



Forced Disappearances in the European Court of Human Rights

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Abstract

Aim: To examine the essential characteristics of the crime of forced disappearances in the European Court of Human Rights. Establish and analyse key cases of this court.

Methodology: Documental Analysis and Case Study.

Findings: This text establishes theoretical definitions and aims to demonstrate how this court judges cases of forced disappearances. This crime is part of this court's fundamental case law.

Value: Determine the characteristics of forced disappearances from three court judgments to understand how this crime is punished according to the variables and circumstances of the cases.

Keywords: European Court of Human Rights, forced disappearances, Right to Life, security forces

Characteristics of forced disappearances in the ECtHR.

The European Court of Human Rights (hereinafter ECtHR) has ruled since 1998 on several cases of forced disappearances, mainly in Turkey and Russia.

It is essential to note that a major reform in 1998 significantly altered many aspects of the tribunal, including the removal of the European Commission on

The manuscript was submitted in English. Received: 27 January 2025. Revised: 19 March 2025
Accepted: 8 July 2025.

Human Rights. Two of the cases presented in this work were applied before this reform, illustrating the findings of this Commission.

Furthermore, this text identifies four articles of the European Convention on Human Rights: Article 2 (Right to Life), Article 3 (Prohibition of Torture), Article 5 (Right to Liberty and Security), and Article 6 (Right to a Fair Trial). These articles are applied in the standards of the ECtHR when deciding cases regarding forced disappearances and protect the rights violated by this crime.

Ophelia Claude identifies that the ECtHR defines three different state obligations concerning the crime of forced disappearances.

- 1) The state must refrain from unlawful killings.
- 2) The state bears the positive obligation to prevent avoidable loss of life.
- 3) The state must investigate suspicious deaths (Claude, 2010).

The first two obligations relate to the substantive aspect of the right to life, while the last concerns the procedural aspect of this right (European Court of Human Rights [ECtHR], 1998). The substantive aspect of the right to life concerns the loss of people's lives. The procedural element relates to the duty to investigate violations of the right to life to identify, try, sanction and punish those responsible for the homicide and establish reparations for the victims and/or relatives.

Furthermore, an important notion is that security forces agents perpetrate the homicide in forced disappearances, but the person responsible for the violation of the right to life is the state. The state parties to the European Convention on Human Rights (hereinafter 'ECHR') and the court are accountable for the actions of the security forces under their control.

López Guerra states that the cases presented before the ECtHR concerning forced disappearances can be divided into four different areas: 1) The Turkish-Kurdish conflict; 2) Greek Cypriot clashes; 3) Clashes in the Caucasus between Russian forces and other nationalities; 4) Armed conflicts of the dissolution of Yugoslavia (López Guerra, 2020).

Encarnación Fernández established that since 1990, the ECtHR has had to attend to a significant quantity of lawsuits about committed abuses by the security forces in situations of conflict or severe internal instability, extrajudicial executions, tortures, illegal detentions, forced disappearances, among others, first in the Southeast of Turkey and later in Chechenia. The International Convention for the Protection of All People Against Forced Disappearances tries to unify all the complexities of the phenomenon of forced disappearances. This document imposes on state parties the obligation to classify this crime as such (Fernández, 2009). This document defines forced disappearances as follows: *'For the purposes of this Convention, 'enforced disappearance' is considered to*

be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.' (United Nations General Assembly, 2006).

The Council of Europe was born 70 years ago with the objectives of peace and respect for human rights. However, it was integrated only by some European countries over several decades. Only after the fall of the Berlin Wall in 1989, with access to the countries of Central and Western Europe, did it become an authentic Pan-European organisation, and it was able to aspire to a united Europe regarding the preeminence of human rights. This was the decisive argument for Russia's admission, despite not meeting the adhesion conditions, and at a moment when the conflict with Chechnya had already broken out (Chatzivassiliou, 2007). However, time and experience have proven the enormous difficulties of making this aspiration a reality (Jägers & Zwaak, 2008). It is essential to note that Russia has not been a member of the Council of Europe or a state party to the European Court of Human Rights (ECtHR) since 2022.

In the crime of forced disappearances, the whole apparatus of the state is involved, including the judicial power. Suppose the victim is excluded from the protection of the law. In that case, this violates several rights, including the right to recognition of legal personality, the right to liberty and security of the person, and the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. It also violates the right to life or places it in grave danger (United Nations General Assembly, 1992). It is essential to highlight that forced disappearances violate the interlinked rights to personal integrity, personal liberty (Articles 3 and 5), and life (Article 2). Furthermore, forced disappearances infringe on the right to a fair trial (Article 6), including the presumption of innocence, the right to be heard by a judge, or the right to defence, among other provisions.

The first cases of forced disappearances were interposed before the European Commission on Human Rights in the nineties. The ECtHR resolved these cases at the end of this decade. There are two main groups of cases of forced disappearances in this tribunal. The first is about the Kurdish conflict in the southeast of Turkey between the government and the Labor Party (party of the workers) of Kurdistan. The second group consists of Chechen cases following the entry into force of the European Convention of Human Rights in Russia in 1998 and the subsequent access to individual lawsuits. This corresponds to the Second Chechen War, during which large-scale forced disappearances occurred (Fernández, 2009).

Fernández determined that cases of forced disappearances depend on the facts. It is not easy to show proof. As a last resort, the outcome of a lawsuit regarding the detention and disappearance of a relative will not depend on a complex legal aspect, but on the available evidence (Leach, 2008).

The problem is that the disappearance of a person is a crime that is characterised by the fact that there is no body, the victims are missing, the perpetrators are anonymous, and there is a lack of evidence. In cases where the ECtHR has ruled, the usual response of the authorities has been to deny any responsibility on the part of the state's security agents. If there is no body, the state denies that the person has died or that they may be presumed dead (Fernández, 2009). However, in these cases, the perpetrators of the crime conceal the body to ensure impunity.

The first case the ECtHR judged about forced disappearance was Kurt V. Turkey, judgment of 25 May 1998. In this case, the tribunal was not willing to accept the presumption of death (European Court of Human Rights [ECtHR], 1998). It was relevant to this tribunal because the organisation Amnesty International defended the victim's rights and made the case visible worldwide. Timurtas V. Turkey, the judgment of 13 June 2000, is a landmark case that significantly altered the court's perspective on forced disappearances. This is a key case that has guided the ECtHR's approach to forced disappearances since 2000. The ECtHR established in this judgment that '*when the State has not provided a plausible explanation for the disappearance, and there is sufficient circumstantial evidence, the Court will make the finding that the individual died in State custody.*' (European Court of Human Rights [ECtHR], 2000). In the judgments issued after the case of Timurtas, the ECtHR has shown more willingness to examine the cases of forced disappearances from the point of view of Article 2, giving a progressive entrance to the presumption of death (Fernández, 2009).

Fernández states that in the consolidated jurisprudence of the ECtHR, the first phrase of Article 2.1 ('*The law protects the Right to life of every person*') imposes to the state the obligation of refrain of attempt against the life intentionally or illegally, but also to adopt adequate measures to protect the life of the people that are found under its jurisdiction (European Court of Human Rights [ECtHR], 1998). These are the negative and positive obligations of the state, respectively.

Fernández highlights, like other authors, the case of McCann and Others V. United Kingdom (European Court of Human Rights [ECtHR], 1995). This was the first case in which this court addressed the substantive and procedural aspects of the right to life in relation to the use of force by state security agents. It is understood that the obligation to protect the right to life established in Article 2 also demands carrying out an official and effective investigation when a person dies as a consequence of the use of force (Fernández, 2009). This procedural

duty related to the right to life is not explicitly stated in Article 2. Still, it can be inferred from the extensive case law of the ECtHR regarding the deprivation of the right to life by state security forces. This procedural aspect is essential for this court and arises from the interpretation of Article 2 of the ECHR.

In ulterior matters, regarding the situation in southeast Turkey, the ECtHR has precise characteristics that this investigation must have. This is essential to ensure the practical application of the internal law that protects the right to life. In the cases where state agents and organs are part, it must be guaranteed that they are accountable for the deaths that occurred under their responsibility. The authorities must act on their initiative once they are aware of the matter. Independent and impartial organs must carry out the investigation. (Fernández, 2009)

Fernández states that the authorities must have adopted reasonable means to obtain proof related to the incident. Any irregularity that decreases the capacity to establish the cause of death or identify the responsible party can be an infraction of the procedural obligation of Article 2. (Fernández, 2009)

The author continues by stating that in many cases of disappearances, the applicant alleges that before the death, the victim had suffered ill-treatment. Such allegations are generally rejected due to the lack of evidence. Since there are no remains of the person, it is challenging to prove ill-treatment or torture. (Fernández, 2009) Nevertheless, in many cases of forced disappearances, the ECtHR has established the violation of Article 3 (Prohibition of Torture) regarding the relatives or loved ones of the victim. The reason for this is the anguish and suffering of these people for not knowing the destiny or whereabouts of the victim during a prolonged period.

Forced disappearances are flagrant violations of a broad range of human rights, which are acknowledged in the international instruments protecting them (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, among others) in particular the rights to life, to liberty and personal security, the prohibition of arbitrary detention and arrest and the right to a just and public trial (Esteve Moltó, 2016).

Fernández addresses the problem of forced disappearances brought before the ECtHR through individual applications. Consequently, the tribunal has not addressed this phenomenon globally but has examined forced disappearances on a case-by-case basis. In these circumstances, the court has reviewed various ways to ensure justice, considering concrete assumptions such as the government's lack of cooperation, which is often decisive in establishing the state's responsibility, the presumption of death, and the positive obligations to protect life and liberty, among others (Fernández, 2009).

Furthermore, it is possible to find differences between the rulings in cases related to forced disappearances in the ECtHR and the IACtHR. This last tribunal has a vast number of judgments on this crime, condemning most Latin American countries. The first case of forced disappearances (Velásquez Rodriguez V. Honduras – Inter-American Court of Human Rights [IACtHR], 1988) was ruled by the Inter-American Court of Human Rights (hereinafter, the IACtHR) in 1988, ten years before the first judgment on forced disappearances by the ECtHR. This case was paradigmatic in the development of the jurisprudence on this crime and was quoted and used as background in subsequent cases, including the case law of the ECtHR. Latin America has a long history of dictatorships during the 1960s, 1970s and 1980s, where there was a systematic practice of forced disappearances. Since Velásquez Rodríguez, the IACtHR has condemned this crime in its judgments with over eighty cases to date. Although dictatorships existed for a long time in Europe, not many cases of forced disappearances have been brought before the ECtHR. Most cases of forced disappearances have been brought against Russia and Turkey.

Key cases of forced disappearances in the ECtHR.

In the case of Kurt v. Turkey. Judgment 25 May 1998, the applicant was Mrs. Koçeri Kurt, a Turkish citizen (European Court of Human Rights [ECtHR], 1998). She applied to the Commission on behalf of herself and her son, Üzeyir Kurt, who, she alleges, disappeared in circumstances involving the respondent State's responsibility. (Kurt v. Turkey, para. 8,9) The facts surrounding the disappearance of the applicant's son are disputed (Kurt v. Turkey, para. 8,9).

From November 23 to 25, 1993, security forces, comprising gendarmes and several village guards, operated in the village of Ağilli. On 23 November 1993, (Kurt v. Turkey, para. 14) following intelligence reports that three terrorists would visit the village, the security forces took up positions around the town. Two clashes followed (Kurt v. Turkey, para. 14).

According to the applicant, around noon on 24 November 1993, when the soldiers had gathered the villagers in the schoolyard (Kurt v. Turkey, para. 15), the soldiers were looking for her son, Üzeyir, but he was not there. He was hiding in his aunt Mevlüde's house. The soldiers went to Mevlüde's house with Davut Kurt, another of the applicant's sons, and took Üzeyir from the house. Üzeyir spent the night of 24 November 1993 with soldiers in the house of Hasan Kılıç. The morning of November 25, 1993, was the last time she saw Üzeyir. The

applicant maintains that there is no evidence he was seen elsewhere after this time (Kurt v. Turkey, para. 15).

On 30 November 1993, the applicant received a response from Captain Izzet Cural at the provincial gendarmerie headquarters. Stating that it was supposed that Üzeyir had been kidnapped by the PKK (the Kurdish Workers' Party) (Kurt v. Turkey, para. 16).

The government submitted that there were substantial grounds for believing that Üzeyir Kurt had joined or been kidnapped by the PKK. They referred that the family alleged that his brother died in gendarme custody several years before, the fact that the applicant stated that he hid when the security forces arrived in the village and the fact that his house was burnt down following the clash in the town. Further, some members of the family had already joined the PKK, and several months after the operation in the village, a shelter was found outside the town, which it was said was used by Üzeyir Kurt in his contacts with the PKK (Kurt v. Turkey, para. 28).

In the application to the Court, the international organisation Amnesty International participated in this case and presented its arguments to the Court (Kurt v. Turkey, para. 68, 69). In their written submissions to the Court, Amnesty International identified the following elements of the crime of '*disappearances*' from their analysis of the relevant international instruments addressing this phenomenon: (a) a deprivation of liberty; (b) by government agents or with their consent or acquiescence; followed by (c) an absence of information or refusal to acknowledge the deprivation of liberty or refusal to disclose the fate or whereabouts of the person; (d) thereby placing such persons outside the protection of the law. According to Amnesty International, while '*disappearances*' often take the form of a systematic pattern, they do not necessarily need to do so. Furthermore, a '*disappearance*' is to be seen as constituting a violation not only of the liberty and security of the individual but also of other fundamental rights (Kurt v. Turkey, para. 68, 69). They referred to the decision of the Inter-American Court of Human Rights in the Velásquez Rodríguez v. Honduras case (judgment of July 29, 1988), in which the court affirmed that '*the phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted integrally.*' (Inter-American Court of Human Rights [IACtHR], 1988). This complex of rights includes the right to life and not to be subjected to ill-treatment (European Court of Human Rights [ECtHR], 1998). The gravity of the violations of rights attendant upon a disappearance has led the United Nations Human Rights Committee to conclude that Article 6 of the International Covenant on Civil and Political Rights requires state parties to take specific and compelling measures to prevent the disappearance of individuals.

They should establish facilities and procedures to investigate thoroughly cases of missing and disappeared persons, which may involve a violation of the right to life (Kurt v. Turkey, para. 68, 69).¹

The applicant maintained that several factors conspired to find her son a victim of the violation of Article 2 of the Convention (European Court of Human Rights [ECtHR], 1998). The applicant stressed that her son's disappearance occurred in a life-threatening context (Kurt v. Turkey, para. 100, 101). In an alternative submission, the applicant asserted that there existed a well-documented high incidence of torture (Kurt v. Turkey, para. 102), and unexplained deaths in custody as well as '*disappearances*' in southeast Turkey, which not only gave rise to a reasonable presumption that the authorities were in breach of their obligation to protect her son's life under Article 2, but, in addition, constituted compelling evidence of a practice of '*disappearances*' (Kurt v. Turkey, para. 102). This would support a claim that her son was also the victim of an aggravated violation of that provision (Kurt v. Turkey, para. 106,108).

The Court recalls at the outset that it has accepted the Commission's findings of fact in respect of the detention of the applicant's son by soldiers and village guards on 25 November 1993 and at the time of the sentence, almost four and a half years had passed without information about his subsequent whereabouts or fate. In such circumstances, the applicant fears that her son may have died in unacknowledged custody at the hands of his captors. The Court notes that in those cases where it has found that a Contracting State had a positive obligation under Article 2 to conduct an effective investigation into the circumstances surrounding an alleged unlawful killing by the agents of that State, there existed concrete evidence of a fatal shooting which could bring that obligation into play. It is to be observed in this regard that the applicant's case rests entirely on presumptions, deduced from the circumstances of her son's initial

1 United Nations. International Covenant on Civil and Political Rights. Adopted 16 December 1966 by General Assembly resolution 2200A (XXI). Article 6: 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

detention, bolstered by more general analyses of an alleged officially tolerated practice of disappearances and associated ill-treatment and extra-judicial killing of detainees in the respondent State. The Court, for its part, considers that these arguments are not sufficient in themselves to compensate for the absence of more persuasive indications that her son did meet his death in custody. Regarding the applicant's argument that there is a practice of violating Article 2, the Court considers that the evidence she has adduced does not substantiate this claim (*Kurt v. Turkey*, para. 106, 108).

This case is key for various reasons. First, Amnesty International presented an allegation in favour of the applicant and explained precisely what constitutes a forced disappearance. Second, Article 6 of the International Covenant on Civil and Political Rights is quoted as another human rights instrument that establishes the prohibition of forced disappearance. Third, the applicant acknowledged that there was a systematic practice of forced disappearances in the southeast of Turkey, and the court dismissed this argument by determining that there was not sufficient proof of this practice. Finally, this is the first case of forced disappearance of the ECtHR. However, the particularity of this case is that the court decided that there was not enough evidence to determine that the victim disappeared in the hands of the authorities of the state, a situation that would later change in subsequent judgments.

In the case of *Ertak V. Turkey*, judgment of 9 May 2000, the applicant, İsmail Ertak, a Turkish national, applied to the Commission on behalf of himself and his son, Mehmet Ertak. He alleged that his son had disappeared under circumstances engaging the responsibility of the State (European Court of Human Rights [ECtHR], 2000).

The facts surrounding the disappearance of the applicant's son are disputed. (*Ertak v. Turkey*, para. 14, 15) The facts as presented by the applicant include the following incidents in Şırnak (a town in southeastern Turkey) between August 18 and 20, 1992: several people were taken into police custody at the Şırnak Gendarmerie Command and Security Police Headquarters on August 21. At the time of the events, the applicant's son, Mehmet Ertak, worked at a coal mine. At the Bakımevi checkpoint, police officers stopped the taxi where Mehmet Ertak was travelling home from work with three other people. The police officers took their identification papers, and one of them asked which one belonged to Mehmet Ertak. The latter identified himself, and the officers took him away. (*Ertak v. Turkey*, para. 14, 15) Abdurrahim Demir, a lawyer taken into police custody on 22 August 1992 and released on 15 September 1992, told the applicant that he had spent five or six days in the same room as Mehmet Ertak. (*Ertak v. Turkey*, para. 17) He also stated that Mehmet Ertak had been severely

tortured. On being brought back to his cell, he had been unconscious, displaying no signs of life. A few minutes later, he had been dragged out of the cell by his legs (Ertak v. Turkey, para. 17).

The facts, according to the government, stated the following: It was true that following clashes in the town of Şırnak between 18 and 20 August 1992, an operation was carried out, and nearly one hundred people were taken into police custody. However, the security forces did not arrest Mehmet Ertak. As the national police headquarters stated in a letter of 21 December 1994, the custody register indicated that he had never been arrested or held in custody.

The applicant alleged that his son, Mehmet Ertak, who had been taken into police custody, had disappeared while in custody and had, in all probability, been killed by the police during questioning. He argued on that account that there had been a breach of Article 2 of the Convention (Ertak v. Turkey, para. 18, 19).

The Court has endorsed the Commission's findings of fact. It is not disputed that there were clashes in Şırnak between 18 and 20 August 1992 and that, according to evidence given by members of the security forces, more than a hundred people were arrested, identity checks were carried out at the entrance to the town and members of the 'rapid intervention force' took persons suspected of terrorist activities directly to the police headquarters. The Court finds on that basis that there is sufficient evidence to conclude beyond a reasonable doubt that, after being arrested and taken into custody, Mehmet Ertak was subjected to severe and unacknowledged ill-treatment and died while in custody of the security forces. Therefore, this case must be distinguished from the Kurt case, in which the Court examined the applicant's complaints about her son's disappearance under Article 5. In the Kurt case, although the applicant's son had been taken into custody, there was no other evidence of the treatment to which he had been subjected after that or his subsequent fate. Stressing that the authorities must account for individuals under their control, the Court observes that no explanation has been offered for what occurred after Mehmet Ertak's arrest. Accordingly, it considers that in the circumstances of the case, the government bore responsibility for Mehmet Ertak's death, which agents of the State caused after his arrest; there has, therefore, been a violation of Article 2 on that account (Ertak v. Turkey, para. 18, 19).

The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention and, together with Article 3, enshrines one of the essential values of the democratic societies making up the Council of Europe. The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by agents of the State. The first sentence of Article 2.1. extends to a positive obligation on States to protect the right to life by

law. This requires, by implication, some form of adequate and effective official investigation when individuals have been killed as a result of the use of force. The procedural protection of the right to life inherent in Article 2 of the Convention entails an obligation for agents of the State to account for their use of lethal force. They subject their actions to some form of independent and public scrutiny that can determine whether the force used was or was not justified in a particular set of circumstances (Ertak v. Turkey, para. 134).

Because the Court has endorsed the Commission's findings regarding the unacknowledged detention of the applicant's son, the ill-treatment to which he was subjected and his disappearance in circumstances from which it could be presumed that he was now dead, the above considerations must apply *mutatis mutandis* to the instant case. It follows that the authorities were obliged to conduct an effective and thorough investigation into the disappearance of the applicant's son. The Court concludes that the respondent State failed to fulfil its obligation to conduct an adequate and effective investigation into the circumstances of the applicant's son's disappearance. Therefore, there has also been a violation of Article 2 in this regard. (Ertak v. Turkey, para. 134) In this case, the procedural and substantive aspects of the right to life were violated.

The applicant requested the Court to find that there was a practice of '*disappearances*' in south-eastern Turkey, which amounted to an aggravated violation of Article 2 of the Convention. He further maintained that there was an officially tolerated practice of providing ineffective remedies in that region of Turkey. In support of that assertion, he argued that there was compelling evidence of a policy of denying incidents involving killings, torture of detainees and disappearances, and the authorities systematically refused or neglected to conduct investigations into victims' grievances. The government rejected the applicant's allegations. The Court considers the evidence obtained in the instant case and the material in the file. There needs to be sufficient evidence to determine whether the Turkish authorities have adopted a practice that infringes Article 2 of the Convention. (Ertak v. Turkey, para. 134) The Court denied that it could establish a systematic practice of forced disappearances in Turkey from this case.

In this case, the ECtHR considered, unlike the case of Kurt v. Turkey, that there was enough evidence to support that the victim disappeared in the custody of the state. There was proof that he was tortured and subjected to ill-treatment in violation of Article 3 of the European Convention on Human Rights (Prohibition of Torture) and Article 5 (Right to Liberty and Security), besides the violation of Article 2 (Right to Life). Furthermore, an interesting addition to this case is that, like in Kurt V. Turkey, the applicant referred to a systematic

practice of forced disappearance in southeastern Turkey, which the court dismissed due to insufficient evidence. As can be seen from the three cases of this court about forced disappearances against Turkey, a pattern can be observed.

In the case *Timurtas v. Turkey*, judgment of 13 June 2000, the applicant, Mr. Mehmet Timurtaş, is a Turkish citizen (European Court of Human Rights [ECtHR], 2000). He applied to the Commission on behalf of himself and his son, Abdulvahap Timurtaş. He alleges that his son disappeared under circumstances that engage the responsibility of the respondent State (*Timurtas v. Turkey*, para. 1,9).

The facts surrounding the disappearance of the applicant's son are disputed. On 14 August 1993, the applicant received a telephone call from someone who did not identify himself. The caller stated that the applicant's son, Abdulvahap, had been apprehended that day near the village of Yeniköy, in the Silopi district of Şırnak province, where soldiers are stationed at Silopi's central gendarmerie headquarters. Abdulvahap had been apprehended together with a friend, who was said to be Syrian, as well as with the muhtar (the elected village head in Turkey) and the latter's son, in front of all the villagers. The muhtar was released soon afterwards. The applicant later heard that Abdulvahap and his friend had been taken around several villages to see if the villagers recognised them. (*Timurtas v. Turkey*, para. 10, 15) The applicant submitted petitions to the Silopi prosecutor's office, which were registered. At the Silopi gendarmerie headquarters, he was told that his son was not in custody (*Timurtas v. Turkey*, para. 10, 15).

The government stated that, by the applicant's admission, his son, Abdulvahap, had left the family home in Cizre two years prior, and the applicant has not heard from his son since then. None of the statements corroborated the applicant's allegations that the security forces had apprehended Abdulvahap Timurtaş. On August 14, 1993, he was detained for an additional period (*Timurtas v. Turkey*, para. 22).

The applicant alleged that his son died whilst in unacknowledged detention and submitted that the respondent State should be held responsible for failing to protect his son's right to life in violation of Article 2 of the Convention. The Court recalls that Abdulvahap Timurtaş was apprehended on August 14, 1993, by gendarmes attached to the Silopi District Gendarmerie Headquarters. He was detained in Silopi, after which he was transferred to a detention facility in Şırnak. More than six and a half years have passed (at the time of the judgment) without information as to his subsequent whereabouts or fate (*Timurtas v. Turkey*, para. 73, 81).

The Court has previously held that when an individual is taken into custody in good health but is found to be injured at the time of release, the State is required to provide a plausible explanation of how those injuries were caused; failing

to do so, an issue arises under Article 3 of the Convention. Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody. (*Timurtas v. Turkey*, para. 10, 15) This is of extreme importance, considering that in cases before the IACtHR, it is established that if the corpse is not found, it is difficult to prove that a crime occurred. Meanwhile, in this case, the ECtHR established that if a person disappeared while in custody of security forces and a period passed, it can be determined that the person died in the state's custody.

In this respect, the period that has elapsed since the person was placed in detention, although not decisive, is a relevant factor. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that they have died. Therefore, the passage of time may affect the weight attached to other circumstantial evidence elements before it can be concluded that the person concerned is to be presumed dead (*Timurtas v. Turkey*, para. 84).

Several elements distinguish the present case from the Kurt case, in which the Court held that there were insufficient persuasive indications that the applicant's son had met his death in custody. In the first place, six and a half years have now elapsed (at the time of the judgment) since Abdulvahap Timurtaş was apprehended and detained – a period markedly longer than the four and a half years between the taking into detention of the applicant's son and the Court's judgment in the Kurt case. Furthermore, whereas Üzeyir Kurt was last seen surrounded by soldiers in his village, it has been established in the present case that Abdulvahap Timurtaş was taken to a place of detention – first at Silopi, then at Şırnak – by authorities for which the State is responsible. Finally, a few elements in the Kurt case file identified Üzeyir Kurt as a person under suspicion by the authorities. In contrast, the facts of the present case leave no doubt that the authorities wanted Abdulvahap Timurtaş for his alleged PKK activities. In the general context of the situation in southeast Turkey in 1993, it cannot be excluded that the unacknowledged detention of such a person would be life-threatening. (*Timurtas v. Turkey*, para. 85) For the above reasons, the Court is satisfied that Abdulvahap Timurtaş must be presumed dead following unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for his death is established noting that the authorities have not provided any explanation as to what occurred after Abdulvahap Timurtaş's apprehension and that they do not rely on any ground of justification in respect

of any use of lethal force by their agents, it follows that liability for his death is attributable to the respondent State. Accordingly, there has been a violation of Article 2 in this regard. (Timurtas v. Turkey, para. 86) The Court reiterates that the obligation to protect 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, some form of effective official investigation when individuals have been killed as a result of the use of force.

The Court is particularly struck by the fact that it was not until two years after the applicant's son had been taken into detention that enquiries were made of the gendarmes in Şırnak. Moreover, there is no evidence that the public prosecutors attempted to inspect custody ledgers or places of detention themselves, or that the Silopi district gendarmerie was asked to account for their actions on August 14, 1993. In light of the preceding, the Court finds that the investigation into the disappearance of the applicant's son was never carried out. It was inadequate and, therefore, in breach of the State's procedural obligations to protect the right to life. There has also been a violation of Article 2 of the Convention on this account (Timurtas v. Turkey, para. 89, 90).

The applicant complained that the disappearance of his son constituted inhuman and degrading treatment in violation of Article 3 of the Convention. The Court observes that not only did the investigation into the applicant's allegations lack promptitude and efficiency, but certain members of the security forces also displayed a callous disregard for the applicant's concerns by denying, to the applicant's face and, contrary to the truth, that his son had not been taken into custody. Noting, finally, that the applicant's anguish concerning his son's fate continues to the present day, the Court considers that the disappearance of his son constitutes inhuman and degrading treatment contrary to Article 3 of the Convention concerning the applicant (Timurtas v. Turkey, para. 91, 97, 98).

This case has several essential notions. First, it establishes the importance of the time that has passed since a person was last seen and considers this period relevant in determining, sadly, that the person must be presumed dead. Second, stated differences with the Kurt V. Turkey case by establishing that more time had elapsed since the disappearance of Timurtas than that of Kurt. Also, the authorities suspected Kurt was part of the PKK, and the last time he was seen was around soldiers, but not in their custody, unlike Timurtas, who was taken by soldiers and was not suspected of being part of the Kurdish party or another suspicious activity. Third, the court recognises the situation in southeast Turkey and the crimes committed in the previous case. The ECtHR considers that the disappearance in southeast Turkey was life-threatening. Fourth, the court

noted that the applicant's presentation to the law was not considered and established that the investigation was inadequate and ineffective, requiring impartiality and promptness. For all of this, in addition to the violation of Article 2, there was a violation of Article 3 regarding the applicant and the suffering and anguish caused by not knowing the whereabouts of his son. This is essential because the tribunal recognises the rights of indirect victims and relatives of the direct victim as subjects whose rights must be protected. This was a pivotal case that significantly influenced the ECtHR's approach to forced disappearances from then on.

Conclusion

Tracing the evolution of forced disappearances in the ECtHR is relevant in the context of these three cases. In the first case, *Kurt v. Turkey*, the tribunal decided that there was no proof beyond a reasonable doubt that the victim had died in the state's custody. There was a change in the court's analysis in the second case, where the tribunal proved that the security forces took the victim into custody. The individuals' whereabouts have been unknown until now.

It is significant that in two of the cases, it was established by the applicants that there was a systematic pattern of forced disappearances in the southeast of Turkey. However, the ECtHR dismissed this fact, stating that there was insufficient evidence to support it. As demonstrated in later judgments, there was a clear pattern of systematic and continuous disappearances of people by the authorities in the southeast of Turkey that caused several persons to be kidnapped and die in the custody of the state. The court in *Timurtas v. Turkey* recognised this.

Furthermore, the IACtHR had more than 80 cases of forced disappearances until 2024, while the ECtHR had 26. This can be explained by the fact that the latter court's first case of enforced disappearance occurred in 1998, and most of the cases involved Turkey and Russia. This does not mean that these were the only cases of forced disappearances in Europe, but they were the ones that reached the court. For example, after the dissolution of the Yugoslav Republic, there were crimes of forced disappearances that did not get to the ECtHR.

In the ECtHR, the cases of forced disappearance had different characteristics. Mostly, they took place in the southeast of Turkey and Russia, primarily linked to the Chechen conflict. Soldiers, tortured, and assassinated were the victims. This court also gave relevance to the relatives' rights as indirect victims.

The ECtHR ruled that the entire state apparatus was complicit in this crime by failing to provide documents, concealing evidence, and not cooperating in

the investigations. The judicial power was also ineffective in getting an answer about the disappeared people.

This article focuses on three key cases against Turkey that demonstrate the evolution and development of the ECtHR's standards in cases of forced disappearances.

Fundamentally, cases of forced disappearances never stop being investigated, no matter how much time passes. Additionally, the laws of immunity or indulgence must be dismissed because they hinder justice for the victims. The seriousness of the nature of this crime and the lack of investigation present the character of *ius cogens*,² and it can never be prescribed. This court must persist with this work and oblige the states to continue the investigation to find and punish those responsible for the crime. This will achieve respect and compliance with the provisions of the European Convention on Human Rights and the rule of law.

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Kaliman, S. J. (2026). Forced Disappearances in the European Court of Human Rights. *Belügyi Szemle*, 74(1), 205–222. <https://doi.org/10.38146/BSZ-AJIA.2026.v74.i1.pp205-222>

Statements

Conflict of interest

The author has declared no conflict of interest.

Funding

The author did not receive any financial support for researching, writing, and/or publishing this article.

Ethics

No dataset is associated with this article.

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