with information about that organisation.

Later, the soldiers had assembled all villagers. He and some other villagers had been taken to the station. He used to have a Kalashnikov weapon which he had bought from a smuggler whose name he did not know. He had hidden this weapon in the fields, under a stone in the Seripeli region, which was situated in the direction of Fındık. He had later admitted this offence and had shown the location of the weapon to the security forces. Then the security forces had removed it. They had subsequently claimed that some persons had been on watch duty with this weapon. However, terrorists had come to Ormaniçi and it had been for that reason that those villagers with arms had kept watch. If these people had not kept watch, others would have done so with the same weapons. Various persons had used his weapon for watch duty. He himself had also carried out watch duty. Everybody would perform watch duty. He identified those persons in Ormaniçi who had arms.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

38. According to the record of questioning before the Eruh Magistrates' Court, Abdullah Sezgin – when brought before Judge Filiz Yalçın on 9 March 1993 – stated that he used to have a Kalashnikov weapon. He used to keep watch as PKK terrorists would often come to Ormaniçi. They had forced the villagers to use weapons against the soldiers. As a result of that, the Ormaniçi villagers had performed a watch duty in order to protect themselves against PKK members. He himself had carried out watch duty, sometimes armed and sometimes unarmed. He had told the soldiers where he had hidden this weapon one day after he had been brought to the station. When the statement that he had made earlier that day before the Eruh public prosecutor was read out to him, he confirmed its truthfulness and stated that he accepted it. As he had declared in that statement that Mehmet Nuri Özkan had a weapon, Mehmet Nuri Özkan was brought into the courtroom and confronted with Abdullah Sezgin and that part of the latter's statement. Mehmet Nuri Özkan responded that he did not have a weapon and that he did not know why Abdullah Sezgin had said that he did. When his statement to the gendarmes of 21 February 1993 was read out to him, Abdullah Sezgin declared that he accepted that statement too.

**Kumri Aslan (applicant no. 6)**

39. In a fingerprinted and undated statement, submitted to the Commission on 8 December 1997, Kumri Aslan gave a succinct account of what had happened in Ormaniçi on 20 February 1993, including how her husband Mehmet Aslan had been taken into detention on that day and released after about four months.

**Mehmet Aslan (spouse of Kumri Aslan and *muhtar* of Ormaniçi)***1. Statement to Güçlükonak gendarmes dated 21 February 1993*

40. In a handwritten, fingerprinted and signed statement taken in Güçlükonak by gendarme NCO Hüseyin Baran, Mehmet Aslan is recorded as stating that the PKK would come from time to time to Ormaniçi to collect food and that the villagers had been forced to provide this. The rest of the contents of his statement cannot be established from the photocopy submitted, which is only partially legible.

*2. Statement to Şırnak gendarmes dated 5 March 1993*

41. In a fingerprinted and signed statement taken in Şırnak by two unidentified gendarmes, Mehmet Aslan is recorded as stating that he had been in continuous contact with the Ormaniçi village committee and members of the PKK. He himself was one of the militia members. Mehmet Aslan identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. Together with these persons, he had participated in the incident of 20 February 1993. Everybody had used weapons in this incident and had fired at the security forces' positions. After having heard gunshots that morning, he himself had started firing from the garden of his house. After seeing that the villagers were retreating, he had hidden his weapon and had started to run away. But the security forces had apprehended him.

*3. Statement to the Eruh public prosecutor dated 9 March 1993*

42. In a signed statement given to the Eruh public prosecutor Ramazan Bayrak, Mehmet Aslan declared that he was not guilty. He stated that, when he had been asked at the gendarmerie about the Ormaniçi village committee, he had told them about the village assembly whose members were prominent Ormaniçi residents who dealt with problems. The village assembly members were Ali Özkan, Mehmet Kaya, Ömer Yıldırım, Cemal Sezgin, Hacı Ekin, Ali Çetin and himself. This assembly had already existed before he had become *muhtar*. Mehmet Aslan further stated that there were four PPK militia members in Ormaniçi, namely Nezir Demir, Ali Erbek, Deham Özkan (son of Ali) and Nedim Kaya. Ali Erbek had stayed one year with the PKK and had then returned to Ormaniçi. Ali Erbek had a weapon with him and had started carrying out activities. Being wary of him and fearing for their lives, the villagers had not reported that situation to the soldiers.

On the day of the incident, he had woken up to gunshots. According to what he had heard, the soldiers had come to conduct a search. He had told the soldiers who had been wandering around his house not to shoot and that he was the *muhtar*. He had gone out of his house and had accompanied the

soldiers during the search. He did not know who had fired at the soldiers, but he did know that the four PKK militia members had had weapons in their hands. He himself had certainly not used a weapon in the incident.

*4. Statement to the Eruh Magistrates' Court of 9 March 1993*

43. According to the record of questioning before the Eruh Magistrates' Court, Mehmet Aslan – when brought before Judge Filiz Yalçın on 9 March 1993 – denied any involvement with the PKK and referred to the statement that he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement; he had been forced to sign it. He further denied that he had been confronted with anyone at the gendarmerie.

*5. Statement to the applicants' representatives dated 9 October 1997*

44. In a signed statement and co-signed by Tahir Elçi, Mehmet Aslan stated that he was the *muhtar* of Ormaniçi. In this statement Mehmet Aslan gave a concise account of what had happened in Ormaniçi on 20 February 1993, including how a soldier had been shot by other soldiers while searching the house of Mevlüde Ekin. He further related, *inter alia*, how, on that day, he had been taken into detention and under what conditions he had been detained in Güçlükonak and later in Şırnak. He further related what had happened to a number of villagers who had also been taken into detention on 20 February 1993, including İbrahim Ekin, who had died. He also stated that, after having been brought before the public prosecutor in Eruh, he had been released.

In this statement, Mehmet Aslan also stated that, following threats by the soldiers, the Ormaniçi villagers had left the village and that, in May 1994, four villagers had been killed in the orchards of the village and that, after this incident, the villagers had left Ormaniçi and had settled in different places.

**Abdullah Elçiçek (applicant no. 7)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

45. In a typed and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Abdullah Elçiçek<sup>403</sup> is recorded as stating that the Ormaniçi villagers aided the PKK by meeting the latter's needs for food and drink. Whenever the PKK came to the village, they would assemble the villagers in the mosque for propaganda purposes. During such meetings, a few villagers would keep watch outside. Everyone in the village had done

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<sup>403</sup> In many documents, such as in this statement, his surname is recorded as “Erçiçek”.

that. He did not know who in the village had weapons. He himself had no weapon. He did not know who had fired at the soldiers when they had arrived in the village on 20 February 1993.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

46. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Abdullah Elçiçek stated that, after having been absent from Ormaniçi for about two months in connection with his son's medical treatment in Batman and Diyarbakır, he had returned there the day before the incident. When he had woken up the next morning, he had heard gunshots. Around that time, soldiers had told the villagers not to go out and that a search was going to be conducted. The soldiers had searched his house, but had found nothing. He had nevertheless been taken away. He did not know whether an armed watch duty had been carried out or if anyone had carried out activities for the PKK. PKK members had come from time to time to the village, where they had forcibly collected food. He did not know who had been aiding them. As he was poor, nobody had asked him anything. When his statement to the gendarmes was read out to him, Abdullah Elçiçek stated that he was illiterate. He had given the gendarmes the same statement. He knew nothing about the watch duty or about the propaganda activities recorded in that statement. He did not accept that.

*3. Statement to the applicants' representatives dated 14 April 1998*

47. In a fingerprinted statement taken in Diyarbakır and co-signed by Tahir Elçi and M.Sezgin Tanrikulu, Abdullah Elçiçek gave a detailed account of what had happened in Ormaniçi on 20 February 1993. The statement further contains a detailed account of how he was taken into detention on that day and his conditions of detention and treatment in Güçlükonak and later in Şırnak. He further stated that, after having been brought before the public prosecutor in Eruh, he had been released.

In this statement, he also mentioned two further visits by soldiers to Ormaniçi, namely one in the autumn of 1993 and one in the spring of 1994. Lastly, he stated that after the last incident he and his family had left Ormaniçi and that they had settled in Güçlükonak.

**İbrahim Kaya (applicant no. 8)**

*1. Statement to Güçlükonak gendarmes*

48. In an undated, handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, İbrahim Kaya is recorded as stating that the PKK sometimes came to the village and the villagers provided them with food. Out of fear, he himself had also done that. He did not know who possessed a weapon; he himself did not have

one. He further stated that he had not fired when the soldiers had entered the village.

*2. Statement to Şırnak gendarmes dated 5 March 1993*

49. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, İbrahim Kaya is recorded as stating that everybody in Ormaniçi helped the PKK and that he was a member of both the village committee and the armed militia. His sister Mulkiye had also joined the PKK. Acting on the instructions of the village committee, he would meet with PKK members and carry provisions to them. The village committee had acted on the instructions of Ali Erbek, who had returned to Ormaniçi after having been trained by the PKK, and Ali's brother Abdullah Erbek. All the villagers were armed and carried out watch duty in the village so that they could shoot at soldiers arriving. He further acted as a courier between committees in other villages. He knew the person with the codename "Bahos" very well. In the past, he himself used to act on the instructions of a PKK member with the codename "Lokman", who had left and betrayed the PKK and who had apparently surrendered to the authorities. He had seen and identified "Lokman" in Şırnak. İbrahim Kaya identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. They had all participated in the clash of 20 February 1993 and in the incident of the death of a soldier.

*3. Statement to the Eruh public prosecutor dated 9 March 1993*

50. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, İbrahim Kaya denied the charges against him and denied any involvement with the PKK. He did not know a person with the codename "Lokman" and he had no weapon. He was not a member of a committee or militia. He did not know who in the village was involved in the PKK. He explained that the PKK members would often come to Ormaniçi, where they forcibly took food and clothing. As the State did not protect the villagers well enough, nothing could be done about that. He had told the gendarmes the same things, but they had made him confirm a text without reading it. He did not accept that statement. On the day of the incident, he had got up early in order to take the cattle for grazing. He had then seen soldiers coming from the cemetery, whereupon he had returned to his house. Suddenly the gunshots had intensified. After about 1½-2 hours of shooting, the District Gendarmerie Commander had come to his house, which they had searched together. Although no incriminating evidence was found, he had nevertheless been taken into detention.

*4. Statement to the Eruh Magistrates' Court of 9 March 1993*

51. According to the record of questioning before the Eruh Magistrates' Court, İbrahim Kaya – when brought before Judge Filiz Yalçın on 9 March

1993 – made a statement that was nearly identical to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement and that he had been forced to sign it.

**Mehmet Kaya (father of İbrahim Kaya)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

52. In a handwritten and fingerprinted statement taken in Güçlükonak by the Gendarme NCO Hüseyin Baran, Mehmet Kaya is recorded as stating that PKK members would occasionally come to Ormaniçi. The villagers would supply them with provisions. The PKK members would assemble the villagers and tell them not to help the soldiers, not to allow soldiers in the village and not to give the soldiers information about the PKK. When the soldiers had entered the village, shots had been fired from the village. He did not know who had fired. He himself had no weapon.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

53. In a fingerprinted statement given, with the assistance of an interpreter, on 16 March 1993 to the Eruh public prosecutor Ercan Turan, Mehmet Kaya gave a similar account to the one he had given to the gendarmes. When his statement to the gendarmes was read out to him, Mehmet Kaya confirmed its truthfulness.

**Hüseyin Sezgin (applicant no. 9)**

54. In a signed statement taken in Diyarbakır, dated 17 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Hüseyin Sezgin related the state in which he had found Ormaniçi when he had arrived there about a week after the events of 20 February 1993. He further related what had happened to his father Cemal Sezgin and his brothers Abdullah and Mehmet Sezgin, who had been taken into detention on 20 February 1993. In this statement, Salih Demir also mentioned two further visits by soldiers to Ormaniçi, namely one in the autumn of 1993 and one in the spring of 1994. He finally stated that, after the last incident, he and his family had left Ormaniçi and had settled elsewhere.

**Mevlûde Ekin (applicant no. 10)**

55. In a fingerprinted and undated statement, co-signed by Tahir Elçi and submitted to the Commission on 8 December 1997, Mevlûde Ekin gave a succinct account of an incident in her village in the course of which her six-year-old daughter Abide had been fatally injured by a bomb thrown into

her house, and her son Abdullah and her daughter Halime had been taken into detention. She further stated that her village had been burned a second time and that, on 5 May 1994, the security forces had killed four villagers.

**Halime Ekin (daughter of Mevlüde Ekin)**

*1. Statement to Şırnak gendarmes dated 8 March 1993*

56. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Halime Ekin is recorded as stating that she joined the PKK in 1991. Her brother Abdullah had also joined the PKK. The villagers Ali Erbek and Şehabettin Erbek were also members of the PKK. Halime Ekin further stated that members of the PKK frequently came to Ormaniçi; that was why watch duty was performed in the village. Everybody in the village helped them. In 1991 she had left Ormaniçi with a PKK member with the codename “Bahos” who had taken her to the Gabar region. There she had met other PKK members whose codenames she stated. She had also met the person with the codename “Lokman”, who had later left the PKK and had surrendered to the authorities. She had carried out various activities in the Gabar region. After having received political and military training for about seven months, “Celal” had told her to return to Ormaniçi and to lead and train the women's committee. She identified by name the members of the women's committee in Ormaniçi. She had carried out propaganda and, according to orders received, would take provisions to various groups in the area.

Towards the morning of 20 February 1993, she had heard gunshots coming from the direction where Ali Erbek had been keeping watch. The militia members in the village had collected their weapons and assembled in the village square. She identified these 24 persons by name. She herself had taken her weapon and had started to fire at the security forces from the garden of her house. At that point in time, everybody in the village had been firing from their houses.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

57. In a fingerprinted statement given with the assistance of an interpreter to the Eruh public prosecutor Ercan Turan, Halime Ekin denied the charges against her and denied any involvement with the PKK. She did not know the persons whose codenames were mentioned in the statement taken by the gendarmes. She did not know whether there was a women's committee in Ormaniçi or who would have formed it. On the day of the incident, she had woken up to the sound of gunshots. Later, the security forces had come to her house and had taken her away. She did not know how the clash had happened.

3. *Statement to the Eruh Magistrates' Court of 9 March 1993*

58. According to the record of questioning before the Eruh Magistrates' Court, Halime Ekin was assisted by an interpreter when, on 9 March 1993, she was brought before Judge Filiz Yalçın. Halime Ekin stated before Judge Yalçın that it was not true that she was a member of the PKK. She explained that there was another girl called Halime who had joined the PKK. She thought that Judge Yalçın was taking her statement instead of that of the other girl by mistake. After the statement that she had made earlier that day before the Eruh public prosecutor had been read out to her, she confirmed its truthfulness and stated that she accepted it. When her statement to the gendarmes dated 8 March 1993 was read out to her, she declared that she had not made such a statement and that she had been forced to fingerprint it.

4. *Statement to the applicants' representatives dated 17 April 1998*

59. In a fingerprinted statement taken in Diyarbakır and co-signed by Tahir Elçi and M.Sezgin Tanrıku, Halime Ekin stated that, in February 1993, she had been single and had lived with her mother Mevlüde Ekin in Ormaniçi in a house immediately opposite the cemetery. She had married her paternal cousin M.Şirin Ekin in 1998. In this statement she declared that she did not know whether the [PKK] organisation or the State had murdered her father. Her father had been taken away several times by the soldiers and had been tortured. In so far as she knew, at some point in time her father had been called during the night. She herself had been sleeping at the time. Her father had then been taken away. Nothing had been heard from him since. This had happened before 20 February 1993. In Ormaniçi, her family had owned a two-storey house which had contained all their belongings, two mules, some other livestock, two non-irrigated fields and one irrigated field.

On 20 February 1993, she had woken up to gunshots. Her mother Mevlüde Ekin, her brother Abdullah Ekin and her other siblings had all been in the house. When she had looked outside, she had seen soldiers shooting at the houses from around the village. The soldiers had been wearing white and dark military uniforms. She had not known why the soldiers had shot at the village and had not seen any shots being fired from the village at the soldiers. The soldiers had later surrounded her house. Shortly after the shooting, explosives had been thrown through the window in the room where she and her family had been, and had injured all of them. Her sister Abide had been injured the most. Her mother had taken Abide into her lap and had carried Abide to the house of their neighbour Mehmet Aslan, the village *muhtar*. The soldiers, however, had taken her siblings and herself to the village square. After the soldiers had taken them out of the house, the *muhtar* Mehmet Aslan and a number of soldiers had gone into their house for a search. In the village square, the soldiers had tied up the hands and feet of the men and had made them lie on their faces. She, along

with other women and children, had been waiting nearby. Her sister Abide had kept on wailing and asking for water. Three days later, while she herself had been in detention, her sister had died. Towards the evening the soldiers had blindfolded her and along with others they had put her into a helicopter and taken her to Şırnak. She had not been blindfolded before. She had personally seen that the soldiers had burned houses, including houses belonging to her maternal uncle Abdullah and her family. She had been frightened.

In Şırnak, she had been put into a narrow cell with a steel door. Her hands had been tied. As she had remained blindfolded, she had been unable to see the other village residents. But whenever the others were beaten, she had heard their screams. She had been taken out of her cell in Şırnak twice and had been interrogated in another room. She had been accused of helping the organisation and had been beaten with a wooden stick on her hands and feet. Apart from being beaten, she had not been subjected to any other form of torture. The soldiers had forced her to fingerprint a document that they had not allowed her to read. She had not been informed of the contents of the document. At that time, she had heard İbrahim Ekinçi wailing and screaming but, as she had been in another cell, she had not seen him. However, she had understood that he had been tortured. She and others had later been brought before a public prosecutor in Eruh and had subsequently been released. She could not remember exactly what she had said to the prosecutor or what questions he had asked her.

Along with other villagers, she had then returned to the village. She had seen that all the houses in the village had been burned. Her mother and siblings had been living in the cattle barn. They had been unable to repair their house; there had been nobody to care for them. In the autumn, the soldiers had once again returned to Ormaniçi. The soldiers had assembled all of the villagers in the square next to the school. The soldiers had read her name out, but she had hidden amongst the other women and they had been unable to find her. The soldiers had taken Ayşe and Hediye into the school. She had not seen what had been done to them. When Ayşe had come out of the school, her hands had been bleeding and the front of her dress had been torn. During this time, the rest of the soldiers had burned all of their belongings. In the first incident one of the rooms in her family house had only been partially damaged. The soldiers had burned this room in the autumn. The soldiers had wanted them to evacuate the village. Thereupon they had moved to the Dehla Hazara caves near Akdizgin.

In the following spring, the villagers had returned to Ormaniçi. Shortly afterwards the soldiers had returned to the village. Gunshots had been heard from the gardens. Towards the evening the soldiers had told the villagers that they had killed seven people there. When, that evening, villagers had gone to see the bodies, they had found that one of the persons killed was her paternal cousin Şerif Ekin. The next day, the bodies had been buried in the

village. The soldiers had wanted the villagers to leave Ormaniçi. They had then settled down in Basa (the Kurdish name for Güçlükönak) and two months later had gone to Tarsus, where they were currently living.

**Abdullah Ekin (son of Mevlüde Ekin)**

*1 Statement to Güçlükönak gendarmes dated 27 February 1993*

60. In a handwritten and fingerprinted statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran, with the assistance of another gendarme who acted as interpreter, Abdullah Ekin is recorded as stating that PKK terrorists often came to Ormaniçi. They would give speeches, which he sometimes attended. Like all other villagers, he would give them food and drinks. He did not know them. Soldiers had been fired at. Kalashnikov shots had been heard first. He did not know who had fired. He himself did not have a weapon and he had not hidden one.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

61. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Abdullah Ekin stated that he did not like the PKK and did not help them. Two years ago, PKK terrorists had forcibly taken his father, the former *muhtar* of Ormaniçi, to the mountains. His family had not heard from him since. Halime was his older sister. He denied that she was involved with the PKK. On the day of the incident, he and his family had been in bed. He did not know how the incident had happened and whether anyone had fired from the village. Being illiterate, he did not know what kind of statement he had fingerprinted at the gendarmerie.

**Besna Ekin (applicant no. 11)**

62. In a fingerprinted statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Besna Ekin gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993. She also stated that, in so far as she knew, there had not been any PKK members or any armed individuals in the village at that time. She also related what had happened to her husband Hacı Ekin, who had been detained for 5-6 months, and her 13-year-old son Şerif, who had been detained for 15 days. In this statement, she also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994, when the soldiers had killed her son Şerif in the orchards.

**Hacı Ekin (spouse of Besna Ekin)***1. Statement to Güçlükonak gendarmes dated 22 February 1993*

63. In a fingerprinted as well as signed handwritten statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Hacı Ekin is recorded as stating that he disapproved of the PKK and that he did not possess a weapon.

*2. Statement to Şırnak gendarmes dated 5 March 1993*

64. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Hacı Ekin is recorded as stating that he was the brother of Osman, İbrahim and Harun Ekin. Harun had been carrying out armed PKK activities for three years. He himself had longstanding relation with the PKK. Many Ormaniçi villagers were PKK members. They regularly came to the village. He himself was deputy head of the village committee and the armed militia. Nobody could carry out any activity without his knowledge or that of the committee. He further stated that all villagers helped the PKK. A villager who did not do so would be punished by the others. The villagers received information from the PKK via Ali Erbek, who had spent some time with the PKK and who had been assigned to Ormaniçi by the PKK, and Ali's brother Şehabettin Erbek. Ali had taught the villagers how to act against the soldiers and how not to allow them in the village. He knew a person with the codename "Lokman", who used to come to Ormaniçi when he was a PKK member. But "Lokman" had betrayed the PKK by surrendering to the authorities. A death sentence had been passed on him. After being apprehended, he had seen "Lokman" in Şırnak. The statement by "Lokman" about him was true and he had identified and recognised "Lokman". Hacı Ekin identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. All persons named by him had fired weapons at the soldiers in the clash of 20 February 1993.

*3. Statement to the Eruh public prosecutor dated 9 March 1993*

65. In a signed statement given to the Eruh public prosecutor Ercan Turan, Hacı Ekin denied the charges against him and stated that he had no sympathy for the PKK. Halil, his elder brother and former *muhtar* of Ormaniçi, had been kidnapped from his house by PKK members. No news from him had been received. He and others had asked the State for help, but they had not obtained any result. More than one year ago, his son Mehmet had also been forcibly taken away by the PKK and he had been unable to receive any news from him. Sometimes, when the PKK came to Ormaniçi, he would give them bread under pressure. Other than that, he had no links with the PKK. He was certainly not the deputy head of the village

committee; he did not know who the members of the village committee or militia were. His statement at the gendarmerie had been taken under pressure and he had been forced to fingerprint it. On the day of the incident, he had got up for morning prayer when he had heard gunshots. Together with the members of his household, he had crouched in a corner of the house. Some time later, the security forces had arrived and taken all the members of his household outside. He had later been taken away. According to what he had heard, there was a lot of damage to his house and livestock. He did not know whether anyone of his household carried out watch duty.

**Şerif Ekin (son of Besna Ekin)**

*1. Statement to Güçlükönak gendarmes dated 27 February 1993*

66. In a handwritten and fingerprinted statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran, Şerif Ekin is recorded as stating that PKK terrorists sometimes came to Ormaniçi. He would also sometimes come across them in the mountains, but he had no involvement with them. Without forcing him, they would ask him for food. He would give them what they wanted. Nearly all villagers had carried out watch duty in the village. Shots had been fired from the village when the soldiers had arrived. He had not seen who had fired; he had been at home. He did not know who had weapons.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

67. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Şerif Ekin denied the charges against him. Although PKK terrorists would occasionally come to Ormaniçi, he had not had any involvement with them. There was no one in the village who would carry out an armed watch duty. He was illiterate and had been forced to place his fingerprint on his statement at the gendarmerie. On the day of the incident, he had woken up to the sound of gunshots. At that stage, the soldiers had come to his house and had taken him away. He did not know how the incident had taken place.

**İbrahim Ekin (applicant no. 12)**

*1. Statement to Güçlükönak gendarmes dated 26 February 1993*

68. In a handwritten and fingerprinted statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran in the presence of the Gendarmerie Station Deputy Commander Turan Kolan, İbrahim Ekin is recorded as stating that, from time to time, PKK terrorists came to Ormaniçi, where they would assemble the villagers in the mosque. They wanted food from the

villagers. İbrahim Ekin denied that he acted as a PKK courier. He further stated that armed villagers had been keeping watch when the soldiers had arrived. He had not fired and he did not have a rifle. He continued to explain that, after the Iraqi war, almost everyone in the village had a weapon.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

69. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, İbrahim Ekin stated that he denied the charges against him. He declared that, being a shepherd, he did not stay in the village and therefore did not know whether PKK members came and went or whether a watch was being kept on behalf of the PKK. On the day of the incident, he had been at home and had woken up to the sounds. He had been taken away from the village. At the gendarmerie, he had been made to confirm the statement without knowing its contents; he was illiterate. He had made the same statement there as the one he was presently making.

*3. Statement to the applicants' representatives dated 14 April 1998*

70. In a signed statement taken in Diyarbakır and co-signed by Tahir Elçi and M.Sezgin Tanrikulu, İbrahim Ekin gave a detailed account of the events in Ormaniçi on 20 February 1993. The statement also contains a detailed account of how, on 20 February 1993, he was taken into detention and of his conditions of detention and treatment in Güçlükonak and later in Şırnak. He further stated that, after having been brought before the Eruh public prosecutor, he had been released. In the statement, İbrahim Ekin also mentioned two further visits by soldiers to Ormaniçi. One had taken place in the autumn of 1993. He and his family had already left Ormaniçi and settled in Güçlükonak when, in May of the following year, the third visit had occurred in the course of which four Ormaniçi villagers had been killed.

**Abdullah Kurt (applicant no. 13)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

71. In a typed and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Abdullah Kurt is recorded as stating that the Ormaniçi villagers were forced to aid the PKK by providing its members with food, which the PKK collected in the village. The PKK would kill anyone who refused to give. The PKK would further occasionally assemble the villagers in the mosque, where they would tell the villagers that they should help the PKK. The PKK had wanted the villagers to arm themselves. He further identified by name four militia members, including Resul Aslan and İbrahim Özkan from Ormaniçi. Ali Erbek and Mehmet Emin Kiliç from Çobakazanı had been amongst those who had fired when the soldiers had entered the village. He did not know who else had fired.

2. *Statement to the Eruh public prosecutor dated 9 March 1993*

72. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Abdullah Kurt denied the charges against him. PKK terrorists would sometimes come to Ormaniçi, where they would forcibly take food. He did not know who collected food for the PKK, nor did he know any PKK militia. The PKK had also taken away the *muhtar* of Ormaniçi from whom no news had been heard since. Apart from that, he had done nothing to aid or abet the PKK. At the gendarmerie he had given a similar statement to the one he was currently making, but, being illiterate, he had confirmed a document at the gendarmerie without knowing its contents.

**Tayibet Kurt (spouse of Abdullah Kurt)**

73. In a fingerprinted statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M. Sezgin Tanrıku, Tayibet Kurt gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including the condition of her husband Abdullah Kurt when he had returned to Ormaniçi after his detention. In this statement, she also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Mehmet Kurt (brother of Abdullah Kurt)**

1. *Statement to Güçlükonak gendarmes dated 26 February 1993*

74. In a typed and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Mehmet Kurt is recorded as stating that the Ormaniçi villagers willingly provided the PKK with all kinds of aid. When the PKK came to the village, all the villagers would assemble in the mosque. During such meetings, a watch duty outside would be carried out in turns, because the PKK members present wanted that to be done. He did not know who in the village had weapons. He himself did not have a weapon. He did not know who had fired when the soldiers had arrived in the village on 20 February 1993.

2. *Statement to the Eruh public prosecutor dated 16 March 1993*

75. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mehmet Kurt stated that he had been working in the province of İstanbul for a long time. He had come to Ormaniçi to visit his elderly mother. When he had still lived in Ormaniçi, he had seen PKK members come to the village, where they would assemble the villagers in the mosque for propaganda meetings. They had told the villages to arm themselves. He did not know whether anyone had done so. He did not know whether there was a village committee or militia in Ormaniçi. On the morning of the day of the incident, he had heard concentrated gunshots. At that point, the

soldiers had made an announcement that nobody should come out. After the gunshots had stopped, he and some other villagers had been taken from his house for interrogation. He did not know whether there had been a clash or how it had taken place. When his statement to the gendarmes was read out to him, Mehmet Kurt stated that the statement was generally correct, but added that he had only once seen PKK members come to Ormaniçi.

**Mehmet Sezgin (applicant no. 14)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

76. In a handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Mehmet Sezgin is recorded as stating that PKK terrorists used to come to Ormaniçi. About one month earlier two persons had come and he had given them food and drink. The PKK terrorists used to assemble the villagers and give speeches. His brother Abdullah Sezgin had a Kalashnikov, which he himself would borrow when he went on watch duty. He did not know who had brought weapons to the village. He did not know who had fired when the soldiers had arrived. He himself had not fired; he had been at home.

*2. Statement to Güçlükonak gendarmes dated 28 February 1993*

77. In a further handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Mehmet Sezgin stated that the Ormaniçi villagers Nedim Kaya, Daham Özkan and Ali Erbek had joined the PKK and had later returned to the village. Mehmet Sezgin further stated that the villagers had been very afraid of the PKK as, about two years earlier, they had murdered the previous *muhtar*, who had been related to him. Ali Erbek and other PKK supporters had taken Fahrettin Özkan (son of Mehmet) and Mehmet Ekinci (son of Hacı) who were both about 15 or 16 years old, Halide Özkan (daughter of Mehmet Nuri) who was about 13 or 14 years old, and Mulkiye Kaya (daughter of Mehmet) who was 10 years old to the PKK. One year ago, [illegible] Erbek, who aided and abetted the PKK, had taken his 11-year-old sister Firuze and his 12-year-old nephew Hasan Sezgin to the PKK. He had had an argument about that with Ali Erbek and they were not on speaking terms with each other. Ali Erbek had complained about Mehmet Sezgin's father and uncle to the PKK. About three months ago, five or six PKK members, whom he had not known, had come to Ormaniçi and had assembled all the men in the mosque. These persons had shouted at his father and uncle, who had been told by them to obey Ali Erbek. Those villagers supporting the PKK had, four months previously, collected funds from the villagers according to the villagers' financial circumstances. He himself had given money too. About one month earlier, three PKK members had come to the houses of Feka Ali Çetin, İbrahim Özkan and Mehmet Kaya, who had been given instructions. For the

last four or five months, both armed and unarmed Ormaniçi villagers had carried out watch duty. He had also kept watch sometimes. At other times his brother had done so. His brother Abdullah had bought a weapon in Cizre for 3,000,000 Turkish Liras (TRL). As they had been poor, he had been angry with his brother for spending that money on a weapon. Hacı (surname unknown) from the Şevi hamlet of the Çobankazanı village, as well as Ahmet Aslan and Osman Ekinci from Ormaniçi, had been on watch duty during the night of 19 February 1993. As he had been at home, he had not seen who had fired.

*3. Statement to the Eruh public prosecutor dated 9 March 1993*

78. In a fingerprinted statement given on 9 March 1993 to the Eruh public prosecutor Ramazan Bayrak, Mehmet Sezgin stated that he was not guilty. He declared that he was a shepherd and that, about two months previously when he had been in the mountains, PKK terrorists had come to the village. After having collected provisions there, they had left again. He had learned that after returning to the village. He confirmed that his brother Abdullah Sezgin used to have a Kalashnikov weapon, but had surrendered it to the State. He did not accept the accusation that he had kept watch with his brother's weapon. On the day of the incident, when the soldiers had come to search the village, he had been at home. Suddenly, gunshots had been heard. He did not know who had fired.

*4. Statements to the applicants' representatives*

79. In a signed and undated statement, submitted to the Commission on 16 March 1998, Mehmet Sezgin gave a succinct account of the events in Ormaniçi on 20 February 1993, including how he was taken into detention in Güçlükönak and subsequently in Şırnak.

In a further signed statement taken in Ankara and co-signed by Mahmut Kaya, submitted to the Commission on 4 April 1998, Mehmet Sezgin gave a detailed account of the events in Ormaniçi on 20 February 1993. The statement further contains a detailed account of how, on 20 February 1993, he, his brother Abdullah and his father Cemal Sezgin were taken into detention, and of the conditions during their detention in Güçlükönak and in Şırnak. He further stated that, after having been brought before the Eruh public prosecutor, he had been released. His two-storey house and all his family's possessions and livestock had been burned. He finally stated that he had owned 25 *dönüm*<sup>404</sup> unirrigated land, 7 *dönüm* irrigated land and orchards in Ormaniçi. In this statement, Mehmet Sezgin also mentioned two further visits by soldiers to Ormaniçi, namely one in the autumn of 1993 and one in the spring of 1994. He finally stated that, after that incident, he

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<sup>404</sup> One *dönüm* equals about 0.25 acre or 0.1 hectare.

and his family had left Ormaniçi and settled in Tarsus and that he was making the application on behalf of himself, his family and his parents.

**Asiye Aslan (applicant no. 15)**

80. In an undated and fingerprinted statement, submitted to the Commission on 8 December 1997, Asiye Aslan gave a succinct account of the events in Ormaniçi on 20 February 1993, including the taking into detention of her husband, her father and two brothers. When released from detention, her husband had been exhausted and very ill. He had also lost both feet. They had been amputated. She also related a further occasion when soldiers had returned to Ormaniçi and four villagers, including her older sister's husband, had been killed in the orchards.

**Resul Aslan (spouse of Asiye Aslan)**

*1. Statement to Güçlükonak gendarmes dated 21 February 1993*

81. In a fingerprinted and typed statement taken in Güçlükonak by the gendarme NCO Hasan Yılmaz, Resul Aslan is recorded as stating that he had bought a Kalashnikov rifle from smugglers, whose names he did not know, and that he was willing to show where he kept this weapon. He further stated that PKK members would collect provisions in Ormaniçi. He himself had also given them food; otherwise they would have killed him. The PKK would also make propaganda in Ormaniçi. The *Serkeytin* magazine found on him had been brought by the terrorists and circulated amongst the villagers.

*2. Statement to Güçlükonak gendarmes dated 3 March 1993*

82. In a handwritten and fingerprinted further statement taken in Güçlükonak by the gendarme NCO Hasan Yılmaz, Resul Aslan stated that, in so far as he knew, İbrahim Özkan, Ömer Yıldırım, Ramazan Yıldırım, the *muhtar* Mehmet Aslan, Mehmet Emin Demir, Mehmet Kaya, Hacı Ekin, Cemal Sezgin, Abdullah Ekin, Abdullah Kurt, Mehmet Nuri Özkan, Ali Erbek, Hamit Ekinci, Mehmet Özkan (son of Ali) and Hasan Yıldırım from Ormaniçi had weapons. He further stated that a group of five or six PKK members, led by Bahoz who was in charge of the Haruna region, would come to Ormaniçi nearly every week. Apart from Bahoz's assistant Rauf, he did not know the other members of this group. This group had been stationed in the Kırkaaç region. The villagers helping the terrorists were Ali Erbek and Nezir Demir. Ali Erbek had previously joined the PKK and had later come to Ormaniçi. The Ormaniçi villagers had also kept an armed watch. The weapons had been obtained from the Batuman and Taya clans in Cizre. The members of one of these clans were village guards. Ali Erbek, Şemsettin Erbek and Ahmet Aslan had been on watch duty when the

soldiers had come. Although it was likely that they had fired, he had not seen that himself. He himself had not fired.

**Hamit Ekinci (applicant no. 16)**

83. In a signed statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Hamit Ekinci gave a succinct account of the destruction caused by the soldiers in Ormaniçi on 20 February 1993, which he had seen on his return to Ormaniçi on 21 February 1993, and how his son Osman had been taken into detention on 20 February 1993. In this statement, Hamit Ekinci also mentioned one further visit by soldiers to Ormaniçi, namely in the autumn of 1993. He finally stated that, before the incident in the spring of 1994, he and his family had left Ormaniçi and settled in Abdoğlu.

**Osman Ekinci (son of Hamit Ekinci)**

*1. Statement to Güçlükönak gendarmes dated 21 February 1993*

84. In a fingerprinted, as well as signed, handwritten statement taken in Güçlükönak by an unidentified gendarme, Osman Ekinci is recorded as stating that he had heard that PKK members had collected food in Ormaniçi about 15 days previously. He did not possess a weapon and he did not know anybody who had any weapons.

*2. Statement to Güçlükönak gendarmes dated 22 February 1993*

85. In a signed and fingerprinted, handwritten further statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran, Osman Ekinci stated that there had been a village watch and that the villagers had taken turns in keeping watch in groups of four. He identified by name some of the villagers who would stand watch. Some of them would carry arms while on watch duty. He did not know the names of these people. On 20 February 1993, he had heard a gunshot upon the soldiers' arrival in Ormaniçi, but he did not know who had fired. He himself had not been on watch duty that day.

*3. Statement to Şırnak gendarmes dated 5 March 1993*

86. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Osman Ekinci is recorded as stating that he was a member of the armed militia in Ormaniçi. Osman Ekinci identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. Together with these persons, he had supplied provisions and other material to the PKK. These provisions were handed over when the PKK came to Ormaniçi. In the early morning of 20 February 1993, he had heard gunshots coming from where Ali Erbek had been

keeping watch duty. He had then fired into the air to alert the other villagers. A clash between the security forces and the villagers had then taken place. The villagers had retreated and had run away. The security forces had pursued and apprehended them.

*4. Statement to the Eruh public prosecutor dated 9 March 1993*

87. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Osman Ekinci denied the charges against him and denied any involvement with the PKK. He normally worked in İstanbul and would only stay for short periods in Ormaniçi. He had been in the village for the last three months, helping his father. He had not acted as a PKK courier or militia. He did not know whether anyone had formed a PKK village committee or militia organisation in the village. On the day of the incident, he had got up for morning prayer, when he had heard gunshots. He had gathered his siblings in a corner of his house. Later, the security forces had taken him from his house. He did not know how the clash had taken place. He did not know the contents of the statement to the gendarmes, as his eyes had been closed. He had been forced to fingerprint it.

*5. Statement to the Eruh Magistrates' Court of 9 March 1993*

88. According to the record of questioning before the Eruh Magistrates' Court, Osman Ekinci – when brought before Judge Filiz Yalçın on 9 March 1993 – made a statement that was nearly identical to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement dated 5 March 1993 was read out to him, he declared that he did not accept that statement; they had forced him to fingerprint it whilst his eyes had been closed.

**Rahim Arslan (applicant no. 17)**

89. In a fingerprinted statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıku, Rahim Arslan gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including what had happened to her husband Ahmet Arslan and the treatment that had been necessary after his release from detention. In this statement, she also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Ahmet Arslan (spouse of Rahim Arslan)***1. Statement to Güçlükonak gendarmes dated 26 March 1993<sup>405</sup>*

90. In a handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Ahmet Arslan<sup>406</sup> is recorded as stating that armed PKK terrorists, whose names he did not know, would sometimes come to Ormaniçi. They had only wanted food and he had given them some. The terrorists would gather the villagers in the mosque and give speeches. They had told the villagers not to allow the soldiers into the village and that was why the villagers had kept watch, in particular when the terrorists were in the village. He did not know who had kept watch. As he had not been in the village when the soldiers had arrived, he did not know who had fired. He had been attending livestock.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

91. In a fingerprinted statement given, with the assistance of an interpreter, to the Eruh public prosecutor Ercan Turan, Ahmet Arslan denied the accusations against him and stated that he knew nothing about activities carried out on behalf of the PKK. As he tended cattle, he was not often in Ormaniçi. He had never come across anyone keeping watch and did not know whether this was done. On the day of the incident, he had heard gunshots. Soldiers had come to search his house and they had taken him away. As regards his statement to the gendarmes, Ahmet Arslan stated that he had given them the same statement. He was illiterate and had confirmed the statement without knowing its contents.

**Mahmut Güler (applicant no. 18)***1. Statement to Şırnak gendarmes dated 5 March 1993*

92. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Mahmut Güler is recorded as stating that he had been involved with the PKK for four months. He had taken up temporary residence in Ormaniçi, where he had seen constant PKK comings and goings and where there had been many PKK supporters. There had been speeches and meetings nearly every evening. Halime Ekin would address the women and the men would meet in the mosque. They had been directed by Cemal Sezgin and Ali Erbek. He had been made a member of the village militia. Cemal Sezgin and Ali Erbek had made the villagers carry out watch duty at the village entry in order to inform the villagers of any security forces arriving. When performing such duties he had taken his Buruno weapon.

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<sup>405</sup> It is likely that the recorded date 26.03.1993 is a clerical error and that this statement was in fact taken on 26 February 2002.

<sup>406</sup> In some documents, such as this statement, his surname is recorded as "Aslan".

His livestock-breeding business had become more fruitful. He explained that not supporting the PKK would affect a person's business. Mahmut Güler identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. They had always acted on the instructions of PKK members. The village had the status of a PKK base and the villagers had been instructed not to allow any soldiers in the village. That is why a watch was kept. On 20 February 1993, Ali Erbek had been on watch duty. At about the time of the morning prayer, gunshots had been heard in the village. The villagers had taken their weapons and had assembled in the village square. They had then dispersed and taken up different positions. A clash had followed. At that point in time, the security forces had been carrying out a search in the village. As a result of the security forces' fire, the villagers had been obliged to retreat and they had eventually been apprehended.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

93. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mahmut Güler denied having any involvement with the PKK or being a member of the village committee or militia. He denied having a weapon. He did not know whether any villagers were active as PKK militia or PKK committee members. He had only seen the person with the codename "Lokman" once, when that person had come to Ormaniçi. PKK militants had come to Ormaniçi a few times, but he had not helped them. He did not know the contents of the statement he had been forced to fingerprint. When the public prosecutor read it out to him, Mahmut Güler stated that he did not accept the statement. On the day of the incident, he had just got up for morning prayer. He did not know how the clash had taken place.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

94. According to the record of questioning before the Eruh Magistrates' Court, Mahmut Güler – when brought before Judge Filiz Yalçın on 9 March 1993 – stated that he was a shepherd and that he had heard that PKK members frequented the village, but he himself had never seen them. He denied any involvement with the PKK and stated that he did not have a weapon. When the statement he had made earlier that day before the Eruh public prosecutor was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement; he had been forced to fingerprint it whilst he had been unaware of its contents. He added that he did not know Osman Ayan, the person with the codename "Lokman" to whom Judge Yalçın had referred.

**Ali Özkan (applicant no. 19)**

95. In a signed statement taken in Diyarbakır, dated 5 October 1997 and co-signed by Tahir Elçi, Ali Özkan gave a succinct account of the events in Ormaniçi on 20 February 1993, including how his son Mehmet Nuri had been detained for one month. His son Nevaf was still being held in detention. In this statement he also related a further incident when the soldiers had returned to Ormaniçi, namely in the spring of 1994 when they had killed his son Mehmet.

**Nevaf Özkan (son of Ali Özkan)**

96. In a handwritten and fingerprinted statement taken in Güçlükonak on 26 February 1993 by the gendarme NCO Hüseyin Baran, Nevaf Özkan is recorded as stating that terrorists would occasionally come to Ormaniçi, where they would assemble the villagers in the mosque and give speeches. He would give them food and drinks. A watch was kept in the village in order to see if soldiers arrived. He denied acting as a courier and did not know who did. He did not know who had a weapon. He had been at home when the soldiers had entered the village and did not who had fired at them.

**Ahmet Erbek (applicant no. 20)**

97. In a fingerprinted statement taken in Diyarbakır, dated 17 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Ahmet Erbek gave a succinct account of the destruction caused as a result of the events in Ormaniçi on 20 February 1993 which he had seen on his return to Ormaniçi on 21 February 1993. He further described how his sons Ali, Şehabettin and Şemsettin had been taken into detention on 20 February 1993. His son Ali was still being held in detention. In this statement, Ahmet Erbek also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Şehabettin Erbek (son of Ahmet Erbek)***1. Statement to Şırnak gendarmes dated 5 March 1993*

98. In a fingerprinted statement taken in Şırnak on 5 March 1993 by two unidentified gendarmes, Şehabettin Erbek is recorded as stating that he had gone to the mountains as a PKK member. He had joined voluntarily in 1991. There had been frequent comings and goings of PKK members in Ormaniçi. Almost all the villagers were on their side and helped them. He himself had initially acted in a PKK group under the orders of a person with the codename "Selim", and had later left for a group under the orders of a person with the codename "Bahos" who had been in charge of the Haruna region. Later on, he had carried out various duties in the Gabar region, where he had also received six months' political and military training. He

identified by codename other PKK members whom he had met in the Gabar region, including “Lokman” who had run away and who had surrendered to the authorities. He had carried out activities with “Lokman” and, during the identification parade, he had stated that he knew “Lokman”. What “Lokman” had said about him was true.

At some point in time, he had been ordered to return to Ormaniçi and to become active there with his brother Ali Erbek, who was also a PKK member. Their duty had been to inform the Ormaniçi villagers about the PKK and to teach them how to resist the security forces. At that point in time everyone in the village had been armed. Şehabettin Erbek identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. The duties of these identified persons had been to collect money, to carry provisions and to take part in activities for the PKK. In order to prevent soldiers from entering the village, a watch had been kept in Ormaniçi. When the soldiers had arrived on 20 February 1993, those on watch duty had informed the villagers about their arrival. The villagers had taken their weapons and had opened fire. After the incident, some villagers had hidden some of their weapons and had thrown away other weapons. When he and other villagers had been apprehended, they had denied that they had fired weapons.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

99. In a fingerprinted statement given, with the assistance of an interpreter, to the Eruh public prosecutor Ercan Turan, Şehabettin Erbek denied the charges against him and denied any involvement with the PKK. He did not have the codename “Sorej” and did not know a person with the codename “Lokman”. The Ormaniçi villagers had taken a collective decision to perform watch duty, but he himself had never done so. He had never seen any weapons on the persons who kept watch. He did not know whether there was a PKK village committee or militia and, if so, who its members were. He did not know the contents of the statement he had made to the gendarmes. He had been forced to fingerprint it. On the day of the incident, he had been in the barn to feed the cattle before sunrise. He had then heard gunshots. He had not left the house. He did not know how the incident had happened, but the security forces had taken him from his house.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

100. According to the record of questioning before the Eruh Magistrates' Court, Şehabettin Erbek was assisted by an interpreter when he was brought before Judge Filiz Yalçın on 9 March 1993. Before Judge Yalçın, he stated that he had no involvement whatsoever with the PKK and that he did not know which Ormaniçi villagers were pro-PKK. When the statement that he had made earlier that day before the Eruh public prosecutor was read out to

him, he stated that he accepted it, but added that he had not said that the villagers had kept watch. When his statement taken at the gendarmerie on 5 March 1993 was read out to him, he declared that he had not made a statement there. He was illiterate and had been forced to fingerprint it.

**İbrahim Ekinçi (spouse of Ayşe Ekinçi, applicant no. 21)**

101. In a handwritten and fingerprinted statement taken in Güçlükonak on 26 February 1993 by the gendarme NCO Hüseyin Baran, İbrahim Ekinçi is recorded as stating that terrorists often came to Ormaniçi. The last time had been 15 days ago. They had asked the villagers for food and he himself had given them bread and cheese. No one had asked him to carry out any duties for the PKK. All the villagers had taken turns in keeping watch in the village. He himself had done so unarmed. This duty had most often been carried out when the terrorists had been in the village. He had been at home when shots had been fired at the time the soldiers had entered the village. He himself had not fired. He had had a Kalashnikov in the past, but he had handed it over when weapons had been collected. He did not know who else had weapons.

**Mehmet Özkan (applicant no. 22)**

*1. Statement to Güçlükonak gendarmes dated 22 February 1993*

102. In a handwritten and signed statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Mehmet Özkan is recorded as stating that the PKK would come from the mountains to the village from time to time, that he did not know or help them, that he did not have a weapon and that he had not fired on the day of the incident.

*2. Statement to Şırnak gendarmes dated 5 March 1993*

103. In a fingerprinted and signed statement taken in Şırnak by two unidentified gendarmes, Mehmet Özkan is recorded as stating that he had been made a member of the militia by the PKK members “Bahos” and Ali Erbek (codename “Çekdar”). Mehmet Özkan identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. Together with these persons, he had continuously carried out activities on behalf of the PKK. They had acted under the orders of Ali Erbek, who had told them to keep watch at the village exits. When, on 20 February 1993, the security forces had intended to enter the village, gunshots had been heard. He and other villagers had immediately taken their weapons and had fired at the security forces. However, as those firing from the houses had stopped shooting, he and the others had wanted to run away, but they had been apprehended.

*3. Statement to the Erüh public prosecutor dated 16 March 1993*

104. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mehmet Özkan denied the accusations against him and stated that he had no involvement with the PKK. He stated that PKK militants would come to Ormaniçi up to once a month. They would assemble the villagers in the mosque for propaganda purposes. He had been forced to attend such meetings. They had also forcibly taken food from him. Apart from that, he had never helped them in any way. He did not know whether a watch had been kept on the instructions of the PKK. He did not know whether there was a village committee or militia or, if so, who the members were. On the day on the incident, he had got up for the morning prayer. He had then heard concentrated gunshots coming from the upper part of the village; his own house was located in the lower part. He and his children had taken shelter in the house. Thirty minutes later, the soldiers had entered his house and, after having blindfolded him, had taken him away. He did not know how the incident had happened. He had later heard that a soldier had been killed. When his statement to the gendarmes was read out to him, Mehmet Özkan stated that he had not known its contents; he had been forced to fingerprint it. He had said the same on that occasion as what he was saying now.

**Fatım Özkan (spouse of Mehmet Özkan)**

105. In an undated and fingerprinted statement, submitted to the Commission on 8 December 1997, Fatım Özkan gave a succinct account of the events in Ormaniçi on 20 February 1993, including the taking into detention of her husband Mehmet Özkan, who as a result of torture in detention had lost nine toes. She also related a further occasion when soldiers had returned to Ormaniçi and four villagers, including her husband, had been killed in the orchards.

In a further fingerprinted statement taken in Ankara, dated and submitted to the Commission on 4 April 1998 and co-signed by Mahmut Kaya, Fatım Özkan gave a succinct account of the events in Ormaniçi on 20 February 1993. She stated, *inter alia*, that she had heard the sound of a helicopter three times on that day and that, in so far as she could remember, her husband Mehmet Özkan had been taken away on foot. He had been released after about one month. In this statement, she also related that the soldiers had returned to Ormaniçi later that year. She further related how her husband had been killed in the village orchards.

**Abdurrahman Çetin (applicant no. 23)**

106. In an undated and uncertified statement, submitted to the Commission on 16 March 1998, Abdurrahman Çetin gave a succinct account of the incident of 20 February 1993 in Ormaniçi, including the burning of his house by the soldiers.

In a signed and fingerprinted further statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıku, Abdurrahman Cetin declared to be a widower and gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including how the shop of his son Ali had been plundered and subsequently burned by the soldiers. His sons Zeki and M.Tahir had been taken into detention on 20 February 1993 and had been subjected to severe torture. Zeki had lost his mind after having been subjected to physical and psychological torture during his detention. After being released, Zeki had had to undergo two operations for injuries caused by torture, in particular to his buttocks and anal region. Despite the operations, these injuries had remained chronic. In this statement, he also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Zeki Çetin (son of Abdurrahman Çetin)**

*1. Statement to Şırnak gendarmes dated 5 March 1993*

107. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Zeki Çetin is recorded as stating that he made a living by being the “learned man”<sup>407</sup> in the village mosque. He had been active for the PKK for seven months. Ali Erbek and a person with the codename “Bahos”, who was in charge of the Haruna region had assembled the villagers and had told them that they should help the PKK. As the learned man, he had been asked to make propaganda for the PKK in his sermons during the Friday services in the mosque. He had also obtained a weapon. Zeki Çetin identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. They would act on instructions given by the PKK. On 20 February 1993, the villagers had woken up to gunshots coming from where Ali Erbek had kept watch. The villagers had armed themselves, had assembled in the village square and had taken up positions. As they had been unable to resist the security forces' fire, the villagers had started to run away, but they had been apprehended.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

108. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Zeki Çetin declared that he was not guilty. He stated that he suffered from a mental disorder for which he was under permanent medication. He explained that, being disabled, he could not work. He stayed with his parents. As he was able to read the Koran and performed his prayers in the mosque, the villagers called him “faka”. His older brother Ali Çetin was the imam in the mosque. He did not know whether there were

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<sup>407</sup> The word “faka” used in the statement does not exist in Turkish. What in all likelihood was meant is “fakahetli” meaning an expert in Islamic canon law.

villagers carrying out activities under the name of “village militia” or “committee”. He was not a member of either. On the day of the incident, just when he had stepped out of the mosque after having performed the morning prayer, the soldiers had arrived and he had heard gunshots. Later, the soldiers had assembled all the villagers. He and some other villagers had been taken from Ormaniçi to the station. He did not accept the statement he had made to the gendarmes.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

109. According to the record of questioning before the Eruh Magistrates' Court, Zeki Çetin – when brought before Judge Filiz Yalçın on 9 March 1993 – denied that he had any involvement with the PKK. He could barely stand on his feet because of his medication. He was not even of any use to himself, let alone to any other person or organisation. When the statement that he had made earlier that day before the Eruh public prosecutor was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement; he had been forced to fingerprint it and did not know its contents.

*4. Statement to the applicants' representative dated 4 October 1998*

110. In a signed statement taken by Tahir Elçi, Zeki Çetin declared that, on 26 February 1996, he had applied to the İstanbul Representative Office of the Human Rights Foundation because the injuries he had sustained had not healed. He suffered, amongst other things, from anal bleeding. He had received medical treatment through the Foundation and they had provided him with a medical report. Four photographs of his anal region were appended to the statement. These photographs show a healed perianal fissure of about 3 cm by 1 cm.

**Şükrü Yıldırım (applicant no. 24)**

*1. Statement to Güçlükonak gendarmes dated 26 February 1993*

111. In a handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Hüseyin Baran, Şükrü Yıldırım is recorded as stating that, from time to time, the PKK would come to the village, where they would gather the villagers in the mosque for propaganda purposes. Whenever they came, he would give them provisions. He denied being a PKK courier. He had been asleep when the soldiers had arrived and had woken up to the sound of gunshots. He had not fired and he did not know who had.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

112. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Şükrü Yıldırım stated that he had not helped the PKK and had no involvement with them. He had been at home when the clash had taken place in the village; he did not know how it had happened. He did not know whether a watch was kept in the village. Being illiterate, he had signed his statement at the gendarmerie without knowing its contents.

**Hatice Erbek (applicant no. 25)**

113. In a signed statement taken in Diyarbakır and dated 17 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Hatice Erbek gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including how her spouse Şemsettin had been detained for 4-5 months. She further stated that her son Zeki, after a lengthy exposure to the cold on 20 February 1993, had fallen ill. He had contracted pneumonia from which he had still not recovered. Hatice Erbek also related how the soldiers had returned to Ormaniçi in the autumn of 1993 and how, after this event, she and her family had permanently left Ormaniçi.

**Şemsettin Erbek (spouse of Hatice Erbek)**

*1. Statement to Şırnak gendarmes dated 5 March 1993*

114. In a fingerprinted statement taken in Şırnak by two unidentified gendarmes, Şemsettin Erbek is recorded as stating that he had become active for the PKK after the return to Ormaniçi in August 1992 of his brother Ali Erbek, who was a PKK member. Ali had made propaganda for the PKK in Ormaniçi. In nearly every village committees and militia had been formed by persons who had been trained by the PKK and then had returned to their villages. The members of village committees and militia had been recruited either on a voluntary basis or by pressure. In his statement, Şemsettin Erbek identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. His brother Ali Erbek had told the villagers to resist soldiers wishing to enter the village. To this end, a continuous watch had been kept at the exit points of Ormaniçi. His brother Ali had been on watch duty when the soldiers had arrived on 20 February 1993. After having woken up to the sound of gunshots, he and the villagers he had identified had immediately assembled in the village square and taken up positions. He had heard that one soldier had been killed. The villagers had been unable to resist the security forces' fire and had had to retreat.

2. *Statement to the Eruh public prosecutor dated 9 March 1993*

115. In a fingerprinted statement given on 9 March 1993 to the Eruh public prosecutor Ercan Turan, Şemsettin Erbek denied the charges against him. He denied having had any involvement with the PKK or having aided and abetted the PKK. He had been forced to put his fingerprint on a text written by the gendarmes themselves. Being illiterate, he was unaware of its contents. He did not know who had formed the PKK village committee and militia. The “*peşmerge*”<sup>408</sup> clothes he was wearing had been given to him by the gendarmes, because they had torn up and thrown away his own clothes. Whenever the PKK came to the village, they did not come and see him. On the day of the incident, he had not heard any gunshots; he had been taken away from his house at around noon.

3. *Statement to the Eruh Magistrates' Court of 9 March 1993*

116. According to the record of questioning before the Eruh Magistrates' Court, Şemsettin Erbek – when brought before Judge Filiz Yalçın on 9 March 1993 – gave a statement that was similar to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When the statement taken at the gendarmerie on 5 March 1993 was read out to him, he declared that he had not made such a statement and that he had been forced to fingerprint it.

**Raife Cetin (applicant no. 26)**

117. In an undated and uncertified statement, submitted to the Commission on 16 March 1998, Raife Çetin gave a succinct account of the incident of 20 February 1993 in Ormaniçi, including the taking into detention of her husband. As a result of having been tortured during his detention that had lasted 65 days, her husband's feet had both been amputated. He had further lost his mind.

In a fingerprinted statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Raife Cetin gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993. She stated that her spouse Mehmet Tahir had been detained for 68 days and related the condition in which he had been when she had last seen him. She further mentioned that the soldiers had returned to Ormaniçi in the autumn of 1993 and related what the soldiers had done in the village on that occasion.

**Mehmet Tahir Çetin (spouse of Raife Çetin)**

118. In a handwritten and fingerprinted statement taken in Güçlükonak on 26 February 1993 by the gendarme NCO Hüseyin Baran, Mehmet Tahir

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<sup>408</sup> Kurdish warrior.

Çetin is recorded as stating that terrorists had often come to Ormaniçi. They had wanted provisions from him, which he had supplied. They would assemble the villagers and give speeches. A permanent watch had been kept in the village. He did not know who had kept it. Shots had been fired when the soldiers had entered the village, but he did not know by whom. He himself had not fired.

**Fatma Özkan (applicant no. 27)**

119. In an undated and fingerprinted statement, submitted to the Commission on 8 December 1997, Fatma Özkan gave a succinct account of the events in Ormaniçi on 20 and 21 February 1993. She stated, *inter alia*, that on 20 February 1993 her husband Mehmet Nuri Özkan had been taken on foot to Güçlükönak and that, after one week, he had been taken to Şırnak.

**Mehmet Nuri Özkan (spouse of Fatma Özkan)**

*1. Statement to Güçlükönak gendarmes dated 26 February 1993*

120. In a handwritten statement, both fingerprinted and signed, taken in Güçlükönak on 26 February 1993 by the District Gendarmerie Deputy Commander Celal Çürek in the presence of the gendarmes NCO Hüseyin Baran and Turan Kolan, Mehmet Nuri Özkan is recorded as having identified by name 19 persons who aided and abetted, acted as couriers or made propaganda for the PKK, including Nezir Demir (head of the committee), Feke Ali Çetin, Resul Aslan, Osman Ekinci, Mehmet Kurt and İbrahim Özkan from Ormaniçi. The other persons he identified by name were from Güçlükönak, Çobakazanı, Şevi, Boyuncuk, Gümüşyazı and Sağkol.

*2. First statement to Şırnak gendarmes dated 5 March 1993*

121. In a fingerprinted and signed statement taken in Şırnak by two unidentified gendarmes, Mehmet Nuri Özkan is recorded as stating that he was a member of the armed militia in Ormaniçi and that the security forces had found his Kalashnikov during their search of his house. He had become a militia member after having been influenced by speeches held in Ormaniçi by PKK members and the PKK members in the village, namely Ali Erbek and Cemal Sezgin. Mehmet Nuri Özkan identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. Everyone in the village had supported the PKK and continuously had held meetings and planned actions against the State. The villagers had continuously kept watch in order to prevent soldiers from entering the village. On 20 February 1993 Ali Erbek had been on watch duty. He had woken up to the sound of gunshots. The armed militia had assembled in the

village square and taken up positions. As he had been unable to resist the firing from the security forces, he had hidden his weapon in the barn. When he had been apprehended, he had indicated the location of his weapon.

*3. Second statement to Şırnak gendarmes dated 5 March 1993*

122. In an additional statement, fingerprinted and signed, taken in Şırnak by two unidentified gendarmes, Mehmet Nuri Özkan stated that the Simonov 7.62 mm weapon and the other Bruno or Mauser 7.7 mm weapon with Arabic inscriptions, the locations of which he had indicated on 21 February 1993, had been purchased by him with the help of Resul Çakır, an important PKK militia member who maintained the PKK's communications between different villages. The weapons were meant for use in PKK activities. One of the two weapons belonged to Nezir Demir, another militia member. He himself had built a shelter in the rocks about 1 kilometre from the village and he had hidden the weapons there. Visiting PKK members would stay in that shelter.

*4. Statement to the Eruh public prosecutor dated 9 March 1993*

123. In a signed statement given to the Eruh public prosecutor Ercan Turan, Mehmet Nuri Özkan denied the charges against him. He had never carried out any armed activities for the PKK, nor had he participated in the armed conflict on the day of the incident. He owned no weapons and did not have any weapons belonging to the PKK. The finding of weapons in the barn of his house had never happened nor had he assisted in locating weapons belonging to the PKK. He did not know of any persons acting as militia or members of a PKK committee. He did not know whether there were persons keeping watch. He had never done that. He did not know any of the documents put to him. He had been forced at the gendarmerie to apply a fingerprint on something, the contents of which he did not know. On the day of the incident, he had only heard gunshots. He did not know how the incident had occurred or how the clash had taken place.

*5. Statement to the Eruh Magistrates' Court of 9 March 1993*

124. According to the record of questioning before the Eruh Magistrates' Court, Mehmet Nuri Özkan – when brought before Judge Filiz Yalçın on 9 March 1993 – stated that he had been at home on the day of the incident and that, after the clash, a search had been carried out in his house and in all the houses in the village. The soldiers had not found anything, because he had no relations with the PKK. When the statement that he had made earlier that day before the Eruh public prosecutor was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement at the gendarmerie, dated 5 March 1993, was read out to him, he declared that he did not accept the statement, that it was not true and that he had been forced to fingerprint it.

**Fatma Yıldırım (applicant no. 28 and spouse of Ramazan Yıldırım [applicant no. 4])**

125. In a fingerprinted statement taken in Diyarbakır, dated 14 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıkulu, Fatma Yıldırım stated that she wished to pursue the application that her deceased husband Ramazan Yıldırım had brought in April 1993. In her statement, she gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993, including how two of her older sons had been taken into detention. She further explained how her young son, Ali Yıldırım, had died as a result of having played with an unexploded bomb left after the incident. She also described the physical condition of her two older sons upon their return from detention. She further stated that the soldiers had returned twice to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Hüseyin Yıldırım (son of Fatma and Ramazan Yıldırım)**

*1. Statement to Güçlükönak gendarmes dated 26 February 1993*

126. In a typed and fingerprinted statement taken in Güçlükönak by the gendarme NCO Turan Kolan, Hüseyin Yıldırım is recorded as stating that some PKK members used to come to Ormaniçi every 20-25 days and that they would assemble the villagers in the mosque for propaganda purposes. During such meetings, Ormaniçi villagers would keep watch. He did not know who had kept watch or who had had weapons. He himself had no weapon. He had been sleeping at home when the soldiers had arrived in the village on 20 February 1993. He did not know who had fired in the village or who had weapons.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

127. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Hüseyin Yıldırım stated that he was not guilty. He stated that he completely reaffirmed the statement he had made at the gendarmerie. He certainly did not help the PKK. He did not have a weapon. On the day of the incident, he had woken up to the sound of gunshots. The soldiers had later gathered all the villagers in the village square. He and some other villagers had been taken to the station. He did not know who had fired at the soldiers.

**Mehmet Yıldırım (son of Fatma and Ramazan Yıldırım)**

*1. Statement to Güçlükönak gendarmes dated 28 February 1993*

128. In a handwritten and fingerprinted statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran, Mehmet Yıldırım is recorded as stating that PKK terrorists sometimes came to Ormaniçi, where they would

assemble the villagers in the mosque and give speeches. They would also make the villagers listen to a cassette tape. He did not know who had the tape. He himself had made donations in the form of cash and foodstuffs. He further stated that, when the soldiers had entered the village, shots had been fired from the village. He had heard the shots, but had not seen anything. He himself had not fired and he had not hidden any weapon anywhere.

2. *Statement to the Eruh public prosecutor dated 9 March 1993*

129. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Mehmet Yıldırım denied the charges against him. He stated that the terrorists occasionally came to Ormaniçi, where they would forcibly take various things. For fear of death, no one had objected. Apart from that, he had no involvement with the PKK. On the day of the incident, he had woken up to the sound of concentrated gunshots and had taken shelter in his house. At that stage, the soldiers had arrived and taken him from the house. He did not know how the clash had happened. He had given a similar statement to the gendarmes. Being illiterate, he did not know its exact contents when he had fingerprinted it. He knew nothing about the cassette mentioned.

**Zeynep Yıldırım (applicant no. 29)**

130. In an undated and uncertified statement, submitted to the Commission on 16 March 1998, Zeynep Yıldırım gave a succinct account of the incident of 20 February 1993 in her village Ormaniçi, including the taking into detention of two of her sons. As a result of having been tortured during his detention, one of her sons had had to undergo an amputation of his feet from the knee down. Her other son has lost his mind after having been tortured for 20 days during his detention in Şırnak.

In a fingerprinted further statement taken in Diyarbakır, dated 15 April 1998 and co-signed by Tahir Elçi and M.Sezgin Tanrıku, Zeynep Yıldırım gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993. She stated, *inter alia*, that she did not understand why the soldiers had raided Ormaniçi on 20 February 1993, as there had been no armed people in Ormaniçi on that day. She also related two further occasions when soldiers had returned to Ormaniçi, namely in the autumn of 1993 and in the spring of 1994.

**Halime Ekin (applicant no. 30)**

131. In an undated and fingerprinted statement, submitted to the Commission on 8 December 1997, Halime Ekin gave a succinct account of the events in Ormaniçi on 20 February 1993, including how her husband Osman Ekin had been taken into detention.

**Osman Ekin (spouse of Halime Ekin)***1. Statement to Güçlükönak gendarmes dated 25 February 1993*

132. In a handwritten and fingerprinted statement taken in Güçlükönak by the gendarme NCO Hüseyin Baran, Osman Ekin is recorded as stating that the PKK sometimes came to Ormaniçi, where they assembled villagers in the mosque and gave speeches. Aid for the PKK was provided in the village. He himself had aided them sometimes. He had donated TRL 100.000. The villagers used to keep watch. He had done so together with Hacı Ekin, Abdullah Sezgin, Mehmet Aslan and Nevaf Özkan, but he did not have a rifle. He knew that Mehmet Aslan and İbrahim Özkan had Kalashnikovs.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

133. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, Osman Ekin denied the accusations against him. He stated that, a long time ago, his older brother Halil had been taken away by PKK members to be murdered. The reason for that was that Halil had been the *muhtar*. From then on, PKK members had come from time to time to Ormaniçi, where they would collect food under the threat of firearms. He had no sympathy for them. He had not aided or sheltered these persons. On the day of the incident, he had got up for the morning prayer. He had then heard concentrated gunshots and had taken his children to a safe place in the house. Soldiers had later come to conduct a search and had taken him away. He had not made any statement to the gendarmes about keeping watch or giving money. He did not know whether a watch had been kept. He had been forced to confirm his statement to the gendarmes.

**Ayşe Sezgin (applicant no. 31)**

134. In an undated and fingerprinted statement, submitted to the Commission on 8 December 1997, Ayşe Sezgin gave a succinct account of the events in Ormaniçi on 20 February 1993. She also related a further occasion when soldiers had returned to Ormaniçi and when four villagers had been killed in the orchards.

**Rukiye Erbek<sup>409</sup> (applicant no. 32)**

135. In a fingerprinted statement taken in Ankara in the presence of Mahmut Kaya, dated and submitted to the Commission on 4 April 1998, Rukiye Erbek<sup>410</sup> gave a detailed account of the events in Ormaniçi on 20 and 21 February 1993. She also related two further occasions when soldiers had returned to Ormaniçi, namely in September 1993 and in the spring of

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<sup>409</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

<sup>410</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

1994. On that last occasion, her brother Mehmet Özkan and three other villagers had been killed in the orchard.

**Ali Erbek (spouse of Rukiye Erbek<sup>411</sup>)**

*1. Statement to Şırnak gendarmes dated 4 March 1993*

136. In a fingerprinted and signed statement taken in Şırnak by two unidentified gendarmes, Ali Erbek (codename “Çekdar”) is recorded as stating that, after initially having been abducted by the PKK, he had joined the PKK in 1992 after having received political and military training for three months. He had stayed in the Gabar region for about eight months. He later stated that, after having attended a PKK meeting in Aşağıdere in July 1991, he had told PKK members that he wished to join the PKK. He knew the person with the codename “Lokman”, who had left the PKK and surrendered to the authorities. He had carried out PKK activities in the Gabar region for one year. He had participated in the raid on the Damlarca gendarmerie station in September 1992. Ali Erbek gave the codenames of a number of others who had also participated in that raid. In 1992 the person with the codename “Celal” had instructed him to return to Ormaniçi, where he had then organised PKK activities. He identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. His brother Şehabettin Erbek was also a PKK member and had been his assistant in Ormaniçi. He further identified by name the persons from Ormaniçi who had joined the PKK upon his initiative. He had told the Ormaniçi villagers how to act against the security forces, that a watch duty should be kept and what needed to be done in order to prevent the security forces from entering the village. When, on 20 February 1993, the soldiers had entered the village, the villagers had acted in the manner in which he had told them to act. They had resisted with arms and had killed one soldier. As Ormaniçi had been close to the Gabar region, PKK provisions had been stored in the house of Ali Çetin, who had been trusted as he was an imam and as he was a member of the committee. Those were the provisions which he had indicated on 21 February 1993 in Ormaniçi. These provisions would be loaded onto mules and taken to PKK members in the districts of Cizre and Güçlükönak. He identified by name and/or codename the PKK members who used to come to Ormaniçi. He indicated two shelters where these persons had stayed and which were now destroyed. Ali Erbek lastly indicated four locations in the region where PKK groups were to be found and which persons were in command of these groups.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

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<sup>411</sup> Rectified on 1 March 2005. The previous version reads “Fatma Erbek”.

137. In a fingerprinted statement taken from Ali Erbek by the Eruh public prosecutor Ercan Turan, Ali Erbek denied the charges against him. He declared that he had been kidnapped by the PKK in September 1992 and taken to the Gabar mountains, where he was kept in a camp for five months. He received four months of training, was given the codename “Çekdar” and was provided with a weapon during the fifth month, which he had left behind when he ran away during the fifth month. He denied having participated in any action. He initially went to İstanbul and later returned to Ormaniçi, where PKK militants came almost every week. They had distributed “ARGK”<sup>412</sup> badges to the children, who must have put them in his pocket. One of the photographs found on him had been taken during his time with the PKK. The other photograph found had been given to him by a person in Cizre, who had asked him whether he knew Nezir Demir. When he confirmed that he did, he had been given the photograph. He denied having participated in the raid on the Damlarca station or having recruited persons for the PKK. As he had escaped from the PKK, he had not been staying in his house at night.

During the armed conflict in the village he had been ill and lying in bed. He denied that he had participated in the clash, but he knew that Cemal Sezgin was in the PKK village committee and that Nezir Demir was a militia member. He did not have a weapon and accepted the parts of his statement to the gendarmes that were consistent with his present statement.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

138. According to the record of questioning before the Eruh Magistrates' Court, Ali Erbek – when brought before Judge Filiz Yalçın on 9 March 1993 – made a statement that was nearly identical to the one he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When the statement taken at the gendarmerie, dated 4 March 1993, was read out to him, he declared that the statement he had now made was true and that he did not accept the other statement that he had been forced to sign.

*b. Statements taken from persons not related to the applicants*

**Mehmet Seyit Erden**

*1. Statement to Güçlükönak gendarmes dated 26 February 1993*

139. In a typed and fingerprinted statement taken in Güçlükönak by the gendarme NCO Turan Kolan, M. Seyit Erden is recorded as stating that the PKK would occasionally come to Ormaniçi, where they would assemble the

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<sup>412</sup> “*Artesa Rizgaria Gele Kurdistan*”; People’s Liberation Army of Kurdistan.

villagers in the mosque for propaganda purposes. During such meetings, Ormaniçi villagers would keep watch in turns on top of the houses. He had also kept watch a few times. He did not know who had weapons. He himself had no weapon. He had been at home when the soldiers had arrived in the village. He did not know who had fired or where from.

*2. Statement to the Eruh public prosecutor dated 16 March 1993*

140. In a fingerprinted statement given to the Eruh public prosecutor Ercan Turan, [Mehmet] Seyit Erden denied the accusations against him. He explained that, although he was from the village of Boyuncuk, he tended sheep belonging to Ormaniçi villagers. Owing to a physical disability, he was not even fit for military service. As he and the livestock stayed in the caves near Ormaniçi, he did not know what happened in the village, whether the villagers had any relations with the PKK or whether they had kept watch. He had been in the caves on the day of the incident. He had heard gunshots and soldiers had taken him away. He had not aided or abetted the PKK.

**Ali Erden**

*1. Statement to Güçlükonak gendarmes dated 27 February 1993*

141. In a handwritten and fingerprinted statement taken in Güçlükonak by the gendarme NCO Turan Kolan, Ali Erden is recorded as stating that he had come to Ormaniçi to collect his disabled brother, who tended livestock in Ormaniçi. He further stated that PKK terrorists would sometimes come to Boyuncuk, but that he had no connections with them. He had been at home on the morning when these incidents had taken place.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

142. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Ali Erden stated that he was from Boyuncuk and that he was not guilty. He declared that he had heard that PKK militants had come to Ormaniçi, but he himself had not seen them. He had not helped them either. His brother had been a shepherd in Ormaniçi. As his brother was crippled, he had come to Ormaniçi to fetch him. He had stayed in Ormaniçi that night. In the morning, the soldiers had arrived in Ormaniçi and he had woken up to the sound of gunshots. He had not fired at anyone. He accepted the statement he had made at the gendarmerie.

**Mehmet Erdem***1. Statement to Şırnak gendarmes dated 5 March 1993*

143. In a fingerprinted as well as signed statement taken in Şırnak by two unidentified gendarmes, Mehmet Erdem is recorded as stating that he was a member of the armed militia in Ormaniçi, although he was from the village of Boyuncuk. On the basis of standing instructions, he would take his weapon and go to Ormaniçi in case of an incident there. Mehmet Erdem identified by name the members of the Ormaniçi men's village committee and the PKK militia members in Ormaniçi. In the morning of 20 February 1993 he had heard gunshots coming from Ormaniçi and, on the basis of his standing instructions, had taken his weapon and had gone to Ormaniçi. He and others had taken up positions in the village mosque. He had started firing at the security forces from the iron bars of the toilet. When the militia had retreated, he had retreated as well.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

144. In a signed statement given to the Eruh public prosecutor Ramazan Bayrak, Mehmet Erdem denied the charges against him. He declared that he was from the village of Boyuncuk near Ormaniçi. He had been in Ormaniçi on the day of the incident. He explained that he had come to Ormaniçi to trade livestock. As it had been very late, his brother and brother-in-law had refused to let him go and he had spent the night in Ormaniçi planning to leave in the morning. He did not know the names of the members of the Ormaniçi village committee or militia. He did not have a weapon and had certainly not fired at the soldiers.

*3. Statement to the Eruh Magistrates' Court of 9 March 1993*

145. According to the record of questioning before the Eruh Magistrates' Court, Mehmet Erdem – when brought before Judge Filiz Yalçın on 9 March 1993 – made a statement that was similar to the one that he had made earlier that day before the Eruh public prosecutor. He added to this statement that, on the day before the incident, he had bought livestock from Cemal Sezgin and Mahmut Güler. Both Cemal Sezgin and Mahmut Güler were thereupon brought into the courtroom and were questioned on this point. They both confirmed Mehmet Erdem's account.

When his statement to the Eruh public prosecutor of 9 March 1993 was read out to Mehmet Erdem, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he did not accept that statement. His signature had been taken whilst his eyes had been bound and he had not been allowed to read it.

**Resul Çakır***1. Statement to Şırnak gendarmes dated 6 March 1993*

146. In a fingerprinted and signed statement taken in Şırnak by two unidentified gendarmes, Resul Çakır is recorded as stating that he had been involved with the PKK for two to three years. He had been introduced to the PKK by Mehmet Nuri Özkan from Ormaniçi. He explained that the PKK militants could not go to Güçlükönak as there were soldiers there. Being poor, he had helped the PKK and, at the same time, had been making a living by selling weapons to Mehmet Nuri Özkan and other members of the Ormaniçi militia. He had tried several times to set up a PKK committee in Güçlükönak, but without success as the Güçlükönak residents had been frightened. He had met a PKK group led by a person with the codename “Bahos”, who had given him a Kalashnikov and for whom he had acted as an armed guide. He had received political and military training from them.

*2. Statement to the Eruh public prosecutor dated 9 March 1993*

147. In a fingerprinted statement given to the Eruh public prosecutor Ramazan Bayrak, Resul Çakır denied the accusation against him. He stated that he was from Güçlükönak and that he was sick; he suffered from asthma. He certainly did not have the strength to help the PKK. He had met Mehmet Nuri Özkan from Ormaniçi, who apparently had told the soldiers that he was a PKK member as the soldiers had come to his house and had taken him away. He did not have a weapon. He had been in his house in Güçlükönak on the day of the incident. He did not accept the statement he had made at the gendarmerie.

*3. Statement to Eruh Magistrates' Court of 9 March 1993*

148. According to the record of questioning before the Eruh Magistrates' Court, Resul Çakır – when brought before Judge Filiz Yalçın on 9 March 1993 – made a statement that was nearly identical to the one that he had made earlier that day before the Eruh public prosecutor. When this statement was read out to him, he confirmed its truthfulness and stated that he accepted it. When his statement to the gendarmes dated 5 March 1993 was read out to him, he declared that he had not given such a statement; as he was illiterate, his signature had been taken without having allowed him to read it.

*c. Official domestic reports and documents related to events on 20 February 1993*

**Preliminary Report on a Terrorist Incident dated 20 February 1993**

149. A “Preliminary Report on a Terrorist Incident” numbered HRK: 7130-117-93/816, signed by Celal Çürek, was sent by the Güçlükönak District Gendarmerie Command to the 23<sup>rd</sup> Gendarmerie Border Command at Şırnak, the Şırnak Provincial Gendarmerie Command and the office of the public prosecutor in Erüh. In the report, it is recorded that on 20 February 1993 at 5.30 a.m., when five gendarme commando teams from the Güçlükönak District Gendarmerie Command and two [regular] gendarme teams entered Ormaniçi in order to carry out a systematic search and a search for weapons, members of the PKK terrorist organisation opened fire which resulted in a clash. As the gendarme teams had surrounded the village from all directions, the terrorists were unable to escape from the village. Private Servet Uslu was killed during the initial firing by the terrorists.

150. The clash lasted until 2 p.m. At that point, three gendarme commando teams from the Fındık 6<sup>th</sup> Gendarme Commando Battalion Command, two gendarmes commando teams from the Fındık/Akdizgin Gendarmerie Commando Division Command and two [regular] gendarme teams from the Güçlükönak District Gendarmerie Command arrived as reinforcements and joined in the search activities. The systematic search lasted until 5.30 p.m. All forces then returned to Güçlükönak. Ten apprehended terrorists were taken by helicopter to the Şırnak Gendarmerie Command for interrogation and 33 other persons apprehended for aiding and abetting the terrorists were taken into detention in Güçlükönak.

151. The report further states that three Kalashnikov automatic rifles (serial nos. 1973 NR 4504, 1971 GT 7477 and 1989-7037134), 14 Kalashnikov cartridge clips, 358 rounds of Kalashnikov bullets, 35 rounds of empty Kalashnikov empty cartridges, four hand grenades, 15 leather Kalashnikov cartridge clip holders and two belts for cartridge clip holders were found.

**Sketch maps of Ormaniçi**

152. On an undated “Incident Location Sketch” map of Ormaniçi, signed by Celal Çürek, are indicated the houses of the villagers, the mosque, the cemetery, stables, the places where Zeki Çetin, Ali Erbek and Şehabettin Erbek were apprehended and the place where Private Servet Uslu was killed. A further copy of this map has been submitted which does not bear Celal Çürek's signature. This copy appears to have been copied by hand on the basis of the original map.

153. On another undated, untitled and more detailed sketch map of Ormaniçi, signed by Celal Çürek, several relevant locations are indicated, including where weapons were found. A further copy of this map has been submitted which does not bear Celal Çürek's signature. This copy appears to have been copied by hand on the basis of the original map. The indication of distance on this copy does not appear on the sketch map signed by Celal Çürek.

154. On another undated and untitled sketch map of Ormaniçi, signed by Turan Kolan, several relevant locations are indicated, including the places where weapons and equipment reportedly belonging to İbrahim Özkan, Resul Aslan and Mehmet Nuri Özkan were found. Although the relevant locations on this sketch map are numbered from 1 to at least 25, the explanations of these numbers stop at number 5. A further copy of this map has been submitted which does not bear Turan Kolan's signature. This copy appears to have been copied by hand on the basis of the original map.

**Operation Result Report dated 20 February 1993**

155. The "Operation Result Report", in an abbreviated number format with the reference number HRK: 7130-118-93/817, signed by Celal Çürek, was sent by the Güçlükönak District Gendarmerie Command to the 23<sup>rd</sup> Gendarmerie Border Command at Şırnak, the Şırnak Provincial Gendarmerie Command and the 6<sup>th</sup> Gendarme Commando Battalion Command at Fındık. In this report, reference is made to a message dated 19 February 1993 and numbered HRK: 7130-108-93/760, sent by the Güçlükönak District Gendarmerie Command.

156. It indicates that five gendarme commando teams and one [regular] gendarme team from the Güçlükönak Gendarmerie Command were assigned to conduct both a weapon and a field search in the section of the Ormaniçi stream between the village of Ormaniçi and the Dicle (Tigris) river. Once this duty had been carried out, members of the PKK terrorist organisation opened fire, on 20 February 1993 at 5.30 a.m., resulting in a clash with the security forces. The gendarme Private Servet Uslu of the 1<sup>st</sup> commando team was killed by the initial fire from the terrorists.

157. The clash lasted until 2 p.m. After the arrival of reinforcements – three gendarme commando teams from the Fındık 6<sup>th</sup> Gendarmerie Commando Battalion Command, two gendarme commando teams from the Akdizgin Gendarmerie Commando Division and two [regular] gendarme teams from the Güçlükönak District Gendarmerie Command – the security forces entered the houses in Ormaniçi from where shots had been fired. A search and identity checks were carried out, which resulted in the apprehension of ten terrorists who were alive and injured, namely Ali Erbek, Şemsettin Erbek, Şahabettin Erbek, Mehmet Güler, Zeki Çetin, İbrahim Özkan (son of Ahmet, born in 1955), Hamit Demir, Mehmet Erden,

Mehmet Nuri Özkan and Halime Ekin. They were taken into detention and brought to the Şırnak Provincial Gendarmerie Command for interrogation.

158. Another 33 individuals from Ormaniçi were apprehended for aiding and abetting the ten terrorists, namely Ahmet Arslan, İbrahim Ekinci, Mehmet Özkan (son of Ali), Mehmet Tahir Çetin, Şerif Ekin, Mehmet Kurt, Osman Ekinci, Abdullah Kurt, Resul Aslan<sup>413</sup>, Mehmet Özkan (son of Ahmet), Şükrü Yıldırım, Nevaf Özkan, Osman Ekin, Nedim Özkan, Abdullah Sezgin, Mehmet Aslan<sup>414</sup>, Mehmet Şerif Demir, Salih Demir, Abdülselem Demir, İbrahim Ekin, Mehmet Kaya, İbrahim Kaya, Mehmet Sezgin, Hacı Ekin, Abdullah Ekin, Ali Erden, Fahrettin Özkan, Abdullah Elçiçek, Mehmet Yıldırım, Hacı Çetin, İbrahim Özkan (son of Ahmet, born in 1955), Hüseyin Yıldırım and Seyit Erden. These persons were taken into detention in Güçlükonak.

159. The report further records that the searches of the houses and the persons taken into detention resulted in the finding of three Kalashnikov automatic rifles (serial nos. 1973NR4504, 1971GT7477 and 1989-7037134), 14 Kalashnikov cartridge clips, 358 rounds of Kalashnikov bullets, 35 rounds of empty Kalashnikov empty cartridges, four hand grenades, 15 leather Kalashnikov cartridge clip holders and two belts for cartridge clip holders. The exact place where these weapons and other items were found is not recorded.

160. It is also recorded that, as a result of fire being returned at the houses from which shots had been fired, five houses were partially burned and ten mules and one calf were killed.

161. The ammunition used by the security forces, as recorded in the report, consisted of 3,000 rounds of 7.62 mm bullets fired from an automatic weapon (*mayonlu fişek*), 2,100 rounds of 7.62 mm NATO standard bullets (*normal fişek*), 1,600 rounds of 5.56 mm HK-23 bullets (*fişek*), 6 rounds of 60 mm mortar destruction bombs, 9 rounds of RPG-7<sup>415</sup> ammunition, 25 rounds of 40 mm grenades, 12 rounds of *Macar* rifle grenades, 8 rounds of DM-22 rifle grenades and 10 hand grenades. In addition 250 litres of unspecified fuel had been used. It is not specified whether the bullets used included tracer bullets (*izli fişek*).

162. The report finally states that it appeared that, owing to the weather and terrain conditions, the terrorists had used nearby villages for food and shelter.

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<sup>413</sup> In some documents, such as this one, the surname of Resul Aslan is recorded as "Arslan".

<sup>414</sup> In some documents, such as this one, the surname of Mehmet Aslan is recorded as "Arslan".

<sup>415</sup> Rocket Propelled Grenades.

**Observation and Establishment Report in the Location dated 20 February 1993**

163. The extensive “Observation and Establishment Report in the Location” is signed by, among others, the Güçlükonak District Gendarmerie Deputy Commander Celal Çürek, and the 1<sup>st</sup> Gendarmerie Commando Team Commander Hasan Yeşilyurt. The report is also signed by the *muhtar* of Ormaniçi, Mehmet Aslan, and the villagers Resul Aslan and Abdullah Sezgin. Underneath the names of the latter three persons, the mention “suspect” is recorded.

164. The report states that, in accordance with the Güçlükonak Gendarmerie Command order dated 19 February 1993 and numbered HRK:7130-108-93/760, an operation began on 20 February 1993 at 2.30 a.m. in order to carry out a search in the village of Ormaniçi and around the Ormaniçi stream. One [regular] gendarme team and five commando teams participated in this operation. At 5.20 a.m. and as planned, the 2<sup>nd</sup> Gendarmerie Commando Team was positioned south of the village of Ormaniçi, the 5<sup>th</sup> Gendarmerie Commando Team north of the village, the [regular] gendarme team south-west of the village and the 1<sup>st</sup>, 3<sup>rd</sup> and the 4<sup>th</sup> Gendarmerie Commando Teams in the Ormaniçi stream. The gendarmes started the planned search activities at 5.30 a.m.

165. As it approached the village, the 2<sup>nd</sup> Commando Team noticed two persons running towards the streambed. As, after an oral warning to stop, the two persons continued to run, two warning shots were fired. Thereupon, these two persons ran towards the village. At that point in time, fire was opened on the security forces from various houses in the village. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Commando Teams, who had gone to search the Ormaniçi stream area, were informed that shots were being fired from the village. The 1<sup>st</sup> and 3<sup>rd</sup> Commando Team then started to approach the village from the north-west whilst the 4<sup>th</sup> Commando Team approached it from the north-east. The village thus became completely surrounded. In the course of the exchange of fire, the village was gradually approached from the west. Once the western section of the village was reached, the security forces started to search the houses there one by one.

166. Accompanied by the *muhtar* Mehmet Aslan, the 1<sup>st</sup> Commando Team Commander Hasan Yeşilyurt and Private Servet Uslu entered the house of Abdullah Ekin in order to search it. Whilst searching a room facing the village (to the east), Servet Uslu, who was near the window, was hit by a shot fired by the terrorists in the village and died at 9.30 a.m. The bullet entered Servet Uslu's left chest and exited from the left side of the back and there were blood stains on the floor. The exchange of fire continued in a concerted manner until 11 a.m. and finally ended at 2 p.m. Servet Uslu's body was transported by helicopter to Şirnak.

167. Ten persons from the village, who were firing at the security forces, were apprehended<sup>416</sup>. The location where two of them, Şehabettin and Ali Erbek, had been apprehended was searched. Two Kalashnikov automatic rifles, 14 Kalashnikov cartridge clips, 347 rounds of Kalashnikov bullets, 4 hand grenades, 15 leather cartridge clip holders, 2 belts, and 26 rounds of empty Kalashnikov cartridges were found by the wall and hidden under the snow. It was understood that this place could also have been the location from which the bullet that lethally injured Private Servet Uslu was fired and that the bullet could therefore have been fired from one of these weapons. During the search of the toilet area in the mosque, where Zeki Çetin had been apprehended, one Kalashnikov automatic rifle, one Kalashnikov cartridge clip, and nine rounds of Kalashnikov empty cartridges were found. It was found that shots had been fired from all three weapons.

168. It was established that, during the exchange of fire, Ali Erbek, Şehabettin Erbek, Mehmet Güler, Zeki Çetin, Cemal Sezgin, Hamit Demir, Mehmet Erdem, Mehmet Nuri Özkan, Mehmet Aslan (*muhtar*) and Halib Ekin had fired from the iron bars of the toilet in the mosque and from their houses.

169. Following the search in the village, 33 named persons<sup>417</sup>, who were aiding and abetting the ten others, were detained in order to be interrogated. At 2 p.m., five reinforcement teams arrived from the Fındık 6<sup>th</sup> Gendarmerie Commando Battalion Command, who assisted in the further activities in the village. The search activities were completed and the operation was finished at 6 p.m.

170. The report further states that, as the use of infantry rifles was not effective since the walls of the houses were made out of stone, RPG-7 missiles, grenades, rifle grenades and mortars were used. As a result, fire broke out in some of the houses. Since this occurred during the clash and consequently no action to extinguish the fire could be taken, the fire spread to the adjacent houses. About six or seven houses caught fire. Owing to strong wind and the fact that the operation ended only at 6 p.m., it was too late to do anything about the burning houses.

#### **Report on the post-mortem examination of Private Servet Uslu**

171. The report states that, after having been informed on 20 February 1993 at about 3 p.m. by the Provincial Central Gendarmerie Command that one private had been killed in a clash with the separatist terrorist organisation and that his body had been taken to the morgue at the Regimental Military Hospital of the 23<sup>rd</sup> Gendarmerie Border Command in Şırnak, the local public prosecutor, a clerk and an expert doctor arrived

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<sup>416</sup> The names recorded are: Ali Erbek, Şemsettin Erbey, Şahabettin Erbek, Mehmet Güler, Zeki Çetin, Cemal Sezgin, Hamit Demir, Mehmet Erden, Mehmet Nuri Özkan and Halime Ekin.

<sup>417</sup> Resul Çakır is not included in the list of names set out in this report.

there in order to carry out a post-mortem examination on the body of Servet Uslu. One bullet entry wound, located 10 cm above the left nipple, and two exit wounds, one of which was not caused by a bullet but by a laceration resulting from the pressure caused by the bullet, were recorded. No other injuries were found. The doctor concluded that Servet Uslu had died of fatal injuries to the lung and major artery. The examination was recorded as having ended between 4.40 and 4.49 p.m.

*d. Documents relating to the detention of the apprehended Ormaniçi villagers*

**Lists of apprehended persons**

172. In an undated and unsigned list of the Şırnak Provincial Government State Emergency Bureau it is recorded that the members of the organisation apprehended in the incident were (1) Ali Erbek (codename Çekdar), (2) Şehabettin Erbek (codename Sorej) and (3) Halime Ekin.

173. In another undated and unsigned list of the Şırnak Provincial Government State Emergency Bureau it is recorded that the armed militia apprehended in the incident were (1) Şemsettin Erbek, (2) Mahmut Güler, (3) Zeki Çetin, (4) Cemal Sezgin, (5) M. Nuri Özkan, (6) Hamit Demir, (7) Mehmet Erdem, (8) Hacı Ekin, (9) Mehmet Özkan (son of Ali), (10) Mehmet Aslan, (11) Osman Ekinci, (12) İbrahim Kaya, (13) Abdülselam Demir, (14) Şerif Ekin, (15) Mehmet Kurt, (16) Mehmet Sezgin, (17) Ali Erdem, (18) Resul Çakır, (19) İbrahim Ekinci, (20) Nedim Özkay, (21) Abdullah Ekinci, (22) Salih Demir, (23) Mehmet Özkan (son of Ahmet), (24) Abdullah Kurt, (25) M. Şerif Demir, (26) Şükrü Yıldırım, (27) Mehmet Arslan, (28) M. Sait Erdil, (29) Nevaf Özkan, (30) Osman Ekin, (31) M. Tahir Çetin, (32) Mehmet Kaya, (33) İbrahim Ekin, (34) Hacı Çetin, (35) Mehmet Yıldırım (son of Ramazan), (36) Resul Aslan, (37) İbrahim Özkan, [No. 38 is skipped], (39) Hüseyin Yıldırım, (40) Abdullah Sezgin, (41) Fahrettin Özkan, and (42) Abdullah Ercicek.

**Custody records of the Güçlükönak district gendarmerie station**

174. In a letter dated 24 June 1998, sent by the Central Gendarmerie Command in Ankara to the Ministry of Foreign Affairs, it is stated that no custody records existed for the Güçlükönak district gendarmerie station for the period between 20 February 1993 and 9 March 1993. This information was confirmed by the Government's representative during the hearing held from 5 to 10 October 1998 in Ankara.

**Body search reports of the Güçlükönak district gendarmerie station**

175. According to a handwritten body search report dated 20 February 1993, both fingerprinted and signed by Ali Erbek, and signed by the

Güçlükonak district gendarmes Hasan Yılmaz and Levent Emen<sup>418</sup>, Ali Erbek was found to have on him the following items: a photograph showing him in front of a PKK poster and, printed on the back of this photograph, “Ali Erbek”, his codename “Çekdar” and “Ormaniçi”; a photograph of Cemal Demir in front of the same poster and, printed on the back, the words “Cemal Demir” and “Cizre”; and two PKK badges with the inscription “ARGK”.

176. According to a typed body search report dated 23 February 1993, fingerprinted by Resul Aslan and signed by the Güçlükonak district gendarmerie Commander Celal Çürek and the gendarmes Namık Pakdil, Hüseyin Baran and Hasan Yılmaz, Resul Aslan was found to have on him a folded 59-page *Serextin* magazine containing propaganda articles, written in both Turkish and Kurdish, intending to provoke rebellion. As the words “Bana” (Ormaniçi) and “Haruna” were written on its back page, it was believed that this magazine was sent by the Haruna group to the Ormaniçi village committee.

177. According to a typed body search report dated 23 February 1993, fingerprinted by İbrahim Özkan and signed by the Güçlükonak district gendarmerie Commander Celal Çürek and the gendarmes Namık Pakdil, Hüseyin Baran and Hasan Yılmaz, İbrahim Özkan was found to have on him a cassette tape. It was found that the tape contained a narration, in Turkish, of the history of so-called Kurdistan and the history of the PKK organisation. The tape was further found to contain provocative songs inciting the people in the region to rebel.

#### **Custody records of the Şırnak provincial gendarmerie command**

178. A copy of entries nos. 318 - 365 in the Security Room Custody Ledger of the Şırnak provincial gendarmerie station was provided. They cover the period between 20 February 1993 and 5 March 1993. The reasons stated for detention are “aiding and abetting [the PKK]” (entries nos. 318 and 319), “laying landmine” (entry no. 320), “member PKK” (entries nos. 321, 323 and 330), and “armed militia” (entries nos. 322, 324-329 and 331-365). The document also contains information as to the date of being taken into detention, the date of departure and whether the person concerned was released, whether further detention (“arrest”<sup>419</sup>) was ordered, or whether the person was transferred to hospital.

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<sup>418</sup> This report does not contain the names of these two gendarmes. Their identities have been established on the basis of other documents submitted, which contained both their names and signatures.

<sup>419</sup> According to the Turkish law, only a judge can order the “arrest” of an accused person (Article 106 § 1 of the Code of Criminal Procedure, as amended by the Law no. 3842 of 18 November 1992). The term “apprehension” is generally used to designate the action of the security forces when arresting the person in the common sense of the word.

## 179. These custody records concern the following persons:

“Entry: Name:	Date of detention:	Departure date:	Result:
318 Hacı Caner	1 March 1993	31 March 1993	released
319 Ahmet [illegible]	1 March 1993	31 March 1993	released
320 Sehmus [illegible]	4 March 1993	---	arrested
321 Ali Erbek	20 February 1993	9 March 1993	arrested
322 Şemsettin Erbek	20 February 1993	9 March 1993	arrested
323 Şehabettin Erbek	20 February 1993	9 March 1993	released
324 Mahmut Güler	20 February 1993	9 March 1993	released
325 Zeki Çetin	20 February 1993	9 March 1993	arrested
326 Cemal Sezgin	20 February 1993	9 March 1993	arrested
327 M. Nuri Özkan	20 February 1993	9 March 1993	arrested
328 Hamit Demir	20 February 1993	9 March 1993	released
329 Mehmet Erdem	20 February 1993	9 March 1993	released
330 Halime Ekin	20 February 1993	9 March 1993	released
331 Hacı Ekin	20 February 1993	9 March 1993	arrested
332 Mehmet Özkan (son of Ali)	20 February 1993	9 March 1993	released
333 Mehmet Aslan	20 February 1993	9 March 1993	arrested
334 Osman Ekinci	20 February 1993	9 March 1993	arrested
335 İbrahim Kaya	20 February 1993	9 March 1993	released
336 Abdulselam Demir	5 March 1993	6 March 1993	Mardin Hospital
337 Şerif Ekin	5 March 1993	9 March 1993	released
338 Mehmet Kurt	5 March 1993	16 March 1993	released
339 Mehmet Sezgin	5 March 1993	9 March 1993	released
340 Ali Erden	5 March 1993	9 March 1993	released

341	Resul Çakır	5 March 1993	9 March 1993	released
342	İbrahim Ekinci	5 March 1993	9 March 1993	Mardin Hospital
343	Nedim Özkan	5 March 1993	16 March 1993	released
344	Abdullah Ekin	5 March 1993	9 March 1993	released
345	Salih Demir	5 March 1993	16 March 1993	released
346	Mehmet Özkan (son of Ahmet)	5 March 1993	16 March 1993	released
347	Abdullah Kurt	5 March 1993	9 March 1993	released
348	M. Şerif Demir	5 March 1993	16 March 1993	released
349	Şükrü Yıldırım	5 March 1993	9 March 1993	released
350	Ahmet Arslan	5 March 1993	16 March 1993	released
351	M. Seyit Erden <sup>420</sup>	5 March 1993	16 March 1993	released
352	Nevaf Özkan	5 March 1993	9 March 1993	Mardin Hospital
353	Osman Ekin	5 March 1993	16 March 1993	released
354	M. Tahir Çetin	5 March 1993	9 March 1993	Mardin Hospital
355	Mehmet Kaya	5 March 1993	16 March 1993	released
356	İbrahim Ekin	5 March 1993	9 March 1993	released
357	Hacı Çetin	5 March 1993	9 March 1993	released
358	Mehmet Yıldırım	5 March 1993	9 March 1993	released
359	Resul Aslan	5 March 1993	9 March 1993	Mardin Hospital
360	İbrahim Özkan	5 March 1993	9 March 1993	Mardin Hospital
361	Hüseyin Yıldırım	5 March 1993	9 March 1993	released
362	Abdullah Sezgin	5 March 1993	9 March 1993	released
363	Fahrettin Özkan	5 March 1993	9 March 1993	Mardin Hospital
364	Abdullah Ercicek	5 March 1993	16 March 1993	released

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<sup>420</sup> The name “M.Sait Erdil” as recorded in this document is likely to be a clerical error.

365 Hacı Saygi 5 March 1993 16 March 1993 released”

**Body search reports of the Şırnak Provincial Gendarmerie**

180. According to 17 fingerprinted individual “Body Search Reports”, some undated and others dated 5 March 1993 and signed by two provincial gendarmerie interrogation officials whose identities are not stated, the following persons were detained for a PKK related offence and brought to the [Şırnak] Gendarmerie Command Interrogation Section, where they were searched and their personal belongings placed in deposit: Salih Demir, Osman Ekin, M. Sait Erdem, Mehmet Özkan (son of Ahmet), Şerif Demir, Nedim Özkan, İbrahim Ekinci, Fahrettin Özkan, M. Tahir Çetin, Resul Aslan, Nevaf Özkan, İbrahim Özkan, Ahmet Aslan, Mehmet Kaya, Mehmet Kurt, Mehmet Özkan (son of Ali), Abdullah Elçiçek. On these same forms, without any indication as to the date, the same persons confirmed by fingerprint that their belongings placed in deposit had been returned to them.

**Documents concerning the transfer of detained villagers**

181. The stated subject matter of a letter dated 1 March 1993 from the Güçlükonak District Gendarmerie Deputy Commander Celal Çürek to the office of the Eruh public prosecutor, is the dispatch of the defendants involved in the armed clash incident in Ormaniçi on 20 February 1993. According to this letter, the apprehended defendants were being transferred to Eruh for further proceedings.

182. In a letter dated March 1993<sup>421</sup>, the Şırnak Provincial Gendarmerie Commander Baki Onurlubaş informed the Provincial Central Gendarmerie Command that all persons who had been apprehended for having aided PKK members in the clash in Ormaniçi on 20 February 1993 had been transferred to the Şırnak Provincial Gendarmerie Command together with the investigation documents in order to be sent to the Eruh District Gendarmerie Command. The letter further mentioned that one of them, Abdülislam Demir, had been sent to the Mardin State Hospital and that, after his medical examination, he would be sent by the Mardin Provincial Gendarmerie Command to the Eruh District Gendarmerie Command. Bakir Onurlubaş lastly requested the Provincial Gendarmerie Command to refer the persons concerned to the Eruh District Gendarmerie Command together with their documents and to inform him of the outcome of the proceedings. A number of documents are appended to his letter<sup>422</sup>.

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<sup>421</sup> This letter does not contain an exact date.

<sup>422</sup> One unspecified doctor’s admission report, one unspecified doctor’s discharge report, 27 statements, two Incident Reports, one Destruction Report, one Location Indication and Seizure Report, one Location Indication and Destruction Report, one Location Indication

183. By letter of 11 March 1993, the Şırnak Provincial Gendarmerie Commander Baki Onurlubaş informed the Mardin Provincial Gendarmerie Command and the Mardin State Hospital that, owing to the lack of orthopaedic medical care in Şırnak, the detainees Resul Aslan, İbrahim Ekinci, M. Tahir Çetin, Nevaf Özkan, Fahrettin Özkan and İbrahim Özkan were being transferred to Mardin for a medical examination and treatment there. The letter also stated that eventually they were to be sent to the office of the public prosecutor in Eruh.

184. By letter of 11 March 1993, in response to a request made on the same day by the Şırnak Provincial Gendarmerie Command, Dr Feza Köylüoğlu and Dr Mahmut Duyan of the Mardin State Hospital informed the Şırnak Provincial Gendarmerie that Resul Aslan, Nevaf Özkan and Fahrettin Özkan had been admitted to the orthopaedic ward in the Mardin State Hospital and that, for lack of beds, İbrahim Ekinci, M. Tahir Çetin and İbrahim Özkan had been sent to the orthopaedic ward of the Diyarbakır State Hospital.

185. According to a "Transfer Record" dated 11 March 1993 and signed by the Güçlükönak district gendarmerie station Deputy Commander Hasan Yılmaz, the gendarme NCO Koray Erkaya and the Mardin provincial central gendarmerie station Deputy Commander A...[illegible] Çiçek, the latter had received the detained suspects İbrahim Ekinci, M. Tahir Çetin and İbrahim Özkan. It was noted that the detainees had no signs of blows or acts of physical violence on their bodies. Information was further provided that they did not have any personal belongings.

186. By letter of 12 March 1993, the Şırnak provincial gendarmerie Commander Baki Onurlubaş informed the District Gendarmerie Command in Eruh that the interrogations in Şırnak of the persons who had been apprehended for being local collaborators of the PKK in the armed conflict that had taken place in Ormaniçi on 20 February 1993 had been completed, and that, together with their documents, they were now being sent [to Eruh] in order to be brought before the Eruh public prosecutor. Commander Onurlubaş requested to be informed of the outcome of this.

The letter further states that six injured detainees Resul Aslan, İbrahim Ekinci, M. Tahir Çetin, Nevaf Özkan, Fahrettin Özkan and İbrahim Özkan had been sent to the Mardin State Hospital and that they would eventually be brought [to Eruh] by the Mardin Provincial Gendarmerie Command.

A number of documents are appended to his letter<sup>423</sup>. From the appended body search reports it appears that the detainees concerned were Salih

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Report, one Incident Establishment Report in the Location, 27 body search reports, 27 certified copies of identity cards, and a list with the names of 27 persons.

<sup>423</sup> One unspecified doctor's admission report, one unspecified doctor's discharge report, 17 statements, a letter from the Güçlükönak District Gendarme Command to the Eruh public prosecutor, one Observation and Establishment Report in the Location, one Location Indication Report, three sketches, one Report, one Incident Report, a letter from the Şırnak

Demir, Osman Ekin, M. Sait Erdem, Mehmet Özkan (son of Ahmet), Şerif Demir, Nedim Özkan, İbrahim Ekinci, Fahrettin Özkan, M. Tahir Çetin, Resul Aslan, Nevaf Özkan, İbrahim Özkan, Ahmet Arslan, Mehmet Kaya, Mehmet Kurt, Mehmet Özkan (son of Ali) and Abdullah Elçiçek.

187. On 30 March 1993 Ahmet Özkan addressed a petition to the office of the public prosecutor in Diyarbakır, in which he stated that his paternal cousin İbrahim Özkan had been taken into detention on 20 February 1993 and that he had learned that, on the grounds of illness, İbrahim Özkan had been taken to the Diyarbakır State Hospital. Submitting that his family had not received any formal notification or news from İbrahim after he had been apprehended, Ahmet Özkan requested permission to visit him in hospital. On the same date, Abdurrahman Çetin submitted an identical request to the office of the Diyarbakır public prosecutor in respect of his son M.Tahir Çetin. According to a handwritten reply dated 30 March 1993 both requests were granted by the Diyarbakır public prosecutor, by informing Sergeant Major Necati that a visit at the State Hospital Prisoners' ward was approved.

188. By letter of 29 April 1993, the Deputy Commander of the Mardin provincial central gendarmerie division, Şeref Çakmak, informed the office of the public prosecutor at the Diyarbakır State Security Court that the [four] detained Ormaniçi villagers who had been hospitalised in Mardin had been discharged from hospital on 29 April 1993. With reference to the Eruh public prosecutor's decision of lack of jurisdiction of 31 March 1993<sup>424</sup>, he noted that, to date, no orders for their further detention had been received by him and that, therefore, these detainees had been transferred to the office of the public prosecutor at the Diyarbakır State Security Court in order to find out what their situation was.

189. On 30 April 1993, the public prosecutor at the Diyarbakır State Security Court, Metin Yücel informed the Mardin provincial central gendarmerie division command that proceedings had been instituted against Resul Aslan, that it had been decided not to take any proceedings against Nevaf Özkan and Fahrettin Özkan and that no file in respect of Abdülislam Demir had been referred to his office.

190. In a letter dated 5 May 1993 addressed to the office of the Cizre District Governor, Abdullah Özkan stated that his paternal cousin Fahrettin Özkan and his close relatives Resul Aslan and Mehmet Tahir Çetin had been released from detention on 1 May 1993 in the Mardin State Hospital. Their identity cards had, however, not been returned to them. As the feet of Fahrettin Özkan and the others had been amputated, they could not themselves file a request for the return of their identity cards. As they urgently needed to be transferred to hospitals in Ankara or İzmir, Abdullah

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Military Hospital, 17 body search reports, 17 certified copies of identity cards, and 28 suspect-decision follow-up forms.

<sup>424</sup> See Appendix II: §§ 227-231.

Özkan requested the District Governor on their behalf to be provided as soon as possible with provisional documents for them.

*e. The preliminary domestic investigation*

**Location Indication and Destruction Report dated 21 February 1993**

191. According to a “Location Indication and Destruction Report”, fingerprinted and signed by Ali Erbek and by three unidentified Şırnak Provincial Gendarmerie officials, Ali Erbek stated during his interrogation that he had been active for a PKK mountain cadre for nine months under the codename “Çekdar”, that he would continually come to Ormaniçi to secure provisions from PKK sympathisers in the village and that these provisions were still in the house of Ali Çetin. He further indicated the location of two shelters.

192. On the basis of Ali Erbek's statement, security forces were sent to the house of Ali Çetin in Ormaniçi for a search, where they found a stock of provisions<sup>425</sup> in a state ready for transport. The security forces burned these provisions. On the information given by Ali Erbek, the security forces also found two shelters, each capable of accommodating eight persons, along the stream about three kilometres to the south-east of the village of Ormaniçi. The security forces found nobody there and destroyed the shelters.

**Location Indication and Seizure Report dated 21 February 1993**

193. According to a “Location Indication and Seizure Report”, fingerprinted and signed by Mehmet Nuri Özkan and signed by three unidentified Şırnak gendarmerie officials, Mehmet Nuri Özkan stated during his interrogation that he was able to indicate the hiding place of weapons belonging to himself and another villager, Nezir Demir, namely in an artificially constructed shelter in the rocks about one kilometre south-west of the village.

194. Security forces were sent to Ormaniçi, where they found two weapons, i.e. one Simonov 7.62 mm calibre rifle (serial no. 14102540) and one (Bruno-Mauser) 7.7 mm calibre rifle with an Arabic name (serial no. 400X) at the hiding place indicated<sup>426</sup>. The weapons were seized and the hiding place destroyed.

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<sup>425</sup> 50 tins of margarine of 17 kg each, 250 packs of smuggled [foreign] tea, 25 packs of Rize tea, 150 large size batteries, 500 pairs of rubber shoes, 5 cases of Sana margarine, 350 cartons of cigarettes, 25 boxes of sugar, 5 cases of chewing gum, 3 cases of Oralet instant powder fruit juice, 10 coils of rope, 2 sacks of 50 kg lentils, 4 sacks of 50 kg cracked wheat, 2 sacks of 50 kg of rice and 3 sacks of salt.

<sup>426</sup> The sentence used in this Report “*Sanık Mehmet Nuri Özkan silahları saklamış olduğu yerden çıkartarak sığınak imha edildi.*” is ambiguous as to whether or not Mehmet Nuri Özkan was present in person when these weapons and ammunition were found in Ormaniçi. It appears to indicate that he was not. Had he been there, it should have read

**Terrorist Incident Preliminary Report**

195. In a confidential “Terrorist Incident Preliminary Report”, in an abridged numbered format, numbered HRK : 7130-15-93/ASYS.KS.(211) and sent on 22 February 1993 by the Şırnak provincial gendarmerie Commander Baki Onurlubaş to the 23<sup>rd</sup> Gendarmerie Border Gendarmerie Command at Şırnak, the Güçlükönak District Gendarmerie Command and the Intelligence Branch Directorate in Şırnak, it is recorded that, on the indications given by Ali Erbek and Mehmet Nuri Özkan, weapons and provision were found and seized in Ormaniçi. In this context, reference was made to the Fındık 6<sup>th</sup> Gendarmerie Commando Battalion Command. It was further stated that the investigation of the incident was opened.

**Operation Result Report dated 25 February 1993**

196. A “Operation Result Report” numbered HRK: 7130-152-93/912, signed by Celal Çürek, was sent by the Güçlükönak District Gendarmerie Command to the 23<sup>rd</sup> Gendarmerie Border Command at Şırnak, the Şırnak Provincial Gendarmerie Command, the 6<sup>th</sup> Gendarmerie Commando Battalion Command at Fındık and the office of the Eruh public prosecutor. In this report, reference is made to a message dated 24 February 1993 and numbered HRK: 7130-141-93/868, sent by the Güçlükönak District Gendarmerie Command.

197. In this report, it is recorded that the detained and interrogated persons Resul Aslan, Abdullah Sezgin, İbrahim Özkan as well as two others, Hamit Demir and Mehmet Nuri Özkan, who had been brought from Şırnak to the Güçlükönak gendarmerie station, were taken to Ormaniçi in order to indicate the locations of hidded weapons. A search of these locations resulted in the finding of 3 Kalashnikov automatic rifles (serial nos. 75-578052, KO.16.3195, and 1980-WT-45639), 19 Kalashnikov rifle cartridge clips, 422 rounds of 7.62 mm Kalashnikov bullets, 11 rounds of 7.62 mm G-3 infantry rifle bullets, 11 Kalashnikov cartridge clip holders, 2 belts with attached holders, 1 water bottle, 2 bread bags and 1 bullet bag.

**Location Indication Report dated 25 February 1993**

198. The “Location Indication Report” is signed by the District Gendarmerie Deputy Commander Celal Çürek, the 4<sup>th</sup> Gendarmerie Commando Team Commander Mehmet Vural, the Central Gendarmerie Station Deputy Commander Turan Kolan and the Station Deputy Commander Hasan Yılmaz. It is also signed by Abdullah Sezgin, Resul Aslan, İbrahim Özkan, Hamit Demir and Mehmet Nuri Özkan under whose names the mention “suspect” appears.

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“Sanık Mehmet Nuri Özkan silahları saklamış olduğu yerden **çıkarttı** [ve] sığınak imha edildi.”

199. According to this report, on 25 February 1993 at 5.30 a.m. forces from the Fındık 6<sup>th</sup> Gendarmerie Commando Battalion and the Akdizgin Gendarmerie Commando Division Command took Hamit Demir, Mehmet Nuri Özkan and İbrahim Özkan together with Resul Aslan and Abdullah Sezgin to Ormaniçi.

200. İbrahim Özkan was asked to indicate the location of the weapon(s) that he had mentioned in his statement. On the basis of his indications, a hiding place in a wall was found which contained 1 Kalashnikov rifle (serial no. KO-163195) in working order, 11 cartridge clips, 262 rounds of 7.62 mm bullets, 5 cartridge clip holders, 1 bullet bag, 1 bread bag, 1 belt and 11 rounds of 6.72 mm G-3 type infantry rifle bullets. All the items belonged to İbrahim Özkan.

201. Abdullah Sezgin was asked to indicate the location of the weapon(s) that he had mentioned in his statement. He stated that it was in the Seri[illegible] Pali region north of the village. At the place indicated by him, the following items, wrapped in fabric and nylon, were found: one Kalashnikov rifle (serial no. 1980-WT-45639) in working order, 7 pertaining cartridge clips, 155 rounds of 7.62 mm bullets, 6 cartridge clip holders, 1 bread bag, 1 belt and 1 water bottle. All items belonged to Abdullah Sezgin.

202. Mehmet Nuri Özkan was asked to indicate the location of the weapon(s) that he had mentioned in his statement. On his indications, a hiding place in the barn attached to his house was found which contained one Kalashnikov rifle (serial no. 75-5780) in working order, 1 cartridge clip and 5 rounds of bullets. All the items belonged to Mehmet Nuri Özkan.

203. Resul Aslan was asked to indicate the location in the Seri Kevzek region of the weapon(s) that he had mentioned in his statement. It appeared that the location indicated by him had contained an unknown item, which had been removed by an unknown person.

204. Hamit Demir was asked to indicate the location in the Seri Kevzek region of the weapon(s) that he had mentioned in his statement. Nothing was found in the search of the location he had indicated.

#### **Destruction Report dated 25 February 1993**

205. In the "Destruction Report", signed by the Güçlükonak District Gendarmerie Command officials Hasan Yılmaz, Levent Emen and Mevlana Cinkara<sup>427</sup>, it is recorded that, on 20 February 1993, Ali Erbek and Şehabettin Erbek were apprehended with their weapons and hand grenades whilst trying to escape after having shot and killed Private Servet Uslu. The report further stated that the four hand grenades of foreign origin had been

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<sup>427</sup> This report does not contain the names of these three gendarmes. Their identities have been established on the basis of other documents submitted which contain both their names and their signatures.

destroyed by bomb disposal experts of the Güçlükonak district gendarmerie command.

**Initial information transmitted by the Güçlükonak Gendarmerie to the Eruh public prosecutor**

206. By letter of 1 March 1993 (ref. 7130-175-93/1007), with reference to four previous messages of 19, 21, 26 and 27 February 1993 respectively, the Deputy Commander of the Güçlükonak district gendarmerie, Celal Çürek, informed the office of the Eruh public prosecutor of the events of 20 February 1993, including the fact that the apprehended terrorists had been taken into detention in Şırnak and that 33 others had also been taken into detention. With reference to the message sent on 27 February 1993, the letter also stated that the investigation had revealed that a further person from Güçlükonak had carried out “organisational activities” and that this person had also been taken into detention in order to be prosecuted with the same group. The letter further contains the particulars of the 44 persons taken into detention, including Resul Çakır from Güçlükonak. A number of documents were appended to this letter<sup>428</sup>.

**Identification and Confrontation Report with Statements dated 5 March 1993**

207. The “Identification and Confrontation Report with Statements” is signed by three Provincial gendarmerie interrogation officials, whose identities are not recorded, under the note “identification witness” as well as by Osman Ayan (codename “Lokman”) under the note “confronted and identifying person”. It is further fingerprinted by Ali Erbek (codename “Çekdar”), Şehabettin Erbek (codename “Sorej”), Şemsettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, M.Nuri Özkan, Hamit Demir, Mehmet Erdem, Halime Ekin, Mehmet Özkan (son of Ali), Hacı Ekin, Mehmet Aslan, Osman Ekinci and İbrahim Kaya under the note “those confronted and identified”. It is stated in the report that Osman Ayan had been an armed PKK member who had surrendered to the authorities. At the material time, he was detained in Diyarbakır as a “confessor”. As he had declared himself to be willing to assist the security forces, he had been brought to the Şırnak Provincial Gendarmerie Command for a confrontation with 15 persons apprehended on charges of being armed PKK militia members.

208. According to this report, Osman Ayan stated – when confronted with Ali Erbek – that he knew this person with the codename “Çekdar-Serdar” with whom he had been active in a PKK group in the Gabar mountain, that had been led by a person with the codename “Celal”. He

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<sup>428</sup> One Incident Establishment and Observation Report, one Location Indication Report, one Confrontation for Identification Report, two Sketches of the Incident Location, one Location Indication Sketch, 44 statements by defendants, two reports, 44 certified copies of Identity Cards, 44 Body Search and Delivery Documents, 44 medical reports, one propaganda cassette tape and one “organisational” document containing PKK material.

stated that Ali Erbek was a very trusted member of the PKK. When Ali Erbek was confronted with Osman Ayan, he stated that he knew Osman Ayan; they had been in the same PKK group.

209. When confronted with Şehabettin Erbek, Osman Ayan identified him by both his name and codename. They had been for a while in the same PKK group. Together with his older brother Ali Erbek (codename “Çekdar-Serdar”), Şehabettin Erbek had participated in an ambush on the Damlarca gendarmerie station. Şehabettin Erbek had later left for another PKK group. When Şehabettin Erbek was confronted with Osman Ayan, he identified Osman Ayan by both his name and codename; they had been in the same PKK group, but Osman Ayan had later escaped from the PKK.

210. When confronted with Şemsettin Erbek, Osman Ayan identified him as the brother of Ali Erbek and a member of the Ormaniçi militia. He had organised PKK activities together with his brothers. When Şemsettin Erbek was confronted with Osman Ayan, he identified Osman Ayan by both his name and codename; he used to come to Ormaniçi when he had been in the PKK and he had been in the same PKK group as his brother Ali Erbek. What Osman Ayan had said about him was true.

211. When confronted with Mahmut Güler, Osman Ayan identified him by name and stated that he was an armed PKK militia member; he had one Bruno weapon. He would act as a courier and, together with other PKK members, was involved in actions. When Mahmut Güler was confronted with Osman Ayan, he identified him by his codename “Lokman”. Whenever “Lokman” had come to Ormaniçi, he had helped him, but “Lokman” had betrayed the PKK. What “Lokman” had said about him was true; the PKK had given him a Bruno weapon but the person with the codename “Celal” had asked for it and he had returned it. He had been promised a Kalashnikov, but it had not yet been delivered.

212. When confronted with Zeki Çetin, Osman Ayan stated that he knew him. As he understood the job of an imam, Zeki Çetin used to disseminate propaganda for the PKK in his Friday sermons. He was an armed PKK militia member. When Zeki Çetin was confronted with Osman Ayan, he identified him as a PKK member who used to visit Ormaniçi. He had heard that Osman Ayan had betrayed the PKK and that he had surrendered. What Osman Ayan had said about him was true; he was a voluntary militia member and, acting as imam, he had disseminated PKK propaganda in the mosque.

213. When confronted with Cemal Sezgin, Osman Ayan identified him by name and stated that Cemal Sezgin was the head of the Ormaniçi PKK village committee, that he was his contact person in Ormaniçi and that he participated in PKK activities. The PKK member with the codename “Bahos” had given Cemal Sezgin a Kalashnikov. When Cemal Sezgin was confronted with Osman Ayan, he identified him by his codename “Lokman”. He had been one of the best PKK militants before he had ran

away from and betrayed the PKK by surrendering. What Osman Ayan had said about him was true; he was the head of the village committee. Everyone in Ormaniçi was Kurdish and voluntarily helped the PKK.

214. When confronted with Mehmet Nuri Özkan, Osman Ayan stated that he knew him; he would help the PKK with provisions and money. The PKK had provided him with a weapon and he would participate in PKK actions. When Mehmet Nuri Özkan was confronted with Osman Ayan, he identified him by his codename "Lokman". He had often come to Ormaniçi when he still was a PKK member and the villagers had helped him as they could. He had later ran away from the PKK and had surrendered to the soldiers. What Osman Ayan had said about him was true; there were weapons that had been provided by the PKK, and he had indicated the location of these weapons.

215. When confronted with Hamit Demir, Osman Ayan identified him by name and stated that Hamit Demir, together with his brother Mehmet Demir, had often brought provisions to the PKK. The PKK had provided him with a Kalashnikov weapon and he would participate in PKK actions. Whenever a PKK member visited Ormaniçi, Hamit Demir would keep watch. He had also acted as a PKK courier/guide. It is not clear from the submitted copy of the report whether or not Hamit Demir was confronted with Osman Ayan.

216. When confronted with Mehmet Erdem, Osman Ayan identified him by name and stated that, whenever he and other PKK members arrived in Ormaniçi, Mehmet Erdem would gather the villagers and that, after propaganda meetings in Ormaniçi, Mehmet Erdem would accompany them to other PKK groups. Mehmet Erdem knew PKK shelters and depots. He was an important armed militia member. There is no record to show that Mehmet Erdem was confronted with Osman Ayan.

217. When confronted with Halime Ekin, Osman Ayan identified her by name and stated that she had joined his PKK ground in the Gabar region and had carried out armed PKK activities for a while. His group leader had later sent her back to the village, where she became the head of the PKK women's committee. She was active in the village. She had one Kalashnikov weapon and her brother Abdullah was a PKK militia member. When Halime Ekin was confronted with Osman Ayan, she identified him by both his name and code "Lokman". Together they had carried out activities in the Gabar region. After her marriage she had returned to the village, where she became the head of the women's committee. She admitted that the PKK had provided her with a weapon. After having used the weapon in the clash, she had thrown it somewhere. No one had noticed that in the confusion. What Osman Ayan had said about her was true.

218. When confronted with Mehmet Özkan (son of Ali), Osman Ayan identified him by name and stated that he was a member of the village committee and armed militia, that he had acted as a courier for PKK

members and that he would also carry provisions to the mountains. There is no record to show that Mehmet Özkan was confronted with Osman Ayan.

219. When confronted with Hacı Ekin, Osman Ayan identified him by name and stated that he was a member of the village committee in Ormaniçi. He used to live in Cizre, but would come to Ormaniçi whenever an incident was planned. He acted as a courier, was a militia member and had one Saddam pistol and one Kalashnikov weapon. There is no record to show that Hacı Ekin was confronted with Osman Ayan.

220. When confronted with Mehmet Aslan, Osman Ayan identified him by name and position as the *muhtar*, and stated that he was on the Ormaniçi village committee. He had a Kalashnikov weapon and, in his capacity as *muhtar*, would provide PKK members with identity documents. He was a fervent PKK supporter and would go to the rural areas to meet PKK members. There is no record to show that Mehmet Aslan was confronted with Osman Ayan.

221. When confronted with Osman Ekinci, Osman Ayan identified him by name and stated that he was an armed militia member. He would disseminate propaganda and would meet PKK members in the rural areas. He had a weapon belonging to the PKK. There is no record to show that Osman Ekinci was confronted with Osman Ayan.

222. When confronted with İbrahim Kaya, Osman Ayan identified him by name and stated that he was an armed militia member from Ormaniçi. He was on the village committee, collected money for the PKK and carried provisions. He also brought youngsters to the mountains in order for them to join the PKK. There is no record to show that İbrahim Kaya was confronted with Osman Ayan.

*f. Judicial decisions*

**Decisions of 9 March 1993 on further detention on remand**

223. According to the record of questioning before the Eruh Magistrates' Court of 9 March 1993, Judge Filiz Yalçın decided on that day – having found strong evidence that Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin had committed offences consisting of acts designed to undermine the Government's influence and to upset national order and peace – to order these persons' further detention (“arrest”) in accordance with Article 104 of the Turkish Code of Criminal Procedure. Judge Yalçın further ordered that their family members be informed of this decision via the office of the public prosecutor.

224. Judge Yalçın found no grounds for ordering the further detention of Şahabettin Erbek, Halime Ekin, İbrahim Kaya, Mahmut Güler, Hamit Demir, Mehmet Erdem, Resul Çakır and Abdullah Ekin.

**Applications for release**

225. By letter of 13 March 1993 an official of the Eruh Prison and Detention Centre transmitted to the office of the Eruh public prosecutor applications for release filed by Hacı Ekin, Şemsettin Erbek, Mehmet Aslan, Zeki Çetin, Ali Erbek, Osman Ekinci, Mehmet Nuri Özkan and Cemal Sezgin. All applications were signed by the petitioners and mentioned that their village had been completely burned down and their livestock destroyed.

226. On 13 March 1993, the Eruh public prosecutor Ercan Turan transmitted these applications to the Eruh Magistrates' Court, recommending that they be refused.

**Decision of lack of jurisdiction of 31 March 1993**

227. The Eruh public prosecutor Ercan Turan issued a decision of lack of jurisdiction in respect of the events of 20 February 1993 in Ormaniçi as the preliminary investigation had indicated that the offences established fell within the scope of Article 9 of the Law no. 6136. Consequently, the case was to be transferred to the office of the public prosecutor at the Diyarbakır State Security Court.

228. It was related in this decision that, on 19 February 1993 at around 7 p.m. under the threat of firearms, a group of PKK militants had taken a person called Mehmet Sevgin from his house in Boyuncuk under the threat of firearms and had murdered him with firearms 150 metres further on. The security forces had started an operation on the same day. As they approached the village of Boyuncuk and the neighbouring village of Ormaniçi, the security forces had been shot at from the village. As a result of the armed clash, Private Servet Uslu had been killed. The search in and around the village had resulted in the finding of weapons, ammunition and PKK documentation. These items were registered in the deposit ledger under no. 1993/5.

229. The offences mentioned in this decision are membership of a terrorist organisation which carried out activities aimed at endangering the territorial unity of the State, aiding and abetting that organisation, entering into a clash with the security forces and homicide. The victims mentioned are the gendarmerie commando Private Servet Uslu and Mehmet Sevin from the village of Boyuncuk.

230. The defendants referred to in the decision of lack of jurisdiction are (1) Ali Erbek (codename "Çekdar"); held in custody in Eruh, (2) Şemsettin Erbek; held in custody in Eruh, (3) Osman Ekinci; held in custody in Eruh, (4) Mehmet Nuri Özkan; held in custody in Eruh, (5) Cemal Sezgin; held in custody in Eruh, (6) Hacı Ekin; held in custody in Eruh, (7) Mehmet Aslan; held in custody in Eruh, (8) Zeki Çetin; held in custody in Eruh, (9) Mehmet Yıldırım, (10) Ali Erden, (11) İbrahim Ekin, (12) Abdullah Ekin, (13) Şükrü Yıldırım, (14) Mehmet Erdem, (15) Resul Çakır, (16) İbrahim Kaya,

(17) Hamit Demir, (18) Abdullah Sezgin, (19) Şerif Ekin, (20) Mahmut Güler, (21) Mehmet Sezgin, (22) Şehabettin Erbek (codename “Sorej”), (23) Abdullah Kurt, (24) Hacı Çetin, (25) Hüseyin Yıldırım, (26) Halime Ekin, (27) Mehmet Özkan (son of Ali), (28) Mehmet Kurt, (29) Nedim Özkan, (30) Salih Demir, (31) Osman Ekin, (32) Mehmet Kaya, (33) Mehmet Şerif Demir, (34) Mehmet Sait Erden, (35) Abdullah Elçiçek, (36) Ahmet Arslan, (37) Mehmet Özkan (son of Ahmet), (38) Resul Aslan; in Diyarbakır State Hospital, (39) Mehmet Tahir Çetin; in Diyarbakır State Hospital (did not come before the Chief public prosecutor), (40) Nevaf Özkan; in Diyarbakır State Hospital (did not come before the Chief public prosecutor), (41) Fahrettin Özkan; in Diyarbakır State Hospital, and (42) İbrahim Özkan; in Diyarbakır State Hospital.

231. Although Abdülselem Demir was apprehended in Ormaniçi on 20 February 1993<sup>429</sup>, his name is not included in this decision.

#### **Decision of non-prosecution of 30 April 1993**

232. The public prosecutor at the Diyarbakır State Security Court Metin Yücel issued a decision of non-prosecution for lack of sufficient evidence in respect of 25 persons, namely, Mehmet Yıldırım, Ali Erdem, İbrahim Ekin, Abdullah Ekin, Şükrü Yıldırım, Resul Çakır, Şerif Ekin, Mehmet Sezgin, Abdullah Kurt, Hacı Çetin, Hüseyin Yıldırım, Mehmet Kurt, Nedim Özkan, Salih Demir, Osman Ekin, Mehmet Kaya, Mehmet Şerif Demir, Mehmet Sait Erden, Abdullah Elçiçek, Ahmet Arslan, Mehmet Özkan (son of Ahmet), Mehmet Tahir Çetin, Nevaf Özkan, Fahrettin Özkan and İbrahim Özkan.

#### **State Security Court Indictment of 30 April 1993**

233. The public prosecutor at the Diyarbakır State Security Court Metin Yücel indicted 17 persons for one or more of the offences stated in this decision, namely armed action on behalf of the illegal PKK, PKK membership and aiding and abetting PKK members, committed prior to and on 20 February 1993. The victims mentioned in the indictment are Private Servet Uslu and Mehmet Sevin from the village of Boyuncuk.

234. The defendants referred to are Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Arslan, Zeki Çetin, Şahabettin Erbek, Mehmet Erdem, İbrahim Kaya, Hamit Demir, Mahmut Güler, Mehmet Özkan (son of Ali), Halime Ekin, Abdullah Sezgin and Resul Aslan. The indictment contains detailed information as to the facts on the basis of which each individual defendant was charged.

235. The indictment further states that all the defendants, except for Mehmet Özkan and Resul Aslan, had been detained in custody between 20 February 1993 and 9 March 1993. Mehmet Özkan and Resul Aslan had

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<sup>429</sup> See Appendix II: § 71, § 173 under no. 13, § 253 and § 179 under entry no. 336.

been detained in custody between 20 February 1993 and 16 March 1993. It also mentions that the further detention of all the defendants had been ordered on 9 March 1993.

236. It is indicated in a footnote to the indictment that the Kalashnikov weapon (serial no. CO 163195), 11 cartridge clips, 263 bullets and 11 G-3 bullets, as registered at the Eruh public prosecutor's depository under no. 5, are to be returned to the Eruh public prosecutor with a decision of lack of jurisdiction.

#### **Proceedings before the Diyarbakır State Security Court**

237. The proceedings before the Diyarbakır State Security Court against the indicted persons formally started on 3 May 1993, when the State Security Court fixed the date for its first hearing and, in view of the nature of the charges, the available evidence and the contents of the case file, ordered the continued detention of Ali Erbek, Şemsettin Erbek, Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin.

238. According to the minutes of the first hearing held on 21 June 1993, the indicted persons who had been released<sup>430</sup> failed to appear. The State Security Court took evidence from the detained defendants Ali Erbek, Şemsettin Erbek (assisted by an interpreter), Osman Ekinci, Mehmet Nuri Özkan, Cemal Sezgin, Hacı Ekin, Mehmet Aslan and Zeki Çetin (assisted by an interpreter). All of them denied the charges against them and stated that they did not accept statements previously taken from them and did not know a person called Osman Ayan. Mehmet Nuri Özkan stated, *inter alia*, that he did not know Resul Çakır, and that he had not indicated the location of any weapon. Ali Erbek denied that any weapons had been found on him and explained that the photograph found on him had belonged to his deceased brother.

239. The State Security Court ordered the taking of evidence from Osman Ayan, the submission of a certified list with the names of the Ormaniçi Council of Elders, and a ballistics examination of the weapons found in order to establish whether the 35 empty cartridges found in Ormaniçi on the day of the incident had been fired from one of these weapons. As to the request by the defence to release all of the detained accused, the State Security Court further decided, in view of the nature of the charges and the available evidence, to prolong the detention of Ali Erbek and Mehmet Nuri Özkan and to order the release of the other detained defendants. On basis of the nature of the charges and the available evidence, the State Security Court prolonged the detention of Ali Erbek and Mehmet Nuri Özkan at its 4<sup>th</sup> hearing of 1 November 1993, its 5<sup>th</sup> hearing of

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<sup>430</sup> Namely: Şahabettin Erbek, Mehmet Erdem, İbrahim Kaya, Hamit Demir, Mahmut Güler, Mehmet Özkan (son of Ali), Halime Ekin, Abdullah Sezgin and Resul Aslan.

13 December 1993, its 6<sup>th</sup> hearing of 31 January 1994, its 7<sup>th</sup> hearing of 21 March 1994, its 8<sup>th</sup> hearing of 25 April 1994, its 9<sup>th</sup> hearing of 13 June 1994, its 10<sup>th</sup> hearing of 1 August 1994 (at which occasion Ali Erbek and Mehmet Nuri Özkan had made a request for their release), its 11<sup>th</sup> hearing of 19 September 1994, its 12<sup>th</sup> hearing of 31 October 1994 and its 13<sup>th</sup> hearing of 19 December 1994.

240. According to the minutes of the 14<sup>th</sup> hearing held on 27 February 1995, the State Security Court noted that a ballistics report had been received, and the report was read out.

241. Report no. 1670, dated 25 November 1994, of the Regional Forensic Police Laboratory states that the laboratory had been provided with 7.62x39 mm comparison cartridges taken from:

- a Kalashnikov weapon with the serial no. “1973ИЕ4504/ИО4745”;
- a Kalashnikov weapon with the serial no. “1971БТ7477/823444”;
- an automatic Tabuk (Kalashnikov) weapon with the serial no. 7037134 1989/62 U 2301”;
- a Kalashnikov weapon with the serial no. “1975 578052”;
- a Kalashnikov weapon with the serial no. “1980WT45639”;
- a Simonov weapon with the serial no. “14102840”;
- a Mauser-type weapon with the serial no. “02379” written in Arabic characters; and
- 35 7.62x39 mm empty cartridges.

242. According to the findings in this report, 34 of the group of 35 empty cartridges submitted for examination were identifiable. These 34 consisted of three groups (19, 9 and 6). After a comparison of these empty cartridges with the comparison cartridges taken from the weapons, it was found that the group of 19 cartridges had been fired by the weapon with the serial no. 1971БТ7477/823444, the group of 9 cartridges had been fired from the weapon with the serial no. 1973ИЕ4504/ИО4745, and the group of 6 cartridges had been fired from the weapon with the serial no. 7037134 1989/62 U 2301. None of the cartridges submitted for examination matched the Simonov and Mauser-type weapons. These findings were repeated in a more concise report, no. 3366, of the same date.

243. For reasons not stated in the minutes of the 14<sup>th</sup> hearing, the State Security Court decided to obtain an additional ballistics report. It further rejected a request of the defence to release Ali Erbek and Mehmet Nuri Özkan and decided, on basis of the nature of the charges and the available evidence, to prolong their detention. On basis or the same grounds, the State Security Court prolonged the detention of Ali Erbek and Mehmet Nuri Özkan at its 15<sup>th</sup> hearing of 10 April 1995, its 16<sup>th</sup> hearing of 29 May 1995, its 17<sup>th</sup> hearing of 17 July 1995, its 18<sup>th</sup> hearing of 2 October 1995, and its 19<sup>th</sup> hearing of 6 November 1995.

244. In view of a change in the composition of the State Security Court, it fully recommenced its examination on 18 December 1995, when the

20<sup>th</sup> hearing was held, by taking notice of the minutes of the previous hearings held. It further decided, on basis of the nature of the charges and the available evidence, to prolong the detention of Ali Erbek and Mehmet Nuri Özkan. On the same grounds, the State Security Court prolonged their detention at its 21<sup>st</sup> hearing of 5 February 1996, its 22<sup>nd</sup> hearing of 11 March 1996, its 23<sup>rd</sup> hearing of 15 April 1996, its 24<sup>th</sup> hearing of 27 May 1996 (rejecting a release request by the defence), its 25<sup>th</sup> hearing of 1 July 1996, its 26<sup>th</sup> hearing of 2 September 1996, its 27<sup>th</sup> hearing of 7 October 1996 and its 28<sup>th</sup> hearing of 18 November 1996.

245. After numerous reminders, the State Security Court decided in the course of its 29<sup>th</sup> hearing held on 16 December 1996 to address a formal warning letter in respect of the additional ballistics report it had requested on 27 February 1995. It further decided, on basis of the nature of the charges and the available evidence, to prolong the detention of Ali Erbek and Mehmet Nuri Özkan.

246. At its 30<sup>th</sup> hearing, held on 17 February 1997, the State Security Court noted that the requested ballistics report had been received. The Supplementary Report (no. 1670, dated 27 November 1996) of the Regional Forensic Police Laboratory states that the laboratory had been provided with 7.62x39 mm comparison cartridges taken from:

- a Kalashnikov weapon with the serial no. “1973ИЕ4504/ИО4745”;
- a Kalashnikov weapon with the serial no. “1971БТ7477/823444”;
- an automatic Tabuk (Kalashnikov) weapon with the serial no. 7037134 1989/62 U 2301”;
- a Kalashnikov weapon with the serial no. “1975 578052”; and
- a Kalashnikov weapon with the serial no. “1980WT45639”.

According to the findings in this supplementary report, none of the comparison cartridges taken from these weapons matched any of the empty cartridges used in “killings by an unknown perpetrator” kept in the archives of the Regional Forensic Police Laboratory.

247. The State Security Court further decided on 17 February 1997, on basis of the available evidence, to prolong the detention of Ali Erbek and Mehmet Nuri Özkan. At its 31<sup>st</sup> hearing held on 24 March 1997 and without indicating any reasons, the State Security Court prolonged the detention of Ali Erbek and Mehmet Nuri Özkan.

248. On 17 April 1998, an additional indictment was issued in respect of Ali Erbek for participation in the raid on the Damlarca gendarmerie station in September 1991 on the basis of the contents of the “Identification and Confrontation Report” of 5 March 1993 and Ali Erbek's confessing statement [of 4 March 1993].

249. At its 32<sup>nd</sup>, 33<sup>rd</sup> and 34<sup>th</sup> hearing of 12 May, 23 June and 1 September 1997 the State Security Court rejected a request by the defence to release Ali Erbek and Mehmet Nuri Özkan and decided, without giving any reasons, to prolong their detention. At its 35<sup>th</sup>, 36<sup>th</sup> and 37<sup>th</sup> hearing of

13 October, 24 November and 29 December 1997, the State Security Court rejected a request by the defence for the release of Ali Erbek and Mehmet Nuri Özkan and decided, on basis of the nature of the charges and the available evidence, to prolong their detention. At its 38<sup>th</sup> hearing of 2 March 1998, the State Security Court rejected another request by the defence to release Ali Erbek and Mehmet Nuri Özkan and prolonged their detention finding that the reasons for their detention still remained pertinent. At its 39<sup>th</sup> hearing, the State Security Court rejected a request by the defence for the release of Ali Erbek and Mehmet Nuri Özkan and, without indicating any reasons, prolonged their detention. At its 40<sup>th</sup> hearing of 25 May 1998, the State Security Court rejected a request by the defence for the release of Ali Erbek and Mehmet Nuri Özkan and prolonged their detention, finding that the reasons for their detention continued to remain pertinent. At its 41<sup>st</sup> hearing of 29 June 1998, the State Security Court rejected a request by the defence for the release of Ali Erbek and Mehmet Nuri Özkan and decided, on basis of the nature of the charges and the available evidence, to prolong their detention. It adjourned the further proceedings until 7 September 1998.

*g. Medical reports and other documents on the physical condition and medical treatment of Ormaniçi villagers taken into detention*

**Medical reports drawn up Güçlükonak**

250. In a report dated 20 February 1993 and signed by the Güçlükonak District Gendarmerie Deputy Commander Celal Çürek, and the gendarmes Namık Pakdil, Aziz Doğan and Dr Fahrettin Parmaksız, it is recorded that, in the absence of a Government doctor or a civilian doctor in Güçlükonak and the fact that no other doctor was available in the district, the persons taken into detention on 20 February 1993 were examined by a gendarmerie doctor.

251. In a medical report dated 20 February 1993 and signed by the District gendarmerie doctor, Dr Fahrettin Parmaksız, it is recorded that a group of 33 persons<sup>431</sup>, who had been taken into detention, arrived [in Güçlükonak] on 20 February 1993 at 8 p.m. The initial medical examination of these persons indicated that, as a result of having been made to walk seven kilometres in adverse weather and terrain conditions, they had oedema and skin lesions and that – having had to walk on uneven surfaces reaching up to their knees – they had incurred bruises and irregular cuts.

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<sup>431</sup> Namely: Ahmet Arslan, İbrahim Ekinci, Mehmet Özkan (son of Ali), Mehmet Tahir Çetin, Şerif Ekin, Mehmet Kurt, Osman Ekinci, Abdullah Kurt, Resul Arslan, Mehmet Özkan (son of Ahmet), Şükrü Yıldırım, Nevaf Özkan, Osman Ekin, Nedim Özkan, Abdullah Sezgin, Mehmet Arslan, Mehmet Şerif Demir, Salih Demir, Abdusselam Demir, İbrahim Ekin, Mehmet Kaya, İbrahim Kaya, Mehmet Sezgin, Hacı Ekin, Abdullah Ekin, Ali Erden, Fahrettin Özkan, Abdullah Elçiçek, Mehmet Yıldırım, Hacı Çetin, İbrahim Özkan, Hüseyin Yıldırım and Seyit Erdem.

The report further states that, given [the presence of] snow and [the fact that] most of them did not have shoes on their feet, the cause of the lesions recorded became more apparent. No other lesions were observed. The necessary medical interventions were carried out. This report only contains overall findings and does not contain any separate findings for each individual examined.

252. According to a report signed by Dr Fahrettin Parmaksız and dated 4 March 1993, Dr Parmaksız examined 32 detainees<sup>432</sup> in their place of detention on 4 March 1993 at 9 a.m. In this report he stated that their examination revealed the presence of oedema, cyanosis and healing lesions with ulcers on their feet and legs. He further found that their artery blood pressure in the knee and calf area was low. No other lesions, which could be considered to have resulted from blows or physical force, were found. He concluded that the lesions found had been caused by the cold environment and because these individuals had been kept immobile. Furthermore this report only contains overall findings and does not contain any separate findings for each individual examined.

253. A separate report signed by Dr Fahrettin Parmaksız and dated 4 March 1993, contains Dr Parmaksız' findings following his medical examination of Abdülislam Demir. Dr Parmaksız found that both legs of Abdülislam Demir had oedema with the appearance of cyanosis. He could not take Abdülislam Demir's pulse from the popliteal and posterior tibial artery and saw no trace of any blows or physical violence. Dr Parmaksız further stated that Abdülislam Demir's condition was caused by the environment in which he had been kept being immobile and cold.

#### **Medical reports drawn up in Şırnak**

254. In response to a written request by Major Turgut Alpı of the Directorate of Intelligence Branch of the Şırnak Provincial Gendarmerie Command dated 20 February 1993, Dr Fatih Pehlivanlı of the Şırnak Duty Coronary Medical Office examined 15 detained persons who had been taken into detention and brought to Şırnak<sup>433</sup>.

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<sup>432</sup> Namely: Ahmet Arslan, İbrahim Ekinci, Mehmet Özkan (son of Ali), Mehmet Tahir Çetin, Şerif Ekin, Mehmet Kurt, Osman Ekinci, Abdullah Kurt, Resul Arslan, Mehmet Özkan (son of Ahmet), Şükrü Yıldırım, Nevaf Özkan, Osman Ekin, Nedim Özkan, Abdullah Sezgin, Mehmet Arslan, Mehmet Şerif Demir, Salih Demir, İbrahim Ekin, Mehmet Kaya, İbrahim Kaya, Mehmet Sezgin, Hacı Ekin, Abdullah Ekin, Ali Erden, Fahrettin Özkan, Abdullah Elçiçek, Mehmet Yıldırım, Hacı Çetin, İbrahim Özkan, Hüseyin Yıldırım and Seyit Erdem.

<sup>433</sup> Namely: Ali Erbek, Şemsettin Erbek, Şehabettin Erbek, Mahmut Güler, Zeki Çetin, Cemal Sezgin, M.Nuri Özkan, Hamit Demir, Mehmet Erdem, Halime Ekin, Mehmet Özkan (son of Ali), Hacı Ekin, Mehmet Aslan, Osman Ekinci and İbrahim Kaya.

255. In a report written by hand, Dr Pehlivanlı recorded on 20<sup>434</sup> February 1993 at 8 p.m. that:

- Şehabettin Erbek had an open infected wound of 1 cm by 2 cm on the back side of his right elbow, which had been open since about 15 days;
- Mehmet Erdem had a bruise of 4 cm by 4 cm on the outer side of his left arm;
- Mehmet Özkan had an infected injury of 5 cm by 5 cm on his right buttock (“*kalça*”), which was likely to be the result of an itchy fungal contamination<sup>435</sup> having become infected by scratching, and the dorsal side of the toes of both feet showed graze marks of 1 cm by 1 cm;
- Mehmet Aslan had a bruise of 4 cm by 5 cm on the top of his right shoulder;
- Osman Ekinci's feet were swollen and hyperaemic and there was a superficial graze on the dorsal side of his big toe on the left foot; and that
- as regards the other persons examined, no signs of any blows or acts of violence were found.

256. In response to a written request by Major Turgut Alpı of the Directorate of Intelligence Branch of the Şırnak Provincial Gendarmerie Command dated 5 March 1993, Dr Fatih Pehlivanlı of the Şırnak Duty Coronary Medical Office examined a group of 14 detained persons<sup>436</sup> who had been brought to Şırnak. In a handwritten report, he recorded on 5 March 1993 at 5 p.m. that:

- İbrahim Ekinci's feet were swollen and showed slight hyperaemia;
- Abdülislam Demir's feet were swollen, with oedema and hyperaemia from the ankles down, the soles of both feet and the toes of the right foot had superficial grazes on their dorsal face, and he had a bruise of 3 cm by 3 cm on his left shoulder;
- Fahrettin Özkan's feet were swollen, with oedema and hyperaemia from the ankles down; and that,
- as regards the other persons examined, no signs of any blows or acts of violence were found.

<sup>434</sup> The handwritten date on this document appears to have been corrected from “25” to “20”.

<sup>435</sup> In all likelihood “*tinea cruris*”, an itchy fungal skin disorder of the groin area that, if untreated, develops relatively rapidly and may spread onward in ring-like patterns to the buttocks and upper thighs. The fungi that cause tinea infections thrive in warm, moist areas. Susceptibility to tinea infection is increased by friction, poor hygiene and prolonged moist skin.

<sup>436</sup> Namely: M.Sait Erden, Salih Demir, Şerif Ekin, M.Tahir Çetin, İbrahim Ekinci, Şükrü Yıldırım, Abdülislam Demir, Hüseyin Yıldırım, Abdullah Ekin, Osman Ekin, Fahrettin Özkan, Şerif Demir, Mehmet Özkan (son of Ahmet) and Hacı Çetin.

257. In response to an identical written request by Major Turgut Alpı dated 5 March 1993, Dr Fatıh Pehlivanlı examined a further group of 15 detained persons<sup>437</sup> who had been brought to Şırnak. In a handwritten report, he recorded on 5 March 1993 at 5.15 p.m. that:

- İbrahim Özkan's feet were swollen and had hyperaemia from the ankles down, and that on the outer and internal sides of the right wrist there were two grazes of about 2 cm by 1 cm;
- Nevaf Özkan's feet were swollen and had hyperaemia from the ankles down, and that there were grazes on the dorsal side of the toes of the right foot and a superficial graze of 3 cm by 4 cm on the dorsal side of the left foot;
- Abdullah Elçiçek had a bruise of 10 cm by 6 cm on the rear side of his right thigh and the right buttock ("*sağ kalça ve sağ uyluk arka yüzünde*"), and a graze measuring 2 cm by 1 cm on the outer side of his right wrist;
- İbrahim Ekin had infected injuries of 2 cm by 1 cm on both buttocks ("*kalça*"), probably caused by a fungal infection;
- Resul Aslan's feet were swollen with hyperaemia from the ankles down and he had infected injuries of 2 cm by 3 cm on both buttocks ("*kalça*") probably caused by a fungal infection; and that
- as regards the other persons examined, no signs of any blows or acts of violence were found.

258. In a letter dated 6 March 1993 the Şırnak Provincial Gendarmerie Commander Baki Onurlubaş requested the Mardin State Hospital to medically examine and treat Abdülislam Demir. An unspecified medical report was attached to his letter. An interim medical report, dated 6 March 1993 and signed by Dr Gokkan Gör.[illegible] and Surgeon Dr Ahmet Saplı, states that all the toes of Abdülislam Demir's right foot were gangrenous and that there was oedema. Gangrene was diagnosed in the 4<sup>th</sup> and 5<sup>th</sup> digits, for which he had received initial medical treatment, including a tetanus vaccination. According to this report, Abdülislam needed to be examined by an orthopaedic specialist.

259. In response to a written request dated 9 March 1993 by Major Turgut Alpı of the Directorate of Intelligence Branch of the Şırnak Provincial Gendarmerie Command, Dr Tuncy Öztürk of the Şırnak Duty Coronary Medical Office examined a group of 26 detained persons<sup>438</sup> who were detained in Şırnak. In his undated report, he recorded that:

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<sup>437</sup> Namely: Mehmet Sezgin, Resul Çakır, Nedim Özkan, İbrahim Özkan (son of Ahmet), Mehmet Kaya, Nevaf Özkan, Ahmet Aslan, Mehmet Kurt, Abdullah Sezgin, Ali Erden, Abdullah Elçiçek, İbrahim Ekin, Abdullah Kurt, Resul Aslan and Mehmet Yıldırım.

<sup>438</sup> Namely Hacı Ekin, M. Nuri Özkan, Mehmet Yıldırım, Ali Erden, Ali Erbek, İbrahim Ekinci, Osman Ekinci, Abdullah Ekin, Şükrü Yıldırım, Şemsettin Erbek, Mehmet Erdem, Resul Çakır, İbrahim Kaya, Zeki Çetin, Hamit Demir, Abdullah Sezgin, Şerif Ekin,

- İbrahim Ekinci<sup>439</sup> had one bruise with grazed skin tissue on his right buttock (“*kalça*”), a bruise of 5 cm by 6 cm on his left buttock, and maceration and grazing on the skin tissue of the 4<sup>th</sup> and 5<sup>th</sup> toes of his right foot;
- Abdullah Kurt had a bruise with grazed skin tissue on his right buttock;
- Hacı Ekin had two bruises facing each other between the buttocks and around ...[illegible];
- Şehabettin Erbek had one open injury from the left elbow down, involving dermal and subcutaneous tissue and other smaller injuries, each measuring 1 cm, around the first one; and that
- on the other persons examined no signs of any blows or acts of physical violence were found.

260. On 9 March 1993, the Eruh public prosecutor Ercan Turan requested the Şırnak Provincial Gendarmerie Command to verify the physical condition of Mehmet Tahir Çetin and Fahrettin Özkan, who were being detained in Şırnak, as it had been noted that they required medical care by either military or civilian doctors for frostbite. In response to this letter, the Şırnak Provincial Gendarmerie Commander Baki Onurlubaş requested the Şırnak Security Command on the same day to ensure medical treatment for six detainees, namely Resul Aslan, İbrahim Ekinci, M. Tahir Çetin, Nevaf Özkan, Fahrettin Özkan and İbrahim Özkan.

261. In an undated letter signed by Dr İlhan Küçükakal, Dr Hayran Özuslu, Dr Servet Tunay and Dr Hakan Atalay, referring to the above letter from Baki Onurlubaş, the Şırnak Hospital informed the Şırnak Provincial Gendarmerie Command that:

- Resul Aslan had necrosis in the toes of both feet, a crusty lesion on the front/inside (anteromedial) side of his right ankle, multiple injuries on the dorsal side of his right foot, an injury on his right hand and an injury on his right buttock;
- Mehmet Tahir Çetin had a 4 cm by 5 cm long demarcation line at the level of the ankle bones of both feet, distal necrosis and coldness, and no pulse was discernible on either side;
- Nevaf Özkan's 4<sup>th</sup> and 5<sup>th</sup> toes on both feet appeared necrotic and he had multiple superficial injuries (not specified where);
- Fahrettin Özkan's toes on both feet appeared to be necrotic and he had oedema on both feet;

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Mahmut Güler, Mehmet Sezgin, Şehabettin Erbek, Cemal Sezgin, Mehmet Aslan, Abdullah Kurt, Hacı Çetin, Hüseyin Yıldırım and Halime Ekin.

<sup>439</sup> In his report, Dr Öztürk refers to İbrahim Ekinci as “İbrahim Ekin”. In the list of names provided by Turgut Alpi, İbrahim Ekinci had apparently erroneously been indicated as “İbrahim Ekin”; his year of birth (1956) and the fact that he is the son of Mehmet are correctly recorded in this list.

- İbrahim Ekinci's toes on the left foot, in particular the 4<sup>th</sup> and 5<sup>th</sup> toes, as well as the toes of his right foot appeared slightly necrotic; it was also noted that he suffered from what looked like epileptic fits (“*epileptiform atakları*”); and that
- İbrahim Özkan's toes on the left foot, as well as the 4<sup>th</sup> and 5<sup>th</sup> toes of his right foot, appeared to be necrotic.

262. The letter further states that the patients had been placed under observation and specifies the medication they had received. This medication included, *inter alia*, what appears to be two types of antibiotics<sup>440</sup>, 2 x 500 cc Rheomacrodex<sup>441</sup> and medication given to İbrahim Ekinci for epilepsy<sup>442</sup>. The letter finally states that, as the patients had not shown any signs of improvement, it had been decided to transfer them to the Mardin State Hospital for further examination and treatment.

263. In response to a written request dated 12 March 1993 by Major Turgut Alpı of the Directorate of Intelligence Branch of the Şırnak Provincial Gendarmerie Command, Dr Tuncy Öztürk of the Şırnak Duty Coronary Medical Office examined a group of 11 detained persons<sup>443</sup> who were being detained in Şırnak. In his report, he recorded on 11 March 1993<sup>444</sup> at 8.30 p.m. that:

- Mehmet Özkan (son of Ali) had a partially ... [illegible] grazed skin injury of 5 cm by 6 cm with irregular edges on his left buttock (“*kalça*”), an injury of 2 cm by 3 cm on the inner part of his left buttock, maceration around the toes of the left foot, a macerated watery injury with blistered skin on the 2<sup>nd</sup> toe of his right foot and similar injuries on the other toes;
- Abdullah [Er]çiçek had an injury of 2 cm by 3 cm on his left buttock, a further injury of 5 cm by 7 cm on the outer side of the same buttock, an injury of 10 cm by 20 cm with blistered skin and dotted haemorrhage starting from the right buttock and going down along the median line, another injury of 4 cm by 5 cm with blistered skin on the inner part of the lower section of the left knee, and both feet had oedema from the ankles down;

<sup>440</sup> Namely: Pen. Crystallised 2 x 1.000.000 units and Ceptamicin 2 x 60mg daily.

<sup>441</sup> A standard medication for maintaining the volume of bodily fluids; administered by a drip.

<sup>442</sup> Epdantoin 3 x 100mg. daily.

<sup>443</sup> Namely: Mehmet Özkan (son of Ali), Mehmet Kurt, Nedim Özkan, Salih Demir, Mehmet Özkan (son of Ahmet), M. Şerif Demir, Ahmet Arslan, Mehmet Sait Erdem, Osman Ekin, Mehmet Kaya and Abdullah Elçiçek.

<sup>444</sup> The date indicated on the request consists of a handwritten “12” followed by the typed word “MART” on a dotted line which ends with “1993”; the date recorded on the medical report – which was drawn up in response to the request – reads “11-3-1993” and is handwritten.

- Osman Ekin's feet had oedema from the ankles down, he had open watery injuries with maceration and dotted haemorrhage on the toes of both feet, and the small toe of his right foot had gangrene;
- Mehmet Kurt had a 5 cm by 6 cm watery dermal injury with irregular edges on the lower part of his right buttock, oedema on both feet from the ankles down, a 2 cm by 3 cm watery dermal injury starting from the lateral side of the right ankle and extending towards the little toe, and watery macerated injuries on the toes of both feet;
- Salih Demir had macerated watery injuries on the toes of his right foot; ... [illegible] injuries at the base of his toes, and an irregular injury on the dorsal side of his right wrist;
- Mehmet Şerif Demir had bruises with blistered skin on the toes of his right foot, an open injury on the small toe, and bruises on the toes of his left foot;
- Nedim Özkan had a dermal regular injury on the lateral side of his right ankle;
- Ahmet Arslan had injuries with irregular edges on both buttocks, an open watery injury with blistered skin on his right buttock, oedema on his left foot from the ankle down, open watery injuries on and between the toes, no nail on the big toe of his left foot and a macerated injury completely covering this big toe, oedema on the right foot from the ankle down; an open macerated watery injury on the big toe of his right foot, and macerated watery injuries on and between the toes;
- Mehmet Kaya had a bruise of 3 cm by 4 cm on his left knee, a watery injury completely covering the small toe of his right foot, oedema on the big toe of his left foot with sub-cutaneous haemorrhage, and a macerated injury extending to the small toe of his left foot;
- Mehmet Özkan (son of Ahmet) showed no signs of any blows or acts of physical violence;
- Mehmet Sait Erdem had an injury of 1 cm by 1 cm on his left knee, oedema on his left foot from the ankle down, open watery macerated injuries entailing the loss of nails of the toes of his left foot, maceration on the ... [illegible] toes of his right foot and a bruise on the small toe of his right foot.

264. In a report by the Mardin State Hospital, dated 11 June 1993 and signed by Dr Feza Köylüoğlu and Dr Mahmut Duyan, it is stated that:

- Abdülselam Demir was admitted to hospital on 6 March 1993 and discharged on 30 April 1993. The 4<sup>th</sup> and 5<sup>th</sup> toes of his left foot had been amputated. The injury was not mortal, but it would prevent employment for 10 days;

- Fahrettin Özkan was admitted to hospital on 11 March 1993 and discharged on 30 April 1993. He had undergone a metatarsal amputation on both feet. The injury was not mortal, but would prevent employment for 25 days;
- Resul Aslan was admitted to hospital on 11 March 1993 and discharged on 30 April 1993. He had undergone a metatarsal amputation on both feet. The injury was not mortal, but would prevent employment for 25 days; and that
- Nevaf Özkan was admitted to hospital on 11 March 1993 and discharged on 30 April 1993. He had undergone a distal amputation of the 5<sup>th</sup> toe of his left foot. The injury was not mortal, but would prevent employment for 7 days.

#### **Other medical reports**

265. According to a medical report of the Eşrefpaşa Hospital in İzmir, dated 5 April 1993 and signed by Dr Hilmi Çetin Aydınok, Hüseyin Yıldırım was treated there between 19 March 1993 and 5 April 1993 and underwent an amputation of the 5<sup>th</sup> toe of his left foot. He also received treatment for superficial injuries to his right hand and right foot.

266. In a medical report of the Ankara Council Hospital, dated 24 June 1993 and signed by Dr Sabri Dokuzoğuz and Dr Doğan İstanbulluoğlu, it is stated that Ahmet Arslan and Sait Erdem were taken to the hospital by their relative Abdullah Özkan on 29 March 1993. They were admitted to the orthopaedic ward, where they received treatment for gangrene injuries caused by frostbite. No other injuries were found. They both underwent a skin transplant operation for treatment of gangrene.

267. In a letter dated 22 September 1998 and signed by Dr Önder Özkalıpçı, Dr Satia Advan and Dr Nury Karalı, physicians of the Representative Office of the Human Rights Foundation in İstanbul, it is stated that Zeki Çetin had applied to the Foundation in order to seek medical treatment for health problems caused by the torture and ill-treatment to which he had been subjected while in detention in Batman in 1984, in Kızıltepe in 1986, in Güçlükonak in 1993 and in Oğuzeli in 1994. According to Zeki Çetin's account as related in this letter, he had – after having been taken into detention together with 19 other students in the school where he was studying religious education in August 1984 in Batman – been kept blindfolded, naked and with his hands and feet tied, beaten, threatened with rape and death, subjected to sexual abuse and attempted rape, suspended, given electric shocks to his genitals, fingers and toes, subjected to cold water treatment, placed on ice, kept in a refrigerated room, given the “wheel treatment”, deprived of water, food and sleep and forced to listen to others being tortured.

268. After having been apprehended with all other students in a village mosque and taken into detention in Kızıltepe in November 1986, Zeki Çetin

claimed that he had, *inter alia*, been kept blindfolded with his hands and feet tied, beaten, suspended, given electric shocks, sexually abused, deprived of water, food and sanitary facilities, given cold water treatment and placed on ice. He had then encountered psychological problems which he described by saying “I have lost my mind”. The letter further contains his account of his detention in Güçlükonak and subsequently in Şırnak. During his detention in Şırnak, he claimed that he had been, *inter alia*, beaten, struck on his head, given cold water treatment, suspended vertically and horizontally, subjected to palestinian hanging<sup>445</sup>, given electric shocks, subjected to repeated anal rape with a truncheon, needle, skewer and other unknown objects and forced to drink petrol and diesel.

269. After having been expelled from his village Ormaniçi, he and his family had gone to the district of Oğuzeli, where he had been apprehended. During his ten days' detention at the Oğuzeli Gendarmerie Command, he had been subjected to, *inter alia*, beatings, *falaka*<sup>446</sup>, wheel torture, deprivation of water, food and sanitary facilities, threats and a mock execution (by having been made to walk along the Syrian border).

270. Through the Human Rights Foundation, he had been examined on 26 March 1996 by a surgeon, Dr Nüvit Duraker, who diagnosed a perianal fistula<sup>447</sup> and fissure. Zeki Çetin underwent an operation on 24 April 1996. He had a second operation on 11 July 1997. Dr Nuray Karalı examined him on 23 September 1996 in connection with sleeping disorders. Dr Karalı noted that it was difficult to communicate with Zeki Çetin, since he could not speak Turkish very well. Dr Karalı found Zeki Çetin to be emotionally euthymic, obsessive and having an intensive internal relationship with torture and bodily aches. He was diagnosed as suffering from a Bipolar I disorder<sup>448</sup> and an atypical anxiety disorder. He was admitted to the Psychiatric Clinic of the İstanbul Faculty of Medicine on 22 January 1997. Having been discharged, he returned to the clinic for two weeks on 30 June 1997 on account of a manic depression.

#### **Photographs submitted of Ormaniçi villagers with injuries**

271. The applicants have submitted a number of photographs taken of Ormaniçi villagers who sustained injuries. Some of these photographs show Resul Aslan and Fahrettin Özkan displaying their bare feet which have undergone a metatarsal amputation.

272. Other photographs show persons – stated to be Salih Demir, Şükrü Yıldırım, Osman Ekin, Şerif Demir and Mehmet Özkan – with injured feet, or show only feet, with black spots covering the entire underside of some

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<sup>445</sup> Suspension by the arms whilst the hands are tied behind the back.

<sup>446</sup> The technique of beating the sole of the foot with a solid object to induce intense pain and suffering in a short period of time.

<sup>447</sup> An abnormal tract extending from inside the rectum to the skin outside the anus.

<sup>448</sup> A mental disorder involving episodes of serious mania and depression.

toes. One photograph shows three barefoot men sitting on a mattress on the floor.

273. One picture shows the buttocks of a person – stated to be Abdullah Elçiçek – with a red and white discoloured infection with a clear red demarcation line covering nearly half of the right buttock and a small similar lesion on the left buttock. Another photograph shows the buttocks of a person – stated to be İbrahim Ekin – with a circular dermal open injury of about 5 cm in diameter, surrounded by a black/brown coloured ring, about 2 cm wide, on each buttock.

*h. Documents and reports related to the death of İbrahim Ekin*

**Post-mortem examination in Diyarbakır and related events**

274. It appears that a preliminary investigation was opened by the office of the Diyarbakır public prosecutor into the cause of the death of İbrahim Ekin. It was registered under no. 1993/2350.

275. According to the “Body Examination and Autopsy Report” dated 17 March 1993 and signed by the public prosecutor Abdullah Yıldırım, Dr Çetin Seçkin, a clerk, an autopsy assistant and an orderly, İbrahim Ekin had died in the prisoners' ward of the hospital. The gendarme on hospital duty had provided the autopsy team with his identity card. Dr Seçkin, the Director of the Diyarbakır Coronary Branch, carried out the post-mortem examination in the presence of the public prosecutor.

276. In the course of his examination for external findings, Dr Seçkin found that, as a result of frost, there were ecchymoses on the toes. Around the region of the 5<sup>th</sup> toe and on the sole of the foot, the skin was split. He further found damaged and partially recovered skin on the toe. He found no external traces of injuries caused by a firearm or traces of physical violence caused by other means.

277. According to information provided by the hospital and the attending doctors of the prisoners' ward, İbrahim Ekin was admitted to hospital on 12 March 1993. His right foot had suffered frostbite, there were ecchymoses on his toes and he had injuries. It had been intended to keep him in the ward for a few days and then to discharge him. However, during daily check-ups he was seen having an epileptic fit. His fellow villagers had said that he had had previous fits and had been on appropriate medication. On this basis, a course of treatment was arranged by the relevant specialist. At a later stage, his condition worsened and the specialist neurologist referred him to the Diyarbakır University Faculty Hospital. At the time of his transfer to that hospital, he was unconscious and unresponsive to the

Babinski bilateral reflex test<sup>449</sup>, his pupils were anisocoric<sup>450</sup>, his light reflex was normal and he responded to pain stimuli. However, he was dead on arrival.

278. Also, the internal examination did not disclose any possible cause of death. No haemorrhage was found in the brain or elsewhere. There were no bite marks on the tongue and the trachea was empty. There was slight oedema in the lungs. As no definite cause of death could be established, various tissue samples were taken for further examination.

279. The public prosecutor Abdullah Yıldırım subsequently sent these tissue samples to the İstanbul Institute of Forensic Medicine, accompanied by an undated letter in which he requested the institute to establish the definite cause of death and to inform him accordingly.

280. In a letter of 17 March 1993, Abdullah Yıldırım informed the Diyarbakır Registration Office of the death of İbrahim Ekinci and requested that the death be recorded in the population register. In the appended death certificate it is recorded that İbrahim Ekinci had died on 17 March 1993 and that the cause of death was illness. On the same date, Abdullah Yıldırım issued a burial certificate in respect of İbrahim Ekinci.

281. In a report of the İstanbul Institute of Forensic Medicine dated 28 May 1993 and signed by Dr Cevat Özer, Dr Hilmi Kasar, Dr Mahmut Aşirdizer and Professor Dr Özdemir Kulusayın, it is stated that a macroscopic examination and a systematic toxicological analysis of the tissue samples took place. The samples contained none of the toxic substances which the systematic toxicological analysis had sought to identify. According to the histopathological analysis, interstitial pneumonia with focal pneumonic infiltration was found in the lungs. Furthermore, angioliipomas<sup>451</sup> were found in the kidneys. Nothing was found in the heart, liver or brain.

282. The report concluded that, given that the body examination and autopsy report described frostbite in the right foot and partially healed and partially infected injuries to the sole of the foot, and that the histopathological analysis revealed angioliipomas in the kidneys, it was the signatories' certified opinion that İbrahim Ekinci's death had been caused by respiratory failure due to pneumonia.

#### **Judicial decisions**

283. On 24 June 1993 the public prosecutor at the Diyarbakır State Security Court Abdullah Yıldırım took a decision not to take any proceedings in respect of the preliminary investigation no. 1993/2350 into

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<sup>449</sup> Stroking the sole of the foot should normally cause the big toe to point downwards. A Babinski sign is when it points up instead and the other toes fan out. A Babinski sign is considered normal in an immature nervous system such as that of a baby.

<sup>450</sup> Unequal diameter of the pupils.

<sup>451</sup> Benign growth of vascular vessels in fatty or fatlike tissue

the death of İbrahim Ekinci. Noting that, according to the findings of the Institute of Forensic Medicine, İbrahim Ekinci had died of pneumonia, he found it established that no offence had been committed, that there was no offender and that the death was due to nobody's fault or influence. A copy of this decision was transmitted on the same day to the office of the public prosecutor in Eruh.

284. On 15 August 1994 the Eruh public prosecutor Eruh, Şenol Önal, issued a decision of non-prosecution in response to a criminal complaint alleging homicide through torture, which had been filed on 12 April 1993 by Ayşe Ekinci with the office of the public prosecutor in Cizre in relation to the death of her husband İbrahim Ekinci. In the decision reference is made to the finding of the public prosecutor at the Diyarbakır State Security Court that İbrahim Ekinci had died of pneumonia. The decision of non-prosecution further states that evidence was taken from Ayşe Ekinci in Ormaniçi [on 10 August 1994] and that she testified that she had intended to obtain aid from the State rather than file a complaint against anyone. It was concluded that, on the basis of the evidence in the case file, there was no offence or offender to be prosecuted.

#### **Subsequent medical report**

285. In a report of the Diyarbakır State Hospital dated 15 March 1996 and signed by Dr Mustafa Uğurlar and Dr Sela... [illegible]...attin ...[illegible]...arol, it is stated that, on 12 March 1993, the Mardin State Hospital referred three patients, including İbrahim Ekinci who was accompanied by gendarmes, to the Diyarbakır State Hospital. İbrahim Ekinci's foot was found to have suffered frostbite. His general condition was good; he had arrived on foot. He was treated for frostbite and, after two days, he was going to be discharged. However, during the night he had an epileptic fit and vomited. The vomit entered his lungs. In the absence of any alarm during the night, this was established during the morning visit. A specialist neurologist was called, but İbrahim Ekinci died before his arrival.

#### *i. Subsequent activities of the security forces in Ormaniçi*

286. An "End of Operation Report", dated 6 June 1994 and in an abridged numbered format, was sent by Boran Yüksel of the 6<sup>th</sup> Gendarmerie Commando Battalion Command of Fındık to, *inter alia*, the Güçlükönak district gendarmerie station and to the Şırnak provincial gendarmerie station. According to this report, a planned ground search and patrol operation was carried out on 5 June 1994 by security forces in the area of the village of Ormaniçi and in the Akdizgin area.

287. It appears from this report that seven gendarmerie commando teams, assisted by four other gendarmerie commando teams who had cordoned off the area, conducted a thorough search of, *inter alia*, the area near the Ormaniçi stream. At a place indicated by numbered coordinates,

the security forces found unused mattresses and women's clothes hidden in the thickets. In a small cave in the same area about 100 new cutlery items and plates were found. Furthermore, a rucksack belonging to terrorists was found in an area with different coordinates.

288. Shortly afterwards, at 12.15 p.m. an incident occurred with a group of terrorists in an area nearby the place where the rucksack had been found. One private was injured by a fragment of a hand grenade thrown by the terrorists. The fighting lasted until 12.50 p.m. Seven terrorists were killed in the skirmish by one of the commando teams participating in the operation. The killed terrorists were left on the spot. The following weapons were recovered from their bodies: 4 Kalashnikov weapons, 18 Kalashnikov cartridge clips, 5 hand grenades, 6 cartridge clip cases, 1 cartridge belt, 1 suspension strap and 220 rounds of 7.62 mm Kalashnikov bullets. The four hand grenades found were considered dangerous and were destroyed by experts. The operation ended on 5 June 1994 at 5.30 p.m. The troops were ordered to return to base while pursuing their ground search.

289. The ammunition used by the security forces in this operation, as recorded in the report, consisted of 3,600 rounds of 7.62 mm NATO standard bullets, 2,250 rounds of 7.62 mm bullets fired from an automatic weapon, 2,150 rounds of 7.62 BIXI bullets, 1,225 rounds of 5.56 mm bullets fired from an automatic weapon, 37 hand grenades, 16 rounds of 40 mm mine throwers, 20 rounds of 81 mm mortar destruction bombs, 16 rounds of 60 mm mortar destruction bombs, 17 rounds of RPG-7 ammunition, 2 rounds of 66 mm Light Anti-Tank Weapons, 280 rounds of 7.62 mm (4+1) tracer MG-3 bullets and 910 rounds of 5.56 mm (4+1) tracer bullets.

*j. Investigations by the Siirt and Erüh public prosecutors in Ormaniçi*

**Investigation by the Siirt public prosecutor**

290. The "Exploration Report in the Location", dated 10 August 1994, is signed by the Siirt public prosecutor Mustafa Taşkafa, the clerk Cemal Ertek, the expert civil engineer Haydar Sultan, the Güçlükönak Commando Team Deputy Commander Fahrettin Çaydaşı, and the applicant İbrahim Kaya. It is fingerprinted by the applicant Ayşe Ekinçi. In the report it is recorded that, following the application of 32 Ormaniçi villagers to the European Commission of Human Rights, a team of experts was assembled to establish whether any houses were damaged and burned, and to take statements from applicants.

291. The report states that, according to information supplied by Commander Fahrettin Çaydaşı, Ormaniçi was completely abandoned, that its inhabitants had moved to other places and that İbrahim Kaya, a former Ormaniçi resident and who had been brought from Güçlükönak, was appointed as guide (local expert). It further contains a statement taken from

İbrahim Kaya about the events of 20 February 1993, as well as a statement taken from Ayşe Ekin who was found to be present in the village<sup>452</sup>. The report states that, according to information provided by İbrahim Kaya, the other 30 applicants had left Ormaniçi and had moved to other places.

292. It further records that İbrahim Kaya showed Mustafa Taşkafa and the other members of the latter's team – including the civil engineer who would make a separate technical report – the applicants' houses in Ormaniçi. The following information was recorded:

- “1. Ahmet Özkan's house was built of stone and was undamaged;
2. Hediye Çetin's house was not damaged on the day of the incident. ... [illegible] days after the incident the wood under the roof burned and the roof collapsed;
3. Hediye Demir's house was built of stone and was undamaged;
4. Ramazan Yıldırım's house was built of stone and was undamaged;
5. Mehmet Emin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;
6. Kumri Aslan's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;
7. Abdullah Elçiçek's house was built of stone and its roof was built of clay; it was undamaged;
8. İbrahim Kaya's house was built of stone and its roof was built of clay; it was undamaged;
9. Hüseyin Sezgin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;
10. Mevlüde Ekin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;
11. Besna Ekin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;
12. İbrahim Ekin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

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<sup>452</sup> See Appendix II: §§ 308-315.

13. Abdullah Kurt's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

14. Mehmet Sezgin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

15. Asiye Aslan's house was built of stone and its roof was built of clay; it was undamaged;

16. Hamit Ekinci's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

17. Rahime Aslan's house was damaged on the day of the incident; it was noted that the clay roof had collapsed;

18. Mahmut Güler's house was built of stone and its roof was built of clay; it was undamaged;

19. Ali Özkan's house was built of stone and its roof was built of clay; it was undamaged;

20. Ahmet Erbek's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

21. Ayşe Ekinci's house was built of stone and its roof was built of clay; it was undamaged;

22. Mehmet Özkan's house was built of stone and its roof was built of clay; it was undamaged;

23. Abdurrahman Çetin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

24. Şükrü Yıldırım's house was built of stone and its roof was built of clay; it was undamaged;

25. Hatice Erbek's house was built of stone and its roof was built of clay; it was undamaged;

26. Raife Çetin's house was built of stone and its roof was built of clay; it was undamaged;

27. Fatma Özkan's house was built of stone and its roof was built of clay; it was undamaged;

28. Fatma Yıldırım's house was built of stone and its roof was built of clay; it was undamaged;

29. Zeynep Yıldırım's house was built of stone and its roof was built of clay; it was undamaged;

30. Halime Ekin's house was built of stone and its roof was built of clay; it was undamaged;

31. Ayşe Sezgin's house was damaged on the day of the incident; it was noted that the clay roof had collapsed and that the wooden structure supporting the roof had burned;

32. Rukiye Erbek<sup>453</sup> had moved to Cizre many years ago.”

#### **Photographs of Ormaniçi**

293. The report further mentions that the investigation team photographed the state of the village. In the course of the hearing held in Ankara by the Commission's Delegates on 2 April 1998, the Government's representative submitted 20 photographs taken in Ormaniçi. On the back, these photographs are numbered, dated 10 August 1994 and officially certified by Mustafa Taşkafa, who also signed the back of photograph no. 1.

294. Photographs nos. 1, 2, 4, 5, 8 show aerial images of Ormaniçi. Photographs nos. 3, 6, 7, 9, and 11 show ground level views of Ormaniçi. Photographs nos. 10, 12, 13, 14, 15, 16, 17, 18 and 20 show individual abandoned and damaged houses with stone walls, collapsed roofs and charred roof beams which appear to have been hewn from trees. Photograph no. 19 shows an undamaged house with objects placed in one of its windows and an adjoining building which looks like a barn or shed. The photographs do not contain any information about the owners and/or former occupants of the photographed houses. A group of persons standing underneath a tree is visible on photographs nos. 4 and 5.

295. It is clear, when compared with the above photographs, that one of the three black-and-white photographs submitted by the applicants<sup>454</sup> shows a view of Ormaniçi. The other two photographs show, respectively, three unidentified persons standing in front of a single house with a collapsed roof, and a distant view of two houses built on the slope of a hill with, on the foreground, what appears to be a mule or a horse lying on its right side on the ground, which is densely covered with small rocks.

#### **Technical report dated 16 August 1994**

296. In a report drawn up by Haydar Sultan, a civil engineer working at the Siirt Public Works Directorate, a general technical description is given of the houses that he saw in Ormaniçi on 10 August 1994. In the report he further states that the collapse of roofs was caused by burning of the

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<sup>453</sup> Rectified on 1 March 2005. The previous version reads “Fatma Erbek”.

<sup>454</sup> See Appendix II: § 2.

wooden structure, resulting in a loss of support capability. A sketch of Ormaniçi is appended to this report.

**Investigation by the Eruh public prosecutor**

297. In a letter of 8 August 1994 the Eruh public prosecutor, Şenol Önal, informed the office of the District Governor that, in accordance with instructions dated 21 July 1994 from the International Law and Foreign Relations Directorate of the Ministry of Justice, he would travel with two medical doctors to Ormaniçi by helicopter in order to carry out an exhumation in connection with the operation conducted on 20 February 1993 in Ormaniçi.

298. On 9 August 1994 the Siirt Provincial Gendarmerie informed the Eruh public prosecutor Şenol Önal that the Güçlükonak District Gendarmerie would take security measures in Ormaniçi and that a helicopter would be made available to transport him, the doctor, the clerk and other assistants.

299. In a report dated 10 August 1994 and signed by the Eruh public prosecutor Şenol Önal, Dr A.Ferhat Gürsan, Dr Ahmet Nebioğlu, the autopsy assistant Abdurrahman Özer and the clerk M. Şirin Çakay, it is stated that 32 persons had applied to the European Commission of Human Rights claiming that, during an operation in Ormaniçi on 20 February 1993, two children – Ali Yıldırım and Abide Ekin – had been killed by gendarmes. The report further states that the International Law and Foreign Relations Directorate of the Ministry of Justice had ordered an investigation of the scene of the incident.

300. According to the report, the investigation team left Eruh on 10 August 1994 at 9 a.m. by helicopter. The village of Ormaniçi is described as consisting of 40-50 houses which had been demolished. A few persons were seen harvesting in Ormaniçi and were called to indicate the graves of Ali Yıldırım and Abide Ekin. It was noted that some of them were related to Ali Yıldırım and Abide Ekin. The remains of the two children were subsequently exhumed and examined. The investigation team arrived back in Eruh on the same day at 6 p.m.

**Minutes of Exhumation dated 10 August 1994**

301. The “Minutes of Exhumation” are signed by the Eruh public prosecutor Şenol Önal, Dr A.Ferhat Gürsan, Dr Ahmet Nebioğlu, the autopsy assistant Abdurrahman Özer, the clerk M. Şirin Çakay and Osman Ekin. Above the latter's name the mention “witness” is recorded.

302. According to these minutes, Hüseyin Yıldırım indicated the location of the grave of his brother Ali Yıldırım whose remains were exhumed, examined and reburied. The medical examination of the remains, i.e. the decaying skeleton of a 6-7 year old child, did not disclose any physical injury caused by materials of an explosive, sharp or piercing

nature. No definite cause of death could be established and both doctors were of the opinion that a further forensic examination would not be any more conclusive.

303. According to a witness statement taken from Ali Yıldırım's sister Safiye Yıldırım, which forms an integral part of the minutes, Ali Yıldırım had died as a result of the explosion of a hand grenade about ten days after the incident. His abdomen had been injured and his intestines had come out. He had had a heavy haemorrhage and died within 2-3 hours. His family had not applied to any institution.

304. On the basis of this witness statement, it was concluded that Ali Yıldırım had died as a result of the explosion of explosive material in his hand.

305. According to the minutes of exhumation, Osman Ekin indicated the location of the grave of his niece Abide Ekin. She was the daughter of his older brother Halil. Abide Ekin's remains were exhumed, examined and entrusted to Osman Ekin for reburial. The medical examination of the remains, i.e. the decaying skeleton of a 6-7 year old child, did not disclose any traces of explosive and piercing objects. No definite cause of death could be established.

306. According to a statement taken from Osman Ekin, which forms an integral part of the minutes, he had heard that a bomb had been thrown into the house of Abide Ekin and that she had died of injuries thus incurred. He did not know who had thrown the bomb.

307. On the basis of this statement, it was concluded that Abide Ekin had died of injuries caused by the explosion of explosive material.

#### **Statements taken on 10 August 1994**

##### *İbrahim Kaya (applicant no. 8)*

308. In a statement to the Siirt public prosecutor Mustafa Taşkafa, forming an integral part of the "Exploration Report in the Location", İbrahim Kaya declared that groups of terrorists of sometimes up to 100 persons would come to Ormaniçi at times. Sometimes they had just passed through, and sometimes they had stayed in the village. They would occasionally assemble the villagers for propaganda purposes. Some villagers used to inform the gendarmes of such visits. In so far as he knew, Halil Ekin had been killed by terrorists. He thought that the security forces had been informed of the presence of terrorists and had come to Ormaniçi [on 20 February 1993] to conduct a search. He did not know whether there had been terrorists in Ormaniçi on that day. He did not like terrorists and had no involvement with them.

309. He had been in his house near the bank of the stream in the western part of Ormaniçi when, on 20 February 1993 at [illegible] hours in the morning, he had heard gunshots fired from both outside and inside the

village. The security forces had been fired at and a clash (two-way conflict) had taken place. He had taken shelter underneath his house. When, at around 10 a.m. the shooting had stopped, he had left the shelter. He had later heard that Abide Ekin, the daughter of Emine Ekin, had been injured in the conflict. A 6-year-old child, Ali Yıldırım, had died later; he had found and played with a live hand grenade which had exploded.

310. The soldiers had assembled the villagers one by one in the village square. He had gone there along with the soldiers. On his way to the village square he had seen smoke coming out of some of the houses in the village. He did not know whether these houses were burning or whether they had been bombed. He had not seen soldiers set fire to or throw hand grenades into any houses. As the wood on the roofs of these houses had burned, the roofs had collapsed inwards. Some houses, however, had not burned. He had also seen that livestock were dying. The soldiers had not gathered or killed any livestock. About 100 small livestock (sheep, goats, etc.) had suffocated from smoke. Ayşe Ekinçi had lost one cow and one mule, which had suffocated from smoke.

311. In the village square, the soldiers had made the villagers lie down on the snow-covered ground and had searched them. The soldiers had then taken 43 villagers to the Güçlükonak gendarmerie station.

312. After the incident, a stranger had come to the village and had said that the State would pay for the perished livestock. The stranger had asked him to sign a document. His intention in signing it had been to obtain aid from the State. He had had no intention of complaining against anyone. In particular, he had not intended to send a petition to the European Commission of Human Rights. He did not know that Commission. He wondered why he should apply anywhere else when he could apply to the State.

*Ayşe Ekinçi (applicant no. 21)*

313. In a statement to the Siirt public prosecutor Mustafa Taşkafa, forming an integral part of the “Exploration Report in the Location”, Ayşe Ekinçi declared, with the assistance of the clerk Cemal Ertek who acted as interpreter, that her husband İbrahim Ekinçi, while on his way to prayer on 20 February 1993, had died in the conflict which took place in the village. After his death, she had signed a petition in order to obtain aid for her orphaned children. She had not lodged any petition with the intention of complaining against the security forces. Moreover, her house had not been burned. After the incident, a stranger had come to the village and had said “Your child is orphaned. The State will help you. For this, put your fingerprint here.” She had given her fingerprint for that reason.

314. In a fingerprinted statement taken by the Eruh public prosecutor Şenol Önal on 10 August 1994, Ayşe Ekinçi declared that, on the day of the incident, her husband had left the house at the time of morning prayer and

had suddenly come back. At the same time she had heard gunshots. Shots had been fired from the stream and from the village. She did not know who had been shooting. As she and her family had stayed inside the house, she had seen nothing definite. She had also heard explosions. As a consequence of bombs that had been thrown, Abide Ekin had died as a result of her intestines coming out and of facial injuries. Ten days after the incident, Ali Yıldırım had died as a result of the explosion of a hand grenade that he had struck with two stones. She did not know who had left these explosives or who had thrown them.

315. Fearing conflicts, she had left the village. However, as she had plots in the village, she would come and farm the land. Thanks to the soldiers, she could now travel safely to and from the region. She did not know whether there were any PKK members in the village or whether villagers aided the PKK. No one had asked for any provisions. As she had left the village, she did not know whether any weapons had been found in the village.

316. In another fingerprinted statement taken by Şenol Önal on 10 August 1994, Ayşe Ekinci declared that, after the conflict in the village, her husband had been taken from his home by unknown individuals. His hands and arms had been tied and, in so far as she could see, he had been blindfolded. She had kept on looking until they had been 500 metres away. After the soldiers had taken her husband away to Diyarbakır, she had not seen him again. She had later heard that he had died.

317. She further stated that her husband had had an illness; his mouth would foam and his limbs would stiffen. He had had fits. Four days prior to the conflict, they had gone together to Siirt to see a doctor who had given him medication.

318. She also stated that, after her husband's death, she and her uncle Hacı Abdullah had gone to Cizre to file a complaint. She did not know the nature of that complaint. Her intention had been to obtain aid from the State for her five children. She did not know whether her husband had died of torture or as result of negligent treatment.

*Hatice Yıldırım (daughter of Ramazan and Fatma Yıldırım, applicants nos. 4 and 28)*

319. In a fingerprinted statement taken by the Eruh public prosecutor Şenol Önal on 10 August 1994, it was recorded that Hatice Yıldırım was about 15 years old. She declared that she was been in Ormaniçi when the incident had taken place. She and her siblings had woken up to the sound of gunshots. The conflict had lasted for about 1-2 hours. The shop belonging to Ali Çetin had been burned by the soldiers, because it had been considered to be an ammunition depot.

320. Ten days after the incident, her brother Ali Yıldırım and her sister Emine Yıldırım found a hand grenade between the wood in the shed right

next to her family's house. Ali had played with it. He had placed it on a rock and had hit it with a stone. It had exploded. As a result, he had died within a couple of hours. Emine had suffered a slight injury to her foot. She did not know whether the grenade had been left by the soldiers or by the PKK.

*Safiye Yıldırım (sister of Hatice Yıldırım)*

321. In a fingerprinted statement taken by the Eruh public prosecutor Şenol Önal on 10 August 1994, it was recorded that Safiye Yıldırım was about 17 years old. She declared that [on 20 February 1993] she and family had woken up to the sound of gunshots. The conflict had lasted for about 2-2½ hours. She did not know how it had started. When she had looked outside after the conflict, she had seen soldiers shooting. During the searches at the time of the incident, some weapons left outside the villagers' houses had been found. She had heard that soldiers had burned some houses for being arms and ammunition depots.

322. Ten days after the incident, her brother Ali Yıldırım had made a hand grenade explode after finding it in the wood shed. He had died three hours later. Her sister Emine Yıldırım had suffered an injury to her foot in that incident. She did not know whether the hand grenade had been left by the soldiers or by the PKK.

323. Fearing both the PKK and the soldiers and out of fear of conflict, her family had moved to Güçlükönak. She told Şenol Önal that she and the others were only threshing the harvest because of the security provided by the soldiers. She did not know whether members of the PKK [illegible] used to go [illegible].

324. In an additional fingerprinted statement taken by Şenol Önal from Safiye Yıldırım on 10 August 1994, she stated that her family had lived near to Abide Ekin's family. Abide had lost her life as the result of the explosion of a bomb thrown by an unknown person. She had had shrapnel in various parts of her body. In so far as she had been able to see, Abide's limbs and head had been in place, but Abide's internal organs had been outside her body.

*Hediye Yıldırım (sister of Hatice Yıldırım)*

325. In a fingerprinted statement taken by the Eruh public prosecutor Şenol Önal on 10 August 1994, it was recorded that Hediye Yıldırım was about 12 years old. She declared that she had heard her sisters' statements and that she confirmed their accounts.

*Osman Ekin (spouse of Halime Ekin, applicant no. 30)*

326. In a statement taken by the Eruh public prosecutor Şenol Önal on 10 August 1994, which forms an integral part of the minutes of exhumation, Osman Ekin declared that, two years prior to the incident [of 20 February 1993] his brother Halil had been taken from his house to an unknown

destination and killed. His family had been unable to locate his body. He further stated that PKK members had come to Ormaniçi a few times. Since then [20 February 1993] they had not come any more. The soldiers had come to Ormaniçi following the villagers' plea for protection.

327. He further stated that the signatory of "this petition letter" was his wife Halime Ekin. This was the first time that he heard that she had filed a complaint. Some people had arrived in the village claiming that they would secure aid from the State. He also stated that the names listed in the documents [shown to him] were members of his family. He did not know why they had filed a complaint. He supposed that they had done so in order to receive aid from the State.

328. After he had got up for morning prayer [on 20 February 1993], he had seen that the village was surrounded by soldiers. Gunshots had started from all sides and he had hid in the house. He had not fired at the soldiers. Soldiers used to come to the village all the time and they had approached the village on that day in a normal formation. After the gunshots, sounds of [illegible] had started, coming from all directions. The conflict had continued for two hours. Various explosives had been thrown in the village; he did not know by whom. After the incident, the village had been searched and weapons had been found in some houses. The owners of these houses were currently in prison. Whilst blindfolded, he and other villagers had been taken to various places. They had been beaten up on the ground that they had aided the PKK. As they had been blindfolded, they had not known who had beaten them. In addition, because of the cold weather and the fact that they had been made to walk a long distance, their feet had swollen, and blisters had developed that had burst. After this sentence, according to the minutes of exhumation, the public prosecutor reminded Osman Ekin of his role [as a witness in exhumation proceedings] and the exhumation procedure in respect of Abide Ekin was continued.

#### **Subsequent proceedings**

329. By letter of 22 August 1994, in the preliminary investigation no. 1994/152, the Eruh public prosecutor Şenol Önal informed the Güçlükonak District Gendarmerie Command that, in connection with the operation carried out on 20 February 1993 and in addition to the death of one private, two children had been killed. The Eruh public prosecutor instructed the Güçlükonak district gendarmerie station to investigate the matter, to apprehend the perpetrators and to secure their presence before the prosecution authorities. He repeated these instructions in a letter of 18 January 1995 to the Güçlükonak District Gendarmerie Command and sent a reminder on 22 February 1995.

330. A report dated 1 March 1995 and signed by the gendarmes Metin Çavdar, Kamil Erbaş and Canip Coban, states that the investigation conducted in case file no. 1994/152 had failed to find any evidence and that

the perpetrator(s) could not be apprehended. On 3 March 1995, the Güçlükonak district gendarmerie Commander Özcan Tozlu transmitted this report to the Eruh public prosecutor. A similar report dated 18 March 1995 was transmitted to the Eruh public prosecutor on 10 April 1995.

331. On 27 June 1995, the Eruh public prosecutor Şenol Önal issued a decision of lack of jurisdiction. The victims mentioned in the decision are Ali Yıldırım and Abide Ekin. The defendants mentioned are an unknown number of PKK terrorists and the offence stated is causing the death of two persons by leaving explosive material behind. According to the decision, the victims had died as a result of the explosion of explosives left unexploded following the incident [of 20 February 1993]. As this was held to constitute an offence referred to in Article 9 of the Law no. 2845 and falling within the scope of the Law no. 3717, it was decided to transfer the case file to the office of the public prosecutor at the Diyarbakır State Security Court.

332. According to a file note dated 21 July 1995, the public prosecutor at the Diyarbakır State Security Court Nazmi Okumuş had opened a preliminary investigation under no. 1995/2749 and had instructed the Eruh public prosecutor to continue the investigation of the deaths of Ali Yıldırım and Abide Ekin with the assistance of the gendarmerie and to send progress reports to the office of the public prosecutor at the State Security Court once every three months.

333. With reference to a letter of 21 July 1995, the Siirt Provincial Directorate of Security informed the office of the public prosecutor at the Diyarbakır State Security Court on 5 October 1995 that the incident had occurred as a result of PKK activities and that, upon the identification of the perpetrators, a separate report would be submitted. Similar letters were sent on 24 June 1996, 24 April 1997, 1 August 1997, 8 December 1997 and 10 March 1998.

334. By letter of 20 March 1998, the Ministry of Justice requested the office of the public prosecutor at the Diyarbakır State Security Court for information, as a matter of urgency, about the investigation into the deaths of Ali Yıldırım and Abide Ekin. The public prosecutor at the Diyarbakır State Security Court replied on 25 March 1998 that to date the perpetrators had not been found and that the investigation was ongoing.

335. With reference to a letter of 21 July 1995, the Siirt Provincial Directorate of Security informed the office of the public prosecutor at the Diyarbakır State Security Court on 3 June 1998 that the investigation into the deaths of Ali Yıldırım and Abide Ekin was still ongoing.

*k. The 1998 Report of a Turkish Parliamentary (Temporary) Committee*<sup>455</sup>

336. On 9 June 1997, upon the initiative of ten deputies, the Turkish Parliament agreed to open a parliamentary inquiry into the problems of villagers who had been forced to migrate as a consequence of village evacuations in the east and south-east of Turkey. It appointed a Committee consisting of 14 deputies and chaired by Mr Haşim Haşimi.

337. This Committee held 16 meetings. The members of the Committee also went to Diyarbakır from 25 to 28 July 1997 where they met with, *inter alios*, State officials and other civil servants, *muhtars*, local administrators, village guards, representatives of non-governmental organisations, artisans and villagers.

338. According to information supplied to the Committee by the State of Emergency Regional Governor's Office in the provinces concerned, i.e. Diyarbakır, Hakkari, Siirt, Şırnak, Tunceli, Batman, Bingöl, Bitlis, Mardin and Muş, a total of 820 villages and 2,345 hamlets had been evacuated in 1993 and 1994, resulting in the migration of 378,335 persons.

339. The Parliamentary Committee concluded that the villagers had left their homes for security and economic reasons, that armed illegal organisations had forced the evacuation of villages that had refused to provide them with logistical support and that the security forces had evacuated some villages. Its report further stated that the agents of the State had evacuated villages, particularly where villagers refused the village guard system, where security could not be provided or where the security forces were concerned that the village might assist the PKK and that such village evacuations had been carried out by security units and had been rife between 1992 and 1994.

340. As all persons having served as Regional Governors had stated to the Committee that they had never exercised their authority under the Law no. 2935 on the State of Emergency to order the evacuation of villages, the Committee further concluded that – since the evacuations had thus apparently not been carried out legally – those persons who had been forced to leave their villages had not been granted compensation as provided in the Law no. 2510 on Housing and Settlement.

341. In its Report, the Parliamentary Committee formulated a number of proposals aimed at resolving the problems caused by the migration of persons from evacuated villages.

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<sup>455</sup> See Appendix II: § 3.

### APPENDIX III

#### THE ORAL EVIDENCE

1. The testimony given by the 48 witnesses to the Delegates is summarised below.

*Ahmet Özkan (applicant no. 1)*

2. Ahmet Özkan stated that he was 80 years old<sup>456</sup> and that he had not spoken Turkish since his military service. He was a widower and currently lived in Cizre. He was the father of Mehmet and İbrahim Özkan and the grandfather of Fahrettin and Nedim Özkan. In February 1993, he and his family lived in Ormaniçi.

3. When the witness was shown his fingerprinted statement dated 13 April 1998<sup>457</sup>, he confirmed that it was his.

4. He denied that there had ever been clashes between the PKK and the security forces in or around Ormaniçi. The village had no guards for protection against PKK attacks. No PKK members had ever been seen in the village. However, when questioned whether, shortly before the burning of the houses, PKK members had hidden in the village, he stated that on one occasion PKK members had come to the mosque. He himself had not seen them. The *muhtar* informed the authorities. No one came to the village.

5. On the day of the raid on Ormaniçi, he was at home. He had just finished his morning prayer when he heard the sound of gunfire, which had sporadically continued until the evening. At some stage, the soldiers had systematically gone from house to house in the village and taken the persons found there outside. Like all the other men, women and children in the village, he and his family were taken to the village square. The soldiers gagged and blindfolded the men and boys and made them lie face down with their hands tied behind their backs from dawn until late afternoon. At some point in time, whilst lying on the ground against the wall, the soldiers severely hit him in the lower back and he fainted from the pain. He bled from his mouth and ears. He believed that the soldiers had broken his back. He was obliged to lie on the floor for about 20 days before he was able to move. He still required assistance to walk.

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<sup>456</sup> Some of the witnesses only stated their approximate age, while others stated their year of birth or showed to the Delegates their *Nüfus* identity card on which the year of birth is recorded. The year of birth recorded on an identity card does not necessarily reflect the actual year of birth, as a time-lag between birth and registration of birth is a common phenomenon in this part of Turkey.

<sup>457</sup> See Appendix II: § 11.

6. After all the villagers were gathered in the square, the soldiers set fire to some of the houses in the village and killed all the village livestock. As he was blindfolded, he did not see the soldiers do this. He heard a helicopter landing.

7. In the late afternoon, the soldiers took the men and boys, still blindfolded, away from the village. Because he was unable to get up, the soldiers apparently decided not to take him with them. He was the only man left in the village. The soldiers had not burned down his house on that day. His house was at the end of the village. The soldiers started to burn the houses in the village from the other end and did not reach his house. Some of the villagers stayed there for the night; others were obliged to take refuge in the caves.

8. The following day the soldiers returned to Ormaniçi, where they conducted a search and burned some houses that remained untouched. On the third day, the soldiers returned once more and burned his house. After this he moved to Hazara (Kurdish name for Akdizgin). At some unspecified point in time, he returned from Hazara to Ormaniçi. He was in Ormaniçi when his son Mehmet and grandson Nedim returned to the village. He was not in Ormaniçi when his grandson Fahrettin was released and returned to Ormaniçi. Fahrettin left Ormaniçi again to seek medical treatment as both his feet had been amputated.

9. In the late summer or early autumn of the same year, after the villagers had started to repair their houses and to tend their gardens and fields, the soldiers returned, gathered the villagers in front of the school and burned houses and provisions. In the late spring of the following year, the soldiers returned once more to Ormaniçi, where they killed four villagers. He denied that this occurred during a clash. After that incident, everybody left the village.

10. He never received compensation from the State. He never considered filing a complaint with the public prosecutor. If there had been a real prosecutor, his house, field and provisions would never have been burned. He had been afraid to go to the prosecutor. After the burning of the houses, he himself went to Cizre to seek aid from the Human Rights Association. He lodged a petition.

*Mehmet Özkan (son of Ahmet Özkan)*

11. Mehmet Özkan stated that he was born in 1965. He was the son of Ahmet Özkan and the uncle of Fahrettin and Nedim Özkan, who were the sons of his brother Abdullah Özkan. He only had a limited knowledge of Turkish. He and his family were currently living in Cizre. In February 1993 he and his family lived in the same house as his father in Ormaniçi. He and his father owned this house with all the furniture and possessions, grain which had just been harvested and 20 goats which were later poisoned. He

never saw nor knew about any PKK visits to Ormaniçi. His father had not told him that the PKK had come to the village.

12. When the witness was shown his signed statement of 4 April 1998<sup>458</sup>, he confirmed that it was his.

13. On 20 February 1993 he was at home when just before morning prayer he heard shooting. He only saw the soldiers shooting; he did not hear or see anyone from the village shooting back at the soldiers. He did not hear any shelling. When the shooting stopped, the soldiers entered the village, where they took him and the other villagers to a place next to the cemetery. There he and others were made to lie down with their faces in the mud and snow. Further, the soldiers blindfolded him with pieces of cloth and kicked him with their military boots. He bled from his nose and mouth. He was aware that houses in the village were on fire as sparks fell near to him. As he was blindfolded, he did not see how these fires had started. He had not seen any arms being found in the village and had not heard that Kalashnikov rifles were found in Ormaniçi.

14. About one hour before the evening<sup>459</sup>, the soldiers bound the villagers' hands and tied the villagers together. They then walked from Ormaniçi to Güçlükönak. During this walk, he and others were beaten with truncheons and sticks. He was wearing shoes during the walk and there was snow on the ground. He did not know how long the walk had taken, but it was dark when he arrived in Güçlükönak.

15. In Güçlükönak, he was taken to a place like a basement, where the floor was wet. He was thrown on the floor. In his opinion, most of the villagers were in that same place. It was very cold and there was no heating. As he had only been given little pieces of bread two or four times during his stay in Güçlükönak, he had not felt the need to go to the toilet. Those who needed to urinate had wet themselves.

16. Some people were taken for interrogation. He himself was taken to a separate room for interrogation. He remained blindfolded during his interrogation. He believed that he heard about two or three different voices during the interrogation. He was asked whether he possessed any arms or if he knew of anyone in the village who had any guns. Whilst being interrogated, the soldiers insulted him and threatened to kill him. The soldiers beat him, tore his trousers and forced him to sit on a bottle until he fainted. He did not remember having signed or fingerprinted a statement in Güçlükönak. After interrogation, he was thrown back into the main room. At that time and as a result of the cold, his feet were swollen. In the room where he and the others were detained, they sat back to back or lay on the floor.

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<sup>458</sup> See Appendix II: § 13.

<sup>459</sup> On 20 February, according to general meteorological data, the sun rises in the area concerned at around 5.50 a.m. and sets at around 5.00 p.m.

17. After about two weeks, he was taken from Güçlükonak to Şırnak where he was detained with one other person in a small cell. He remained blindfolded during his detention in Şırnak. The soldiers beat him and the other detainees a lot in Şırnak. He was kicked by soldiers wearing military boots and had his head banged against the wall. He was beaten until he lost consciousness.

18. In Şırnak, his feet were medically treated once or twice in the ward where he was detained. As he was blindfolded, he did not know who gave him medical treatment on those occasions.

19. He and a number of other villagers were taken from Şırnak to Eruh where, for the first time since February, his blindfold was removed. In Eruh, he and some other villagers were brought before a public prosecutor. When he was brought before the public prosecutor, he was barely able to stand and looked wretched, his clothes were ragged and he looked like a madman. The others were in virtually the same state. The prosecutor asked him what had happened to him. As he considered that to be quite obvious, he just told the prosecutor to see how they looked. The public prosecutor did not put any specific questions to him about his physical appearance. He could not remember whether or not he had told the prosecutor about the torture to which he had been subjected. As he was not guilty, he was then released.

20. He and the other released villagers spent that night in another village. The following day, they went to a place close to Basa (Güçlükonak). From there on they went to Ormaniçi, where he found that his house had been burned. His family were staying in sheep pens. The soldiers had killed most of the villagers' mules.

21. After his release, he saw a doctor called Abdülkadir in Diyarbakır. As a result of having been forced to sit on a bottle, he initially suffered from substantial bleeding. That healed in the course of time. His feet were also injured and he suffered from headaches. There was very little permanent damage to his feet, but about a year or two ago he saw a doctor who told him that his head was damaged. During his detention, his head was banged against the wall many times. He had no medical report about that. When the witness was asked whether he could obtain a report from this doctor, he stated that he did not know how he would be able to get such a report.

22. In September 1993, when the soldiers returned to Ormaniçi, he was in the village. On that occasion, the soldiers spilled and mixed up his family's provisions. Being unaware that this would be harmful, these spoiled provisions were fed to his family's goats, which died as a result. As the soldiers told the villagers to leave Ormaniçi, he and his family went to Zeve.

23. He had returned to Ormaniçi by the spring of the following year. He was in the village when soldiers killed four villagers. When the witness was asked who the strangers were whom he had mentioned in his statement of 4 April 1998, he stated that he did not know. As the soldiers told the villagers that they would be killed if they did not leave the village within

three days, he and his family again went to Zeve. After having stayed in Zeve for a considerable time, they moved on to Cizre.

24. He had never applied for compensation for his lost property nor received any such compensation. He was too afraid to apply to the State.

*Fahrettin Özkan (grandson of Ahmet Özkan)*

25. Fahrettin Özkan stated that he was born in 1979 and that he was the grandson of Ahmet Özkan. His father's name was Abdullah Özkan and he had an older brother called Nedim. He could only understand a little Turkish. He was currently living in Cizre where he was working as a night watchman. He was unable to do any other work. The Delegates noted that Fahrettin Özkan was an albino.

26. When the witness was shown his signed statement dated 13 April 1993<sup>460</sup>, he confirmed that it was his.

27. On 20 February 1993 he was in Ormaniçi, where he and his brother Nedim were living with their father in the same house as his grandfather. He was 13 years old then. They were all at home when the soldiers arrived in the early morning. He heard shooting. He and his family stayed inside their house. Only the soldiers were shooting; he did not see or hear anyone from the village shooting at the soldiers. After about half an hour, the shooting ceased and the soldiers took him and his family to the square. He was made to lie face down next to the men in the mud and snow. The soldiers stepped on his body, from his feet to his head. The soldiers also kicked him.

28. He had heard but had not seen himself that the soldiers had killed the animals. Before he was blindfolded, he lifted his head and saw the soldiers setting fire to Mevlüde's house. The soldiers used a yellow powder. He was unable to see any more because the soldiers became angry with him and beat him for having lifted his head. He was then blindfolded. Sparks landed on his back from nearby houses that were burning.

29. He was kept lying face down until about half an hour before the call to evening prayer. He was only wearing one rubber shoe and did not have his socks on. His clothing was unsuitable for winter; he was only wearing a vest, not a winter coat. He was tied to the other men and taken on foot to Güçlükonak. He was made to walk through the mud and was beaten throughout the journey to Güçlükonak.

30. As he was an albino, he suffered insults, being called an infidel, a foreigner and a non-Muslim. The soldiers took him and the others to a place that was under construction, where it was cold and where there was water everywhere. There was also mortar and sand. There was no form of heating in the building. As Ramadan was approaching, the soldiers asked the detained villagers whether they intended to fast. Those who replied that they would be fasting were given nothing to eat and those who replied that they

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<sup>460</sup> See Appendix II: § 17.

would not be fasting were given a piece of bread. There were no toilet facilities and the villagers were forced to urinate where they sat. He remained blindfolded, his hands remained tied and he was beaten during his stay in Güçlükonak. He was not medically examined.

31. After about 15 days, he was taken for an interrogation. He was told that he had been helping the PKK and that, if he was not prepared to tell the truth, the soldiers would push their truncheon into him. The soldiers asked him who had been helping the PKK. He replied that he did not know, as he was a shepherd; he left the village in the morning, came home at night and went to sleep immediately. He suddenly lost consciousness during his interrogation.

32. He did not know how long he remained unconscious, but when he recovered, two people were supporting him under his armpits. He was then forced to fingerprint five pieces of paper. His request to remove his blindfold was refused. The soldiers told him that he would be given five years' punishment. He replied that, if he were guilty, he would accept his punishment as God was great. The soldiers replied that God was dead, that the Prophet was on holiday and that the soldiers were his God.

33. After about 15 days in Güçlükonak, he was taken by helicopter to Şırnak where he was kept in a cell. He heard voices, but was unable to tell whether he was alone in the cell or not. He was beaten when he went to the toilet so he stopped asking to be taken there. At some stage he was stripped and soldiers looked at him. He and six others were then taken to see a doctor who applied a liquid to his feet. Subsequently, İbrahim Ekinci, Tahir Ekin, Nevaf Özkan, Abdülislam Demir and Resul Aslan and himself were taken to the military hospital in Şırnak, where he had one hand cuffed to the bed rail. A drip was placed in his other arm. His blindfold was removed, but it was replaced by tape over his eyes. During the five days when he was in the Şırnak hospital, the doctors told the soldiers to feed them so that they could recover from their injuries. Food was brought and put at their bedside. He was unable to reach it by himself. At some point in time the doctors had to insert a catheter for a bladder infection.

34. After five days, Nevaf Özkan, Abdülislam Demir, Resul Aslan and himself were taken in an open vehicle to the hospital in Mardin. During his journey, it rained and hailed. The soldiers collected the hail from the bottom of the vehicle and poured it down the back of his collar. His blindfold was removed in the hospital. He did not receive any medication; the doctor only drew up a list of necessary medication.

35. After about a week in Mardin hospital where they stayed in a place where detainees were kept, the doctors amputated the toes of one of his feet. The wounds were dressed every other day. His feet smelled badly and were decayed. Resul Aslan, with whom he shared a room, had both his feet amputated. After another week, the doctors amputated the toes of his other foot. He was not fed enough in the hospital. Nevaf Özkan recovered.

Together with Abdülislam, Nevaf Özkan was taken to prison. After having been detained for 53 days, he was released. He was free when he left Mardin hospital. During his detention, he was not been brought before and did not give a statement to a public prosecutor. Further, he never went to court.

36. He sent a message to his family and they came to collect him. They went to Cizre and subsequently to Ankara for treatment. He was operated on with the help of the Human Rights Association. He had skin grafts carried out on his feet. The treatment in Ankara lasted 15 days. He then returned to Ormaniçi, where he stayed in his house which was partially burned. Other families stayed in that house too. About a month later, he returned to Ankara to have artificial feet fitted, which were no good. The witness offered to show his feet to the Delegates.

37. When a month later, in the early autumn of 1993, he had returned once more to Ankara, the soldiers burned Ormaniçi again. As his father's house was then completely burned, he, his family and other villagers went to the Dehla Hazara caves near Zeve. Later, they returned to Ormaniçi again.

38. He was not in the village when, the following year, four villagers were shot. He was tending sheep when that happened. He saw soldiers that day. The soldiers wanted to take him away with them, but he was unable to walk. He was very afraid and told the soldiers that he had had an accident. After the four villagers were killed, the soldiers told the villagers that they would be shot if they did not leave the village within the next three days. He left the village and never returned.

*Hediye Çetin (applicant no. 2)*

39. Hediye Çetin stated that she was born in 1952 and that she was currently living in Akdizgin. She was married to Ali Çetin. In February 1993, she and her husband lived in Ormaniçi. They owned the only store in the village. The store was in their house. There were no tractors in Ormaniçi, but there were tractors in neighbouring villages.

40. When the witness was shown her fingerprinted statement dated 13 April 1998<sup>461</sup>, she confirmed that it was hers.

41. On the day of the raid on Ormaniçi, she was at home. She heard the dogs barking early in the morning and made her morning prayer. When she finished her prayer, she heard the sound of gunfire. Soldiers had started shooting indiscriminately at the village. She did not see anyone shooting from the village at the soldiers. After about 30 minutes, when the main shooting ceased, the soldiers systematically went from house to house in the village and took the persons found there outside.

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<sup>461</sup> See Appendix II: § 20.

42. Like all the other villagers, she was taken to the village square near the cemetery. The soldiers made the men lie on the muddy, snow-covered ground from dawn until evening, during which time the soldiers kept on kicking the men with their boots.

43. She saw the soldiers set fire to Mevlüde's house and the house of the *muhtar*. The soldiers spread a yellow powder to set the houses on fire. When she approached the houses, she saw the yellow powder on them. She also saw the soldiers shoot and kill the villagers' mules. None of her own livestock was killed at that time.

44. In the village square, she saw Mevlüde Ekin with the latter's daughter Abide. Abide was wounded in the belly. She learned that Abide was injured when a bomb was thrown into Mevlüde Ekin's house. In her opinion, there could be no doubt that the soldiers saw Abide's obvious injury. Abide died three days later. Kumri Aslan was also in the square.

45. Towards the evening, she saw a helicopter land and soldiers taking Ali Erdem to the helicopter. She did not see any other men being taken to the helicopter. The soldiers then lined up and took away the remaining men, who still had their hands tied. At first, the women and children followed the men. When the soldiers shot in their direction, the women and children returned to the village.

46. As her own house was not burned that day, she was able to stay there that night. Some villagers stayed in the houses that were still intact. Others either stayed in the mosque or went to nearby caves.

47. The following day, the soldiers returned to Ormaniçi. Then the soldiers entered her house, emptied all the contents of the store into the courtyard and systematically destroyed everything. The soldiers damaged the metal oil containers with bayonets, poured the oil on the ground and then set fire to it. Then the soldiers shot and killed her livestock, consisting of 50 goats, 9 cows, 7 calves, 2 mules and a donkey. On that second day, she saw a helicopter hovering above the village, but she did not see it land.

48. In the autumn of that year, after the villagers had started to rebuild their houses and had harvested their crops, the soldiers returned once more. On this occasion the soldiers gathered all the villagers at the school. Her husband was not in the village on that day. The soldiers took her inside the school where they punched her three times in the stomach and questioned her about her husband's whereabouts. The soldiers then proceeded to burn and destroy all the villagers' provisions and possessions. The soldiers gave the villagers three days to vacate the village. Thereupon, she and her family left Ormaniçi. She had never returned there since.

49. She had never received compensation from the State. She lodged a complaint with the European Commission of Human Rights in April 1993. She did not know whether Mevlüde Ekin or Kumri Aslan had gone to Cizre and, if so, by what mode of transport.

*Hediye Demir (applicant no. 3)*

50. Hediye Demir stated that she was born in 1962 and that she was currently living in Tarsus. She was married to Nezir Demir and was the sister of Salih, Abdülislam, Hamit and Şerif Demir. In February 1993 she and her family lived in Ormaniçi. Her family owned a two-storey house, four or five plots of irrigated and non-irrigated fields, one mule and a few chickens.

51. When the witness was shown her fingerprinted statement dated 17 April 1998<sup>462</sup>, she confirmed that it was hers.

52. On 20 February 1993, she and her family were at home in Ormaniçi. At 5 a.m. she heard the sound of gunfire. She herself saw, through a slightly open door, that soldiers were shooting. She did not see anyone shooting from the village at the soldiers. The soldiers were wearing green military uniforms. She did not recall having seen soldiers wearing white uniforms or that she had previously made a statement to that effect. When the main shooting ceased, the soldiers systematically went from house to house in the village and took outside the persons found there. Her husband hid in the barn for fear of being killed. The soldiers did not find him. She denied that her husband had shot at the soldiers from the barn. That would have been impossible. He did not possess a gun.

53. Like all the other villagers, she was taken to the village square near the cemetery. The soldiers made the men lie face down on the ground from dawn until 30 minutes before the evening prayer call. Throughout the day, the soldiers walked over the men's backs. The men were blindfolded.

54. She had in the course of that day seen the soldiers set fire to some houses. The soldiers used an unknown substance that they had brought along with them in bottles. The soldiers also used the villagers' store of lamp fuel. She also saw the soldiers shoot and kill the villagers' livestock.

55. In the village square, she saw Mevlüde Ekin with the latter's daughter Abide. Abide was wounded in the belly and her intestines were hanging out from a hole in her belly. She learned that Abide had been wounded when a bomb was thrown into Mevlüde Ekin's house. In her opinion, the soldiers must have seen Abide's injury when Abide asked for water. The soldiers refused to allow water to be given to Abide.

56. Towards the evening, she saw a helicopter land and the soldiers took some men to this helicopter. The soldiers then tied the hands of the 45 remaining men with nylon rope and took the men, who were barefoot and blindfolded, away.

57. Although her own house was not burned that day, she was afraid to stay there and preferred to stay in the mosque that night. The following day, the soldiers returned to Ormaniçi and burned Ali's house. The soldiers then

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<sup>462</sup> See Appendix II: § 23.

destroyed her house. The soldiers did not burn it, but tore the walls down. She was then obliged to take refuge in the caves.

58. In the autumn of that year, the soldiers returned once more. On this occasion the soldiers assembled all the villagers at the school. The soldiers then burned all the villagers' houses and possessions. She and others heard Ayşe and Hediye screaming, but did not know what was happening. When she and others wanted to go and find out, the soldiers stopped them. The soldiers gave the villagers three days to vacate the village. Thereupon, she and her family left Ormaniçi. She had never returned there since.

59. She had never heard that some of the men of Ormaniçi had been brought before the State Security Court, but she had learned that Mehmet Nuri Özkan and Ali Erbek had been placed in custody and tried. She had never received compensation from the State for the loss of her property. She confirmed that she had lodged a complaint with the European Commission of Human Rights.

*Salih Demir (son of Mehmet Emin Demir, applicant no. 5)*

60. Salih Demir stated that he was born in 1964. His father was called Mehmet Emin Demir and his brothers were called Abdüselam, Hamit and Şerif. In 1993 he lived with his parents in Ormaniçi. His family owned two houses, with their belongings and provisions, 15 sheep, a 15 *dönüm* garden and two fields, of three and seven *dönüm* respectively.

61. In his family house he also kept a cash amount of 5,000 German marks and ten pieces of *Reşadiye* gold. He did not know whether the money and the gold had been taken away or had been burned on the day of the incident. He explained that he only lived in Ormaniçi intermittently. He and his brothers used to work in big cities such as Istanbul and Ankara. He would return to the village during the summer months in order to help with the farm work. The wages of himself and his brothers provided for his parents in the village. He and his brothers regularly exchanged a part of their monthly wages into German marks, which they kept in their parental home, as his father did not want to deposit these funds in the bank.

62. When the witness was shown his signed statement dated 13 April 1998<sup>463</sup>, he confirmed that it was his.

63. On 20 February 1993 he, his brothers and his parents were in their home in Ormaniçi. At about 5.30 a.m., he noted the presence of soldiers wearing white commando clothing. The soldiers started shooting and aimed at his family's house. He went outside and asked the soldiers, who were at a distance of about 20 metres from the house, why they were shooting at them. The soldiers replied by asking who was in the house with him. He replied that his brothers were in the house with him. The soldiers then fired

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<sup>463</sup> See Appendix II: § 26.

a mortar shell that hit the rear of his house, which resulted in the collapse of the back part of the house. The soldiers stood at a distance of about 50 metres from the place where the mortar hit the house. His family was inside the house at that time, but no one was injured by the shell. He only saw the soldiers shooting. He did not see anybody shooting at the soldiers from the mosque or from the rest of the village. His house was situated three houses away from the mosque.

64. The soldiers then entered and searched his house. The soldiers took the identity cards of himself and his family and made them sit together in a room. He still heard shooting at that point in time. He heard messages on a soldier's radio informing the soldiers that soldiers were in such-and-such a house and that that house should not be fired at. The soldiers also took his family's animals outside. They remained in that room for about 2½ hours and were guarded by one soldier. Then other soldiers came, who said that one of the soldiers had been killed. The soldiers then tossed his family's belongings around and took him and his family to the village square next to the cemetery. At about 11 am, on his way to the square, he saw that the houses of Halil and Mevlüde were on fire. He did not see how they had been set on fire.

65. Upon his arrival in the square at around 11 am, he saw that the other villagers were also gathered there. The men were lying face down in the snow and water. As his parents were ill, they had not been forced to lie down in the square, but both he and his brothers were forced to lie down. The soldiers kicked him in his head and back. The soldiers also walked over their backs. During this time, sparks from the burning houses fell on his back. Further, he was blindfolded and his hands were tied.

66. After about 3½ hours, the soldiers tied the men of the village together and made them walk to Basa (Güçlükonak). He had only one shoe on at this time. It took about three hours to walk to Basa; his blindfold had not been removed. Upon his arrival in the Basa station, his feet were injured and his toes were bleeding. As he was unable to move, the soldiers dragged him. He and most of the others were kept in a basement. The floor there was wet and there was sand. There was not any heating and, as it was under construction, there were no windows. He had not been medically examined in Basa. Although he knew that his brothers Hamit, Abdülislam and Şerif were also in detention in Basa with him, he was unable to speak with them. The soldiers prevented the villagers from speaking with each other. He remained blindfolded during his entire stay in Basa. He was only given a piece of bread every fourth day. There were no toilet facilities. He had to urinate over himself. He was beaten and his head was banged against the walls.

67. He was taken to a separate room for interrogation on three occasions. The soldiers interrogated him about his supposed PKK involvement. The soldiers heated a bricklayer's trowel on a stove and applied it to his hands,

forehead and nose when he said that he knew nothing about the PKK. He was also forced to fingerprint a document. He did not know what was written on it and, although he was able to sign his name, the soldiers forced him to fingerprint it.

68. After about 15 days, he was taken to Şırnak by helicopter. Upon his arrival there, he was examined by a doctor who put a liquid on his feet. Although he no longer had his hands tied, he was still blindfolded. He was detained in a cell together with two other persons. There was not enough space to sit down. During his stay in Şırnak he was beaten whilst he went to and from the toilet. He was interrogated once. He was then forced to sign a paper. As he had remained blindfolded, he asked what he had signed. He was then told that it was concerning his belongings and cash. His blindfold was still not removed.

69. During his stay in Şırnak he heard the voice of İbrahim Ekinçi, when the latter asked to be taken to the toilet. İbrahim Ekinçi was not allowed to go and was beaten. As he was blindfolded, he did not see İbrahim Ekinçi but only heard the latter's voice. From what he heard, he concluded that İbrahim Ekinçi was lying on a piece of cardboard in the hall in front of the cells. One night İbrahim Ekinçi was taken away three times by an ambulance. After the third time, İbrahim Ekinçi was not brought back.

70. He stayed in Şırnak for 15 days. He was then taken to a public prosecutor in Eruh. His brother Şerif was there with him at that time. His other brother Hamit had already been before the prosecutor and set free. His brother Abdülislam had been sent to Mardin Hospital, as he had been ill.

71. He told the prosecutor that his village was burned and destroyed and that he had been ill-treated. The prosecutor replied that he could not deal with such matters. He was then released. He denied that he would have told the public prosecutor that, in Ormaniçi, PKK militants collected food by force of arms or that the latter made propaganda speeches in the mosque. He had neither heard nor spoken about such matters. Nobody asked him to change his statement.

72. After his release, he went to Siirt. That was the destination of the minibus which had been hired for him and others by the soldiers. On the way to Siirt, the security forces stopped the bus and took them to a station, where they were told to go home. As he was unable to reach Ormaniçi on that day, he spent the night in the village of Seyfiye.

73. He reached Ormaniçi the following day. He found that his house had been burned and that his family had settled in a small room in another house. As his feet, hands and nose were injured, he went to Cizre for medical treatment.

74. When his brothers Abdülislam and Mehmet Şerif were released from custody, they told him that they had been beaten, that they had not been given any food and that their feet had not been treated. Two of Abdülislam's toes had been amputated. Abdülislam had been detained in

Mardin Hospital for 60 days. None of his family had been able to see him during that time.

75. He had been in Ormaniçi when, later that year, the soldiers returned. On that occasion, the soldiers gathered the villagers at the village school. He was blindfolded and made to lie face down on the ground. The soldiers further mixed the villagers' grain, provisions and food and tore up the villagers' clothes. As the soldiers told the villagers that they would be killed if they did not leave the village, he went to the Dehla Hazara caves. After having spent some time there, he and others returned to Ormaniçi.

76. In the spring of the following year, he had been in the gardens with his brother when they saw soldiers approaching. Believing it to be another raid, he and his brother ran towards the village. By the time he arrived at the spring near the village, he was about 10 metres ahead of his brother. The soldiers then caught his brother at the spring. He saw his brother still alive when his brother was taken away by the soldiers to, as he then thought, the school. There was an orchard near the school. He then heard shots from afar. Some time later the sound of shooting became closer.

77. Before the soldiers left the village that day, they told the villagers that they had killed seven people in the garden and that the villagers should get the bodies. When he went to see their bodies in the orchard, he saw that three of them were strangers. He then saw that both his brothers Abdülislam and Şerif had been shot and killed.

78. The soldiers also told the villagers to leave the village that night. Otherwise they would be killed. He asked the soldiers to give the villagers three days to leave the village. He left Ormaniçi and went to Cizre. He had never returned to Ormaniçi since.

79. Neither he nor his family received compensation from the State. He knew that his father, who had died in the meantime, had made an application to the European Commission of Human Rights in April 1993. His father had told him about that. He wished to pursue that application.

*Kumri Aslan (applicant no. 6)*

80. Kumri Aslan stated that she was born in 1965 and currently resided in Tarsus. She was born in Bana (Ormaniçi), where she had lived in February 1993. Her husband, Mehmet Aslan, had been the *muhtar* of Ormaniçi. They had five children. From time to time soldiers came to Ormaniçi, where they conducted house searches. She had never seen the PKK come to the village and had never heard about PKK visits to the village.

81. On 20 February 1993 she woke up and realised that soldiers had come to the village. The soldiers fired for some time at the houses in the village. Nobody fired from the village at the soldiers. At some later point in time, the soldiers entered the village, where they gathered all the villagers. When the soldiers came to her house, her husband was in the house as well.

The soldiers forced him to leave his house through the window. They did not allow him to go through the house door because of the shooting. She did not know where the soldiers took her husband then.

82. The house of Mevlüde Ekin was near her house. Mevlüde Ekin had a daughter Abide. Abide was injured on that day. She died three days later. She was told by Mevlüde Ekin that, about ten minutes after the raid had started, a mine was thrown into a room in the latter's house. Abide was in that room at that moment and mine fragments wounded Abide in her belly. Her intestines were ripped out. Mevlüde and Abide came to her house shortly after the soldiers arrived.

83. The soldiers collected all the villagers from their homes and took them to the village square next to the cemetery. The square was at the back of her house. The soldiers beat the villagers on the way to the village square. In the village square, the soldiers made the men lie face down in the mud. The women and children were kept apart from the men. Sleet had been falling that day. She was kept in the square until the soldiers took the men away. It was nearly evening when that happened.

84. During the time when the villagers were kept in the village square, the soldiers searched the houses in the village and set the houses on fire. She herself saw the soldiers setting fire to her own house. When she and her children were taken out of their house, the soldiers lit a match and threw it onto the beds. This happened in front of her. She did not see the soldiers spreading any chemicals around when she left her house, but she saw that the soldiers had a yellow box in their hands. She also saw a box in the soldiers' hands near the house of Mevlüde Ekin. She saw from the outside that her house had been set on fire. Smoke had risen up. The soldiers did not allow her to remove anything from the house, not even her children's clothes. Her children were dressed but did not yet have their shoes on when they were taken out of the house. She wrapped her children in her skirt. The soldiers brought Mevlüde and Abide Ekin together with herself and her children to the village square.

85. In the course of that day, Mevlüde Ekin asked the soldiers for water for her injured daughter Abide. The soldiers did not give her any water. The soldiers realised in what condition Abide had been. Towards the evening, the soldiers tied the hands of the men with ribbons and dragged them away. The men were also blindfolded. She saw her husband being taken away in that manner. She also saw that Halil Ekin and two other villagers were taken away by helicopter. Her husband had not been taken away by helicopter. All the male villagers were taken away by the soldiers.

86. While the villagers were assembled in the village square, the soldiers shot and killed all the animals which were outside. Later she and others saw that the soldiers had also killed the animals which were inside. That was the shooting that had gone on after the villagers were taken to the village square.

87. After the men and the soldiers left the village, she went to the mosque, as she had no house any more. Her house and everything in it had been burned. There were gold objects in her house. She did not know whether the gold had also burned or whether it had been taken away. Abide Ekin also stayed in the mosque. As all the men had been taken into detention, there was nobody to take Abide Ekin to a hospital.

88. The next day, the soldiers returned to Ormaniçi, where they burned the house and barn of Hediye Çetin, which had remained intact. After that, the soldiers left. She stayed three days in the mosque without any food. After three days food was brought from neighbouring villages. After that, she moved into a barn belonging to Mehmet Kaya. She stayed there until, about four months later, her husband returned. Neither her husband nor the other six released villagers she then saw told her what had happened. She only knew that they were in prison in Muş.

89. As the walls of her house had not been destroyed, she and her husband repaired the roof of their house after her husband's return to Ormaniçi. She stayed in Ormaniçi until September, when the soldiers attacked the village again. The soldiers burned two or three houses that had not been burned during the previous raid. The soldiers poured gas over the food, material and provisions in the other houses and then set fire to it. After that attack, all villagers left Ormaniçi and went to different places. Some of them took shelter in caves near to the village. Others went to other caves.

90. She returned to Ormaniçi in the spring of the following year. She stayed there for 1½ months. Then the soldiers raided Ormaniçi again and killed four villagers there.

91. She had never filed a complaint with the authorities and had never received any aid or compensation. She went to the Human Rights Association in Cizre to file an application to the European Commission of Human Rights. She went there alone. She filed this application also on behalf of her husband, who at that time was imprisoned, and their children. She fingerprinted a statement. She fingerprinted a further statement at the end of 1997. She gave her account orally and Tahir Elçi wrote it down.

*Mehmet Aslan (husband of Kumri Aslan)*

92. Mehmet Aslan stated that he was born in 1963 and that he was currently living in Tarsus. He was married to Kumri Aslan and was the brother of Resul and Abdullah. He lived in Ormaniçi in February 1993. There were about 30-33 households in this village. He was the *muhtar*. He had been elected two years earlier. He could both speak and write Turkish. He was the only person in Ormaniçi who possessed a telephone, but his telephone had not worked for a long time in February 1993. There was an employee of the telephone company who lived in Fındık and he had asked several Ormaniçi villagers who used to go to the mill there to ask this person to come to have a look at the telephone, but he never came. Every

village *muhtar* had a telephone in his house. There was no electricity in Ormaniçi. There were no tractors in Ormaniçi, as there was no access road to the village. There was a tractor road between Akdizgin and Cizre. There were one or two tractors in Akdizgin, with which the villagers could go from Akdizgin to Cizre.

93. The previous *muhtar* was Halil Ekin, who told him that he had been detained and beaten several times. One day, he saw Halil Ekin, Cemal Sezgin, Hacı Ekin and others being taken away by soldiers to a little pond with water above the village. The soldiers dragged the men to that pond, immersed them and ill-treated them. At some point in time, Halil Ekin had been taken away by armed men during the night and nothing had been heard from him since. He had not seen that incident himself and had no idea who could have taken Halil.

94. He confirmed that Mevlüde Ekin had a daughter called Halime. There was another Halime Ekin in the village, who was married to Osman Ekin. He knew İbrahim Ekinci. He had never heard that İbrahim Ekinci had a disease. İbrahim Ekinci was a normal person and he had never seen İbrahim Ekinci go to the doctor nor heard him talk about that. He had heard from the sister of another villager, İbrahim Kaya, that the latter was a village guard. İbrahim Kaya's younger brother, Nedim Kaya, was a member of the PKK and was a confessor. He heard from their sister that Nedim used to participate in operations by the security forces.

95. Ormaniçi was situated on the slope of a hill. There was no road for cars to Ormaniçi and it would take 1½-2 hours to walk from Ormaniçi to Güçlükonak. It would take about 2½ hours to walk from Ormaniçi to the village of Boyuncuk. There was no road between Ormaniçi and Boyuncuk. The relationship between the two villages was good, the usual relationship between villages. There were village guards for a while in Boyuncuk and then they stopped for a while and then they started to have village guards again. When he returned home after his release from detention, he learned that a Boyuncuk village guard called Mehmet Sevgin had been killed. He did not personally know Mehmet Sevgin. He had never heard that anyone from Ormaniçi was suspected of having been involved in that killing.

96. There were no PKK activities around Ormaniçi prior to February 1993. The security forces had frequently come to Ormaniçi, where they carried out routine duties, such as searching houses and asking whether the PKK had come. On such occasions, the soldiers would come during the night and surround and seal off the village. In the morning, the soldiers would enter the village and, after having conducted a thorough search, leave again. There had been no village guards in Ormaniçi although pressure was applied by the military commanders to accept the village guard system in that the commanders would say "Either you become village guards or you leave this place". There were many villages from the same nomadic clan that had been evacuated. There was a military base in Güçlükonak, to the

west of Ormaniçi. At the relevant time, the commander of the Güçlükonak gendarmerie station had a major called Turgay. He did not know a person called Celal Çürek. There was also a battalion in the Fındık sub-district to the north of Ormaniçi. Further, there were soldiers in the village of Akdizgin, to the east of Ormaniçi.

97. On 20 February 1993 he woke up to sounds of gunfire. His own house had been hit by the first shots as, immediately after he heard the shots, all the glass in the windows broke. A kind of heavy weapon fell in front of his house. It made a big noise, flames came in through the window and stones hit the wall. It sounded like horse hooves. When he looked out the window, he saw lots of soldiers in front of the village, to the south. He guessed that there were about 100 soldiers, some of who were wearing white uniforms. Other soldiers were wearing the usual camouflage uniforms. Shots were fired at the village from a place across the village. He did not see any shots being fired from the village at the soldiers. During the extensive shooting, he lay down on the floor. He guessed that the shooting lasted for about 1½-2 hours. After the main firing stopped, he heard intermittent shots until noon.

98. At some point in time, he heard soldiers at the back of his house. They asked him to come out of the house, which he refused to do as bullets were still flying around. When the firing stopped, he left his house through the window, as the door in the front of the house was not visible to the soldiers, who were at the back, and they wanted to be able to see him as he came out of the house. After having climbed through the window he was ordered to put his hands in the air and the soldiers searched him. He guessed that there were about 50 soldiers in the village at that time. He did not know whether after that his house had been searched, as at that moment a soldier told the commander that someone was shooting from a nearby house and that he had just thrown a gun bomb (rifle grenade)<sup>464</sup> into the house to silence the weapon. The soldiers asked him whose house that was. He told them that a widow lived there with her children. It was the house of Mevlüde Ekin. The soldier suggested that the commander search the house. The commander was a special sergeant called Aziz. He did not recognise any of the other military. The commander ordered the witness to tell the persons in the house to come out and then to search it.

99. Mevlüde lived with her children in that house. They all slept in the same room. He did not hear the explosion of the bomb. There were lots of sounds of weapons at that time. After he called Mevlüde and her children, they came out of the house. Mevlüde was carrying her 5- or 6-year-old daughter Abide in her arms. Abide had been injured, her intestines were hanging out. He told Mevlüde to go to his house and wait there, which she did. Halime and Abdullah, who also came out, did not go to his house but

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<sup>464</sup> The witness used the words "tüfek bombası".

stayed outside. He was then ordered by the soldiers to take them into the house. They pointed a gun in his back.

100. He went in first and then the soldiers – five privates, a special sergeant and one NCO – accompanied him and searched the house, which had two storeys. Some other soldiers stayed outside and there were also soldiers on the street around the house. They found no weapons in the house. The soldiers first searched the ground floor and then went up by the outside stairs to the upper floor. He and the soldiers went into the bedroom, where they saw bloodstains. He reproached the soldiers, saying that all they had managed to do was to wound the child. The soldier insisted that there had to be a weapon in the house.

101. There was a 20 cm long shelf with a curtain above the window in the bedroom where Abide had been injured. After having been ordered to do so, he pulled and held the curtain. When the soldier was looking at the papers and the ashtrays placed on that shelf, a single shot was suddenly fired from outside hitting the soldier in the chest. The soldier died immediately. He was standing directly next to the soldier when that happened; their shoulders were touching. He quickly looked out of the window and saw that, at a distance of about 50 metres, a soldier was kneeling and pointing his gun in the direction of the house. He then said to Commander Aziz – who was also in the bedroom, together with a non-commissioned officer and five soldiers – “He will keep shooting and he will kill us too. What is that? Call out to him. Why is he shooting? Has he gone crazy or what? Tell him not to shoot at us”. The Commander said “What soldier? Soldiers do not shoot other soldiers”. The soldiers in the room said that the villagers had shot the soldier. He told the commander to look and see for himself that the soldier outside was still there pointing his gun at them. The soldier was the only person there. There was not a single civilian at that spot.

102. The commander then started to beat him, telling him not to say that a soldier shot another soldier. He was told that if by chance he went to court and told the court that the soldier had been shot by soldiers, he would be killed. The soldiers made all sorts of threats. He said that he would not deny what he saw. The commander grabbed him by the neck and hit his head against a wall. A soldier hit him on the head with a rifle butt. He then lost consciousness. In his opinion, the soldier who fired the shot did so after having seen him dressed in civilian clothes standing in the window of a house at which the soldiers had previously fired.

103. When he regained consciousness, he found himself lying face down by the cemetery wall. He raised his head to see where he was. On his right he saw men lying in a row face down at the foot of the cemetery wall. When he wanted to look to his left, he was kicked in the head. Although he did not see the women and children, he heard them crying to his left. He did not see his wife in the square.

104. He was kept there, lying face down until shortly before dark. He was unable to look around at what was happening, as the soldiers frequently stepped on his back. He did not know whether the soldiers also stepped on the backs of the other men. Directly to the right of him was Ahmet Özkan, an old man. He did not have the chance to see who was directly left of him. He also noticed burning. He heard the sound of burning reeds, smelt smoke and felt the warmth of a fire. Small pieces of cinder carried by the wind fell on his back. Mevlüde Ekin's house was only five metres away from him. He did not see any houses being deliberately set on fire and he himself did not see Mevlüde Ekin's house burning. While lying in the square he also heard sporadic gunfire. He did not hear the soldiers call out any names of villagers during that day. Two or three times, he heard a helicopter approaching and landing. As he was unable to move, he did not see whether any villagers were taken away in a helicopter. As he was unconscious at that time, he did not know how the body of the dead soldier had been transported.

105. In the late afternoon, he and the other men were blindfolded one by one. He was blindfolded with his scarf. Each man who had been blindfolded was made to stand up. The soldiers then tied all the men together with a rope taken from the village grocery store. After all the men had been tied together, the soldier in front pulled the rope. That is how he and the other men were made to walk to Güçlükonak. Only one stranger was apprehended in Ormaniçi, namely a 15 year old shepherd from Boyuncuk who stayed in Ormaniçi. The area was rocky and some of the men fell down a number of times. He himself also fell. As his hands were tied, he was dragged 5-10 metres before he was able to get on his feet again. There was about 20 cm of snow on the ground and during the day sleet had fallen. He put on his shoes in the morning and still had his shoes on when he arrived in Güçlükonak. He was unable to say how long the walk lasted.

106. In Güçlükonak the villagers were taken to a military building under construction, where they were detained in the basement. As *muhtar*, he had been many times to Güçlükonak, where he had seen the construction site. During his stay in Güçlükonak, he heard the sounds of construction activities. Upon their arrival in that building, he was untied from the rope with which he had been tied to the other men. His hands were then retied. His blindfold was not removed during his entire stay in Güçlükonak. He did not know whether the men's names were recorded. In so far as he knew, there was no head count. In Ormaniçi, the soldiers took his identity card and those of the others, and kept them. They were not medically examined upon their arrival in Güçlükonak.

107. The place where he was detained had no walls. Raindrops and snowflakes fell on the men. There was also water on the floor. There was about 20 cm of water where he sat. There was no heating and there was no bed or bedding. He did not know whether there was a toilet. He asked many times to go to the toilet, but the soldiers never let him. Apart from a piece of

bread, which was given to him either that night or the next morning, he did not receive anything to eat or drink in Güçlükonak.

108. At some point in time, his name was read out by a soldier, who then took him to a different place, where he was asked about PKK visits to Ormaniçi, about a gun he was believed to possess, why he had not left the village and why the villagers had not become village guards. He learned who else was detained in Güçlükonak when – in reply to the calling out of names before being taken to a different place – someone answered “present”. He did not hear İbrahim Ekinci's name being called out, nor did he hear him. He remembered that Mehmet Tahir Çetin was there. Apart from having been kicked and hit by a rifle butt, he was not ill-treated in Güçlükonak. He heard the screams of others while they were beaten.

109. After three days, his name and those of seven others were read out and they were then taken by helicopter from Güçlükonak to Şırnak. He remembered that Hacı Ekin and Mehmet Özkan were part of that group. He could not remember who the others were. At the time, he did not know to which place he was being taken. Upon his arrival he was placed in a cell from where he then overheard a conversation between soldiers. From this conversation he understood that he was in Şırnak. He remained blindfolded in Şırnak. He was not medically examined when he arrived in Şırnak. He understood from the sounds that the cells in Şırnak were next to each other. Sometimes he was alone in the cells; sometimes he shared his cell with two or three others. The cells were dry and heated.

110. He was interrogated once in Şırnak. His name was called out and he was taken to a downstairs room. He was told to undress completely. His blindfold was then removed and he was told to look in front of him. He saw a table with a truncheon and cables. Then he was blindfolded again. He was subsequently questioned about PKK activities in his village. After he denied any such activities, he was told that they would make him talk. He then felt a rope being passed under his arms and suddenly he found himself hanging. He estimated that he was hanging in this manner for 5-15 minutes during which time cold water was poured over him twice. His arms felt numb for an hour or two. Later, his arms felt normal again. He was not subjected to electric shocks, but he heard from Cemal Sezgin, in prison, that the latter had been given electric shocks.

111. He stayed for about 16-17 days in Şırnak. He was taken to court in Eruh on 9 March 1993. He was medically examined in Şırnak before he left. He and others were made to undress in the same room. A doctor came and asked them to show their front and their back. The doctor looked everywhere on their bodies and then said that they were fine and that they could get dressed again. Then he and the others were taken by car to Eruh. When they entered Eruh, their blindfolds were removed. They were taken to the courthouse where they sat in a row. Their names were called and then they went one by one into the courtroom, where they gave statements. He

had never given any statements prior to that. He remembered having been forced to fingerprint a document on two occasions, once in Güçlükonak and once in Şırnak. He was blindfolded on both occasions. He did not write his signature on these occasions.

112. In Eruh, he was brought before a public prosecutor to whom he gave a statement. When questioned about the contents of his statement dated 9 March 1993<sup>465</sup>, in particular about the arms and armed activities of Nezir Demir, Deham Özkan, Nedim Kaya and Ali Erbek, the witness stated he could not remember having said this and doubted that he had in fact done so. He further did not remember whether he had signed that statement. The signature on the statement did not look like his. The prosecutor saw the state in which the men were. Most of them had to crawl on the floor to go and give their statement. They did not have the strength to stand up. He told the prosecutor that he had been ill-treated, but the prosecutor said “I cannot do anything for you. You will be prosecuted”. After the prosecutor, they were taken before a female judge who took their statements again. They did not complain to her about their treatment as they were only allowed to answer the questions she put to them.

113. He was then taken to prison in Eruh. A few days later he received an indictment which listed all the charges. That is how he learned what the charges were. After a month there, he was taken to Siirt, where he stayed for one week. From Siirt he was transferred to Muş. On 21 June 1993, he was brought before the State Security Court in Diyarbakır for a hearing. He was then released. The soldiers first took him back to Muş. After he collected his personal belongings and his identity card there, he returned to Ormaniçi. He believed that the State Security Court proceedings were still pending as he had not received any notice of acquittal.

114. Upon his return to Ormaniçi, he saw that no houses were still standing. A few houses were covered with wood or plastic. People were living in one room. His family was also in the village at that time. His house and the house of his brother Resul had been destroyed. In Resul's house there was one room in which Resul run a store. Resul sold sewing thread, dishes, shoes and other necessities for the villagers. Resul's feet were cut. Resul also had a wound on his buttocks<sup>466</sup>. Resul said that he had been burned with a hot iron. Other villagers also told him after his return to Ormaniçi that they had been burned with a hot iron.

115. As his house had been destroyed, his children stayed in Mehmet Kaya's barn, which had not been burned. Mehmet was the father of İbrahim Kaya. He immediately started to repair his own house by covering the roof with wood and clay. To this end he cut down trees in the village orchard. After that, he and his family moved back into their house.

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<sup>465</sup> See Appendix II: § 43.

<sup>466</sup> Mr Aslan used the Turkish word “*kalça*”, which in English literally means the hips, but which in colloquial Turkish may also be used as a polite denotation of the buttocks.

116. In July 1993, he went to Ankara, where he met with members of the Prosperity Party and Muhsin Yazıoğlu, president of the Great Union Party. He told them about the incidents in Ormaniçi and that the political parties should form a committee and send it to his area for an assessment of the damage inflicted on his village. He was told that they would see what they could do. He subsequently heard that a committee had only gone to Siirt. It had not gone to his area.

117. In September 1993, after he and the other villagers had harvested their crops and stocked the crops in their houses, the soldiers returned to Ormaniçi. He himself was in Cizre on that day. He learned from the villagers that, on that occasion, the soldiers had burned two or three of the repaired houses – which he later saw for himself – and that the soldiers, after having mixed up the wheat, barley and lentils, had poured lamp fuel over the foodstuffs. The soldiers had warned the villagers to leave the village.

118. Certain villagers then went to live in the caves near Akdizgin. There were many caves there. His family and four other families went to other caves within the boundaries of Ormaniçi. These caves were located on the banks of the Dicle (Tigris) river. They returned to the village itself in March or April 1994. It was impossible to stay in the caves. There were too many fleas.

119. As his repaired house was still standing, he and his family were able to move back into their own house. All those who had repaired their houses moved back into them. Others did not have the strength to repair their houses. After about two months – he thought it was on 25 May 1994 – the soldiers returned to carry out an operation. When the soldiers arrived in Ormaniçi, they started to advance towards the orchards near the river. He remained in his house. Then he heard gunfire. At about 3 p.m., the soldiers came back to the village and said that they had killed seven terrorists. The soldiers then left for Güçlükonak where they had come from. Later, some of the villagers went to the orchards – he himself did not go there – and he learned that Mehmet Kaya, Mehmet Özkan, Abdülislam Demir and Şerif Ekin and three others were killed there. The villagers did not know the three other persons who were killed in the orchards. They were strangers.

120. Firstly, he had sent two persons to the gendarmes in Güçlükonak in order to find out from the major whether the seven persons could be buried or whether the arrival of official investigators should be awaited. These two persons did not return that day. The next day, soldiers and village guards from Güçlükonak came to Ormaniçi. Two village guards came to his house and told him that the major had said that the dead could be buried. The bodies, which were still lying near the river, were brought to the village where they were buried in the cemetery. Before the soldiers left, they said to him “We are giving you three days. If we come back in three days and find you in this village, we will shoot all of you. Leave the village”. The

villagers agreed to leave. The death of the four villagers was registered with İhsan Aktuğ, the *muhtar* of Güçlükönak. He did not know what was stated on their death certificates as the cause of death.

121. Some villagers left Ormaniçi on the same day, others on the next day. All the villagers left the village. He and the other villagers, including Ayşe Ekinci and İbrahim Kaya, went to Güçlükönak, where they sold their animals. That is how he obtained the money for the journey from Güçlükönak to Mersin. He had not returned to Ormaniçi since then. Ayşe Ekinci still lived in Güçlükönak. İbrahim Ekin initially stayed in Güçlükönak, but later moved to İdil.

122. He had never heard that, in August 1994, two prosecutors and an expert had gone to Ormaniçi to inspect the damage to the property. He had never complained to the State authorities about what happened in Ormaniçi and had never heard that others had done so. This would have been pointless as the soldiers had burned the houses. He wondered why the ones who had burned his house would compensate him. His younger brother Abdullah, who was sitting for university entrance exams at the relevant time, might have filed a petition on his behalf, but he was not aware of this. He never received any compensation from the State for what happened.

123. Whilst he was in prison, his wife made a petition to the European Commission of Human Rights. He found that out when he came home. He remembered that in October 1997 he had given an oral statement to Tahir Elçi, who had just been released from prison and who had written it down. He had gone to Tahir Elçi together with Hüseyin. The signature on this statement<sup>467</sup> was his. He could not remember whether or not he had given any previous statement. When questioned about his wife's statement that, on 20 February 1993, there was gold in their house, he explained that his sister had got engaged and that this gold, 9 Cumhuriyet gold coins and a 50 cm long gold chain, had belonged to her. It was bought for her as a dowry.

124. When the photographs taken on 10 August 1994<sup>468</sup> were shown to the witness, he confirmed that the village on the photographs was Ormaniçi.

*Abdullah Elçiçek (applicant no. 7)*

125. Abdullah Elçiçek stated that he was born in 1958 and was currently living in Güçlükönak. He was married to Rahime. In February 1993 he and his family lived in Ormaniçi, where they owned a two-storey house which had been burnt twice, one cow, two plots of fruit gardens and 30 *dönüm* of non-irrigated fields.

126. When the witness was shown his fingerprinted statement dated 14 April 1998, he confirmed that it was his<sup>469</sup>. He gave this statement in Diyarbakır.

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<sup>467</sup> See Appendix II: § 44.

<sup>468</sup> See Appendix II: §§ 293-294.

127. On 20 February 1993 he and his family were at home in Ormaniçi. At about 5 a.m., when he and his mother went outside to get water, they saw soldiers near the houses. He heard shooting. The soldiers opened fire. He did not see anyone shooting from the village at the soldiers. When the main firing stopped, the soldiers came to his house, blindfolded him and took him to the village square where he was made to lie down in the muddy snow. The soldiers walked over his back, head and hands whilst he was lying there. The soldiers set houses on fire. Sparks landed on his back from nearby houses on fire. He himself did not see soldiers setting fire to the houses as he was blindfolded, but having only been four metres away he realised that houses were burning. Moreover, all the women saw it happen. The soldiers also shot and killed the villagers' animals, including his own livestock.

128. He was kept in the muddy snow until about one hour before sunset. The soldiers then roped the blindfolded men together and forced them to walk up and down the slopes of the valley to Güçlükonak. Many of the men were barefoot when they left Ormaniçi and, as others lost their footwear during the walk, all the men were barefoot when they arrived in Güçlükonak after 2-3 hours. It was a very difficult walk as there was snow on the ground.

129. When he arrived at Güçlükonak he was taken to a building still under construction that had no doors or windows. Although he was blindfolded, he realised that he was being kept with the other men as he heard them screaming and shouting. He had to sit on a wet stony floor, as there was no furniture. There was no heating. There were toilet facilities located in a corner of the building. He himself did not use these facilities during the 17-18 days he was detained there. He was not fed for the first five or six days. Then he was given a piece of bread once a week.

130. During his detention in Güçlükonak, he was interrogated many times. He was asked whether he possessed any weapons. During the interrogation he was beaten, burned by hot metal bars and given electric shocks. Although the witness initially stated that he also had his toenails and fingernails pulled out, he later explained that his fingernails had in fact fallen out by themselves. After he had been subjected to electric shocks, his fingers had swollen and then after a week his nails had fallen out. The witness showed the Delegates the condition of the fingernails on his right hand. He denied having made a statement to Tahir Elçi to the effect that he was stripped and that cold water had then been poured over him.

131. After 17-18 days, he was taken by helicopter to Şırnak, where he was detained in a cell with five or six other persons. There was not enough space to stand up. His blindfold had still not been removed. He did not see

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<sup>469</sup> See Appendix II: § 47.

İbrahim Ekinci in Şırnak, but he heard his voice, when he was screaming as if he was being tortured.

132. During his detention in Şırnak, he was subjected to repeated kicking and beatings with sticks. He was also thrown on the ground and walked on. He stated that whilst he was in Şırnak his feet had swollen a lot and that now one of his toes no longer touched the ground. He did not lose any toes. Also his shoulder was still paralysed. He did not receive any medical treatment, but on one occasion somebody pulled down his trousers and had a look.

133. After 14 days, he was taken from Şırnak to Eruh, where he was brought before a public prosecutor, whom he told what had happened to him. At that time, he was unable to stand on his feet. He did not remember having told the prosecutor that the PKK had asked the villagers for food. He was then released.

134. After his release from detention, he returned to Ormaniçi, where he found that his house had been burned and that his wife was staying in the mosque. In the autumn of 1993, after he had rebuilt his house, the soldiers returned to Ormaniçi and once again burned his house. He was not in Ormaniçi on that occasion. After this incident, he went to live in nearby caves.

135. He returned to Ormaniçi in the spring of 1994. After he had rebuilt his house for a second time, the soldiers once again returned and destroyed his house. When this happened he was not in the village; he was working in the field where lentils had been planted. When he returned in the evening, he learned that four villagers had been killed. The soldiers forced the villagers to vacate the village. Thereupon, he and his family left Ormaniçi. They had never returned since.

136. He never received any compensation from the State. However, he did make an application to the European Commission of Human Rights in April 1993.

*İbrahim Kaya (applicant no. 8)*

137. İbrahim Kaya stated that he was born in 1962. He was married and currently lived in İdil. In February 1993, he lived in Ormaniçi in the same two storey house as his father Mehmet Kaya. His family had another house in Ormaniçi. There were two rooms in one house and four rooms in the other house. There was no access road to Ormaniçi, which could only be reached on foot.

138. In February 1993 there was much terrorist activity in the area. Armed terrorists from all over used to come to Ormaniçi at intervals of 15 to 20 days. They made propaganda in the village and demanded food and water. After the terrorists took various foodstuffs as they liked, they left again. The terrorists also took mules from the village in order to transport the things they had taken. Sometimes the Ormaniçi villagers informed the

gendarmes of such visits. At some point in time, the PKK had almost 1,000 people in the nearby Gabar mountains. The soldiers came to Ormaniçi once or twice a year. During that period, the military were not very strong. It was a very difficult time; the population was caught in a cross-fire. Terrorists took the former *muhtar* of Ormaniçi to the mountains where they killed him.

139. He had not noted any terrorist presence in Ormaniçi on 20 February 1993. He did recall that on that day about three strangers had been caught in the village of Boyuncuk, which was close to Güçlükönak. One of them had come to buy livestock there.

140. On 20 February 1993, at 6 a.m., he went outside for morning prayer. He then saw soldiers everywhere and returned to his house. When he entered his house, shooting started. Everyone in the house, his father and his siblings, took shelter on the lower floor of the house. He could not tell how long the shooting lasted or whether any heavy weapons were used. The soldiers were shooting. He did not see or hear anyone from the village shooting at the soldiers. He could not have seen that, as he was hiding. At 10 a.m., about 10 soldiers entered the house and took its inhabitants to the upper floor, where they badly beat his father, his brother Resul and himself. The soldiers said that his brother had killed a soldier.

141. Then the soldiers took him and his father, both blindfolded, to the village square, which was located next to the cemetery by the house of Halil Ekin. As his brother Resul lost consciousness, the soldiers left him behind. They thought that he was dead. In the village square, he was made to lie face down on the ground. There was snow and it was wet. The soldiers sometimes kicked him in the head whilst he was lying down. As he was blindfolded, he did not see what went on. He could only hear sounds. There was the noise of a crowd. He smelt smoke and heard Halil Ekin's house burning, in particular the roof made of reeds. This made a particular sound. He could not tell whether the soldiers had set other houses on fire. He did not see a soldier being killed in Ormaniçi on that day, but heard the *muhtar* Mehmet Aslan say that during a house search a soldier had shot another soldier by mistake. He knew Abide Ekin, but could not state anything about what happened to her. He learned later that Abide had been wounded and that she had died because they had not sent her to the doctor. He could not tell whether Abide's mother had informed the soldiers that Abide was injured.

142. After about three hours in the village square, he and the other villagers were tied together with ropes and were taken on foot to Güçlükönak. They were all blindfolded. He thought that about 45 villagers were taken to Güçlükönak in that manner. The walk was difficult. It was rocky and wet. Sometimes they fell down. He thought that the walk from Ormaniçi to Güçlükönak had taken about 2½-3 hours. Darkness fell during the walk.

143. He and the other villagers were taken to a building still under construction, where he stayed for two nights. He remained blindfolded during his stay in Güçlükönak. He thought that all the villagers were detained together; it was very crowded. He remembered that Hacı Ekin was with him in Güçlükönak. As in all new constructions there was water on the floor. Other parts were dry. There were toilet facilities. When the villagers asked for permission to go there, they were taken. When it was put to the witness that others had denied that there had been toilet facilities, he maintained that there were such facilities. It was something like a trench. Everybody knew this and the villagers were taken there. It was in a different place from where they had been detained.

144. He was not given any food or drink in Güçlükönak. There were no beds or bedding. It was very cold. It was snowy weather and the building was open. The feet of all the villagers were swollen because of the cold. When the villagers complained of the cold to the soldiers, the soldiers said that they had no fire either and that they could not do anything about it. When he once complained of the cold, a soldier allowed him to approach what he thought was an open coal stove. As he was blindfolded he did not know exactly what it was. He was not medically examined in Güçlükönak. He was interrogated once in Güçlükönak by Captain Celal. He was not ill-treated himself, but heard the sounds of people being beaten.

145. After two nights in Güçlükönak, he was taken by helicopter to Şırnak. He remained blindfolded during that journey. Further, he was handcuffed. He thought that he had been taken there together with about ten others. He heard the voice of İbrahim Ekinçi when he was taken to Şırnak. İbrahim complained that he was ill. He was scared during that trip. He had never travelled by air before and was afraid that the soldiers would throw them out of the helicopter on the mountains. He recalled that, in Şırnak, a few people came to take fingerprints and they were asked whether they were ill. He had a swelling on his toe, which he showed the doctor.

146. In Şırnak he was detained in a cell together with Zeki Çetin and Resul Cakir who was from Güçlükönak. His blindfold was not removed during his stay in Şırnak. He was interrogated in Şırnak two or three times. He remembered that he had given a statement in Şırnak. He had never said anything to the effect that he was one of the people responsible for shooting at the soldiers on 20 February 1993. He thought that he had given his signature two or three times in Şırnak, but as he was blindfolded he did not know what he had signed. Nothing was read back to him before he signed.

147. He was beaten quite a lot in Şırnak, more or less every day. He was beaten when he was taken for interrogation, when he was brought back to his cell after interrogation, when he was taken to eat or when he went to the toilet, or sometimes when soldiers came in the cell. He was not ill-treated in any other manner. His cell mate was beaten like him.

148. After having stayed in Şırnak for about 18 days, he was taken to Erüh where he was brought before the chief public prosecutor. He told the prosecutor that he had been ill-treated. The prosecutor asked him whether he was involved with the PKK and told him that he was going to be released. He was not charged with any offence. Other villagers were charged and remained in detention. He was then released.

149. He and the other 15-20 released persons, including Abdullah Kurt and Hüseyin Yıldırım, first went to Siirt, where they spent the night in a hotel. The following day they left for Ormaniçi. As they were unable to reach Ormaniçi on that day, they spent the night in the village of Gümüşyazı, which like Ormaniçi was also attached to Güçlükönak. As he and the other released villagers were unable to walk, the villagers brought each of them a mule. They then travelled to Ormaniçi by mule. His toe was bleeding. Apart from that he had no further injuries.

150. Upon his arrival in Ormaniçi, he saw carcasses of dead animals everywhere. He also found his own three mules and donkey shot dead in front of Ali Çetin's house. Although he did not see this himself, he assumed that the soldiers had killed the mules in order to prevent the terrorists from using the mules for transport purposes, thus obliging the terrorists to carry things themselves. He confirmed that the terrorists who came to Ormaniçi in the past had in fact taken mules from the village to carry things to the Gabar mountains. His about 70 sheep and goats were also dead and appeared to have suffocated by smoke. Further, he saw some reporters from Europe, members of the press. Photographs were taken.

151. He found that many houses had been burned. Some houses were only partly burned and many other houses had not been burned. A number of animal sheds had also been burned, whereas other sheds had not been burned. He saw that five or six houses were being repaired.

152. He found his family living in one room in one of their two houses. One room in one of the houses and the furniture in it had been burned. Downstairs, in the food section of that house, everything was messed up and kerosene had been poured everywhere. The food was all inedible because of the kerosene smell. His family's other house was not damaged. The villagers received food from other places. As only one room in his family's two houses was damaged, they took in other households. Hamit Ekin, Mevlüde Ekin and Mehmet Aslan stayed with his family. Each household was given one room. The second floor of Mevlüde Aslan's house had collapsed.

153. He was not in the village when the soldiers returned to Ormaniçi in September 1993. At that time he was herding animals in the Basa (Güçlükönak) valley, but he saw soldiers passing in the valley. The soldiers went straight towards Ormaniçi. When he went to Ormaniçi later to bring the cattle home, he found that the window panes in his house were broken and that all his belongings were in a mess. Everything, including the cheese, was scattered all over the place. On that occasion, the hayloft in Abdullah

Kurt's house was burned. Some of the villagers then moved to an area close to Akdizgin. Five households, including his own and Ahmet Yıldırım's household, stayed in the village.

154. At some point in time in May or June 1994, soldiers came to Ormaniçi. When they asked him if he knew whether the PKK was in the area, he denied it. At some point in time, the commander, a captain from the Fındık battalion, asked him whether Ahmet Erbek was in the village. He told him that Ahmet Erbek, an old man, had gone to Akdizgin that day. The captain then contacted Akdizgin. When Ahmet Erbek was found there, it turned out that Ahmet Erbek was not the person the soldiers were looking for. In reply to the captain's observation that there were a large number of persons in the gardens of Ormaniçi that day, he replied that all the villagers, including his father, had gone down to the gardens to work there. Between 1 and 1.30 p.m., he heard gunfire, which lasted for 1½-2 hours. During the firing, he went home. Once the firing stopped, he went to the soldiers and asked the commander what had happened. The commander told him that seven PKK men had been killed in the area below the village. According to the commander, all seven persons were terrorists and none of the villagers had been killed. When he thought that all the soldiers had left the gardens, he went there. Before he reached the place where the bodies were, he looked around. When, at that moment, soldiers started shooting at him from a place higher up, he and the others who were with him started to run in the direction of the creek.

155. Later, he found out that his father was one of the seven persons who had been killed in the gardens that day. His father used to go to the gardens every day to water them. His father was an old man; he guessed that he was about 60 years old. He used to walk around with a walking stick. His father was not a terrorist. He saw father's body at the place where his father had been killed. Three other villagers were also killed, namely Mehmet Özkan, Abdülislam Demir and Şerif Ekin. The other three were PKK members. He personally knew two of them, namely Nezir Gök and Mehmet Emin Gök, together with whom he herded cattle.

156. The soldiers told the Ormaniçi residents to vacate the village within two days, failing which the soldiers would open mortar fire on the village. He and his family buried his father and then moved from Ormaniçi to Güçlükönak. They were very afraid and did not take all of their belongings to Güçlükönak. They left half of their belongings behind. All the villagers then left Ormaniçi. No one remained there.

157. Although he could not recall this with precision, he did remember that, when he was harvesting lentils in Ormaniçi, soldiers from Güçlükönak were in the village. A lieutenant approached him and told him that a delegation had come for his father from the European Human Rights [Commission]. The lieutenant threatened to kill him if he showed the delegation the location of his father's grave or made "a statement like that".

Therefore he did not say very much. He showed the delegation around the village, and the delegation then verified the condition of the houses and identified whose had been burned. These were listed. He was very scared at that time. He denied that he would have told the prosecutor or the lieutenant that, on 20 February 1993, people had been shooting at the soldiers from the village or that soldiers had not killed livestock. He did tell the prosecutor that the villagers had been forced to move and that he wished to return to live in Ormaniçi. He spoke in Turkish with the prosecutor. His statement was not read back to him. He signed it because he was afraid.

158. On that day, he also saw Safiye Yıldırım. She had a small boy called Ali Yıldırım who had died. He had been in Şırnak when that had happened. Ali's older sister, who was also there, indicated the location of Ali's grave. Ali's remains were then exhumed and examined. Abide Ekin's remains were also exhumed and examined. He remembered that one member of the visiting delegation had been a European woman. He thought that she had spoken a foreign language, which sounded like English. He did not show them the location of his father's grave. He also saw Ayşe Ekinci in Ormaniçi on that day. She came to pick things from the garden. Like he himself and Safiye Yıldırım, Ayşe Ekinci also gave a statement to the prosecutor at that time.

159. Their statements were taken in the open air at a place near to the house of Ramazan Yıldırım, which had not been damaged at that point in time. Someone typed these statements on a typewriter which was brought along. They made their statements individually, one after the other. He did not hear what Ayşe Ekinci said. Her husband, İbrahim Ekinci, was the poorest man in the village. İbrahim used to go to the hospital. He did not know why İbrahim went to the hospital, but he used to shake. He had seen that once himself. That was in 1992. İbrahim was apprehended together with him. After that he never saw İbrahim again. He did not know what happened to İbrahim.

160. About four or five months, after all the villagers had left Ormaniçi, the soldiers from Akdizgin returned to Ormaniçi once more. He was not certain, but he thought it was in October. The soldiers then burned down the remaining houses, including the house of İbrahim Özkan. He was in the village when this happened. He had returned there to fetch some belongings from the village.

161. Although he did not recall making a complaint to the Human Rights Association, he did remember that in the village he had signed a petition complaining about the destruction of his house. That was when the press came to the village and filmed and recorded the burned houses there. When the applicant was shown the application form received by the Commission on 14 April 1993, he recognised his signature on this document. He wished to pursue his complaint.

162. He was not a village guard at present. His brother Nedim Kaya was a village guard in İdil. He had never received any compensation for what happened to him. He asked the District Governor for compensation for the fact that his house had been destroyed and that he had been compelled to move. The District Governor referred him to the municipal authorities of Güçlükonak. He went to the *muhtar* of Güçlükonak, but had not been provided with any aid whatsoever.

*Hüseyin Sezgin (applicant no. 9)*

163. Hüseyin Sezgin stated that he was born in 1962 and was married to Fatma Sezgin. Cemal was the name of his father and his brothers were called Abdullah and Mehmet. He was currently living in Tarsus.

164. In February 1993, although he owned a house near the cemetery in Ormaniçi, he lived in Ceyhan and only his family lived in Ormaniçi. There was no road for cars to Ormaniçi. He learned of the events of 20 February 1993 about seven or eight days later from some people in Cizre. He then went to Ormaniçi, where he found that the houses had been burned down and that all the men were missing. His wife and children were in the mosque. He was told that his father and brothers were in detention.

165. When his brothers returned to the village, their feet were injured and they were unable to walk. He went to a pharmacist in Cizre, to whom he explained that his brothers' feet had been exposed to the snow for too long and the pharmacist gave him the necessary medicine, which he gave to his brothers.

166. He was in Ormaniçi when, in the autumn of that year, the soldiers returned. When the soldiers came, he ran away out of fear. He did not see people standing guard. He himself did not see what happened in the village on this occasion. As the soldiers ordered the villagers to leave Ormaniçi, he and his family took refuge in the caves. He had returned to the village by the spring of the following year. He was in the gardens when four villagers were shot. They were shot in a different part of the gardens. As the soldiers once again ordered that the village be vacated, he and his family went to Basa (Güçlükonak). He had never returned to Ormaniçi since.

167. He had never gone to a public prosecutor. He learned that Mehmet Aslan and others had gone to Ankara to see leaders of political parties but did not know the outcome of this. He had never received any compensation from the State for the property he had lost, namely a two-storey house and all that was inside the house, two cows, two sheep, two plots of irrigated rice fields and three plots of non-irrigated wheat fields. He explained that there were no land records or title deeds. He confirmed that he had lodged a complaint with the European Commission of Human Rights on 17 April 1998.

*Mevlüde Ekin (applicant no. 10)*

168. Mevlüde Ekin stated that she was born in 1953. She was currently living in Tarsus. In February 1993, she and her children lived in Ormaniçi in a two-storey house opposite the cemetery. She was the mother of Abdullah, Halime and Abide Ekin. Her husband Halil had died a long time ago. He had been the *muhtar*. When questioned about the death of her husband, she initially stated that she did not know how he had died and that he had died at home. She later stated that he had been apprehended by the Government two or three times and that, one night, some people had come and taken her husband away. She did not know where he had been taken and she had not heard from him since.

169. In the morning of 20 February 1993 soldiers came to Ormaniçi. She was at home then, together with Abdullah, Halime and Abide. She denied that there were any guns in her house. She woke up to the sound of shooting. All of them were sleeping on the top floor of the house. The shooting came from the soldiers, who were shooting at the houses in the village. The shooting went on for quite a while. When the shooting had just started, she called her children, asking them to come downstairs. Then a bomb was thrown through the window into the bedroom on the second floor in her house. It exploded there. She did not see who threw the bomb. It came through the window facing the nearby house of her brother-in-law İbrahim Ekin. Abide was injured; her intestines were ripped out. Halime was also hit in the belly by a fragment. Fragments hit all of them. She herself was hit in her face by a small fragment.

170. She ran out of her house, carrying Abide, to the house of her neighbours, Mehmet and Kumri Aslan, who were both there. She and Kumri bandaged Abide's wound with a piece of cloth.

171. At some point in time, when the firing stopped, the soldiers came to the house of Mehmet and Kumri Aslan. The soldiers took all of them outside and then brought them to the village square. She took Abide in her arms to the square. The soldiers did not offer any help to treat Abide. In the square, she made Abide sit on her lap. The soldiers made the men lie down on the village square and beat them. She saw her children Halime and Abdullah in the square.

172. When the villagers were gathered in the square, the soldiers set fire to the houses. She saw that herself. The soldiers went around the houses and smoke was rising. Also her own house was burned. As earlier she had run out of it barefoot, she was unable to remove any possessions from her house before it was burned. The soldiers also shot and killed the villagers' mules which were roaming freely in the village. Her own two mules as well as ten lambs were also killed. The villagers stayed in the square until just before sunset, when the soldiers tied up all the men and took them away. She was terrified. She did not recall whether the men were blindfolded. The soldiers took Halime as well. Halime had been taken before the men were taken away. The soldiers put her on a plane. Abdullah was taken away together

with the men. After the soldiers left, she and Abide went to the mosque, where they spent the night.

173. The soldiers returned the following day and killed the mules which had survived. She did not see that herself, as she had stayed with her injured daughter Abide. As the soldiers surrounded the village it was not possible to take Abide to hospital. She was too scared. She showed Abide's injuries to the soldiers, asking them why they had done this. The soldiers did not say anything. After two days Abide died in the mosque and was buried the following day. After that, she and others went to the nearby village Zeve, where she stayed for 20 days. Another girl required medical treatment as the thick smoke had made her sick. Then she returned to Ormaniçi. As her house had been burned, she lived in a barn.

174. About one month later, Abdullah and Halime were released and returned to Ormaniçi. She was there when they returned. They were beaten whilst in detention and were very sick. They were only able to tolerate hot milk and recovered slowly. There were bruises on Halime's feet. Abdullah and Halime stayed in bed for 1-2 months. Halime's wound from the bomb fragment was still visible.

175. She planted and harvested her crops again. Then the soldiers returned to Ormaniçi. The soldiers assembled the villagers behind the village school and took Ayşe Sezgin and Hediye into the school. Ayşe did not tell her what had happened to her in the school. The soldiers did not damage anything on that occasion. They just told the villagers to leave.

176. At some later point in time, the soldiers returned once more to Ormaniçi. On that occasion four villagers were killed and the soldiers dumped the villagers' foodstuffs on the ground telling them that they had to leave the village.

177. In the autumn, she and her family went to Basa (Güçlükonak). She sold their sheep there in order to pay for their journey to Tarsus, where they now lived. Her children worked intermittently in the farmlands there. Whenever there was work available, they worked there. She had never received any compensation for what had happened on 20 February 1993.

178. She recalled going to Cizre, where she had filed a petition about the treatment she received on 20 February 1993. She had filed that petition also on behalf of her children. At the end of 1997, she gave a second statement, which was taken by Tahir Elçi.

*Besna Ekin (applicant no. 11)*

179. Besna Ekin stated that she was born in 1954. She was married to Hacı Ekin and had a son called Şerif. She was currently living in Basa (Güçlükonak). Her family owned a two-storey house, two mules, three plots of irrigated rice fields and fruit gardens and some non-irrigated fields. There were no records of these possessions. She did not know whether anyone in

the village owned a gun; she was in fact quite certain that nobody owned a gun. She had never seen any villager standing guard against the soldiers.

180. When the witness was shown her fingerprinted statement dated 14 April 1998<sup>470</sup>, she confirmed that it was hers.

181. On 20 February 1993 she and her family were at home in Ormaniçi. The soldiers arrived a little before sunrise and she heard the soldiers shooting. She did not see anyone shooting from the village at the soldiers. The shooting lasted approximately two hours. Then the soldiers entered the village and took the villagers to a place close to the cemetery.

182. At this place, the soldiers blindfolded and tied up the men and made them lie face down in the snow. The men were kept in this position until the evening and she saw the soldiers beating them. The women and children were gathered in a nearby area and were not allowed to move.

183. She saw the soldiers set fire to the house of the *muhtar* Mehmet Aslan. The soldiers used a “medicine” which they threw around and which started the fire. She did not see them set fire to Mevlüde Ekin's house but the smoke from it reached them. She also saw the soldiers kill the animals. They shot the goats and sheep.

184. During the day, she saw Mevlüde Ekin with her daughter Abide. Abide was lying across her mother's knees and she was injured. In her opinion, the soldiers saw Abide's injuries. Abide was right next to the soldiers.

185. Towards evening, the soldiers took the blindfolded men away. The men were tied together. She saw that her husband and her son Şerif were among them. As her house had been burned that day, she stayed in the mosque. The following day, towards noon, the soldiers returned to Ormaniçi. The soldiers came to the door of the mosque. That day, the soldiers burned two further houses, including the house and the shop of Hediye Çetin. The soldiers shot more livestock and left.

186. After 15 days her son, Şerif, was released. His hands and feet were injured due to the cold and he was bedridden for a month. Her husband was released after six months. They had both been tortured by means of electric shocks and by having been left in the cold, and had injuries inflicted to their hands and feet.

187. She and her family did not repair their house. During the summer, she and her family stayed with her father-in-law but returned to Ormaniçi again in the autumn. When the soldiers arrived in the autumn they told her to leave the village. The soldiers gathered the villagers near the school, poured fuel oil and petrol over the villagers' winter provisions and mixed them up. She did not see the soldiers take Ayşe and Hediye into the school. The soldiers once again forced them to leave Ormaniçi and they went to live in the Dehla Hazara caves.

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<sup>470</sup> See Appendix II: § 62.

188. She and her family had once again returned to Ormaniçi when the soldiers returned the following year and killed four villagers, including her son Şerif. The soldiers once again forced them to leave the village. Some of the villagers went to Cizre, others to Zeve and some like herself and her family went to Güçlükönak. She had never returned to her village.

189. She did not go to see a public prosecutor in connection with the events which took place in Ormaniçi, nor had any State authority approached her on this subject. She had never received any compensation from the State. She confirmed that she had lodged a complaint with the European Commission of Human Rights concerning her treatment in Ormaniçi.

*İbrahim Ekin (applicant no. 12)*

190. İbrahim Ekin stated that he was born in 1955. He was currently living in Güçlükönak. He was married to Hediye Ekin. In February 1999 he and his family lived in Ormaniçi, where they owned a single-storey house, a garden, a field and one mule. There were no title deeds for their property in the village. He had never seen a title deed. He further stated that he was unable to sign his name and that he did not understand any Turkish.

191. When the witness was shown the signed statement that he had given in Diyarbakır on 14 April 1998<sup>471</sup>, he confirmed that it was his. He was unable to write but could give his signature.

192. On 20 February 1993, when he went out of his house for morning prayer, he heard shooting and ran back into his house until the shooting stopped. In his opinion, it was only the soldiers shooting at the village and he did not see anyone from the village shooting at the soldiers. He did not hear any heavy weapons being fired.

193. After about three hours, the continuous shooting stopped and the soldiers entered the village. The soldiers took all the villagers to a place next to the mosque, behind Halil's house. The soldiers collected him from his house at about 8 a.m. The soldiers were wearing white military uniforms. The soldiers blindfolded the men, tied their hands and made them lie in the mud and snow, where they proceeded to step on their backs and bellies. The men remained there until half an hour before sunset. As he had been blindfolded, he did not see the soldiers set fire to the houses. He only noticed that Halil's house was burning as sparks landed on his back. While he was lying on the ground, he did not hear any shots. He learned that the soldiers had killed all the livestock.

194. About half an hour before sunset the soldiers roped the men of the village together. Still blindfolded and with their hands tied, the men were taken to Güçlükönak. He was wearing shoes at that time but later learned

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<sup>471</sup> See Appendix II: § 70.

that not all the men had their shoes and that some had lost their shoes during the walk. The gendarmes beat them during this walk. He guessed that the walk to Güçlükönak might have taken 3-4 hours. It was difficult to judge the time it had taken. There was snow on the ground, it had rained throughout the walk and he had been up to his waist in mud.

195. The soldiers took the men to the basement of a building. It was freezing cold there. It was wet, full of mud and there was sand on the floor. The sand was one of the reasons why they had injured feet. All the villagers were kept in the same room; he heard them screaming and moaning. There was no furniture or heating. They were refused toilet facilities and they had to urinate over themselves. He was only wearing his pyjamas and the soldiers tore them. When he arrived, he was not allowed water and he was fed a piece of bread every four or five days. They were forbidden to talk and were beaten when they spoke. During his detention, his blindfold was not removed on any occasion, nor was he allowed any exercise. During most of the time, he was unable to move.

196. He did not give any statements, but had been forced to give his fingerprint. As he was blindfolded, he did not know whether the soldiers themselves had written anything down. He was not questioned about whether or not he had aided any PKK members. At night and while he was still blindfolded, he was beaten with sticks and subjected to *falaka*. He was beaten on his behind<sup>472</sup>, back and hands. He was also stripped and had cold water thrown over him.

197. After 17 days he was taken by helicopter from Güçlükönak to Şırnak. The soldiers did not remove his blindfold for this journey. In Şırnak he was placed in a cell which he shared with nine others. In other cells, only three or four persons were detained. His blindfold was not removed during his stay in Şırnak. He was beaten with sticks every night. If any statements were taken from him in Şırnak, he was not aware of this.

198. At some stage he was transported from Şırnak to Erüh, where he was brought before a public prosecutor. Shortly before that, he and others were taken from their cell to another place where they were told to undress completely. As he remained blindfolded he was unable to say whether or not on that occasion they were examined by a doctor.

199. When he was taken to Erüh, his blindfold was removed for the first time since 20 February 1993. He felt dizzy and slightly blinded; it took 4-5 days for his eyes to become normal again. When he was brought before the public prosecutor, he was unable to walk or to stand as his feet were swollen. However, he had to stand up between two gendarmes when he appeared before the prosecutor in order to give evidence. Although he could not clearly remember what he was questioned about by the public

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<sup>472</sup> The interpreter translated the Kurdish term used by the witness by the Turkish word “*kalça*”.

prosecutor, he did recall that the prosecutor had asked him what had happened to him. The prosecutor did not ask him which soldier or gendarme was responsible for his ill-treatment while in detention. He was very confused at that time and could not recall exactly what he said to the prosecutor. He did remember that there had been an interpreter.

200. When he returned to Ormaniçi after his release, he found that his house had been burned and that his family was staying in the mosque. He and his family did not repair their house. They moved to the caves below their village. He was not in the village when the soldiers returned and ordered the villagers to leave Ormaniçi. He and his family then moved away. That was before four people were killed.

201. He had never received any compensation from the State. He made an application to the European Court of Human Rights on behalf of himself and his family. He lost everything, including all the belongings inside his house. These included his wife's two Cumhuriyet gold coins, the beds, a cupboard, chests with clothes, dishes, silverware and household goods.

*Tayibet Kurt (widow of Abdullah Kurt, applicant no. 13)*

202. Tayibet Kurt stated that she was born in 1962. She was the widow of Abdullah Kurt, who had died about four years earlier. She was currently living in the village of Germav. In February 1993 she and her family lived in Ormaniçi, where they owned a single-storey and a two-storey house, which was fully furnished, together with one mule, two cows, two plots of fruit gardens and three plots of irrigated and non-irrigated fields.

203. She had never heard that the *muhtar* of Ormaniçi had been taken away from his home by the PKK. She never saw the PKK collect provisions by force in Ormaniçi. In so far as her husband had made any statements to that effect, he had never mentioned such things to her. She did not know what a Kalashnikov was.

204. When the witness was shown her fingerprinted statement dated 14 April 1998<sup>473</sup>, she confirmed that it was hers.

205. On 20 February 1993, she and her family were at home in Ormaniçi. Their house was next to Cemal Sezgin's house. She and her family woke up to the sound of shooting. She then saw that there were soldiers around the village. The gunfire lasted about half an hour. In her opinion, only the soldiers were shooting; she did not see or hear any villagers firing at the soldiers.

206. Once the shooting had stopped, the soldiers came to her house and took her and her family to a place close to the houses of Mevlüde and the *muhtar*. When they arrived there, the soldiers forced the men to lie face down in the snow. The soldiers stepped on the backs and shoulders of the

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<sup>473</sup> See Appendix II: § 73.

men and tore up the men's *poşus*<sup>474</sup>. The soldiers blindfolded the men. She and the children were made to stay with the women, who were initially divided into two groups; the young women to one side and the elderly to the other. Eventually, the soldiers put all the women together in a corner.

207. She saw Mevlüde Ekin who was holding her daughter Abide on her knees. Abide's intestines had come out of her belly. Abide asked for water, but the soldiers did not allow her to drink any. She saw the soldiers set fire to the nearby houses of Halil and the *muhtar*. The soldiers burned these houses with a yellow chemical. She did not know whether it was a powder or a liquid. The soldiers sprinkled it from a bottle and then threw a burning match on it. The soldiers also killed all the animals in and around the village. Although she could not rule out the possibility that some of the animals had died from suffocation, she did see soldiers shoot the animals, which then fell down.

208. The men were kept lying down in the village square until half an hour before the call to evening prayer. Then three of the men were taken away to a helicopter, which took off. She was unable to see who these three men were, because of the smoke. The rest of the men were taken away on foot to Basa. At first, the women and children followed the men. When the soldiers shot in their direction, the women and children returned to the village.

209. As her house had been burned that day, she stayed in the mosque. The following day the soldiers returned to Ormaniçi. The soldiers then killed all the remaining animals and set fire to the house of Ali Çetin, the shop owner. She stayed in the mosque for three days, during which time she did not have any food. She then went to Zeve.

210. When her husband was released and returned, she came back to Ormaniçi. He had been burned in four places on his body. There were two spots on his forehead, one on his throat and one on his knee. His feet were also seriously injured. She had to carry him on her back. That was the only manner in which he could move around. Accompanied by their children, her husband went to Cizre on Ahmet Özkan's donkey to receive treatment for his injuries. They had an acquaintance in Cizre named Hacı Ömer. Later, she and her husband repaired their house by making something like a tent in which they settled.

211. She was in Ormaniçi when the soldiers returned in the autumn of the same year and gathered the villagers in front of the school, where the villagers remained until the late afternoon. The soldiers made the men of the village lie on the cluster of stones there. Further, the soldiers undid the villagers' tents, took all the provisions, mixed them up and, after pouring kerosene over them, burned them. The soldiers took Ayşe and Hediye inside the school. She heard their screams. She was told that Ayşe was stripped

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<sup>474</sup> Local headscarves.

naked. Ayşe's mother attempted to go to Ayşe's rescue, but the soldiers stopped her. As the soldiers told the villagers that they had three days to leave Ormaniçi, she and her family went to Zeve. Her husband died shortly afterwards.

212. She was in Ormaniçi when the soldiers returned the following year. She heard shooting for a long time coming from the direction of the orchards. The soldiers then came to the village and told the villagers that they had killed terrorists. As, once again, the soldiers told the villagers to leave Ormaniçi, she and her family left the village and went to Şehrika. She had never returned to Ormaniçi.

213. She had never sought nor received any compensation from the State. She had never applied to the State for compensation, as she was afraid. She knew that her husband had made an application to the European Commission of Human Rights about the events in Ormaniçi. She wished to pursue that application on behalf of herself and her family.

*Mehmet Sezgin (applicant no. 14)*

214. Mehmet Sezgin stated that he was born in 1960. He was the son of Cemal and Ayşe Sezgin. He was married to Aliye Sezgin and was currently living in Tarsus. He and his family had owned a two-storey house. Sometimes he would place his signature and sometimes he would place his fingerprint on documents.

215. When the witness was shown his signed statement dated 4 April 1998<sup>475</sup>, he confirmed that it was his.

216. On 20 February 1993 he and his family were living together with his parents in one house in Ormaniçi. Just before morning, he heard shooting. The soldiers were shooting. He did not see anyone from the village shooting at the soldiers. During the shooting, the children gathered in a corner of a room upstairs. As shots broke the glass in the upstairs windows, he took a small axe, cut a hole in the middle of the floor and, for safety reasons, took his family down to a lower floor.

217. After about an hour, the shooting stopped and the soldiers then came to his house. The soldiers made him and the others in the house line up against a wall and searched them. He was then taken to the cemetery wall where he was made to lie face down in the muddy snow. He was blindfolded. From time to time, the soldiers beat and threatened him and walked over his calves. He did not see the soldiers setting fire to the houses as he had been blindfolded. His hands were not tied. He smelt burning and, when the women started to cry, he understood that the soldiers had set the houses on fire.

218. He remained like that in the village square until about two hours before sunset, when he and the others were tied and taken away on foot to

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<sup>475</sup> See Appendix II: § 79.

Güçlükonak. Most of the men of the village were taken to Güçlükonak on foot, but some of the men were taken away by helicopter. The walk to Güçlükonak took about two hours. As he had had the time in the morning to dress himself, he was wearing shoes. In Güçlükonak, he and the others were initially detained in the basement of a construction site, which had windows. It was cold, as there was no heating. There were some wet areas. Other places were dry. They had huddled together for warmth. There was a place that was used as toilet facilities. However, he hardly felt the need to go there, since he was fed only very little. He was only given some bread and sometimes some food on a plate, but it was not enough. He did not have his hands tied all the time during his stay in Güçlükonak. When he went to relieve himself or eat, the soldiers untied them. He was not medically examined in Güçlükonak.

219. He was interrogated once in Güçlükonak. He was taken alone to another place via some stairs. He could not remember whether he had made a statement or whether he had placed his fingerprint on something. He was not in a good physical condition as he was kept on a cold cement floor, was not fed and had stomach aches. On one occasion he was beaten on his calves with truncheons.

220. Later, he was separated from the others and taken to a room without any windows. He believed that this was still whilst he was in Güçlükonak. He was able to remove his blindfold when the soldiers were not in the vicinity of his cell. He replaced it as soon as he heard their voices.

221. After about two weeks he was taken to Şırnak by helicopter, where he was detained in a cell with two other villagers, Mahmut Güler and Şehabettin Erbek. He was not ill-treated during his stay in Şırnak but he heard others being beaten. Although he did not know whether or not this was a medical examination, he was forced in Şırnak on one occasion to take his clothes off. Somebody told him to turn round. He was blindfolded at that time. His hands remained tied during his entire stay in Şırnak.

222. He recalled that at some point in time he had been taken from Şırnak to Eruh where he had appeared before someone. He could not remember whether or not that person was a public prosecutor. There were many people there. He did not complain there about the way in which he had been treated. He did not see an interpreter on that occasion. His feet were swollen and he was unable to stand for very long. He did not recall having signed any statement in Eruh. After that, he and others were released in Eruh. His brother, Abdullah Sezgin, was also released at that time. His father Cemal, who had also been taken into detention on 20 February 1993, was not released. His father's further detention had been ordered. He did not know what the charges against his father were. His father remained imprisoned for 4-5 months. He did not know whether the trial against his father was still ongoing or whether or not his father had been acquitted. He

did not discuss these matters with his father as they lived far away from each other.

223. As it was late at night when they were released, none of the *dolmuş*<sup>476</sup> drivers would go to Ormaniçi. Therefore, they went to Siirt, where they spent the night. Eventually he returned to Ormaniçi, where he found that the village had been burned. Those who had not been taken away had taken shelter in the mosque. His own house was burned as well. After about a month he bought plastic sheets and made a makeshift tent. Subsequently, he and his family left the village and stayed in the Nisifa caves.

224. He had returned to Ormaniçi when, in the late summer, he was harvesting, the soldiers returned to Ormaniçi. The soldiers mixed up all the grain.

225. In the following year, at the time when he was in Ormaniçi harvesting lentils, the soldiers shot four villagers in the gardens. Further, the soldiers gave the villagers three days to leave the village. He and his family then moved to Güçlükonak. He never returned to Ormaniçi.

226. He confirmed that he had made a statement in April 1993 to the European Commission of Human Rights complaining about the events that had taken place in Ormaniçi. He had never received any compensation from the State for his lost property that had been correctly listed in his statement of 4 April 1998.

*Asiye Aslan (applicant no. 15)*

227. Asiye Aslan stated that she was born in 1978, married to Resul Aslan and currently living in İstanbul. In February 1993 she and her two children lived in Ormaniçi. Her husband used to work for 5-6 months in İstanbul during the summer. In the winter, he used to live in Ormaniçi where he ran a shop in their house. She ran the shop when her husband was in İstanbul. Cemal Sezgin was her father. He also lived in Ormaniçi in February 1993. She had two brothers, Abdullah and Mehmet, and an older sister who was married to Mehmet Özkan. Her father and siblings did not live with her; they all lived in their own houses.

228. On 20 February 1993, she woke up to the sound of firing. Soldiers had surrounded the village and there was continuous shooting with heavy weapons at the houses in the village. She saw soldiers shooting with weapons placed on a stand and the soldiers had belts around their bodies with bullets. She and her family took shelter in the house. Nobody in the village fired at the soldiers. The continuous firing at the village lasted for about two hours.

229. After the continuous shooting had stopped, the soldiers entered the village, where they gathered the villagers in a square near the cemetery. She

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<sup>476</sup> A shared minibus-taxi.

herself saw the soldiers set fire to the houses in the village while the villagers were assembled in the square. The soldiers spread a red chemical in the houses and then started a fire with a match. She could not see her own house from the square. There were three houses between the square and her house. But she saw flames and smoke rising from the houses. She herself saw the soldiers set fire to Mevlüde Ekin's house.

230. She heard gunshots when she and the other villagers were gathered in the village square. She owned a large number of sheep and other animals, which the soldiers shot. Also Mevlüde Ekin's livestock had been shot and killed by the soldiers. She did not see that herself, but Mevlüde's animals were killed.

231. In the village square, the soldiers separated the men from the women. The men were made to lie face down on the ground and were blindfolded. The women and children sat side by side in the mud. The snow on the ground came up to her knees and sleet was falling that day. She had not had time to dress her children properly when the soldiers took them out of the house. Like other women, she took off her own clothes and put them on her children. She saw Mevlüde Ekin in the village square. Mevlüde's daughter Abide was injured and was in Mevlüde's arms. They were too afraid of the soldiers to ask for help for Abide. The soldiers beat the men. She heard a helicopter. Some of the villagers were taken away, but she did not know who was being taken away when she heard the helicopter. The villagers stayed in the square until about one hour before sunset, when the soldiers tied the blindfolded men together and took them on foot to the gendarme station. Her husband, father and two brothers were taken. After that, the soldiers left the village.

232. As the houses in the village had been burned, including her own and those of her father and siblings, she and the other remaining women and children went to the mosque. She stayed there for about three or four days. Mevlüde Ekin was in the mosque as well. Abide Ekin died in the mosque three days after the soldiers' attack. They did not take Abide to hospital, as they were too afraid of the soldiers. They were hungry, as there was no food. After that, she and others went to the caves, where they stayed for one or two weeks. Later one of her brothers, who lived somewhere else, came and covered the top of one of the rooms in her house with nylon. She and her family then moved into that room.

233. At some unspecified point in time, soldiers told her that her husband had been sent to hospital. She also heard that from the villagers. The soldiers also threatened her, saying that her husband would be killed if she did not leave the village. She was unable to visit him in hospital as there was nobody to take care of her children and she had no money to go there.

234. After about two or three weeks, her brothers Mehmet and Abdullah were released and they returned to Ormaniçi. They had lost a lot of weight and had bruises on their bodies. Her brothers then went to the doctor, as

their feet were injured. Yellow fluid was oozing out of their feet. Both her brothers lost parts of their feet. Her father was released later. Her husband was released two months after the release of her brothers. He was in a terrible state.

235. At some point in time an aunt came from İstanbul. She did not remember exactly when; she thought it was during the summer. This aunt took her and her family to İstanbul.

236. She remembered that she had gone alone to Cizre, where she had filed a suit. She fingerprinted a petition filed with the Human Rights Association. She filed that petition also on behalf of her husband and their children. She also fingerprinted a statement in 1997 about the events of 20 February 1993.

*Resul Aslan (husband of Asiye Aslan)*

237. Resul Aslan stated that he was born in 1966 and that he was able to read and write. He was currently living in İstanbul. He was married to Asiye Aslan. In February 1993 he lived in Ormaniçi. He lived there intermittently. In the summer he used to work as a construction worker in İstanbul and in the winter he used to live in Ormaniçi, where he ran a grocery shop. His shop was in his house. He owned his house. While he was working in İstanbul, his family remained in Ormaniçi. There were about 32 households in Ormaniçi and they made a living by agriculture and livestock farming. Ormaniçi was attached to the town of Güçlükönak. His brother was the *muhtar* of Ormaniçi.

238. It took about 1½ hours to walk from Ormaniçi to Güçlükönak. A deep valley separated the two places. In order to reach Güçlükönak from Ormaniçi, one had first to descend into the valley and then go up the other side. There was no road between Ormaniçi and Şırnak. There were mountains between these two places. In order to go to Şırnak, Ormaniçi residents had to walk to the village of Akdizgin, which would take about 1½ hours. From Akdizgin they could then travel by tractor to join an asphalt road at a point near Cizre. From there they could travel to Şırnak by car.

239. He had never noticed any PKK activities in or around Ormaniçi. He denied that there had ever been clashes between the PKK and the security forces in or around Ormaniçi. The security forces came to Ormaniçi once every second month. On those occasions they conducted house searches in the village. These security forces mostly came from Güçlükönak. As the soldiers were replaced regularly, the villagers did not really know them. Until the events in question, the villagers had always had good relations with the security forces. He estimated that in total about 500 soldiers had been stationed in Güçlükönak.

240. There were no village guards in Ormaniçi, although for about two or three years a major and the commander of the Güçlükönak gendarmerie station had applied a lot of pressure on the Ormaniçi residents to become

village guards. The villagers of Ormaniçi refused to become village guards, as there were no security reasons necessitating village guards. As there was no access road to Ormaniçi, vehicles could not reach it. The village could only be reached on foot. Another reason for refusing the village guard system was that the villagers felt that they were caught between two fires. If he had lived permanently in the village, he would have owned a gun. It was common for people in the region to have weapons either for hunting or for their own safety.

241. There were village guards in Boyuncuk intermittently. It would take about two hours to travel from Ormaniçi to Boyuncuk. The relations between the two villages were good. He heard that Mehmet Sevgin, a Boyuncuk village guard, had been killed around February 1993. He learned that after his release. According to rumours, Mehmet Sevgin had been killed by the PKK. In his opinion, the security forces suspected that the PKK members responsible had passed through or spent the night in Ormaniçi, as Ormaniçi was located between Boyuncuk and the mountain<sup>477</sup>.

242. On the day of the raid on Ormaniçi, he woke up to the sound of gunfire just before daybreak. He opened the door and saw soldiers at a distance shooting continuously at the houses in the village from at least three sides. When the soldiers on the hillside opposite saw him in the doorway, they started to fire at his house. He saw that the soldiers used missile launchers, magazine guns, A-4s and a lot of MG-3s. As he had done his military service, he could identify these weapons. No one fired shots from the village towards the soldiers. He, his wife and their two young children took shelter in a safe place inside their house during the main firing. Some of the bullets went through the windows of his house. He only learned later that Mevlüde Ekin's daughter Abide had been injured by a bomb that had been thrown into her house. Mevlüde's house was near the house of his brother, the *muhtar*.

243. When the main firing ceased after more than two hours, the soldiers systematically went from house to house in the village and took the persons found there outside. When, at about 10 a.m., the soldiers reached his house in the centre of the village, he and his family were also taken outside. Some soldiers were dressed in white camouflage; others were wearing commando uniforms and gendarme uniforms. Like all the other men, women and children in the village, he and his family were taken to the village square next to the cemetery. His family was possibly one of the last taken from their house. He denied that he had a gun in his house, but confirmed that it was not unusual in the region for people to carry guns for hunting or personal safety.

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<sup>477</sup> Experience has shown that witnesses frequently denote PKK hiding places as “the mountain” or “the mountains”.

244. On his way to the square, he saw smoke rising up from burning houses in the village. The main shooting could not have caused the fires in these houses, as they started two or three hours after the main shooting had stopped. It was a cloudy day and the snow on the ground was knee-deep. The village was full of soldiers. He thought that there were more than 500 soldiers that day. In the village square, the soldiers made the men lie face down along the cemetery wall and gathered the women and children in a corner. The soldiers kept on swearing at and beating and kicking the men lying down. He remained in the square until the evening.

245. After all the villagers had been assembled in the square, the soldiers set fire to the houses in the village. He himself did not see that, as after having been forced to lie down he was blindfolded by the soldiers, but he felt that the house adjacent to the cemetery was burning. He was lying down about one metre from that house and was affected by the fire. As he was blindfolded, he himself did not see soldiers shooting and killing livestock in the village, but he heard intermittent shooting until the evening.

246. During the day he heard a helicopter land and take off several times. Towards sunset, certain villagers were selected and taken in the helicopter to Şırnak. He learned later from the women who these persons were. Halime Ekin, a girl, was also selected. He did not see that himself as he was blindfolded. He himself was not selected. After the helicopter left, the 33 remaining men in the square were tied together with a long rope and taken by foot to Güçlükönak. As he had not expected this, he had only put on rubber shoes in the morning. He remained blindfolded throughout the day and also during the walk to Güçlükönak. The women stayed in Ormaniçi. The soldiers dragged the men along, some of whom fell down during the walk. It took them about 2-2½ hours to reach Güçlükönak.

247. In Güçlükönak, they were taken to and detained in a new building which was still in the process of being constructed, and which he had seen before. His uncles lived in Güçlükönak, where he went almost every week. Although he was blindfolded, he realised that they were being taken to that building. The names of the men were read out in Güçlükönak. İbrahim Ekinci was among them. Güçlükönak had electricity and it was working at that time.

248. The building where they were held in Güçlükönak was not a proper detention facility. Although he remained blindfolded and his hands were tied throughout his stay there, he was able to loosen the blindfold a bit from time to time, which allowed him to see the floor and 10 cm above. He was too scared to look up. They were guarded by 5-6 guards. He was able to tell that from their voices and from seeing their boots.

249. He was unable to tell whether all the villagers were detained in one big room or in different rooms. He recalled that there were columns. There was no furniture and no beds or bedding. They sat on the floor. As the concrete floor was sloping, there were puddles of water on the floor. At one

point in time, when he was writhing around the floor in pain, he found himself in an approximately 10 cm deep puddle of water. It was also very cold and his clothes froze at night. He frequently heard voices saying “I am very cold! I am dying!” or other words to that effect. He did not recall any medical inspection being carried out and at no point in time had any medical care been provided in Güçlükonak. During his stay in Güçlükonak, his body swelled up and it felt as if his body was burning. The detained villagers were fed with the soldiers' leftovers. He himself did not eat during his first week in Güçlükonak. Since he had not eaten, he did not need to go to the toilet. If he needed to urinate, he soiled himself.

250. During their stay in Güçlükonak, the men from Ormaniçi were interrogated many times. They were interrogated individually. He was interrogated 4-5 times. For these interrogations he was taken to a different place in the building, which was located on the same floor. He was questioned about a gun that he was believed to possess and about whether he or any other Ormaniçi residents were involved with or supported the PKK. He was both threatened with being shot and offered rewards if he accepted to join the soldiers. No questions were put to him in relation to the killing of the Boyuncuk village guard. He remained blindfolded during these interrogations. He was ill-treated. This happened immediately after his interrogation. It happened in another room. It could have been on the same floor, but there were 2-3 steps to take. Hot iron bars were applied to his body. Traces of that could still be seen on his buttocks<sup>478</sup>. They also subjected him to electric shocks and one of his ribs was broken. On two or three occasions, in the course of an interrogation, he was forced to put his thumbprint on a piece of paper. As he had been blindfolded, he did not know whether it was on a blank piece of paper or whether something was written on it. He could have signed a statement, as he was literate.

251. Although he was not certain, he guessed that he stayed for about two weeks in Güçlükonak. Not all the detained villagers stayed there for two weeks. Some stayed four days or one week, and others two weeks. After about two weeks, he and 12-13 other detained villagers were transferred to Şırnak by helicopter. He did not know that at that time, since he was not told where he would be taken. He learned that later. He remained blindfolded during the journey. He and the other detainees were unable to stand up. They were jammed into the helicopter one on top of the other like bags. When they arrived in Şırnak, the helicopter did not land but hovered just above the ground. One soldier took him by the head and another by his feet and they threw him out of the helicopter. When he hit the ground, after a fall of about 1½-2 metres, he felt pain and lost consciousness.

252. When he regained consciousness, he found himself in hospital in Şırnak. One hand was handcuffed to the bed and a drip had been placed in

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<sup>478</sup> The witness used the Turkish word “*kalça*”.

his other arm, which was not handcuffed. He did not receive any medical treatment in Şırnak. His blindfold was not removed. He thought that he had stayed for about five days in Şırnak.

253. Together with five others, including İbrahim Ekinci, gendarmes then took him to the Mardin State Hospital by car. He heard the voices of the others. When he realised in Mardin that there were only three of them, he asked where the other three persons had gone. He was told that the three others, including İbrahim Ekinci, had gone on to Diyarbakır. Another villager from Ormaniçi was also taken to Mardin. The other villagers who stayed with him in Mardin were Abdülislam Demir, Nevaf Özkan and Fahrettin Özkan. The latter was thirteen years old at that time. He shared his very small hospital room with Fahrettin Özkan. At that time, he and the others stayed in a ward for detained persons. Soldiers stood on guard in the hall. In the Mardin State Hospital their blindfolds were removed and their handcuffs taken off.

254. He realised in Mardin that his feet had gone black. His feet did not function properly; they had gone numb. A doctor in Mardin told him that it would be necessary to amputate his feet and that otherwise he risked dying. He gave his consent for this operation in writing. Also Fahrettin Özkan's feet had to be amputated. Since Fahrettin was an illiterate child, the doctor asked him [the witness] whether he was willing to take the responsibility of giving written consent for the amputation of Fahrettin's feet. As Fahrettin's life was at risk if his feet were not amputated, he gave his consent. He was operated on a week later.

255. After his release from detention on 30 April, he was transferred to an ordinary hospital ward. He had never been charged with any offence nor had he ever been brought before a public prosecutor or a judge in the course of his detention. When he was discharged from hospital, he was unable to walk. Relatives from Cizre took him by car to Cizre. After his relatives had applied to Ali Dinler, the representative of the Human Rights Association, he was taken to a hospital in Ankara. He stayed there for 28 days.

256. He returned to Ormaniçi for the first time during the Feast of Sacrifice (*Kurban Bayramı*)<sup>479</sup>. He saw that the houses there had been burned. He explained that the walls of the houses in Ormaniçi were made of stone and the roofs of wood covered by earth. The roofs were gone. The villagers had rebuilt them. Most of them had moved back into their houses. His house had also been burned. Everything had been burned, including the supplies of the grocery he ran in his house. He estimated the worth of his burned supplies at one billion Turkish liras. Shortly after his house was burned his brother-in-law went immediately from Gaziantep to Ormaniçi to cover the roof of the house. His wife, his two children and his father-in-law had moved back into his house, where they lived in one room.

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<sup>479</sup> In 1993, the Feast of Sacrifice fell on 1-4 June.

257. He stayed in Ormaniçi for three months. He stayed at home all the time. He was unable to walk, as the wounds on his feet had not yet healed. During these three months he treated himself with the medicines prescribed by the doctors in Ankara. When a photograph of three persons sitting on a bed on the floor showing their bare feet<sup>480</sup> was put to the witness, he identified the person on the photograph as Şerif Demir, the latter's brother Salih Demir and Mehmet Kurt. The witness could not tell where this photograph had been taken.

258. After three months, he returned to Ankara for the fitting of his feet prostheses. When he returned from Ankara to Ormaniçi after one month, he discovered that in the meantime the village had been burned for a second time. He was unable to give any indication of the date when this happened.

259. After his return from Ankara, an aunt from İstanbul visited Ormaniçi. She took him and his family with her to İstanbul where, being a disabled but literate person, he would have better chances of finding suitable employment. He was good for nothing in Ormaniçi. When he and his family left Ormaniçi, most of the other villagers were there. He had not returned to Ormaniçi since he and his family had moved to İstanbul. At the time when the killing of the four villagers occurred, he was living in İstanbul.

260. After the villagers had been taken into detention in February 1993, his youngest brother Abdullah Aslan from İstanbul, who had finished secondary school, went to Ormaniçi and wrote a number of petitions. Abdullah went to the office of the public prosecutor in Şırnak, where he was told that he should go to Güçlükönak. There, Abdullah was told to go back to Şırnak. His brother made a lot of effort but was unable to get anywhere. When Abdullah applied for compensation for the villagers, he was told in Güçlükönak by some official that no compensation would be given to the villagers, but that, as an educated person, Abdullah himself could be given compensation. His brother refused that offer.

261. He himself did not complain to a public prosecutor or other official about what had happened and, at that time, he was not aware that the villagers had filed an official complaint. He was never offered any compensation by the authorities. At present, nobody was living in Ormaniçi anymore. He and his family were living in one room in İstanbul. His wounds were not yet fully healed. They opened from time to time, obliging him to stop working. He only worked from time to time and was unable to make a proper living. His family was dependent on neighbours and had been living from whatever they could get. During the last winter, he had been unable to afford to heat the room in which his family lived.

*Hamit Ekinci (applicant no. 16)*

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<sup>480</sup> See Appendix II; § 272; the photograph of three barefoot men sitting on a mattress on the floor.

262. Hamit Ekinci stated that he was born in 1942 and that he was currently living in the village of Abdoğlu (Adana). He was married to Rukiya and had a son called Osman.

263. When the witness was shown his signed statement of 14 April 1998<sup>481</sup> he confirmed that it was his. He explained that he had gone to a court in Diyarbakır, where a person had asked him questions and had written down the account he gave. He had then signed this statement, which he had subsequently handed over to Tahir Elçi in Cizre.

264. On 20 February 1993 he was not in Ormaniçi. At that time he was in Kırkağac, a hamlet attached to Ormaniçi. He stayed there with nomads of the Soran clan who at that time were living there in tents. These nomads came to the area from time to time. Their tents were about ½ hour away from Ormaniçi. He stayed with the nomads until the soldiers left Ormaniçi in the evening. He spent the night with the nomads and returned to Ormaniçi on the following day.

265. When he returned to Ormaniçi, he found that his son Osman had been taken into detention, that his house and all his possessions had been burned and that his mule had been killed in front of his house. His wife had been unable to save any of their belongings. He then moved to a small place. The women and children stayed in the mosque. They were hungry, as there was nothing left to eat. The next day, nearby villagers brought them some food. The nomads did not provide them with any food.

266. After that, he had to sell livestock in order to support himself and his family until they harvested their crops. He repaired his house. His son returned home after having been detained for about 5-6 months. His son's feet had been deformed from the cold and from beatings. He learned from his son that, on the way to Güçlükönak, his son had lost his shoes. His son had been kept in a building where there was construction work going on and his son had been cold there. His son told him that he had been beaten, including on his feet, and tortured on a regular basis. His son did not receive any medical treatment in detention. When it was put to the witness that his son had stated before the public prosecutor on 9 March 1993 that there had been clashes in the village, the witness stated that he himself had never heard anything about that and that his son had never mentioned this to him.

267. In August 1993, the soldiers returned to Ormaniçi. The soldiers gathered the villagers outside the school. He saw Ayşe and Hediye being taken inside the school. He did not know whether or not they had been beaten. He and others were made to lie face down with their hands tied behind their back. After having been kept there for quite a while, the soldiers told them to get up and had them line up along the school wall. After that, the soldiers went away. While the villagers were assembled near the school, the soldiers collected and mixed up the villagers' provisions. The

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<sup>481</sup> See Appendix II: § 83.

first lieutenant told him that if he did not leave the village within the next five days, he would be shot. Other villagers were told that they had three days to leave the village, but he himself was told by the first lieutenant that he had five days to do so.

268. He, his family and other villagers then left Ormaniçi. Some of the villagers went to Akdizgin and Dehla Hazara; others went to Nisifa in the Dicle district. At some point in time, he learned that the first lieutenant had said that he would not interfere with the villagers if they returned to Ormaniçi. He himself returned to Ormaniçi and stayed there for about 10 days. After 10 days he went to speak with the first lieutenant in Akdizgin, whom he asked for the required permission to move to Cizre. He and his family then moved to Cizre and then from there on to Abdoğlu.

269. He had never received any compensation from the State for his lost property. He and his family had owned a single-storey house with 7 rooms in Ormaniçi. He had further owned three irrigated fields, four non-irrigated fields, 20 *dönüm* of non-irrigated wheat plots, a mule, and some sheep and goats. The various plots adjacent to his own plots belonged to Ömer Yıldırım, Hüseyin Elcevabi, Abdurrahman Çetin, Halil Aslan, Mehmet Emin Demir, Mehmet Tahir Çetin, İbrahim Ekin, Ahmet Özkan, Mehmet Ekin and Tahir Ekin. There were no documents or deeds for these fields. Everybody knew their own piece of land. He confirmed that in April 1993 he had applied to the European Commission of Human Rights in relation to the events in Ormaniçi.

*Rahim Arslan (applicant no. 17)*

270. Rahim Arslan stated that she was born in 1950 and that she was currently living in Güçlükonak. She was the widow of Ahmet Arslan, who had died about three years ago (in 1995).

271. In February 1993 she, her husband and their children lived in Ormaniçi, where they owned a single-storey house with three rooms, one cattle shed, one mule and some irrigated and non-irrigated fields where they cultivated rice and sesame. She had never seen any clashes in the village and if a stranger came to the village, she had not heard about it. She had heard about the PKK, but she had never seen anyone from the PKK. She had never heard of anyone from the PKK coming to the village, nor had she herself ever seen that happen.

272. When the witness was shown her fingerprinted statement dated 14 April 1998<sup>482</sup>, she confirmed that it was hers. She had given this statement in Diyarbakır in the presence of Tahir.

273. It was still dark when the soldiers arrived on 20 February 1993. She was in her house and heard shooting from outside the village. She did not see anyone shooting from the village at the soldiers. The shooting lasted for

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<sup>482</sup> See Appendix II: § 89.

quite a long time. Once it stopped, the soldiers entered the village and assembled the villagers in the village square, which ran along the cemetery wall. The soldiers blindfolded the men and made them lie down on the snowy ground. Her husband was amongst these men. Although it was very difficult to see exactly what the soldiers were doing because of the smoke from the burning houses, she knew that the soldiers were beating and kicking the men.

274. She saw the soldiers set fire to the houses. The soldiers used a yellow powder, which they scattered and then they set the house on fire. She also saw the soldiers kill her mule.

275. She saw Mevlüde Ekin with her daughter Abide in the village square. Abide had received an injury to her belly. Her intestines were hanging out. In her opinion, the soldiers who were present in the square certainly saw Abide's injury. The soldiers did nothing to help Abide.

276. The men remained lying in the square until almost nightfall when the soldiers made the men get up. The men, including her husband, were then taken to the gendarmerie station in Güçlükönak. Her husband had been wearing shoes when he was taken from the house. As her house and all her possessions in it had been burned, she went to the mosque.

277. The soldiers returned to Ormaniçi the next morning. The soldiers killed the animals that were still there and further set fire to Ali Çetin's house and Hediye Çetin's shop.

278. Her husband returned to Ormaniçi about three weeks later. His feet were swollen and deformed and his hip was broken in two places. He received medical treatment in the village for these injuries. She was unable to repair her house by herself, so she lived in an animal barn, the walls of which she and others plastered.

279. Later that year, in September, the soldiers returned to Ormaniçi. The soldiers assembled the villagers outside the school and emptied the villagers' provisions and set fire to them. After having told the villagers to leave Ormaniçi within three days, the soldiers left. She and her family then left the village.

280. She and her family returned to Ormaniçi in the spring of the following year. She was in the village when four villagers were killed in the gardens of the village. On that occasion, the soldiers again ordered the villagers to leave Ormaniçi. She and her family then moved from Ormaniçi to Güçlükönak. She had not returned to Ormaniçi since.

281. She confirmed that she had made an application to the European Commission of Human Rights in April 1993 concerning the events in Ormaniçi. She had not received any compensation from the State for her lost possessions.

*Ali Özkan (applicant no. 19)*

282. Ali Özkan stated that he was born in 1337<sup>483</sup> and that he was currently living in Tarsus. In February 1993 he lived in Ormaniçi, where he owned a house. He was the father of Mehmet Nuri, Mehmet and Nevaf, all of whom also lived in Ormaniçi. These sons were all married to women called Fatma. He was also the father of Mehmet, who had been killed. There was another Mehmet Özkan in Ormaniçi, namely the son of his brother. He had never heard that the PKK came to the village.

283. On 20 February 1993, at dawn, the villagers suddenly found themselves under heavy gunfire. He did not understand what was happening. He thought that war had broken out. He took shelter. The heavy shooting at the village lasted for a while. He did not see anyone returning fire from the village.

284. When soldiers entered the village after the shooting had stopped, he understood that the village was being raided. The soldiers collected the villagers and brought them to the village square. The soldiers did not allow the villagers to take anything from their houses when they were being collected. The soldiers separated the men from the women and children. They made the men lie in the mud and snow and then blindfolded them with their scarves. As he was sick, the soldiers did not force him to lie down. When the men were lying down on the ground with their mouths in the mud, the soldiers beat them and stepped on them. The women and children were kept waiting at a different place. He saw Mevlüde Ekin in the village square, holding her daughter Abide in her arms. Abide had been injured when a bomb had hit her house. Her intestines were hanging down in front of her. It was impossible that the soldiers did not see that.

285. Whilst the villagers were being kept in the square, the soldiers burned the houses in the village. He saw that himself. The soldiers had a yellow cylindrical container, which they used when they set fire to two-storey houses. The soldiers sprayed its smelly contents on the houses and then ignited it with a lighter. The soldiers set fire to the single-storey houses by setting fire to the straw, which was kept at the lower level. As there were four or five houses between his house and the village square, he was unable to see his own house from the square, but he was able to see the houses of Mevlüde, Ramazan and Abdullah.

286. The soldiers kept the villagers in the square until the evening. Some of the men were taken away by helicopter. Towards the evening, the soldiers roped all the remaining blindfolded men together and took them on foot to Güçlükonak. The men – he thought there were 45 of them – were pulling each other and the soldiers beat them. When one fell, the others fell over him. His sons Mehmet, Mehmet Nuri and Nevaf were among them; they were not taken away by helicopter.

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<sup>483</sup> According to the Islamic calendar; this corresponds to the year 1921.

287. After the soldiers had left the village that day, he went back to his house. As he found it burning, he and others then went to the nearby caves. All his possessions had been burned. During the day, the soldiers had also shot and killed mules, horses and donkeys in the village. They had even killed the chickens. His own six mules, one mare and donkey had also been killed. He saw that himself. Furthermore, since that day, he had never seen his 130 sheep again. They had been in the pen. He did not know what had happened to them. Although many houses in the village had been burned, not all the buildings in the village were burned. Some of the stables were still standing. He did not see any of the villagers staying in the mosque.

288. When he returned to the village the next day, he saw that the soldiers had returned. The soldiers gathered the remaining women and children together in the mosque and chased and killed the animals that were still in the village. After having burned some more houses, the soldiers left again. The villagers did not dare to take Abide Ekin to Cizre or Şırnak to be treated, as they were too afraid to leave the village. Abide later died. The villagers were hungry and ate grass. After about a week, they received food from neighbouring villages. After that, he went to the caves of Dehla Hazara (Akdizgin), which were bigger than those near Ormaniçi.

289. His son Nevaf was released about two months after having been taken into detention. Nevaf was nearly dead. He did not know where Nevaf had been detained. No official told him where Nevaf had been detained. Nevaf had been in the Mardin State Hospital during his detention. When Nevaf returned, he stayed for about 10 days in Cizre. Only after 10 days could Nevaf be put on an animal and brought back to Ormaniçi. His toes had shrivelled. Because of the icecold water, Nevaf's toes had decayed, but he had not lost his toes. He was better now. Mehmet Tahir, however, had had his legs amputated below the knee.

His other son Mehmet Nuri was still in prison. Some of the men who were detained had lost their feet. His sons told him that they had been subjected to all kinds of ill-treatment. Truncheons had been inserted in their bodies, they had been dragged and sprayed with cold water, and had been made to lie in the mud.

290. At some point in time, he and his family left Ormaniçi and went to the village of Akdizgin. They stayed in the caves there during the winter, for about six months.

291. Six months later, he returned to Ormaniçi. The villagers started to repair their houses by putting new wood on the roofs. He and the other villagers planted vegetables and tended their fields. After 2-3 months, in May, the soldiers raided the village again and, for no apparent reason, shot and killed his son Mehmet and Mehmet Kaya, Abdullah and Abdülislam in the orchard. He himself heard the shots. Mehmet's wife and children, who were in a higher up place from where they were able to see the orchard, told him that the four villagers had all been killed together in the same place.

The soldiers gave the villagers three days to bury the dead and to leave Ormaniçi. Anyone found there after three days would be killed. All villagers then moved to different places: to Cizre, Tarsus and Siirt. Nobody stayed in the village.

292. He did not file any complaint with the public prosecutor in Cizre or Şırnak. He feared that he would be killed if he did. He could not recall whether he had fingerprinted a petition at the Human Rights Association in Cizre. He did remember that he had given a statement to Tahir Elçi in Cizre at the end of 1997 and that he had filed a complaint with the European Commission of Human Rights. He had done that also on behalf of his sons Nevaf and Mehmet Nuri and their families. He now lived in a tent in Tarsus. He had never been offered any compensation by the State. He had not heard about a prosecutor and an expert investigator who were said to have examined the houses in Ormaniçi in August 1994.

*Ahmet Erbek (applicant no. 20)*

293. Ahmet Erbek stated that he was born in 1935 and that he was currently living in Akdizgin. His sons were called Ali, Şehabettin and Şemsettin. In Ormaniçi, he and his family owned a house with nine rooms. In one of the two sections of this house, he kept his livestock. He had eight sheep and goats. He further owned two plots of non-irrigated fields and one irrigated rice field<sup>484</sup>.

294. When the witness was shown his fingerprinted statement dated 17 April 1998<sup>485</sup>, he confirmed that it was his.

295. In February 1993 he and his family were living in Ormaniçi. His sons also lived there. He was not in the village when the soldiers arrived there on 20 February 1993. At that moment, he was at the mill and was too afraid to return.

296. He went back to Ormaniçi on the following day after the soldiers had left the village. They had taken his three sons away with them to Şırnak. All the other men from the village had also been taken away by them. Since, like the other houses in the village, his own house had been burned, he and his family stayed in the mosque. He further found that the villagers' mules had been killed. He himself did not possess any mules. As to his own livestock which he kept inside, he was told that, as a door had been left open, his goats and sheep had gained access to the store of wheat, which they had eaten. The wheat had swelled in their bellies until they had burst. That is how they had died.

297. His sons Şemsettin and Şehabettin had been taken to Muş and subsequently to Eruh. They were released later. He thought that they had

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<sup>484</sup> The witness expressed the size of these plots in “*çiftlik*”, which in English literally means “farm”.

<sup>485</sup> See Appendix II: § 97.

been released at the same time. Upon their return, Şemsettin and Şehabettin told him that they had been ill-treated during their detention. Both of them had been subjected to electric shocks. Because of that Şehabettin was unable to use his hands properly. Şemsettin also told him that a gun had been stuck into him.

298. His son Ali had not been released and was currently still in detention. His trial was still ongoing. He did not know why Ali was standing trial. On the sole occasion on which he had visited Ali in prison, he had asked him that question. Ali had told him that he did not know, but that some people had been informing on him. Ali did not know who those informers were. He visited Ali only once for lack of money and for health reasons.

299. At some point in time, the soldiers raided Ormaniçi for a second time. The soldiers burned his house, which he had just repaired. After that incident, he and his family went to live in the caves in Dehla Hazara.

300. The soldiers came back to Ormaniçi a third time. He was in Akdizgin at that moment. He was intending to return to Ormaniçi when he learned that the soldiers were at the village at that moment. He then changed his mind. At that time he did not know that on that occasion people had been killed in Ormaniçi. He learned that afterwards. He returned to Ormaniçi later. As the villagers had been told to evacuate Ormaniçi within three days, he and his family left Ormaniçi. He had never returned there. All villagers had then moved away to different places like İstanbul and Adana.

301. He did not receive any compensation from the State for the loss of his possessions which included rolls of goat-hair felt cloth, woollen quilts, kitchen utensils, prayer rugs and lots of food provisions. He confirmed that he had applied to the European Commission of Human Rights concerning the events at Ormaniçi.

*Ayşe Ekinçi (applicant no. 21)*

302. Ayşe Ekinçi stated that she did not know when she had been born. She lived in Ormaniçi in February 1993 but she was currently living in Basa (Güçlükonak). She was the widow of İbrahim Ekinçi with whom she had five children. They had all lived in Ormaniçi. She had no other relatives in Ormaniçi. She had no relatives at all.

303. Her husband never suffered from epilepsy or fainting fits and never went to a doctor. When questioned about the statement she had given in August 1994 to a prosecutor<sup>486</sup>, she firmly denied having said that her husband was ill and that he suffered from fits. As long as she had been married to him, her husband had never gone to see a doctor. Her husband worked single-handed. He ploughed the soil with the aid of mules.

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<sup>486</sup> See Appendix II: §§ 316-317.

304. She was in Ormaniçi on 20 February 1993. She, her husband and their five children were at home. They just got up for the morning prayer when heavy weapons fired at them. Soldiers were shooting at the houses. She did not see anybody shooting from the village at the soldiers and denied having made any statement to that effect to a prosecutor who had visited the village.

305. Later soldiers came to the door ordering them to leave their house. She and her family did not even have a chance to put on their shoes. They went outside barefoot. She was holding her three-month-old naked baby. Just outside her house door, she was ordered to undo a belt on her back. When she told the soldiers that she could not do so, she was hit so hard on her shoulder that her baby fell from her arms into the mud and snow on the ground. They were then taken to the village square.

306. In the village square, the soldiers made all the men lie face down in the snow and mud. While the men lay down, the soldiers beat them and stepped on their backs. The women and children were also gathered in the square. While the villagers were kept in the square, the soldiers burned the houses. She herself saw the soldiers set fire to the houses of the *muhtar* and Mevlüde Ekin. These houses were close to where she was being kept. The soldiers used something like a jug<sup>487</sup>. They were spraying its contents, a yellow chemical. When the soldiers ignited it, it burned quickly. She saw it being used on the houses of both the *muhtar* and Mevlüde Ekin. She also saw her own house burning; it was in a lower part of the village. Nothing was left; she lost everything.

307. She also heard some shots during the day, but these were not so loud as those in the morning. The soldiers were shooting the animals which came out of the houses. Two cows, two calves and two mules were killed in front of the door of her own house and a donkey had been burned inside.

308. The villagers stayed in the square from morning until it began to get dark. Then the soldiers tied all the men together with a yellow rope. The men were blindfolded. Then the soldiers took the men away towards Güçlükönak. She saw that her husband was tied and taken away. She had not seen him since. All the women started to shout and cry. The soldiers said that if the women came, they would be shot.

309. After the men left, the women and children went to the mosque, where they stayed for three days. Mevlüde Ekin was also in the mosque together with her wounded daughter Abide, whose intestines were hanging out. Nobody went to the school at that time to seek shelter. Abide died after three days.

310. After having spent three days in the mosque, she and others cleaned some of the barns and took shelter there.

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<sup>487</sup> The witness denoted it as “*misin*”, which the Kurdish interpreter described as a vessel with a handle and a spout.

311. In the beginning of March 1993 she received a document from Güçlükonak, telling her to go to Diyarbakır to collect her husband's body. That was the first time she had heard anything about her husband. She had never been informed that he had been taken to hospital. They had beaten her husband so hard that he had died. She did not go to Diyarbakır. There were no men in the village and her children were very young. She sent the document to Cizre. Some good people there went to Diyarbakır and brought her husband's body to Cizre, where he was buried.

312. She did not even see her husband's dead body. Refik from Güçlükonak told her that her husband had been tortured for 14 days in Güçlükonak. Other villagers who had been taken away told her that her husband's moustache had been pulled out and that the soldiers had broken the back of his neck into pieces. Resul and Hacı told her that they had heard her husband screaming and moaning. Resul had heard that in Şırnak. İbrahim Özkan and Tahir Çetin had seen her husband in the Diyarbakır State Hospital. When they saw him, he had been unable to swallow. He had just been lying there as if he were unconscious. One day she received a document. It said that her husband was suffering from an illness. She had never seen him sick during the time she had lived with him. She filed a criminal complaint about her husband's death. She had not been informed of any decision to the effect that the State did not intend to prosecute anybody for the death.

313. She stayed in Ormaniçi until September 1993. After the villagers reaped the harvest, picked their produce and bought their provisions, the soldiers came back to Ormaniçi, where they gathered the villagers near the school. Ayşe Sezgin and Hediye Çetin were taken inside the school. On that occasion, the soldiers mixed up the villagers' provisions and poured crude oil over the provisions. The soldiers ordered the villagers to leave the village. After that, she and all the other villagers left. She and her children went to the caves in Zeve, which were about one hour from Ormaniçi.

314. After about three months, she returned to Ormaniçi. A corner of her house was still standing. She covered it with plastic and leaves. She and her children took shelter in it. She left the village after the soldiers once again returned to Ormaniçi, telling the villagers to leave. On that occasion four villagers were killed. She did not see that. She had stayed inside her house as her children were sick. She then went to Güçlükonak.

315. One day, later that year, she went from Güçlükonak to the orchard in Ormaniçi to pick fruit for her children. Soldiers came and asked her what she was doing there. As she approached them to tell them that she had come to pick fruit as her children were hungry, she saw İbrahim Kaya run towards the soldiers. At present, he was a village guard. The soldiers then took her to the cemetery, where there were two or three men together with many soldiers. She had been very afraid as there was nobody else in the village. The soldiers and the men were there to disinter the body of a child.

316. The men then took a statement from her and wrote it down. İbrahim Kaya was there too. They did not read her statement back to her. She did not ask for it to be read and in any event she did not speak Turkish. Only one of the men spoke Kurdish. For the rest they all spoke Turkish, including İbrahim Kaya. She did not understand what they said. She signed or fingerprinted her statement out of fear. She denied having said, on that occasion, that she had never signed a complaint or that a stranger had come to the village telling her to sign a petition in order to obtain assistance from the State. She had never said anything like that. She further denied having said anything about Abide Ekin. That day, she told the prosecutor about her husband and about the document she had received from Güçlükonak. The prosecutor asked whether she had seen her husband's body, to which she had replied that she had not.

317. She was currently still living in Güçlükonak, where she was making a living by begging for food for her children.

*Fatım Özkan (widow of Mehmet Özkan, applicant no. 22)*

318. Fatım Özkan stated that she was born in 1955. She was the widow of Mehmet Özkan, one of the sons of Ali Özkan. In February 1993 she and her family lived in Ormaniçi where they owned a stone house with four rooms, three mules, food stores and money, 40 *dönüm* of land planted with wheat, barley, chickpeas and lentils, four *dönüm* of irrigated land and four *dönüm* of fruit orchard. She was currently living in Tarsus.

319. When the witness was shown her fingerprinted statement dated 4 April 1998<sup>488</sup>, she confirmed that it was hers. She was able to recognise her fingerprint.

320. She and her family were at home in Ormaniçi on 20 February 1993. In the morning, when she woke up, she saw soldiers standing on the other side of the village. She told her husband that soldiers had surrounded the village. She then heard shots and her house was fired at. She and her family took shelter in a room at the back of their house. Nobody fired at the soldiers from the village. After about half an hour, the shooting at the village stopped.

321. The soldiers then came to her house and took everyone out, even though she and her children were barefoot. The soldiers took her husband back inside the house, where they beat him. She and her children were then taken to the village square. Her husband, who was taken to the square later, was made to lie in the mud near the cemetery with the other men of the village. The soldiers blindfolded the men with the men's headgear which the soldiers had torn. The soldiers tied the men's hands with a yellow nylon rope. Whilst the men were forced to lie down, the soldiers beat them,

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<sup>488</sup> See Appendix II: § 105.

stepped on their backs and forced them to eat mud. This continued until sunset, when the soldiers took the men away to Basa (Güçlükonak).

322. In the course of the day, she herself saw the soldiers set fire to her own house and to the houses of Halil and the *muhtar*. The soldiers used a yellow substance, which they dropped on the floor and then lit. She herself also saw the soldiers kill all the animals which had come outside.

323. In the village square, she saw Mevlüde Ekin with her daughter Abide who was injured. In her opinion, the soldiers must have seen Abide's injuries, as Abide was screaming, crying and weeping.

324. As her house had been burned, she stayed that night in the mosque. The following day, she learned in the mosque that Abide's intestines had come out when she had been hit by mortar fragments. The soldiers returned that day to Ormaniçi. They killed the surviving animals and set fire to some more houses, including the houses of Feke Ali<sup>489</sup> and Hediye Çetin. The witness stayed in the mosque for two or three days and then went to nearby caves. At some point in time, she returned to the village.

325. Her husband was subsequently released from detention and returned to Ormaniçi. His feet were injured and his head had been burned. He had great difficulty in walking. Apart from saying that his head had been burned, he did not tell her about his treatment in detention. His feet had healed but, owing to gangrene, one of his little toes fell off.

326. In the summer of 1993, the soldiers returned to Ormaniçi, where they took all the villagers out of their houses and gathered them in a place by the school. The soldiers burned all the provisions which they found in the houses. The soldiers also took Ayşe and Hediye inside the school, where both women were beaten. She heard their screams.

327. The following year, the soldiers returned once more to Ormaniçi, where in the meantime she and her family had repaired their house. On that occasion, the village was virtually empty in that only the women were there. The men were reaping the crops in the fields or in the gardens. On that day, the soldiers killed her husband in the gardens. She went to the orchards to identify her husband's body. This was made difficult by the fact that his head had been completely shattered by a bullet, she recognised him by his body and clothing. He had also been shot in his arm. They were unable to bury the dead on that day; the bodies were buried the following day. The soldiers told the villagers that they had two or three days to leave the village or they would be killed. She and her family then went to Zeve and later moved to Tarsus. She had never returned to Ormaniçi since.

328. Her husband had told her that he had made an application to the European Commission of Human Rights concerning the events in Ormaniçi. She stated that she wished to pursue that application on behalf of herself and her family.

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<sup>489</sup> This witness refers to Ali Çetin as "Feke Ali".

*Abdurrahman Çetin (applicant no. 23)*

329. Abdurrahman Çetin stated that he was born in 1341<sup>490</sup> and that he was able to understand a little Turkish. According to his Nüfus identity card, issued in 1992, he was a widower. The Delegates noted that he was hard of hearing. He was currently living in Gaziantep. He had two sons called Zeki and Mehmet Tahir. He and his family owned a single-storey house in Ormaniçi. All the houses in Ormaniçi, including his own, were built of stone with timber roofs. He owned two donkeys, one mule and one cow, 10 *dönüm* of irrigated rice fields, five *dönüm* of vineyard, three *dönüm* of non-irrigated vineyard and 70 *dönüm* of non-irrigated wheat fields. There were no village guards in Ormaniçi.

330. When the witness was shown his signed and fingerprinted statement dated 14 April 1997<sup>491</sup>, he confirmed that it was his.

331. On the morning of 20 February 1993 he and his family were at home in Ormaniçi. When he went out to perform his ablutions for morning prayer, he noticed that soldiers had surrounded the village. He had already sent his son Zeki to the mosque for the communal morning prayer. He himself was unable to go, as he felt unwell. Although he saw the soldiers, he continued with his morning prayer. He then heard gunfire. Soldiers shot at the village. There was no return fire from the village.

332. After the shooting had stopped, some of the soldiers entered the village. Other soldiers remained on the outskirts of the village. The soldiers took the villagers to the village square near the house of Mevlüde. He himself also went to the village square. On his way to the square, he saw that the *muhtar* and the soldiers were carrying out a search in Mevlüde Ekin's house. He also saw a soldier standing near to that house by a brazier. The soldier aimed his gun at the window of that house.

333. In the square, he was standing next to that soldier. He saw how in the square the soldiers blindfolded the male villagers, tied their hands and made them lie down on the ground. There was mud and snow on the ground. He himself was standing in a corner when suddenly he heard a shot. He then heard a voice from inside Mevlüde's house shouting in Turkish "What are you doing, you fool? You have shot your friend!". He did not know who had shouted that. He did see that the soldier who had fired the shot running into Mevlüde's house and a soldier's body being carried out of the house and taken away. One of the soldiers who had come to Mevlüde's house asked him what he was doing there. After he had replied that the soldiers had brought him there, this soldier sent him home because of his age and because he had told the soldier that he was unwell. He then went back to his house. At that time, the soldiers had not yet set fire to anything.

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<sup>490</sup> According to the Islamic calendar; this corresponds to the year 1925.

<sup>491</sup> See Appendix II: § 106.

334. He saw houses burning when he went home after performing his midday prayer in the mosque. He himself saw soldiers set fire to Mevlüde's house with powder. Some time later, a group of soldiers came and searched his house. When a second group of soldiers arrived, he was evicted so they could set fire to his house. He was taken to the village square. He did not see the soldiers set fire to his house but shortly afterwards he saw smoke. In his opinion, the shooting could not have caused the burning, as the shooting had already stopped when the burning started. He further stated that the soldiers killed animals in the barns, including two of his own.

335. He was in the square when the soldiers took the men of the village away. His son Zeki was taken away by helicopter. His other son Mehmet Tahir was taken on foot to Güçlükonak.

336. That night, he went to stay in the caves, but Mevlüde and some of the other villagers stayed in the mosque. The following day, the soldiers returned to Ormaniçi and before setting fire to the shop of Feke Ali<sup>492</sup>, they took some of his provisions to the helicopter. The soldiers also killed Feke Ali's livestock.

337. When his son Mehmet Tahir was released, both of his legs had been broken below the knee. He took Mehmet Tahir to hospital. Zeki had lost his mind when he was released.

338. Zeki told him that he had been ill-treated during his detention. He had been stripped naked and hung from the ceiling by a chain, and that he had been beaten until he had lost consciousness. When Zeki had regained consciousness, a soldier had been slapping his face whilst calling out his name. Zeki had then seen that he had been taken down and that there was a pool of blood under him. Zeki had also told him that on one occasion in Şırnak he had been forced to drink petrol. This had seriously damaged Zeki's internal organs. Zeki had further told him how iron bars and bottles had been rammed up his anus.

339. After being released from detention, the wounds had not healed and Zeki continued to bleed from his anus. Since then, Zeki had been operated twice on his anus. At present, Zeki was living with him and he looked after Zeki's children. When questioned about Zeki's current state of physical and mental health, the witness stated that Zeki was apathetic.

340. The witness repaired parts of his house during the summer. However, the soldiers returned and once again set fire to his house. On this occasion, the soldiers took the villagers to the school. The soldiers separated the men from the women and children, tied the men's hands behind their backs and further set fire to the villagers' winter provisions. After the soldiers left, he and the rest of the villagers took refuge in the Dehla Hazara caves. He returned to Ormaniçi in the following spring.

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<sup>492</sup> The witness refers to Ali Çetin (spouse of applicant no. 2) as "Feke Ali".

341. Once again, the soldiers attacked the village. This time, the soldiers killed people and left their bodies in the village gardens. The soldiers gave the villagers three days to leave the village. He and his family then left Ormaniçi and had never returned since.

342. He had never received any compensation for his lost property. He further confirmed that in April 1993 he had filed an application with the European Commission of Human Rights. He had also brought this application on behalf of his son Zeki.

*Şükrü Yıldırım (applicant no. 24)*

343. Şükrü Yıldırım stated that he was born in 1978, that he was unable to read and write and that he could only speak a little Turkish. In February 1993, he lived with his parents İbrahim and Maşallah Yıldırım in Ormaniçi. He was 15 years old at that time. He was currently living in İstanbul. Ramazan Yıldırım was his paternal uncle. Ramazan was married to Fatma Yıldırım. Ömer Yıldırım was a brother of Ramazan. Ömer was married to Zeynep Yıldırım.

344. On 20 February 1993, before sunrise, soldiers attacked Ormaniçi. He heard shooting and looked out of the window. He saw soldiers, who were firing at the window. He and his mother took shelter in a different room. Nobody fired shots from the village at the soldiers.

345. At some point in time, soldiers took him out of the house. Behind the house, the soldiers beat him up. The soldiers then took him back inside the house, which they searched. He was then taken to the village square. When they had left his house, the soldiers set fire to it. The soldiers carried a small yellow box, which contained a sort of beige-coloured powder. The soldiers spread that powder through the door in the building. They then lit it and a fire suddenly started. He was unable to see with what tool they lit the fire. The soldiers had taken him 10 metres away by then. Smoke towered above. He did not see the soldiers spread the powder on the roofs of houses. He saw his own house being set on fire. He did not see the soldiers set fire to other houses.

346. The soldiers kept on beating him while they were taking him to the village square. In the village square, near to Mevlüde's house, the soldiers forced him to lie on the ground next to the other men. Mehmet Özkan was lying next to him. He recognised Mehmet Özkan's voice. The witness had his mouth in the mud. The soldiers beat him and stepped on both his shoulders and his head. While he was lying in the square he heard shooting, but not as much as during the soldiers' first attack on the village. As burning pieces from Mevlüde's house had fallen on the men's backs, he realised that Mevlüde's house was on fire. The soldiers stopped the men from looking around. Although some men had been blindfolded, he himself had not been blindfolded at that time. He later learned from the women who, together with the children, were kept standing in the square, that the soldiers had shot

and killed animals. He and the others were kept lying in the square almost until sunset.

347. In the late afternoon he and the other men were blindfolded with pieces of cloth in the colour of military uniforms. They were then taken on foot to Güçlükonak. The snow was about 50-60 cm deep and he lost his shoe halfway. From there on the soldiers made him walk barefoot. The walk lasted about 2-2½ hours.

348. In Güçlükonak, they were first kept waiting outside a door for about half an hour. Then they were put into a basement, where it was wet. It was very cold and there was no heating. The soldiers made the men sit on the cement floor. The place was a construction site and he heard the sound of construction activities. He was still blindfolded. He could not tell whether all the men were detained together there, but he heard the voices of others. They beat and kicked him for three days. As he was not given any food for three days, he did not need to go to the toilet. Even those who wanted to urinate did not go to the toilet. He did not go. He wet himself.

349. He was once questioned about a gun that he was believed to have. While he was being questioned, he was made to lean against a wall and something was hung around his neck. He was told that it was a bomb and that they would let it explode if he did not speak. When he denied what had been put to him, he was placed in water. He was not stripped. He was then forced to put his fingerprint on a piece of paper.

350. After a couple of days, the feet of the detained men, including his own, started to swell. He and others cried, shouted and moaned. The soldiers then beat them to silence them.

351. He guessed that he had stayed in Güçlükonak for two weeks. He was then brought by helicopter to Şırnak. As he was unable to walk, he was dragged along. He learned from those dragging him along that he was going to be brought to Şırnak. The helicopter did not completely land in Şırnak. He and the others were thrown out of the helicopter at a height of about one metre. In Şırnak, he was at first taken to a place like a cell, where he stayed for about 15 minutes. Then he was taken to a basement, where he was detained together with three other villagers, namely Mehmet Özkan, Abdullah Ekin and Abdullah Kurt. He was still blindfolded at that time.

352. During his detention in Şırnak, soldiers came every morning and hit his hands. In Şırnak, his hands were untied, but his blindfold was not removed. He and his cellmates would remove their blindfolds whenever the soldiers went out and would put them back on when the soldiers returned. He was never interrogated in Şırnak, but he was forced to put his fingerprint on a document. He did not know what it was for. They held his finger and pressed it on a document by force. He could not tell how long he stayed in Şırnak, but when he was brought before the public prosecutor, he was told that it was 9 March.

353. Shortly before he had been brought before the public prosecutor, he and others were taken from their cell in Şırnak and brought to a place where they were told to strip. He was still blindfolded when this happened. His blindfold was not removed. After having stripped, they were told to turn around. He did not know whether this was a medical examination, but there was some talk about a doctor. He did not receive any medical treatment for his feet in Şırnak.

354. He was taken to Eruh, where his blindfold was removed. When he appeared before the prosecutor in Eruh, he was unable to stand on his feet by himself. He went to the prosecutor holding the wall for support. He told the prosecutor that he had been tortured in Güçlükonak. The prosecutor told him that accusations had been made that soldiers had been shot at from Ormaniçi, which he denied. He had been made to put his fingerprint on a piece of paper. He was unable to hold a pen. He was subsequently released. He had not been allowed to leave the court building immediately. Other villagers from Ormaniçi were there too. When they were also released, they took a minibus to Siirt. Subsequently, they returned to Ormaniçi. At that time, his feet were burning; they felt as if they were on fire. He had not been even able to stand on a rug. His feet were well now; the pain had gone.

355. When he returned to the village, he saw that his house and everything inside it had been completely burned. Also, his family's 30 sheep were dead. They had suffocated from the smoke. His family, together with other villagers, were staying in the caves near the village. He and others repaired his house in September. Then the soldiers returned to Ormaniçi, where they assembled the villagers near the school. His house was burned again on that occasion. As the soldiers ordered the villagers to leave the village, he and others went to the caves in Zeve. After having stayed there about a week, he went to İstanbul. He had never returned to Ormaniçi since.

356. Out of fear, he had not filed a complaint with the prosecutor. The prosecutor knew that his village had been burned. He had never received any compensation from the State for his lost possessions. In his opinion, there was nothing to be expected from the State as it was the State that had burned his possessions. He confirmed having signed a petition to the Human Rights Association complaining about how he had been treated. He had gone to Tahir Elçi in order to file a suit. He had filed this application also on behalf of his mother and siblings.

*Hatice Erbek (applicant no. 25)*

357. Hatice Erbek stated that she was born in 1966 and was married to Şemsettin Erbek. They were currently living in Zeve (Akdizgin). In Ormaniçi, she and her family had owned a single-storey house with two rooms, as well as 50 goats, one mule and a cow.

358. When the witness was shown her fingerprinted statement dated 17 April 1998<sup>493</sup>, she confirmed that it was hers. As to the field, vineyard and orchard mentioned in this statement, she explained that these had in fact belonged to her father-in-law and not to her and her husband.

359. On 20 February 1993, she and her family were sleeping in their house in Ormaniçi when the soldiers arrived. They did not realise this until morning prayer when she heard the soldiers shooting. In her opinion, the shooting only came from the soldiers. She did not hear or see anyone shooting from the village at the soldiers.

360. At some point in time the soldiers arrived in the village. Her house was situated in the lower part of the village and the soldiers arrived there last. The soldiers had first assembled the men and then 2-3 hours later the soldiers gathered the women and children. She had not had enough time to dress the children properly.

361. On the way to the place where the soldiers were taking her, she saw soldiers carrying the body of a soldier. She learned from the other women that the soldier had been shot by other soldiers when the soldiers had raked the village with gunfire. She also heard that the soldiers had taken this soldier's body to the helicopter.

362. In the square near the cemetery, where the soldiers had assembled the men, the men were made to lie face down on the muddy ground. The soldiers singled out her husband and put him in the middle of a group of 20-30 soldiers, who beat him. There was blood on the ground. After the soldiers had stopped beating her husband, he was taken to the cemetery wall where the other men were and, like them, he was made to lie face down in the mud. The men were blindfolded.

363. The soldiers divided the villagers into three groups; the men, the women, and the children together with the elderly. The soldiers initially tried to take the women away, but after much screaming and shouting on their part, the soldiers changed their minds. She saw Mevlüde Ekin with her daughter Abide in the square. It was obvious for everyone, including the soldiers, that Abide had been injured as her intestines were hanging out of her belly. The soldiers did not offer any assistance to Abide or her mother. Later, in the mosque, she learned that Abide had a bullet or lead shot in her belly. She died later. The women buried Abide, as there were no men left in the village to do so.

364. She herself saw the soldiers set houses on fire. She was so close that she was in fact worried about being burned herself. She screamed and then moved further away. The soldiers asked where the heating and paraffin oil could be found. After having found it, the soldiers used this oil as an incendiary device. She saw the *muhtar's* house and Mevlüde's house being

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<sup>493</sup> See Appendix II: § 113.

burned in this way. The soldiers did not kill any animals in the village on that day. They did so on the following day.

365. At some point in time, the men were tied. Half of the men, including her husband, were then taken away by helicopter. The rest of the men were taken away to Basa (Güçlükonak). She was too distraught to notice how his brothers Ali and Şehabettin had been taken away.

366. Although all that was inside her house had been burned, including her provisions for the imminent month of Ramadan, the house itself was still standing. However, she was too afraid to go back to her house. She stayed in the mosque.

367. The soldiers returned the next day, when they set fire to Feke Ali's house and shop. She explained that the villagers referred to Hediye Çetin's husband as Feke Ali. The soldiers then killed animals in Ormaniçi. Later, when she checked on her own goats, she found that half of them were dead. The other half died shortly afterwards. She did not know why the goats had died. She thought that their deaths had been caused by poison or lack of food. After this, she initially continued to stay in the mosque. She and others later stayed together in one of the houses that had not been burned. Sometimes, she also stayed in the caves.

368. After about six months, her husband was released and returned to Ormaniçi. He was one of the last men to return. After his return, her husband was mentally disturbed for about six months. He had been beaten a lot in Şırnak. When, during his detention, he had fainted he had been administered an intravenous injection, which had brought him round but which had also damaged some blood vessels. His broken ribs had healed slightly during his imprisonment. However, the blood vessels in his hip had been battered. He had been unable to move and was still unable to move properly. He was currently still physically incapable of going anywhere. He had never received any treatment for his injuries. They could not afford for him to see a doctor. Although he had tried to work as a shepherd, her husband was still unable to work.

369. In the late summer or early autumn, a couple of days after she had given birth to her son Mahmut, the soldiers returned to the village. Together with the others, she went to the school, where the soldiers gathered the villagers. Three or four women, including Ayşe and Hediye, were taken into the school by the soldiers. When Ayşe came back out of the school, she was bleeding from a wound on her head. The witness and the others present did not ask what had happened or why she was bleeding.

370. On that occasion, the soldiers set fire to several houses, including her own. When she tried to extinguish the fire, the soldiers stopped her. As the soldiers told the villagers that, if they did not leave the village within three days, they would be shot, she and her family left Ormaniçi and had never returned there since. She initially went to the caves and later settled in the village of Akdizgin.

371. She and her family were living in Akdizgin when the soldiers once more returned to Ormaniçi. On that occasion four villagers were shot there.

372. She had never sought or received any compensation from the State for the loss of her property. According to a military doctor, the internal organs of one of her sons were not functioning properly as a result of permanent damage caused by smoke. She confirmed that she had gone to the European Commission of Human Rights to complain about what had happened to her in Ormaniçi. She had also filed this complaint on behalf of her husband and her children.

*Raife Çetin (applicant no. 26)*

373. Raife Çetin stated that she was born in 1956. She was married to Mehmet Tahir Çetin. They had nine children. In Ormaniçi, she and her family had owned a fully furnished one-storey house with three rooms and an attached barn, three mules, one donkey, four plots of non-irrigated fields and two plots of irrigated fields.

374. When the witness was shown her fingerprinted statement dated 14 April 1998<sup>494</sup>, she confirmed that it was hers.

375. On 20 February 1993 she and her family had been at home in Ormaniçi. Her house was situated next to Hediye Cetin's house. When she had been about to perform her morning prayer, she saw soldiers attacking the village. She only saw the soldiers shooting; she did not see or hear anyone attacking the soldiers from the village. The shooting ceased after about one hour. The soldiers then entered the village and assembled the villagers by the cemetery. The men of the village were blindfolded and were made to lie face down in the mud and snow while the soldiers trampled over their heads and backs.

376. Whilst she was in the square, she saw the soldiers set fire to the houses of Mevlüde Ekin, the *muhtar* Mehmet Aslan and Ramazan Yıldırım. She was standing quite close to these houses when she saw the soldiers scatter a yellow powder, which they then set on fire. Her own house was not burned on that day; it was burned later. She also saw the soldiers kill the villagers' animals, including her own livestock.

377. In the village square, she saw Mevlüde Ekin with her daughter Abide who had been injured in the belly. In her opinion, the soldiers must have seen Abide's injury when Abide asked for water. The soldiers refused to allow water to be given to Abide.

378. About half an hour before sunset, she saw a helicopter land but, because of the dust and smoke, she was unable to see anything. The soldiers then took the men of the village, including her husband, away on foot. Her husband was wearing shoes at that time. At first, the women and children

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<sup>494</sup> See Appendix II: § 117.

followed the men. When the soldiers shot in their direction, the women and children returned to the village.

379. That evening she took her family to the caves, as she had been afraid. Others stayed in the mosque and the school. The following day, the soldiers returned to Ormaniçi, where they then set fire to Hediye Cetin's house. Her house was not been burned then either; it was burned later.

380. Her husband was released after 65 days. After his release he stayed with an acquaintance in Cizre. When she heard of his release, she travelled to Cizre to see him. Her husband's legs, from the knees down, were covered in pus and blood. His feet had been amputated. He told her that at first he had been detained in Güçlükonak, then in Şırnak and that he had then been taken to Diyarbakır where a doctor had amputated his feet.

381. His feet needed to be amputated as he had been ill-treated in Güçlükonak. He told her that, in Güçlükonak, he had been beaten up, thrown into the mud and snow and that he had constantly been tortured. He had only stayed briefly in Şırnak. Her husband had not mentioned having been subjected to any ill-treatment in Şırnak.

382. After her husband had been released, he went to Ankara. The Human Rights Association gave him artificial feet. He was currently able to walk short distances with the assistance of crutches, but was still unable to work.

383. The soldiers returned to Ormaniçi in September. She had returned from Cizre where she had visited her husband. The soldiers assembled the villagers at the school. The soldiers took Hediye Çetin and Ayşe Sezgin inside the school. The villagers outside were able to hear that they were being beaten. On that day the soldiers also burned houses, including her own house. Apart from all the furniture, her provisions were also burned. These consisted of lentils, wheat, rice, barley, chickpeas and animal fodder. As the soldiers told the villagers to leave Ormaniçi, she left the village. She had never returned since.

384. She had never received compensation for the property which she and her family had lost. She confirmed that she had lodged a complaint with the European Commission of Human Rights on behalf of herself, her husband and her children. Street vending by two of her sons and her own income as an agricultural labourer provided her family's current income.

*Mehmet Nuri Özkan (husband of Fatma Özkan, applicant no. 27)*

385. Mehmet Nuri Özkan stated that he was born in 1959 and that he was currently in detention in Mardin awaiting trial for the offence of being a PKK member. He had been detained since his apprehension in February 1993. He was illiterate. Until February 1993 he had always lived in Ormaniçi. He had been in Ormaniçi in February 1993. He was married to Fatma Özkan. Nevaf Özkan was his brother and Ali Özkan was his father. He had an older brother Mehmet, who had been killed by the State. At the

relevant time, he lived together with his wife, their six children, one of his sisters-in-law, his father and a shepherd. His house was close to the mosque. There was one house between his house and the mosque. He did not have a gun in his house. He did not possess a gun.

386. Although he had done his military service, he could speak only a little Turkish. He did his military service together with other persons of Kurdish origin and they spoke Kurdish together.

387. When the soldiers raided Ormaniçi on what he thought was 19 February 1993, he woke up early in the morning. He heard dogs barking. He did not know why the dogs were barking. He then saw İbrahim Ekinci, who had returned from having fed his livestock and who told him that the soldiers were approaching the village. He then looked and saw the soldiers. At that point they both went inside their houses. He performed his morning prayer at home. Sleet had been falling that morning. The soldiers did not come into the village but, at the time of morning prayer, opened sustained fire from three or four sides at the houses in the village. He did not see any firing from the village at the soldiers. The soldiers used guns and heavy weapons, such as mortars and missile launchers. Although he was inside his house, he understood that that was what was happening from the sounds he heard. He saw the soldiers, who were wearing white clothes. Some of the soldiers were from Güçlükonak, others were from Fındık and Akdizgin. There were many soldiers; he could not say how many. They had come on foot as Ormaniçi was not accessible to vehicles. The firing lasted until noon.

388. He thought that the soldiers' attack on Ormaniçi was based on the villagers' refusal to become village guards. The soldiers had borne a grudge against the Ormaniçi villagers because they would not agree to become village guards.

389. Towards noon, the soldiers had gone round the village. They had taken all the villagers out of their houses and assembled them in the village square. His house was 500-600 metres from the village square. When the soldiers came to his house, he and his family were all dressed. The soldiers took him and his family to the village square. He saw soldiers spreading some sort of powder in Mevlüde Ekin's house. Although sleet had been falling, the house then started to burn. There was snow on the ground. He himself saw soldiers setting fire to the houses in the village. Flames and smoke were rising from the houses. When the soldiers took them near the burning houses, he saw the soldiers spreading that powder towards the houses. Whilst being taken to the village square, he had seen soldiers carrying G-3 weapons.

390. In the village square, a soldier hit him on the head with his gun and he fell down. The ground was muddy and wet. Like all the other male villagers, the soldiers forced him to lie face down on the ground. The women and children were also in the village square. At some later point in time, the soldiers tied the hands of the male villagers and then blindfolded

them with their *puşus*. While the men were lying down, the soldiers swore at them and kicked them. The men were lying near the burning house of Mevlüde Ekin. He heard the crackling sound of fire and felt sparks falling on him.

391. At some point in time, the soldiers read out his name and separated him from the other men. They wanted him. He did not hear the soldiers reading out the names of any other villagers. He was taken to another square, where he heard the sound of a helicopter. In that square he heard the voices of other villagers. He was still blindfolded. He thought that there were ten villagers in total. He recognised the voices of some of the other villagers. They were then taken by helicopter to the gendarme station in Şırnak. That is what he was told upon his arrival there. In Şırnak, he heard the voice of Halime Ekin, the daughter of Mevlüde Ekin. He did not see his brothers Mehmet and Nevaf in the helicopter; they had been taken to Güçlükönak.

392. In the Şırnak gendarme station, he was stripped and, together with the other villagers sprayed with water. He heard their voices. It was cold. Then he was ordered to put his clothes on again and, together with two others whom he did not know, was placed in a cell. He remained blindfolded throughout his stay in Şırnak. He was interrogated six or seven times in Şırnak. He was questioned about whether he owned a gun and about the PKK. When he denied that the PKK ever came to the village, the commander ordered “Take him downstairs and torture him”. He was taken down a stairway and was ill-treated. He was stripped, sprayed with water and subjected to *falaka* and “wheel” torture.

393. After about a week, he and others were taken by helicopter to Güçlükönak. His blindfold was removed when he boarded the helicopter. In the helicopter he was blindfolded again. In Güçlükönak, they were taken to a new military building under construction, where he and the others were jammed into a room. He understood that about 40 fellow-villagers from Ormaniçi were being held in that same room. He was tightly blindfolded. He recognised the voice of his brother Nevaf who, although his hands were tied behind his back, had been able to loosen his blindfold a bit. He did not see his brother Mehmet.

394. As he was blindfolded, he could not tell whether there were any windows in the room in Güçlükönak. There was no furniture, beds or bedding in that room. There were only five or six cement bags. There was water all around on the floor. It was very cold. They were fed a minimal amount every two or three days, probably with leftovers. The soldiers did not allow anyone to go to the toilet. As some point in time he heard İbrahim Ekin ask “Let me go to the toilet, otherwise I will wet myself”. The soldiers did not allow him to go. He heard some of the villagers crying and moaning, complaining about their feet. The soldiers then intervened and beat them.

395. When he arrived in Güçlükönak, he asked to see a doctor about the pain in his head. They looked at his head and said “No doctor for you”. He did not have a medical examination. He did not know whether any of the detainees had received medical treatment. Once, when the villagers had been crying and shouting, he heard the soldiers say “Do not shout. The doctor is coming”. He did not know whether the doctor had in fact come.

396. He had also been interrogated in Güçlükönak. He was asked about a gun he was believed to have. He was subjected to worse ill-treatment in Güçlükönak than in Şırnak. He was raped with a bottle in Güçlükönak.

397. He stayed eleven days in Güçlükönak. Together with a number of other villagers he was then taken back to Şırnak by helicopter. Some of the villagers were taken to a doctor for a medical examination. He was again interrogated in Şırnak. He was told that, if he surrendered his gun, he would be released. He was ill-treated again. He was subjected to palestinian hanging, his testicles were squeezed and he was threatened with rape with a baton.

398. In front of his cell in Şırnak there was a hall. He shared his cell with another villager called Hacı Ekin. He had not seen Hacı Ekin during his first period of detention in Şırnak or in Güçlükönak. Hacı Ekin told him that he had been taken to Güçlükönak. From time to time, he was able to loosen his blindfold and look around. At some point in time, in the hall in front of his cell, he saw two soldiers bringing İbrahim Ekin, who had been wrapped in a blanket, and beating him until he lost consciousness. One of the two soldiers was called Serdar. About 30 minutes later he saw the soldiers bringing İbrahim Ekin back. He then heard the voice of a commander saying “From now on, do not beat him again”. In his opinion, Hacı Ekin must have seen this too.

399. He never gave a voluntary statement in Şırnak, but the soldiers forced him to place his fingerprint on a piece of paper. As he was blindfolded at that time, he could not say whether the paper was black or white. In any event, although he was illiterate, he was able to put his signature. Before the Delegates, the witness gave some specimen signatures.

400. At some point in time, he and others were brought one by one before a public prosecutor in Eruh. After having arrived from Şırnak to Eruh, his blindfold was removed. The prosecutor asked, when all the men were together, whether they had been tortured, which the men confirmed. He was charged with an offence. When he was brought alone before the public prosecutor, he was told that he had been denounced as being involved with the PKK and that he had made a statement, both of which he denied. As to his statement, he explained to the prosecutor that he had been blindfolded when the statement had been taken. The public prosecutor recorded what he had told him. After that they were brought one by one before a female judge. She did not ask him whether he had been tortured and he did not tell her as he did not know on whose side she was.

401. At some unspecified point in time, he was taken to Diyarbakır. There he heard that the soldiers had burned Ormaniçi again and that the villagers had temporarily abandoned Ormaniçi. In Diyarbakır he also heard that a number of villagers with whom he had been detained had had their feet amputated.

402. Before the State Security Court, he heard that guns had been found in Ormaniçi. When he was asked whether a particular gun was his, he denied that it was. When, before the State Security Court, it was put to him that such-and-such had happened, he explained that he had been forced to put his thumbprint and that, had they been in his place, they would have accepted it in the same way.

403. His wife and children had first stayed in Siirt. From there, they went to Tarsus, where they were currently living in a nylon tent. During the five years in which he had been detained so far, his wife had visited him three times in prison.

404. He had never filed a complaint about what had happened. Nobody had asked him to complain. Moreover, as Turkey had done this, a complaint to the Turkish authorities was, in his opinion, pointless. He did not rule out the possibility that, during his detention, fellow-villagers might have complained on his behalf. The wound on his head would still open from time to time and, as a result of the palestinian hanging, his arm had been dislocated. He was still unable to lift heavy things.

*Fatma Yıldırım (applicant no. 28 and widow of Ramazan Yıldırım [applicant no. 4])*

405. Fatma Yıldırım stated that she was born in 1951. She was the widow of Ramazan Yıldırım and the mother of Hüseyin and Mehmet Yıldırım. She was currently living in Batman. In February 1993 she and her family lived in Ormaniçi. They lived in a two-storey house next to the house of Mehmet Aslan. Apart from all her family's belongings in that house, her family owned 20 sheep, two plots of fruit gardens and five plots of non-irrigated fields in Ormaniçi.

406. When the witness was shown her fingerprinted statement dated 14 April 1998<sup>495</sup>, she confirmed that it was hers.

407. When, on 20 February 1993, the soldiers arrived, her husband had gone to the mill and she and the rest of her family were at home. She woke up to the sound of gunfire. She noted that soldiers had surrounded the village and were shooting. She did not hear or see anyone shooting at the soldiers from the village. The shooting lasted for about half an hour. After the shooting ceased, the soldiers took her and her children Hüseyin and Mehmet to a place by the house of Mehmet Aslan, the *muhtar*, and the house of Mevlüde Ekin. The soldiers beat her children. The soldiers

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<sup>495</sup> See Appendix II: § 125.

blindfolded and tied the men's hands and made them lie down. Whilst the men were lying down, the soldiers from time to time hit the men's heads and upper backs with their rifle butts.

408. She heard from Mevlüde Ekin that her daughter Abide had been wounded when the soldiers had fired into their courtyard. She saw the soldiers set fire to her house by using a “poison” which they scattered to burn the houses. Her daughter went to the house in order to try to save the animals that were kept on the lower floor, but the soldiers caught her by the hair and did not allow her to open the door. The animals consequently suffocated. She saw one mule being shot by soldiers. They killed many mules.

409. Just before evening, the soldiers made the village men, including her two children who were then 13 and 15 years of age, stand up. The soldiers tied them in a line and took them to Basa. As her house had been burned, she stayed that night in the mosque. The following day, the soldiers returned to Ormaniçi and burned the shop and house of Ali and Hediye Çetin. She stayed in the mosque for three or four days. During this time, her small son Ali was killed. He had been playing with a grenade that had been left behind. After three or four days, she went to stay in the caves.

410. When questioned, the witness stated that she knew nothing about the eight Kalashnikov rifles which were found in the village. She had never heard of any villagers owning guns of any sort. She would have known if any villager had hidden arms.

411. She had already returned to the village when her sons were released from detention. They told her that they had only been given a piece of dry bread every three or four days and that they had been thirsty. Her sons also told her that they had been left in the freezing cold, that their shoes had been taken from them and that their feet had frozen. They had also soiled themselves. Hüseyin told her how his hand had been burned with an LPG (heater). Hüseyin later had one of his toes amputated. That summer, she repaired her house and brought in the crop.

412. She was in Ormaniçi when the soldiers returned in the autumn of that year. The soldiers mixed the villagers' provisions, scattered some substance over the wheat and set fire to it. The villagers were gathered together at the school. As the soldiers ordered them to evacuate the village, she and her family went to the area of Dehla Hazara. She returned to Ormaniçi the following year, when the soldiers returned once again and four villagers were killed. On this occasion, the soldiers gave them three days to leave Ormaniçi. She and her family then left Ormaniçi for Güçlükönak. They had never returned since.

413. Although her husband had applied to the public prosecutor, she had never received any compensation from the State. Her husband had also filed an application to the European Commission of Human Rights. She wished to pursue that application on behalf of herself and her family.

*Zeynep Yıldırım (applicant no. 29)*

414. Zeynep Yıldırım stated that she was born in 1941. She was married to Ömer Yıldırım and was currently living in Gaziantep. In Ormaniçi, she and her family had owned a one-storey house with six rooms, all their belongings, two mules, an irrigated rice field of six or seven *dönüm*, one plot of fruit garden and 60 *dönüm* of non-irrigated fields. She could not say how many households there had been in Ormaniçi.

415. When the witness was shown her fingerprinted statement dated 15 April 1998<sup>496</sup>, she confirmed that it was hers.

416. On 20 February 1993 she and her family were at home in Ormaniçi. Her house was situated across the street from Abdurrahman Çetin's house. Just before morning prayer, when she went to feed the animals, she saw soldiers. She immediately returned home and, as she started to tell her family of the soldiers' arrival, she heard shooting. She only saw the soldiers shooting. She firmly denied that any shots had been fired from the village at the soldiers. The villagers could not have fired at the soldiers, as they had no weapons. She and her family hid in the house. She guessed that the shooting had ceased after about 30-45 minutes. When she looked out of the window, she saw that a soldier had fired at Halil's window. She later heard that this soldier had shot the soldier there, as well as Abide Ekin. Abide's mother had seen that too.

417. After the shooting ceased, the soldiers entered the village and assembled the villagers by the cemetery. The men were tied together and blindfolded, and were made to lie down. They also gathered the women together. The soldiers also made her husband lie down. Her husband, who had a heart condition, had a heart attack and fainted.

418. Whilst she was in the square, she saw the soldiers set fire to the houses of Halil and the *muhtar*. She saw the soldiers scatter a yellow substance, which they then set on fire. Her own house had not been burned. It was burned on the last occasion when the soldiers had returned in the autumn. Further, she saw the soldiers firing at the villagers' animals. In the village square, she saw Mevlüde Ekin with her daughter Abide, who had been injured. Abide's intestines had been hanging out. In her opinion, the soldiers would have been able to see that too.

419. At some point, the men of the village were taken away. As he was ill, her husband was not taken away and stayed in the village. Out of fear, she stayed at the mosque that evening. Others stayed in the school or went to the caves. The following day, the soldiers returned to Ormaniçi, where they set fire to Ali's house. The soldiers then also killed any animals that were left in the village.

420. She stayed in Ormaniçi that summer. The soldiers returned to Ormaniçi in the autumn. On that occasion the soldiers took all the villagers,

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<sup>496</sup> See Appendix II: § 130.

both men and women, to the school, where the soldiers took two women inside the school. She did not know what happened to them in the school. Her own house was burned on that occasion. The soldiers took all her furniture and belongings outside, poured paraffin over them and set them on fire. Her mules died from the smoke. One part of her house was burned and it collapsed completely afterwards. As the soldiers told the villagers to leave Ormaniçi, she went to live in the caves.

421. The following spring, the soldiers told them that they could return to Ormaniçi and that nothing would happen to them. The soldiers then raided Ormaniçi again and killed four villagers there. She herself was in the village when that happened. As the soldiers told them that they were definitely not allowed to stay in the village and had to leave, she and her family went to Güçlükonak. She had never returned to Ormaniçi.

422. She had never filed a complaint with the authorities and never received any aid or compensation. In April 1993, she and other women from the village went to Tahir in Cizre to file an application to the Commission on behalf of herself, her husband and her children.

*Ayşe Sezgin (applicant no. 31)*

423. Ayşe Sezgin stated that she was born in 1948 and that she was currently living in Tarsus. In February 1993 she and her four children lived in their own house in Ormaniçi. She was the widow of Abdul Kadir. He died in February 1993.

424. On 20 February 1993, around the time of morning prayer, she woke up to the sound of shooting. After the soldiers had been shooting for a while, they entered the village and the houses in the village. About 15 soldiers came to her house, ordering her to come out of the house. When she and her children went out, the soldiers took her back into the house. Her children stayed outside. The soldiers ill-treated her by grabbing her hair and hitting her head against the wall. They told her that she had a hideout in her house. She was then taken outside again.

425. The soldiers then took her and her children to the square, where everybody had been gathered. As they had not had time to dress themselves properly, her children were only wearing thin shirts. The women and children were gathered in a corner of the square. The soldiers made the men lie on the ground with their mouths in the mud and snow. The soldiers walked over the men's heads and backs and beat them. The men bled from their mouths and noses. Because of the way in which the men had been treated, the women did not dare to say anything. In the square, she saw Mevlüde Ekin who was holding her clearly injured child Abide on her lap. Abide's belly was open and was bleeding. Mevlüde put her hand on the wound and the witness wrapped her scarf around Abide's wound, but Abide kept bleeding.

426. From the village square, she was able to see some of the houses. The soldiers poured a chemical and then set fire to the houses. This chemical was in a container. She herself saw soldiers set fire to the house of Mevlüde Ekin. The soldiers sprayed the chemical near Mevlüde's door and the flames rose. She had been astonished and wondered how it worked. Later she noticed yellow stains on the walls. The houses had not withstood the fire for long and quickly burned and collapsed. She saw flames over the top of her own house from a corner of the house of Mevlüde Ekin. While she was in the square, the soldiers shot and killed any animals they saw. The animals were roaming around after the soldiers had let them loose from the houses. She heard shots and saw with her own eyes soldiers shooting animals. The soldiers killed her mule. Her chickens and turkeys were burned in the chicken coop. The soldiers also killed animals which were in the houses and barns. The soldiers burned the house of Ali Çetin, together with his sheep, cows and other animals which were inside his house. The soldiers also killed Mevlüde Ekin's two mules.

427. The villagers remained in the square until about one hour before dark. Towards the evening, the men were blindfolded, tied together and taken away to the Güçlükonak track. After the men had left, some of the women and children, including herself, went to the mosque and others went to the school. They had no houses any more and the mosque and the school were made of concrete. Hediye Çetin and her family, the household of Mehmet Özkan (not her brother), and Hediye Demir and her family went to the school. The school was a two-storey building. She had never gone to school and did not know how many rooms there were in the school. Her own house had been burned too. She lost everything in the fire. Nothing was left. Only some animal shelters and barns remained untouched. She heard that a soldier had been killed near Mevlüde Ekin's house, but she did not see the killing or the dead body. His body had been removed by the time she was taken to the village square.

428. The soldiers returned to Ormaniçi the next day. The soldiers were holding cans of crude oil. Two soldiers advanced towards them in the mosque. After the women held the Koran in front of the soldiers, the soldiers left. On the second day, the soldiers burned the house of Ali Çetin, the husband of Hediye Çetin. She and the others had nothing to eat for three days. Then the villagers from the surrounding villages brought them food.

429. After three days, she left the mosque. Her house had been burned, but the main frame was still standing. In one of its rooms, she and others put down some poles which they then covered so that it looked like a tent. She then took shelter there. She remained there until September 1993.

430. After the men returned to Ormaniçi, they repaired some of the houses. In September 1993 the soldiers returned to Ormaniçi. The soldiers burned the houses that had been repaired, mixed up all the villagers' food supplies and ordered the villagers to leave. On that occasion, the soldiers

took her and Hediye Çetin into the school, where they ill-treated both of them for five or six hours. She was hit on her body, in her face and on the soles of her feet. The soldiers tore her shirt and exposed her breasts. After this incident, she left the village for Zeve.

431. In May 1994 she returned to Ormaniçi as she and the other villagers wanted to cultivate their land in order to make a living. Then the soldiers returned again. On that occasion the soldiers killed four villagers, including her brother Mehmet Özkan, and three strangers. She saw her brother's dead body. The soldiers gave the villagers three days to vacate the village. Then the villagers moved away as they were afraid.

432. She remembered having made a statement to the Human Rights Association complaining about what had happened in February 1993. She had filed that complaint on behalf of her children as well. She had also made a further statement in 1997 to Tahir Elçi. She was currently living in rented accommodation in Tarsus. Whenever there was work, she would go to hoe the fields.

*Rukiye Erbek<sup>497</sup> (applicant no. 32)*

433. Rukiye Erbek-Özkan<sup>498</sup> stated that she was 23 years old and married to Ali Erbek. She and her children were currently living in Tarsus. Her husband was in detention in Mardin awaiting trial. In Ormaniçi, she and her family had owned a house which was located in the middle of the village and which contained their provisions and furniture, as well as a necklace with 12 gold coins. Further, she owned two sheep.

434. When the witness was shown her fingerprinted statement dated 4 April 1998<sup>499</sup>, she confirmed that it was hers. She had given that statement to a Kurdish speaking person, who had translated it.

435. On 20 February 1993 she and her husband were at home in Ormaniçi. When her family got up for morning prayer, they saw that soldiers had surrounded the village. After about ten minutes, she heard shots coming from the soldiers. She and her family took shelter in a corner in order not to be hit by any of the shots fired at her house. She, her husband and her daughter stayed there until, about an hour later, the shooting stopped. Nobody shot at the soldiers from the village. She would have heard or seen that. There were no weapons in the village and she had never seen anyone carrying or hiding a weapon.

436. The soldiers then entered the village. They arrived at her house at about 9 a.m. and took her, her husband and her daughter out of the house to a place by the cemetery. Whilst they were being taken there, both she and her husband were beaten. The soldiers told her to put her hands up. As she

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<sup>497</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek".

<sup>498</sup> Rectified on 1 March 2005. The previous version reads "Fatma Erbek-Özkan".

<sup>499</sup> See Appendix II: § 135.

was carrying her daughter, she only put one hand up. The soldiers then seized her daughter and threw her in the snow.

437. When they arrived at the cemetery, she saw that all the other villagers had already been assembled there and that the men had been made to lie face down in the mud. Her husband was made to lie down too. She herself saw the soldiers set fire to the *muhtar's* house. The soldiers had a box in their hands. They pressed it; something came out of it which spread. The soldiers then lit this substance with matches and the house began to burn. She could not tell whether it had been a powder or a liquid. She had been right next to that house. When the flames came towards her and the others, the soldiers moved them away. When the soldiers came across any of the villagers' animals, such as mules or a chicken, they shot at them.

438. In the village square, she also saw Mevlüde Ekin with her daughter Abide. Mevlüde told the witness that her family had been bombed and that a piece of the bomb had hit Abide. Abide's intestines were coming out of her belly. In her opinion, it would have been impossible for the soldiers not to see Abide's injury. Although Mevlüde did not ask the soldiers for help for Abide, Mevlüde had shown Abide's injuries to the soldiers several times.

439. Although she heard the helicopter land on several occasions, she did not know which, if any, of the villagers had been taken away by helicopter. About half an hour before sunset, the men from the village were blindfolded and taken away to Basa (Güçlükonak). Her husband Ali had been in detention since February 1993 and, as she had not seen him since, she did not know whether or not he had been taken away from Ormaniçi by helicopter or why he was being tried. She could not afford to go and see him in Mardin. If her husband had stated before a judge in Erüh that Cemal Sezgin and Nezir Demir were PKK members, he would not have been telling the truth. She had never heard or seen anything indicating any involvement with the PKK.

440. As her own house had also been burned that day, she stayed in the mosque that evening. Mevlüde also stayed in the mosque with her daughter Abide. The following day, the soldiers returned to Ormaniçi. When on that day the soldiers threatened the women in the mosque, the women held the Koran in front of them. The soldiers then burned a barn and the house of Ali and Hediye, which also contained their shop. These had not been burned the day before. As transport was impossible for most of the villagers, Ali always had a large stock of provisions. The soldiers left the animals of Ali and Hediye to burn to death. After the soldiers had left the village, she herself saw how the cows had perished in the flames. After about three days, neighbouring villagers brought them provisions, mattresses and clothes and, as the mosque had been overcrowded, she and her daughter returned to a small, unburned part of her house. Others stayed up to 20 days in the mosque.

441. She was in Ormaniçi when the soldiers returned in September. On that occasion, the soldiers again burned the houses of those families whose men had been released and who had started to repair them. Further, the soldiers mixed up all the villagers' provisions and poured diesel oil over them. The soldiers also took Hediye and Ayşe into the school. She did not know what happened to them in the school. As the soldiers told the villagers to leave the village, she and her daughter went to Zeve and then to the Dehla Hazara caves, where they stayed and where she gave birth to her son.

442. She had gone back to Ormaniçi when, in the spring, the soldiers returned to the village. The soldiers then killed four villagers, including her brother Mehmet, in the gardens. The next day, soldiers and village guards came to Ormaniçi to bury the dead. They then told the villagers that they had three days to leave Ormaniçi. She then went to Basa. She had never returned to Ormaniçi since.

443. She confirmed that she had neither claimed nor received compensation from the State. She had gone to a lawyer in Cizre, where she had made an application to the European Commission of Human Rights on behalf of herself, her husband and her children. She was currently living in a tent and working in Tarsus.

#### *Celal Çürek*

444. Celal Çürek stated that he was born in 1963 and that, in February 1993, he had been the temporary commander of the Güçlükönak district gendarmerie station, as the District Gendarmerie Commander in office there had been on leave at that time. He had been appointed to that post in July or August 1992 and left it in August 1994. Güçlükönak was in the judicial district of Eruh. During that period, he was physically stationed in Güçlükönak and held the rank of first lieutenant. He was promoted to the rank of Captain in August 1993. He was currently stationed at the 21<sup>st</sup> border division in Van.

445. In February 1993 there were three or four gendarmerie stations that reported to the Güçlükönak district gendarmerie command. He estimated that, including these stations, in total 400-500 soldiers were stationed in the Güçlükönak district. One commando unit was based in Güçlükönak. Another commando battalion was stationed in Fındık, which reported to the Fındık district command. He thought that about 200-250 soldiers were based in Güçlükönak itself.

446. The Güçlükönak District Gendarmerie was housed in a U-shaped, single-storey building, which had been constructed as a gendarmerie station, not as a district gendarmerie station. In 1989 or 1990, when the village of Güçlükönak became a district (township), the district gendarmerie command had been established and used the old gendarmerie station's building until the completion of the new station building. At the relevant time, this new building had been half-finished; the construction of the 8-unit

staff lodgings and a three- or four-storey office building was still going on. In the meantime and with their own means, the officers residing in Güçlükönak built a NCO guesthouse and an officers' club. The privates were housed in primitive conditions in the basement of the gendarmerie building still under construction. From time to time, there would be no electricity. It was only possible to use the telephone when there was electricity. He did not recall whether or not there had been electricity in the gendarmerie station on the day of the incident.

447. There were detention facilities for three to four persons in the old U-shaped gendarmerie building. The new detention facilities were not yet completed. Records were kept in respect of all persons detained or interrogated in Güçlükönak. In these custody records, the date and time of entry and exit were recorded. Such persons also underwent a medical examination.

448. When he took up his duties in Güçlükönak in July or August 1992, the gendarmes used to go on foot to the villages of Akdizgin and Damlarca to obtain provisions or supplies. On their way to these villages, the gendarmes went through Ormaniçi. In order to reach Ormaniçi from Güçlükönak, one had to cross a riverbed which lay at the bottom of a precipice. In order to cross the riverbed, one had to walk across a rocky terrain; to cross from one bank to the other would normally take 45 minutes to one hour. If there was snow, the crossing would take about one hour and ten minutes. After having crossed, one had still to walk another six kilometres before reaching Ormaniçi. In snowy conditions, the whole walk from Güçlükönak to Ormaniçi would take 2-2½ hours. He thought that the total walking distance amounted to about 10-12 kilometres. It was a winding path. One needed to go down to the riverbed, then back up again several times. The banks of the Ormaniçi stream were very high; it was a deep ravine. There was no road for vehicles to Ormaniçi; there was only a path leading to the village. There was a road suitable for vehicles from Güçlükönak to the edge of the precipice.

449. As the gendarmes trusted Ormaniçi, no searches were ever carried out in that village. He had never found that necessary. He did not personally know the *muhtar* of Ormaniçi. According to the terms of his appointment to Güçlükönak by the gendarmerie headquarters, he was only responsible for the fight against terrorism. He had no judicial duties. Therefore, he had only met those local villagers who came to the gendarmerie station or those who came from nearby villages.

450. At some point in time, they had been tipped off that members of the PKK had been hiding near the Ormaniçi stream. Owing to severe weather conditions, it had been impossible – for several months already – for the gendarmes to go there. The gendarmes planned and carried out an operation to neutralise the PKK members. He did not recall that anyone called Mehmet Sevin from Boyuncuk had been killed. As to the events of

20 February 1993, the gendarmes only intended to search the area at the Ormaniçi stream where the terrorists were reportedly in hiding. As the gendarmes did not intend to enter or to search the village, the taking into detention of a large number of people had not been anticipated. In his original plan, he did not at all consider the possibility that there might have been a terrorist presence in Ormaniçi itself.

451. When the witness was shown the Observation and Establishment Report in the Location<sup>500</sup> in which it was indicated that the operation had also been launched in order to carry out a search in the village, he explained that the main purpose of the operation was to conduct a search in the area around the Ormaniçi stream. At the same time, one or two gendarme teams were to conduct a search in the village, as there was a judicial order to apprehend a wanted person who might be found in the village. The regular gendarme team was brought to Ormaniçi in order to search the house concerned as well as its annexes. To search the village with commando teams had not been part of the planned operation.

452. When he together with three gendarme teams reached Ormaniçi at about 5.30 a.m. on 20 February 1993, after having set out on foot at about 2 a.m., they took up positions about 1-1½ kilometres north of the village. He himself was in a position about 2½ kilometres north of the village. There was a small riverbed from where one could reach the Ormaniçi stream. There was snow on the ground and sleet was falling. Five gendarme commando teams of 17 soldiers each and one or two regular gendarme teams, 90-100 men in total, participated in this operation. He himself was the commando company commander. Unlike the gendarme commandos, regular gendarmes were responsible for judicial and civil matters.

453. He himself wore the normal khaki coloured uniform of the Turkish army. None of the men wore white-coloured “snow” uniforms. The latter uniforms would only be used when soldiers were to stay in snow-covered fields for 4-5 days. This operation had been planned for only one day; it was only intended to search the riverbed area. He had in fact expected the gendarmes to be back in Güçlükonak by 10 or 11 a.m. The gendarmes had further taken the route they would normally take when they going to Damlarca and Akdizgin via Ormaniçi, as they did not expect any problems.

454. At about 5.30 a.m., he was informed by radio by the gendarme teams who were moving towards Ormaniçi on the Güçlükonak-Ormaniçi footpath as well as the gendarme team on security duty at the Dicle river to the south that fire had been opened by PKK terrorists on the soldiers. He recalled being informed that this firing came from the direction of the mosque or its vicinity. He then changed his initial plan to search the Ormaniçi stream and, instead, proceeded towards Ormaniçi with a flank of soldiers. Shooting came from the village. The gendarmes did not return fire.

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<sup>500</sup> See Appendix II: §§ 163-170.

When his own team approached the village from the north, via a garden surrounded by a wall, they too were shot at from the village when they reached the end of the garden. He then ordered his men to lie down and seek shelter. It was around 6.30 a.m. There was intensive fire and the gendarmes returned fire. He was unable to give an approximate indication of the number of points of fire from the village. There had perhaps been 10-20 Kalashnikov-type weapons shooting intensively at the gendarmes from the village.

455. After the ammunition listed as having been used in the Operation Result Report<sup>501</sup> was read out to the witness, he stated that this was a normal amount of fire power for a clash which lasted for 5-6 hours and in which six gendarme teams participated. The use of the destruction bombs, the RPG missiles and the grenade launchers – which the separatist terrorist organisation also used – was necessary in order to damage stone walls and to shoot the people behind such walls. The gendarmes also used the rifle grenades, which the terrorists did not have, to damage stone walls. These weapons were not used at random against houses in the incident, but only to blow up garden walls and annexes of buildings. At least that is what he himself saw. He was only able to see one side of the village. The teams who were on the other side would have been able to see everything. They saw where the fire was coming from and opened fire in that direction. When the shooting first started, he was informed by radio that three or five persons had escaped from the village towards the east. He then ordered mortar missiles to be launched in that direction, towards the riverbed. Therefore, no 66 mm mortar missiles landed in the village. He himself did not see any hand grenades being used. Whatever kind of ammunition had been used was reported to him later.

456. In his recollection, the intensive firing lasted about 3-3½ hours, until about 9 or 9.30 a.m. He waited one or two hours before he entered Ormaniçi as there was still some shooting at the soldiers, although the intensity of the firing had lessened at some point in time. Then two gendarme teams entered the village at the same time. He was not at the head of either team. He himself entered the village at around 9.15 a.m. As soon as he was able to see the other side of the village, which the gendarmes had not yet reached, he saw a lot of smoke. At that time shots were being fired at the soldiers from the direction of the mosque. The intermittent shooting in the village lasted until about noon or 2 p.m. He was not completely certain of these time indications.

457. He then ordered that every single house in the village be searched. All persons who were in the houses that were being searched were taken to a place about 50-100 metres from the village, where he left a gendarme team. He was unable to tell whether that was near the cemetery wall. He

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<sup>501</sup> See Appendix II: § 167.

thought that he himself was in the process of searching his third house when Private Servet Uslu was shot. He was in the stable of that house, when Private Uslu went upstairs, together with somebody said to be the *muhtar*, whom he had just met outside the house. He himself stayed on the ground floor. There was nobody in the house when they entered. He did not know whose house it was or who the neighbours were. When the witness was shown the Incident Location Sketch<sup>502</sup>, he identified the house as No. 7 or No. 8, i.e. the houses of Mehmet Aslan and Mevlüde Ekin respectively.

458. When Private Uslu was killed, the witness went upstairs. There were only three, possibly four, persons upstairs: the 1<sup>st</sup> Commando Team Commander Senior Sergeant Hasan Yeşilyurt, Private Servet Uslu, the *muhtar* and possibly another private. When he arrived he saw the *muhtar* and the NCO. The private was lying on the floor. He himself did not see who had killed the private. In reply to his question as to what had happened, the Team Commander said that Private Uslu had approached the window and had then been shot. He himself went to the window to verify from where the shot could possibly have come. The window faced the mosque. There were houses at a distance of 80-100 metres from where the shot could have been fired. The gendarme forces had not yet secured that area at that stage. It was only the second or third house searched in the village. The gendarmes started to search the village from one side and advanced into the village. Nobody had mentioned to him at that time that another soldier had fired the shot. If he had heard that, he would have initiated an administrative investigation.

459. When it was put to the witness that the *muhtar* Mehmet Aslan had given evidence that, when he had looked out of the window immediately after Private Uslu had been shot, he had seen a soldier pointing a gun in the direction of the house and that he had drawn the attention of the persons in command in the room to this fact, the witness stated that, although he would not exclude the possibility that the *muhtar* had looked out of the window during the minute it took himself to go upstairs, the *muhtar* had not told him anything to that effect at the time. In any event, it would be illogical as soldiers would not turn their back on an area which was not yet secured.

460. When the witness was questioned about Abide Ekin, he stated that that was the first time that he had heard of the incident. Neither the *muhtar* nor anyone else had told or reported to him on 20 February 1993 that a person or child was injured. He himself had not seen any wounded person or child on that day. He excluded the possibility that a hand grenade could have been thrown into the house which was empty. He stated that he was very surprised to hear about that injury.

461. During the reciprocal clash, five or six houses or stables near to the mosque caught fire. The gendarmes were unable to search these, because of

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<sup>502</sup> See Appendix II: § 152.

the smoke and fire. A few animals were also killed during the clash. He had recorded this in his operation result report in order to allow the owners of the houses, stables and livestock to apply for compensation from the State for their losses. He firmly denied that the soldiers had ever deliberately killed animals or set fire to houses. He had never seen this and had never given orders to that effect. He had never seen or heard about a yellow powder or liquid used by soldiers as an incendiary device. If any persons had given evidence to that effect, they were lying. Such a device was not in his inventory either. He used to keep records of all military material, equipment and supplies which were received at the station. By checking these delivery records it could be proved that this substance was not included in the inventory and was not used.

462. The houses that he saw burning when he entered Ormaniçi were located in an area where the gendarmes had not yet been. It would have been impossible for the gendarmes to set fire to them. He did not exclude the possibility that these houses had in fact been set on fire by the terrorists so that they could hide in them, or that they had caught fire in the cross-fire or after having been hit by tracer bullets which were used by both the gendarmes and the terrorists. Tracer bullets would leave a trail of sparks behind and, if they landed in straw, could cause a fire. It was impossible to extinguish the fires, as there was no water in the village.

463. In so far as he remembered three terrorists were caught with their weapons. He did not see their capture himself, but he was later shown the places where they were captured and the used cartridges. He saw the empty Kalashnikov cartridges in front of two or three houses and in the toilet of the mosque. As the cartridges fired from the houses were hot, the snow around them had melted. The cartridges fired in the toilets were on the concrete floor. The gendarmes found only three Kalashnikov weapons in Ormaniçi. He did not rule out the possibility that more weapons were hidden in Ormaniçi. However, because of the snow on the ground, it was very difficult to locate where weapons might have been concealed. He transmitted the weapons that had been found to the forensic department, to the office of the prosecutor. He did not know what had happened with these weapons or whether it had ever been established whether or not Private Uslu was killed by a shot fired from one of these weapons.

464. The search of the village was completed around noon. He then went to the place where the villagers were gathered. The villagers were being guarded there by about 17-20 soldiers. Those persons who were caught with weapons and those who looked suspicious, in total about 8-12, were handcuffed and made to lie face down in the square where the villagers were assembled. He did not remember having seen that they were blindfolded. These persons were later taken to Şırnak. He firmly denied that about 43 villagers had been made to lie face down in the square. He only saw 8, or a maximum of 12, persons lying down in that position in the

square. He further firmly denied that the soldiers had ill-treated the persons lying on the grounds by kicking them, stepping on their backs or striking them with rifle butts. He himself did not see that. After he had arrived in the square, he ordered the men who were lying face down to stand up. As the search started at about 9.15 a.m., these men would have been kept lying face down for a maximum of three hours. Parts of the ground were covered with snow and in other parts, where the snow had melted, there was mud.

465. Although they were also in the square, the women and children were kept apart from the men. There was a certain distance between them and the men. He denied that soldiers had refused to help the injured child Abide Ekin or had refused her access to water. Nobody had complained or reported to him that a child had been injured. Had he known this, he would have evacuated the child, together with the dead soldier in the helicopter and, consequently, recorded this in his Operation Result Report. In that Report he would also have recorded the houses that had been burned and the animals that had been killed, so that the owners could receive compensation for the damages incurred. After the office of the public prosecutor had been informed of the incident, members of special committees came and examined the area. If he had not included, for instance, the fact that a person had been injured and the office of the public prosecutor or another judicial authority had found that out, an enquiry could have been initiated. If it was found that he had been negligent, legal proceedings could then have been brought against him.

466. He was informed that his regiment commander would be coming because of the dead soldier and to inspect the site of the incident. At about 2 p.m., the helicopter of the regiment commander arrived in Ormaniçi. The regiment commander and a confessor named Osman Ayan (codename "Lokman") stepped out of the helicopter. He did not know that it had been intended to bring Osman Ayan to Ormaniçi. Osman Ayan, whom he then met personally, identified amongst the captured persons those who were either PKK members or supporters. After that Osman Ayan returned to the gendarmerie regiment headquarters in the same helicopter.

467. Nine men and one woman from the village were taken directly to Şırnak by helicopter. They were suspects. In so far as he could remember, the three weapons found were found in and around these persons' houses and empty cartridges were found in their gardens. His regiment commander, who was probably aware of the gendarmerie facilities in Güçlükonak, had ordered their detention and interrogation in Şırnak. Their removal by helicopter had not been planned in advance. When the findings of the medical examination conducted in Şırnak as recorded in Dr Pehlivanlı's report dated 20 February 1993<sup>503</sup> were put to the witness, he stated that only

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<sup>503</sup> See Appendix II: §§ 254-255.

these villagers could explain how they had sustained their injuries. The gendarmes had not done anything illegal.

468. As to the remaining villagers, his regiment commander said to him that there was not enough room for them in Şırnak and that he was to detain them and prepare the preliminary documents and the investigation documents. Also in the afternoon, when everything was over, gendarmerie commando reinforcements from Fındık arrived in Ormaniçi.

469. The hands of the remaining male villagers were tied in order to take them on foot to Güçlükönak, as the villagers were in principle all suspects and needed to be interrogated. As the gendarmes did not have sufficient handcuffs, ropes were used for this purpose. He firmly denied that the men were blindfolded. If so, it would have been impossible for them to walk on the narrow trail to Güçlükönak. When he arrived in the square he did not see anyone barefoot; they were all wearing their shoes and socks. As the villagers were poor, they had inexpensive footwear like rubber shoes or clogs. It seemed to him that such footwear could not have protected their feet from the snow or the cold, but they were too poor to afford boots. He could not remember how they were clothed. He walked with the villagers to Güçlükönak. As their hands were tied, it was not easy for them to walk. But it was necessary in order to prevent them escaping in the dark. The villagers probably staggered. They probably fell down and got up again several times during the walk. He denied that the villagers were tied together. Only their hands were tied. To have tied them together would only have delayed their arrival in Güçlükönak. The gendarmes would then have had to travel at night, which he wanted to avoid as there was only one track which the captured villagers and the soldiers could take. He could not exclude the possibility that people who escaped might have hidden in that area in order to prepare an ambush. Some inhabitants of Güçlükönak saw the group arrive there.

470. Once they reached the road at the edge of the precipice, some gendarmerie vehicles arrived. Some of the persons taken into detention, as well as his tired soldiers, were then driven the approximately 700 metres to Güçlükönak district gendarmerie station. The others continued on foot.

471. When the Ormaniçi villagers arrived at the gendarmerie station in Güçlükönak, given the conditions there at that time, they were first gathered in the officers' dining room next to the bakery. They were searched and medically examined by a doctor within the first few hours of their arrival, and all this was recorded in the custody register.

472. There were custody records for 1993; they had been there during the relevant time, as well as when he had left his post in Güçlükönak. The Central Gendarmerie Commander had been responsible for keeping the records. In the villages, it was the responsibility of the village gendarmerie station commanders. When it was put to the witness that, according to a letter dated 24 June 1998 from the Central Gendarmerie Command in

Ankara to the Ministry of Foreign Affairs<sup>504</sup>, no custody records for the period from 20 February to 9 March 1993 of the Güçlükonak district gendarme station existed, he firmly maintained that custody records had been kept at that time and that all persons detained or interrogated underwent a medical examination. He was unable to explain why the records had not been found. It was a very small building. Perhaps the records had been lost during the move to the new building. He further clearly remembered having sought and obtained from the office of the public prosecutor permission to detain the villagers for a specific period of time for interrogation purposes.

473. When it was put to the witness that, when Dr Parmaksız had examined the villagers later that day, the latter had noted that a number of them had no shoes, he said that it was possible that during their walk to Güçlükonak, in the dark and in snow of 20-30 cm deep, some villagers might have lost their shoes. He was not informed by the doctor or anyone else that some of the villagers were without footwear. He found this unacceptable and wrong.

474. The villagers stayed the first night in the dining room of the officers' club. The following day, the villagers were taken to two rooms in the basement of the new gendarmerie station building still under construction, where the soldiers themselves also stayed and where rooms had been prepared for them in the meantime. A stove had been placed there and the window openings were covered with plastic as they had not yet been fitted with window frames or glass. For lack of any alternative accommodation, the villagers were divided in two groups and were kept in these two rooms. He denied that the floor there was wet. Some of his officers and soldiers were staying in the adjoining rooms. In the stoves, the gendarmes burned coal allotted to them from Şırnak. The coal was bad; it did not burn properly. It would quickly melt and become like mud; it would stick without giving off any heat. The temperature in the rooms was perhaps a little cold, but the gendarmes lived in the same conditions. It was true that there were no bunk beds; the bedding was spread out on the floor.

475. The gendarmes did what they were capable of doing. Apart from the fact that the soldiers had bunk or camp beds, they lived in the same conditions as the villagers. The soldiers lived further down in the same basement. The reason that no window frames or glass had yet been fitted was because there was no carpenter or glazier in Güçlükonak and the road from Siirt to Güçlükonak had been closed for three months. If the soldiers had not covered the open windows with plastic it would have been colder. Considering the circumstances, the gendarmes in Güçlükonak had done their best. The villagers had not been transferred to other detention facilities, as simply none were available at that time.

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<sup>504</sup> See Appendix II: § 174.

476. One of the two rooms had a toilet. There was no toilet in the other room. The villagers detained in the latter room were accompanied by a soldier to the toilet in the other room. The detained villagers were given the same food as the soldiers. As long as the villagers stayed in the two rooms, they were not blindfolded. They would only be blindfolded when taken to the toilet or for interrogation. This was necessary for security reasons. The soldiers' toilet was outside.

477. There was enough room for the villagers to move around in the rooms where they were being detained. As it was cold outside with snow on the ground, it was not possible to take the villagers outside for exercise. They were given the opportunity to have some exercise when they were taken to the toilet or to give statements.

478. He had seen the report of Dr Parmaksız of 20 February 1993<sup>505</sup> in which the latter reported that all villagers had injuries to their legs and feet as a result of having been made to walk seven kilometres in adverse weather and terrain conditions. He arranged for medical treatment to be provided. Two of his soldiers and the doctor continually examined the villagers in the two rooms where the latter were detained. They treated the villagers' wounds with massage and ointments. He saw this with his own eyes. He accompanied the doctor there on several occasions. The villagers were not taken to the doctor's own room, as it was only a small room containing just a chair, a table and a medicine cupboard. There was no examination table or bed in that room. Also, the soldiers received medical treatment in their dormitory. One or two weeks later – he believed on two occasions – he arranged for the transport to Şırnak or Mardin by helicopter of 4-6 people who had not responded to the treatment provided and whose feet had become gangrenous.

479. The villagers were not really interrogated in Güçlükonak. Only statements had been taken from them. There was no interpreter present when the villagers gave their statements. In so far as he remembered, they probably all spoke Turkish. He was not personally present when statements were taken from the villagers. He recalled that one day an NCO, who had been taking someone's statement, came to him and told him that one of the villagers had confessed and told the gendarmes which of the villagers were aiding and abetting [the PKK] and which were members of the [PKK] village committee. He then ordered this person to be brought to his office. He did not recall this person's surname. He thought his first name had been Nuri. While they had tea together, Nuri gave his statement, which was taken in the witness's presence and was recorded verbatim, because Nuri had supplied names. In so far as he could remember, this was the only statement he himself had taken. Perhaps he himself had taken one or two further statements, but he could not remember this.

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<sup>505</sup> See Appendix II: § 251.

480. He firmly denied that any of the villagers had been ill-treated by having been beaten, stripped, subjected to cold-water treatment or electric shocks, hung up or made to sit on bottles. He himself had never seen that and he did not believe that such treatment had occurred. In his opinion, the villagers' clothes might have been wet upon their arrival in Güçlükönak and they might have stripped for their medical examination. He had not tortured or used force on anybody during his term in office in Güçlükönak. The gendarmes had not done anything illegal.

481. He could not remember when exactly he drew up the Observation and Establishment Report in the Location<sup>506</sup>. He had probably taken notes in Ormaniçi which he might have used when he returned to Güçlükönak. Everything that was reported to him was recorded in this report. The *muhtar* of Ormaniçi also signed it. If he had omitted to state anything in the report, the *muhtar* or the other signatories should have brought this to his attention. When the Location, Indication and Destruction Report dated 21 February 1993<sup>507</sup> and the Terrorist Incident Preliminary Report of 22 February 1993<sup>508</sup> were put to the witness, he stated that neither document concerned him. The Location, Indication and Destruction Report was drawn up by the Provincial Gendarmerie Command. The Terrorist Incident Preliminary Report was sent to Güçlükönak by the office of his regiment commander at the Provincial Gendarmerie Command and was to be added to the file in Güçlükönak. It was sent before the suspects' files had been transmitted to the office of the public prosecutor.

482. None of the gendarmes under his command went to Ormaniçi on 21 February 1993. He was not aware of the various activities recorded in these two reports and therefore could not give any evidence as to what had happened in Ormaniçi on that day.

483. Although the witness initially stated that, after the incident of 20 February 1993, he himself had gone back to Ormaniçi on two or three occasions in order to locate places where weapons had been hidden as indicated by villagers, and that the gendarmes had brought these villagers along on those occasions, when the Operation Result Report dated 25 February 1993<sup>509</sup> and the Location Indication Report dated 25 February 1993<sup>510</sup> were put to the witness, he stated that he could not recall whether or not he himself had participated in the operation recorded in these documents. He recalled having gone to Ormaniçi on one occasion, when the gendarmes had found İbrahim Özkan's rifle. İbrahim Özkan identified the location of this rifle. İbrahim Özkan's equipment had been hidden in a very unusual place: in a wall of earth in which a space of about 100 by 30 cm had

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<sup>506</sup> See Appendix II: §§ 163-170.

<sup>507</sup> See Appendix II: §§ 191-192.

<sup>508</sup> See Appendix II: § 195.

<sup>509</sup> See Appendix II: §§ 196-197.

<sup>510</sup> See Appendix II: §§ 198-204.

been made. This wall was about 10 or 15 metres from İbrahim Özkan's house.

484. Before the end of the detention period or the end of the preliminary investigation – he could not clearly recall this – the detained villagers were taken by helicopter to Şırnak. They were transported by helicopter as the road to Eruh, within whose judicial district Güçlükönak fell, was closed. The investigation in Güçlükönak had taken some time, as there were 33 people involved. The gendarmes had to draw up reports, take and compare their individual statements and go and see the weapon shelters. The reason why the villagers did not go to Şırnak immediately after the completion of the investigation could have been that there was no helicopter available for their transport. He did not rule out the possibility that the villagers were not in fact transferred on 1 March 1993, as stated in his letter of that date to the public prosecutor in Eruh<sup>511</sup>.

485. Dr Parmaksız medically examined the villagers before they left Güçlükönak. When the contents of Dr Parmaksız' reports of 4 March 1993<sup>512</sup> were put to the witness, he denied that it had been cold. He guessed that the room temperature had been about 18-20 degrees. It would have been one or two degrees lower than the normal room temperature. The gendarmes only had the coal from Şırnak that gave off little heat. So 30 minutes after the stove stopped burning, the temperature would drop two or three degrees. He did not check the temperature of the room, so he was unable to state anything with any precision. Although Dr Parmaksız might have been right about the detained villagers' lack of mobility, he wondered why they had not moved around in the rooms where they were being held. He had never given an order prohibiting them from walking about in their room and did not know whether or not the villagers had been kept immobile. He was able to give the villagers the opportunity to walk only when they went to or from the toilet or to give statements.

486. He confirmed that he had given a statement about the physical condition of the villagers in his custody in the context of an official inquiry. He thought that the Ministry had given permission to commence legal proceedings against him. He did not know at what stage these proceedings currently were. So far, he had not been formally charged.

487. No questions had ever been put to him by the office of the chief public prosecutor in Eruh about the death of Abide Ekin. This was the first time that he had heard about the child's death.

488. He could not recall what had happened in Ormaniçi in September 1993. He did recall an operation in the course of which seven terrorists had been shot dead in a place about four or five kilometres from Ormaniçi. One of his gendarme teams participated in that operation. His units were not

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<sup>511</sup> See Appendix II: § 181.

<sup>512</sup> See Appendix II: §§ 252-253.

involved in the clash which occurred in the village. The office of the public prosecutor, again through State channels, started an enquiry about him, as he was the District Gendarmerie Commander at the time. A statement was taken from him. He was asked whether autopsies had been carried out on the bodies and where the bodies were buried. He answered these questions in writing and sent his answers to the office of the chief public prosecutor in Eruh.

489. He had never given orders to evacuate a village in his district, nor had he ever made anyone leave. It was impossible for him to have given such an order. If the villagers said that, on that occasion, they had been ordered by the gendarmes to leave Ormaniçi within three days, they were lying. He had never heard that during the period in question about 2,000 villages had been forcibly evacuated. He did not know why currently nobody lived in Ormaniçi any more. Only the villagers themselves could answer why they had left. Perhaps the terrorists had forced them to leave.

*Hasan Yeşilyurt*

490. Hasan Yeşilyurt stated that he was born in 1973. In February 1993 he had been the team commander of a commando unit stationed in the Güçlükonak district. He had been appointed there about six or seven months earlier. He had then held the rank of NCO first sergeant. Celal Çürek was the commander of the commando company in Güçlükonak. The real unit commander was on leave. Apart from Celal Çürek, there was also the intelligence NCO Major Hüseyin Baran and the station commander NCO Turan. He was presently stationed in the Kelkit district, in the province of Gümüşhane and held the rank of senior first sergeant.

491. He participated in the operation carried out on 20 February 1993 in Ormaniçi. The operation's main purpose was to conduct a search in the riverbed area near this village. Information had been received that terrorists were hiding there. A gendarme team came along in order to carry out some judicial procedures in Ormaniçi. They separated into two groups. He was in the group that was to carry out the search. He believed that he had not been to Ormaniçi before. As their teams had gone to Ormaniçi with the purpose of carrying out a judicial duty, they took the normal road to Ormaniçi and were therefore visible. In situations where there were indications of a terrorist presence in a village which they had to search, they would approach the village by taking different roads, so that their approach would remain unnoticed.

492. About one kilometre before the village, just when they were preparing to start the search, fire was opened. He heard shooting coming from the village, which was not directed towards the area where he was. It came from the area where three other teams, which had already approached the village, were located. He was not in the group that was supposed to go

into the village. He was immediately informed by his commander by radio that fire had been opened on the latter's team.

493. He and his team then joined that team, set off to the village and tried to approach it. As they approached the village, shots were fired at them and they slowly continued to advance whilst taking cover. He believed that the shots were coming from different places in the village. As it was already light, it was not possible to identify the firing points in the village. The intensive firing lasted for about two or three hours. Later it started to abate and it went on for a while at intervals.

494. The soldiers had G-3 infantry guns. They also had launchers, but they did not use them at that time. As their commander had ordered him and the other soldiers not to shoot, they did not use their weapons much. Although his own team did not use any mortar bombs, he heard some. The sounds came from the riverbed. He guessed that their other team, which was in the village, had used them. He did not see any mortar bombs being used in the village. The soldiers also used RPG-7s. He heard the explosions. The other team, which had come under fire, used them. This kind of weapon would be used when it could be seen clearly that shots had been fired from a house. It would then be used to destroy the walls. As they had both rifle and hand grenades, it was possible that such grenades had also been used. He could not say whether or not the terrorists had also used any grenades or explosives, but he heard Kalashnikovs. As regards the amount of ammunition used by the security forces, he explained that in all types of operations or clashes the security forces would initially open extensive fire in order to break down the enemy's fire power. In the first round of firing, the security forces would use a substantial amount of ammunition and later the intensity of the firing would be increased again. He did not exclude the possibility that even more ammunition had been used than was recorded.

495. Once the intensive shooting had lessened, his commander gave the order to enter the village and to search the houses. He thought that they had entered Ormaniçi at around 9 a.m. When he entered Ormaniçi, he saw smoke coming out of two or three houses around the mosque. At that point in time, sporadic shooting was still going on.

496. Private Servet Uslu was killed in the first house that he searched. Soldiers reported that shots had been fired from that house. He did not know which soldier had reported that. He thought that it had been reported by radio by the other teams there during the first round of firing. No shots had been fired from that house when he entered the village. That was why it was so easy to approach that house. The house had not been damaged at the time when he entered it. He denied that a bomb had been thrown into that house. He did not see or hear of a young child who had been injured by an explosive device that was thrown or fired into that house. If he had seen a child whose intestines were hanging out, he would have done something about it by ensuring that the injured person was taken to hospital by

helicopter, and it would have been recorded in the report that a child had been shot during the shooting in the village. In his opinion, it was impossible for a soldier not to have acted upon a situation like that. But he had in fact not seen any injured person in the village on that day.

497. He entered the house together with Servet Uslu and a person who said that he was the *muhtar*. When he went to the house, someone looked out of the window of the adjoining house. This person said that he was the *muhtar*. For reasons of security, he asked this person to come outside via the window. After he had come through the window, some women who were there also came out through the window. Together with the *muhtar* and Servet Uslu he then went to search the house, where Servet Uslu was later killed.

498. The house had two storeys and a wooden stairway. As they had seen the *muhtar* in his company, the persons inside the house had come out. He could not remember how many persons had come out of the house or whether there had been any children. He did remember that there had been a man and at least one woman. They were standing by the front door of the house. There were soldiers around too. Wherever he looked, he saw six or seven soldiers. His commander, who had been there as well, went to the ground floor. He, Servet Uslu and the *muhtar* went upstairs. The owner of the house remained downstairs.

499. There were two rooms upstairs. There was nobody in the room on the left, only some sacks of flour. They then entered the room on the right. As shots had reportedly been fired from the house, he started to look for empty cartridges as evidence. He did not see any blood in the room. Above a small window, there was something like a wooden shelf, on which wooden boxes were placed. When standing in front of that window, the torso of an adult man would be visible from the outside. Servet Uslu checked that shelf for cartridges, whilst he himself searched the other corners. Then Servet Uslu fell on the floor, saying that he had been shot. Because of the sporadic shooting that was still going on, he had not heard a distinct shot. He then immediately ran to the window and looked outside but did not see anybody. There were houses at a distance of about 30-40 metres. He wondered afterwards why he had looked out of the window, realising that he risked being shot as well. On the other hand, in his opinion, maybe the terrorist had only wanted to fire a single shot and, as this shot had hit the target, might not have wished to waste another bullet. Aimed sight shooting would involve only one shot. He then called out to his commander, who came up directly. When he looked at Servet Uslu, he understood from the point of impact of the bullet that Servet Uslu had been hit in the middle of the heart. He and his commander tried to administer emergency treatment, but Servet Uslu died a couple of minutes later.

500. No empty cartridges were found in that house. He had never heard any allegation that Servet Uslu had been shot by mistake by another soldier.

Although he himself did not see who had fired the shot that killed Servet Uslu, he considered it impossible that another soldier could have shot Servet Uslu. When he looked out the window, he did not see any soldiers in the area from where the shot had been fired and there was no reason why a soldier would shoot at another soldier. Furthermore, other soldiers would have noticed it. He admitted that it had happened that soldiers had accidentally shot another soldier. In such cases, there would be an enquiry and reports would be drawn up.

501. Months after this incident, he heard that one of the persons taken into detention on that day had confessed to having shot Servet Uslu. He denied that the *muhtar* had looked outside the window after Servet Uslu was killed, that the *muhtar* had called out to his commander or that the *muhtar* had said that a soldier had fired the shot. He had no explanation as to why the *muhtar* would have said things to that effect.

502. After Servet Uslu's death, his commander told him to take two soldiers, to bring the body to a place above the village where a helicopter could land, and to wait there for the helicopter which his commander was to requisition. At that point in time, he had been deeply affected by the death of Servet Uslu, who had been a member of the team under his command. After having taken the body to the landing place for the helicopter, he remained there until the helicopter arrived. He did not know whether, after the body had been taken to Şırnak, an autopsy had been conducted or whether any ballistics tests had been carried out to discover the weapon used to kill Servet Uslu. After the helicopter had left, he went back down to the village, where he saw that all the villagers had been assembled in an area near the cemetery. Not all the male villagers were lying face down there, only five or six of them. The hands of those on the ground were tied. The others did not have their hands tied. Nobody was blindfolded. If 28 persons had given evidence that about 40 men had been made to lie down on the ground, these persons had not told the truth.

503. He denied that soldiers had deliberately set fire to houses in the village. Although it was possible that livestock had been killed by stray bullets, he further denied that soldiers had deliberately shot and killed any animals in the village. He was not involved in any searches, either on that day or later, for weapons in Ormaniçi. He did not return to the village on the following day. Although he was not personally involved, he believed that, four or five days later, security forces had returned to Ormaniçi.

504. About 30 minutes after he had arrived in the village, the soldiers and the detained villagers left Ormaniçi. He accompanied the 33 detained men on their walk to Güçlükonak. This walk took two or three hours. All the men were wearing shoes. Some of the villagers were tied together in groups of two or three in order to prevent them from escaping. He could not remember whether all of the detained villagers had been tied together in this manner as he was at the front of the group. The men were not blindfolded.

505. As a member of the commando company, his only duty was to carry out operations. Although he was not responsible for the detention of the villagers in Güçlükonak, he did know how they had been detained. As the facilities available could not accommodate so many persons, they were taken to a building under construction, where soldiers also stayed and which was intended to serve as guest quarters. The officers' club, a part of the guest quarters, was nearly ready. The villagers were taken there. He was not present when the doctor examined the villagers. When it was put to the witness that Dr Parmaksız found that the villagers had lesions and oedema on their feet as a result of having been made to walk seven kilometres in the snow, he stated that his soldiers had suffered from the same problems. He did not know that six villagers taken into detention had subsequently had toes or feet amputated as a result of the cold.

506. From the following day onwards, the villagers were regularly given food. He saw soldiers bringing them food and water and accompanying them to the toilet. As the bakery was next to it, it was probably the warmest place as the bakery's oven burned practically continuously. At night, the stove was burning. It was February. The soldiers would bring the coal and make a fire. He himself did not go inside the place where the villagers were detained, but he saw food, coal, etc. being taken to them. In his opinion, the soldiers detained the villagers in the best possible conditions at that time. The soldiers themselves lived in the same conditions. The soldiers stayed on the lower floor of the building under construction in rooms with unfinished walls, where the windows were covered with plastic. The soldiers were squeezed into bunks. As a commando, he did not know whether any attempts had been made to transfer the villagers to Şırnak. Those matters were the concern of the gendarmes.

507. He had never been present when statements were taken from the villagers taken into detention. Statements could be taken by the station commander, the intelligence NCO and the company commander, either together or alone.

508. Only three weapons were found in Ormaniçi. He did not know how many cartridges had been found. When the recorded amount of ammunition used in the operation was put to him, he explained that, in all types of operations or clashes, soldiers would initially fire all the bullets to break the enemy's fire power. This could be the reason why so much ammunition had been used. When it was put to the witness that only 40 cartridges were found in Ormaniçi, he said that it was possible that, because of the snow and the mud, no thorough search had taken place. If there had been a thorough search, maybe more cartridges would have been found.

509. He had never heard that, in the spring of 1994, seven persons had been shot in the orchard in Ormaniçi. He had been posted to the Şırnak provincial gendarmerie headquarters in 1994.

*Uğur Kırıkçılar*

510. Uğur Kırıkçılar stated that he was born in 1967. In February and March 1993 he had been in charge of the Güçlükönak central gendarmerie. He had been posted there in July 1992. He was currently an NCO stationed at the Gendarmerie Central Headquarters in Ankara.

511. During the time in question, he was in hospital. His assistant Turan Kolan acted as his deputy during his absence. When he returned to Güçlükönak after 15 or 20 days, none of the suspects were there any more. It was then that he was informed about the incident. The information provided by the Government in their letter of 13 March 1998 to the Commission that he had been on duty in Güçlükönak, guarding the apprehended Ormaniçi villagers, was not correct. He had not been involved in any of the events at issue.

512. As to the general situation at the Güçlükönak gendarmerie station at the relevant time, he explained that there were no custody facilities there. Some of the rooms in the building under construction were used as custody rooms. The personnel, the soldiers and the gendarmes worked and lived under the same conditions in the same building.

513. For security reasons, detainees were blindfolded when they were taken to the toilet or to an interrogation in order to prevent them from seeing the inside or the outside of the building, the number of soldiers or the soldiers' guard positions. There was no rule that detainees should be blindfolded during interrogation and he could not remember that this had ever happened.

514. Persons in custody in Güçlükönak were normally taken for meals from the custody room to the place where the soldiers took their meals. Sometimes, the detainees were taken to the soldiers' cafeteria, which was a warmer place, and ate there with the soldiers. As to the persons from Ormaniçi who were taken into detention, he was certain that they had been treated in the same manner. They had been treated much better than his own men.

515. There was a custody register in Güçlükönak in which the names of detainees were recorded. It was his responsibility, and in his absence the responsibility of his assistant, to keep that record. He supposed that the custody record in relation to the relevant period had been lost. In his opinion, that was hardly surprising given the poor working conditions in Güçlükönak, where people did not even have proper offices and where sometimes three or four people had to share one room of about five or six square metres. Rooms where documents could be kept organised and locked up, which normally exist in gendarmerie or unit buildings, had simply not yet been provided. He further did not exclude the possibility that the custody records had been destroyed after becoming wet, as the roof had leaked. But he remembered very well that he had seen the custody records when he returned to Güçlükönak and that these records contained the names

of the suspects. He did not remember their exact number, but it had been quite a large number.

516. He and others often received information or heard rumours that terrorists went to Ormaniçi where they were aided and abetted, that they hid near the riverbed and the valley below Ormaniçi and that they passed through this village. When he went to hospital, he knew that an operation was going to be carried out, but he did not know on which day it would take place. He did not expect that, as a result of that operation, a large number of terrorist suspects would be taken into detention in Güçlükonak. He had not been surprised when he learned that 33 persons had been detained at the same time for a fortnight in Güçlükonak, as a soldier had been killed and the clash had lasted for four hours.

517. When asked why the gendarmes had accompanied the soldiers on the operation conducted in Ormaniçi, he explained that the gendarmes had to serve judicial documents and documents concerning civil matters in person on the villagers concerned. The gendarmes did not go to Ormaniçi very often. Since the soldiers planned to carry out a search of the riverbed below the village, the idea was to take advantage of this opportunity and to let the gendarmes accompany the soldiers. He was unable to state the nature of the documents that needed to be served in Ormaniçi.

518. He did not remember whether he had made any enquiries with his subordinates as to the manner and conditions in which these detainees had been held. He could not remember having read reports by Dr Parmaksız about medical findings in relation to these detainees.

519. He later learned that a few of the villagers of Ormaniçi who had been detained in Güçlükonak had had their feet amputated as a result of gangrene and similar complaints which had been contracted during these villagers' detention in Güçlükonak. He had never made any enquiries in order to find out if any official in Güçlükonak had been negligent. It was not in his power to carry out such procedures. Moreover, he did not know at that time that it was necessary to make such enquiries. When asked whether this was in his authority, since these persons had lost parts of their feet as a result of injuries incurred while being detained at his station, the witness stated that this was not the case. No enquiries had been made by any prosecutor or other official in order to establish how these villagers had come by their injuries. He had never heard that one of them had died. He did not remember anyone called İbrahim Ekinci. He could not tell whether or not that person's name had been recorded in the Güçlükonak custody register.

#### *Hüseyin Baran*

520. Hüseyin Baran stated that he was born in 1965. He was currently an NCO at the Diyarbakır Provincial Gendarmerie Headquarters. In February 1993, he had been stationed at the Güçlükonak District Gendarmerie

Headquarters. He did not have any specific function there, but fulfilled the duties of an operation and intelligence NCO. Persons in that post would not participate in any operations, but would remain at the station. He himself had not gone on any operations. The Güçlükönak district gendarmerie station was in the judicial district of the office of the Eruh public prosecutor and in the military district of Şırnak.

521. He remembered that an operation had been carried out in Ormaniçi in February 1993. He himself had not participated in that operation. The security forces heard that terrorists had been in that area. He did not know the details of that information; it had been discussed between the company commander and the station commander. He had never heard of a confessor called Osman Ayan whose code-name was Lokman and could not tell whether the information about the Ormaniçi villagers' involvement in terrorist activities had been provided by Osman Ayan. In his opinion, it was unlikely that gendarmes, relying on the words of a confessor, would carry out an operation. Given the information received and the need to carry out some judicial and civil duties in Ormaniçi, a joint operation with the gendarmes was planned. The purpose of the operation was not related to terrorism at all. In so far as he knew, its purpose was to fulfil judicial and civil duties. The gendarmes had not been in Ormaniçi for three months and needed to serve documents there. He was not aware of any other purpose for the operation.

522. He learned by radio that the soldiers had come under intensive fire from Ormaniçi. The clash lasted for four or five hours and resulted in the death of one soldier. A large number of people from Ormaniçi – he did not recall how many exactly – were then taken to the Güçlükönak district station. Ten or eleven of these villagers were sent to Şırnak; the others were taken on foot to Güçlükönak. His company commander ordered him to take statements from these persons.

523. He was in the station when the villagers arrived there. He saw a few of them arrive. He was inside when they arrived. He was in the radio room following the clash. The feet of almost all the villagers were in a horrible condition due to the snow and the cold. He noted that some of them did not have shoes on or had only one shoe. They all had poor quality rubber shoes. None of them had boots; they were too poor to buy boots. As the region was very poor, the villagers were not wearing appropriate clothes. Upon the instructions of the company commander, the doctor medically examined the villagers. All the villagers went into the doctor's room, where the doctor administered first aid. The doctor also drew up a report.

524. The villagers were detained in the room adjoining the station. The bakery was on one side of this room. He believed that there had been a large stove in the room, which had been burning. As the room was in a building still under construction, the windows were covered with plastic. The room was not cold. The villagers' injuries were not caused by the conditions of

their detention in Güçlükonak. In his opinion, they could have been caused by the villagers' living conditions in Ormaniçi or because they had walked from Ormaniçi to Güçlükonak. For lack of space, the gendarmes and the soldiers stayed in tents. The soldiers and gendarmes stayed in Güçlükonak under the same conditions as the villagers.

525. Efforts had been made to provide the detained villagers with suitable living conditions. When the witness was asked whether the villagers had been provided with blankets and socks to keep themselves warm, the Delegates noted that the witness reacted with astonishment when he stated that he knew nothing about socks. There were blankets, but he did not see that any blankets had been provided to the detained villagers. He was not on duty in the room where they were kept. That was the responsibility of the station commander Hasan Yılmaz or his acting deputy Turan Kolan.

526. He could not remember how many statements he had taken from the Ormaniçi villagers. He did not remember having taken statements from Fahrettin Özkan and Osman Ekinci. He had no recollection of these boys, who were then 13 years old. In any event, he would not treat a minor any differently from an adult when taking statements. When the total number of statements taken by him was put to him, the witness replied that he and others had taken many statements in the context of their duties. To him, it had been a routine taking of statements.

527. Statements were always taken in the same manner; he would make the person sit down, order tea or coffee and talk nicely to the person concerned to induce the latter to co-operate and to tell the truth. No pressure would be applied. He would explain that it would be best for the person concerned to tell the truth. Whatever was stated would be recorded accurately. That was necessary, as in case such a person subsequently made a different statement before the court, his investigation or the statements taken by him would not be credible.

528. In cases such as the present one, he would ask questions about PKK presence and involvement with the PKK. The persons had been called in for that purpose. After a statement had been taken, he would read it back to the author asking the latter whether anything needed to be added. The author would then be invited to sign with a pen made available. In case of a refusal to sign, this would be recorded in the statement taken. If the author of a statement declared himself to be illiterate, he would have him place his thumbprint on the statement.

529. Although he could not remember exactly what the detained villagers had said, he recorded as accurately as possible whatever they had stated of their own accord. The villagers were not blindfolded when he took their statements. They were brought before him one by one, he sat down with them and they chatted together. They approved their statements by signing them. To take a statement meant recording exactly what a person

said, in the terms used by that person. He took their statements in Turkish, as they all answered in Turkish. If they had required a Kurdish interpreter, such an interpreter could easily have been found and the interpreter's name would have been recorded at the bottom of the statement. Some of the soldiers spoke Kurdish. He only took their statements; he did not interrogate them. Interrogation was a different technique; it was more technical. He did not think that the villagers from Ormaniçi had been interrogated before he took their statements. He had not seen anything like that.

530. In so far as the villagers had given evidence that in Güçlükönak, whilst blindfolded, they had been forced to apply their fingerprint to statements and that they had been beaten, stripped and subjected to cold water treatment, that they had been hung up, made to sit on a bottle and that hot irons had been put against their body, they had not told the truth. He had never heard or seen this happen. In any event, at the relevant time there was only a limited water supply in Güçlükönak and there was no electricity. Moreover, had the villagers been ill-treated when they gave their statements, they would have admitted guilt, whereas no such confessions appeared from the villagers' statements. The witness referred in this context to the contents of the statement he had taken from Mehmet Özkan<sup>513</sup>. According to the witness, there was nothing in this statement showing that Mehmet Özkan had been influenced. The witness had never been subjected to disciplinary proceedings in relation to the manner in which he had taken statements.

531. He could not recall whether there had been a delay between the day on which the last statement from the villagers had been taken and the day on which the villagers had been transferred to Şırnak. According to his recollection, the villagers stayed about 7-10 days in Güçlükönak. He could not remember who had been transferred and who had stayed. He thought that those villagers whose physical condition was bad had been sent to Şırnak. When the medical findings recorded in Dr Parmaksız' reports of 4 March 1993<sup>514</sup> were put to the witness, he stated that he had not seen these reports and maintained that the villagers could not have incurred these injuries during their detention in Güçlükönak. It was not cold in the room where the villagers were kept. The bakery was on one side of the room and there was a stove in the room.

532. He had never heard that six of the villagers detained in Güçlükönak had had their feet or toes amputated as a result of frostbite and of having been kept immobile and in cold conditions. He had learned that İbrahim Ekinci died within two weeks after having given a statement to him, but he had never been told that this was related in any way to İbrahim Ekinci's detention in Güçlükönak. He did not know the cause of İbrahim Ekinci's

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<sup>513</sup> See Appendix II: § 102.

<sup>514</sup> See Appendix II: §§ 252-253.

death. He had never been questioned by any public prosecutor about the way in which the men from Ormaniçi had been treated in Güçlükonak.

533. He denied that Ormaniçi had been forcibly evacuated. The Ormaniçi residents had migrated because of pressure from the side of the terrorists. He had never gone to Ormaniçi in relation to any investigation carried out after its inhabitants had left.

*Turan Kolan*

534. Turan Kolan stated that he was born in 1971. He was a gendarme NCO and was presently stationed at the Aksaray Provincial Gendarmerie Headquarters. In February 1993 he had been stationed at the Güçlükonak District Gendarmerie Headquarters. His superior officer at the time was Celal Çürek.

535. He had been on leave on 20 February 1993, but had resumed his duties on 21 February 1993, when – replacing the absent Commander Uğur Kırıkçılar – he had taken command of the Güçlükonak station. Uğur Kırıkçılar resumed his work at some point in time in March 1993. On 20 February 1993, Hasan Yılmaz, the other assistant of the station commander, was the acting commander of the Güçlükonak station. The witness himself had been on leave when the operation in question was planned. He learned about it for the first time on 21 February 1993, when he was informed that on the previous day an operation had been carried out during which a soldier had been killed and 33 villagers taken into custody. The District Gendarmerie Commander Celal Çürek communicated with the public prosecutor and obtained permission to hold these villagers in custody. As he wanted to see the detainees' conditions, he went to the place where they were being kept to have a look.

536. The villagers were detained in the room which was used as the officers' club. The place where even the officers of the station and the company were then staying was a building under construction. The station staff had covered the windows with plastic and had installed some stoves. As there were no proper custody facilities in Güçlükonak at that time, persons taken into detention there were held at that place. A custody record was kept in Güçlükonak. When it was put to the witness that, according to information provided to the Delegates, those records did not exist, the witness stated that it was possible that these records had been lost in the course of the move to the new station building. As incidents like the one in question often occurred, 33 persons being taken into detention was not an exceptional number.

537. When asked about the condition in which he had found the detained villagers, the witness stated that the stove had been burning in their room, that the temperature there had been a normal room temperature and that the villagers had each been provided with a blanket. They had minor injuries on their feet, which had been caused by frost. He believed that these injuries

had resulted from the villagers' walk to Güçlükönak. The villagers were wearing the customary local clothes of the region. Such clothing was warm. Some of the men, who had lost their shoes during the walk from Ormaniçi to Güçlükönak, had further been provided with boots at the station. He did not pay attention as to whether or not they had been wearing socks. There was no furniture in the room. The men sat on the lower part of their blankets and covered themselves with the upper part. There were no mattresses in the room; the villagers sat on the floor. None of the villagers complained of being cold.

538. The villagers were given food in the morning, at noon and in the evening. They ate the same food as the soldiers and the officers at the station. There was a choice of several dishes. A list of these dishes had been made available to the villagers. There was a toilet inside the office building. If the villagers needed to go to the toilet, a guard would take them there. There was also a toilet under construction in the room where the villagers were being held. That toilet was only used when villagers needed to go to the toilet urgently. The villagers were not blindfolded. They were only blindfolded when they were taken to the room where their statements were taken. They were not blindfolded when they were taken to the toilet.

539. He himself also took statements from a number of the detained villagers. His colleagues, whose names are recorded on those statements, were present when the statements were taken. None of the villagers requested Kurdish interpretation. They were all fluent in Turkish. If an interpreter had been necessary, it would have been possible to find one among the inhabitants of the region. When taking statements, he would first establish the identity of the person concerned and then ask questions. On the basis of the answers received, he would then prepare a statement which the author of the statement would subsequently sign or fingerprint. If anyone had given evidence that the villagers, whilst blindfolded, had been made to apply their fingerprints to statements or that they had been ill-treated by having been beaten, stripped, subjected to cold water treatment or electric shocks, or by having a hot iron applied to their bodies, that person had been lying.

540. He did not recall the length of time for which the Ormaniçi villagers had been detained in Güçlükönak. When asked whether he had attempted, after all the villagers had given a statement, to have them transferred to a more appropriate place of detention, the witness replied that he was under the command of the District Gendarmerie Commander. In reply to the question whether, as acting station commander, he did not have any independent function at all as regards the custody of detainees, the witness replied that, under the system in force, he had to obey the orders of the District Gendarmerie Commander.

541. When asked whether the villagers had been given exercise during their detention in Güçlükönak, the witness replied that the room where they

had been kept – the officers' club – was large enough to enable them to move around. Some of the detained villagers were sent to hospital during their stay in Güçlükönak. He sent them by helicopter to Şırnak. From there, they were sent to hospital. He had never heard that a number of these villagers had later had toes or feet amputated as a result of the cold conditions in which they had been kept in Güçlükönak. Six months after the events at issue, he was transferred to another province. He had no idea as to what kind of treatment feet had to be subjected to in order to become gangrenous. He had never been questioned by a public prosecutor or any other official as to the conditions in which the Ormaniçi villagers had been detained in Güçlükönak.

*Dr Fahrettin Parmaksız*

542. Dr Fahrettin Parmaksız stated that he was born in 1961. He was currently working as a general practitioner in Kocaeli. He had been a qualified doctor for about ten years. In February and March 1993, in order to fulfil his two-month short-term military obligations, he worked as a doctor-private at the infirmary of the Şırnak company stationed in Güçlükönak.

543. His normal duty in Güçlükönak was to medically examine and treat soldiers of that company, but he also provided medical care to the civilian population. He did not have his own medical office in the Güçlükönak station. His infirmary was too small to examine patients there; it was about three by four metres. There was no examination table and the drugs were kept on shelves. The station did not have running water and, in order to make it fit for drinking, he had been required to treat the available water supply with chlorine. There had been problems of hygiene; many of the soldiers had body lice or other parasites. Because of the lack of water, there were no proper washing facilities.

544. He did remember that a large group of villagers from Ormaniçi had been taken into detention on 20 February 1993. He distinctly recalled one of them, as that person was an albino who, in his opinion, was about 18 or 19 years old. He saw this group for the first time when they arrived at the Güçlükönak station at around 8 p.m., while they were being taken from the station gate to the place where they would be detained. They were accompanied by soldiers. Some of the men were handcuffed or tied to each other. They were not blindfolded and some of them were wearing only one shoe. He did not think that they were very warmly dressed. There was snow on the ground that day. He medically examined them about 35-40 minutes later. He himself had never been in Ormaniçi. On the basis of the map, he guessed that the distance between Ormaniçi and Güçlükönak was about seven to eight kilometres.

545. The Ormaniçi villagers were first taken to the cafeteria, which was a big place where there was an oven. He medically examined them there and

they spent the first night there. There was a burning stove in that room when he examined the villagers individually. He was assisted by two medical orderlies. The villagers rolled up their trousers and took their shirts off for the medical examination. The examination took place at the same time in the same place.

546. He confirmed that the signature on the medical report dated 20 February 1993<sup>515</sup> was his and that its contents as to his medical findings were correct. The oedema mentioned in the report was a skin tissue reaction to cold, which he found in particular on those parts of the feet which had been in contact with the soil. The bruises recorded consisted of subcutaneous bleeding developing inwards, caused by a blow, and the skin lesions were cuts of various degrees and depths. It would not be right, if this were true, to make people walk seven kilometres in rough terrain in the snow without shoes. As the terrain had been snowy and muddy, he did not rule out the possibility that the Ormaniçi villagers had lost their footwear during their walk from Ormaniçi to Güçlükönak, but he did not know that they had been made to walk to Güçlükönak without shoes and doubted that this was true.

547. He was absolutely certain that he had examined 33 persons. He had not examined 28 persons. He did not remember whether or not five people had been transferred to Şırnak that night. When the names of the villagers medically examined on 20 February 1993 in Şırnak by Dr Pehlivanlı as recorded in the latter's report of that date<sup>516</sup>, as well as the latter's findings in respect of Mehmet Aslan, were put to the witness, he replied that it was impossible that Mehmet Aslan had been examined in both Şırnak and Güçlükönak as no helicopter had come to Güçlükönak. He further considered it impossible that, at that time, Mehmet Aslan would have had a bruise of 4 cm by 5 cm as recorded in Dr Pehlivanlı's report.

548. He treated the villagers' injuries with hydrogen peroxide, *zephiran* solution<sup>517</sup> and some basic ointments. When asked whether he had recommended that socks be provided to those villagers with foot injuries, the witness stated that, given the open dressings applied on the wounds of these people, their feet were to remain uncovered.

549. He also treated some of the privates who had the same symptoms, as cold water had got in their boots. Some days later many privates had flu-like infections which were treated medically.

550. He recommended to Celal Çürek that the villagers be kept warm. He did not specifically propose that blankets be provided and did not pay any attention to whether or not the villagers were provided with blankets.

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<sup>515</sup> See Appendix II: § 251.

<sup>516</sup> See Appendix II: §§ 254-255.

<sup>517</sup> A quaternary ammonium salt with antiseptic properties for cleansing of wounds and skin surfaces.

He further recommended to Celal Çürek that the villagers be given exercise during their stay in Güçlükonak.

551. The next day, the villagers were taken from the cafeteria to a four- or five-storey building still under construction, where they were placed in two different rooms on the ground floor. At the material time, this was the place where persons taken into detention in Güçlükonak would be kept. He slept there too, in an adjacent room. The privates also stayed in that unfinished building. The inner and outer plastering had not yet been done, the water pipes had not yet been installed, some doors and windows had frames, but no glass had yet been fitted. The windows were covered with plastic sheets. A stove was burning in the room where the villagers were kept. The high-calorific coal used in Güçlükonak at that time burned very quickly. He estimated that the temperature in the room was above 21 degrees. There were no beds or other furniture in the room. The villagers just sat on the floor. There was no floor covering. At night, the outside temperature fell below zero.

552. The medical orderlies changed the dressings on the villagers' injuries every evening and kept him informed about the healing process. He himself checked on the villagers every other day. His superior enquired continuously about the state of affairs and he kept his superior informed. He did not remember, when he checked on them every other day, whether any of the villagers had blankets. He did recall that the villagers did not have any boots or shoes on their feet and that they were not blindfolded. He spoke Turkish with the detained villagers, which they understood. He did not verify whether his recommendation that the villagers be given exercise was implemented. He himself saw that the detained villagers were given dinner. They were given the same food as the soldiers. During his medical check-ups of the villagers, he did not notice any additional injuries resulting from blows or violence.

553. He confirmed that the signature on the medical report dated 4 March 1993<sup>518</sup> was his and that its contents were correct. He examined the 32 persons mentioned in this report shortly before they were transferred to Şırnak. He examined them in the same place where they had been kept. The villagers never moved to a different place in Güçlükonak. The villagers rolled up their trousers and took off their shirts for the examination. He recalled that the state of six or seven people had caused him some concern. These persons had been slow to heal. He remembered the albino in particular. He explained that albinos have more sensitive skin.

554. He did not examine the thighs or buttocks of the villagers and none of them expressed any complaints in relation to that part of their body. He did not rule out the possibility that, as a result of their having sat down without moving, sores (decubitus ulcers) might have developed. When the

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<sup>518</sup> See Appendix II: § 252.

pictures showing the injuries on the buttocks of İbrahim Ekin and Abdullah Elçiçek<sup>519</sup> respectively were shown to the witness, he found that the injury of İbrahim Ekin was a sore and that the lesions on the buttocks of Abdullah Elçiçek were a fungal infection caused by a lack of hygienic conditions.

555. The one person whom he did not medically examine had probably not had any lesions any more. He could not remember why, on 4 March 1993, he had examined Abdülislam Demir separately and drawn up a separate report. When the contents of this report<sup>520</sup> was put to him, he confirmed them. The remark about the weak popliteal and posterior tibia artery blood pressure indicated that the blood circulation had been slow. The villagers were kept immobile in a room where the temperature was variable. As the coal used in Güçlükonak burned very quickly, the temperature in the room could, given the season, cool down intermittently. Such circumstances would slow down the blood circulation, resulting in a weak pulse in these arteries. In his opinion, blood circulation and blood pressure were important elements in cases of gangrene. The weak pulse of some detainees worried him. He had never heard that six of the persons detained in Güçlükonak had developed gangrene necessitating the amputation of feet or toes.

556. He had never been questioned by a public prosecutor or any other official in relation to the conditions of detention or the treatment of the Ormaniçi villagers detained in Güçlükonak.

*Dr Fatih Pehlivanlı*

557. Dr Fatih Pehlivanlı stated that he was born in 1963. He was currently working as a general practitioner in the emergency day hospital at the Yozgat State Hospital. He had been practising medicine since 1992. In February and March 1993 he worked as a general practitioner at the Şırnak Central Health Care Centre. The medical examination of persons detained at the Şırnak gendarmerie command was part of his duties there. He would examine such detainees in a room at the entrance of the gendarmerie building in Şırnak and record his findings in a report. He would give this report to those working on the interrogation. Such a report would be included in the file for the public prosecutor.

558. He remembered that on 20 February 1993 he had been called to examine a number of persons from Ormaniçi who had been taken into detention in Şırnak. He could not recall at what time he had been called or how many persons he had examined. It was a group of persons. He examined them all together at the same time in one room. They had probably not been blindfolded. In any event, they were not blindfolded when he examined them. When the witness's medical report of 20 February

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<sup>519</sup> See Appendix II: § 273.

<sup>520</sup> See Appendix II: § 253.

1993<sup>521</sup> was shown to him, he confirmed that it listed 15 names. He had been provided with this list of names. When he recorded any injuries found, he asked the person concerned to state his name. He confirmed that, on 20 February 1993, he had found a bruise of 4 cm by 4 cm on the top of Mehmet Aslan's right shoulder.

559. When it was put to the witness that five persons on that list, namely Mehmet Özkan, Hacı Ekin, Mehmet Aslan, Osman Ekinci and İbrahim Kaya, had also been medically examined in Güçlükonak on 20 February 1993, he stated that these persons must have been taken first to Güçlükonak and from there on to Şırnak. If these five persons had made statements in Güçlükonak on 22 February 1993, they must have been taken back to Güçlükonak.

560. He confirmed that on 20 February 1993 he had found the feet of Osman Ekinci swollen and hyperaemic, which meant a redness. He further confirmed his findings as regards Mehmet Özkan. He had not formed any opinion as to the cause of these respective injuries. In general, such questions were not asked. Had he diagnosed frostbite, then he would have recorded this in his report. He recorded all the bodily injuries found in his report, even if they were insignificant. He confirmed that he had recorded nothing in his report of 20 February 1993 in respect of Hacı Ekin. When it was put to him that, on 9 March 1993, Dr Öztürk had examined Hacı Ekin and found two bruises between the latter's thighs, the witness stated that he might have overlooked them if they had been very small. If they had been big, he would not have missed them. He did not provide detainees with medical care; his only duty was to superficially examine detainees for blows and other traces of violence. Medical treatment of detainees was provided by the doctors of the brigade infirmary.

561. He remembered that on 5 March 1993 a further group of men had arrived in Şırnak. He did not know that this group was connected with the group which had arrived on 20 February 1993. He did not remember having examined two groups who had arrived in Şırnak on 5 March 1993. He confirmed that his two reports dated 5 March 1993<sup>522</sup> concerned two groups of persons. He did not know at what time these persons had arrived in Şırnak. He went to the gendarmerie station after he had been called there. After having examined these persons, who were not blindfolded and who were all in the same room, he recorded his findings in his reports.

562. He only examined these persons for blows and other traces of violence; he did not look for lesions caused by frostbite. None of the detainees had complained about frostbite and he had not received any such information. When the photographs taken of the feet of Salih Demir, Şükrü Yıldırım, Osman Ekin, Şerif Demir and Mehmet Özkan<sup>523</sup> were shown to

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<sup>521</sup> See Appendix II: § 255.

<sup>522</sup> See Appendix II: §§ 256-257.

<sup>523</sup> See Appendix II: § 272.

the witness, he stated that if he had found such black marks on feet as can be seen on these photographs, he would have recorded this in his report. If the photographs had been taken on 5 March 1993, that could only mean that he had not noted any such black marks. In his opinion, some time had to pass before frostbite became evident, but he could not give an indication as to how much time. Persons who were not given food or water for five days would be very weak and exhausted.

563. He confirmed that the findings of Dr Parmaksız, as recorded in the latter's report of 4 March 1993<sup>524</sup>, did not correspond to his own findings as recorded in his two reports of 5 March 1993. He was unable to explain these differences.

564. When it was put to the witness that Dr Öztürk, in his reports of 9 and 11 March 1993<sup>525</sup>, had recorded injuries found on the thighs and buttocks of İbrahim Ekin, Abdullah Kurt, Ahmet Aslan, Mehmet Özkan and Mehmet Kurt, whereas in the witness's reports of 5 March 1993 no such injuries were recorded, the witness confirmed that, as regards İbrahim Ekinci he had recorded "infected injuries on both buttocks measuring 2 cm by 1 cm (probably due to a fungal infection)", and that, as regards Abdullah Kurt, Ahmet Aslan, Mehmet Özkan and Mehmet Kurt, he had not recorded anything. He further confirmed that, on 5 March 1993, he had found infected injuries on both buttocks of Resul Aslan, resulting from a fungal infection. Fungal infections could develop after burning, but not necessarily. Deep burning would certainly leave a scar. He could not remember whether or not he had examined any of the men on 5 March 1993 in a different place from the others, for example in a room on a bed with a drip in one arm.

565. He had heard that some of the persons in custody in Şırnak had later been examined by experts at the infirmary of the brigade, but did not know that on 6 and 9 March 1993 a number of them had been sent to hospital for treatment of gangrene. He denied ever having heard that İbrahim Ekinci had died in hospital on 16 March 1993. He was unaware of the findings contained in the report of 28 May 1993 of the Institute of Forensic Medicine in İstanbul<sup>526</sup>.

#### *İzzettin Atar*

566. İzzettin Atar stated that he was born in 1962. He was presently stationed at the Tokat provincial gendarmerie command. Between July 1991 and July 1993, he served at the Şırnak provincial gendarmerie command. The village of Ormaniçi was situated at a distance of about five kilometres from the Gabar mountain chain. At the material time, it was believed that there were about 400-500 PKK groups in the Gabar mountains.

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<sup>524</sup> See Appendix II: § 252.

<sup>525</sup> See Appendix II: §§ 259 and 263.

<sup>526</sup> See Appendix II: §§ 281-282.

567. He was one of the personnel responsible for the custody rooms and the custody records at the Şırnak provincial gendarmerie station. At the material time, he shared this responsibility with seven or eight other persons. The detention facilities in Şırnak, which were housed in a two-storey building, could accommodate more than 50 detainees. Two or three detainees could comfortably share one detention room of which there had been 13 or 15 in Şırnak. These rooms were not called cells. A cell was different. The detention rooms in Şırnak were all centrally heated.

568. He did recall that an operation had been carried out in Ormaniçi when about 40 villagers had been taken into detention. He himself did not participate in that operation but had learned about the clash via the radio. The Şırnak gendarmerie station was informed that some apprehended suspects would be sent to Şırnak. These ten persons arrived in Şırnak towards the evening. They arrived by helicopter and were not blindfolded. He himself was at the station when this group arrived there.

569. The detention facilities in Şırnak were not entirely empty at that time; there were already other detainees there. There had been a lot of PKK activity in 1993. He could not remember whether or not five further detained persons had come separately from Güçlükönak on that night. He heard that the detainees, who were not sent to Şırnak, had been taken to the Güçlükönak gendarmerie station. That happened either because only a limited group of persons could be brought to Şırnak by helicopter which was the only available means of transport at the material time, or because there was a lack of space in Şırnak, or because it was preferable for the investigation of the incident to be conducted by the gendarmes of the Güçlükönak station to which Ormaniçi was attached.

570. It was the task of the gendarme on duty to maintain and fill in the custody records. He himself did not fill in the custody records, but he verified them from time to time. The entries in the custody records were to be made in chronological order. When the entries nos. 318-365 in the Şırnak custody records<sup>527</sup> were shown to the witness, he stated that the handwriting on these records was not his and that he could not recognise whose handwriting it was.

571. He confirmed that the recorded date of the taking into detention of entries nos. 318 and 319 was 1 March 1993, that the taking into detention of entry no. 320 was recorded as 4 March 1993 and that the recorded date of the taking into detention of entry no. 321 was 20 February 1993. Although he could not offer an explanation as to why the information was recorded like that, he stated that it was quite possible that these entries were made at a chaotic moment.

572. At some later point in time, those persons from Ormaniçi who had been detained in Güçlükönak were transferred to Şırnak. He confirmed that

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<sup>527</sup> See Appendix II: §§ 178-179.

all persons transferred from Güçlükonak to Şırnak had been recorded in the Şırnak custody records as having been taken into detention on 5 March 1993. In his opinion, these entries were correct. He himself did not see these persons on their arrival in Şırnak.

573. He was involved in taking statements from the detained Ormaniçi villagers. The investigation concerning most of them had already been completed in Güçlükonak. They only stayed transitorily in Şırnak. Statements were only taken from those who arrived on 20 February 1993. He asked them how the incident had happened and they told him about it. He did recall that there had been a confrontation between a number of detainees and a confessor called Osman Ayan, but could not remember whether this confrontation had taken place in Şırnak or Güçlükonak. Osman Ayan identified a number of villagers as being involved in some way or another with the PKK.

574. He himself was present when a number of the detained villagers admitted being involved with the PKK and having opened fire on the security forces on 20 February 1993. Some of them indicated the location in Ormaniçi where provisions for the PKK were hidden. These provisions were in fact found later, hidden in a house which was indicated by one of the detained villagers. He did not remember on which day these provisions had been found; he had not been there in person when they were found.

575. He did not know the contents of the statements which had been taken from the Ormaniçi villagers in Güçlükonak. He further did not know that, when brought before the public prosecutor, all the villagers who had admitted to PKK involvement had told the prosecutor that they had been forced to sign or fingerprint statements in Şırnak. In so far as the villagers had made statements to this effect, they were lying. When asked whether it was normal practice for interrogators of a suspect in custody not to clearly record their identities on a statement taken from a suspect, the witness explained that, according to the Anti-Terror Law, the identity of persons dealing with terrorism was not written, stated or published<sup>528</sup>.

576. He denied that any of the villagers detained in Şırnak had been ill-treated there. The first group, who arrived on 20 February 1993, were medically examined by a civilian doctor from the Şırnak Health Care Centre. After this examination, the gendarmes in Şırnak tried to obtain medical treatment for the villagers by establishing contacts with the military hospital. Medical staff from this hospital treated the villagers in the Şırnak custody facilities and told the gendarmes which of the villagers needed to go to hospital; some of them did in fact go to hospital. He did not remember how many had gone to hospital. In his opinion, if this medical treatment had not been provided, maybe all of the villagers would have needed to have

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<sup>528</sup> The Agent of the Government stated after the examination of Mr Atar that the Anti-Terror Law contains no such provision and submitted that Mr Atar's evidence on this point was likely to be based on his poor legal knowledge.

their feet amputated. He considered the villagers' allegations about their treatment in Şırnak to be slanderous. He could not remember a detained villager called İbrahim Ekinci.

*Dr Feza Köylüoğlu*

577. Dr Feza Köylüoğlu stated that he was born in 1962. He was currently a specialist in traumatology and orthopaedics at Antalya State Hospital. At the material time, he was a specialist in traumatology and orthopaedics at Mardin State Hospital.

578. He remembered that in March 1993 a number of detained villagers from Ormaniçi with foot and toe injuries had been referred by the Şırnak provincial gendarmerie command to the Mardin State Hospital. Three of the detainees were sent on to the Diyarbakır State Hospital because of a lack of beds in the Mardin State Hospital.

579. Those who remained in Mardin were admitted to the prisoners' ward in the hospital. That ward consisted of two rooms. Soldiers permanently guarded the doors of these rooms, which were locked.

580. He confirmed that the signatures on the letter of 11 March 1993 and the report of 11 June 1993 issued by the Mardin State Hospital<sup>529</sup> were his. Such a medical report would normally not be issued. They were issued on request.

581. He himself treated the three or four detainees who were admitted to the Mardin State Hospital. They told him that their feet had frozen from the cold. He had no precise recollection, but thought that they had stayed in the cold inside a building. Although he had no clear recollection of this, he thought that he had spoken Turkish with them. When they arrived in the hospital, they did not receive any serious medical treatment for their feet. In any event, no treatment was possible anyway. Their toes were frostbitten. If frostbite occurred anywhere, the chance that it would spread further was very low in that freezing would cause dry gangrene. After the detainees had initially been placed under observation, their affected toes were subsequently amputated.

582. He explained that Fahrettin Özkan had undergone a metatarsal amputation; that is an amputation of about one-third of the foot from the toes upwards. Resul Aslan underwent the same sort of amputation. Abdülislam Demir had two toes amputated. Nevaf Özkan had the tip of the fifth toe of his left foot amputated. In his opinion, a person who underwent a metatarsal amputation would be partially incapacitated for work. Such a person would not be able to work like a normal person, in that it would be possible to walk but not to run.

583. He could not remember whether or not he had in fact seen Dr Parmaksız' medical reports of 20 February 1993 and 4 March 1993. As

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<sup>529</sup> See Appendix II: §§ 184 and 264.

an orthopaedic specialist, he could confirm that, if one was made to walk in the snow for seven kilometres without shoes and was subsequently kept immobile in a cold environment, one could end up having feet in the condition which he had observed on the detainees when they were referred to hospital. He could further confirm that, although frostbite itself would not cause pneumonia, what caused the frostbite could equally cause pneumonia.

*Dr Çetin Seçkin*

584. Dr Çetin Seçkin stated that he was born in 1959. He was currently working as a specialist in forensic medicine at the İstanbul Institute of Forensic Medicine. In March 1993 he worked as a specialist in forensic medicine in Diyarbakır, where he was the Deputy Director of the Bureau of Forensic Medicine. He worked there for nearly four years.

585. He vaguely recalled having carried out the autopsy on the body of İbrahim Ekinci on 17 March 1993. After having reviewed the contents of the report on this autopsy<sup>530</sup>, he confirmed that he had found frostbite on the toes of İbrahim Ekinci. The information recorded in the autopsy report – namely that İbrahim Ekinci had been treated for frostbite and a subsequent epileptic fit, that his condition had subsequently worsened, that he had lost consciousness, that he had then been taken to the Diyarbakır University Faculty Hospital and that he had been dead on arrival there – was based on what the witness had been told by the attending doctor.

586. When the contents of the report dated 15 March 1996<sup>531</sup> by the surgeon Mustafa Uğurlar from the Diyarbakır State Hospital – i.e. that İbrahim Ekinci had had an undetected epileptic fit during the night, had vomited, and that vomit had entered his lungs, resulting in his death – was put to the witness, he stated that, according to what he himself had been told, İbrahim Ekinci had regained consciousness after the epileptic fit. In his opinion, İbrahim Ekinci must have been conscious since there was no information to the effect that he had later lost consciousness and had not regained it until his death. He had never seen this report of 15 March 1996 before.

587. He confirmed that there was no indication at all in the report of 15 March 1996 that the hospital had been informed about any history of epileptic fits or had arranged for treatment of İbrahim Ekinci's epileptic condition. This report recorded the epileptic fit as the first one he had suffered. Moreover, according to the normal procedure, the doctor on guard in the emergency unit should have taken care of the matter.

588. At the time of the autopsy, he had not been told by anyone that vomit had entered İbrahim Ekinci's lungs during an epileptic fit. Moreover, if the cause of death had been a mechanical asphyxia caused by vomiting,

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<sup>530</sup> See Appendix II: §§ 275-278.

<sup>531</sup> See Appendix II: § 285.

he would have found vomit in the course of the autopsy when opening the bronchial tubes. He had found nothing. The autopsy report clearly stated that the trachea and the bronchial tubes were found to be empty. In case of vomiting, he would certainly have found food residue and this would have been recorded in the report. The report would have described where it had gone, all the way to the smallest bronchial tubes. If he had been aware of the report of 15 March 1996 at the time of the autopsy, he would have stressed that the bronchial tubes had been opened and that they had been found to be empty.

589. He explained that, in the course of an autopsy, it was first of all examined whether death had been caused by trauma. Apart from frostbite, which was also considered a form of trauma, he did not find any bruises, abrasions, internal bleedings or other signs of trauma on the body of İbrahim Ekinçi. As İbrahim Ekinçi was under medical treatment and possibly used drugs, he took tissue samples which he sent to İstanbul for toxicological and microscopic examination. If the cause of death had still remained unclear, it would have been possible to transmit the case to councils which specifically dealt with cases of death.

590. He had not been provided with the report of the İstanbul Institute of Forensic Medicine in respect of the examination of the tissue samples taken. That was not the usual practice. When the contents of the report of 28 May 1993 of the İstanbul Institute of Forensic Medicine<sup>532</sup> was put to the witness, he confirmed that it contained nothing indicating that İbrahim Ekinçi's death had resulted from vomit in the lungs or from any epileptic fit. If there had been vomit in the lungs, foreign particles would have been detected in the microscopic examination of the pulmonary alveolus and this would have been stated in the report. He confirmed that, according to the findings stated in the report of 28 May 1993, the cause of death of İbrahim Ekinçi had been pulmonary oedema and respiratory failure.

591. Being kept immobile and in the cold could, in his opinion, contribute to the development of pneumonia. He had not enquired or found out how İbrahim Ekinçi had come by frostbite. He did not have the authority to examine how injuries occurred. He did not remember having received any information that İbrahim Ekinçi had developed frostbite as a result of living in caves. But the important thing was that İbrahim Ekinçi had been staying in the cold. How that happened would have to be examined at another level. As İbrahim Ekinçi had been able to talk when he arrived in the hospital, his complaints should normally have been recorded in the hospital documents, but they were not stated there. Had these complaints been recorded, then he would have included these complaints in the information set out in the autopsy report. He did not clearly recall the hospital documents.

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<sup>532</sup> See Appendix II: §§ 281-282.

592. When the contents of the medical reports of 20 February and 4 March 1993 by Dr Parmaksız<sup>533</sup> on the medical examination of İbrahim Ekinci and others in Güçlükonak were put to the witness, he stated that it was difficult for him to comment of the findings recorded in these reports. It was the evaluation of Dr Parmaksız, who – unlike himself – had seen what had happened. For a person not having personally seen the events, it was difficult to say anything precise. He did confirm that the lesions recorded in these reports could occur if a person was made to walk seven kilometres in difficult weather and terrain conditions without footwear. He further confirmed that clothes, weight and general health condition constituted relevant factors for the influence of cold on the body. A thin, weak, ill or insufficiently dressed person would be more affected by cold.

593. Pneumonia could be diagnosed by a chest X-ray, and could be treated with antibiotics. In his opinion, where a person suffered from frostbite and developed an infection on his feet or the frozen parts of his body, that person would certainly have had a temperature. İbrahim Ekinci must have had respiratory problems as he stayed in the cold. The doctor treating his feet would certainly have been an orthopaedist. Any internal examination of İbrahim Ekinci or treatment with antibiotics would have been recorded by the hospital. A forensic examination would only reveal treatment with antibiotics, if a specific examination into the presence of this substance had been requested. The presence of antibiotics would not be verified in a standard procedure. The report of 28 May 1993 of the İstanbul Institute of Forensic Medicine did not identify the presence of antibiotics.

*Abdullah Yıldırım*

594. Abdullah Yıldırım stated that he was born in 1953. He was currently a public prosecutor in Adapazarı. In 1993 he had been a public prosecutor in Diyarbakır.

595. He confirmed that the signature on the autopsy report dated 17 March 1993 in respect of İbrahim Ekinci<sup>534</sup> was his. He had attended this autopsy, which was carried out by Dr Çetin. He had been in the State Hospital for another autopsy when he was notified that İbrahim Ekinci had died in the hospital's prisoners' ward. On İbrahim Ekinci's body, the doctor noted signs of frostbite, which he himself also saw. That was something rather unusual. According to oral information he obtained from the police, İbrahim Ekinci had been a terrorist who had developed frostbite as a result of a lengthy stay in caves. After having been taken into detention in the course of an operation, İbrahim Ekinci was sent from the Diyarbakır E-type prison to hospital for medical treatment. The witness had not asked for any information about the duration of İbrahim Ekinci's detention before his

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<sup>533</sup> See Appendix II: §§ 251-252.

<sup>534</sup> See Appendix II: §§ 275-278.

death. To make enquiries about that was not his task. As a public prosecutor in Diyarbakır, he was only assigned to attend the autopsy.

596. All the facts stated in the autopsy report were correct and had been observed by him personally. He confirmed that he had been told that, when he was about to be discharged from the prisoners' ward of the Diyarbakır State Hospital after having been successfully treated for frostbite, İbrahim Ekinci – who according to fellow-residents suffered from epilepsy – had had an epileptic fit for which he was given a course of treatment; that his condition had subsequently worsened; that he had lost consciousness; that he had then been taken to the Diyarbakır University Faculty Hospital and that he had been dead on arrival there. He explained that İbrahim Ekinci had then been taken back to the Diyarbakır State Hospital.

597. When the contents of the report dated 15 March 1996<sup>535</sup> by the surgeon Mustafa Uğurlar from the Diyarbakır State Hospital – i.e. that İbrahim Ekinci had an undetected epileptic fit during the night and had vomited, and that vomit had entered his lungs, resulting in his death – was put to the witness, he confirmed that this was a different account from the one he had been given at the time of the autopsy. He had never been confronted with this report before. He had no explanation for the difference in the accounts. He confirmed that there was no indication at all in the report of 15 March 1996 that the hospital had been informed about any history of epileptic fits or had arranged for treatment of İbrahim Ekinci's epileptic condition. At the time of the autopsy, he himself obtained his information directly from the doctors who treated İbrahim Ekinci. He confirmed that no vomit had been found in the lungs of İbrahim Ekinci during the autopsy. If that had been the case, it would have been recorded in the autopsy report.

598. As it was not possible to establish the exact cause of death at that point in time, tissue samples were taken in order to seek the opinion of the İstanbul Institute of Forensic Medicine, the most experienced in this field in Turkey. The Institute found that İbrahim Ekinci had died of respiratory failure due to pneumonia. He agreed that it was clear that İbrahim Ekinci had not died of inhalation of vomit during an epileptic fit. He firmly denied that, in the report of 28 May 1993 of the İstanbul Institute of Forensic Medicine<sup>536</sup>, it had been suggested that there was a link between the state of the frost-bitten feet and the partially infected injuries on the sole of the foot on the one hand, and the pneumonia on the other. As a medical layman, he himself was unable to say whether or not the pneumonia that had developed was linked to the injuries found on İbrahim Ekinci's feet.

599. His decision of 24 June 1993 not to prosecute<sup>537</sup> was based on the findings of the İstanbul Institute of Forensic Medicine that İbrahim Ekinci

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<sup>535</sup> See Appendix II: § 285.

<sup>536</sup> See Appendix II: §§ 281-282.

<sup>537</sup> See Appendix II: § 283.

had died of pneumonia. Given those findings, he did not find İbrahim Ekinci's death suspicious.

600. If he had had evidence that İbrahim Ekinci's pneumonia was caused as a result of the fault of somebody in detaining İbrahim Ekinci in custody, it would have been proper to prosecute. In such a situation, he would have transmitted the case, together with his decision of lack of jurisdiction *ratione loci*, to the public prosecutor in whose judicial district the person concerned was detained in order to conduct an investigation. He himself would not take any action if, in the context of an assignment to attend an autopsy, it was found that a person had died of pneumonia as a result of the manner in which that person had been detained. That would fall within the jurisdiction of the public prosecutor in whose judicial district that person had been detained. He himself would not have the authority to investigate that.

601. He denied that the information he had been given by the police that İbrahim Ekinci had developed frostbite while staying in caves had had any influence on his decision not to prosecute. He had never seen the medical reports of 20 February and 4 March 1993 by Dr Parmaksız<sup>538</sup> on the medical examination of İbrahim Ekinci and others in Güçlükonak. When the contents of these two reports were put to the witness, he stated that the findings recorded in these reports would obviously not have influenced his decision not to prosecute.

602. In his opinion, it was not necessary to verify the background information about İbrahim Ekinci that he received from the police at the time of the autopsy. Although he could not rule out the possibility that İbrahim Ekinci had in fact developed frostbite from having been made to walk through the snow in Güçlükonak rather than from having stayed in a cave, there was no way for him to find that out. He had been in Diyarbakır at that time. His only duty was to establish the cause of İbrahim Ekinci's death. This was done with the assistance of the most expert institution in Turkey which concluded that İbrahim Ekinci had died of pneumonia. He then took his decision stating that there had not been anything suspicious.

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<sup>538</sup> See Appendix II: §§ 251-252.

*Ercan Turan*

603. Ercan Turan stated that he was born in 1964. He was currently an investigating judge at the Court of Cassation. In March 1993, he was a public prosecutor with the number 29261 in Eruh. The Eruh district was judicially attached to Siirt. Many incidents took place during that time. In judicial matters, the gendarmes proceeded under the instructions of the office of the public prosecutor. Public prosecutors were competent to order gendarmes to conduct an investigation. Apart from their judicial duties, gendarmes also had certain administrative duties.

604. He remembered having taken statements from a large number of detained villagers from Ormaniçi who were brought to Eruh. He himself had never been in Ormaniçi. As these villagers had arrived at a rather late hour, he had asked his colleague Ramazan to assist him. He confirmed that the signatures on the statements taken on 9 March 1993<sup>539</sup> and on 16 March 1993<sup>540</sup> were his.

605. Statements from detainees were always taken individually. He had no rule that persons were required to give their statements standing up. Depending on their condition, he would ask persons who were brought before him to give a statement whether they would like to sit down. If need be, an interpreter would be provided. Normally one of the courthouse staff would act as interpreter. The prosecutor in charge of a case would have the complete case file before him when taking statements. Such a file would contain, *inter alia*, all statements made by detainees to the gendarmes as well as any medical reports obtained in respect of the detainees. He himself would review the case file before hearing suspects.

606. As to the statements he took from the Ormaniçi villagers, he could not remember anyone on an individual basis. The matter concerned a clash, the death of a soldier and people having been gathered and taken away for questioning. He did not know for how long these villagers had already been detained. He had no clear recollection of having issued a written detention order. It was general practice at the time that, if the gendarmes were unable to reach the office of the public prosecutor, messages would be sent. He could not remember anything in particular as regards the villagers' physical condition when they appeared before him. He did not remember whether or not they had been wearing shoes. If he found a detainee in a poor physical

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<sup>539</sup> See Appendix II: § 34 (Cemal Sezgin), § 50 (İbrahim Kaya), § 57 (Halime Ekin), § 61 (Abdullah Ekin), § 65 (Hacı Ekin), § 67 (Şerif Ekin), § 69 (İbrahim Ekin), § 72 (Abdullah Kurt), § 87 (Osman Ekinci), § 93 (Mahmut Güler), § 99 (Şehabettin Erbek), § 112 (Şükrü Yıldırım), § 115 (Şemsettin Erbek), § 123 (Mehmet Nuri Özkan), § 129 (Mehmet Yıldırım) and § 137 (Ali Erbek).

<sup>540</sup> See Appendix II: § 14 (Mehmet Özkan, son of Ahmet), § 19 (Nedim Özkan), § 25 (Salih Demir), § 28 (Mehmet Şerif Demir), § 46 (Abdullah Elçiçek), § 53 (Mehmet Kaya), § 75 (Mehmet Kurt), § 91 (Ahmet Arslan), § 104 (Mehmet Özkan, son of Ali), § 133 (Osman Ekin and § 140 (Mehmet Seyit Erden).

condition, it was his function to try and discover why the person was in that state. He would question the person about that.

607. He could not clearly remember whether the case file in the present case contained two medical reports by Dr Parmaksız<sup>541</sup> in relation to the detention of the Ormaniçi villagers, but in his opinion he must have read them. He assumed that, at the time he took statements from the villagers, he had not noted anything that would require an immediate investigation.

608. On being referred to the contents of the two medical reports by Dr Öztürk dated 9 and 11 March 1993<sup>542</sup> which mentioned injuries on detainees from whom he himself had taken statements, he stated that he could not say anything definite, but that these reports must have been in the documents and that he must have seen them. He considered that, in so far as he could understand them, some of the lesions described could have been caused during transportation from one place to another under difficult circumstances, as recorded. Some of the other injuries described would require a more detailed examination, including the taking of evidence from both sides. That would certainly be his duty. At the material time, he did not know all the details and, of course, he would have expected a special petition from the villagers in relation to this matter. None of the villagers, whether those released or those detained, had in fact made such a complaint. In so far as he could remember, the absence of any complaints had been the reason why he had not considered starting an investigation into the ill-treatment of the villagers during their detention.

609. He explained that, when the Ormaniçi villagers were brought before him, his priority had been to determine which of them were to be released and which men were to remain in detention, to take evidence from the latter category as soon as possible and to transmit, as a matter of urgency, the case file to the office of the public prosecutor at the State Security Court. He had even already released some of them before he had completed the taking of evidence. In any event, given his priority of taking evidence from those who were to remain in detention, he would not have set in motion an investigation procedure in relation to complaints about any injuries incurred.

610. He explained that if injuries were recorded in the documents, he would not necessarily be duty-bound to carry out any further investigation as to how detainees had come by their injuries in the absence of any additional information as to the cause of such injuries.

611. When it was put to the witness that, according to the contents of the statements he had taken from the Ormaniçi villagers, fifteen persons had claimed that they – in a number of cases while blindfolded – had been forced to fingerprint statements and that six of them denied that the

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<sup>541</sup> See Appendix II: §§ 251-252.

<sup>542</sup> See Appendix II: §§ 259 and 263.

statement had ever been read back to them or that they had been told what they were fingerprinting, the witness explained that he had merely recorded what the villagers had stated before him and that, following his transmission of these statements, it would be for the trial court – the State Security Court – to determine the veracity of such allegations. His primary concern had been to take the villagers' voluntary statements which would be subject to judicial process.

612. Although in principle he could have opened a separate investigation into these matters, it was at the time impossible as he only saw the villagers and not the gendarmes who had taken statements from the villagers. It was not possible to draw any conclusions on the basis of generalities. He confirmed that, under the Act on Procedure for the Prosecution of Civil Servants, it had been possible for him to open an investigation into the question of whether soldiers should be committed for trial for criminal offences. In the present case, he had just recorded the villagers' allegations. As it was not up to him but up to the State Security Court to assess their evidence, he had done what was necessary to secure a fair trial for the defendants. He firmly denied that the fact that public prosecutors in the area concerned worked closely together with the gendarmes stationed in the same area constituted an obstacle for prosecutors in starting investigations into criminal offences allegedly committed by gendarmes.

613. He remembered that a preliminary investigation in connection with these matters, as well as the taking to hospital of six detained villagers who had to undergo amputations and the death of one of them in hospital, had in fact been carried out at a later point in time, after some documents had been received in relation to applications filed with human rights organisations. His office then started a preliminary investigation in relation to the statements taken, the condition of the Ormaniçi villagers and the state of the village. The security forces, however, were unable to provide any means of transport to Ormaniçi and his office was unable to arrange for the villagers to come. His office tried to get information through the testimonies of some witnesses. In his opinion, it was clear from the documents that the persons concerned had been in hospital.

614. He denied that a complaint was a necessity for the prosecution of a criminal offence. As to the taking of action as a public prosecutor, he would not wait for a petition to be filed in relation to any offence, still less an application to a human rights organisation. There had been incidents in the area concerned where he had started an investigation on the basis of articles in the press.

615. He had never heard that the Ormaniçi villagers had filed an application to the European Commission of Human Rights in relation to the burning down of their village by security forces. None of the Ormaniçi villagers who were brought before him had made any allegations concerning the burning down of their village. When the petitions dated 13 March 1993

by Cemal Sezgin, Zeki Çetin, Mehmet Aslan, Şemsettin Erbek, Hacı Ekin, Osman Ekinci, Ali Erbek and Mehmet Nuri Özkan<sup>543</sup> were shown to the witness, he confirmed that his signature and number was placed on them. When it was put to him that in these petitions it was stated that “Our village was completely burned and our livestock was destroyed”, the witness stated that these petitions concerned objections to being held in detention. They had been transmitted to the Criminal Court of First Instance together with his views on the matter of detention. He did not remember having taken any separate action in relation to the cited phrase, which could be described as reporting a crime. If he had, it should appear from the documents.

616. He confirmed that the signature on the decision of lack of jurisdiction of 31 March 1993<sup>544</sup> was his. As the offence concerned was a terrorist offence, the case fell within the jurisdiction of the State Security Court and not within the jurisdiction of the regular court. Although, on the basis of the contents of the villagers' statements to the gendarmes, all of them were in principle eligible for further detention on remand, he identified for further detention only those whose confessions were supported by other evidence and released the others. It would therefore not be correct to say that all the statements taken by the gendarmes had been accepted as *prima facie* correct. The existence of contradictions was normal and he had not been content simply to rely on the gendarmerie's investigations.

617. He confirmed that there was information in the file that, of the more than 40 villagers taken into detention, seven had been taken to hospital during their detention. They had not been brought before him. When questioned as to what had happened to these persons, the witness stated that there were public prosecutors and courthouses in the places where these people had been and that, in his opinion, it was for the authority conducting the investigation into the offences with which these persons had been charged to enquire about their circumstances. After he had taken his decision of lack of jurisdiction and transmitted the case file to the office of the public prosecutor at the State Security Court, the case was out of his hands; this applied equally to these persons. If, for example, some of them had disappeared, he would no longer have any responsibility for making any enquiries. When it was put to him that Abdülislam Demir, was not included in his decision of lack of jurisdiction of 31 March 1993, although it appeared clearly from the case file that he had been detained and that his statement had been taken in detention, the witness was unable to offer any explanation. He was not sure of the details of this matter and, in his opinion, it should become clear from the documents.

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<sup>543</sup> See Appendix II: §§ 225-226.

<sup>544</sup> See Appendix II: §§ 227-230.

*Ramazan Bayrak*

618. Ramazan Bayrak stated that he was born in 1965. He was currently working as a judge. Between 6 February 1991 and 15 April 1993 he was a public prosecutor with the number 31559 in Eruh. After having done two months of military service, he returned to Eruh from 15 June 1993 until July 1993, when he was assigned to a different location.

619. In accordance with the internal rules on distribution of cases in the office of the public prosecutor in Eruh, his colleague Ercan Turan dealt with the preliminary investigation concerning the villagers from Ormaniçi who had been taken into detention following an operation in Ormaniçi on 20 February 1993. At Ercan Turan's request, given the number of persons involved, he himself had taken statements from seven or eight or ten villagers. He could not recall this with precision. Ercan Turan had been senior to him.

620. Generally speaking, when such statements were taken, the cause of the incident and the reasons for bringing the suspect before the public prosecutor would be set out in a covering note sent by the gendarmerie. On the basis of that information, the public prosecutor would inform the suspects of the offence of which they were suspected and would then proceed by taking their statement. Before taking a suspect's statement, a public prosecutor would be provided with any statements made by that suspect before the gendarmes as well as the medical reports prepared when the suspect concerned had left the gendarme station where he had been detained.

621. Each suspect would be heard individually and would give his statement standing up. Suspects would be allowed to give their statements sitting down if they were not in a condition to stand up. If need be, an interpreter would be made available. Where incidents fell within the jurisdiction of the State Security Court, the file would be transmitted to that court together with a decision of lack of jurisdiction. The local public prosecutor's jurisdiction to investigate and to collect evidence in such a case would end there.

622. If a public prosecutor found a detainee in a poor physical state, it would be the prosecutor's duty to send that person immediately – via the gendarmerie or the police – to the doctor for treatment and for a medical report. For instance, if a detainee was visibly limping, the prosecutor would put a question on the subject. It would also be the prosecutor's duty to investigate, on the basis of the medical report, the cause of that person's poor physical state by asking, in cases of apparent ill-treatment, about the reasons for such treatment.

623. If a detainee appeared before him, accompanied by a medical report which showed that substantial damage to the feet had occurred as a result of having been detained in cold conditions for a fortnight, he would pursue and investigate the matter on his own initiative. An investigation of alleged

ill-treatment in detention would follow the procedure set out in the Act on Procedure for the Prosecution of Civil Servants. After the completion of his investigation into such a matter, he would transmit the investigation file together with a decision of lack of jurisdiction to the Administrative Council, which was the competent body for committing a civil servant for trial.

624. Although the witness initially declared that he could not remember in what physical state the ten Ormaniçi villagers had been when they were brought before him in order to give statements, or whether they had been standing up or sitting down when they gave their statements to him, he later stated that, as regards the ten villagers whom he had seen, there had been no visible evidence at all that these villagers had been ill-treated in any way. If evidence had been given by these villagers that, when they were brought before him, they had not had the strength to stand up and that most of the villagers had had to crawl on the floor to go and give their statements, they had not told the truth. He did not remember anyone giving a statement crawling on the floor or in such a serious condition that that person had been unable to sit down. He did not know whether one of the villagers, Zeki Çetin, had been bleeding from an injury to his anus which he had sustained whilst in detention.

625. He did not remember having seen two medical reports drawn up by Dr Parmaksız<sup>545</sup>. When he interviewed some of the Ormaniçi villagers, he had no information that any of them had any lesions on their body or that they had been subjected to ill-treatment. Had he had such information, he would have reported the matter to his colleague dealing with the case and together they would have dealt with it. He would of course have made enquiries as to the cause of the injuries recorded in Dr Parmaksız' medical reports, had he seen those reports. He said that it was possible that these reports had not been in his own file, but had remained in the main file held by his colleague. He thought that he had been provided with the statements these villagers had given to the gendarmerie and that he had been asked to interview the villagers on the basis of those statements.

626. He did not recall that any of the Ormaniçi villagers from whom he had taken statements had complained of having been ill-treated in detention. It would have been his duty to record such complaints in the statements given. In such a situation, he would also have asked whether a medical report was available. It would also have been his duty to make enquiries into allegations of ill-treatment if such allegations had been based on concrete evidence. A mere allegation would be insufficient; it had to be supported by facts, otherwise all and sundry could make allegations that they had been ill-treated by the police and gendarmerie. In any event, allegations of this kind were frequently made in that area and in those circumstances. Such

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<sup>545</sup> See Appendix II: §§ 251-252.

supporting evidence could be a medical report together with other evidence such as statements by witnesses. He agreed that, where a person claimed to have been beaten up by a gendarme while in custody, it would be unlikely that this would have happened in front of witnesses other than the gendarme concerned. In such a situation, the medical report would be taken into consideration. He would have failed in his judicial duties if, in reply to a complaint alleging ill-treatment during detention, he had stated that that was something he could do nothing about.

627. During the period in which he had worked as a public prosecutor in Eruh, he had once brought criminal proceedings against a gendarmerie station commander in relation to a person who had been taken into detention and who had died from gastric bleeding. Apart from this, he had never come across any arbitrary treatment.

628. There had been cases in which he had investigated allegations of ill-treatment, but mostly such allegations were unfounded. He explained that it was impossible for a man working in that region not to be influenced by that war like environment. He had frequent and intense experience of attending autopsies of soldiers and civilians killed by terrorists, and also of terrorists killed by the security forces.

629. When a suspect brought before a public prosecutor claimed that he had never made a statement to a gendarme and that he had been forced to sign or fingerprint a statement, it would be the duty of the public prosecutor if satisfied of this, to record in a report that the statement taken by the gendarme should not be taken into consideration, and that was what he himself had done.

630. However, in the circumstances of that time, it was simply not possible for him to investigate every gendarme official in relation to every person who denied a statement given to the gendarmerie. There was also a legal constraint in that the prosecution of a civil servant was subject to a decision to commit for trial.

631. In practice, he did not recall having come across any such investigation of security force members except where there had been very serious ill-treatment.

632. Güçlükonak had been in the emergency area. At the material time and according to the law, apprehended suspects could be held in detention for a total of 30 days. With the permission of the public prosecutor, gendarmes could detain apprehended suspects for 15 days and, in case their interrogation could not be completed within 15 days, could seek an extension of 15 days. The granting of permission for such an extension was not automatic or mandatory; it would depend on the particular circumstances of each case. The granting of an extension would be recorded in writing on the file.

633. He confirmed that, in the present case, there should have been evidence of such written permission given by the public prosecutor. As he

and his colleague Ercan Turan had taken statements in different places, he did not have the files Ercan Turan had and *vice versa*. While taking statements from a number of the Ormaniçi villagers, he had no other documents than the statements the gendarmerie had taken from those villagers. He did not remember whether, after the taking of statements from the Ormaniçi villagers had been completed, he had discussed the case or the physical condition of the villagers with Ercan Turan. He said that it was possible that he had done so.

*Metin Yücel*

634. Metin Yücel stated that he was born in 1946. He was currently working as a public prosecutor in Şişli. Between January and June 1993 he was a public prosecutor at the State Security Court in Diyarbakır. Between June 1993 and 1996 he was a public prosecutor in Nevşehir.

635. He remembered having been responsible for the preliminary investigation concerning the village of Ormaniçi and the subsequent criminal proceedings brought against a number of Ormaniçi villagers. Since the offence with which these persons had been charged, involvement in terrorist offences, fell within the scope of Law no. 2845 establishing the State Security Courts, the public prosecutor of Erüh, after having collected all the evidence related to the incident, took a decision of lack of jurisdiction and transmitted the case to the office of the public prosecutor at the State Security Court. This entailed the transmission of the entire prosecution case file, including all the statements taken in the course of the preliminary investigation.

636. If the number of persons listed in a decision of lack of jurisdiction was lower than the number of persons recorded as having been taken into detention, he would ask the public prosecutor who had dealt with the preliminary investigation to clarify this point and, if need be, to issue an additional decision of lack of jurisdiction. Until that moment, such persons would remain within the jurisdiction of the public prosecutor who had conducted the preliminary investigation. No proceedings before the State Security Court could be initiated against persons whose names were not stated in a decision of lack of jurisdiction. He did not remember whether or not Abdülislam Demir and İbrahim Ekinci had in fact been taken into detention, even though their names had not been stated in the decision of lack of jurisdiction issued by the public prosecutor in Erüh.

637. The office of the public prosecutor at the State Security Court would take notice of the medical reports contained in a transmitted file. However, if any unusual findings were recorded in such reports, the office of the public prosecutor at the State Security Court would not take any action in relation to such findings, since these would be matters falling outside the jurisdiction of the State Security Court. As offences of that nature fell within the jurisdiction of the regular courts, the prosecution of

such offences was required to be brought by the local public prosecutor. It was not the responsibility of a State Security Court prosecutor to investigate how particular defendants had sustained certain injuries. Such persons were required to inform the local public prosecutor of this, either orally or in writing, and that prosecutor would then carry out the necessary investigation.

638. When it was put to the witness that, in the present case and before the Eruh public prosecutor and the Criminal Court of First Instance, nearly all the defendants had denied making confession statements to the gendarmes and had claimed that the contents of their statements were untrue and that they had been forced – sometimes blindfolded – to sign and fingerprint statements, the witness explained that in many cases of this kind defendants would deny statements taken previously.

639. It was not the duty of State Security Court prosecutors to investigate whether defendants had been forced to fingerprint or sign statements which had not been given by them. Only where it was patently obvious that authors of statements had been subjected to great pressure would he report matters to the office of the public prosecutor of the place where such statements had been taken. A mere allegation would be insufficient. In so far as medical reports in the case file mentioned findings of superficial abrasions, bruises etc., that would be considered normal because these could occur in any event. If there were findings of major injuries or similar things and he was able to understand the terminology used in the medical report, he would inform the local public prosecutor.

640. Allegations of pressure being exerted when statements were taken by the security forces were in fact made very often by defendants, even where such statements were correct. It was often used as a defence argument. In the present case, one of the suspects, Ali Erbek, had used this in his defence in the proceedings brought against him before the State Security Court. He did recall having sent suspects to a forensic doctor after they had told him personally that they had given a statement under pressure or torture. He could not remember in which case that had happened, but in his opinion examples could be found. If the forensic doctor made findings of ill-treatment and reported that back to him, he would request the local public prosecutor to start an investigation in respect of the security forces who had conducted the initial investigation. He would do the same thing where a petition by a suspect, together with the latter's statement, alleged that he or she had been subjected to torture or ill-treatment.

641. He did not send the present case back for a further investigation. He did not regard as serious the allegations made before the judicial authorities in Eruh about the manner in which the statements had been obtained by the gendarmes. He did not personally see the suspects. He only read the medical reports in their case file. These medical reports contained Latin terms which, as a medical layman, he did not understand. He further did not find it

necessary to obtain statements from those who had been sent to hospital as their further detention on remand<sup>546</sup> had not been ordered by the Eruh Magistrates' Court. The fact that a detained suspect was taken to hospital did not, in his opinion, necessarily imply that that person had been subjected to torture. He could not remember whether or not Resul Aslan had been brought before the Eruh public prosecutor or the Criminal Court of First Instance.

642. Generally speaking, after having received a decision of lack of jurisdiction issued by a local public prosecutor, he would first determine whether the offences at issue in the case fell within the jurisdiction of the State Security Court and, if so, whether there was sufficient evidence for instituting proceedings. If the offences in question fell outside the jurisdiction of the State Security Court, he would refer the case back to the local public prosecutor. Once he had brought proceedings before the State Security Court and it appeared that further evidence was required for the State Security Court's decision, the Court could order the taking of additional evidence.

643. He confirmed that the signatures on the indictment of 17 persons dated 30 April 1993<sup>547</sup> as well as on the decision of the same date not to prosecute 25 persons<sup>548</sup> were his. Although, in his statement to the gendarmes, the suspect Resul Çakir had admitted that he had helped the PKK, that he had obtained a weapon for one of the other suspects and that he had bought weapons for other militia members in the village, Resul Çakir was not indicted as there was no additional evidence in the file confirming these confessions. He explained that, according to the case-law of the Supreme Court of Appeal, statements based only on confessions made to the security forces could not be accepted. Abstract confessions were insufficient. Before deciding to prosecute, he would look for some sort of substantiation outside the statement or confession of the person concerned by, for instance, verifying whether other defendants or witnesses had made statements that the person concerned was implicated in the offences.

644. He took the decision not to prosecute 25 persons in the present case as, apart from their own statements, there was no additional evidence against them. Only in respect of İbrahim Özkan, the last person mentioned in his decision not to prosecute of 30 April 1993, did he issue an additional separate decision of lack of jurisdiction and refer the case back to the public prosecutor in Eruh. İbrahim Özkan had also been suspected of weapon-related offences under the Turkish Criminal Code, which offences fell outside the jurisdiction of the State Security Court but within the jurisdiction of the regular criminal judicial authorities. This was related to

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<sup>546</sup> Meaning "arrest"; see page 141, footnote no. 270.

<sup>547</sup> See Appendix II: §§ 233-236.

<sup>548</sup> See Appendix II: § 232.

the fact that İbrahim Özkan had indicated places where weapons had been concealed.

645. He denied that he had been aware that many of the suspects in the present case had been kept in custody for about 70 days. The Eruh public prosecutor issued a decision of lack of jurisdiction on 31 March 1993 and transmitted the case file to the office of the public prosecutor at the State Security Court on 9 April 1993. He did not know whether the suspects had been brought to court before the end of the normal custody period or on the last day.

646. After June 1993, following his assignment to a new post, he had not been involved in the present case or any similar cases.

*Mustafa Taşkafa*

647. Mustafa Taşkafa stated that he was born in 1959. He was currently a public prosecutor in Kadıköy. In 1994 he was a public prosecutor in Siirt. He explained that Ormaniçi was located in the administrative district of Şırnak, but in the judicial district of Eruh. Eruh fell within the judicial jurisdiction of Siirt.

648. He recalled that, after the Ministry had requested information about the incident from the office of the Siirt public prosecutor because of an application which had been made to the European Commission of Human Rights, he had been appointed to conduct an on-site inspection in Ormaniçi. Ormaniçi was administratively attached to the province of Şırnak. It was judicially attached to Eruh, which in turn was attached to Siirt. The public prosecutor in Eruh had difficulties in going to Ormaniçi in order to carry out this investigation. An earlier judicial investigation, prior to his own, might have been carried out, but he doubted that this had included a visit to Ormaniçi. To his knowledge, no attempt had been made to determine the level of damage in the village with a view to possible compensation of the villagers.

649. After having taken the necessary security measures, he went to Ormaniçi on 10 August 1994 by helicopter and was accompanied by Şenol Önal, the public prosecutor of Eruh, a doctor and an expert civil engineer. Şenol Önal went to Ormaniçi to carry out a different investigation, namely an investigation into the death of two children. He himself had been instructed to establish whether houses in Ormaniçi had been burned and demolished, to take statements from any persons found to be present in Ormaniçi and to transmit this to the Ministry. Before he left for Ormaniçi, he had not been informed whether the village was still inhabited and he had not given this any thought. He had not taken anyone from the village with him to Ormaniçi. He thought that he would find some people there. They went there by helicopter as Ormaniçi was far from Siirt and it was not possible to go to Ormaniçi by road. Moreover, it would have been

dangerous to go there in any other manner, as the terrorist organisation was very active in that area; they attacked every civilian or official vehicle.

650. As recorded in his Exploration Report dated 10 August 1994<sup>549</sup>, he found one or two families living in Ormaniçi when he arrived there. One of the people there was Ayşe Ekinçi. He and the others saw her in front of her house and it was clear that she was actually living in her house. He took a statement from her.

651. When it was put to the witness that Ayşe Ekinçi had given evidence that, at that time, she was actually living in Güçlükonak and that, while she had been picking fruit in the orchard in Ormaniçi that day, soldiers had taken her to the cemetery for the disinterment of the child, the witness stated that when he had taken her statement she herself had declared that she was living in the village of Ormaniçi in the district of Güçlükonak. This was recorded in the report.

652. She was assisted by a Kurdish interpreter called Cemal Ertek when she gave her statement to him. She stated that her husband İbrahim Ekinçi, while on his way to prayer, had died in the course of the conflict which had taken place in Ormaniçi on 20 February 1993. That was how it had been interpreted to him. When it was put to the witness that İbrahim Ekinçi had in fact died in hospital on 16 March 1993, the witness stated that he had recorded what Ayşe Ekinçi told him. In reply to the question whether he had asked Ayşe Ekinçi whether she had made an application to the European Commission of Human Rights, the witness stated that she had volunteered that information. After Ayşe Ekinçi had given her statement, it was read back to her via the interpreter and she confirmed it with her fingerprint.

653. He also took a statement from İbrahim Kaya. Upon his arrival in Ormaniçi, he asked the security forces to look for a person living nearby who could show him around the village. The security forces found İbrahim Kaya for him. As İbrahim Kaya lived in the centre of the village, the witness went together with İbrahim Kaya and the expert civil engineer Haydar Sultan around the village and inspected the houses, in particular the houses of those who had filed an application with the European Commission of Human Rights.

654. He found that some houses had not been damaged and others had shown evidence of a roof burning and/or a roof collapsing. He found damage to 14 out of the 32 houses which he had looked at. When asked whether he had been able to tell from what he saw whether any burned houses had been rebuilt in the period between 20 February 1993 and 10 August 1994, the witness stated that that had not been the case and that anyway he would not have had sufficient information about that. He agreed that what he saw on 10 August 1994 might not have been a reflection of the

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<sup>549</sup> See Appendix II: §§ 290-292.

situation in the village immediately after 20 February 1993 or at any other time before 10 August 1994.

655. When the 20 photographs submitted by the Government on 2 April 1998<sup>550</sup> were shown to the witness, he confirmed that these had been taken in the course of the on-site investigation on 10 August 1994. The signatures on the back of these photographs were his. He and the other participants in the visit to Ormaniçi were probably the group of persons who could be seen standing underneath a tree on the photographs numbered 4 and 5; they had gathered there to have lunch.

*Witnesses not heard*

656. The Delegates had also called as witnesses the applicants Mahmut Güler (no. 18), Fatma Özkan (no. 27) and Halime Ekin (no. 30) as well as the Government witnesses Şinasi Başköy, Filiz Yalçın, and Şenol Önal.

657. In the course of the hearings held in April and October 1998 respectively, the Delegates noted that Mahmut Güler, Fatma Özkan and Halime Ekin had not appeared. No reasons have been submitted or have become apparent for their failure to appear.

658. The Government's representative informed the Delegates on 8 October 1998 that it appeared that Şinasi Başköy, one of the gendarmes identified by the Government at the Commission's request, had in fact not been on duty at the material time. The Delegates decided to release this witness. On the same day, the Government's representative informed the Delegates that it had not been possible to serve the summons on Filiz Yalçın, as she was a judge. To take evidence from her would entail a breach of constitutional guarantees for judges. The Government confirmed this by letter of 4 February 1999, in which they submitted that the taking of evidence of Judge Yalçın would be contrary to the Basic Principles on the Independence of the Judiciary<sup>551</sup>.

659. On 9 October 1998 the Government's representatives informed the Delegates that they had been informed by Şenol Önal that he would not appear and submitted a letter dated 6 October 1998 from Şenol Önal stating that he was alone in the office and could not leave his post because no replacement was available.

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<sup>550</sup> See Appendix II: § 2 and §§ 293-294.

<sup>551</sup> United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.