



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

SECOND SECTION

CASE OF FATİH ÇAKIR AND MERVE NİSA ÇAKIR v. TURKEY

(Application no. 54558/11)

JUDGMENT

STRASBOURG

5 June 2018

FINAL

05/09/2018

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

In the case of Fatih Çakır and Merve Nisa Çakır v. Turkey,

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

Robert Spano, *President*,

Paul Lemmens,

Ledi Bianku,

Işıl Karakaş,

Nebojša Vučinić,

Valeriu Griţco,

Jon Fridrik Kjølbro, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 15 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 54558/11) 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 Fatih Çakır and Ms Merve Nisa Çakır (“the applicants”), on 8 July 2011.

2. The applicants were represented by Mr İ. Ataş, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, under Article 2 of the Convention, that the failure of the relevant State authorities to take the necessary safety measures on a road had led to the death of their wife and mother, Ms Yeşim Çakır. They further alleged, under Articles 6 and 13, that the ensuing judicial proceedings had not been adequate to establish whether the responsibility of the State authorities had been engaged in connection with the death.

4. On 30 June 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1979 and 2007 respectively and live in İzmir.

6. On 25 October 2008, as the first applicant was driving in İzmir with his wife and one year-old daughter in the back seat, he lost control of his car when the road curved into a sharp bend. As a result, the car dropped into an empty concrete canal running along the right-hand side of the road, some five to six metres below the level of the road. The first applicant's wife, Yeşim Çakır, lost her life at the spot and his daughter (the second applicant) was slightly injured.

7. The accident report – prepared on the same day by the traffic police on the basis of their findings and the statements of the first applicant – indicated that after the first applicant had lost control of the vehicle on the bend, it had first crashed into the metal barrier alongside the road, and had then fallen over the barrier into an empty canal. The report specified that the crash barrier at that particular spot had been damaged prior to the accident. It also indicated that a road sign warning of a sharp bend ahead had been in place at the time of the accident.

A. Criminal proceedings

8. After the accident the first applicant was taken to a police station to give a statement. He told the police that as he had been approaching the sharp bend, he had felt his car skidding to the left. When, at the same time, he had noticed another car approaching him from behind on his left, he had first applied the brakes and had then swerved his car to the right, at which point he had lost control of the car and hit the crash barrier on the right side of the road. However, since the barrier had been damaged prior to the incident, it had not stopped the car and, therefore, the car had dropped down into the empty canal. He claimed that he had lost control of the car as a result of the dangerous bend in the road.

9. On the same date, the police also took a statement from M.S., an eyewitness. M.S. told the police that as he had been driving down the opposite side of the road, he had seen the first applicant's car suddenly swerve to the right, after which it had hit the crash barrier on its right-hand side and had dropped down the side of the road.

10. Later the same day the İzmir public prosecutor questioned the first applicant in connection with the accident. The first applicant admitted before the public prosecutor that he had lost control of the car as he had been taking the bend. He said that, for a reason unknown to him, his car had skidded. He claimed that the road had not been wet, but there had been some slippery substance on it, like sand.

11. On 28 October 2008 the İzmir public prosecutor's office filed a bill of indictment with the İzmir Assize Court against the first applicant, for causing death and bodily injury by negligence.

12. At the first hearing held before the İzmir Assize Court on 15 December 2008 the first applicant stated that as he had been driving

along the road at a normal speed, his car had started skidding to the left for an unknown reason, and that he had swerved the car to the right to avoid hitting the car approaching him from the opposite lane on the left. He did not ask the court to carry out an additional investigation into the incident, but stated that the fatal accident had taken place as the crash barrier alongside the road, which was supposed to have been able to stop the car, had been badly damaged.

13. At the same hearing, the İzmir Assize Court decided that although the first applicant had been charged with causing death and bodily injury by negligence and that his negligence in that regard had been established, there was no need to subject him to a criminal penalty as it could be accepted that he had been aggrieved by the accident, which had resulted in the death of his wife, to a sufficient degree within the meaning of Article 22 § 6 of the Turkish Criminal Code. That judgment, which was not appealed against by the first applicant, became final on 23 December 2008.

B. Declaratory judgment of the İzmir Magistrates' Court

14. In the meantime, on 17 November 2008 the first applicant applied to the İzmir Magistrates' Court for a declaratory judgment in order to establish (i) whether and to what extent the state of the crash barrier alongside the road had contributed to the fatal accident and whether the barrier had been repaired after the accident; and (ii) whether there had been any structural problems with the road, such as unusual sloping.

15. The expert report submitted to the İzmir Magistrates' Court on 5 December 2008 made the following findings:

- the crash barrier at the bend in question had been damaged prior to the accident and the damaged parts of it had not been repaired after the accident;
- there was a slight dent in the road right by the damaged barrier; however, there was no structural problem with the slope of the road surface.

C. Compensation proceedings before the İzmir Administrative Court

16. On 2 March 2009 the first applicant applied for compensation from the General Directorate of Highways ("the General Directorate") and the Municipality of İzmir ("the Municipality") in connection with the road traffic accident that had claimed his wife's life. According to him, it was evident from the traffic accident report that the crash barrier at the site of the incident had been damaged prior to the incident, which suggested that other road accidents had taken place at that same spot. He argued that the defective state of the barrier, which had been put in place to prevent cars from dropping down the side of the road in the event of impact, had greatly aggravated the outcome of the accident. Had the barrier been repaired prior

to the accident, it would most probably have prevented the car, which had been travelling within the legal speed limit, from dropping down into the canal, in which case his wife would possibly not have sustained fatal injuries. He further claimed that the fact that there had been other accidents at the same spot in the past suggested a structural problem with the road.

17. Both the General Directorate and the Municipality denied responsibility for the maintenance of the crash barrier at issue.

18. On 20 May 2009 the applicants brought an action for compensation before the İzmir Administrative Court against the Municipality alone, arguing that the latter had been responsible for Yeşim Çakır's death on account of its failure to repair the crash barrier in a timely manner, as well as the possible structural problems with the road. The applicants submitted to the Administrative Court as evidence the expert report ordered by the İzmir Magistrates' Court (see paragraph 15 above).

19. The Municipality once again denied responsibility for the maintenance of the crash barrier in question, but also stated that in any event, sole responsibility for the accident lay with the first applicant, who had lost control of his car despite the road signs warning of a sharp bend ahead.

20. In their response to the Municipality, the applicants repeated that the state of the roadside barrier showed that other accidents had happened at that exact spot on previous occasions, which in turn suggested a structural problem with the road, such as an unusual sloping towards the side. They requested an expert examination on that matter.

21. By an interim decision dated 18 February 2010 the İzmir Administrative Court requested a copy of the criminal case file, as well as detailed information from the Municipality and the General Directorate in order to be able to determine which of those authorities had been responsible for repairing the crash barrier. It appears from the information submitted by the authorities that the repair work in question fell under the responsibility of the Municipality.

22. On 16 April 2010 the applicants once again requested an expert examination of the road in order to establish any structural problems that may have triggered the accident. They also asked the Administrative Court to find out how many accidents had happened on that road in the past. It appears that the Administrative Court did not obtain the information requested by the applicants.

23. Relying mainly on the findings in the traffic accident report and the statements of the first applicant, on 27 May 2010 the İzmir Administrative Court found that the first applicant bore sole responsibility for the accident in question, as he had lost control of his car while taking the bend, despite a sign warning of the sharp bend ahead. It therefore rejected the applicants' claims against the Municipality.

24. The applicants appealed against that judgment. They argued that the judgment was based solely on the traffic accident report, and that a technical expert opinion was required to be able to ascertain whether the first applicant had lost control of his car as a result of an anomaly in the road. They also argued that although the roadside barrier had been damaged to the point of completely losing its protective capacities, the Administrative Court had not taken that factor into account in assessing the Municipality's responsibility for the accident.

25. On 25 January 2011 the Supreme Administrative Court upheld the judgment of the İzmir Administrative Court.

II. RELEVANT DOMESTIC LAW

A. General Directorate of Highways Act (Law no. 5539) (repealed)

26. Under section 2 of the General Directorate of Highways Act (Law no. 5539) in force at the material time, the General Directorate was tasked not only with the construction and repair of roads, but also with taking measures to ensure their safe use and conducting studies for those purposes.

B. Road Traffic Act (Law no. 2918)

27. Section 7 of the Road Traffic Act provides for the duties and powers of the General Directorate of Highways. The relevant parts of the provision read as follows:

“The duties and powers of the General Directorate of Highways under this Act are as follows:

(a) To take the measures necessary to ensure the safety of life and property on the roads, the construction and maintenance of which they are responsible for, by putting in place the necessary arrangements and markings, or to have such measures taken [by others];

...

(f) To assemble data on the causes of road traffic accidents and to take ... the necessary technical measures to prevent the occurrence of [such accidents];

...

(h) To take the necessary measures in response to accidents which, according to analyses conducted by the relevant units ..., are brought about by [problems with] the infrastructure and the physical structure of a road ... or to have such measures taken [by others];

...”

C. Regulations on the Duties, Powers and Responsibilities of the General Directorate of Highways (no. 28045)

28. Article 14 of the Regulations on the Duties, Powers and Responsibilities of the General Directorate of Highways, which sets out the specific duties of the Traffic Safety Department of the General Directorate, provides as follows in its relevant paragraph:

“...

(i) To collect and analyse data on the causes of road traffic accidents and to take the necessary technical measures to prevent their occurrence, or to have such measures taken [by others];

...”

D. Road Traffic Regulations (no. 23053)

29. Article 16 of the Road Traffic Regulations sets out the municipalities’ duties and responsibilities, as relevant, in respect of the roads which they are responsible for constructing and maintaining:

“(a) To maintain the state of the roads in a manner that ensures the order and safety of traffic;

(i) To implement the [necessary] measures, as recommended by the competent authorities, in areas where accidents occur due to the structure of the road or insufficient road traffic signs;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

30. The applicants complained, under Article 2 of the Convention, that the failure of the relevant State authorities to take the necessary protective measures in respect of the road in question, such as repairing the damaged roadside barrier, had aggravated the outcome of the accident and had resulted in the death of their wife and mother, Yeşim Çakır. They stressed in this connection that some time after the accident, the authorities had not only repaired the barrier, but had added another tier, in order to increase its capacity to protect against cars leaving the road.

31. The applicants further claimed, under Articles 6 § 1 and 13 of the Convention, that the İzmir Administrative Court, which was bound by law to collect all evidence relevant to the case of its own motion, had dismissed their requests for the obtaining of an expert opinion and the collection of

other evidence to shed light on the circumstances of the accident. The applicants emphasised in this regard that the establishment of the facts of the current case had required technical expertise, which both the police officers who had prepared the road traffic accident report and the Administrative Court judges had lacked.

32. The Court considers that the applicants' complaints fall to be examined under Article 2 of the Convention alone, the relevant part of which reads as follows:

"1. Everyone's right to life shall be protected by law."

A. Admissibility

33. The Government claimed that the applicants' complaints under Article 2 of the Convention were incompatible *ratione personae* with the provisions of the Convention, as the first applicant, who had alone been responsible for the accident that had claimed his wife's life, could not be considered to have victim status. They further argued that the applicants had failed to exhaust all available domestic remedies in relation to their complaints, as they had not applied to the Supreme Administrative Court for rectification of its decision dated 25 January 2011.

34. In response to the Governments' argument that they lacked victim status, the applicants stated in the first place that unlike the first applicant, who had been charged with causing the death of Yeşim Çakır by negligence, the second applicant had had no involvement in the accident. Therefore, her victim status in connection with the death of her mother could not be challenged in any way. They added that, even if the first applicant had been found responsible for his wife's death in the criminal proceedings, that finding did not preclude the concurrent civil liability of the State authorities for the death. They emphasised in this connection the distinction between criminal and civil liability, and argued that the first applicant also retained victim status in respect of the death of his wife, considering their allegation that the authorities bore partial responsibility for her death.

35. The Court considers that the Government's preliminary objection regarding the applicants' victim status is closely linked to the substance of the complaint under Article 2 and decides accordingly to join it to the merits.

36. As for the Government's second preliminary objection concerning the non-exhaustion of domestic remedies, the Court notes that it has examined and rejected similar arguments in previous cases (see, for instance, *Dağtekin and Others v. Turkey*, no. 70516/01, § 22, 13 December 2007, and the case cited therein). The Court finds no particular circumstances in the present application which would require it to depart

from that conclusion. Consequently, it rejects the Government's preliminary objection in this respect.

37. The Court notes that the application 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 parties' arguments

38. The applicants made the same allegations as those submitted to the Supreme Administrative Court in their appeal petition (see in paragraph 24 above). They stressed in particular that the proceedings conducted before the İzmir Administrative Court had not been of a nature to dispel all doubts as to whether any omission on the part of the authorities had contributed to the accident or its tragic outcome.

39. The Government argued that the issues concerning the admissibility and assessment of evidence were primarily matters for regulation by the national courts, and that the Court should not act as a fourth-instance body when it reviews the decisions of national courts. They emphasised in this regard that the decision whether to request an expert opinion was within the domestic court's discretion. The İzmir Administrative Court had found in the instant case that the first applicant bore sole responsibility for the accident, as he had lost control of his car while taking a sharp bend at an excessive speed, and that the responsibility of the Municipality could not be engaged in these circumstances. According to the Government, the Administrative Court had based its decision on all the evidence available in the case file, including the expert report submitted to the İzmir Magistrates' Court that had found no structural problems in the road, and had not deemed it necessary to obtain an expert report in addition to that evidence. The Government argued that there had been no arbitrariness in that decision. They added that the Administrative Court was in any event bound by the finding of the criminal court regarding the first applicant's guilt. They lastly drew the Court's attention to what they deemed to be discrepancies between the statements delivered by the first applicant before different domestic authorities as to the circumstances of the accident.

2. The Court's assessment

40. 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 stipulates its duty to take such reasonable measures to ensure the safety of individuals within its jurisdiction as are necessary (see, among many authorities, *Ciechońska v. Poland*, no. 19776/04, § 60, 14 June 2011,

and the cases cited therein). Having regard to the approach adopted in previous cases involving non-intentional infringements of the right to life, the Court notes that this duty requires States to adopt in this context regulations for the protection of people's safety in public spaces, and to ensure the effective functioning of that regulatory framework (ibid., § 69).

41. The aforementioned positive obligation to protect the right to life has been found to arise in a range of different contexts examined so far by the Court, including that of road safety (see ibid., § 62, for examples of different sectors where this obligation has been found to be engaged). However, there is no exhaustive list of sectors or activities where this obligation comes into play. As the Grand Chamber observed in its *Öneryıldız v. Turkey* judgment ([GC], no. 48939/99, § 71, ECHR 2004-XII), the positive obligation under Article 2 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 certain circumstances, positive obligations may even 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, with further references).

42. The Court further reiterates that in the event of serious injury or death, the above-mentioned duty under Article 2 requires the State to have in place an effective independent judicial system so as to secure the legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. 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 (see *Ciechońska*, cited above, § 66).

43. The applicants in the instant case did not contest the domestic courts' finding that the first applicant bore the primary responsibility for the occurrence of the accident. They nevertheless made two claims which may engage the respondent State's concurrent responsibility for the death under Article 2 of the Convention. They firstly claimed that the result of the traffic accident in question had been significantly aggravated due to the defective state of the crash barrier, which had failed to stop the car falling down into the canal, and to possible structural problems with the road. They secondly argued that neither of those contentious matters had been duly examined by the İzmir Administrative Court, which had not even ordered an expert report to assist with the determination of such technical matters.

44. The Court notes in the first place that the applicants' allegations regarding the possible structural problems with the road were examined during the domestic proceedings by an expert, who appears not to have identified any significant problems which may have contributed to the accident (see paragraph 15 above). In these circumstances, and having

regard to its considerations below, the Court finds no reason to explore this specific issue any further.

45. As for the applicants' allegations regarding the state of the crash barrier, the Court recalls that it is not its role to determine whether and what type of roadside safety measures must be taken on different types of roads in Contracting States, nor does it have the capacity to make such assessment. It naturally falls on the relevant authorities in individual States to identify the roads, junctions, bends or the like that may pose a particular risk to human life and to determine the appropriate measures that must be taken to dissipate or minimise those risks.

46. The Court notes that after assessing the potential dangers posed by the road and roadside conditions at the bend that is the subject matter of the present case, the relevant State authorities had decided that it was necessary to take some specific measures to protect the safety of road users against those dangers. Accordingly, they put in place a sign warning drivers of the sharp bend ahead (see paragraph 7 above), and also installed a crash barrier to prevent out-of-control vehicles from dropping off the side of the road into the adjacent concrete canal. The Court also notes from the information in the case file, however, that the barrier in question was already damaged at the time of the incident. The applicants alleged that that prior damage had virtually negated the purpose of the crash barrier, as a result of which it had failed to prevent their car from vaulting over it into the canal, thus bringing about the death of their wife and mother.

47. The Court notes once again that it is not in a position to determine whether and what type of measures must be taken to ensure safety on a particular road. Nor can it speculate in the present circumstances as to whether the inadequacy of those measures had led to the death of Yeşim Çakır as alleged by the applicants, or arrive at general conclusions about the adequacy of the relevant regulatory regime on road safety *in abstracto*, which, in any event, is not contested by the applicants (see, for instance, *Dodov v. Bulgaria*, no. 59548/00, § 86, 17 January 2008, and *Ciechońska*, cited above, § 70).

48. It is, however, the Court's view that if the national authorities had deemed such safety measures necessary in the first place to prevent potential risks to life, as in the present case, any omissions in maintaining the effectiveness of those measures must be subjected to close scrutiny by the domestic courts, especially where it is claimed that such omissions have led to serious physical injury or loss of life. The Court reiterates in this connection that an issue of State responsibility under Article 2 of the Convention may arise in the event of the inability of the domestic legal system to secure accountability for any negligent acts endangering or resulting in the loss of human life (see *Ciechońska*, cited above, § 71). The Court will therefore examine whether the legal system of the respondent State dealt adequately with the case at hand as required under Article 2 (see,

mutatis mutandis, *Dodov*, cited above, §§ 83 and 86, and *Ciechońska*, cited above, § 70).

49. Assessing the judgment of the İzmir Administrative Assize Court dated 27 May 2010, the Court agrees with the applicants that that court appears to have failed to subject the applicants' allegations regarding the authorities' responsibility for the death of Yeşim Çakır to a sufficiently rigorous scrutiny.

50. The Court notes that relying mainly on the traffic accident report prepared by the police after the incident, the Administrative Court found that the first applicant bore sole responsibility for the accident, as he had lost control of his car through his own fault and had caused it to drop from the road. However, bearing in mind that crash barriers are put in place for the very purpose of minimising the risk to life on roads where drivers have been observed to run a real risk of losing control of their cars, which risk was also acknowledged by the national authorities in respect of the road at issue, the Administrative Court's simplistic conclusion seems inadequate to address any potential responsibility on the part of the State authorities in the death of the applicants' wife and mother.

51. The Court notes in this connection that the Administrative Court did not consider the perceived risks that had prompted the relevant authorities to place a crash barrier at the bend in question. It did not examine whether the crash barrier had been damaged as a result of previous accidents there, as alleged by the first applicant; whether the barrier had been damaged to the point of losing its purpose and, if so, for how long the authorities had been aware of that damage; and whether their failure to repair the barrier in a timely manner had contravened their obligations arising from the relevant domestic legislation, engaging their responsibility, at least partially, for the death of Yeşim Çakır. Nor did the court assess, ultimately, whether there was a causal link between the authorities' omissions and the death, that is, whether the applicants' car had left the road as a result of the incapacity of the crash barrier to keep it on the road, or whether, having regard to factors such as the weight and speed of the vehicle, the barrier would have been unable to withstand the impact, even if it had been intact.

52. In the Court's opinion, the İzmir Administrative Court was under an obligation to address those issues, with the help of an expert opinion or not as it deemed necessary, in order to shed light on the circumstances of the case and to establish the authorities' liability for the death, if any. The Administrative Court did not, however, duly fulfil that task, as it failed to extend its focus beyond the immediate responsibility of the first applicant for the occurrence of the accident.

53. The Court notes in this regard the Government's argument that the İzmir Administrative Court was bound by the finding of guilt of the İzmir Assize Court in respect of the first applicant (see paragraph 39 above). The Court is well aware that although under Turkish law, the civil courts are not

bound by the verdict of a criminal court as to the acquittal of a defendant (see, for instance, *Güvenç v. Turkey* (dec.), no. 43036/08, § 42, 21 May 2013), a finding as to guilt is binding. The Government's argument, however, fails to take into consideration the fact that the possible civil responsibility on the part of the authorities for the accident was outside the scope of the İzmir Assize Court's jurisdiction in the instant case. For that reason, the establishment of the responsibility of the first applicant by that criminal court did not preclude a finding by the Administrative Court that the authorities had also contributed to the death of Yeşim Çakır by way of their acts or omissions.

54. The Government also claimed in their observations that according to the Administrative Court, the Municipality's responsibility could not be engaged in the circumstances, as the first applicant had lost control of his car while taking the bend "at an excessive speed", suggesting that the causal link between the authorities' alleged omission and the death of Yeşim Çakır had been broken for that reason. The Court wishes to stress that, contrary to the Government's claim, neither in the Administrative Court's judgment nor anywhere else in the administrative or criminal case files was any observation made regarding the speed of the first applicant's car by the judicial authorities or experts. There was similarly no information in the traffic accident report as to the approximate speed of the car at the time of the accident or whether the first applicant had been driving within the legal speed limit. It cannot therefore be assumed that the İzmir Administrative Court had deemed the causal link between the alleged omission and the death to have been broken for that reason, as suggested by the Government.

55. Having regard to the foregoing considerations, the Court considers that the administrative proceedings at issue did not secure an effective possibility to shed light on the circumstances of the death of the applicants' wife and mother and to establish whether the responsibility of the State authorities had been engaged in the circumstances. In other words, the judicial system of the respondent State, faced with an arguable case of negligent acts on the part of the State authorities endangering human life, failed to provide an adequate response, consonant with the State's procedural obligations under Article 2 (see *Dodov*, cited above, §§ 97 and 98, and *Ciechońska*, cited above, §§ 78 and 79).

56. The Court therefore dismisses the Government's preliminary objection as to the applicants' victim status and concludes that there has been a violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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.”

58. The applicants claimed 10,000 euros (EUR) in respect of pecuniary damage, having regard to the financial contribution that their wife and mother, Yeşim Çakır, would have made to the family had she not lost her life, and claimed EUR 40,000 in respect of non-pecuniary damage. They also claimed 1,254.43 Turkish liras (TRY) (approximately EUR 308) for their costs and expenses before the domestic courts and TRY 140 (approximately EUR 35) for translation costs, and submitted the relevant invoices in relation to those expenses. They lastly stated that their representative had worked some sixteen hours on the case and requested lawyers’ fees in an amount to be determined by the Court.

59. The Government contested those claims, arguing that they were excessive and unsubstantiated, and that there was no causal link between the alleged violations of the Convention and the purported damage.

60. The Court rejects the applicants’ claims in respect of pecuniary damage as unsubstantiated. It considers, however, that the applicants have suffered some non-pecuniary damage on account of the deficiencies in the administrative proceedings conducted in the aftermath of the death of their wife and mother, which cannot be sufficiently compensated for by the finding of a violation alone. Taking into account the particular circumstances of the case and the type of violation found, the Court awards the applicants a total of EUR 10,000 in respect of non-pecuniary damage.

61. As for the costs and expenses, the Court notes that according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 2,000 covering costs under all heads.

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* the Government’s preliminary objection concerning the applicants’ victim status to the merits of the complaint under Article 2 of the Convention and dismisses it;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds*,
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President