



Proceedings in administrative courts sufficed to establish liabilities for death caused by 2011 Van earthquake

In today's **Chamber** judgment¹ in the case of [Erdal Muhammet Arslan and Others v. Türkiye](#) (application no. 42749/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life/procedural limb) of the European Convention on Human Rights

The case concerned the death of the applicants' family member, who was buried in the ruins of the Bayram Hotel when it collapsed during the earthquake that struck Van Province in eastern Türkiye on 9 November 2011. The applicants, who had obtained redress from the administrative courts, complained to the Court that they had been unable to have criminal proceedings brought against the officials they held responsible for the death of their family member.

The Court considered that the State had been required to afford the applicants a remedy by which to have established the potential liability of the authorities in question and to obtain compensation where appropriate. Under Turkish law this remedy took the form of an action before the administrative courts ruling with full jurisdiction. The applicants had pursued that avenue and had obtained an explicit acknowledgment of the alleged failings.

The Court clarified that the State's positive obligation under Article 2 of the Convention in circumstances such as those in the present case did not necessarily require criminal proceedings. In addition to there being no right under Article 2 of the Convention to have third parties prosecuted and convicted, the fact remained that, in the circumstances of the present case, the failure to prosecute the officials in question had not precluded the establishment of the administrative authorities' respective liabilities for the death of the applicants' family member, or the compensation awarded to them in that respect.

The Court reiterated that States had a responsibility to take preventive measures in case of foreseeable natural hazards, including for the purpose of reducing their effects in order to keep their catastrophic impact to a minimum. The national authorities also had an obligation to supervise and inspect existing buildings to prevent, as far as possible, any danger to the population at large. In the event of a complaint, the judicial authorities were required to ensure that the obligations in question had been complied with by the relevant authorities.

Principal facts

The applicants are six Turkish nationals who were born between 1942 and 2007 and live in Türkiye.

In 2011, Van Province was struck by two successive earthquakes on 23 October 2011 (measuring 7.2 on the Richter scale) and 9 November 2011 (measuring 5.6 on the Richter scale) respectively, which killed 644 people and wounded 1,966 others.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

A member of the applicants' family (Ercan Arslan) died on 9 November 2011 in the ruins of the Bayram Hotel, when it collapsed, causing the death of 24 people. A few days later, the Van public prosecutor's office opened a criminal investigation into the circumstances surrounding the hotel's collapse. It commissioned an expert assessment, which found in particular that the building had been hastily constructed in 1964, without due consideration for building regulations; that the materials used had failed to meet applicable standards; and that an additional floor, which did not appear on the building permit, had been unlawfully built.

The applicants subsequently lodged a criminal complaint against several senior officials within the Disaster and Emergency Management Directorate ("the AFAD"), the then Governor of Van and the management of the Bayram Hotel, alleging that they were responsible for the death of their family member.

After the criminal investigation, the public prosecutor's office brought criminal proceedings against the operator of the hotel for wilful negligence occasioning multiple deaths, on account of the fact, among others, that he had continued to operate the hotel in spite of the first earthquake, which had weakened the structure. He was placed in pre-trial detention in 2012, then released in 2016. The criminal proceedings against him are pending before the Van Assize Court.

In addition, the public prosecutor's office considered the hotel's owner to be equally liable for the incident, but a discontinuance decision was issued on account of that individual's death.

As to the public officials, the public prosecutor's office found no grounds on which to prosecute them. Moreover, under the authorisation system implemented by Law no. 4483, the Minister of the Interior declined to authorise an investigation directed against the former Deputy Head of the AFAD, the former Governor of Van Province and the then Provincial Director of Emergency Services.

Meanwhile, in 2013, the applicants brought an action for damages in the Van Administrative Court against various administrative authorities, alleging that they had committed a breach of administrative duty resulting in the death of their family member during the earthquake.

In 2017, after examining the expert report it had ordered, the Administrative Court took the view that the Ministry for the Environment and Urban Planning and the Van municipal authorities had not properly inspected the Bayram Hotel construction project and building work, and that the Turkish public body for disaster management had neither conducted the necessary studies and inspections pertaining to the disaster scenario, nor carried out a timely inspection following the first earthquake of 23 October 2011. The court awarded the applicants a total of 71,694 euros (EUR) in compensation.

Complaints

Relying on Article 2 (right to life) of the Convention, the applicants complained that they were unable to obtain the prosecution of the officials they held responsible for the death of their family member, namely the former Deputy Head of the AFAD, the former Governor of Van Province, and the then Provincial Director of Emergency Services.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 July 2019.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Pauliine Koskela (Finland),
Saadet Yüksel (Türkiye),

Lorraine Schembri Orland (Malta),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Naturally occurring earthquakes were events over which States had no control. They nevertheless had a responsibility to take preventive measures in case of foreseeable natural hazards, including for the purpose of reducing their effects in order to keep their catastrophic impact to a minimum. This prevention obligation, which was an obligation of means, consisted in reinforcing the State's capacity to deal with such natural and destructive phenomena as earthquakes. Prevention first and foremost included spatial planning and controlled urban development. The local authorities responsible for regulating land use by issuing building permits had a decisive role in risk prevention and bore the primary responsibility for it. The national authorities then had a duty to supervise and inspect existing buildings to prevent danger to the population at large. In the event of a complaint, the judicial authorities were required to ensure that the obligations in question had been fulfilled by the relevant authorities. Moreover, an "earthquake plan", among other things, had to be drawn up in order to raise awareness among citizens and professionals and inform them of the seismic risk.

In the present case, the Court pointed out that it had previously held, in the context of an earthquake, that a civil action for damages could in principle allow the facts and responsibilities at issue to be established and afford the applicants appropriate redress for the purposes of Article 2 of the Convention. The State's positive obligation under Article 2 in circumstances such as those of the present case therefore did not necessarily require recourse to criminal proceedings.

The State had been required to afford the applicants a remedy by which to have established the potential liability of the authorities in question and to obtain compensation where appropriate. Under Turkish law, this remedy took the form of an action before the administrative courts ruling with full jurisdiction. The applicants had pursued that avenue and had obtained an explicit acknowledgment of the alleged violations. The Van Administrative Court, after examining the expert report it had ordered, had thus considered that the Ministry for the Environment and Urban Planning and the Van municipal authorities had not properly inspected the Bayram Hotel construction project and building work, and that the Turkish public body for disaster management had neither conducted the necessary studies and inspections pertaining to the disaster scenario, nor carried out a timely inspection following the first earthquake of 23 October 2011. It had therefore awarded the applicants a total of EUR 71,694 in compensation. The Court found that such redress had been appropriate and sufficient in the circumstances of the case.

The Court further observed that a few days after the Bayram Hotel had collapsed the Van public prosecutor's office had, on its own initiative, opened a criminal investigation into the circumstances of the collapse and gathered evidence that was apt to shed light on what had happened. In particular, an independent expert report had been commissioned. Following the investigation, criminal proceedings had been brought against the operator of the Bayram Hotel. The criminal courts had found, in particular, that the hotel building had not complied with anti-seismic regulations; that extensions had been added to the hotel without authorisation, thereby compromising the building's structure; that the defendant had continued to operate the hotel in spite of the first earthquake, which had weakened the structure; and that he had thus acted in a wilfully negligent fashion. The matter of compliance with safety standards had therefore been duly examined by the judicial authorities and had given rise to criminal investigations.

The Court noted that the applicants had insisted on the need for the criminal conviction of the officials they held responsible for the death of their family member. In the Court's view, beyond

there being no right under Article 2 of the Convention to have third parties prosecuted and convicted, the fact remained that, in the circumstances of the present case, the failure to prosecute the officials in question had not precluded the establishment of the administrative authorities' respective liabilities for the death of the applicants' family member, or the compensation awarded to them in that respect.

Consequently, the Court considered that domestic law had afforded the applicants a remedy that was apt to satisfy the Turkish State's obligation under Article 2 of the Convention to set up an effective judicial system capable of providing appropriate redress for the death of their family member in the circumstances of the present case. **There had therefore been no violation of Article 2 of the Convention.**

Separate opinion

Judge Derenčinović expressed a concurring opinion. That opinion is annexed to the judgment.

The judgment is available only in French.

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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.