



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

SECOND SECTION

CASE OF GÜLEN v. TURKEY

(Application no. 28226/02)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of *Gülen v. Turkey*,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 28226/02) 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, Mrs Fatma Gülen and Mr Necdet Gülen (“the applicants”), on 19 April 2002.

2. The applicants were represented by Mrs F. Karakaş Doğan, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that there had been a violation of Article 2 of the Convention on account of the unlawful killing of their daughter, Mrs Ayşe Gülen Uzunhasanoğlu, by police officers.

4. On 16 April 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the case at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1942 and 1931 respectively and live in Germany.

6. In connection with an ongoing investigation against activist members of the illegal armed organisation *Devrimci-Sol* (the “Revolutionary Left”), on 17 April 1992 police officers from the Anti-Terrorism Branch of the

Istanbul Security Directorate conducted an operation in three buildings located in different areas of Istanbul. The applicants' daughter, Ayşe Gülen Uzunhasanoğlu, was killed during this operation. According to the police reports, police officers arrived at the building located in Erenköy at about 2.30 a.m. Ayşe Gülen Uzunhasanoğlu was living on the third floor of this building. The police officers, wearing bulletproof vests, took the necessary safety measures outside the building. Four of the officers went upstairs to flat no. 9 and rang the bell. There was no answer, and the officers forced the door open. Shots were fired from one of the rooms. Despite the officers' call to surrender, the firing continued and a clash broke out, lasting approximately thirty minutes. When the firing ceased, the police found the dead bodies of two women; one in the bathroom and another in the living room, the latter being later identified as Ayşe Gülen Uzunhasanoğlu. It was observed that there was a Beretta gun next to Ayşe Gülen Uzunhasanoğlu's body. As the police also found explosives in the flat, a bomb disposal team was called to the scene and the flat was evacuated. Once the apartment was secured, the Kadıköy public prosecutor was informed about the incident. The prosecutor arrived at the scene of the incident at about 9.30 a.m. and prepared a scene of incident report in which he noted that photographs of the bodies had been taken; that a sketch map of the flat had been drawn and that fingerprints of the bodies had been taken. The report further indicated that a semi-automatic Italian Beretta 7.65 mm pistol, its magazine and cartridges, 3 Kalashnikov cartridges, 90 cartridges of 7.62 mm, 7 bullet cases of 7.65 mm, 23 bullet cases of 5.56 mm, 90 bullet cases of 9 mm, several hand made bombs and material to manufacture explosive devices had been found. The prosecutor further examined the bodies in the presence of a medical expert. The preliminary examination of the bodies revealed that there were several bullet entry and exit holes on both corpses. The bodies were subsequently taken to the Istanbul Forensic Medicine Institute for autopsy. Following the inspection of the flat by the public prosecutor, the premises were sealed by the police.

7. On 27 April 1992 ballistic examinations of the Beretta pistol, the bullet cases and cartridges collected from the incident scene were conducted by two experts from the Regional Criminal Police Laboratory. According to their report, the seven 7.65 mm bullet cases had been fired by the Beretta pistol found at the scene of the incident. The report further concluded that the 52 bullet cases of 9 mm and the 23 bullet cases of 5.56 mm, which had been sent for examination, had been fired from the guns of the police officers.

8. On 28 April 1992 a criminal complaint was filed against Mr Necdet Menzir, the Head of the Istanbul Security Directorate at the time, and the police officers who had been involved in the three operations conducted on 17 April 1992.

9. On 4 May 1992 the first applicant applied to the Kadıköy public prosecutor and requested that the flat which had been sealed after the incident be returned to her. On 20 May 1992 the public prosecutor sent a letter to the Kadıköy Magistrates Court requesting that the keys of the flat be returned to the applicants.

10. On 15 May 1992 three experts from the Forensic Medicine Institute conducted an examination of Ayşe Gülen Uzunhasanoğlu's clothes and prepared a report which held that, if short-barrelled firearms had been used during the incident, Ayşe Gülen Uzunhasanoğlu had been shot at from a distance of more than 35-40 metres. However, if Ayşe Gülen Uzunhasanoğlu had been shot at with long-barrelled firearms, then the distance would have been more than 75-100 metres. The experts further explained that it was impossible to determine the exact range of the shootings in view of the information at their disposal.

11. On 27 May 1992 the Istanbul Forensic Medicine Institute delivered the autopsy report on the applicants' daughter. The report described ten bullet wounds on the body, eight of which had been fatal. It was also established that the body had not been shot at from point-blank range. The report concluded that the cause of death was internal bleeding due to bullet wounds.

12. In the course of the investigation, the public prosecutor took statements from the police officers who had taken part in the operation on 17 April 1992, from two neighbours of Ayşe Gülen Uzunhasanoğlu and from the first applicant.

13. On 24 June 1997 the Kadıköy public prosecutor filed a bill of indictment with the Kadıköy Assize Court against 15 police officers for having killed Ayşe Gülen Uzunhasanoğlu. The charges were brought under Articles 31, 33, 49, 251, 281, 450 and 463 of the Criminal Code. The applicants intervened in the proceedings.

14. On 14 November 2000 the Kadıköy Assize Court, finding that there were no grounds for imposing any punishment on the defendants, acquitted the police officers. The court held that the officers had acted within the scope of their duties and had remained within the limits of legitimate self-defence, in accordance with section 16 of Law no. 2559 on the duties and powers of the police.

15. On 14 November 2001 the Court of Cassation denied the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. A description of the relevant domestic law at the material time and international law can be found in *Erdoğan and Others v. Turkey* (no. 19807/92, §§ 51-58, 25 April 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

17. The applicants complained that the killing of Ayşe Gülen Uzunhasanoğlu had violated Article 2 of the Convention, which reads insofar as relevant as follows:

“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; ...”

A. Admissibility

18. The Government argued that the applicants had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention. Referring to Article 125 of the Constitution, they stated that the applicants could have brought civil and administrative proceedings before lodging their application with the Court.

19. The Court notes that it has already examined and dismissed similar preliminary objections by the Government in previous cases (see *Kaya and Others v. Turkey* (dec.), no. 4451/02, 4 October 2005). It finds no particular circumstances in the instant case which would require it to depart from its findings in those applications. Consequently, it dismisses the Government’s preliminary objection.

20. The Court notes that this complaint 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

1. *Submissions of the parties*

21. The applicants argued in the first place that their daughter had been killed intentionally by the police. They further stated that Ayşe Gülen Uzunhasanoğlu's death had resulted from the use of lethal force which had been more than absolutely necessary.

22. The Government submitted that the police had used firearms acting in self-defence and in accordance with the requirements of the Law and Regulations on the duties and powers of the police. In their view, the death of Ayşe Gülen Uzunhasanoğlu had resulted from a use of force which had been no more than absolutely necessary. They stressed that the domestic courts had established that the police officers had only fired their guns in order to protect themselves after the deceased had opened fire. The Government contended that the authorities had carried out an adequate and effective investigation into these events.

2. *The Court's assessment*

(a) **As to the death of Ayse Gülen Uzunhasanoğlu**

(i) *General principles*

23. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted (see *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI). Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII). The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47).

24. 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 within its internal legal order to safeguard the lives of those within its jurisdiction (see *Kiliç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-

enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

25. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted to intentionally kill an individual, but describes situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than “absolutely necessary” for the achievement of any of the purposes set out in its subparagraphs. In this respect the use of the term “absolutely necessary” in Article 2 § 2 indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraph 2 of Articles 8-11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in the Article (see *McCann and Others*, cited above, p. 46, §§ 148-49).

26. In this connection, the Court reiterates that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of facts, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of fact for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic authorities, in normal circumstances there must be cogent elements to lead it to depart from the findings of fact reached by those authorities (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 18, §§ 29-30).

27. However, the central importance of the protection afforded by Article 2 is such that the Court is required to subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force, but also all the surrounding circumstances. This will include such matters as the planning and control of the actions under examination, even where domestic proceedings and investigations have already taken place (see *Erdoğan and Others*, cited above, § 71).

(ii) *Establishment of the facts*

28. The Court notes that it is undisputed between the parties that Ayşe Gülen Uzunhasanoğlu was shot dead by police officers in the course of a clash between the latter and *Devrimci-Sol* militants. However, the parties disagreed on the account of the events leading up to her death. On the one hand, the applicants alleged that their daughter was not a member of *Devrimci-Sol* and that the police officers had gone to the scene of the

incident in order to kill their daughter. The Government, on the other hand, claimed that Ayşe Gülen Uzunhasanoğlu was an activist member of the said armed illegal organisation. It was the applicant's daughter and her friend who had refused to surrender and opened fire on the police. The Government contended that the applicants' daughter had died as a result of an armed clash during which the police officers had acted in self-defence and in compliance with Law no. 2559 on the duties and legal powers of the police.

29. The Court observes that a judicial determination of the facts took place in the course of the criminal proceedings brought against the police officers before the Kadıköy Assize Court. It notes that no material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of fact of the domestic court or lead the Court to depart from it (see *Makaratzis v. Greece* [GC], no. 50385/99, § 47, ECHR 2004-XI). The Court therefore considers, in the light of all the material presented to it, that there is a sufficient factual and evidentiary basis on which to assess the case, taking as a starting point the findings of the national courts (see *Usta and Others v. Turkey*, no. 57084/00, § 50, 21 February 2008; *Perk and Others v. Turkey*, no. 50739/99, § 57, 28 March 2006).

(iii) *Application of these principles to the present case*

30. The Court notes that the applicants' daughter was killed in the course of an anti-terrorist operation by police officers. Having regard to the material in its possession, it does not find it sufficiently established that the police officers had acted from the outset with the aim of killing Ayşe Gülen Uzunhasanoğlu.

31. As regards the legal framework defining the circumstances in which law enforcement officials may use firearms, the Court observes that it has already held that the applicable legislation at the time of the incident, namely Law no. 2559 enacted in 1934, would not appear sufficient to provide the level of protection "by law" of the right to life which is required in present-day democratic societies in Europe (see *Erdoğan and Others*, cited above, § 77; *Usta and Others*, cited above, § 52). However, it is to be noted that, by virtue of Article 17 of the Constitution, recourse to lethal force can only be justified "in case of absolute necessity authorised by law". Thus, in the Court's view, the difference between the national standard and the standard of Article 2 of the Convention is not sufficiently great that a violation of Article 2 § 1 could be found on this ground alone (see *McCann and Others*, cited above, p. 47, §§ 154-155; *Usta and Others*, cited above, § 52; *Perk and Others*, cited above, § 60).

32. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as

well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 182).

33. In this connection, the Court notes that the police officers arrived at the scene of the incident in connection with an ongoing investigation against activist members of the illegal organisation *Devrimci-Sol*. As stated in the case of *Erdoğan and Others* (cited above, § 76), until it was disbanded, the *Devrimci-Sol* group had committed numerous crimes, including the assassination of many police officers, army officers and public prosecutors. Consequently, the Court finds in the circumstances of the present case that the police could reasonably have considered that there would be a need to resort to the use of their weapons in order to arrest the suspects or neutralise the threat posed by them.

34. Referring to the findings of the Kadıköy Assize Court, the Court observes that the use of force by the security forces in the present case was the direct result of the unlawful violence emanating from the deceased suspects. In this regard, it notes that the police officers arrived at the scene of the incident, secured the area surrounding the flat and asked the suspects to open the door. However, when the suspects did not do so and the police officers had to break the door, the suspects opened fire on them. Consequently, the operation in question must be considered to have been effected “in defence ... from unlawful violence” and “in order to effect a lawful arrest” within the meaning of Article 2 § 2 a) and b) of the Convention.

35. The Court is therefore called upon to determine whether the use of force in the instant case was no more than absolutely necessary and strictly proportionate to the achievement of the aforementioned aims.

36. The Court notes that the Kadıköy Assize Court found it established, on the basis of the evidence before it, that the first shot had been fired by the deceased. It also observes that when the police officers were confronted with gunfire from the suspects, they believed that it was necessary to return fire until the suspects stopped shooting. Finally, it was also established that Ayşe Gülen Uzunhasanoğlu had not been shot at point-blank range.

37. The Court further considers that it is not necessary to speculate on the question whether using non-lethal methods in order to arrest the deceased had been a possibility open to the security forces. In this connection, it observes that in the cases of *Andronicou and Constantinou* and *Perk and Others*, where the applicants’ relatives had been killed as a result of the use of force by the security forces, it held that it could not with detached reflection substitute its own assessment of the situation for that of the officers who were required to react in the heat of the moment. The Court further considered that, to hold otherwise, would be to impose an unrealistic burden on the States and on their law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives

of others (see *Andronicou and Constantinou*, cited above, § 192; *Perk and Others*, cited above, § 72; *Usta and Others*, cited above, § 59). It sees no reason to reach a different conclusion in this case, where a violent confrontation took place between the parties and the police officers had to act in self-defence when confronted by two armed suspects.

38. The Court considers therefore that the use of lethal force in the circumstances, however regrettable it may have been, did not exceed what was “absolutely necessary” for the purposes of self-defence and in order to effect a lawful arrest. Consequently, the Court concludes that it did not amount to a breach by the respondent State of their obligations under Article 2 § 2 of the Convention.

39. It follows that there has been no violation of Article 2 of the Convention as regards the killing of Ayşe Gülen Uzunhasanoğlu.

(b) As to the alleged inadequacy of the investigation

40. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV). As it is often the case that, in practice, the true circumstances of the deaths in such cases remain largely within the knowledge of State officials or authorities, the bringing of appropriate domestic proceedings, such as a criminal prosecution, disciplinary proceedings or proceedings for the exercise of remedies available to victims and their families, will be conditioned by an adequate official investigation, which must be independent and impartial. The same reasoning applies in the case under consideration, where there is no dispute that the deceased were killed by the police officers in the course of an operation to arrest them.

41. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence relating to the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is

liable to fall foul of the required standard of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001; *Anguelova*, cited above, § 139).

42. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-104; *Çakıcı*, cited above, §§ 80-87 and 106; *Tanrikulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Avşar v. Turkey*, no. 25657/94, § 395, ECHR 2001-VII).

43. In the present case, the Court observes that a comprehensive investigation was indeed carried out by the authorities into the circumstances surrounding the killing of the applicants' daughter. In this connection, it notes that, immediately after the incident, a report describing the course of events and the state of the flat were prepared by the police officers. A sketch map of the flat which indicated the position of the deceased's body was drawn up and photographs were taken. The weapons used in the clash and the cartridges retrieved from the scene of the incident were subjected to ballistics examinations. The cartridges discharged from every weapon were identified and the range of the shootings was also determined subsequent to the examination of the clothes of the deceased. Furthermore, forensic experts carried out a full and comprehensive autopsy on the body of the deceased (see paragraphs 6-11 above).

44. Nevertheless, the investigation in the present case cannot be considered to have been effective given the substantial delays involved. In this connection, the Court notes that the prosecuting authorities waited more than five years before initiating criminal proceedings against the accused police officers. Subsequently, the Kadıköy Assize Court took more than four years in reaching a final judgment in the proceedings (see paragraphs 13-14 above).

45. In view of the foregoing, the Court considers that the proceedings in question, which lasted more than nine years, cannot be described as a prompt response by the authorities in investigating the allegedly unnecessary and disproportionate use of force. Accordingly, given the delays in the criminal investigation and the overall duration of the proceedings, the Court concludes that there has been a violation of the State's procedural obligation under Article 2 of the Convention.

46. There has therefore been a violation of Article 2 under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The applicants further alleged a breach of Articles 3, 6 and 14 of the Convention and Article 1 of Protocol No. 1. Under Article 3, they complained about the suffering they had endured as a result of their daughter's death; under Article 6 they stated that the proceedings brought against the police officers were unfair; under Article 14 they complained about the non-prosecution of Mr Necdet Menzir, the Head of the Istanbul Security Directorate at the time; and finally under Article 1 of Protocol No. 1, they argued that there had been an interference with their right to peaceful enjoyment of their possessions as their flat was sealed by the police following the incident.

48. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Furthermore, in respect of the complaint raised under Article 1 of Protocol No. 1, the Court had particular regard to the fact that the apartment was returned to the first applicant on 20 May 1992 on the order of the Kadıköy Magistrates Court. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

A. Damage

50. The applicants claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 each in respect of non-pecuniary damage.

51. The Government contested these claims.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. However, having regard to its finding of a violation of Article 2 under its procedural limb and ruling on an equitable basis, it awards the applicants EUR 10,000 jointly in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicants also claimed a total of EUR 9,500 for the costs and expenses incurred before Court. In support of their claim, they submitted a legal fee agreement for 10,000 new Turkish liras [approximately EUR 5,200].

54. The Government contested the claim.

55. The Court may make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Making its own estimate based on the information available, and having regard to its case-law, the Court awards the applicants jointly EUR 3,000 for the costs and expenses claimed.

C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 2 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no substantive violation of Article 2 of the Convention as regards the killing of Ayşe Gülen Uzunhasanoğlu;
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 jointly, 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 new Turkish liras 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 3,000 (three 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 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President