



Proceedings failed to establish responsibilities for death of earthquake victims

In today's **Chamber judgment**¹ in the case of **Özel and Others v. Turkey** (applications nos. 14350/05, 15245/05 and 16051/05) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights under its procedural head.

The case concerned the deaths of the applicants' family members, who were buried alive under buildings that collapsed in the town of Çınarcık in an earthquake on 17 August 1999, one of the deadliest earthquakes ever recorded in Turkey.

The Court found in particular that the national authorities had not acted promptly in determining the responsibilities and circumstances of the collapse of the buildings which had caused the deaths.

Principal facts

The applicants, Mehmet Özel, Ali Kılıç, İsmail Erdoğan, Salim Çakır, Betül Akan, Menekşe Kılıç, Güher Erdoğan and Şehriban Yüce (Ergüden), are Turkish nationals who were born in 1974, 1955, 1938, 1954, 1960, 1956, 1927 and 1966, respectively.

The town of Çınarcık is located in a region classified as "major risk zone" on the map of seismic activity. The company V.G. *Arsa Ofisi* was accused of being responsible for the collapse of the buildings which killed the victims, mainly because the materials used in their construction had been deficient. Three partners in the company and its two scientific directors were prosecuted. The victims' relatives joined the proceedings as third parties. At the end of the criminal proceedings, two of the accused were convicted and the proceedings against the others were discontinued as time-barred.

In the absence of any administrative authorisation, it was not possible to bring criminal proceedings against the civil servants who also allegedly shared responsibility for the collapse of the buildings.

In 1999 and 2000, Ms Akan, Mr Özel, Mr Çakır and his wife, and Ms Yüce (Ergüden) sought compensation by bringing proceedings in Yalova District Court. The proceedings ended between 2009 and 2011.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained of a breach of their relatives' right to life. Under Articles 6 (right to a fair hearing) and 13 (right to an effective remedy) they also complained of a lack of fairness in the criminal proceedings and the excessive length of the proceedings, together with a lack of effective remedies.

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.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that there had been an interference with their property rights.

The applications were lodged with the European Court of Human Rights on 16, 22 and 25 April 2005.

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

Paul Lemmens (Belgium), *President*,

Işıl Karakaş (Turkey),

Nebojša Vučinić (Montenegro),

Helen Keller (Switzerland),

Egidijus Kūris (Lithuania),

Robert Spano (Iceland),

Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 2 (right to life)

The Court began by pointing out that Article 2 of the Convention imposed on States an obligation to take the necessary measures for the protection of the lives of individuals within their jurisdiction, even in the event of natural catastrophes (see *Budayeva and Others v. Russia*).

As regards the obligation for States to prevent disasters and protect their citizens, the Court explained that this obligation consisted mainly in the adoption of measures to strengthen the authorities' capacity to respond to lethal and unexpected natural phenomena such as earthquakes. Such prevention involved land planning and control over urban development. In the present case the Court noted that the national authorities had been fully aware of the risks to which the disaster zone was subject. The local authorities, with their responsibility to issue building permits, thus had a role and responsibility of primary importance in the prevention of risks related to the effects of an earthquake. However, the Court found that this part of the complaint was out of time and rejected it pursuant to Article 35 §§ 1 and 4 (admissibility criteria) of the Convention.

In the light of the case file, the Court notes that the criminal proceedings had lasted for more than 12 years. Even though the case was a complex one, only five individuals were prosecuted and the experts' reports were ready at an early stage. Two of the defendants were convicted, while the proceedings were time-barred in the case of the three others. The Court concluded that the length of the proceedings did not satisfy the requirement of promptness. It took the view that the importance of the investigation should have made the authorities deal with it promptly in order to determine the responsibilities and the circumstances in which the buildings collapsed, and thus to avoid any appearance of tolerance of illegal acts or of collusion in such acts.

Other articles

Having regard to the finding of a violation under Article 2 of the Convention, the Court considered that it had already examined the main legal question and that it did not need to rule separately on the other complaints.

Article 41 (just satisfaction)

The Court held that Turkey was to pay, in respect of non-pecuniary damage, 30,000 euros (EUR) jointly to Ms Akan and Mr Özel, EUR 30,000 jointly to Mr and Mrs Kılıç, EUR 30,000 jointly to Mr and Mrs Erdoğan, EUR 30,000 each to Mr Çakır and Ms Yüce (Ergüden), and for costs and expenses EUR 4,000 each to Mr Çakır and Ms Yüce (Ergüden).

The judgment is available only in English.

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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.