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

SECOND SECTION

DECISION

Application no. 12647/11
Rahime UYAR and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 October 2016 as a Chamber composed of:

Julia Laffranque, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 29 November 2010,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. On 2 December 2002 the applicants' son and brother respectively, Utku Uyar, was killed in a traffic accident when the car he was driving collided with a bulldozer at approximately 2.30 p.m. in the afternoon. The bulldozer was being used for road works by the General Directorate of Highways (*Karayolları Genel Müdürlüğü*). An autopsy performed on the

victim's body on 3 December 2002 confirmed that he had died as a result of bodily traumas sustained in the crash.

1. Criminal proceedings related to the accident

4. Shortly after the accident, three gendarme officers went to the site of the crash to prepare an incident report. They noted, *inter alia*, that no signs had been placed on the road to warn drivers about the road works, a fact confirmed by the driver of the bulldozer. According to a map sketched by the gendarme officers, the car driven by Utku Uyar had hit the bulldozer on the rear left side, while the bulldozer was parked on an unpaved area on the right side of the main road.

5. According to witness statements obtained by the gendarmerie on 2 December 2002, the rear of the bulldozer had protruded approximately one and a half metres onto the main road at the time of the collision. However, it had been moved to the side of the road immediately after the accident, prior to the arrival of the gendarmerie at the site of the crash.

6. A couple of hours after the accident gendarme officers questioned the driver of the bulldozer, B.T. He stated that he had been operating the bulldozer on the unpaved area next to the main road when Utku Uyar's car had crashed into it. He denied any responsibility for the accident.

7. On 3 December 2002 B.T. was taken to the Sultanhisar public prosecutor to make a statement. Repeating his earlier words to the gendarmerie, B.T. insisted that the bulldozer had been completely off the main road at the time of the accident, and that he had no idea how the collision had occurred. He also stated that there had been some signs about 700-800 metres from the place of the crash showing road works. He made the same statement before the Sultanhisar Magistrates' Court later the same day.

8. On 9 December 2002 the Sultanhisar public prosecutor interviewed an eyewitness, A.E.H., who stated that at the time of the incident the bulldozer had occupied almost half the main road and that just before the crash another accident had been avoided when a lorry had managed to steer around the bulldozer at the last minute. The witness stated that he had warned an engineer overseeing the road works that someone holding a flag was needed to redirect the traffic.

9. On 12 December 2002 the Sultanhisar public prosecutor filed a bill of indictment with the Sultanhisar Criminal Court of First Instance ("the Sultanhisar Criminal Court" or "the trial court") against B.T., charging him with causing death through negligence under Article 455 § 1 of the Criminal Code in force at the material time.

10. On 13 December 2002 the Sultanhisar Criminal Court began hearing the case.

11. On an unspecified date the first applicant joined the proceedings as a civil party.

12. On 7 January 2003 the trial court carried out an on-site inspection of the place of the accident. The inspection included a gendarmerie expert, the defendant and eight witnesses. The expert carried out measurements on the bulldozer and the unpaved road it had been working on, as well as on the main road. Only one of the witnesses, A.E.H., who had previously been interviewed by the public prosecutor, had seen the accident happen. The remaining witnesses made contradictory statements about the location of the crash. Some of them stated that the victim's car had crashed into the bulldozer on the shoulder between the main road and the unpaved area, while others stated that the collision had occurred in the right lane of the main road.

13. On 16 January 2003 the gendarmerie expert issued his report ("the first report"). He stated that owing to the contradictory nature of the witness accounts the location of the collision could not be established with any certainty. He continued by saying that if the crash had occurred on the shoulder, then the victim bore five-eighths responsibility, as he had had no reason for leaving his lane and crossing to the shoulder; the remaining responsibility fell on the General Directorate of Highways (two-eighths) and B.T. (one-eighth) for not taking the necessary safety measures around the road construction work. If, however, the collision had occurred in the right lane of the main road, then B.T. and the General Directorate of Highways were six-eighths and two-eighths liable respectively for occupying the main road without taking any safety measures.

14. On 11 April 2003 the Forensic Medicine Institute issued a report concerning the accident ("the second report"). Relying on all the information in the case file, they found that the collision had occurred on the main road. On the basis of that finding, it declared that B.T. was three-eighths responsible for occupying the main road, the victim was three-eighths liable for not reacting effectively and redirecting the car in a timely manner to avoid a collision, and the General Directorate of Highways was two-eighths responsible for not placing warning signs and signals on the road.

15. On 17 June 2003 the first applicant objected to the Forensic Medicine Institute's report. It appears that the Sultanhisar Criminal Court ordered a third report owing to the contradictions between the first two.

16. On 8 September 2003 three court-appointed experts issued their own accident report ("the third report"), where they reached the same findings as the Forensic Medicine Institute.

17. On 5 March 2004 an additional indictment was filed against Y.S., the head of the team of workers carrying out the road construction work ("the foreman") for causing Utku Uyar's death through negligence by not placing signs or a man with a flag on the road to warn drivers about the construction work.

18. At a hearing held on 23 June 2004 Y.S. denied all responsibility for the failure to take safety measures, claiming that such measures were the responsibility of his superiors.

19. At its fifteenth hearing, held on 30 November 2004, the Sultanhisar Criminal Court delivered its judgment. It convicted B.T. and Y.S. as charged on the basis of the second and third reports, and sentenced them to a judicial fine.

20. The parties appealed against the trial court's judgment.

21. On 11 July 2005 the public prosecutor's office attached to the Court of Cassation remitted the case to the Sultanhisar Criminal Court for a reassessment of the sentence in the light of the new Criminal Code (Law no. 5237) that had entered into force in June 2005.

22. At a hearing held by the Sultanhisar Criminal Court on 9 November 2005, the defendant Y.S. argued that the responsibility for taking safety measures on the road fell on Ş.Z., the head of the road construction site.

23. On 22 November 2005 the Sultanhisar Criminal Court requested that the General Directorate of Highways indicate whether responsibility for taking the necessary safety measures at the road construction site had been that of Y.S. or Ş.Z. The first applicant objected to that request, stating that the trial court had no jurisdiction to collect new evidence at that stage of the proceedings as the case had been remitted to it only for a reassessment of the sentence in the light of the new Criminal Code. The first applicant's objection was dismissed, having regard to the authority and duty of a trial court to collect relevant evidence at all stages of the criminal proceedings.

24. On 21 December 2005 the General Directorate of Highways informed the Sultanhisar Criminal Court that the head of the construction site was responsible for placing the necessary warning signs while the foreman was responsible for keeping those signs in place for the duration of the construction work. It added that warning signs had been placed on the road at the time of the accident.

25. On 17 May 2006 Ş.Z. was heard as a witness. He stated that his responsibility was limited to placing warning signs around the construction site, which he had duly fulfilled. He added that the inspection of the day-to-day work at the site was the responsibility of the foreman, who was Y.S.

26. At a hearing held on 20 June 2006 the trial court ordered an additional report to determine the liability of Y.S. and Ş.Z. for the accident.

27. The additional report, issued on 27 November 2006 ("the fourth report"), found that the responsibility to take safety measures fell on Ş.Z. and not Y.S. He was, therefore, two-eighths liable for the accident, according to the experts.

28. On 27 February 2007 the Sultanhisar Criminal Court again convicted B.T. under the relevant provisions of the former Criminal Code, which were more favourable in the circumstances. However, on the basis of the additional report, it acquitted Y.S. and decided that a criminal complaint

should be filed against Ş.Z. with the Sultanhisar public prosecutor's office. On 6 March 2007 the first applicant appealed against that judgment.

29. On 6 July 2009 the Court of Cassation upheld Y.S.'s acquittal, but quashed the trial court's judgment in so far as it concerned B.T., holding that the trial court had to consider whether the procedure for the suspension of the pronouncement of judgments *(hükmün açıklanmasının geri bırakılması)*, provided for in Article 231 of the Code of Criminal Procedure (Law no. 5271), was applicable in the circumstances.

30. On 28 January 2010 the first applicant requested that the Sultanhisar Criminal Court file a criminal complaint against Ş.Z., as per its decision dated 27 February 2007.

31. At a hearing held on 30 March 2010 the Sultanhisar Criminal Court issued an order for the Sultanhisar public prosecutor to indicate whether an investigation had been commenced against Ş.Z., and if not, to duly commence the investigation process, having regard to the impending expiry of the limitation period. At the same hearing the criminal court decided to suspend the pronouncement of the judgment against B.T. (*hükmün açıklanmasının geri bırakılması*), pursuant to Article 231 §§ 5 and 6 of the Code of Criminal Procedure (Law no. 5271).

32. On 6 April 2010 the applicant objected to the decision to suspend the pronouncement of the judgment, arguing that the conditions for such a suspension, as set out in Article 231 § 6 of the Code of Criminal Procedure, had not been satisfied.

33. On 31 May 2010 the Nazilli Assize Court dismissed the applicant's objection, finding that the requirements of the above-mentioned article of the Code of Criminal Procedure had been complied with.

34. It appears that in the meantime, on 5 April 2010, the registry of the Sultanhisar Criminal Court filed a criminal complaint against Ş.Z. with the Sultanhisar public prosecutor's office.

35. On 14 April 2010 the Sultanhisar public prosecutor delivered a decision not to prosecute in relation to Ş.Z. as prosecution of the offence in question had become time-barred.

2. Criminal proceedings against members of the registry of the Sultanhisar Criminal Court

36. On an unspecified date the applicants filed a criminal complaint against the members of the registry of the Sultanhisar Criminal Court for neglect of duty. They alleged that by delaying the filing of a criminal complaint against Ş.Z., they had caused his prosecution to become time-barred.

37. On 6 September 2010 the Sultanhisar public prosecutor filed a bill of indictment with the Sultanhisar Magistrates' Court against three members of the registry of the Sultanhisar Criminal Court for neglect of duty.

38. On 11 July 2011 the Sultanhisar Magistrates' Court acquitted the defendants on the grounds of an absence of *mens rea* because the offence of neglect of duty required a specific intent, which had been absent.

39. The applicants appealed against that judgment.

40. On 17 December 2015 the Court of Cassation upheld the judgment of the Sultanhisar Magistrates' Court.

3. Compensation proceedings before the Sultanhisar Civil Court of First Instance

41. In the meantime, on 27 December 2004 the applicants brought compensation proceedings against B.T., Y.S. and the General Directorate of Highways before the Sultanhisar Civil Court of First Instance ("the Sultanhisar Civil Court"). The first applicant claimed 639 Turkish liras (TRY) and TRY 35,000 in respect of pecuniary and non-pecuniary damage, respectively. The second and third applicants claimed TRY 35,000 and TRY 5,000, respectively, in non-pecuniary damages.

42. On 4 February 2010 the Sultanhisar Civil Court dismissed the claims against Y.S. on account of his acquittal in the criminal proceedings. It also delivered a decision of non-jurisdiction in respect of the claims against the General Directorate of Highways as such claims were to be brought before the administrative courts. Relying on the second and third reports issued during the criminal proceedings, the Sultanhisar Civil Court held that B.T. held three-eighths liability for Utku Uyar's death and ordered him to pay TRY 239.77 (approximately 115 euros (EUR)), plus interest, in respect of pecuniary damage to the first applicant, in proportion to his responsibility for the death. It also ordered B.T. to pay compensation in respect of non-pecuniary damage of TRY 2,000 (approximately EUR 960) to each of the first two applicants, and TRY 500 (approximately EUR 240) to the third applicant, together with interest running from the date of the accident.

43. On 29 March 2010 the applicants appealed against the judgment of the Sultanhisar Civil Court, arguing in particular that the compensation for non-pecuniary damage ordered by that court had been minimal.

44. On 27 April 2011 the Court of Cassation granted the applicants' request and quashed the judgment of the Sultanhisar Civil Court, ordering that court to award a higher level of compensation for non-pecuniary damage to the applicants.

45. It appears that on 20 December 2011 the Sultanhisar Civil Court ordered B.T. to pay compensation in respect of non-pecuniary damage of TRY 15,000 (approximately EUR 6,085) to each of the first two applicants, and TRY 2,000 (approximately EUR 810) to the third applicant, together with interest running from the date of the accident.

46. On 16 April 2012 the Court of Cassation quashed the judgment of the Sultanhisar Civil Court in so far as it concerned the first two applicants, on the grounds that the compensation awards for non-pecuniary damage to

those applicants had been excessive. The case was remitted to the Nazilli Civil Court of First Instance ("the Nazilli Civil Court") on account of the closure of the Sultanhisar Civil Court.

47. On 26 December 2012 the Nazilli Civil Court ordered B.T. to pay TRY 8,000 (approximately EUR 3,370) to each of the first two applicants in respect of non-pecuniary damage, together with interest running from the date of the accident. B.T. appealed against this judgment but the applicants did not submit an appeal.

48. On 11 March 2015 the Court of Cassation upheld the judgment of the Nazilli Civil Court.

4. Compensation proceedings before the Aydın Administrative Court

49. On an unspecified date in 2011 the applicants brought an action for compensation before the Aydın Administrative Court against the General Directorate of Highways. The first two applicants sought TRY 35,000 each in respect of non-pecuniary damage, and the third applicant requested TRY 5,000.

50. Relying on the second report, submitted by the Forensic Medicine Institute to the Sultanhisar Criminal Court, on 11 October 2012 the Aydın Administrative Court found the General Directorate of Highways to be partially responsible for the death of Utku Uyar on account of the absence of the necessary warning signs and signals to alert drivers to the ongoing road construction work. Accordingly, it granted the applicants' request in part and ordered the General Directorate of Highways to pay the first two applicants TRY 20,000 (approximately EUR 8,530) each and the third applicant TRY 5,000 (approximately EUR 2,130) in respect of non-pecuniary damage, together with interest running from 27 December 2004 (the date on which the first compensation claim had been made before the Sultanhisar Civil Court).

51. It appears that on 23 April 2013 the applicants received TRY 84,289.89 (approximately EUR 35,790) from the General Directorate of Highways.

52. In the meantime, the General Directorate of Highways appealed against the judgment of the Aydın Administrative Court. On 12 May 2016 the Supreme Administrative Court upheld the judgment of the first-instance court.

B. Relevant domestic law

53. A description of the domestic law regarding the new remedy introduced by Law no. 6384 to deal with complaints relating to the excessive length of proceedings may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013), *Demiroğlu v. Turkey*

((dec.), no. 56125/10, 4 June 2013) and *Yıldız and Yanak v. Turkey* ((dec.), no. 44013/07, 27 May 2014).

COMPLAINTS

54. The applicants complained under Articles 2 and 13 of the Convention that the General Directorate of Highways had been responsible for the death of Utku Uyar on account of its failure to take the necessary safety measures at the road construction works. They further alleged under the same provisions that domestic law had not been designed to effectively and adequately punish the State agents who had caused Utku Uyar's death through their gross negligence and that the criminal proceedings related to the accident had not been conducted effectively.

55. The applicants complained under Article 6 of the Convention that the Sultanhisar Criminal Court's instruction for the filing of a criminal complaint against Ş.Z. had not been executed in a timely manner.

56. The applicants maintained under Article 6 that the Sultanhisar Criminal Court had overstepped its authority by collecting new evidence regarding the case following its remittal by the public prosecutor on 11 July 2005 as the remittal order's sole purpose had been the reassessment of the sentence that had been imposed. The applicants also alleged under the same provision that the decision to suspend the pronouncement of the judgment delivered by the Sultanhisar Criminal Court on 30 March 2010 had not complied with the requirements of Article 231 §§ 5 and 6 of the Code of Criminal Procedure.

57. The applicants complained under Article 6 about the refusal of the Sultanhisar Civil Court to examine the compensation claim against the General Directorate of Highways.

58. The applicants argued under Articles 6 and 13 of the Convention that the compensation proceedings before the Sultanhisar Civil Court and the criminal proceedings before the Sultanhisar Criminal and Magistrates' Courts had not been concluded within a reasonable time and that there had been no domestic remedies to complain about the length of those proceedings.

59. Lastly, the applicants maintained under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention that the non-pecuniary damages ordered by the Sultanhisar Civil Court had been insufficient to compensate them for their loss and suffering and that it had not been possible to bring compensation proceedings against Ş.Z. owing to the judicial authorities' failure to prosecute him in a timely manner.

THE LAW

A. Complaints under Article 2 of the Convention

60. The applicants complained under Articles 2 and 13 of the Convention that the General Directorate of Highways had been responsible for the death of their son and brother on account of its failure to take the necessary security measures related to the road construction works. They further complained under the same provisions that the respondent State had failed to put in place an effective judicial procedure to adequately punish the State agents who had been responsible for the accident. They also criticised the effectiveness of the criminal proceedings under Article 6, noting in particular the failure of the relevant judicial authorities to charge Ş.Z. in a timely manner. Lastly, they complained under Article 1 of Protocol No. 1 to the Convention and Article 13 of the small amount of compensation ordered by the Sultanhisar Civil Court in relation to the accident and argued that it had not even been possible to bring a compensation claim against Ş.Z. in view of the outcome of the criminal proceedings against him.

61. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009). For that reason, and having regard to the formulation of the complaints by the applicants, the Court decides to examine them from the standpoint of Article 2 alone, the relevant part of which reads as follows:

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

62. Turning to the facts before it, the Court notes at the outset that the applicants do not allege that Utku Uyar was killed intentionally by B.T, the driver of the bulldozer in question, nor do they complain of the inadequacy of the safety regulations governing road construction works. They rather limit their substantive complaint under Article 2 to negligence by the General Directorate of Highways in putting in place the necessary safety measures around the construction zone.

63. The Court observes that the applicants' claims in this regard were accepted by the Aydın Administrative Court, which ordered the General Directorate of Highways to pay them compensation in respect of non-pecuniary damage in the amount of TRY 45,000, together with interest, to take account of its responsibility for the death of Utku Uyar. The Court observes that pursuant to that judgment the applicants received TRY 84,289.99 from the General Directorate of Highways on 23 April 2013. The judgment of the Aydın Administrative Court was, moreover, upheld by the Supreme Administrative Court on 12 May 2016.

64. In those circumstances, the question now arises as to whether the applicants can still be considered to be victims within the meaning of Article 34 of the Convention in respect of their substantive complaints under Article 2.

1. General principles governing the assessment of victim status

65. The Court summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-92 of its judgment in the case of *Scordino v. Italy (no. 1)* [GC], no. 36813/97, ECHR 2006-V). In so far as relevant to the case under consideration, they are:

(a) under the principle of subsidiarity, it falls first to the national authorities to redress any alleged violation of the Convention; in this connection, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention;

(b) a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a victim unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention;

(c) the applicant's victim status will depend on the redress which the domestic remedy will have given him or her;

(d) the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies; otherwise the rights guaranteed by the Convention would be devoid of any substance.

66. It follows from the foregoing principles that the Court must verify whether the authorities have acknowledged, at least in substance, that there has been a violation of a right protected by the Convention and whether the redress can be regarded as appropriate and sufficient in the circumstances of the instant case (ibid., § 193).

2. Acknowledgement of the violation

67. The Court considers that the judgment of the Aydın Administrative Court finding the General Directorate of Highways liable in damages to the applicants on account of its negligence in taking the necessary security measures on the relevant road construction site (see paragraph 50 above) may be regarded as an acknowledgment in substance of the alleged breach of Article 2 of the Convention.

3. Characteristics of the redress

68. The Court must also determine whether, in the particular circumstances of the present case, the compensation awarded to the applicants by the Aydın Administrative Court amounted to sufficient redress in respect of the alleged breach of Article 2 of the Convention.

69. Two questions arise in that regard. First, whether an award of compensation may be regarded as an appropriate form of redress in the present context; second, whether the quantum of the award could be regarded as sufficiently compensating the damage suffered by the applicants.

(a) Appropriateness of the redress

70. In relation to the first question, the Court has held that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligations under Article 2 of the Convention do not necessarily require criminal proceedings to be brought in every case, and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for instance, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII; and *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 139, ECHR 2008 (extracts)). Different considerations may apply in the particular context of cases concerning dangerous activities, where it is established that the negligence attributable to State officials or bodies in relation to a fatal accident involving a dangerous activity goes beyond an error of judgment or carelessness (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 93, ECHR 2004-XII). However, there is no suggestion that such considerations applied in the instant case – the applicant alleged, and the national courts found, that their son and brother's death had been due to negligence on the part of officials of the General Directorate of Highways in taking the necessary safety measures around the road construction works. In those circumstances, the award of damages to the applicants in the context of administrative proceedings may be regarded as an appropriate form of redress in respect of their substantive complaints under Article 2 of the Convention (see, *mutatis mutandis*, *Zaharieva v. Bulgaria* (dec.), no. 6194/06, § 68, 20 November 2012).

71. The Court wishes to stress that to the extent that the applicants complained of the inadequacy of the criminal proceedings to effectively punish the responsible State agents, Article 2 does not entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I, and *Öneryıldız*, cited above, §96). While an effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law, the Court has already noted above (paragraph 70) and elsewhere on a number of occasions that the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal law remedy in every case if the infringement of the right to life or to physical integrity is

not caused intentionally, such as in the instant case (see, for instance *Vo*, cited above, and *Oyal v. Turkey*, no. 4864/05, §§ 67-68, 23 March 2010).

72. The Court is further aware that the relevant award of damages was made approximately ten years after the incident. The Court cannot, however, lose sight of the fact that the initial claim against the General Directorate of Highways was erroneously brought before the Sultanhisar Civil Court, and once the Aydın Administrative Court was seized of the matter, it ruled on the case fairly rapidly. Moreover, payment in relation to the compensation award was made shortly after the administrative court's judgment, without waiting for the finalisation of the appeal proceedings, and it included a significant amount of interest (TRY 39,289.99, almost as much as the principal award) to compensate for the passage of time since Utku Uyar's death. In those circumstances, and bearing in mind that the applicants did not complain of the length of the administrative proceedings or the delay with which the award was made, the Court is of the opinion that the delay in payment of the compensation was not such as to detract from its capacity to provide the applicants with effective redress in respect of their grievance. The Court, moreover, stresses in this regard that any prejudice suffered by the applicants on account of the length of the criminal and civil proceedings preceding the procedure before the administrative courts is addressed below in paragraph 78 in the context of the complaints under Article 6 § 1 of the Convention.

(b) Sufficiency of the redress

73. As to the question of whether the amount of compensation awarded was sufficient, the Court observes that the applicants have not alleged that the award made by the Aydın Administrative Court failed to make good the damage that they had suffered as a result of the alleged breach of Article 2 of the Convention.

74. It is true that the applicants' claims were allowed only in part by the Aydın Administrative Court, and that they were not awarded the full amount of compensation for non-pecuniary damage that they were seeking. However, it cannot be overlooked that on 23 April 2013 the applicants received TRY 84,289.99 (approximately EUR 35,790), an amount which is much higher than the awards made by the Court in similar cases concerning death by negligence (see, for instance, *Banel v. Lithuania*, no. 14326/11, § 77, 18 June 2013, and compare with *Oyal*, cited above, §§ 70-73, and *Ciorap v. Moldova (no. 2)*, no. 7481/06, § 24, 20 July 2010).

4. Conclusion

75. Having regard to the Aydın Administrative Court's judgment recognising the responsibility of the General Directorate of Highways for the accident in question and awarding the applicants ample compensation for their grievances, the Court concludes that the applicants can no longer

claim to be victims of a substantive violation of Article 2 of the Convention in relation to the death of their son and brother. Their complaints in that regard are therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

76. In view of the foregoing, and noting in particular its considerations above regarding the adequacy of the administrative proceedings as an effective remedy that enabled the applicants to obtain redress (see paragraphs 70 and 71 above), the Court considers that it is not called on to assess the effectiveness of the various criminal proceedings in the instant case (see, *mutatis mutandis*, *Kołaczyk and Kwiatkowski v. Poland* (dec.), no. 34215/11, § 50, 22 October 2013). Nor is it necessary to examine the applicants' complaints regarding the insufficiency of the amount of compensation awarded by the Sultanhisar Civil Court against B.T., which amount the applicants had in any event not contested before domestic courts (see paragraph 47 above), and their alleged inability to bring compensation claims against Ş.Z.

B. Complaints regarding the length of proceedings under Articles 6 and 13 of the Convention

77. The applicants complained under Article 6 of the Convention of the length of the proceedings before the Sultanhisar Civil, Criminal and Magistrates' Courts, and under Article 13 of the Convention of the lack of effective remedies in that respect.

78. The Court notes that a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012) to deal with, *inter alia*, applications concerning the length of proceedings that were lodged with the Court before 23 September 2012 (the date on which the individual application remedy before the Constitutional Court entered into force). Subsequently, in the case of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013), this remedy was considered to be *a priori* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings and the case was declared inadmissible on account of the applicants' failure to resort to that new remedy. Turning to the facts before it, the Court considers that there are no particular circumstances in the instant case preventing the applicants from using that new remedy in relation to their complaints. It therefore concludes that the applicants' complaint under this head should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

79. Having regard to its above finding, the Court further concludes that the complaint under Article 13 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C. The remaining complaints under Article 6 of the Convention

80. The applicants maintained under Article 6 that the first judgment delivered by the Sultanhisar Criminal Court on 30 November 2004 was remitted to that court for a reassessment of the sentence in the light of the new Criminal Code (Law no. 5237) that had entered into force in June 2005. That court had, however, not only reassessed the sentence, but had also collected new evidence regarding the case, which it had had no authority to do at that stage. The applicants further alleged under the same provision that the decision to suspend the pronouncement of the judgment delivered by the Sultanhisar Criminal Court on 30 March 2010 had not complied with the requirements of Article 231 §§ 5 and 6 of the Code of Criminal Procedure.

81. The applicants also complained under Article 6 about the refusal of the Sultanhisar Civil Court to examine the compensation claim against the General Directorate of Highways, stating that the "strict formalism" of the Sultanhisar Civil Court in that regard had violated their right of access to court in relation to their claims against the General Directorate.

82. The Court notes in relation to the complaints concerning the proceedings before the Sultanhisar Criminal Court (noted in paragraph 80 above) that the first applicant raised those complaints with the relevant domestic courts, which examined and dismissed them (see paragraphs 23 and 33 above). The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 81, ECHR 2006-V, and the cases cited therein). In the absence of any arbitrariness or manifest unreasonableness in the interpretation or application of the domestic laws in question, and having regard to the reasons provided by the relevant judicial authorities in rejecting the applicants' claims, the applicants have failed to substantiate that any of the procedural guarantees contained in Article 6 were breached in relation to the present complaints (see, *mutatis mutandis*, *Çalışkan v. Turkey* (dec.), no. 47936/11, 1 December 2015). In those circumstances, the Court holds that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

83. As for the complaint regarding the Sultanhisar Civil Court's decision not to examine the compensation claim brought against the General Directorate of Highways (noted in paragraph 81 above), the Court reiterates that domestic courts are best placed to interpret and apply national laws and

to solve any jurisdictional issues that may arise. The Court notes at the outset that there is no element before it which might lead it to conclude that the Sultanhisar Civil Court acted in an arbitrary or manifestly unreasonable manner in delivering its decision of non-jurisdiction in relation to the compensation claims against the General Directorate of Highways. In any event, the Court notes that the applicants were subsequently able to bring their claims against the General Directorate of Highways before the Aydın Administrative Court. It follows that this complaint must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 10 November 2016.

Stanley Naismith
Registrar

Julia Laffranque
President

APPENDIX

1. Rafet UYAR, born on 29 June 1956, is a Turkish national, lives in Aydın and is represented by S. Cengiz ("the first applicant")
2. Rahime UYAR, born on 6 September 1959, is a Turkish national, lives in Aydın and is represented by S. Cengiz ("the second applicant")
3. Umut UYAR, born on 21 December 1993, is a Turkish national, lives in Aydın and is represented by S. Cengiz ("the third applicant")