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EUROPEAN COURT OF HUMAN RIGHTS

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF BULDAN v. TURKEY

The European Court of Human Rights has today notified in writing a judgment¹ in the case of ***Buldan v. Turkey*** (application no. 28298/95).

The Court held, unanimously, that there had been:

- **no violation of Article 2** (right to life) of the European Convention on Human Rights concerning the death of the applicant's brother;
- a **violation of Article 2** concerning the lack of an adequate and effective investigation into his death;
- **no violation of Article 3** (prohibition of torture or inhuman or degrading treatment or punishment) of the Convention;
- a **violation of Article 13** (right to an effective remedy);
- **no violation of Article 14** (prohibition of discrimination).

Under Article 41 (just satisfaction), the Court awarded the applicant 6,000 euros (EUR) for non-pecuniary damage and EUR 10,000 for costs and expenses. The widow and children of the applicant's brother were awarded EUR 10,000 for non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicant, Nejdet Buldan, is a Turkish national of Kurdish origin, born in 1948 and living in Gelsenkirchen (Germany).

On 3 June 1994 at about 4.30 a.m. while the applicant's brother, Savaş Buldan, was leaving the casino at the Çınar Hotel in the Yeşilyurt area of Istanbul, together with his two friends, they were approached by seven or eight people with walkie-talkies, firearms and bullet-proof vests who introduced themselves as police officers. The three men were then forced into three cars.

The applicant began a search, and contacted members of Parliament, the Governor of Istanbul and the media. The Office of the Prime Minister was also informed about the kidnapping. The applicant and his legal representative made a further written application to the Bakırköy public prosecutor's office. However, the initial enquiries made by the authorities showed that the three men had not been taken into custody.

At about 9 p.m. that day, a man contacted the Yiğilca gendarmerie station within the district of Bolu, some 270 kilometres from where the three men had been abducted, informing them that he had seen three bodies in an area near

the river where he had gone to fish. The preliminary investigation of the bodies revealed that the three men had been shot at point-blank range. On 4 June 1994 the applicant identified the bodies of his brother and his two friends.

An investigation was undertaken and murder charges brought against Savaş Buldan's suspected killer, who was acquitted for lack of evidence on 18 November 1999.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 2 December 1994 and transmitted to the European Court of Human Rights on 1 November 1998. It was declared admissible on 4 June 2002.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), **President**,
András **Baka** (Hungarian),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Wilhelmina **Thomassen** (Netherlands),
Mindia **Ugrekheldze** (Georgian), **judges**,
Feyyaz **Gölcüklü** (Turkish), **ad hoc judge**,

and also Lawrence **Early**, **Deputy Section Registrar**.

3. Summary of the judgment²

Complaints

Mr Buldan claimed that his brother, Savaş Buldan, was ill-treated and killed following his abduction in 1994 by undercover State agents and that the Turkish authorities failed to carry out an effective and adequate investigation into his death. He further alleged that he himself had received life-threatening messages and that he had had to leave Turkey to live in Germany as a result. He relied on Articles 2, 3, 13 and 14.

Decision of the Court

Article 2

Death of the applicant's brother

The Court noted that the Susurluk Report, which stated that it had been a State strategy to kill wealthy Kurdish people who supported the PKK (proscribed as a terrorist organisation under Turkish law), had referred to the killing of Savaş Buldan. In addition, Hanefi Avcı, former head of Istanbul and Diyarbakır Police Intelligence, had maintained that that the kidnapping and assassination of Savaş Buldan had been carried out by a special team made up of State officials and civilians.

However, the Court observed that there was no indication in the case-file that the applicant's brother had been threatened by anyone, or that he had had reason to believe that his life was at risk prior to his death. It further noted that there were no eyewitnesses to Savaş Buldan's killing.

The Court recalled that the Susurluk Report could not be relied on to establish

to the required standard of proof that State officials were implicated in any particular incident. Notwithstanding the fact that the name of the applicant's brother was mentioned in the report, the actual circumstances in which he had died remained a matter of speculation and assumption. Accordingly, there was insufficient evidence on which to conclude that the applicant's brother was, beyond reasonable doubt, killed by or with the connivance of State agents in the circumstances alleged by the applicant. There had, therefore, been no violation of Article 2.

Adequacy of the investigation

The Court noted striking omissions in the conduct of the investigation into the kidnapping and subsequent death of the applicant's brother, for example:

- the authorities did not make any serious attempt to investigate the possible involvement of State agents in the killing;
- a link between the killing of Savaş Buldan and the special team mentioned in the Susurluk Report was ignored;
- the Turkish authorities never provided any information about the owner of a car which had been identified as one of those used on 3 June 1994;
- there was no real co-ordination between the different public prosecutors dealing with the case.

Considering that the national authorities had failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's brother, the Court concluded that there has been a violation of Article 2.

The applicant's right to life

The Court was not persuaded that the applicant's allegations concerning the receipt of life-threatening messages were of such a nature or degree as to breach Article 2. There had, therefore, been no violation of Article 2 concerning the applicant.

Article 3

As it had not been established that any State agent was implicated, directly or indirectly, in the killing of the applicant's brother, the Court found no violation of Article 3.

Article 13

The Court observed that it was not in dispute that the applicant's brother was the victim of an unlawful killing and that the Turkish authorities had an obligation to carry out an effective investigation into the circumstances surrounding his killing. However, no effective criminal investigation could be considered to have been conducted. The Court therefore found that there had been a violation of Article 13, because the applicant had been denied an effective remedy in respect of the death of his brother and thereby access to any other available remedies at his disposal, including a claim for compensation.

Article 14

The Court found no violation of Article 14, having found the applicant's allegations to be unsubstantiated.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer. ² This summary by the Registry does not bind the Court.

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