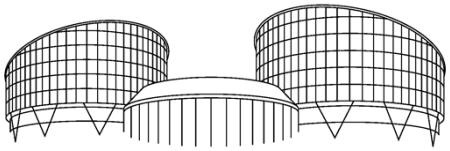

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF M. ÖZEL AND OTHERS v. TURKEY

(Applications nos. 14350/05, 15245/05 and 16051/05)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 31 March 2020.

STRASBOURG

17 November 2015

FINAL

02.05.2016

This judgment has become final pursuant to Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M. Özel and Others v. Turkey,

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

Paul Lemmens, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 20 October 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in three applications (nos. 14350/05, 15245/05 and 16051/05) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Turkish nationals, namely Mr Mehmet Özel, Mr Mehmet Özel, Mr İsmail Erdoğan, Mr Ali Kılıç, Mr Salim Çakır, Mrs Betül Akan, Mrs Menekşe Kılıç, Mrs Güher Erdoğan and Msr Şehriban Yüce (Ergüden) ("the applicants"), on 16 April 2005 (as regards Mr Özel and Mrs Akan, application no. 14350/05), on 22 April 2005, (as regards Mr Erdoğan, Mr Kılıç, Mrs Kılıç, Mrs Erdoğan and Mrs Yüce (Ergüden), application no. 15245/05) and 24 April 2005 (as regards Mr Çakır, application no. 16051/05).

2. Mr Özel and Mrs Akan were represented by Mrs F Saraç, a lawyer practising in İstanbul. Mr Çakır was represented by Mr M.U. Yılmaz, a lawyer practising in Istanbul. The other applicants were represented by Mr R.P. Şat, a lawyer practising in Istanbul.

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

3. The applicants complained of an infringement of their relatives' right to life (Article 2 of the Convention), unfair criminal proceedings and the excessive length of the latter (Article 6 of the Convention), and the lack of effective remedies (Article 13 of the Convention). They also alleged a violation of Article 1 of Protocol No. 1 to the Convention.

4. On 21 October 2009 the applications were communicated to the Government.

5. On 28 August 2014 the President of the Chamber invited the parties to submit additional information on the facts (Rule 54 § 2 [a] of the Rules of

Court). The parties accordingly submitted the additional information requested.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. Circumstances surrounding the deaths of the applicants' relatives

1. The apartment blocks built in Çınarcık

7. The Çınarcık Municipal Council, meeting in October 1994, adopted a decision increasing to six storeys the authorised height of the blocks covered by the building permits which had been issued to property developers for the construction of apartment blocks in Kocadere, on allotment 987, plot 1, and allotment 1257, plot 1. Pages 7 and 8 of the minutes of that meeting, recording the Municipal Council's discussions, comprise the following exchange:

> "H.D.: ... at the Municipal Council meeting of 17.10.1994 [the height of buildings in] the restricted zone was raised to six storeys in Kocadere, where, on the worksite belonging to K.P., [the blocks were already] six storeys high. [During] the on-site visit it was noted that there were two more six-storey buildings in Kocadere. I think the decision we took at the time was insufficient. I am therefore requesting a modification of the restricted zone for sites comprising six-storey blocks of flats...
>
> The Mayor: ... As I said at the 17.10.1994 meeting, our friend here is proposing legalising the six-storey buildings which have been completed, without bothering about the mistakes made in the past... I repeat what I said at the June meeting: let us correct, rather than mull over, our past mistakes. I acknowledge that mistakes have been made. But from now onwards no one will be able to add an extra storey, we will not allow it. And it was not us that made the mistake. That was already the situation when we arrived [in the municipality].
>
> N.P.: Mr Mayor, three persons have built six-storey blocks in Kocadere. What a cheek! And we subsidise these builders.. V.G. has built six-storey blocks on the site ... Who was asked for authorisation? ... I don't have to clean up his mess! In June we decided that he should coat [the buildings] in concrete. He should just bury them... the municipality should revise the plans for the whole Kocadere region and authorise six storeys ...

Y.B.: The new Municipal Council has been in place for seven months now. Have we visited the site where K.P.'s and V.G.'s buildings stand to record our findings and impose a fine? What exactly have we done so far?

The Mayor: They are standing trial. As things stand [their buildings] are not lawful. They have put up five- to six-storey buildings, which is against the law... We at no stage authorised their construction. There are two or three blocks. Either we authorise the six storeys or they will have to be demolished... If you ask me, I think that action should have been taken earlier on this situation ... we should now just leave this mess alone and issue a decision authorising the six storeys, thus correcting the mistake. After which we will not allow any more such buildings...

Y.B.: Mr Mayor, you did not answer my questions. What has been done about these blocks over the last seven months?

The Mayor: As I say, the builders are being prosecuted. Representatives of the housing department have inspected the site and the municipality has fined certain persons. Furthermore, we will not issue permits [for] these buildings before ... having imposed fines of two or three million Turkish lire ...

...

M.P: Mr Mayor, the fine you mentioned is the second stage in proceedings. I would remind you that the first stage, [relating to] your responsibility as Mayor, is to implement section 32 of the Urban Planning Act (Law No. 3194). Pursuant to that legislative provision, apart from [cases of] constructions which are exempt from the permit requirement, where the authorities have determined that construction work has begun without a permit or the work is incompatible with the permit and its appendices, the Municipality or the Office of the Governor must immediately visit the site and work must stop forthwith. You have been in office for six months now: have you, or have you not, honoured that obligation?

The Mayor: ... I repeat that I did not authorise the buildings in question... They had already been finished and roofed when I took up my duties.

..."

8. On 8 and 12 June 1995 a Çınarcık resident complained to the Directorate General for Research and Implementation of the Ministry of Housing and Public Works about the alleged unlawfulness of the buildings constructed in the Çınarcık municipality by the V.G. company.

9. The Çınarcık Municipal Council held a meeting on 13 October 1995, during which the Municipal Head of Technical Services informed the councillors of the criteria for amending the municipal urban planning scheme. The minutes of the deliberations of the Municipal Council read as follows:

"The Municipal Head of Technical Services: Mr Mayor, I would like to remind you of the provisions of the urban planning scheme on the addition of extra storeys to buildings for which permits have been issued. According to these provisions, two conditions must be met for such work: the first relates to the width of the street, and the second concerns technical and social infrastructure. I would just inform the Council that neither of these conditions is fulfilled in the applications submitted for adding storeys to the buildings.

...

Failure to comply with the conditions laid down in the regulations carries a criminal penalty ... The decision is yours ..."

Following these discussions, the Municipal Council accepted several applications for amendments to the municipal urban planning scheme.

10. On 4 October 1996 the Ministry of Housing and Public Works (the "Housing Ministry") invited the Office of the Governor of Yalova to order the municipality in question to take the requisite legal action on the buildings constructed in breach of urban planning regulations, to monitor the action taken by that municipality and to keep the Çınarcık resident who had complained to the aforementioned directorate informed of the situation.

11. On 7 October 1996 the Municipal Council agreed that the number of storeys authorised for the buildings already constructed could be increased from five to six.

12. On 30 May 1997 the Housing Ministry invited the Governor of Yalova to adopt the urgent measures set out in sections 32 and 42 of the Urban Planning Act (see Relevant Domestic Law, paragraph 134 below) in respect of the buildings and the real estate developers at issue.

13. On 18 August 1997 the Office of the Governor of Yalova informed the Housing Ministry that despite the transmission of the latter's orders to the municipality in question, the latter had failed to take any action.

14. By letter of 15 September 1997 the Housing Ministry invited the Office of the Governor of Yalova to issue the municipality with a final warning on the need to comply with its orders, failing which action would be taken against all persons failing to comply with their obligations under the Urban Planning Act.

15. On 15 October 1998 the Housing Ministry reminded the Office of the Governor of Yalova that section 32 of the Urban Planning Action prohibited amendments to urban planning schemes geared to legalising buildings which failed to comply with their building permits, and in fact required the authorities to correct any incompatibility with those permits.

2. The 17 August 1999 earthquake and the destruction of the buildings in Çınarcık

16. During the night of 17 August 1999 the Izmit region, located on the coast of the Marmara Sea, was hit by an earthquake of a magnitude of 7.4 on the Richter scale. The earthquake was one of the deadliest to hit Turkey in recent years. According to official statistics, it killed 17,480 persons and injured 43,953[1].

17. Seventeen buildings were destroyed in the municipality of Çınarcık, ten of them in the so-called *Çamlık sitesi*[2] and *Kocadere sitesi*[3] estates. On

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[1]. According sources, 13,600 buildings collapsed, involving 285,211 housing units and 42,902 business premises.

[2]. In the *Çamlık* estate, the buildings in question had been on allotment 1927/15-1, plot 1,

those estates 195 persons lost their lives and hundreds of others were injured as their dwellings collapsed.

18. Seher Özel, the mother of Mrs Akan and Mr Özel, Mehmet and Şadiye Yüce, the parents of Mrs Yüce (Ergüden), Hasan Kılıç, the son of Mr and Mrs Kılıç, Kazim Erdoğan, the son of Mr and Mrs Erdoğan, and Can Çakır, the son of Mr Çakır, were buried under the rubble of the blocks of flats in Çınarcık, where they had been when the earthquake struck. Mr Çakır was himself trapped beneath the rubble for about ten hours. Mrs Yüce (Ergüden) was injured, and personally rescued her daughter from the debris. Mrs Akan had also been trapped under the rubble for several hours.

19. According to a medical report of 18 August 1999 drawn up by a doctor working at the Bursa hospital, Mr Çakır had been placed under observation: he had suffered burns to various parts of his body and display whole-body trauma and respiratory problems.

20. On 24 August 1999 the Yalova public prosecutor visited Çınarcık together with technical experts and officers from the Directorate of Security. On the same day official inspection reports were drawn up on the *Çamlık* estate, covering allotment 1648/15-1, plot 7, sections C, D and E, allotment 1649/15-1, plot 3, and allotment 1927/15-1, plot 1, section E. It transpires from these reports that the experts took samples from the buildings which had been destroyed or affected by the earthquake and noted, *in particular*, that the concrete contained mussel shells, that the material used for the construction had been sea-sand based and that as a result the cement had lost its binding capacity.

21. On 25 August 1999 the Yalova public prosecutor and a group of technical experts visited the *Kocadere* estate. On the same day they drew up official reports on allotment 1258/3-2, plot 1, allotment 1256/3-2, plot 5, section D, and allotment 1257/3-2, plot 1. It transpires from these reports that the experts took samples from the buildings which had been destroyed or affected by the earthquake and noted, *in particular*, that the concrete contained mussel shells, that the concrete displayed a very poor granulometry, that the concrete had not been cured, that the metal brackets in the buildings had not been properly fastened to the columns, and that because of the corrosion of the brackets the iron had worked loose from the concrete.

22. Moreover, on 13 September 1999 Mrs Akan had requested that the Yalova Regional Court determine, on the basis of the evidence gathered, the causes of the collapse of building D2 on allotment 1649-15/1, plot 3, in the *Çamlık* estate, under whose rubble her mother had died, and establish the

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section E, allotment 1649/15-1, plot 3, sections C and D, and allotment 1648/15-1, plot 7, sections A, C, D, E.

[3]. In the *Kocadere* estate, the buildings in question had been on allotment 1256, allotment 1257, and allotment 1258/3-2, plots 5 and 1, section D.

relevant responsibilities. An expert opinion was commissioned to that end on the same day.

23. On 13 October 1999 the expert opinion commissioned set out the following findings:

> "...
>
> (d) Defects noted upon examination of the collapsed building, the rubble and the construction blueprint.
>
> 1. The height of the building was increased by 2.80 m by raising the basement above ground level, thus transforming it into the ground floor.
>
> 2. The foundations of the building were raised to soft ground (topsoil) level, which had low stability in terms of ground safety stress; the stability calculations ... were at no point revised.
>
> 3. The overall weight of the building was increased by the addition of an extra storey as compared with the number of storeys set out in the blueprint...
>
> 4. Neither the basement included on the plan, whose existence would have greatly increased earthquake resistance, nor the reinforced concrete retaining walls, which, according to the plans, were to have surrounded the basement, were ever built.
>
> 5. The mussel shells found in the pieces of concrete in the rubble showed that the sea sand and gravel had been used without sifting or sorting, which had been a major factor in diminishing the concrete's resistance.
>
> 6. It was noted that the reinforcing rods inside the concrete had rusted, suggesting that sea sand and gravel had been used unwashed and that the sea salt had corroded the metal.
>
> 7. The broken beams found in the rubble showed that the 20-cm distances between the brackets had not been respected, and in some places the interstices measured 30 cm...
>
> 8. ... The stress testing carried out on the samples showed that their stress resistance was only half what it should have been.
>
> In conclusion: ... The building was constructed without any kind of technical control; another storey in addition to the number of storeys mentioned in the blueprint was added at the owner's request in order to increase the number of housing and commercial units. Furthermore, the fact that the municipality failed to stop the building work raises issues. It is therefore necessary to ascertain whether a permit was issued for the building's shallow foundations, which were, in fact, incompatible with the blueprint as from the first storey. If such a permit was issued, it is necessary to identify the persons working for the municipality who approved that permit and whether or not an occupancy permit was granted by the Çınarcık municipality. If so, it is necessary to establish the identities of the signatories of that occupancy permit. It is possible that other blocks have been built without inspection by the Çınarcık municipality. The photographs taken show buildings with seven storeys above ground level and others with two storeys. It is therefore necessary to establish the reasons for this architectural disparity and the regulations applied to the construction."

B. Criminal prosecution of the real estate developers

24. On 6 September 1999 the Yalova public prosecutor took statements by V.G., the real estate developer responsible for buildings which collapsed in Çınarcık. V.G. stated that he had been working in the real estate field for nine years and that he had constructed numerous buildings with his partnership, the company V.G., and with the company *G. Arsa*. He agreed to shoulder responsibility for the shortcomings in the buildings which he had erected himself, but not for the defects relating to other buildings in which individuals had died during the earthquake and which he had merely sold. He also submitted that the buildings located on allotment 1927/15-1, plot 1, section D, allotment 1649/15-1, section C, and allotment 1649/15-1, plot 3, section D, had been constructed by İ.K. and Z.C. He did not know who had constructed the buildings in the *Çamlık* estate which had collapsed. He added that he was neither a construction engineer nor an architect, and that was why he called on the services of persons with expert knowledge of these fields, who should, in his view, be held responsible.

25. V.G. was remanded in custody the same day.

26. On 14 September 1999 the Yalova public prosecutor charged five individuals: the partners in the company *V.G. Arsa Ofisi*, to wit V.G., C.G. and Z.C., and also the company's scientific officers, to wit D.B. and İ.K. They were charged with having caused, through negligence and recklessness, the deaths of 166 persons, buried under the rubble of three buildings which they had constructed in breach of the relevant norms. It transpired from the indictment that several site sections – section E on allotment 1927, sections C and D on allotment 1649, and sections A, C, D and E on allotment 1648 – had been built in Çınarcık, on *Çamlık* square, and that three buildings, which had totally collapsed, had been erected in the *Kocadere* estate, on *Hanburnu* square, on allotments 1256 and 1258. It also transpired from the indictment that the experts who had taken samples from the collapsed buildings had, in particular, found as follows: in the buildings in question, the iron brackets had not been tightened at the interstice between the beams and the columns; mussel shells had been found in the concrete, resulting in low resistance owing to the use of sea sand and sea gravel; the distance between the columns and the beam brackets was 40 cm in places; and there was insufficient iron in some of the columns.

27. Criminal proceedings were commenced before the Yalova Criminal Court.

28. In September 1999 İ.K., D.B. and C.G. were remanded in custody *in absentia* by the Yalova Criminal Court.

29. On 30 September 1999 Z.C. was remanded in custody.

30. On 6 October 1999 the Yalova public prosecutor wrote to the General Directorate of Criminal Affairs of the Ministry of Justice to inform it of the following facts: a large number of articles had been published in the

local and national press about V.G.; given the very large number of deaths involved, the trial would be attended by many journalists and also numerous relatives of the victims; there was likely to be a very tense atmosphere during the hearings; Yalova prison had been closed following the earthquake and the prisoners were therefore housed in the Bursa prison; the courtroom would be too small for the number of persons attending proceedings; there were credible risks of the accused being abducted or murdered; and any preventive measures which the security forces would be able to put in place would be insufficient, such that it would be better to transfer the case to a different court.

31. On 14 October 1999 the General Directorate of Criminal Affairs of the Ministry of Justice invited the State Prosecutor with the Court of Cassation to transfer the case from the Yalova Criminal Court to a different criminal court pursuant to Article 14 *in fine* of the Code of Criminal Procedure, in order to guarantee public security during the proceedings.

32. On 15 October 1999, before the start of proceedings before the Yalova Criminal Court, the Court of Cassation, to whom the matter had been referred, decided to transfer the case to the Konya Criminal Court[4] for reasons of security during the proceedings and of the accused's safety.

33. On 19 October 1999, therefore, the Yalova Criminal Court transferred the case file to Konya Criminal Court.

34. On 20 October 1999 Mr Çakır applied to join the proceedings as a third party. On the same day Mrs Akan and Mr Özel also applied to join the proceedings as third parties, and declared that they reserved their rights as potential civil parties.

35. On 29 October 1999 Mr and Mrs Erdoğan and Mr and Mrs Kılıç lodged similar applications, and Mr Çakır reiterated his request.

36. On 20 November 1999 Mr Çakır forwarded a memorial requesting the criminal conviction of V.G. and his partners and stating that he reserved his rights *vis-à-vis* claiming compensation for the pecuniary and non-pecuniary damage which he considered he had sustained.

37. On 29 November 1999, after the case had been transferred to the Konya Criminal Court, Mr Çakır once again applied to take part in proceedings as a third party, and declared that he reserved his rights as potential civil party to proceedings. Mrs Yüce (Ergüden) also applied to take part in the criminal proceedings as a third party. Similarly, counsel for Mrs Akan and Mr Özel submitted a third-party application on behalf of each of her clients.

38. On 29 December 1999 Mr and Mrs Erdoğan applied to participate in proceedings, reserving their rights as potential civil parties. They submitted that they had sustained serious mental suffering and also pecuniary damage as a result of the loss of their son. Mr and Mrs Kılıç also lodged a

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4. Road maps show a distance of approximately 544 km between the two towns.

third-party application. Mr Çakır was heard as a victim, and he gave evidence against the accused. Counsel for Mr Çakır requested the admission of his client's application to take part in proceedings. At the conclusion of the hearing held on the same day, the Konya Criminal Court admitted that third-party application.

39. On 28 January 2000 the Konya Criminal Court examined Mr and Mrs Erdoğan's third-party application, and noted that their son's name was not on the list of deceased victims set out in the indictment. The court therefore requested submissions from those two applicants, including fresh information on the deceased persons. In a memorial of the same day, Mr and Mrs Erdoğan requested that charges be pressed against the officials allegedly responsible for the impugned acts.

40. During the hearing of 21 February 2000 the Konya Criminal Court questioned the victims, the accused and their lawyers. Mr Çakır was examined in his capacity as a third party, and he requested the conviction of the accused and the commencement of proceedings the municipal officials in question.

41. According to the official record of the hearing held on 20 March 2000, Mrs Akan, Mrs Yüce (Ergüden) and Mr Çakır had been examined as third parties: Mrs Akan had demanded the conviction of the accused and also requested that charges be brought against the official in question in the framework of those proceedings; and counsel for Mr Çakır had also demanded the conviction of those officials. At the conclusion of the hearing, the State Prosecutor was asked for information on the measures adopted by his Office regarding the provincial officials, as well as those working in the Çınarcık municipality and the Housing Ministry. Furthermore, V.G. and Z.C. were released on parole.

42. On 21 April 2000 Mr Çakır once again requested the prosecution of the Mayor of Çınarcık and of the municipal Head of Technical Services and Architecture. Mr and Mrs Kılıç were granted third-party status in the proceedings.

43. On 30 June 2000 Mr Erdoğan was granted third-party status in the proceedings. Mr Çakır was heard as a third party, and he requested an additional indictment in order to involve in the proceedings the municipal officials who had authorised the construction of the buildings which had collapsed. Counsel for Mrs Akan reiterated a request previously submitted for provisional measures covering all of V.G.'s assets.

44. On 22 September 2000, during the proceedings, the Yalova public prosecutor once again charged the five accused persons with having caused the deaths of several other persons through negligence and recklessness.

45. On 12 October 2000 three experts from the Istanbul Technical University prepared a report on their inspection of ten buildings which had collapsed, seven of them in the *Çamlık* estate and three in the *Kocadere* estate.

The conclusions of this expert report read as follows:

"**Tectonics and seismic activity in the region between Çınarcık et Yalova**

... This region is one of the most dangerous in seismic terms, which is why it has been marked out as a major hazard area on the map of Turkish seismic regions.

Impact of the Izmit earthquake of 17 August 1999 on the region between Çınarcık and Yalova

The 17 August 1999 earthquake, which was of a magnitude of 7.4 on the Richter scale and whose epicentre was at Izmit, created a 120-km-long superficial fault from Gölcük to Akyazı ... The fault segment was interrupted at a distance of 50 km from Çınarcık ... The primary causes of the destruction were the nature of the soil and the quality of the construction methods.

Conclusions

The coastal zone between Çınarcık and Yalova is an extremely dangerous region in seismic terms ... The *Çamlık* estate, which collapsed, had been built on an active rockslide area and on particularly soft soil. In such a high seismic risk region there can be no valid reasons for issuing building permits for six- or seven-storey buildings on such soft soil. Moreover, the fact that six-storey building located 300 m away in the *Çamlık* estate which had been erected on soil with similar characteristics were not damaged and that people are still living in them support the hypothesis that the buildings in the *Çamlık* estate had building defects.

...

Appraisal of the blueprints and the permits

...

Assessment of the blueprints showed the absence of documents attesting that soil studies had been carried out on the land where the buildings were to be constructed...

Expert reports included in the case file

The expert appraisals commissioned by the Yalova public prosecutor ... highlighted the following shared defects:

– Concrete resistance was unsatisfactory. The granulometric composition of the aggregates used for the concrete was inadequate and the concrete contained mussel shells. It was established that the cement dosage had been insufficient and that the sand had not been properly cleaned.

– The metal brackets on the load-bearing parts had not been reinforced and the anti-rust fixtures [*paspayı*] were unsatisfactory... Incipient corrosion on some of the reinforcing rods had weakened their adherence to the concrete.

– ...

– The softness of the soil was established.

Establishing the responsibility of the accused persons and conclusions

The owner and developer of all the impugned buildings [which] collapsed during the 17 August earthquake is the "*V.G. Arsa ofisi*" partnership. The founding partners of that company are İ.K., Z.C., C.G. ... Assessment of the evidence and documents contained in the case file shows that V.G. was the actual organiser [of the project]... For this reason V.G.'s responsibility is estimated at 2/8.

The responsibility of the public authorities which allowed the urban development of the *Çamlık* and *Hanburnu* neighbourhoods, authorised the multi-storey buildings there without commissioning the requisite prior geological studies, failed to provide for satisfactory supervision of the projects in the area, failed to request studies of the soil ..., failed to prevent the defective concrete-manufacturing procedures [and] failed to monitor the work of those responsible for the technical applications is estimated at 2/8.

C.G.'s responsibility is set at 1.5/16 and Z.C.'s at 1.5/16...

İ.K.'s responsibility is set at 3/16 on the grounds that he was a partner in the V.G. company, but also because he was responsible for the architectural and structural design of seven buildings and for the relevant technical applications...

D.B.'s responsibility is set at 1/8 because he was responsible for the architectural and structural design of three buildings and for the relevant technical applications.

..."

46. On 23 October 2000 the Yalova Criminal Court, to which the case had been referred following the indictment of 22 September 2000 (see paragraph 44 above), found that a similar action against the accused was pending and therefore requested the joinder of the two sets of proceedings.

47. On 22 December 2000 the Konya Criminal Court declined jurisdiction to adjudicate the impugned acts in view of the nature of the offence in question; the case was then referred to the Konya Assize Court.

48. Between 16 April 2001 and 21 October 2004 the Konya Court Assize held twenty-three hearings.

At the hearing on 16 April 2001 the State Prosecutor pointed out that transferring the case to Konya was against the procedural regulations and in breach of the rights of the third parties. He stated that the security grounds advanced for that transfer had lapsed and that the proceedings should therefore have continued in Yalova, where the offence had been committed. The applicants also applied for the setting aside of the transfer order in question, submitting that the security grounds advanced no longer applied. On the same day the Konya Assize Court rejected the application, pointing out that pursuant to the case-law of the Court of Cassation the case had to remain before the court to which it had been transferred even if the grounds for the transfer no longer applied. Counsel for Mr Özel, Mrs Akan, Mr and Mrs Kılıç, and Mr and Mrs Erdoğan presented their case during the hearing.

49. On 26 April 2001 the Istanbul Criminal Court remanded C.G. in custody.

50. On 3 May 2001 the Konya Assize Court wrote to the Konya public prosecutor requesting the preparation of a further expert report, complementing that of 12 October 2000, on the ruins of the buildings in question in order to establish whether their mode of construction had been in conformity with the original blueprints and whether the materials used had complied with the usual standards.

51. On 8 June 2001 Mrs Akan gave evidence. She stated that she had lost her mother during the earthquake and had dug her own child out of the rubble. She also submitted that the accused had not been the only parties criminally responsible for the impugned acts, as various municipal officials and members of the Chamber of Architects responsible for the technical oversight of the constructions in question had also been guilty. Counsel for that applicant stated that he had heard, through unofficial channels, that the decision had been taken to broaden the investigation in order to establish the municipal officials' responsibility, and he requested information on whether a decision had been taken to prosecute the Mayor of Çınarcık and the official in question. During the 8 June 2001 hearing Mr Çakır also gave evidence as a third party, as did another person, who stated that the Council of State had adopted a decision on 4 October 2000 to the effect that the Mayor of Çınarcık could not be prosecuted (see paragraph 89 below).

On the same day V.G. was once again remanded in custody.

52. On 11 June and 6 July 2001 the Konya Assize Court wrote to the Office of the Governor of Yalova , asking, in particular, whether any action had been taken against the Mayor of Çınarcık and the other officials liable to be held responsible for the consequences of the earthquake.

53. On 1 August 2001 V.G. and C.G. were released on parole. In a memorial of the same day, Mrs Akan and Mr Özel requested the indictment of the officials whose responsibility had been engaged for the impugned acts. Mr Çakır also submitted a memorial requesting the conviction of the accused and the prosecution, in the framework of the ongoing criminal proceedings, of the Mayor and the Head of Technical Service and Architecture of Çınarcık municipality.

54. At the hearing on 1 October 2001 Mr Çakır read out the minutes of meetings of the Çınarcık Municipal Council which, in his view, established that the buildings in the zone at issue had been constructed without prior authorisation. He once again submitted that the municipality and the officials had been responsible for what had happened.

55. On 11 April 2002 the Assize Court noted that the authorisation for a criminal investigation of the Mayor of Çınarcık and other officials (see paragraph 87 below) previously issued by the Interior Ministry had been set aside by the Council of State (see paragraph 89 below) and that the Inspectorate of Administration had adopted an opinion to the effect that there was no need to bring proceedings.

56. In a memorial of 16 July 2002 Mr Çakır requested the commencement of proceedings against the Mayor of Çınarcık and the Head of Technical Service and Architecture, suggesting that they should be tried in the framework of the criminal proceedings in hand on the ground that they had turned a blind eye to the construction of the impugned buildings.

57. On 24 July 2002 General Directorate of Local Administration of the Interior Ministry prepared a document for the Assize Court mentioning the

following points: (a) the Interior Ministry's 4 May 2000 decision to authorise a criminal investigation had been cancelled on 4 October 2000 by the Council of State, which meant that no action had been taken against the officials in question (see paragraph 89 below); (b) a report on an inquiry authorised by the Interior Ministry on 10 September 2001 had also concluded that there were no grounds for proceedings against the officials in question (see paragraph 91 below); and (c) another report on an inquiry authorised by the Interior Ministry on 25 January 2002 had concluded that there was no need to prosecute the officials in question (see paragraph 93 below).

58. At the hearing on 17 October 2002 the Assize Court noted that the document from the Directorate General of Local Administration of the Interior Ministry had been read and added to the case file.

59. In a claim submitted on 11 November 2003 Mr Çakır demanded a certain sum in respect of procedural expenses for the transfer of the case to Konya, and reserved his rights as regards that outlay.

60. On 18 November 2003 he repeated his request for the indictment of the officials whose responsibility had been engaged.

61. On 1 March 2004 Mrs Akan and Mr Özel submitted a memorial on the merits in which they relied on Article 6 of the Convention to complain of unfair proceedings and an infringement of the "natural judge" principle owing to the transfer of the case to Konya and a breach of the right of prosecution. They considered that their inability to obtain leave of prosecution under the Prosecution of Civil Servants and other Public Officials Act ("Law No. 4483") with regard to the municipal officials in question was contrary to the principle of equality before the law, as well as Articles 6 and 13 of the Convention.

62. On 4 May 2004 the Konya Assize Court ordered the separation of the case in hand from that concerning D.B. and İ.K. on the ground that the latter two accused persons had been untraceable for almost three years, thus delaying the proceedings.

63. On the same day a joint memorial was lodged with the registry of the Konya Assize Court by Mr and Mrs Kılıç and Mr and Mrs Erdoğan, declaring that they reserved their rights to claim civil damages in the criminal proceedings. Mrs Yüce (Ergüden) lodged a third-party memorial stating that owing to the deficiencies and delays in the civil and criminal proceedings the shares held in the accused's company had been sold off, which she considered as jeopardising the chances of success for any future action for damages. She also pointed out that the Mayor of Çınarcık had been given a thirty-five-month prison sentence for the architectural practices implemented in the *Çamlık* estate (see paragraph 85 below), and that he had been removed from office.

64. On 24 June 2004 İ.K. was remanded in custody.

65. On 5 July 2004 a fresh expert report was prepared at the Assize Court's request. According to the report, V.G. had been issued with six different building permits, twenty-two blocks had been built in Çınarcık for which no occupancy permit was to be found in the assessment file, and 195 persons had died buried in the rubble of those buildings, 152 of them in the *Çamlık* estate, 12 in the *Kocadere* estate and 31 in the V.G. estate. It also transpired from that report that İ.K. had been responsible for the architectural project regarding the buildings in the *Çamlık* estate, on allotment 1927/15-1, plot 1, allotment 1649/15-1, plot 3 and allotment 1648/15-1, plot 7, and that D.B. had been in charge of the architectural project regarding the buildings in the *Kocadere* estate, on allotment 1258/3-2, plot 1, allotment 1257/3-2, plot 1, and allotment 1256/3-2, plot 5. The report also specified that the V.G. company, in which İ.K. and Z.C. had been partners, had been responsible for the construction of all those buildings.

66. On 14 October 2004 the State Prosecutor presented the prosecution case on the merits. He submitted that 195 persons had died in the estates built by V.G.: 115 persons had been killed on allotment 1925, plot 1, allotment 1648, plot 7, and allotment 1649, plot 3, and 80 other persons in other buildings. Those deaths had been caused not by the earthquake alone but also by the actions of the accused, who had used deficient materials with full knowledge of the risks involved. He demanded the conviction of the accused pursuant to Articles 383/2 and 40 of the Penal Code, insisting that the sentence should be delivered six times, one for each of the building permits issued.

67. On 21 October 2004 the Assize Court found the accused V.G., C.G. and Z.C. guilty of endangering the lives of others through negligence and recklessness and, pursuant to Article 383/2 of the Penal Code, sentenced each of them to twenty years' imprisonment without parole and four years and twelve months'[5] imprisonment, and to a fine of 360,000,000 Turkish lire[6] (TRL). The Assize Court gave the following reasons:

> "... The investigations conducted on the sites and the expert reports drawn up both during the preliminary investigation and during the criminal proceedings showed that the buildings which collapsed as a result of negligent, virtually intentional, acts had been built in breach of many current legal obligations. Even though the area in question had been classified as a major seismic hazard zone, no soil studies had been carried out on the worksites. The concrete, metal and other materials used lacked the necessary resistance. A large number of obligations set out in the blueprint were breached. The buildings thus constructed collapsed under the impact of the earthquake, and those holding responsibility for the collapse of the buildings had made no attempt to avert danger and [offset] the unlawful acts committed, such that a

[5]. One month was equivalent to thirty days, according to the Enforcement Act. Twelve judicial months did not correspond to a calendar year.

[6]. Approximately 195 euros (EUR).

direct causal link was established between the negligent acts and the consequences of the collapse of the buildings.

... The provisions relating to the concurrence of offences are applicable to this case... The present proceedings concern six different building permits... Consequently, the accused were held responsible for six different events.

Having regard to the lists drawn up by the Governor of Çınarcık district and by the Kocadere municipality... 11 persons lost their lives on plot no. 1, allotment 1927 (1st section), 28 on plot no. 3, allotment 1649 (2nd section), 76 on plot no. 7, allotment 1648 (3rd section) and 2 on plot no. 5, allotment 1256 (blocks A and B). It has not been established with certainty whether there were any deaths on the other plots. Where it was established that there were deaths, it was also established that buildings collapsed. Therefore, it must be acknowledged that in those buildings people's lives had been jeopardised. Consequently ... the sentencing procedure must involve applying to each of the accused the final sentence of Article 383/2 of the Penal Code, multiplied by four, as regards the deaths which occurred in four zones covered by a permit. As regards the two zones covered by a permit where no loss of life could be established, the first section of Article 382/2 of the Penal Code, multiplied by two, must be applied.

All the buildings were constructed by the real estate developer, that is to say the '*V.G. Arsa Ofisi*' company ... At the material time the two accused persons V.G. and C.G. had been partners in that company. The accused person Z.C. had also been a partner in the company in respect of the buildings covered by permits. Z.C. had also been the owner of five buildings covered by permits. Insofar as Z.C. was involved in the construction of the buildings, he must be held responsible for all the relevant actions... Even though permits had indeed been issued for all the building lots, none of them was covered by an occupancy permit, that is to say a permit for utilisation. In this context, since at the time of the offence the company and its partners were still under the obligation to correct the shameful [defects] in the buildings, [they] are also criminally liable for the collapse of the latter owing to these disgraceful [defects] throughout the whole period...

As already stated above, the consequences of the impugned acts amounted to a disaster. Solely because of those acts, 195 persons lost their lives and pecuniary damage was sustained to an extent which is difficult to quantify. The accused bear enormous responsibility for those consequences. As highlighted by the expert reports, using such construction methods in a 100% earthquake risk zone really was a recipe for disaster..."

68. On 4 November 2004 İ.K. was also found guilty of homicide and bodily harm through recklessness. He was sentenced to twenty years' imprisonment without parole and four years and twelve months' imprisonment, and to a fine of TRL 360,000,000.

69. The accused appealed on points on law.

70. By judgment of 27 June 2005 delivered on 6 July 2005 the Court of Cassation set aside the convictions of V.G., C.G. and Z.C. on the following grounds: the fact that a judge had failed to sign the minutes of the 20 March 2000 hearing; conviction for the collapse of a building on allotment 1257, plot 1, which was not mentioned in the indictment; the failure to read out the 22 September 2000 indictment before taking statements from the accused; and the entry into force of the new Penal Code.

71. By judgment of 18 July 2005 delivered on 20 July 2005 the Court of Cassation also set aside İ.K.'s conviction on the following grounds: the conviction for the collapse of a building on allotment 1257, plot no. 1 was not mentioned in the indictment; one judge had failed to sign the minutes of the 20 March 2000 hearing; the criminal prosecution of İ.K. should have been joined to that of the other accused persons; and the new Penal Code had come into force.

72. Between 18 June 2005 and 11 April 2006 the Konya Assize Court, to which the case had been referred back by the Court of Cassation after the setting aside of the 21 October 2004 judgment, held eleven hearings. The preparatory report for the 18 June 2005 hearing included the applicants' names in the list of third parties to the proceedings.

73. On 17 August 2005 the Konya Assize Court ordered the joinder of the criminal proceedings against İ.K. with those pending against V.G., C.G. and Z.C.

74. On 31 January 2006 the Assize Court decided to separate the proceedings against the accused Z.C. and C.G. untile they were arrested.

75. On 11 April 2006 the Konya Assize Court sentenced V.G. and İ.K. to eighteen years and nine months' imprisonment and to a fine of TRY 250[7]. Mr Çakır, Mrs Yüce (Ergüden), Mrs Akan, Mr Özel and Mr and Mrs Erdoğan were mentioned as third parties to the proceedings. Mr and Mrs Kılıç were mentioned as complainants. In its statement of reasons the Assize Court pointed out that the buildings in Çınarcık had been destroyed by the earthquake, but that it had transpired from the inspections carried out both during the preliminary investigation and during the proceedings that the buildings which had collapsed had been constructed in breach of numerous legal obligations. The Assize Court further emphasised the following: even though the stricken zone was classified as a level-one earthquake hazard area, the buildings had been constructed without any prior soil testing; the construction material used had been low-quality and the concrete had not been solid; the buildings erected had been destroyed under the impact of the earthquake; the accused had acted negligently, which had contributed to the destructive events; and there was a direct causal link between the destruction and the loss of life. The Assize Court further held that the provisions relating to the concurrence of offences were applicable to the case, that each building project implemented in accordance with a building permit had constituted an offence and that the instant case concerned five permits, namely allotment 1927, plot 1, allotment 1649, plot 3, and allotment 1648, plot 7 in *Çamlık*, and allotment 1258, plot 1 and allotment 1256, plot 5 in *Kocadere*. It was also noted that no proceedings concerning allotment 1257, plot 1 had been brought before the Assize Court. As regards the lists drawn up by the Governor of Çınarcık District

7. Approximately EUR 159.

and Kocadere Municipality, the Assize Court explained that eleven persons had lost their lives on allotment 1927, plot 1 (1st section), twenty-eight on allotment 1649, plot 3 (2nd section), seventy-six on allotment 1648, plot 7 (3rd section) and two on allotment 1256, plot 5 (blocks A and B). It pointed out that it had been impossible to establish whether any deaths had occurred on the other plots, but that it had been established that the dwellings on those plots had been inhabited, thus placing the inhabitants in mortal danger. The Assize Court also noted the following: the V.G. *Arsa Ofisi* company had been responsible for all the buildings constructed on those plots; at the material time V.G. and C.G. had been partners in that company and Z.C. had been involved in obtaining the permits for the buildings; even though permits had been issued for the buildings in question, none of them had been covered by an occupancy permit, such that the building company and the various partners held criminal responsibility for the events.

76. The accused appealed on points of law.

77. On 16 April 2006 the Court of Cassation adopted a decision to transmit the case to the public prosecutor with the Court of Cassation so that he could submit his opinion on that appeal. The cover page of the decision bore the inscription "Detainees – statute limitation period expiring soon".

78. In a memorial of 5 February 2007 Mr Çakır asked the Court of Cassation to confirm the first-instance conviction, under urgent procedure, on the ground that the offence would shortly be statute-barred.

79. On 6 February 2007 the Court of Cassation confirmed V.G.'s conviction. It also partly upheld İ.K.'s conviction, invalidating it as regards İ.K.'s responsibility for the destruction that had taken place on allotment 1258, plot no. 1, on the ground that it was unlawful to convict that accused person without having regard to the lack of evidence regarding his status as a technical officer or as a partner in the company responsible for erecting the building in question.

80. On 20 February 2007 the Konya Assize Court adopted two decisions discontinuing the criminal proceedings against D.B. and C.G. on the grounds that they had become statute-barred. The proceedings against Z.C. were also terminated, on an unknown date, on the same grounds.

81. On 15 March 2007 the Konya Assize Court, to which the case had been referred, discontinued the criminal proceedings against İ.K. as regards his responsibility for the destruction that had taken place on allotment 1258, plot 1, on the grounds that they had become statute-barred. The applicants' names were included as third parties in the decision.

82. On 8 June 2007 the public prosecutor with the Court of Cassation, examining an appeal lodged by V.G. and İ.K. against the judgment of 6 February 2007, held that that appeal had been lodged unnecessarily.

C. Criminal proceedings brought against the Mayor and the Head of Technical Services of the Çınarcık Municipality before the earthquake

83. Previously, on 7 May 1997, the Governor of Yalova had stated that the Mayor and the Head of Technical Services of Çınarcık should be prosecuted under Articles 230 and 240 of the Penal Code for failing in their duties and abusing their authority. The Governor accused them, in particular, of having, between 1995 and 1996, altered the urban planning schemes and turned a blind eye to the erection of illegal buildings, and of having failed to demolish the latter and to impose the relevant fines.

84. On 18 March 1999 the Council of State, having been applied to by the accused persons, transmitted the case file to the Yalova Criminal Court with a view to prosecuting the offence under Article 240 of the Penal Code.

85. On 28 February 2001, in the framework of the proceedings thus instigated, the Yalova Criminal Court found the accused guilty as charged. It was satisfied that the Mayor had authorised, under a decision taken by the Municipal Council on 13 October 1995, alterations to the urban planning schemes in a manner contrary to normal procedure – which action falls foul of Article 230 of the Penal Code – but that in view of the nature of the offence and the penalty incurred the imposition of a final penalty should be suspended, pursuant to section 1 [4] Law No. 4616 concerning release on parole and stay of proceedings and penalties for offences committed before 24 April 1999. The Criminal Court considered the 1997 adoption by the Municipal Council of a decision setting aside the aforementioned 13 October 1995 decision before it could be enforced as a mitigating circumstance: it changed the penalties imposed on the Mayor to six months' imprisonment, under Article 240/2 of the Penal Code, and a TRL 300,000 fine. In view of the Mayor's behaviour during the proceedings, those penalties were reduced to five months' imprisonment and a fine of TRL 250,000. The Mayor was also found guilty of having abused his authority by once again altering the planning schemes in breach of procedure, under a Municipal Council decision of 14 February 1996, and he was therefore sentenced to one year's imprisonment pursuant to Article 240 of the Penal Code and fined TRL 300,000, which penalties were then reduced to ten months' imprisonment and a fine of TRL 250,000. He was also found guilty of having failed to enforce the fines imposed pursuant to Article 42 of Law No. 3194, as ordered by the Municipal Council on 22 May 1996. Furthermore, he was sentenced to one year's imprisonment and fined TRL 420,000 for having failed to ensure the destruction of the unlawful worksites, which penalties were then reduced to ten months' imprisonment and a fine of TRL 350,000.

The court also found the two accused guilty of having failed to halt the works performed in a manner inconsistent with the corresponding building

permits, of having failed to take action to ensure the demolition of the unlawfully erected constructions and of having abused their authority. Each of the accused was consequently sentenced to one year's imprisonment and fined TRL 300,000, subsequently reduced to ten months' imprisonment and a fine of TRL 250,000.

In all, the Mayor of Çınarcık was sentenced to thirty-given months' imprisonment and fined TRL 1,100,000, and the Head of Technical Services was sentenced to ten months' imprisonment and fined TRL 250,000, which penalties were suspended.

86. On 5 May 2003 the Court of Cassation upheld that judgment.

D. Administrative proceedings

1. Action to ensure the prosecution of the officials

87. On 4 May 2000 the Interior Ministry adopted a decision authorising the instigation of a criminal investigation under Article 230 of the Penal Code against the former and current Mayors of Çınarcık, the former and current municipal Heads of Applied Science, as well as the architect and an official working in Technical Services, the last two having admitted that they had at no stage inspected the worksite after the laying of the foundations of the buildings in *Çamlık*, allotment 1927/15-1, plot 1, block E, allotment 1649/15-1, plot 3, blocks C and D, and allotment 1648/15-1, plot 7, blocks A, C, D and E, and the buildings in *Kocadere*, allotment 1256/3-2, plot 5, block D, allotment 1257/3-2, plot 1, block D and allotment 1258/3-2, plot 1, block D.

88. On 14 July 2000 Mrs Akan and Mr Özel applied to the Interior Ministry's Inspection Committee for identification of the officials who had failed in their duties of inspection and supervision of the impugned buildings. Relying on the conclusions of the expert report of 13 October 1999 (see paragraph 23 above), they also requested a prosecution order against them. They submitted that their aim was to shed light on the whole chain of responsibilities, emphasising that the Mayor of Çınarcık, the Municipal Council and the technical and administrative staff responsible for inspection and supervision should also be prosecuted and placed on trial pursuant to section 102 of the Local Authorities Act (Law No. 1580). The two applicants considered that the municipality had turned a blind eye to the construction of buildings that fell short of the legal requirements. They also reiterated that the construction area in question had been classified as a "major earthquake hazard zone", and complained that the municipality had authorised excessively high buildings on unstable ground. Finally, it was necessary to establish the responsibility of the Büyükşehir municipality on the ground that the area at issue had been part of that municipality at the

time of the construction of the buildings and the submission of the architectural plans.

89. On 4 October 2000 the Second Division of the Council of State, examining an appeal lodged by the individuals concerned by the authorisation of criminal investigation issued by the Interior Ministry (see paragraph 87 above) and acting under Section 9 of Law No. 4483 (see Relevant domestic law, paragraph 133 below), lifted the criminal investigation authorisation issued by the Interior Ministry. The Council of State held that responsibility should be attributed to the specialists who had planned the building project, emphasising that many of the buildings destroyed on 17 August 1999 had not been covered by occupancy permits.

90. On 6 July 2001 the two aforementioned applicants applied to the Directorate General of Local Authorities of the Interior Ministry. On the basis of new evidence they reiterated their application for the prosecution of the officials in question. They submitted that, in the light of the new evidence in question, those officials could not be charged with mere negligence, and that their actions had amounted to abuse of authority.

91. On 10 September 2001 a review report was drawn up as authorised by the Interior Ministry on 15 August 2001, geared to ascertaining whether the failure to react to and verify the addition of extra storeys to several buildings – those located in *Çamlık*, allotment 1927/15-1, plot 1, block E; allotment 1649/15-1, plot 3, blocks C and D; and allotment 1648/15-1, plot 7, blocks A, C, D and E; and in *Kocadere*, allotment 1257/3-2, plot 1, block D – which had been effected in breach of the corresponding building permits, had amounted to a breach of professional duties by the former and current Mayors of Çınarcık, the former and current municipal Heads of Applied Science, as well as the architect and a member of the technical services staff. The report concluded that there had been no need to prosecute the actions in question as they had been in conformity with usual procedure; consequently, no proceedings were brought against the aforementioned persons.

92. On 5 November 2001 Mrs Akan and Mr Özel once again applied to the Directorate of Local Authorities of the Interior Ministry for information on the action taken on their various complaints, pointing out that their requests for the prosecution of the officials had been unsuccessful and that no preliminary inquiry had yet been launched into the facts of which they had complained.

93. On 25 January 2002 a further review report was prepared as authorised by the Interior Ministry on 2 January 2002. That report found that there had been no need to take action against the officials in question for having authorised six-storey buildings.

94. On 4 February 2002 the above-mentioned Directorate replied to the application of 5 November 2001 (see paragraph 92 above). It first of all reiterated that the decision taken by the Interior Ministry authorising an

investigation had been cancelled by decision of the Council of State of 4 October 2000. It went on to explain that in reply, in particular, to the application of 6 July 2001 (see paragraph 90 above), a preliminary examination had been conducted as authorised by the Interior Ministry on 15 August 2001, concluding that the issue at stake had already been decided, that the Council of State had cancelled the authorisation of investigation and that there was therefore no need for action against the individuals in question. Finally, it pointed out that, having regard to the applicants' new allegations, a further authorisation of examination had been adopted on 2 January 2002 (see paragraph 93 above).

95. On 20 August 2002, relying on section 53 of the Administrative Procedure Act (Law No. 2577) and pointing to the existence of new evidence, the applicants applied to the Council of State to set aside the decision of 4 October 2000 (see paragraph 89 above) and to reopen proceedings.

96. On 18 September 2002 the Second Division of the Council of State dismissed that application, without consideration of the merits, on the grounds that no appeal lay from the contested decision, referring in that regard to sections 3 (h) and 9 of Law No. 4483 (see Relevant domestic law, paragraph 133 below).

97. On 20 November 2002, the applicants once again applied to the Council of State, submitting that they had not appealed against the decision of 4 October 2000 cancelling the authorisation of a criminal investigation but had applied for the reopening of proceedings pursuant to the Administrative Procedure Act (Law No. 2577), which was a different remedy. They reiterated their request to that effect.

98. On 14 January 2003 the Council of State dismissed that request, having noted that the proceedings in question had been conducted pursuant to Law No. 4483, which did not provide for reopening proceedings.

99. On 8 April 2004, examining an appeal lodged by Mrs Akan and Mr Özel against the 25 January 2002 report (see paragraph 93 above), the Second Division of the Council of State dismissed that appeal, without considering the merits, on the grounds that it concerned a decision from which no appeal lay.

2. Application to the Provincial Human Rights Committee

100. On 25 February 2004 Mrs Akan and Mr Özel applied to the Yalova Provincial Human Rights Committee ("the Yalova Committee"). They submitted that the transfer of the criminal proceedings from the scene of the earthquake (Yalova) to Konya was in breach of the "natural judge" principle and infringed the victims' right of appeal. They also complained of shortcomings in the assessment of the applications for the prosecution of the officials involved in the case.

101. On 6 April 2004 the Yalova Committee noted that the Commission responsible for the investigation and appraisal of human rights violations had prepared a rapport on the impugned facts concluding that there had been compelling reasons for changing the trial venue, as provided for in Article 14 of the Code of Criminal Procedure, and had not breached any human rights. Similarly, according to the findings of the report, the cancellation by the Council of State of the authorisation of investigation against the official whose responsibility had been engaged and the refusal to reopen the proceedings had not been contrary to human rights. Furthermore, the Yalova Committee pointed out that according to the same report, the complainants could have lodged an application with the European Court of Human Rights.

102. The Yalova Committee also noted that a member of the Commission responsible for the investigation and appraisal of human rights violations had set out the following additional observations:

> "1. The increase in the number of storeys without the authorisation of the Municipal Council and the amendments to the architectural plans, as well as the failure to comply with the architectural plans concerning the 'high-risk' nature of the zone, amount to an infringement of the right to life;
>
> 2. The transfer, on security grounds, of the case to Konya rather than to a province closer to Yalova violated the victims' right to a judge and their right of appeal. The Ministry of Justice has to provide financial assistance to the complainants so that they can follow the proceedings ...
>
> 3. The following constitute human rights violations: the inability, following the cancellation by the Council of State of the authorisation of investigation under Law No. 4483, to secure, [on the basis of] the new evidence submitted, the re-examination of the impugned facts [and] and the reopening of the proceedings... [The same applies to] the lack of a right of appeal for the complainants following the cancellation of the authorisation of prosecution of the officials."

103. On 29 April 2004 the Office of the Governor of Yalova wrote to counsel for the applicants to inform her of that decision, transmitting a copy thereof.

3. Compensation proceedings

a) Actions for damages

104. On an unknown date Mrs Akan and Mr Özel had lodged with the Bursa Administrative Court an action for damages against the Interior Ministry, the Mayor of Çınarcık, the Housing Ministry and the Mayor of Büyükşehir (Istanbul), seeking compensation for the pecuniary and non-pecuniary damage which they had sustained. They had submitted that the administrative authorities charged in the proceedings had authorised building in major earthquake hazard zones, failing to use appropriate construction techniques, and that they had issued building and occupancy

permits without adequate controls, thus committing a breach of their administrative duty.

105. On 30 October 2000 the Bursa Administrative Court dismissed that action as having been brought out of time, stating that the applicants should have brought their action within sixty days from the preparation of the expert report of 13 October 1999 (see paragraph 23 above), when they had been apprised of the alleged defects.

106. On 4 March 2003 the Bursa Regional Administrative Court dismissed an appeal against the latter decision and upheld the first-instance decision.

b) Claim for the reimbursement of costs and expenses

107. On 2 August 2004 Mr Çakır submitted a claim to the Ministry of Justice for the reimbursement and defrayal of his travel expenses to and from Konya in order to follow and take part in the criminal proceedings.

108. On 31 August 2004 the Ministry of Justice rejected that claim.

109. On 16 May 2006 the Ankara Administrative Court, to which the applicant had appealed against that decision, held that the decision to transfer the Yalova case to Konya had been a judicial rather than an administrative decision and that it accordingly could not engage the responsibility of the administrative authorities.

E. Civil proceedings against the property developers

1. The civil proceedings brought by Mrs Akan and Mr Özel

110. On 27 September 1999 Mrs Akan and Mr Özel had lodged with the Yalova Regional Court ("YRC") an action for damages against the V.G. partnership, V.G. himself, İ.K., Z.C. and the Çınarcık municipality.

111. During the hearings held between 29 September 2004 and 17 September 2007, the YRC ordered the adjournment of the case until the conclusion of the criminal proceedings which were pending before the Konya Assize Court at the time.

112. On 17 September 2007 the YRC observed that the Konya Assize Court had convicted V.G. and İ.K. of five offences, one of which related to the collapse of three blocks on allotment 1256, and that that conviction had become final, having been adopted in the light of an expert report prepared by Istanbul Technical University on 12 October 2000 establishing the accused's responsibility. That expert report had been added to the case file, and the YRC commissioned a further expert report in order to establish the pecuniary damage sustained by the complainants as a result of the loss of their apartment.

113. On 19 November 2007 an expert estimated the pecuniary damage sustained at TRY 5,015.

114. At the hearing on 14 January 2008 the complainants contested the conclusions of that expert opinion.

115. On 2 December 2008 the YRC, sitting as a consumer court, rejected the claims for compensation brought against V.G. and the Mayor of Çınarcık respectively on grounds of absence of evidence and lack of jurisdiction. It further held that the complainants' claim for the moveable property lost should be considered as having been abandoned during the course of proceedings. Finally, the YRC partly acceded to the request for compensation by ordering the V.G. and Z.C. partnership to pay the applicants TRY 2,091.43 jointly in respect of pecuniary damage and TRY 2,000 each in respect of non-pecuniary damage.

116. On 13 March 2009 Mrs Akan and Mr Özel appealed against that judgment on points of law. In their memorial before the Court of Cassation they submitted that V.G.'s responsibility had been established by the Konya Assize Court and that, while civil courts were not bound by the conclusions of criminal courts, that did not apply to cases where the facts had established beyond doubt. They complained that the YRC had decided the case as a consumer court, even though it had involved a purely civil action. Finally, they submitted that the amounts awarded in compensation had been unsatisfactory, so that the YRC's decision had been incompatible with Articles 2 and 13 of the Convention and had, moreover, infringed their property rights.

117. On 28 February 2010 the Court of Cassation set aside the YRC's judgment.

118. On 28 June 2010 an expert report was drawn up, estimating the pecuniary damage sustained by the applicants, on the basis of the value of the apartment that had been destroyed during the earthquake, at TRY 2.750.

119. On 23 November 2010, the YRC, to which the case had been referred back by the Court of Cassation, again rejected the compensation claim against V.G. for lack of evidence, holding that the latter had been involved in neither the construction nor the sale of the building in question. The YRC also dismissed the compensation claim against the municipality, declining jurisdiction in favour of the administrative courts. It noted that the claim against İ.K. had been abandoned. Drawing on Article 409 of the Code of Civil Procedure, the YRC considered that the claim relating to moveable property should be deemed not to have been lodged. Lastly, it ordered the V.G. and Z.C. partnership to pay, jointly and severally, TRY 3,600 in respect of the pecuniary damage sustained, and a sum of TRY 2,000 to each claimant in respect of non-pecuniary damage.

120. On 15 November 2011 the Court of Cassation upheld that judgment.

2. Civil proceedings brought by Mr Çakır

121. On 11 November 1999 Mr Çakır and his wife had brought before the YRC an action for damages against the limited liability company V.G. *Arsa Ofisi Villa Inş. Taah. Turizm*, the V.G. *Arsa Ofisi* partnership, V.G. and İ.K. They claimed TRL 15,000 each in respect of pecuniary damage, TRL 500,000 in respect of non-pecuniary damage and a further sum to be calculated in compensation for loss of support.

122. On 29 December 2008 the YRC stated that it was satisfied that the property developer responsible for the building in the ruins of which the applicant's son had died was the V.G. *Arsa Ofisi* partnership and that the architectural blueprint had been prepared by İ.K., who had also acted as scientific officer for the project. Furthermore, in the light of the expert report prepared on 12 October 2000 at the request of the Konya Assize Court, the public authorities which had issued the permit had been responsible in a ratio of 2/8 and the persons in charge of construction had been responsible in a ratio of 6/8. The YRC considered that the V.G. *Arsa Ofisi* partnership and İ.K. had therefore been responsible in a ratio of 6/8.

The YRC dismissed the claim against V.G. and the limited liability company V.G. *Arsa Ofisi Villa Inş. Taah. Turizm* on the grounds that they could not have been involved in the proceedings. It allowed in part the applicant's and his wife's compensation claims. The V.G. *Arsa Ofisi* partnership was accordingly ordered to pay the applicant TRY 1,170 in respect of the moveable property which they had lost, TRY 5,317.40 in respect of loss of financial support and TRY 4,500 in respect of non-pecuniary damage.

123. On 18 November 2009 the Court of Cassation set aside that judgment on the ground that the court which had jurisdiction to hear and determine the case had been the Consumer Court.

124. By judgment of 1 April 2010, the YRC, to which the case had been referred back, sitting as a consumer court, dismissed the claim against V.G. and the limited liability company V.G. *Arsa Ofisi Villa Inş. Taah. Turizm* on the grounds that they could not have been involved in the proceedings. It also dismissed the claim against İ.K. on the ground that when he had died, after the action had been brought, his heirs had not accepted the succession. Nevertheless, the YRC allowed in part the claim against the V.G. *Arsa Ofisi* partnership. In that connection it awarded Mr Çakır TRY 1,014 in respect of the moveable property which he had lost, TRY 4,607.85 in respect of loss of financial support and TRY 4,500 in respect of non-pecuniary damage.

125. On 9 March 2011 the Court of Cassation set aside that judgment.

126. On 13 November 2011 the Court of Cassation dismissed an application for rectification of its judgment.

127. On 29 December 2011 the YRC, to which the case had been referred back, dismissed the claim against V.G. and the limited liability company V.G. *Arsa Ofisi Villa Inş. Taah. Turizm* on the ground that they

could not have been involved in the proceedings. It likewise dismissed the claim against İ.K. owing to the fact that when he had died, after the action had been brought, his heirs had not accepted the succession. Nevertheless, the YRC allowed in part the claim against the V.G. *Arsa Ofisi* partnership. In that connection it awarded Mr Çakır TRY 1,560 in respect of the moveable property which he had lost, TRY 7,089 in respect of loss of financial support and TRY 4,500 in respect of non-pecuniary damage.

3. Civil proceedings brought by Mrs Yüce (Ergüden)

128. On 16 February 2000 Mrs Yüce (Ergüden) and three members of her family had brought compensation proceedings before the YRC in respect of the damage suffered owing to the deaths of their parents, claiming TRL 1,000,000,000 in respect of non-pecuniary damage and TRL 9,000,000,000 in respect of pecuniary damage. The action for damages was directed against the V.G. *Arsa Ofisi* partnership.

129. On 26 December 2007 the YRC, hearing and determining as a consumer court, allowed in part the claim concerning the pecuniary damage suffered, awarding a sum of TRY 3,092.93 to be shared among the different complainants, in accordance with their respective places in their parents' succession. The YRC also awarded a sum of TRY 1,000 in respect of the non-pecuniary damage caused by the death of the claimants' mother and TRY 1,000 in respect of the non-pecuniary damage caused by their father's death.

130. On 28 March 2008 the respondent party appealed on points of law.

131. On 20 November 2008 the Court of Cassation dismissed that appeal under a judgment which became final on 27 January 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

132. Pursuant to section 14 of the Criminal Proceedings Act (Law No. 1412) of 4 April 1929, which was in force at the material time[8], competent judges or courts which, for legal or material reasons, were unable to exercise their territorial jurisdiction or considered that continuation of proceedings under its jurisdiction might be dangerous in terms of guaranteeing the prosecution of the case, could decide to transfer the case to another court of the same level. It was incumbent on the Ministry of Justice to request the transfer of the case for reasons of guaranteeing its prosecution.

133. The Prosecution of Officials and other Civil Servants Act 'Law No. 4483), enacted on 2 December 1999, states that officials may only be tried for acts committed during the exercise of their duties with the authorisation

[8]. The Criminal Proceedings Act (Law No. 5275) was enacted on 4 December 2004 and published in the Official Gazette on 17 December 2004.

of the relevant administrative authority. An appeal lies with decisions to grant or refuse authorisations of investigation.

Section 3 (h) of that Act lays down that the Minister of the Interior is responsible for initiating an investigation against Mayors of cities and towns and members of their municipal councils and the Provincial Council.

Section 9 of the same Act provides that the Second Division of the Council of State is responsible for examining, in particular, appeals lodged against decisions taken under section 3 (h) of the Act, and that decisions taken at appeal level are final.

134. Section 32 of the Urban Planning Act (Law No. 3194) of 3 May 1985, published in the Official Gazette on 9 May 1985, which was in force at the material time provided as follows:

> "Buildings constructed without permits or contrary to the permit and the appendices thereto
>
> Section 32. Pursuant to the provisions of this Act, where, except in the case of buildings which can be erected without a permit, ... it is noted that a building has been commenced without a permit or has been constructed contrary to the permit and the appendices thereto, the state of the construction must be assessed ... by the municipality or by the Office of the Governor. [Seals must be affixed to the] building and the works [must be] immediately halted. The stoppage of works shall be deemed notified to the owner of the building by the posting of the official record of the stoppage decision on the building site. A copy of that notification must be submitted to the *muhtar*. As of the date of notification, and within a month at the latest, the building owner shall apply to the municipality or to the Office of the Governor for the lifting of the seals, having either obtained a permit or brought his building into line with the existing permit. In the case of a building constructed contrary to the permit issued, where it is noted, after inspection, that that non-compliance has been [corrected] or that a permit has been obtained and the construction complies with that permit, the seals shall be lifted by the municipality or by the Office of the Governor and building works shall be allowed to continue."

Section 42 of that Act laid down the administrative penalties applicable to buildings constructed contrary to the provisions of the Act.

135. Law No. 7269 of 15 May 1959 on preventive and relief measures to be adopted regarding the effects of disasters on the life of the population, published in the Official Gazette on 25 May 1959, sets out the preventive and relief measures to be adopted in deal with natural disasters.

136. The adopted on 2 September 1997 and amended on 2 July 1998 set out, in particular, the technical criteria for buildings constructed in disaster areas.

On 6 March 2007 new Regulations on buildings to be erected in disaster areas were published in the Official Gazette.

137. On 27 August 1999 the Grand National Assembly of Turkey decided to set up a Commission of Inquiry to consider all the measures taken before, during and after the earthquake. On 23 December 1999 that Commission presented its report, the relevant sections of which read as follows:

"**VI. Appraisal:**

...

It was noted that despite the setting up of crisis units, which began operations after the earthquake, the relief and assistance committees and the civil defence officers had not been properly organised and that there had been operational delays.

After the 17 August earthquake our company noted that the provision of assistance had become chaotic because of poor preparation and deficient organisation. Whereas it is for the public authorities to take action in situations of disaster liable to affect the lives of the population, those authorities were basically overwhelmed. The reasons for their powerlessness was, no doubt, the size of the area hit by the earthquake, the breakdown in communications, the power cuts and the inaccessibility of infrastructures.

That being the case, there were delays in practice because the officials responsible for these provinces classified as major earthquake hazard areas had no plans setting out the measures to be taken in the event of this type of disaster or describing the roles and responsibilities of each part in the event of an earthquake, or else because they had never envisaged an earthquake ever happening. However, in view of the critical situation in the region and the risk of a worst-case scenario they ought to have been prepared [been] in a position to take effective action... Although the officials leading the crisis units carried out their work determinedly and unstintingly, it was nonetheless noted that they were not prepared for a natural disaster, had no emergency action plans or programmes, and that even where they had such plans and/or programmes, they had been unable to implement them owing to the appalling impact of the disaster.

...

Another authority [which] had failed to take effective and adequate action during the relief operations was the Civil Defence Department... The very small number of civil defence relief teams... totalling approximately 110 persons literally vanished amidst the 13,600 buildings which collapsed on 17 August. That meant that very many persons who could have been dug out of the rubble remained there and died. If there had been civil relief available during the rescue operations to direct and supervise the untrained, unexperienced volunteers, it is certain that [more of] our fellow-citizens would still be alive today.

The municipalities are responsible for regulating urban development in the provinces and districts. It has been noted that these major responsibilities devolved to the municipalities under the decentralisation process have been used ... to political ends... The local leaders and municipalities have abused the legal rights conferred upon them and turned their towns and cities into concrete jungles.

..."

THE LAW

138. Having regard to the similarity of the applications in terms of the facts and the complaints, the Court decides to join them.

I. THE PURPOSE OF THE APPLICATIONS AND THE APPLICANT PARTIES

A. The purpose of the applications

139. The Court notes that in their application forms that applicants submit that the criminal proceedings before the Konya Assize Court were the largest to be brought in the wake of the earthquake, in particular in terms of the number of victims concerned by the proceedings. The applicants submitted that the proceedings, which related to a serious infringement of the right to life, raised the issues not only of major negligence on the part of the property developer and his partners, but also of major negligence on the part of the authorities, but that despite all their efforts not all those responsible had been prosecuted. They further stated that the area where the earthquake had occurred had, many years previously, been declared a disaster zone, which meant that any buildings constructed there were subject to special regulations. Flouting those regulations and the requirements of the urban development and architectural plans, municipal the authorities had issued permits for buildings of five storeys and more, which were then erected illegally. Whereas those building should have been constructed in conformity with the specific features of the zone (closely-spaced iron brackets and two storeys underground), that had not been the case in the buildings in which the applicants' relatives had lost their lives. Moreover, they complained that the municipal authorities had failed to conduct the requisite inspections to check the conformity of the buildings with the relevant standards or to prevent their construction, and considered that those shortcomings amounted to gross negligence which had contributed to causing the deaths of their relatives.

140. The applicants also complained of serious negligence on the part of the authorities owing to shortcomings in the organisation of rescue operations after the earthquake and the fact that the Office of the Governor had failed to draw up a "disaster plan". In particular, the search and rescue operations for people trapped in the rubble had not commenced until several hours after the disaster, as it had proved impossible to draw up lists des of the dead and injured and to transport the injured persons to hospital. The applicants considered that the fact that the authorities had not been prepared for coping with natural disasters had increased the death count.

141. Furthermore, relying on Article 2 of the Convention, the applicants submitted that the deaths of their relatives during the earthquake of 17 August 1999 amounted to a violation of the right to life. While acknowledging that the earthquake had been a natural disaster, they complained that they had been unable to secure the prosecution of all the individuals whom they held responsible. They alleged that the fact of amending the urban development plans without considering the location of

the building sites within a natural disaster zone had infringed their relatives' right to life.

142. Drawing on Article 6 of the Convention, the applicants also complained of unfairness in the criminal proceedings, and in particular of an infringement of the "natural judge" principle owing to the transfer of the proceedings from Yalova to Konya – a ten-hour drive away, according to the applicants – and the difficulties which that transfer caused them in following the proceedings. In that regard they complained of an infringement of their right of judicial appeal. They also complained of the excessive length of the criminal proceedings.

143. Relying on Article 13 of the Convention, the applicants further complained of their inability to obtain the prosecution of the officials involved despite the fact that the latter's responsibility had been established by expert opinion. They also complained that they had not benefited from an effective remedy enabling them to secure compensation for the damage sustained before both the administrative and the civil courts.

144. Lastly, the applicants relied on Article 1 of Protocol No. 1 to complain of the loss of their housing and that of their deceased relatives.

145. The Court reiterates that it is master of the characterisation to be given in law to the facts of a case and is not bound by the approach taken by the parties to the case. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). In the present case the Court considers that regard should be had to all the facts complained of by the applicants in terms of the infringement of their relatives' right to life, under the substantive head of Article 2 of the Convention. It further holds that the facts complained of by the applicants under Articles 6 and 13 of the Convention as regards the course of the criminal proceedings and of their inability to secure the prosecution of the officials should also be examined under the procedural head of Article 2 of the Convention.

As regards the applicants' complaints of the lack of fairness in the proceedings, the lack of an effective remedy enabling them to secure compensation for the violation of their property rights, they should be examined under the articles called in aid, that is to say Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, respectively.

B. The applicants in the present case

146. The Court notes that in Mrs Akan's observations submitted after communication of the case to the Government, her lawyer mentioned that the latter was acting on her own and on her daughter's behalf, without giving further details.

147. The Court observes that Mrs Akan's application form did not mention her daughter's applicant status. Therefore, having regard to the wording of the application and to the manner in which and the stage when that fact was brought to its attention, the Court holds that Mrs Akan must be considered as having lodged her application solely on her own behalf.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The submissions of the parties

1. The Government's submissions

148. The Government submitted first of all that the applicants had failed to exhaust the available domestic remedies, given that they had neither raised in substance the complaints which they put forward in their applications nor adduced a violation of the Convention.

149. Furthermore, the Government submitted, under Article 125 of the Constitution, that the applicants had had the possibility of engaging the authorities' objective responsibility based on the theory of social risk – under which remedy, according to the Government, they could have obtained compensation.

The applicants could also have brought compensation proceedings against other private individuals and authorities such as the builder of the buildings in question or the engineer responsible for their construction , which they had refrained from doing.

150. Finally, in support of their submissions on the merits of the complaints under Article 13, the Government argued that the persons responsible for the construction of the buildings which had collapsed had been convicted. They submitted that under Article 34 of the Convention, if an individual had received redress for his complaint, he could no longer claim to be a victim of a violation of the Convention. Even though the applicants had not secured the decisions they had expected, it should be considered that they had been afforded redress for their complaint.

2. The applicants' submissions

151. The applicants refuted the Government's submissions.

Mr and Mrs Kılıç, Mr and Mrs Erdoğan and Mrs Yüce (Ergüden) submitted that they had exhausted the domestic remedies. Furthermore, although some of the third parties to the criminal proceedings had brought actions against the officials in question before the administrative courts, the latter had dismissed their compensation claims on grounds which were not prescribed by law. Similarly, the actions for damages brought by some complainants before the civil courts had continued for many years without a successful conclusion. In that regard, the aforementioned applicants

submitted that the YRC premises had been damaged during the earthquake, that it had been moved several times and that the judges responsible for the case had also been changed several times, with the result that the actions brought by several victims were still ongoing. The applicants had given up any hope of obtaining any kind of compensation by that means. They submitted that in view of the decisions given and the time that had since elapsed the compensation proceedings relating to the earthquake were no longer effective.

152. In response to a request from the Court to parties for further information, counsel for Mr and Mrs Erdoğan and Mr and Mrs Kılıç had informed the Court that owing to the ineffectiveness of the civil action for damages and the cost of the proceedings, his clients had decided to discontinue that remedy. He submitted that in any case there were no effective remedies as regards compensation.

153. Mr Çakır, Mr Özel and Mrs Akan refuted the Government's submissions as regards the existence of an effective compensation remedy. At the time of submission of their observations they had argued that the compensation proceedings had been going on for eleven years, that it was accordingly impossible to secure an effective result and that the amount which would have been awarded would in any case have been unsatisfactory. They also submitted that when the case had been pending before the Court of Cassation, the first-instance court had held that V.G. had not been required under criminal law to compensate the complainants. They added that even if they had been awarded any amount in compensation the impugned company had not had the wherewithal to pay it, such that there was no effective remedy enabling them to obtain compensation. Citing the cases of *Mahmut Aslan v. Turkey* (no. 74507/01, 2 October 2007) and *Ali Kemal Uğur and Others v. Turkey* (no. 8782/02, 3 March 2009), they complained of the lack of effective remedies enabling them to complain of the length of proceedings.

154. Mr Özel and Mrs Akan further submitted, as regards the administrative compensation proceedings, that in the instant case the administrative courts had applied the deadline for administrative decisions rather than the deadline set out in Article 13 of the Code of Administrative Procedure. They pointed out that those courts had not applied the one-year deadline – which they claimed was contrary to domestic case-law – which was why their claim had been rejected. The applicants considered that that rejection was contrary to domestic law and jurisprudence, and, moreover, had been geared to protecting the administrative authorities.

B. The Court's assessment

155. As a preliminary note, the Court considers it useful to emphasise that although the Government's submissions as to the non-exhaustion of

domestic remedies broadly related to the application as a whole, they specifically concern Article 2 of the Convention and should therefore be examined under that provision.

156. Similarly, having regard to the legal classification of the facts in the present case (see paragraph 145 above), the Court considers that the Government's submissions to the effect that redress was afforded for the applicants' complaint under Article 13 of the Convention (see paragraph 150 above) come under the procedural head of Article 2 of the Convention and should be dealt with before the examination of the merits of the case.

1. The applicants' victim status

157. The Court reiterates that a decision or measure favourable to the applicant does not in principle deprive the individual concerned of his status as a victim for the purposes of Article 34 of the Convention, unless the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see, for example, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-180, ECHR 2006-V; *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 [extracts]). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Eckle*, cited above, §§ 69 et seq.).

158. In the instant case the Government relied on the criminal conviction of the developers responsible for the buildings which collapsed to argue that a remedy had been provided for the applicants' complaint. However, having regard to the nature of the procedural requirements of Article 2 and the fact that the developers' conviction cannot be construed as providing any kind of compensation, the Court rejects the Government's submission in this regard.

2. Exhaustion of domestic remedies

159. The Court reiterates that the obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* [GC], no. 17153/11, § 71, 25 March 2014). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (ibid., § 74). However, there is no obligation to have recourse to remedies which are inadequate or ineffective.

Nevertheless, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (ibid., §§ 73-74).

160. Nonetheless, the Court has frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July, § 89, Series A no. 13, and *Vučković and Others*, cited above, § 76). It has, moreover, accepted that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Kurić and Others*, cited above, § 286).

161. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

162. Furthermore, where an applicant has a choice between different possible remedies whose comparative effectiveness is not immediately obvious, the Court tends to construe the requirement to exhaust domestic remedies in the applicant's favour (see *Manoussakis and Others v. Greece*, 26 September 1996, § 33, *Reports* 1996-IV, and *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

163. As regards the burden of proof, it is incumbent on the Government pleading non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was indeed exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77).

164. In the instant case, in the first part of the preliminary objection raised by the Government, as regards, firstly, the applicants' complaint about the dilatoriness and inefficiency of the rescue operations immediately after the earthquake (see paragraph 140 above), the Court notes from the evidence available to it that the applicants did not specifically contact the national authorities to criticise and complain about the alleged shortcomings in the organisation and implementation of the emergency relief. Consequently, that complaint must be dismissed for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

165. Secondly, as regards the other complaints under Article 2 of the Convention, the Court notes from the case file that the applicants raised the

complaints which were subsequently submitted to it on several occasions during various sets of proceedings before the domestic criminal, civil and administrative courts (for details of the proceedings in question, see paragraphs 24-82, 88-99 and 104-131). As regards their alleged failure to rely specifically on provisions of the Convention, the Court notes that the different types of proceedings brought and the memorials submitted to the domestic courts covered the very substance of the rights relied upon in the proceedings before it. Accordingly, it considers it should reject the Government's objection to the effect that the applicants had failed to submit even the substance of their complaints to the domestic courts.

166. As to the second section of the Government's objection that the applicants should have engaged the objective responsibility of the authorities before the domestic courts, the Court reiterates that it has previously found that under Article 125 of the Constitution, objective responsibility is engaged when it has been established that, in the specific circumstances of a given case, the State has failed in its obligation to preserve public order and security and/or to protect people's lives and property, without the need to establish the existence of criminal negligence attributable to the public authorities (see, among other authorities, *Kavak v. Turkey*, no. 53489/99, § 32, 6 July 2006). The Court further emphasises that no compensation could be awarded under the remedy in question. The Court reiterates that where one remedy has been used, it is not necessary to exercise another remedy with virtually the same aim (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 84, 24 January 2008). In the present case it notes from the case file and other information available to it that Mrs Akan and Mr Özel attempted to bring an action for damages before the administrative courts (see paragraphs 104-106). Furthermore, they applied to the civil courts for compensation for the pecuniary and non-pecuniary damage resulting from their relative's death (see paragraphs 110-120). The Court notes that Mrs Yüce (Ergüden) and Mr Çakır also brought an action for damages (see paragraphs 121-131 above). Therefore, it holds that those applicants cannot be criticised for not having also brought an action against the State before the administrative courts, which action could only have led to the award of damages.

167. As regards the other applicants, the Court reiterates that it is for the Government raising the non-exhaustion objection to convince the Court that the remedy was effective and available both in theory and in practice at the material time. It also reiterates that it must apply that rule with due regard to the context and also the applicant's personal situation, and examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Salman v. Turkey* [GC], no. 21986/93, § 86, ECHR 2000-VII). In that respect, the insecurity and vulnerability of an applicant's position should also be borne in mind (see *Menteş and Others v. Turkey*, 28

November 1997, § 59 *in fine*, Reports 1997-VIII). In the present case, given the extent of the disaster which had given rise to the complaints and its tragic consequences for the applicants, the particular vulnerability in which they found themselves after the earthquake, and the fact that during the criminal proceedings they lodged memorials claiming civil damages in the framework of the latter (see paragraphs 34, 38 and 63 above), bringing the matter of the State's responsibility to the attention of the authorities did not depend solely on the applicants' diligence (see, *mutatis mutandis, Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 112, ECHR 2008 [extracts]).

Furthermore, the Court can but note that the Government failed to submit any examples of cases where that remedy had been successfully used in a comparable situation. In view of the foregoing observations, it must also reject that section of the Government's objection.

168. Lastly, as regards the final part of the Government's objection to the effect that the applicants had failed to bring any civil action for damages against specified persons, the Court reiterates, as noted previously (see paragraph 166 above), that Mrs Akan, Mrs Yüce (Ergüden), Mr Özel and Mr Çakır applied to the civil courts for compensation for the pecuniary and non-pecuniary damage resulting from the deaths of their relatives. As regards the other applicants, that is to say Mr and Mrs Erdoğan and Mr and Mrs Kılıç, the Court observes that they submitted that they had waived recourse to that remedy owing to its ineffectiveness – relating to the length of the relevant proceedings – and high cost. Having regard to the circumstances of the case and the parties's submissions, the Court considers that this section of the objection raises issues intimately linked to the merits of the complaints raised by by the applicants. It therefore decides to join it to the merits (see paragraph 199 below).

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

169. The applicants alleged a violation of Article 2 of the Convention, which provides:

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

A. As regards the applicability of Article 2 of the Convention

170. The Court reiterates that Article 2 of the Convention requires the State not only to refrain from intentionally causing deaths but also to take appropriate steps to safeguard the lives of those within their jurisdiction. That obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, but it also

applies where the right to life is threatened by a natural disaster (see *Budayeva and Others*, cited above, §§ 128-130).

171. In that respect, the Court pointed out, in connection with natural hazards, that the scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation, and clearly affirmed that those obligations applied in so far as the circumstances of a particular case pointed to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use (ibid., § 137). Therefore, the applicability of Article 2 of the Convention and the State's responsibility have been recognised in cases of natural disasters causing major loss of life. In the instant case, the applicants' complaints must be assessed under the substantive and procedural heads of Article 2 of the Convention.

172. The Court holds that the applicants' complaints require it to adjudicate first of all on the obligation to prevent disasters and protect populations from the effects of such events. The Court will then examine the applicants' allegation that not all the persons involved in the construction of the buildings in question had been prosecuted, and their complaint regarding the conduct of the criminal proceedings.

B. Admissibility

1. Prevention of disasters and protection of the population from the effects of disasters

173. The Court observes that earthquakes are events over which States have no control, the prevention of which can only involve adopting measures geared to reducing their effects in order to keep their catastrophic impact to a minimum. In that respect, therefore, the prevention obligation comes down to adopting measures to reinforce the State's capacity to deal with the unexpected and violent nature of such natural phenomena as earthquakes.

174. In that context, the Court considers that prevention includes appropriate spatial planning and controlled urban development. In the present case it notes from the case file that the national authorities were perfectly well aware of the earthquake risk in the affected region. The spatial planning documents for the regions therefore included the relevant information and the earthquake-hit area had been classified as a "disaster zone". Furthermore, building permits in that area had been subject to special conditions, and consequently all buildings erected had to comply with specific building standards. The local authorities responsible for

regulating land use by issuing building permits therefore had a frontline role in risk prevention and bore the primary responsibility for it.

175. Under the circumstances of the instant case, the Court observes that the earthquake had disastrous consequences in terms of loss of life owing to the collapse of buildings erected in breach of the safety and construction standards applicable to the area in question. It would seem to be established, in the light of the findings of the proceedings before the domestic authorities responsible for investigating the matter, that the local authorities which should have supervised and inspected those buildings had failed in their obligations to do so.

176. The Court notes that before the earthquake the Mayor of Çınarcık and the municipal Director of Technical Services had been prosecuted for having amended the urban planning schemes in breach of the requisite procedures and that they had been convicted of the corresponding offences (see paragraphs 83-86 above). Moreover, the responsibility of the public authorities for the collapse of the buildings in the earthquake zone had been acknowledged in various expert reports and by a Parliamentary Commission (see paragraphs 45 and 137 above). Yet the Interior Ministry decision to authorise an investigation of the public officials involved was set aside under a final decision of the Council of State on 4 October 2000. That fact was noted in the minutes of the hearing organised by the Assize Court on 11 April 2002, on which date it may be held that all the applicants could have been aware of it (see paragraph 55 above).

Furthermore, the application submitted by Mrs Akan and Mr Özel to set aside the Council of State decision of 4 October 2000 and reopen the proceedings against the public officials involved was dismissed by the Council of State on14 January 2003 (see paragraph 96 above).

177. Even supposing that that remedy might be taken into account under the procedural requirements of Article 2 of the Convention, it should be noted that the applications were lodged on 16, 22 and 25 April 2005, that is to say more than six months after the 4 October 2000 decision, more than six months after the Assize Court hearing of 11 April 2002, and more than six months, even, after the decision of 14 January 2003. Moreover, Mrs Akan and Mr Özel had clearly been informed of the possibility of applying to the Court in the 6 April 2004 decision of the Provincial Human Rights Committee, which they nonetheless also refrained from doing until 16 April 2005.

178. Although in its observations the Government did not submit any objection as to inadmissibility owing to non-compliance with the six-month time-limit, the Court reiterates that it has previously found that the six-month rule is a public policy rule and that, consequently, it has jurisdiction to apply it of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012), even if the Government has not objected on that basis (see *Paçacı and Others v. Turkey*, no. 3064/07, § 71, 8

November 2011). Accordingly, having regard to the aforementioned findings concerning the date on which the six-month time-limit began in respect of Mrs Akan and Mr Özel (see paragraph 176 above, *in fine*) and concerning the date on which the other applicants could be deemed to have been informed of the setting aside of the authorisation to investigate the public officials (see paragraph 176 above), the Court considers that that part of the complaint was submitted out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The conduct of the criminal proceedings

179. Noting that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other ground, the Court declares it admissible.

C. Merits

180. Having regard to the findings set out above concerning the applicants' complaints *vis-à-vis* the obligation to prevent disasters, to protect populations from the effects of disasters and to provide immediate relief and implement emergency measures (see paragraphs 164 and 178 above), the Court must now adjudicate exclusively on the applicants' allegations regarding the conduct of the criminal proceedings, which come under the procedural head of Article 2 of the Convention.

1. The applicants' submissions

a) Mr Çakır, Mr Özel and Mrs Akan's submissions

181. The applicants submitted that the criminal proceedings conducted in the present case had not led to the conviction of all the persons whom they considered responsible in accordance with their respective responsibilities: they argued that the criminal justice system had been inoperative owing both to the inadequacy of legislation on natural disasters and to the implementation of the provisions on statutory limitation. Furthermore, contrary to the Government's assertions, not all those persons had been prosecuted and convicted. In that connection, the applicants submitted that despite the existence of an arrest warrant against D.B. and the passing of many years since the material time, the latter had not been arrested and had not taken part in proceedings. They added that the same applied to C.G. and Z.C. Moreover, of the five persons prosecuted during the criminal proceedings four had benefited from a stay of prosecution, including a partial stay as regards İ.K. on the grounds of statutory limitation.

182. The applicants further submitted that the State ought to have punished the public officials responsible for the deaths of their relatives,

explaining that the expert opinions had established the respective responsibilities but that the prosecutions had still not been authorised.

b) Mr and Mrs Kılıç's, Mr and Mrs Erdoğan's and Mrs Yüce's (Ergüden's) submissions

183. The applicants submitted that the State had failed in its duty to arrest and try in good time the individuals whom they considered responsible, enabling the latter to benefit from the provisions on statutory limitation.

184. Furthermore, the applicants considered that the failure to prosecute the public officials whose responsibility had been established under an expert opinion had infringed the right to an effective remedy. In that context they complained that the current legislation was such as to render impossible the prosecution of certain public officials, even though their responsibility had been established by experts.

2. The Government's submissions

185. Citing the principles set out in the case of *Öneryıldız v. Turkey* ([GC], no. 48939/99, §§ 91-92, ECHR 2004-XII) regarding the requisite judicial responses to allegations of violations of the right to life, the Government stated that in the present case the domestic authorities had conducted an in-depth investigation. Expert studies had been conducted and reports had been prepared, on which the parties had been able to submit their observations. Furthermore, the domestic courts had examined the requests to claim civil damages under the proceedings and assessed whether or not those civil claimants had actually been involved in the case. Finally, the courts had gathered and scrutinised the requisite evidence.

186. The Government considered that the present case was characterised by the promptness with which the authorities had instigated the investigation, to which fact they attached great importance. They pointed out that the record of the inspection of the site had been prepared on 24 and 25 August 1999, that V.G. had been heard on 6 September 1999 and that the indictment and the additional indictment had been drawn up on 16 September 1999 and 22 September 2000 respectively. They further submitted that no delay in the conduct of the criminal proceedings could be laid at the door of the domestic authorities and that the transfer of the case to Konya had not impeded the applicants' participation in the proceedings.

They therefore submitted that there had been no violation of Article 2 of the Convention.

3. The Court's assessment

a) General principles

187. The Court reiterates that it should in no way be inferred that Article 2 of the Convention may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see *Öneryıldız*, cited above, § 96) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence. On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence in and ensuring public adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see *Nencheva and Others v. Bulgaria*, no. 48609/06, § 116, 18 June 2013).

188. The Court further emphasises that Article 2 requires the authorities to conduct an official investigation in the context of dangerous activities when lives have been lost as a result of events occurring under the responsibility of the public authorities, which are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents (see *Öneryıldız*, cited above, § 93). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 71, ECHR 2002-II, and *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII).

189. The Court also reiterates that the principles developed in relation to judicial responses to incidents resulting from dangerous activities also lend themselves to application in the area of disaster relief. Where lives are lost as a result of events engaging the State's responsibility for positive preventive action, the judicial system required by Article 2 must make provision for an independent and impartial official investigation procedure that satisfies certain minimum standards as to effectiveness and is capable of ensuring that criminal penalties are applied to the extent that this is justified by the findings of the investigation (see *Budayeva*, § 142). In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue (ibid., § 142).

190. Furthermore, the requirements of Article 2 of the Convention go beyond the stage of the official investigation, where this has led to the

institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law (see *Öneryıldız*, citéd above, § 95, and *Budayeva*, citéd above, § 143).

b) Application of the principles to the present case

191. The Court reiterates that the procedural obligation under Article 2 of the Convention is not dependent on whether the State is ultimately found to be responsible for the deaths in question (see *Šilih v. Slovenia* [GC], no. 71463/01, § 156, 9 April 2009). The procedural obligation under Article 2 on conducting an effective investigation has evolved into a separate and autonomous duty (ibid., § 159, and *G.N. and Others v. Italy*, no. 43134/05, § 83, 1 December 2009 and the cases cited therein).

192. In the present case, the Court observes that criminal proceedings were commenced against the property developers responsible for the buildings which had collapsed and certain individuals directly involved in their construction. It also notes that the proceedings concerned the deaths of 195 persons. The cases were initially split up into different investigation files, and were then gradually joined and later separated again (see paragraphs 46, 62, 73 and 74 above). However, the various sets of proceedings at issue all originated in the same facts, that is to say the defects in the buildings which had collapsed, so that the Court considers that it must adjudicate on one single investigation, regardless of the joinder or severance of the various sets of proceedings over time.

193. The Court further observes that the applicants took part in the criminal proceedings in question and applied to intervene in them as third parties. These criminal proceedings against five accused, which began on 14 September 1999, ended on 15 December 2011, almost twelve years later, with the conviction of only two of the accused, one of whom was, moreover, granted the benefit of a partial stay of proceedings on grounds of statutory limitation (see paragraphs 73-79 above). Two of the accused were untraceable for several of those twelve years (see paragraph 62 above), one of whom was D.B., who was in fact never brought before the criminal authorities, so that his involvement in the impugned acts was at no point assessed by the courts. Furthermore, the criminal proceedings against three of the accused were discontinued as statute-barred (see paragraph 80 above) before any responsibility on their part for the impugned acts could be established.

194. The Court reiterates that the mere passing of time can work to the detriment of the investigation, and even fatally jeopardise its chances of success (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011). It also emphasises that the passing of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as

well as drag out the ordeal for the complainants (see *Paul and Audrey Edwards*, cited above, § 86).

195. While acknowledging that the undeniable complexity of the case owing to the number of victims involved, the Court notes that there were only five accused persons and that the expert reports pinpointing the defects and other factors leading to the collapse of the buildings in question, as well as the corresponding responsibilities, had been prepared very promptly, that is to say in August 1999 (see paragraphs 20-21 above) and October 2000 (see paragraph 45 above). It notes, however, that a further request for an expert study issued by the Assize Court on 3 May 2001 had not been met until 5 July 2004 (see paragraph 65 above), that is to say almost three years two months later.

196. Nevertheless, the importance of what was at stake in the investigation conducted in the present case in terms of identifying the responsibilities in issue, the circumstances under which the aforementioned buildings had been erected and the reasons for their collapse should have prompted the domestic authorities to address the matter rapidly in order to prevent any appearance of collusion in or tolerance of unlawful acts.

197. Even in the presence of obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law (see *Šilih*, cited above, § 195). In the present case, the Court can only note that the length of the proceedings at issue breaches the requirement of a prompt examination of the case, without any unnecessary delays. The criminal proceedings were conducted in such a way that only two of the accused were finally declared responsible for the events, the other three having benefited from the statute of limitation.

198. Furthermore, the Court reiterates that it has already accepted, in the light of Article 2 of the Convention, that the failure to indict and prosecute persons holding public office owing to a refusal by the administrative authorities to authorise such action raised issues under Article 2 of the Convention (see, for example, *Asiye Genç v. Turkey*, no. 24109/07, § 83, 27 January 2015). In the present case, it notes the failure of the attempts by some of the applicants to ensure that the competent authorities ordered a criminal investigation of the public officials (see paragraphs 88-99 above). In this respect, the Court observes that in the absence of prior administrative authorisation, no such criminal investigation was instigated against the public officials whose shortcomings and failures in supervising and inspecting the buildings which collapsed – as noted under an expert study (see paragraph 45 above) and registered by the Minister of the Interior (see paragraph 87 above) – might otherwise have been established.

199. As regards the applicants' ability to bring an action for damages against the individuals who had been involved in the construction of the buildings which collapsed, the Court reiterates that the State's obligation

under Article 2 of the Convention will only be satisfied if the protection afforded by domestic law operates effectively in practice (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 53, ECHR 2002-I, and *Byrzykowski v. Poland*, no. 11562/05, § 117, 27 June 2006). In the instant case, however, the Court can only note that those applicants who sought to use the civil compensation remedies had to wait between eight and twelve years (see paragraphs 110-131 above) for the civil courts to deliver their judgments. The Court also emphasises the modesty of the amounts awarded to the applicants in question in respect of the non-pecuniary damage caused by the loss of their relatives, in the light of its own case-law in such matters. It therefore concludes that in the particular circumstances of the present case, the civil compensation remedy was not an effective legal remedy and accordingly rejects the Government's preliminary objection in that respect.

200. In the light of the foregoing considerations, the Court finds a violation of Article 2 of the Convention under its procedural head.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

201. The applicants complained that the proceedings had been unfair and that they had not benefited from an effective remedy in order to obtain compensation for the damage sustained. They relied on Articles 6 and 13 of the Convention. Finally, the applicants considered that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

202. The Government contested the applicants' allegations.

203. Having regard to its finding of a violation under Article 2 of the Convention (see paragraph 200 above), the Court considers that it has examined the main legal issue arising in the present case. In the light of the overall facts of the case and the parties' submissions, it holds that there is no need to adjudicate separately on the admissibility or the merits of the other complaints under Articles 6 and 13 of the Convention or under Article 1 of Protocol No. 1 to the Convention (see, for a similar approach, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

204. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages

205. Mr Özel claimed TRL 40,000 in respect of pecuniary damage and TRL 500,000 in respect of non-pecuniary damage resulting from the death of his mother.

206. Mrs Akan claimed TRL 40,000 in respect of the pecuniary damage which she had sustained. She also claimed TRL 500,000 in respect of the non-pecuniary damage resulting from her mother's death, as well as the suffering, fear and trauma caused by the fact that her nine-year-old daughter had been buried in rubble for several hours. She further claimed TRL 23,000 in respect of pecuniary damage for her and her lawyer's travel and accommodation expenses incurred in order to follow the criminal proceedings, as well as TRL 5,000 in respect of pecuniary damage for the costs incurred by her lawyer in following the proceedings in Ankara before the Interior Ministry and the Council of State. Furthermore, she claimed TRL 20,000 in respect of pecuniary damage corresponding to the value of the furniture which she stated was lost in her apartment during the earthquake. Finally, she claimed TRL 300,000 in respect of non-pecuniary damage sustained by her daughter.

207. Mr Çakır claimed TRL 18,000 in respect of travel expenses incurred in order to follow the criminal proceedings. He provided photocopies of train tickets as vouchers. He also claimed TRL 20,000 corresponding to the value of the property which had been destroyed in the apartment that he had lost. He had not been able, owing to the passing of time, to provide an exhaustive list of the property in question or any documents indicating its value. He further claimed a sum of US$ 90,000 in respect of loss of earnings caused by his presence during the criminal proceedings. Mr Çakır also claimed TRL 750,000 in respect of non-pecuniary damage sustained on account of the death of his son and the anxiety which he had suffered until four days after the earthquake, when he had personally pulled his son out of the rubble of the building. He also submitted that he had been covered by rubble for some ten hours and had been very afraid, with the result that he now suffered from claustrophobia. Similarly, he stated that he suffered from feelings of anxiety and sadness related to the fact that his wife had been buried in the rubble for eight hours. He also pointed out that he had been greatly fatigued by the journeys which he had had to make in order to follow the proceedings, emphasising the length of the latter.

208. Mr and Mrs Kılıç claimed TRL 250,000 each in respect of the non-pecuniary damage caused by the death of their son and TRL 250,000

each in respect of the resultant loss of financial support. In respect of the pecuniary damage resulting from the journeys undertaken by their lawyer in order to following the proceedings, they also claimed TRL 18,000 jointly in respect of the criminal proceedings in Konya and TRL 5,000 jointly in respect of the administrative proceedings in Yalova.

209. Mr and Mrs Erdoğan claimed TRL 250,000 jointly in respect of the non-pecuniary damage caused by the death of their son and TRL 250,000 in respect of the resultant loss of financial support. In respect of the pecuniary damage corresponding to the journeys undertaken by their lawyer in order to follow the proceedings, they also claimed TRL 18,000 jointly in for the criminal proceedings in Konya and TRL 5,000 jointly for the administrative proceedings in Yalova.

210. Mrs Yüce (Ergüden) clamed TRL 500,000 in respect of the non-pecuniary damage resulting from the loss of her parents, as well as TRL 500,000 for her personal suffering caused by the long hours which she had spent buried in the rubble, the fear which that had inspired, the cost of the psychological support which she had had to seek and the exhaustion of having had to travel in order to follow the proceedings. In respect of the pecuniary damage caused by her travel in order to follow the proceedings, she claimed TRL 36,000 for the proceedings in Konya and TRL 5,000 for those in Yalova.

She also claimed TRL 120,000 in respect of pecuniary damage corresponding to the value of her apartment and the furniture which she had lost during the earthquake, as well as TRL 30,000 in respect of pecuniary damage corresponding to her share in the inheritance of her mother's apartment and the furniture appertaining to the latter.

211. The Government contested those claims on the grounds that the applicants had not provided vouchers substantiating their claims in respect of the alleged pecuniary damage. They added that the applicants' claims in respect of non-pecuniary damage were unacceptable, submitting that compensation in respect of just satisfaction should not entail unjust enrichment.

212. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects those claims. On the other hand, it considers it appropriate to award, in respect of non-pecuniary damage, 30,000 euros (EUR) jointly to Mrs Akan and Mr Özel, EUR 30,000 jointly to Mr and Mrs Kılıç, EUR 30,000 jointly to Mr and Mrs Erdoğan, and 30,000 euros (EUR) to each of the other applicants, namely Mrs Yüce (Ergüden) and Mr Çakır.

B. Costs and expenses

213. Mr Çakır claimed TRL 15,000 in respect of miscellaneous costs and expenses relating to the domestic proceedings and US$ 25,000 dollars

in respect of lawyer's fees incurred before the Court and the domestic courts. He also claimed a sum equivalent to 25% of the amount of compensation which might be awarded to him in respect of lawyer's fees before the Court, corresponding to the sum mentioned on the fee agreement which he had concluded with his lawyer. He submitted that document as a voucher.

214. Mr and Mrs Kılıç claimed TRL 15,000 jointly in respect of miscellaneous costs and expenses relating to the domestic proceedings and US$ 50,000 dollars jointly in respect of lawyer's fees incurred during the domestic proceedings and those brought before the Court.

215. Mr and Mrs Erdoğan claimed TRL 15,000 jointly in respect of miscellaneous costs and expenses relating to the domestic proceedings and US$ 25,000 dollars in respect of lawyer's fees incurred during the domestic proceedings and those brought before the Court.

216. Mrs Yüce (Ergüden) claimed TRL 15,000 in respect of miscellaneous costs incurred during the domestic proceedings. She also claimed a sum equivalent to 25% of the amount of compensation which might be awarded to her in respect of lawyer's fees before the Court, corresponding to the sum mentioned on the fee agreement which she had concluded with her lawyer, a copy of which she submitted to the Court.

217. Mr Özel claimed a sum equivalent to 25% of the amount of compensation which might be awarded to him in respect of lawyer's fees, corresponding to the sum mentioned on the fee agreement which he had concluded with his lawyer[9].

218. The Government contested those claims. They submitted that none of the applicants apart from Mr Çakır had submitted documents in support of their claims.

219. According to the case-law of the Court, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, in the absence of documents sufficiently substantiating their claims, the Court rejects the claims for costs and expenses lodged by Mr and Mrs Kılıç and Mr and Mrs Erdoğan[10]. On the other hand, having regard to the documents at its disposal and to its case-law, the Court considers reasonable the sum of 4,000 EUR for proceedings before it, and awards that amount to each of the applicants, namely Mr Çakır, Mrs Yüce (Ergüden) and Mr Özel[11].

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[9]. Rectified (in the French version) on 22 March 2016 by the deletion of the words "qui serait".

[10]. Rectified on 22 March 2016 by the deletion of the words "and Mr Özel".

[11]. Rectified on 22 March 2016 by the addition of the words "and Mr. Özel".

C. Default interest

220. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Decides,* unanimously, to join the applications;

2. *Joins* to the merits, unanimously, the Government's preliminary objection concerning non-exhaustion of domestic remedies and rejects it;

3. *Declares*, unanimously, the application admissible as regards the complaint under Article 2 of the Convention regarding the deaths of the applicants' relatives, under its procedural head, in connection with the criminal proceedings conducted by the national authorities, and inadmissible in connection with the alleged failures in terms of disaster prevention, provision of immediate relief and emergency measures;

4. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its procedural head;

5. *Holds*, by six votes to one, that there is no need to examine separately the admissibility or the merits of the complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. *Holds*, unanimously,]
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros) jointly, plus any tax that may be chargeable, to Mrs Akan and Mr Özel in respect of non-pecuniary damage;
      (ii) EUR 30,000 (thirty thousand euros) jointly, plus any tax that may be chargeable, to Mr and Mrs Kılıç in respect of non-pecuniary damage;
      (iii) EUR 30,000 (thirty thousand euros) jointly, plus any tax that may be chargeable, to Mr and Mrs Erdoğan in respect of non-pecuniary damage;

(iv) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to each of the applicants Mrs Yüce (Ergüden) and Mr Çakır in respect of non-pecuniary damage;
(v) EUR 4,000 (four thousand euros) to each of the applicants Mr Çakır, Mrs Yüce (Ergüden) and Mr Özel, plus any tax that may be chargeable, in respect of costs and expenses[12];

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 17 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Paul Lemmens
President

The separate opinion of Judge Lemmens is appended to the present judgment pursuant to Article 45 § 2 of the Convention and Rule 74 of the Rules of Court.

P.L.
S.H.N.

[12]. Rectified on 22 March 2016 by the addition of the words "and Mr Özel".

PARTLY DISSENTING OPINION OF JUDGE LEMMENS

I regret that I cannot share my colleagues' opinion that "there is no need to adjudicate separately on the admissibility or the merits of the ... complaints under Articles 6 and 13 of the Convention or under Article 1 of Protocol No. 1 to the Convention" (see paragraph 203 of the judgment).

In my view, it cannot be said that assessing those complaints, or at least the complaint concerning Article 1 of Protocol No. 1 to the Convention, would add nothing to the finding of a violation of the procedural head of Article 2 of the Convention. The Court has examined such complaints separately in cases raising similar issues to those raised by the present case (see, for example, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 119-157, ECHR 2004-XII, and *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, §§ 166-198, ECHR 2008 (extracts)). That being so, I consider that the Court should have examined those complaints (see my partly dissenting opinions in the cases of *Yiğitdoğan v. Turkey (no. 2)*, no. 72174/10, 3 June 2014, and *Balta and Demir v. Turkey*, no. 48628/12, 23 June 2015). That is why I voted against point 5 of the operative provisions of the judgment.

As it is impossible to know what the potential outcome of an examination of those complaints would have been, I was also forced to vote against point 7 of the operative provisions rejecting the "remainder" of the applicants' claim for just satisfaction.