

Press release issued by the Registrar

Chamber judgment¹

[Kalender v. Turkey](#) (application no. 4314/02)

**AUTHORITIES FAILED TO TAKE MEASURES TO PROTECT
THE LIVES OF RAILWAY ACCIDENT VICTIMS**

Unanimously:

Violations of Article 2 (right to life and investigation)

***Violation of Article 6 § 1 (right to a fair hearing) on account of the length of the
proceedings***

***No violation of Article 6 § 1 (impartiality of court)
of the European Convention on Human Rights***

Principal facts

The applicants are three Turkish nationals: Mrs Sevim Kalender and her children, Mr Adnan Kalender and Ms Aysun Kalender. They were born in 1940, 1964 and 1966 respectively and live in Istanbul.

The husband of Mrs Sevim Kalender, Kadir Kalendar, and his mother Şükriye Kalender, were killed in an accident in a railway station. On 4 May 1997 the victims had taken a TCDD (Turkish national railway company) train and on their arrival at the station they had been hit and killed by a goods train on the adjacent track.

A criminal investigation was opened immediately after the accident and liability was found to be shared between the TCDD – the safety measures in the station being insufficient – and the applicants' relatives, who had got off the train on the wrong side and had been attempting to cross the track by mistake. The train driver was acquitted of manslaughter and the Criminal Court then requested that a criminal investigation be opened into breaches of safety regulations on the part of the TCDD. However, the requested investigation was never opened.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicants brought civil proceedings against the TCDD seeking compensation for their pecuniary and non-pecuniary damage. The TCDD, for its part, claimed compensation for the pecuniary damage resulting from the delays caused by the accident. An expert appointed to assess the parties' respective liability concluded that Kadir and Şükriye Kalender were 60% liable and that the railway company was 40% liable.

After enforcement proceedings brought by the applicants, they obtained full payment of the compensation in June 2006.

Complaints, procedure and composition of the Court

Under Article 2 (right to life), the applicants complained about the authorities' failure to protect their relatives' lives, and under Article 6 § 1 (right to a fair hearing within a reasonable time), they complained that the court which had heard their case had not been impartial or independent, and that the length of the proceedings had been excessive.

The application was lodged with the European Court of Human Rights on 24 September 2001.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Vladimiro **Zagrebel'sky** (Italy),
Dragoljub **Popović** (Serbia),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino), **judges**,

and also Françoise **Elens-Passos**, **Deputy Section Registrar**.

Decision of the Court

Article 2

All the court-appointed experts had concluded that the structure of the station and its management had failed to comply with minimum safety requirements: no subway, passage blocked by a goods train thus obliging passengers to cross the track, lack of information on the train, lack of staff. It could not therefore be said that any imprudent conduct on the part of the victims had been the decisive cause of the accident. On the contrary, the experts' reports and domestic courts had established a causal link between the shortcomings in railway safety and the deaths of Kadir and Şükriye Kalender. The authorities had thus failed in their duty to implement regulations for the purpose of protecting the lives of passengers. The Court therefore found that there had been a violation of Article 2.

Whilst the authorities had reacted speedily after the accident, having promptly opened a criminal investigation and proceedings against the train driver, the court's subsequent request for the opening of a criminal investigation concerning the TCDD had never been followed up. The Turkish criminal justice system had not therefore been in a position to determine the full extent to which the public servants and authorities were liable for the accident, and had not effectively implemented the provisions of domestic law that

guaranteed the right to life. Accordingly, there had also been a violation of Article 2 in this respect.

Article 6 § 1

The expert's report on which the sharing of liability between the parties had been based was not disputed by the applicants. The complaint about a lack of impartiality and independence on the part of the court was thus rejected as ill-founded.

As to the applicants' second complaint under Article 6 § 1, the Court noted that the proceedings had lasted eight years and seven months for two degrees of jurisdiction, whereas the case was not a particularly complex one and Mrs Kalender and her children had not delayed the proceedings. The enforcement had taken about three years, so payment of the compensation had been delayed accordingly. The Court therefore found that the length of the proceedings had not been reasonable and that there had been a violation of Article 6 § 1.

Having regard to its finding of a violation of Article 2 and of Article 6 § 1, the Court took the view that it did not need to examine the case under the other Articles relied upon by the applicants.

Article 41

By way of just satisfaction, the Court awarded, in respect of all heads of damage combined, 35,000 euros (EUR) to Sevim Kalender and, to Aysun and Adnan Kalender, EUR 25,000 each. It also awarded EUR 1,500 to the applicants, jointly, for costs and expenses.

Judge Barreto expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.