



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

SECOND SECTION

**CASE OF İLBEYİ KEMALOĞLU AND MERİYE KEMALOĞLU v.
TURKEY**

(Application no. 19986/06)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 20 March 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19986/06) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr İlbeyi Kemaloğlu and Mrs Meriye Kemaloğlu (“the applicants”), on 19 April 2006.

2. The applicants were represented by Mr E. Cinmen, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 1 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On 29 March 2011 the applicants’ additional complaint under Article 2 of the Convention was also communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1965 and 1974 respectively, and live in İstanbul. They are the parents of Atalay Kemaloğlu, who died in 2004, when he was seven years old.

5. On 22 January 2004 İstanbul was hit by a heavy snow storm. Consequently, upon the instructions of the Ministry of Education, schools in İstanbul broke up for the winter break a day earlier than scheduled. On that

day, Atalay had gone to his primary school on the municipality's shuttle, which travelled between his home and the school. After the school bulletins had been distributed, classes were dismissed at the beginning of the afternoon, before the normal school day was over.

6. According to the information in the case file, Atalay had not enrolled for the paid school bus, but was using the shuttle that was operated for free by the municipality. As the early dismissal of the classes had not been notified to the municipality, the shuttle did not come when the school was closed. Atalay therefore tried to walk back home, which was 4 km away from his school. Late in the afternoon, when he did not return from school, the applicants called the police. However, it was not possible to find Atalay. His body was found the following day, frozen near a river bed.

7. Following the incident, the Primary School Inspectors' Presidency of the Istanbul Education Directorate (*İstanbul Valiliği İl Milli Eğitim Müdürlüğü İlköğretim Müfettişleri Başkanlığı*) initiated an investigation, during which the inspectors took the statement of the driver of the municipality's shuttle. He explained that on the day of the incident he had taken seven students from their homes and had left them in front of the school. Every day, he took them back around 5.30 p.m. On that day, no one informed him that the school would be closed at 2.00 p.m. Therefore, when he went to the school, everyone had already left. The inspectors prepared a report on 27 January 2004 and found that the deputy headmaster of the school had been at fault for not informing the municipality about the early closure of the schools. On 18 February 2004 the Presidency concluded that the deputy headmaster of the school had been at fault for neglecting to inform the municipality's shuttle service of the early dismissal of the classes. It accordingly decided to issue a warning to the deputy headmaster as a disciplinary sanction.

8. On 6 August 2004 the applicants filed two separate actions with the Istanbul Administrative Court against the Ministry of Education, Yenidoğan Municipality and Istanbul Municipality. Alleging that their son had lost his life due to the negligence of the domestic authorities, the first applicant requested 375,000,000,000 Turkish liras (TRL) (approximately 207,000 euros (EUR) at the time) and the second applicant TRL 324,000,000 (approximately EUR 188,000 at the time) covering both pecuniary and non-pecuniary compensation. They also requested legal aid for the court fees.

9. On 30 September 2004 the Istanbul Administrative Court requested the applicants to complete the case file by submitting relevant documents in support of their legal aid claim within one month.

10. In support of their legal aid claim, both applicants submitted to the Istanbul Administrative Court certificates from the office of the headman (*muhtarlık*) attesting to their indigence, certificates from the District Governor confirming that they did not own any immovable property and certificates indicating that they were in debt to the Tax Office.

11. On 8 June 2005 the Istanbul Administrative Court dismissed the applicants' request for legal aid without giving any specific reasons.

12. Subsequently, on 8 August 2005 the applicants were notified that they were required to pay TRL 5,072,600,000 (approximately EUR 3,000 at the time) and TRL 4,384,100,000 (approximately EUR 2,600 at the time) respectively for the court fees within one month in order for the proceedings to be continued.

13. On 29 December 2005 the Istanbul Administrative Court decided to discontinue the proceedings as the applicants had failed to pay the relevant court fees.

14. In the meantime, on 27 February 2004 the applicants filed a criminal complaint with the Ümraniye Public Prosecutor against the school headmaster, the deputy headmaster and Atalay Kemaloglu's class teacher. On an unspecified date, pursuant to Law no. 4483 (Law on the Prosecution of Civil Servants and Public Officials) the Ümraniye Public Prosecutor referred the file to the Ümraniye District Governor's office and requested authorisation to prosecute the accused persons.

15. On 16 April 2004 the Ümraniye District Governor refused to authorise the public prosecutor to initiate criminal proceedings against the school headmaster, the deputy headmaster and the class teacher, on the basis of a report prepared by the headmaster of the Ümraniye High School, who stated that no fault could be attributed to the accused persons.

16. On 13 May 2004 the applicants lodged an objection against the decision of the Ümraniye District Governor's office.

17. On 25 June 2004 the Istanbul Regional Administrative Court annulled the decision of the Ümraniye District Governor and held that there was sufficient evidence in the case file to initiate criminal proceedings against the accused headmaster, deputy headmaster and class teacher.

18. Accordingly, on 4 October 2004 the Ümraniye Public Prosecutor filed an indictment with the Ümraniye Criminal Court against S.Ç (the deputy headmaster of the school), S.Ö. (Atalay's class teacher) and Ö.Ö (the school headmaster), accusing them of misconduct in office under Article 230 of the former Criminal Code. The applicants joined the criminal proceedings as civil parties and reserved their right to claim compensation.

19. During the proceedings, the court heard the defence statements of the accused. Atalay's class teacher, Ms S.Ö., maintained that a day before the incident she had told her students that their parents should be present on 22 January 2004 as school bulletins would be distributed. The court also obtained an expert opinion from a psychologist, who stated that a seven year old child could not be expected to find effective solutions when faced with extraordinary situations. In this connection, she stated that the child could not have foreseen the dangers he would face when he tried walking home alone in the heavy snow storm.

20. On 28 June 2006 the Ümraniye Criminal Court acquitted the accused persons of the charges against them. In its decision, the court held that the death of Atalay had not been the result of a deliberate action. The reasoning stated that there were 2,400 pupils in the school, and that it could not be considered reasonable to expect the school authorities to control where the pupils went after the classes were dismissed. The court further held that in order to conclude that there had been misconduct in office, the public officer had to have wilfully neglected performing his duty. According to the court, in the instant case the school authorities could not be reasonably expected to foresee that Atalay would be frozen to death on his way back home. The court also decided that it did not have jurisdiction to examine whether or not there had been a service-related fault (*hizmet kusuru*) in the circumstances of the present case.

21. On 11 November 2010 the Court of Cassation quashed the judgment of the Ümraniye Criminal Court, without examining the merits of the case, for procedural reasons, namely due to the absence of the signature of the court's clerk on the minutes of a hearing which had been held on 2 February 2005. The case file was accordingly remitted to the Ümraniye Criminal Court.

22. On 13 May 2011 the Ümraniye Criminal Court once again acquitted S.Ç., S.Ö and Ö.Ö of the charges against them on the basis of the same reasoning as given in its previous judgment of 28 June 2006.

23. The appeal proceedings are still pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. A full description of the relevant domestic law regarding legal aid may be found in *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, §§ 19-22, 17 July 2007

25. In August 2004, the minimum wage in force was TRL 444,150,000 (approximately EUR 245 at the time) a month.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

26. The applicants complained that Article 2 of the Convention had been breached in that the State had failed in its positive obligation to protect their son's life and failed to carry out an effective investigation into the circumstances of his death. Article 2 of the Convention reads:

“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. Admissibility

27. Referring to the criminal proceedings, which are currently pending before the domestic courts, the Government argued that the applicants’ complaint raised under Article 2 of the Convention must be rejected for being premature under Article 35 of the Convention.

28. The Court observes that this objection is closely linked to the Government’s positive obligation under Article 2 to set up an effective judicial system, *inter alia* to provide appropriate redress to the victims. Accordingly, it decides to join it to the merits.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The submissions of the parties*

(a) **The applicants**

30. The applicants maintained that the respondent State had failed to protect the right to life of their child. In their view, by letting a seven year-old child go alone in a heavy snow storm, the school authorities had failed in their duties. The applicants further complained about the alleged ineffectiveness of the domestic remedies, as in the present case there had been no effective remedy capable of holding accountable those responsible for the death of their son, Atalay Kemaloğlu.

(b) The Government

31. The Government did not submit any observations regarding the merits of the case, stating that the criminal proceedings were still pending before the Court of Cassation.

2. The Court's assessment

(a) General principles

32. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

33. Such positive obligation has been found to arise in a range of different contexts examined so far by the Court. Thus, for example, and as regards policing, the Court has noted that the authorities are under a duty to protect the life of an individual where it is known, or ought to have been known to them in view of the circumstances, that he or she was at real and immediate risk from the criminal acts of a third party (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII).

34. The State's positive obligation under Article 2 has also been found to be engaged in the health care sector, be it public or private, as regards the acts or omissions of health professionals (see *Dodov v. Bulgaria*, no. 59548/00, §§ 70, 79-83 and 87, ECHR 2008-...; *Byrzykowski v. Poland*, no. 11562/05, §§ 104 and 106, 27 June 2006; and *Vo v. France* [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII, with further references), as well as in respect of the management of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII) and ensuring safety on board a ship (see *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2001) or on building sites (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003). In certain circumstances, positive obligations may attach to a State to protect individuals from risk to their lives resulting from their own action or behaviour (see *Bone v. France* (dec.), no. 69869/01, 1 March 2005; *Kalender v. Turkey*, no. 4314/02, §§ 42-50, 15 December 2009). In addition, the extent of the State's positive obligation under Article 2 has been addressed by the Court in the context of road safety (see, for example, *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007). The State's duty to safeguard the right to life was also considered to extend to the provision of emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of

injuries sustained as a result of an accident (see *Furdik v. Slovakia* (dec.), no 42994/05, 2 December 2008).

35. The above list of sectors is not exhaustive. Indeed, in its *Öneryıldız v. Turkey* judgment cited above (§ 71) the Grand Chamber observed that the Article 2 positive obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake. In this connection, the Court considers that the State's duty to safeguard the right to life is also applicable to school authorities, who carry an obligation to protect the health and well-being of pupils, in particular young children who are especially vulnerable and are under the exclusive control of the authorities (see, *mutatis mutandis*, *Molie v. Romania* (dec.), no. 13754/02).

36. However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources. Accordingly, not every risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see, amongst other authorities, *Keenan v. the United Kingdom*, no. 27229/95, §§ 89-92, ECHR 2001-III, and *A. and Others v. Turkey*, no. 30015/96, §§ 44-45, 27 July 2004).

37. The Court recalls in this connection that the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see, among other cases, *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).

38. The State's positive obligation also requires an effective independent judicial system to be set up so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Dodov*, cited above, § 83, and *Byrzykowski*, cited above, §§ 104-118). This obligation does not necessarily require the provision of a criminal-law remedy in every case. Where negligence has been shown, for example, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts. However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 53, ECHR 2002-I).

39. For the Court, and having regard to its case-law, the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see, *Ciechońska v. Poland*, no. 19776/04, § 67, 14 June 2011). The events related to the death of the applicants' son therefore fall within the scope of Article 2 of the Convention.

(b) Application of the general principles in the present case

40. In the present case, the applicants' seven year-old son was frozen to death in 2004 as he was trying to return home alone after the early dismissal of the classes due to bad weather conditions. The Court observes that the Government did not make any comments on the merits of the complaint raised under Article 2 of the Convention by referring to the criminal proceedings which are still pending before the Court of Cassation. The Court notes however that following the child's death, disciplinary proceedings were initiated against the deputy headmaster of the school. It further observes that at the end of these proceedings, the Primary School Inspectors' Presidency of the Istanbul Education Directorate which conducted the disciplinary investigation, found it established that the deputy headmaster of the child's school had been at fault for neglecting to inform the municipality's shuttle service of the early dismissal of the classes. A warning was accordingly issued to the deputy headmaster as a disciplinary sanction (see paragraph 7 above).

41. The Court reiterates once again the principle cited above (paragraph 36) and notes that not every risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Nevertheless, in the circumstances of the present case, where a primary school is exceptionally closed early due to bad weather conditions, in the Court's opinion, it cannot be considered as unreasonable to expect the school authorities to take basic precautions to minimise any potential risk and to protect the pupils. Therefore, the Court considers that, as also stated in the Presidency's decision dated 18 February 2004, by neglecting to inform the municipality's shuttle service about the early closure of the school, the domestic authorities failed to take measures which might have avoided a risk to the right to life of the applicants' son.

42. The Court further recalls that an issue of State responsibility under Article 2 of the Convention might arise in the event of the inability of the domestic legal system to secure accountability for negligent acts endangering or resulting in loss of human rights (see *Ciechońska*, cited above, § 71). The State's positive obligation under Article 2 also requires the setting up of an effective functioning legal system.

43. In the present case, the Court is therefore also called upon to examine whether the available legal remedies, taken together, as provided in law and applied in practice, could be said to have amounted to legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victims.

44. The Court observes that following the death of the applicants' son, the administrative proceedings initiated by the applicants were discontinued as the applicants had been refused legal aid and had therefore been unable to pay the relevant court fees (see paragraphs 8-13 above). Consequently, the refusal of their legal aid request deprived the applicants of the possibility of submitting their case before a tribunal, and they were therefore denied to benefit from a remedy which could afford them an appropriate civil redress (see paragraphs 52 and 53 below).

45. Furthermore, the criminal proceedings initiated by the public prosecutor in 2004 against the school's headmaster, deputy headmaster and the child's class teacher on account of negligence and misconduct of office, are still pending before the Court of Cassation, although eight years have elapsed since the incident. In this connection, the Court is particularly struck by the long period of time which elapsed between the acquittal judgment of the Ümraniye Criminal Court delivered on 28 June 2006, and the decision of the Court of Cassation dated 11 November 2010. In this connection, the Court notes that, after almost four and a half years, the Court of Cassation quashed the judgment of the Ümraniye Criminal Court, without examining the merits of the case, on the basis of a procedural reason, namely the absence of the signature of the court's clerk at one of the hearings that had been held before the first instance court. The case was accordingly remitted to the Ümraniye Criminal Court, which once again acquitted the accused of the charges against them on 13 May 2011. According to the information submitted by the Parties, the proceedings are still pending before the Court of Cassation (see paragraphs 18-23 above).

46. Regard being had to the circumstances of the case as a whole, the Court finds that the serious deficiencies encountered by the applicants during the domestic court proceedings, namely the unreasonable delay in the proceedings - particularly the period before the Court of Cassation between 28 June 2006 and 11 November 2010 -, and their inability to initiate compensation proceedings before the administrative courts due to the refusal of their legal aid claim, led to the failure of the domestic courts to hold accountable those responsible for the death of the applicants' child and to provide an appropriate redress to the applicants.

47. In the light of the above, the Court concludes that the domestic authorities did not display due diligence in protecting the right to life of the applicants' seven-year-old son. Moreover, neither the criminal proceedings which are still pending before the national courts nor the administrative remedy afforded by the legal system, enabled the applicants to effectively

establish any liability for the death of their son and to obtain appropriate redress.

48. Accordingly, the Court dismisses the Government's preliminary objection regarding the exhaustion of domestic remedies and holds that there has been a violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

49. The applicants complained that the refusal to grant them legal aid in connection with their compensation case had infringed their right to a fair hearing guaranteed by Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

50. The Government contested that argument, arguing that before the domestic courts the applicants had failed to submit documents attesting to their poverty.

A. Admissibility

51. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

52. The Court reiterates the basic principles laid down in its established case law regarding legal aid (see *Kreuz v. Poland*, no. 28249/95, § 52-57, ECHR 2001-VI, *Bakan v. Turkey*, no. 50939/99, §§ 66-68, 12 June 2007 and *Mehmet and Suna Yiğit*, cited above, § 33-34). In the present case, the court fees that the applicants were required to pay were calculated on the basis of the value of the litigation and amounted to TRL 5,072,600,000 and TRL 4,384,100,000 respectively while the monthly minimum wage was TRL 444,150,000 at the time. Although the Government argued that the applicants had failed to submit documents attesting to their poverty, the Court observes that both applicants submitted certificates proving their poor financial situation in support of their legal aid request before the Istanbul Administrative Court. It is clear from that certificate delivered by the office of the headman that the applicants had no income and that they were in a poor financial situation (see paragraph 10 above). Nevertheless, their legal aid request was rejected by the Administrative Court, which did not indicate

a specific reason in its decision, but merely referred to the relevant legislation.

53. The Court observes that it has already examined similar grievances in the past and has found a violation of Article 6 § 1 of the Convention on the ground, *inter alia*, that the legal aid system in Turkey fails to offer individuals substantial guarantees to protect them from arbitrariness (see *Bakan*, cited above, §§ 74-78; *Mehmet and Suna Yiğit*, cited above, §§ 31-39; *Eyüp Kaya v. Turkey*, no. 17582/04, §§ 22-26, 23 September 2008; and *Kaba v. Turkey*, no. 1236/05, §§ 19-25, 1 March 2011). The Court has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned cases. It considers that the refusal of the applicants' legal aid request deprived them of the possibility of submitting their case before a tribunal and concludes that in the instant case there has been a disproportionate restriction on the applicants' right of access to a court.

54. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

55. The applicants claimed 435,000 Turkish liras (TRY¹) (approximately EUR 182,200) and TRY 384,000 (approximately EUR 160,900) in respect of non-pecuniary damage.

56. The Government contested the claims.

57. The Court considers that the applicants have undoubtedly suffered anguish and distress on account of the failure of the domestic authorities to provide them with an effective remedy to establish any liability for the death of their son and to obtain appropriate redress. Ruling on an equitable basis, the Court awards the applicants jointly EUR 50,000 in respect of the damage sustained by them as a result of violations of Article 2 and Article 6 § 1 of the Convention.

58. Furthermore, the Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicants, as far as possible, are put in the position in which they would have been had this provision not been disregarded (see *Mehmet and Suna Yiğit*, cited above, § 47). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be to quash or otherwise set aside the Istanbul

¹ On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1: TRL 1,000,000

Administrative Court's decision dated 29 December 2005 (paragraph 13 above) and restart the proceedings, in accordance with the requirements of Article 6 § 1 of the Convention, should the applicants so request.

B. Costs and expenses

59. Referring to the Istanbul Bar Association's scale of fees, the applicants' representative claimed TRY 11,500 (approximately EUR 4,800) for the costs and expenses incurred before the domestic courts and the Court. In this connection, he stated that due to the poor financial situation of the applicants, he had not received any legal fees from them during the whole domestic court proceedings since 2004.

60. The Government contested the claim.

61. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the claim submitted by the applicants' representative is not excessive bearing in mind the eight year long domestic court proceedings as well as the proceedings before the Court in Strasbourg. It accordingly awards the sum of EUR 4,500 to the applicants jointly covering all costs under this head.

C. Default interest

62. The Court considers it appropriate that the default interest rate 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. *Joins* to the merits the Government's preliminary objection concerning the exhaustion of domestic remedies and dismisses it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance

with Article 44 § 2 of the convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 4,500 (four thousand five hundred euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President