

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

SECOND SECTION

DECISION

Application no. 34885/06
Nurettin DEMİR and Çiçek DEMİR
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 November 2012 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 11 August 2006,

Having regard to the decision of 30 June 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Nurettin Demir and Mrs Çiçek Demir, are Turkish nationals who were born in 1976 and 1975 respectively and live in Manisa. They were represented before the Court by Mr C. Hüseyni, a lawyer practising in Manisa.

2. The Turkish Government ("the Government") are represented by their Agent.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 31 July 2002 the applicants' three-year-old daughter Melisa, while walking with the second applicant, was severely injured and later died, after a rubbish container she had touched fell on top of her.

1. Criminal proceedings against the second applicant and a municipal official, Mr A.L.

5. According to the post-mortem examination report, dated 1 August 2002, the cause of death was bleeding into the chest cavity (haemothorax), possibly resulting from the falling of a rubbish container on the deceased. A classic autopsy was not deemed necessary.

6. On the same day the first applicant gave a statement to the police in which he stated, *inter alia*, that if the incident was the result of negligence on the part of the Municipality then he wished to lodge a complaint.

7. On 6 August 2002 the second applicant gave evidence to the police. She submitted that while they were walking home from a visit, her daughter had grabbed the open metal lid of the rubbish container and the rubbish container had fallen on top of her.

8. On the same day the second applicant's sister – an eye-witness to the events – also gave evidence along the same lines as the second applicant.

9. On 7 August 2002 two police officers inspected the area where the incident had taken place. They noted, *inter alia*, that the back wheels of the container were faulty and that the container had a tendency to fall backwards if the lid was pulled.

10. On 14 April 2003 the prosecutor heard evidence from Mr A.L., the municipal official responsible for rubbish containers, as a suspect. He maintained, *inter alia*, that he had been informed of the incident ten days after the events, that the municipality had given financial support to the family, and that the incident had been due to the applicants' daughter pulling the lid of the rubbish container.

11. On the next day, 15 April 2003, the prosecutor filed a bill of indictment charging the second applicant and Mr A.L. with causing death by negligence. The charges were brought under Article 455 of the Criminal Code (no. 765).

12. Subsequently, criminal proceedings commenced before the Turgutlu Criminal Court of First Instance.

13. On 16 June 2003 the Turgutlu Criminal Court of First Instance conducted an on-site inspection.

14. On 4 July 2003 an expert report, prepared by Mr E.Ö., found that the degree of fault attributable to the second applicant for the death of the applicants' daughter was 2/8, and it was 6/8 in respect of Mr A.L. The defendants objected to the report and a second expert report was commissioned by the court.

15. On 15 September 2003 a second expert report, prepared by one lawyer and two experts on job safety, held that no fault could be attributed to the accused as the responsibility lay with the Turgutlu Municipality, on the basis of the notion of service fault (*hizmet kusuru*), since the wheels of the rubbish container in question had been broken and it had been placed on an uneven surface.

16. On 25 February 2004 the Turgutlu Criminal Court of First Instance, on the basis of the expert report, acquitted the applicant of the charges against her. It also decided to halt the proceedings against Mr A.L. since no prior authorisation for his prosecution had been obtained, as required under domestic legislation.

17. On an unspecified date the prosecuting authorities requested the Turgutlu District Governor's Office to grant authorisation for Mr A.L.'s prosecution.

18. On 11 November 2004 the Turgutlu District Governor's Office, after a preliminary investigation, declined to grant the necessary authorisation for Mr A.L.'s prosecution. In its decision, the District Governor's Office noted that under the provisions of the contract concluded between the Turgutlu Municipality and the Hastürkler limited company (the firm responsible for rubbish collection – hereinafter "the company"), it had been the responsibility of the company to repair the faulty container and to inform the municipal official with responsibility for rubbish containers about it.

19. On 8 December 2004 the Manisa Regional Administrative Court dismissed an objection by the prosecutor and upheld the decision of the Turgutlu District Governor's Office.

20. On 7 February 2005 the prosecutor, noting that authorisation to prosecute Mr A.L. had been refused, decided not to prosecute him.

2. Compensation proceedings before the administrative courts

21. On 16 January 2004 the applicants had applied to the Turgutlu Municipality for compensation. Since no response was received, on 13 May 2004 the applicants brought an action for compensation in the Turgutlu Administrative Court against the Municipality.

22. On 1 July 2004 the first-instance court dismissed the applicants' claim for compensation on the ground that they had submitted it too late (*süre aşımı*). In this connection, the court, referring to section 13 of Law no. 2577, noted that it should have been obvious to the applicants that the responsibility of the Municipality was engaged and therefore they should

have applied to the relevant authority within a year of the death of their child.

23. On 9 February 2005 the Supreme Administrative Court, by a majority, upheld the judgment of the first-instance court. A request by the applicants for rectification of its judgment was also dismissed by the same court on 13 February 2006. On both accounts one judge dissented on the ground*, inter alia*, that the applicants had become aware of the fault of the municipality only on receipt of the expert reports, and that therefore they were within the applicable time-limits.

3. Criminal proceedings against Mr M.H., the authorised representative of the Hastürkler limited company

24. On 18 August 2006 the applicants lodged a criminal complaint with the Turgutlu public prosecutor's office against Mr M.H., the authorised representative of the Hastürkler limited company, requesting that he be prosecuted and convicted for the death of their daughter. They submitted that nineteen months had elapsed since the prosecutor's office had decided not to prosecute the municipal authorities and that no other steps had been taken since that time. In this connection, the applicants requested the prosecutor's office to act without further delay as the statutory time-limit for trial in respect of the offence was approaching.

25. Mr M.H. gave evidence to the police on 6 December 2006, denying the allegations against him and claiming that the company was responsible only for collecting rubbish in and around the rubbish containers and nothing further.

26. In an indictment dated 13 May 2007 the Turgutlu Public Prosecutor charged Mr M.H. with causing death by negligence. The charges were brought under Articles 85 § 1, 22 and 50 § 4 of the Criminal Code.

27. On 21 May 2007 the criminal proceedings against the accused began before the Turgutlu Criminal Court of First Instance.

28. In the course of the trial the court heard evidence from the accused and the applicants, commissioned expert reports and conducted an on-site inspection.

29. The expert report prepared by Mr C.B., an inspector at the Labour and Social Security Ministry, concluded that the Municipality and the company responsible for collecting the rubbish were at fault.

30. On 14 September 2007 the applicants joined the proceedings as civil parties (*müdahil*).

31. On 5 December 2007 an expert report prepared by three engineers, experts on job safety, concluded that the second applicant was at fault to the degree of 4/8 for the death of the applicants' daughter as she had not been diligent, the Municipality was at fault 2/8 for not conducting the necessary inspections, and Mr M.H. was at fault 2/8 for failing to replace the broken wheels of the rubbish container.

32. On 27 February 2008 the first-instance court, relying on the findings of the expert reports of 31 January 2007 and 5 December 2007, found that Mr M.H. was guilty as charged and sentenced him to two years' imprisonment. This sentence was subsequently reduced to six months' imprisonment and commuted to a fine.

33. On 16 September 2010 the Court of Cassation quashed the decision of the first-instance court and discontinued the proceedings against the accused on the ground that the prosecution of the offence had become time-barred under Articles 102 § 4 and 104 § 2 of the Criminal Code (no. 765) and Article 322 of the Code of Criminal Procedure.

4. Compensation proceedings before the civil courts

(a) Compensation proceedings against the company

34. On 30 July 2007 the applicants initiated compensation proceedings against the company on the ground that the latter was responsible for the death of their daughter. The first applicant requested 7,000 Turkish liras (TRL) in respect of pecuniary damage and TRL 15,000 in respect of non-pecuniary damage. The second applicant requested TRL 8,000 in respect of pecuniary damage and TRL 15,000 in respect of non-pecuniary damage. The applicants further requested, on behalf of their remaining two children, TRL 5,000 in respect of non-pecuniary damage. They further requested the court to issue a temporary injunction banning the sale or transfer of the cars belonging to the company.

35. The company requested the court to dismiss the proceedings as they considered that no fault could be attributed to it.

36. On 1 August 2007 the compensation proceedings commenced before the Turgutlu Civil Court of First Instance. Regular hearings were held. The court examined the case-file of the criminal proceedings brought against the company representative and commissioned an additional expert report to examine the discrepancies between the expert reports contained in the case-file.

37. At a hearing on 9 October 2007 the first-instance court issued an injunction in respect of two cars belonging to the company.

38. On 18 July 2008 an expert report prepared by Mr Ö.T. concluded that both the Municipality and the company were 50% at fault.

39. On 30 July 2008 an expert report prepared by a lawyer was submitted to the court. This report concerned the amount of pecuniary damage to be awarded to the applicants on the basis of the findings of the expert report of 18 July 2008.

40. Another expert report prepared by three engineers, experts on job safety, concluded, on 15 December 2008, that the company was at fault in the circumstances of the present case. They considered that since the municipality had not been informed of the condition of the rubbish

container, no fault could be attributed to it. The report further concluded that no fault could be attributed to the second applicant, as she had been holding the deceased's hand at the time of the incident.

41. At a hearing held on 6 March 2009 the first-instance court decided to commission an additional expert report, as it considered the conclusions as to the attribution of fault in the earlier reports were divergent.

42. On 20 April 2009 an expert report prepared by three engineers, experts on job safety, was submitted to the court. That report concluded that the company was 25% at fault for not preventing its workers from misusing the containers, for not supervising the work, for the placing of the container on an uneven surface, and for the failure to inform the authorities about the broken wheel. It considered that Mr M.H. was 5% at fault for not ensuring general work discipline. The second applicant was 20% at fault for not preventing the child from touching the container, and the Municipality was 50% at fault for not placing the container on an even surface, for not ensuring the container did not overbalance when the lid was open, for not checking or prescribing and taking measures to prevent misuse of the container from causing harm, and for not checking whether the relevant work was being conducted in accordance with the provisions of the contract.

43. On 26 October 2010 an additional expert report was prepared by a lawyer, calculating the amount of pecuniary damage to be awarded to the applicants on the basis of the findings of the latest expert report.

44. On 5 October 2009 and 3 November 2009 the applicants requested the court to broaden the case so as to include Mr M.H. and the Municipality as co-defendants in the compensation claim.

45. On 3 November 2009 the first-instance court partially ruled in the applicants' favour. It first held that the second applicant was at fault for letting her child get too close to a rubbish container in the middle of the night; the municipality was at fault for several reasons, such as not placing the bin on a proper surface, not ensuring that its lid was properly functional, and not checking whether the rubbish container posed a danger, or whether the company was abiding by its contractual obligations. It found that the company was at fault for various reasons, such as not enforcing work discipline, not preventing the misuse of its rubbish containers, and failing to monitor and inform the relevant authorities about faulty rubbish containers. It considered that the responsibility of the company for the incident was 25%. It thus awarded the first applicant TRL 3,319.56 in respect of pecuniary damage and TRL 4,500 in respect of non-pecuniary damage, and the second applicant TRL 3,155.62 in respect of pecuniary damage and TRL 4,500 in respect of non-pecuniary damage. It further awarded TRL 1,500 in respect of non-pecuniary damage to each of the applicants' surviving children. The court fixed the interest at the statutory rate applicable on 31 July 2002, the date of the incident. Finally, the court dismissed the applicants' request for the broadening of the case to include

Mr M.H. and the Municipality as co-defendants, as no such procedure existed in domestic law.

46. The applicants appealed.

47. On 15 January 2010 the applicants commenced enforcement proceedings in order to claim the sums due, which amounted in total to TRL 53,671.49 at the time. The Government submitted correspondence between the enforcement office and various institutions, notably banks, concerning whether the company had any existing assets. According to the record prepared by Mr R.C., a deputy enforcement officer, on 16 February 2012 no movable or immovable property was registered under the name of the firm and the case-file was closed on 29 December 2011.

48. On 14 July 2011 the Court of Cassation rectified and upheld the decision of the first-instance court.

(b) Compensation proceedings against the Municipality

49. On 30 September 2011 the applicants initiated compensation proceedings against the Turgutlu Municipality. The latter raised the objection that the court was prevented from examining the case as the statutory time-limit had expired.

50. On 3 February 2012 the Turgutlu Civil Court of First Instance held that the statutory time-limit for examining a compensation claim arising out of a tortious act (*haksız fiil)* had expired. Referring to Article 60 of the Civil Code of Obligations, the court noted that the liability of the municipality as regards the events had been held to be 50% in the previous compensation proceedings, and thus the applicants had failed to lodge an application with the court against the Municipality within one year of the date on which they had learned of the damage and its perpetrator.

B. Relevant domestic law and practice

51. The relevant domestic law applicable at the time of the events is as follows.

1. The Constitution

52. Article 17 of the Constitution provides that everyone has the right to life.

2. Criminal law

53. Article 455 § 1 of the Criminal Code (no. 765) reads:

> "Anyone who, through carelessness, negligence or inexperience in his profession or craft, or through non-compliance with laws, orders or instructions, causes the death of another shall be liable to a term of imprisonment of between two and five years and to a fine of between 20,000 and 150,000 Turkish liras."

54. A prosecution for an offence punishable by a prison sentence of a maximum of five years must be brought within five years (Article 102 § 4 of the Criminal Code (no. 765)).

55. At the time of the incident, under the Code of Criminal Procedure, a public prosecutor who, in any manner whatsoever, was informed of a situation which gave rise to a suspicion that an offence had been committed was required to investigate the facts with a view to deciding whether or not criminal proceedings should be brought (Article 153). However, the public prosecutor's jurisdiction was restricted *ratione personae* at the preliminary investigation stage if the suspected offender was a State employee or public servant and the alleged offence had been committed during the exercise of official duties. Law no. 4483 (Law on the prosecution of civil servants and public officials) determined which authorities were empowered to give permission for a State employee or public servant to be prosecuted for an offence committed in the exercise of official duties and regulated the procedure to be followed. In such cases, it was for the competent authority (depending on the suspect's status) to conduct a preliminary investigation and, consequently, to decide whether criminal proceedings should be opened. The decision given by the relevant authority could be challenged before the Supreme Administrative Court. A decision not to prosecute was automatically reviewed by that court.

56. On 1 June 2005 a new Criminal Code (Law no. 5237) entered into force. Under Article 85 § 1 of the new Criminal Code a person causing the death of another person by negligence was liable to a term of imprisonment of between two and six years.

3. Administrative law

57. Section 13 of Law no. 2577 (Code on Administrative Procedure) provides that persons who have suffered damage on account of a wrongful act of the administration must apply to the relevant authority for rectification of the situation within a year of the date on which they were notified or otherwise learned of the impugned act, before bringing a lawsuit. Should all or part of the claim be dismissed, or if no reply is received within sixty days, the victim may bring administrative proceedings.

4. Civil law

58. Under the Code of Obligations (no. 818), anyone who has suffered damage as a result of a tortious or criminal act may bring an action for damages for pecuniary loss (Articles 41-46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal courts on the issue of the defendant's guilt (Article 53).

59. In civil law, the claim for damages must be initiated within one year of the date when the prejudiced party has received knowledge of the damage and of the person liable, but in any case within ten years of the date when the act which caused the damage took place (Article 60 of the Code of Obligations (no. 818)).

COMPLAINTS

60. The applicants complained under Articles 6 and 13 of the Convention that despite the fact that their child had died as a result of negligence on the part of Turgutlu Municipality officials, those responsible for the incident had not been prosecuted and the applicants' attempt to obtain compensation in administrative proceedings had proved futile.

THE LAW

61. Under Articles 6 and 13 of the Convention, the applicants maintained that despite the fact that their child had died as a result of negligence on the part of Turgutlu Municipality officials, those responsible for the incident had not been prosecuted and the applicants' attempt to obtain compensation in administrative proceedings had proved futile.

62. The Court considers that the applicants' complaint falls to be examined under Article 2 of the Convention, which reads, in so far as relevant, as follows:

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

A. The parties' submissions

63. The Government submitted that Article 2 was not applicable in the present case as the State could not be held responsible for the manner in which the applicants' child had died. They further claimed that the applicants had failed to exhaust domestic remedies. In this connection, in their initial observations the Government claimed that the applicants had failed to institute an action in the civil courts (pursuant to Articles 41-47 of the Code of Obligations) or administrative courts (pursuant to Article 125 of the Constitution). In their additional observations they claimed that the applicants' claim before the administrative court had been dismissed for their failure to lodge it within the required time-limits, and that the applicants had failed to lodge a compensation claim against Mr M.H. in the course of the criminal proceedings against him.

64. As to the merits, the Government considered that in the circumstances of the present case there was no violation of Article 2 of the Convention. In this connection, relying on the Court's judgments, notably, *Osman v. the United Kingdom*, (28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) ; *Scavuzzo-Hager and Others v. Switzerland*, (no. 41773/98, 7 February 2006); *Zavoloka v. Latvia*, (no. 58447/00, 7 July 2009), and *Tanlı v. Turkey*, (no. 26129/95, ECHR 2001-III (extracts)), they emphasised that no fault could be attributed to the authorities for the death of the applicants' daughter and that, in the circumstances of the case, it could not be held that the authorities could have foreseen that the rubbish container posed a real and immediate danger, and thus prevented the accident from materialising. The Government further added that they had fulfilled their procedural obligations under Article 2 of the Convention. In this regard, they referred to the proceedings and subsequent outcome of each remedy pursued by the applicants.

65. The applicants maintained their allegations. In particular, they reiterated that their daughter had been killed by the rubbish container and that their claims for compensation before the administrative courts had been unfairly dismissed.

B. The Court's assessment

66. The Court considers it unnecessary to determine whether the applicants have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention, since their complaint is, in any event, inadmissible for the following reasons.

67. The Court reiterates that Article 2 does not concern only deaths resulting from the use of force by agents of the State. In the first sentence of its first paragraph it places a positive obligation on the Contracting States to take appropriate steps to safeguard the lives of those within their jurisdiction. Such a positive obligation has been found to arise in a range of different contexts examined so far by the Court, for example, in the health-care sector, be it public or private, as regards the acts or omissions of health professionals (see *Dodov v. Bulgaria*, no. 59548/00, §§ 70, 79-83 and 87, ECHR 2008-...; *Byrzykowski v. Poland*, no. 11562/05, §§ 104 and 106, 27 June 2006; and *Vo v. France* [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII, with further references), as well as in respect of the management of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII), and ensuring safety on board a ship (see *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2008) or on building sites (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003).

68. The above list of sectors is not exhaustive. In a very recent case the Court found that the State's duty to safeguard the right to life was also

considered to extend to the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Ciechońska v. Poland*, no. 19776/04, § 67, 14 June 2011, where the applicant's husband died after being hit by a tree in a health resort).

69. In some exceptional situations the Court has held that the authorities' positive obligations under Article 2 of the Convention entail resort to criminal law remedies (see *Öneryıldız*, cited above, § 93, concerning a dangerous household-refuse tip, as well as *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007, and *Railean v. Moldova*, no. 23401/04, § 28, 5 January 2010, concerning road traffic accidents in which lives were lost in suspicious circumstances). However, if the infringement of the right to life is not intentional, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil law remedy, either alone or in conjunction with a criminal law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see, among other authorities, *Anna Todorova v. Bulgaria*, no. 23302/03, § 73, 24 May 2011).

70. The Court reiterates in this connection that the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 37, 10 April 2012, and *Ciechońska*, cited above, § 65). However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Ciechońska*, cited above, § 66).

71. The Court observes that several remedies were available to the applicants in relation to the death of their daughter. Firstly, it was open to them to request the prosecuting authorities to initiate a criminal investigation into the circumstances surrounding the incident. Secondly, it was open to them to institute administrative proceedings for compensation against the relevant public authority. Finally, the applicants could also have brought a civil action in tort against those they considered responsible for their daughter's death. In the instant case, the applicants used all of the procedures mentioned above. The question is therefore whether in the concrete circumstances of the case any of those procedures satisfied the State's obligation under Article 2 of the Convention to provide an effective judicial system (see *Anna Todorova*, cited above, § 74).

72. Having regard to the particular circumstances, the Court starts from the assumption that the events relating to the applicants' daughter's death fall within the scope of Article 2 of the Convention. It also considers that there is nothing to indicate that the death of the applicants' daughter was caused intentionally, and that the circumstances in which it occurred were not such as to raise suspicions in that regard. Therefore a criminal law remedy was not necessarily called for under Article 2. However, as criminal proceedings were nevertheless brought, the Court deems it appropriate to examine whether they were sufficient to satisfy the State's positive obligations under Article 2.

73. The Court observes that at the initial investigation stage the prosecutor made no attempt to establish whether anyone else apart from the applicant or the municipality could also be held criminally liable for the death of the child. Even then, he omitted to request prior permission for the prosecution of the municipal official, as required by domestic law, with the result that the proceedings regarding the municipal official were unnecessarily prolonged. Subsequently, those proceedings came to an end on 7 February 2005 when the prosecutor decided not to prosecute him as the Turgutlu District Governor's Office, after a preliminary investigation, had decided not to give its permission. The latter considered that the fault in the instant case lay with the company. However, the prosecutor waited approximately one year and ten months before taking additional investigative measures in order to establish whether other persons, notably those working at the company in question, could be deemed to be criminally responsible for the incident. As a result the criminal proceedings instituted against Mr M.H., the owner of the company, were eventually discontinued as the statutory time-limit had expired. Therefore, the Court considers that the prosecutor's investigation lacked thoroughness, and the manner in which he handled the investigation unnecessarily prolonged the proceedings, with the result of depriving the ensuing criminal trials of any effect.

74. In view of the above considerations, the criminal investigation in the instant case can hardly be regarded as having been effective for the purposes of Article 2. It is, then, necessary to examine the effectiveness of the civil and administrative proceedings brought by the applicant (see *Anna Todorova*, cited above, § 79).

75. In the instant case the Court takes note that the applicants raise no particular complaints or criticism as regards the civil proceedings, and that the focus of their complaint is their inability to obtain compensation from the Municipality before the administrative courts. However, the Court observes that the administrative courts were precluded from examining the merits of the applicants' case owing to the failure of the applicants to respect the required time-limits. The applicants challenge the fairness of the interpretation given by the administrative courts. However, the Court

reiterates, in this connection, that the domestic courts are best placed for assessing the relevance of evidence to the issues in a case and for interpreting and applying rules of substantive and procedural law (see *Sevim Güngör v. Turkey* (dec.), no. 75173/01, 14 April 2009). In the instant case, the Court is not persuaded that the interpretation of the domestic law by the administrative courts was so manifestly unreasonable as to be deemed arbitrary. In this connection, the Court observes that the applicants were represented by a lawyer and had the opportunity to avail themselves of their procedural rights in order to influence the course of the proceedings. The same considerations also apply in respect of the compensation proceedings the applicants brought against the Municipality before the civil courts.

76. In any event, the applicants also brought a civil action for compensation against the company and there is no dispute that such proceedings are, in principle, capable of providing adequate redress in relation to the death of the applicants' daughter. In this connection, the Court observes that there is no indication that the judges involved in the examination of the case both at first instance and at the appeal stage lacked independence or were not impartial. The proceedings in question were prompt and appear to have been concluded within a reasonable time. The Court further notes that the applicants, who were represented by a lawyer, actively participated in the proceedings to the extent necessary to safeguard their legitimate interests. Finally, in the Court's view the proceedings were effective. In this connection, the Court observes that the first-instance court found - on the basis of the evidence contained in the case-file - that several persons were liable for the death of the applicants' daughter for various reasons (see paragraph 43 above), and awarded the applicants an amount of compensation corresponding to the degree of liability of the company in question. That judgment was upheld by the Court of Cassation. The Court regrets that the applicants appear not to have been able to recover the sums due from the company; however, the State's responsibility for enforcement of a judgment against a private company extends no further than the involvement of State bodies in the enforcement procedures (see, among other authorities, *Fuklev v. Ukraine,* no. 71186/01, § 67 and §§ 90-91, 7 June 2005). Having regard to the documentary evidence available to it, the Court considers that the authorities have discharged their obligations to take sufficient steps for the enforcement of the judgment in the applicants' favour.

77. In the light of the above considerations, notwithstanding the undoubtedly tragic events in this case, it cannot be held that the State failed to provide an effective judicial system in relation to the death of the applicants' daughter. The Court therefore considers that the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President