



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

1959 · 50 · 2009

THIRD SECTION

CASE OF NARİN v. TURKEY

(Application no. 18907/02)

JUDGMENT

STRASBOURG

15 December 2009

FINAL

15/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Narin v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Luis López Guerra,

Işıl Karakaş,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 18907/02) 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 ten Turkish nationals, Ms Nesima Narin, Mr Hakan Narin, Ms Nimet Narin, Mr Mahmut Narin, Mr Yakup Narin, Ms Sevim Narin, Mr Özkan Narin, Ms Leyla Narin, Mr Ünal Narin and Mr Sertaç Narin (“the applicants”), on 9 April 2002.

2. The applicants were represented by Mr M. Bilal, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged that their relative, Mr Abduvahit Narin, had been unlawfully killed by the security forces and that the national authorities had failed to conduct an effective investigation into the circumstances surrounding the killing in violation of Articles 2, 6 and 13 of the Convention. In their observations dated 22 September 2005 the applicants relied, for the first time, on Article 1 of Protocol No. 1 to the Convention and complained of the damage done to their hotel.

4. On 27 June 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1948, 1978, 1968, 1976, 1980, 1981, 1983, 1984, 1985 and 1986 respectively and live in Diyarbakır.

1. The killing of the applicant's relative, Abdulvahit Narin

6. On 3 October 1992, at 10:30 a.m., clashes occurred in the district of Kulp in the province of Diyarbakır, between the PKK (the Workers' Party of Kurdistan, an illegal organisation) and the security forces, subsequent to the killing of two gendarmes and grave injury of two other gendarmes in a military vehicle by PKK militants. At that time the applicant, Hakan Narin and his father, Abdulvahit Narin, were in the Narin Hotel, which belonged to them. During the clash some other individuals from the town and hotel customers joined them in the basement of the hotel to seek shelter from the clash. There were a total of thirty-five people hiding in the basement of the hotel.

7. According to the applicants' version of events, at around 4 p.m. the security forces raided the hotel and gathered the people on the ground floor. They singled out Abdulvahit Narin from the crowd and took him into the hotel director's office. After a while the applicant, Hakan Narin, heard gunshots coming from the office. The security forces then allegedly poured petrol on the floor and set the hotel on fire.

8. On 4 October 1992 two incident reports describing the events in question were prepared and signed by a number of gendarme officers who took part in the clashes. According to this report, on 3 October 1992, at around 10.30 a.m., PKK militants opened fire on a military vehicle on a main street in Kulp. As a result, two gendarmes died and two were severely injured. Hearing the gunfire, security forces arrived on the scene. PKK militants also fired at them and the security forces returned fire. The clashes, which lasted until 5 p.m., caused the destruction of a number of vehicles and some buildings. It was understood that the real aim of the PKK members was to take control of the Kulp Gendarmerie Station and to seize the weapons therein. Some of the PKK militants hid in the Narin Hotel and opened fire on the security forces. When leaving the town they set the hotel and a number of other buildings on fire. When they were informed that there was a burned body at the hotel, a team of security forces arrived at the hotel in the morning of 4 October 1992. They found an unidentifiable burned body, a Kalashnikov rifle and sixty-four empty cartridges there. The security forces noted that all the furniture in the hotel had been burned, there were a number of bullet holes in the walls and gas cannisters found in the kitchen had exploded as a result of the fire and had caused massive damage

to the building. A sketch map describing the state of the hotel and location of the body was also drawn up by a gendarme officer.

2. The investigation into the killing of Abdulvahit Narin

9. On 4 October 1992, at 3:50 p.m., the Kulp Public Prosecutor arrived at the Narin Hotel with a doctor. They conducted a classical autopsy and an on-site investigation. The on-site investigation report noted that a burned body was lying in one of the ground-floor rooms of the hotel. The report also contained Hakan Narin's testimony that two expert sergeants¹, whose names he did not know but whom he could identify if shown, took his father to the director's office. He then heard gunshots coming from that direction, and saw the security forces throw grenades into the room. He further stated that M.Y., A.Y., M.A., and the teachers A.A., M.Y., H.S. and F.A., who were in the hotel at the time, also witnessed the incident. The report noted that five discharged bullet cartridges were found twenty or thirty metres from the body. Neither Hakan Narin nor the deceased's wife Perinaz Narin could determine whether the burned body was that of Abdulvahit Narin.

10. The Kulp Public Prosecutor took statements from two gendarmes who were injured in the course of the clashes. They stated that they had come to Kulp from Diyarbakır Regional Gendarmerie Command in order to ensure security. When they arrived in Kulp they were attacked by members of the PKK and wounded as a result of the gunfire.

11. On 6 October 1992 the Kulp Public Prosecutor issued a decision of non-jurisdiction and referred the case to the Chief Public Prosecutor's office at the Diyarbakır State Security Court.

12. On 8 October 1992 the Diyarbakır Chief Public Prosecutor's Office issued a decision to join the investigation files concerning the killing of two gendarmes and Abdulvahit Narin, since both had occurred in the course of the events in Kulp.

13. On 25 June 1993 the public prosecutor at the State Security Court took statements from the deceased's two sons and two persons who had witnessed the events. The applicant Hakan Narin repeated the statement he had made to the public prosecutor during the on-site investigation. He further stated the following:

“During the events in question, I was with the deceased (Abdulvahit Narin). The hotel was under gun and rocket fire. I locked the doors of the hotel and went down to the basement together with the customers for safety reasons. They (the soldiers) broke down the door and entered the hotel. My father was alive and holding my hand. Two expert sergeants who work in Kulp, namely N.T. and L.B., hit my hand and took my father to the director's room. I heard a sound of gunfire from the director's room. They had already locked down the basement when they took my father to the director's

1. Expert corporals and expert sergeants are men who opt to stay in the army following the completion of their national service and who thus become paid employees of the armed forces.

room. When the gunfire ended, they took us to the lounge and told us to take off our jackets. We took off our jackets. They poured petrol on us. However, they did not burn us. They then carried the jackets into the director's room. They poured petrol on my father and burned him. They left three hand grenades in the director's room. These bombs exploded one after the other. They burned everything in the hotel. The expert sergeants whom I have mentioned above caused the death of my father. There were thirty-five customers who witnessed this event. I request that criminal charges be brought against [the expert sergeants]...”

14. Azattin Narin, who is another of the sons of the deceased, stated that he had been in Istanbul at the time of the events. He had also heard that two expert sergeants, N.T. and L.B., had caused the death of his father. Mehmet Yıldırım and Aladdin Yıldırım, who were customers at the Narin Hotel at the time of the events, gave statements in line with Hakan Narin's. They added that the security forces took them to the station after the incident, but released them without taking statements from them.

15. In addition to the above statements, the applicants' representative submitted to the Court statements given by another witness, Nihat Ezer, on 13 August 2001. According to this witness, who sought shelter in the Narin Hotel during the clashes, Abdulvahit Narin was separated from the rest of the group and taken to the director's room in the hotel. The witness then heard gunshots coming from that room. The soldiers threw three hand grenades and the hotel caught fire. The witness was taken to the gendarme station together with other people and released afterwards.

16. On 12 May 1994 and 10 June 1994 the Diyarbakır Public Prosecutor took statements from N.T. and L.B. in relation to the allegations concerning the killing of Abdulvahit Narin. N.T. and L.B. denied the allegations that they had been involved in the killing of Abdulvahit Narin and claimed that they had taken part in the clashes against the PKK in order to ensure security in Kulp. They had seen that the Narin Hotel and a number of other buildings had caught fire and stated that they had gone back to their barracks when the clashes were over.

17. In a letter dated 28 July 1994 the Kulp Public Prosecutor requested the Gendarmerie Command in Kulp to provide information concerning the location of and duties assigned L.B. and N.T. on 3 October 1992.

18. In a report dated 14 November 1994, signed by a gendarme sergeant and two gendarmes, it was stated that the location of and duties assigned to L.B. and N.T. on 3 October 1992 were unknown, since there was no record.

19. It transpires from the documents submitted by the parties that since 1994 no further steps have been taken to identify the perpetrators of the killing of Abdulvahit Narin.

3. *The compensation concerning the killing of Abdulvahit Narin and the destruction of the Narin Hotel*

20. On 24 November 1992, one of the sons of Abdulvahit Narin applied to the Kulp Civil Court of First Instance for an assessment report of the damage caused to the hotel in order to lodge actions for compensation.

21. On 28 September 1993 the applicants applied to the Ministry of the Interior (“the Ministry”) for compensation for the loss they had suffered as a result of the death of their relative and the damage done to the hotel. The Ministry rejected the request.

22. On 4 April 1994 the applicants brought an action for compensation in the Diyarbakır Administrative Court against the Ministry, for the damage they had suffered in respect of the death of their relative (“first set of proceedings”). In their application to the court the applicants noted that the perpetrators of the killing of Abdulvahit Narin were unknown. Although the officials claimed that he had been killed and that his hotel had been burned down by members of the PKK during the clashes, the witnesses stated Abdulvahit Narin had been killed by the security forces. Notwithstanding who killed the victim, the State was responsible for the death of the victim and was obliged to compensate for the damage resulting from his death and the destruction of the hotel.

23. On 12 July 1994 the applicants brought a second action against the Ministry, claiming compensation in respect of the material damage caused to the hotel (“second set of proceedings”).

24. By decisions of 17 November and 20 November 1995 the Diyarbakır Administrative Court decided that it had no jurisdiction over the cases.

25. On 6 November 1997 and 4 December 1997 the Supreme Administrative Court set aside the Diyarbakır Administrative Court's decisions of non-jurisdiction and remitted the cases to it for examination.

26. On 18 June 1999 the Diyarbakır Administrative Court partly accepted the applicants' request and awarded them 523,200,000 Turkish liras (TRL, approximately 1,223 euros (EUR) at the material time) in compensation for the pecuniary damage caused to the hotel.

27. On 21 June 2000 the Diyarbakır Administrative Court, relying on the State's strict liability and “the social risk theory”, awarded the applicants a further TRL 738,107,475 (approximately EUR 1,264 at the material time) in compensation for the pecuniary and non-pecuniary damage they had suffered in respect of the death of their relative. This judgment was upheld by the Supreme Administrative Court on 13 December 2001.

28. On 16 June 2001 the Supreme Administrative Court upheld the judgment of the Diyarbakır Administrative Court concerning the damage caused to the hotel.

29. On 18 January 2002, the administration paid the applicants the sum of TRL 2,091,892,880 (approximately EUR 1,732 at the material time) in compensation for the death of their relative and damage done to the hotel.

4. Current state of the investigation

30. In March 2002, the applicants applied to the Public Prosecutor's office at the Diyarbakır State Security Court requesting information about the outcome of the criminal investigation into the death of their relative.

31. On 11 March 2002 the Public Prosecutor informed the applicants that the investigation was still pending. Following this response, on 9 April 2002 the applicants lodged their application with the European Court.

32. According to the Diyarbakır Chief Public Prosecutor's report of 28 October 2008, the investigation into the killing of Abdulvahit Narin and the two gendarmes is still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Administrative liability arising out of criminal offences

33. Under section 13 of Law no. 2577 on administrative procedure, anyone who sustains damage as a result of an act by the authorities may, within one year after the alleged act was committed, claim compensation. If the claim is rejected in whole or in part, or if no reply is received within six days, the victim may bring administrative proceedings.

B. Turkish Constitution

34. Article 125 §§ 1 and 7 of the Constitution provides:

“All acts or decision of the authorities are subject to judicial review...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

35. That provision established the State's strict liability, which comes into play if it is shown that, in the circumstances of a particular case, the State has failed in its obligation to maintain public order, ensure public safety or protect people's lives or property, without it being necessary to prove a tortuous act attributable to the authorities. Under these rules, the authorities may therefore be held liable to compensate anyone who has sustained loss as a result of acts committed by unidentified persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 13 OF CONVENTION

36. The applicants complained that their relative had been unlawfully killed by the security forces and that the authorities had failed to conduct an effective investigation into his death, in violation of Articles 2 and 13 of the Convention.

37. The Court considers that these complaints should be examined solely from the standpoint of Article 2 of the Convention, which reads 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;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' observations

38. The Government submitted that the applicants' complaints were inadmissible for failure to observe the six-month rule within the meaning of Article 35 § 1 of the Convention. They pointed to the applicants' allegations that the authorities failed to conduct an effective investigation into the alleged killing. In this connection, the Government claimed that, even if the applicants are correct in this allegation, which they contest, they should have been aware of this situation much earlier and should not have waited for ten years to lodge their application with the Court (see *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III, and *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002). The Government also reiterated the Court's case-law that if no remedies are available or if they are judged to be ineffective, the six-month time-limit runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). They thus asserted that the application has been lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

39. The applicants did not comment on the Government's objection on the six-month rule.

B. The Court's assessment

1. The applicable principles

40. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Bulut and Yavuz*, and *Bayram and Yıldırım*, both cited above).

41. As noted by the Government, if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and others v. Turkey* (dec.), cited above). However, special considerations may apply in exceptional cases where an applicant avails himself or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it is appropriate to take as the start of the six-month period the date when he first became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

42. Consequently, where a death has occurred, applicant relatives are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, 18 September 2009. On the same basis, where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (*Varnava and Others*, cited above, § 160).

43. In this connection, in a number of cases concerning ongoing investigations into the deaths of applicants' relatives the Court has examined the period of time from which the applicant can or should start doubting the effectiveness of a remedy (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Bulut and Yavuz*, cited above; *Bayram and Yıldırım*, cited above; *Kınış v. Turkey* (dec.), no. 13635/04, 28 June 2005; and *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005). Although the Court has refrained from indicating a specific period for establishing when an investigation has become ineffective for the purposes of assessing when the six-month period runs from, the determination of such a period by

the Court depended on the circumstances of each case and other factors such as the diligence and interest displayed by the applicants as well as the adequacy of the investigation in question. In this connection, in the above-mentioned *Varnava and Others* judgment (cited above, § 162), the Grand Chamber of the Court noted however that where the lack of progress or ineffectiveness of an investigation is readily apparent, the requirements of expedition may require an applicant to bring such a case before the Court within a matter of months, or at most, depending on the circumstances, a very few years after events.

2. Application of the above principles to the circumstances of the present case

44. In the instant case, the Court notes that immediately after the impugned events in question, the authorities commenced an investigation into the killing of Abdulvahit Narin (see paragraph 9 above). In this context, the investigating authorities took statements from a number of witnesses and the deceased's two sons and questioned two suspects, who allegedly killed Abdulvahit Narin, according to Hakan Narin (see paragraphs 13-16 above).

45. Although the investigation into the killing of the applicants' relative is still pending, it does not appear that any further investigation has been carried out to identify the perpetrators of the killing of the applicant's relative since 1994 (see paragraph 19 above). In the Court's opinion, since the first applicant is the wife and the remaining applicants are the children of the deceased, they may be expected to display due diligence and to take the requisite initiative in informing themselves about the progress made in the investigation (see *Varnava and Others*, cited above, § 158).

46. However, the applicants did not show any interest by following up the conduct of or the progress made in the criminal investigation until March 2002 (see paragraph 31 above). They did pursue civil remedies before the administrative courts with a view to obtaining compensation for the death of their relative and the damage done to the family hotel (see paragraphs 20-29 above).

47. In this context, the Court reiterates that breaches of the right to life cannot be remedied exclusively through an award of compensation to the relatives of the victim (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 56-57, 20 December 2007; *Leonidis v. Greece*, no. 43326/05, §§ 46-48, 8 January 2009; *Amaç and Okkan v. Turkey*, nos. 54179/00 and 54176/00, §§ 32 and 35, 20 November 2007; and see also, a contrario, *Uca v. Turkey* (dec.), no. 743/06, 9 April 2008). For that reason, in a number of similar Turkish cases the Court has repeatedly refused to accept the effectiveness of this no-fault-based compensation procedure before the administrative courts in Article 2 cases, on the ground that it does not lead to the identification and punishment of those

responsible (see, most recently, *Bedir v. Turkey* (dec.), no. 25070/02, 2 October 2007 and the cases cited therein).

48. This being so, the Court considers that the administrative proceedings the applicants sought to pursue in order to obtain compensation do not affect the running of the six-month period. It notes that the applicants were awarded compensation on the basis of the “social risk principle”, a no-fault-based principle adopted by administrative courts in Turkey when awarding compensation to those who suffer damage as a result of terrorist acts or in the fight against terrorism.

49. It follows therefore that the relevant domestic remedy for the applicants' complaint which would have had the potential to offer adequate redress was the criminal investigation that, in the circumstances of the present case, came to an end in 1994 (see paragraph 19 above), which is more than six months before the introduction of the application.

50. As noted above, although the applicants took the preliminary steps, they did not pursue the criminal investigation in respect of their grievances because they considered that those remedies were ineffective. Even assuming that there were no effective remedies in the present case, both the applicants and their representative must be considered to have been aware of this situation not later than the end of 1995, the year during which the prosecuting authorities, considering their inactivity, made it clear that they would not continue criminal proceedings against the security forces.

51. In the light of the foregoing the Court considers that the applicants have failed to comply with the six-month rule in respect of their complaints under Articles 2 and 13 of the Convention. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

52. The applicants complained that the administrative proceedings had not been completed within a reasonable time, contrary to Article 6 of the Convention.

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

53. The Government contested the complaint.

A. Admissibility

54. 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

55. The applicant complained that the length of the administrative proceedings had been in breach of the reasonable-time requirement of Article 6 § 1 of the Convention. They noted as a result of the excessive delays in the proceedings, the amount they were paid was not sufficient to compensate their damage.

56. The Government claimed that there had not been any inordinate delays in the course of the proceedings which, in fact, had been completed within a reasonable time.

57. The Court notes that, pursuant to Article 13 of the Code of Administrative Procedure, persons who have sustained damage as a result of an administrative act have to apply to the administrative entity concerned and claim compensation for the damage they have sustained before they can lodge a compensation claim in the administrative courts in respect of such damage (see *Hasefe v. Turkey*, no. 25580/03, § 26, 8 January 2009). In other words, claiming compensation directly from the authorities is a compulsory precondition for bringing administrative proceedings. In the present case, the applicant complied with this requirement on 28 September 1993 (see paragraph 21 above). It follows that, for the purposes of the reasonable-time complaint, the proceedings in question began on 28 September 1993. They ended when the Supreme Administrative Court upheld the judgments concerning the loss resulting from the death of the applicants' relative and the damage done to the hotel, on 13 December 2001 and on 16 June 2001, respectively. The first set of proceedings lasted almost eight years and three months and second set of proceedings lasted approximately seven years and nine months before two levels of jurisdiction.

58. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case. Particular regard must be had to the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II) and what is at stake for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

59. Having particular regard to the fact that the examination of the case by the domestic courts was largely restricted to ascertaining whether the conditions for the applicability of the “social risk principle” obtained in the case before them, and not to examining in detail the security forces' alleged responsibility in the impugned events, the Court does not consider the subject matter of the case to be complex. On the other hand, in view of the nature of the cases in question, the Court considers that the subject matter of the cases was important for the applicants.

60. Despite this fact, which was not disputed by the Government, the proceedings do not appear to have been conducted with due diligence. In

this connection, the Court notes that it took the administrative courts more than three years to decide on the jurisdiction of the competent court (see paragraphs 22-25). Furthermore, the Court considers the period that elapsed before the Supreme Administrative Court, which took two years to decide on the appeal lodged by the Ministry in the second set of proceedings, was also long, considering the nature of the proceedings (see paragraphs 26 and 28 above). In the absence of any convincing explanations from the Government, these delays must be considered to be attributable to the domestic courts.

61. In the light of the foregoing, the Court holds that the “reasonable time” requirement of Article 6 § 1 has not been satisfied. Consequently, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

62. In their observations sent to the Court on 22 September 2005 the applicants relied, for the first time, on Article 1 of Protocol No. 1 to the Convention and complained of the damage done to their hotel.

63. The Government contested the complaints.

64. The Court notes that these complaints were not introduced until 2005, that is, more than six months after the conclusion of the domestic proceedings. It follows that these complaints must also be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-compliance with the six-month rule.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed EUR 1,001,978 euros in respect of pecuniary and EUR 300,000 for non-pecuniary damage as a result of the alleged violations of the Convention.

67. The Government submitted that the amounts claimed were unfounded and excessive.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, having regard to its finding of a violation under Article 6 of the Convention in respect of the excessive length of the proceedings in two sets of proceedings, it awards the applicants a total sum of EUR 8,500 in respect of non-pecuniary damage.

B. Costs and expenses

69. The applicants also claimed EUR 8,241 for the costs and expenses incurred before the Court. They noted that the amount claimed corresponded to sixty-seven hours' legal work in the preparation and presentation of the application.

70. The Government asked the Court to dismiss the applicant's claim.

71. According to the Court's 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 information in its possession and the above criteria as well as to the fact that the applicants partly succeeded in their claims, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

72. 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

1. *Declares* unanimously the complaint concerning the excessive length of the administrative proceedings admissible;
2. *Declares* by a majority the complaint concerning the alleged killing of the applicants' relative and the failure of the authorities to conduct an effective investigation inadmissible;
3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously

(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 Turkish liras at the rate applicable at the date of settlement:

(i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, for 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President