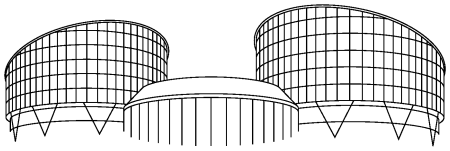

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ERDINÇ KURT AND OTHERS v. TURKEY

(Application no. 50772/11)

JUDGMENT

STRASBOURG

6 June 2017

FINAL

06/09/2017

This judgment is final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Erdinç Kurt and Others v. Turkey,

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

Robert Spano, *President,*
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Grițco,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 16 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 50772/11) 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 three Turkish nationals, Mr Erdinç Kurt and Mrs Nursen Kurt and their daughter, Duru Kurt ("the applicants"), on 24 March 2011.

2. The applicants were represented by Mr A. Kavak and Mr O. R. Kavak, lawyers practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, a violation of Article 8 of the Convention.

4. On 29 May 2012 the application was communicated to the Government.

THE FACTS

5. The applicants were born in 1974, 1975 and 2003 respectively and live in Ankara.

6. In 2004 Duru Kurt's parents took her to the Ankara SSK hospital because they thought that she was displaying symptoms of heart problems. The child was examined and then transferred to the Sami Ulus paediatric hospital, where she was treated for two years, after which the doctors decided that she should undergo heart surgery.

7. Before the operation, which took place on 19 July 2006, the patient's father signed a form setting out the potential risks facing his daughter in

undergoing the surgical operation, consenting to the operation ("the consent form").

8. During the post-operative check-ups a leak was detected on the periphery of the membrane covering the incision.

9. On 8 February 2007, by decision of the hospital medical board, the patient underwent a second operation carried out by a different medical team. Prior to the operation, the patient's father signed a consent form identical to the first one. That form did not mention any risk of a serious neurological problem, but specified that the list of possible sequelae was not exhaustive.

10. After that second operation, the patient suffered an oedema, a brain haemorrhage, liver failure and muscle spasticity while in intensive care.

11. On 6 July 2007 the applicants lodged a complaint against the doctors who had carried out the operations.

12. On 11 July 2007 the medical board of the Dışkapı paediatric hospital in Ankara diagnosed the child with a severe irremediable psychomotor disability (caused by hypoxic ischemic encephalopathy), estimating her disability rate at 92%.

13. On 16 July 2007, pursuant to standard procedure, the prosecutor's office applied to the Governor of Ankara for authorisation to prosecute.

14. The report drawn up following the internal investigation commissioned by the Governor's Office stated that the patient was suffering from a very serious congenital heart disease, that treating that disease would entail a high-risk surgical operation and that in 52% of cases a leak was noted around the membrane, necessitating a second operation. It concluded that the medical team had not been guilty of negligence during the first operation.

15. According to the aforementioned report, the second operation, which had been carried out to rectify the leak, had also been very risky. The report pointed out that the patient's neurological complications had been a common occurrence during open-heart surgery and that they occurred when artificial pumps were installed to maintain blood circulation or where the patient was placed in hypothermia. It added that the patient continued to suffer from sequelae despite the treatment administered after the second operation. In conclusion, the investigator recommended not authorising a criminal prosecution. This preliminary investigation report explained that the relevant persons had been questioned by the instigator. It is not known in what capacity the author of the report, who is a doctor, was involved or to which hospital he is attached.

16. On 6 September 2007, as recommended by the preliminary investigation report, the Governor's Office refused to authorise prosecution.

17. The applicants' challenge to that administrative decision was dismissed by the Regional Administrative Court on 18 December 2007 on the grounds that the preliminary investigation report and the appendices

thereto were not such as to enable the prosecutor's office to instigate a judicial investigation.

18. Consequently, on 28 September 2008 the prosecutor's office issued a discontinuance decision.

19. Concurrently with the criminal proceedings, the applicants lodged a complaint with the Ankara Medical Association.

20. The expert appointed by the latter submitted his report on 14 July 2008. This one-page document stated that the patient had displayed a congenital anomalous left coronary artery from the pulmonary artery (ALCAPA), that open-heart surgery had been carried out in order to irrigate the left coronary artery from the aorta, that six months later a leak had been detected on the membrane which had been applied to the incision during that first operation, that a second operation had been carried out which had resolved that problem, but that the patient had suffered a stroke. The expert pointed out that the patient's anomaly had been extremely serious, that it was liable to be fatal, and that the probability of complications occurring during or after such an operation had been high. The expert took the view that the second operation, geared to treating a foreseeable complication stemming from the first operation, had in fact been even riskier. He considered that open-heart surgery presented risks not only to the organ being operated on but also to other organs. The expert concluded his report as follows:

> "The stroke [suffered by] the patient Duru Kurt was one of the possible complications occurring during open-heart surgery.
>
> No negligence or fault has been noted on the part of the medical teams which carried out the first and second operations. The teams showed great efficiency and a high degree of medical expertise. The complication [which occurred in the present case] was an eventuality which can be observed in cases of anomalies [such as that suffered by the patient] and as a result of open-heart surgery."

21. On 23 May 2008 the applicants brought an action for damages against the doctors before the Ankara Civil Court of General Jurisdiction ("CCGJ") alleging that they had not practised their profession properly and had caused the very severe sequelae with which their daughter Duru Kurt was afflicted. In support of their claim they submitted a private expert report dated 13 May 2008 on the amount of the damages.

22. On 26 March 2009 the CCGJ appointed a board of experts comprising two professors and a lecturer in cardiovascular surgery from Ankara University.

23. The board of experts submitted its report on 31 July 2009.

24. According to that report the patient had originally been diagnosed with dilated cardiomyopathy (an illness which significantly diminishes the "pumping" capacity of the heart) at Ankara University Hospital, and following more detailed examinations at the Sami Ulus Hospital, ALCAPA, also known as Bland-White-Garland syndrome, had been diagnosed.

25. The experts explained that the patient had undergone a Takeuchi operation to create an intrapulmonary tunnel and that a leak had been noted on the periphery of the membrane during the check-ups conducted six months later. They stated that that leak had led to a second surgical operation, that the patient had been placed on respiratory support owing to the emergence of a tonic-clonic contraction after the operation and that the neurological sequelae had appeared during that period of intensive care.

26. After those initial findings, the experts stated in their report that the heart disease from which the patient suffered and for which she had undergone surgery was rare, accounting for 0.5% of all congenital heart diseases. Without treatment the mortality rate was between 80% and 90%, and those affected seldom reached adulthood. The board of experts considered that the only treatment for that disease was surgery, and that the most appropriate type of surgery was the Takeuchi operation. The board added that the latter had a mortality rate of up to 23%, that in 50% of all cases a leak could occur around the membrane following such heart surgery and that, taking all types of complications together, the rate of re-operation was up to 30%.

27. The experts added that in 10% to 29% of cases congenital cardiovascular diseases were accompanied by neurological disorders, and that a multi-country study had shown that the rate of neurological damage in the immediate post-operative period stood at 20%.

28. In their conclusions, the experts pointed out that ALCAPA was a very serious heart disorder and that the patient's parents had signed a consent form before their child's operation. They considered that the fact of the patient's dilated cardiomyopathy had further exacerbated the already serious risks posed by the operation. According to the report, the leak which had been observed around the membrane after the first operation had been a complication which occurred in 50 % of cases, and the operation carried out to resolve that issue had been even riskier than the first one. The experts also pointed out that the neurological damage suffered by the patient had been a complication which was often encountered in cases of patients suffering from a congenital heart defect who underwent post-operative intensive care.

29. The report, which quoted twenty or so bibliographical sources, ended with the following words:

> "In short, this patient's situation could be seen as one large complication. There can be no question of the doctors having committed a medical or surgical error."

30. The applicants contested the report, deeming it inadequate. They considered that the document, which cited scientific studies, was more like a magazine article than an expert report. It contained no concrete and objective facts about the case in hand and would not help in determining the dispute. The applicants did not deny that there had been a risk, but

considered that neither that risk nor the signing of a consent form released the doctors from their duty to practise their profession properly. They submitted, however, that the report, which lacked any explanations or reasoning on that point, had not mentioned any checks carried out with regard to the risk factors. Consequently, they asked the court to commission a second expert assessment, either from a different medical board or from a specialist section of the Istanbul Institute of Forensic Sciences.

31. By judgment of 3 November 2009 the CCGJ rejected the applicants request for a second expert assessment.

With regard to the expert report of 31 July 2009 and the facts set out in the prosecution investigation file, the court held that the doctors had not been responsible for the sequelae affecting the child after her high-risk operations, to which her parents had given their consent.

32. The parents lodged an appeal on points of law against that judgment, reiterating their previous criticism of the expert report, which they considered inadequate. They also emphasised that the report had been based on the medical file and that their daughter had not been examined by the experts. Furthermore, under established case-law, the experts should have begun by explaining the acts and procedures required by medical *lege artis* and comparing them with the acts which the doctors in question had actually carried out in order to determine whether and how far the said rules had been observed. Furthermore, they submitted that it was not the courts' usual practice in this type of case to confine themselves to a single expert report. In that connection, the rejection of their request for a second expert report had amounted to a blatant injustice. They alleged, moreover, that one of the doctors who should have been present during the operation had stayed away from the theatre after having been alerted by telephone that the patient's heart had stopped during the operation, pointing out that the expert report had neither analysed nor even mentioned that fact.

33. Their appeal was dismissed by judgment of 20 April 2010.

34. On 7 October 2010 the Court of Cassation also dismissed the applicants' application for rectification.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The parents submitted that the authorities had been responsible for their daughter's neurological sequelae and that her right to life had not been protected. They further submitted that they had had no effective remedy in order to exercise their rights, affirming that the civil proceedings had been

ineffective. They relied on Articles 2, 6 and 13 of the Convention in support of their complaint.

36. The Government contested that argument.

37. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and that it is not bound by that attributed by the parties (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015).

38. In the present case, it reiterates that that it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention (see *Makaratzis v. Greece* [GC], no. 50385/99, § 51, ECHR 2004-XI). It notes that there is nothing to suggest any immediate risk to Duru Kurt's life (see *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 169 to 171, ECHR 2016).

39. In those circumstances the Court considers that there is no need to examine separately under Article 2 of the Convention the facts complained of by the applicants, but that they should rather be assessed under Article 8 of the Convention, which covers issues relating to individuals' psychological and physical integrity (see, among many other authorities, *Trocellier v. France* (dec), no. 75725/01, 5 October 2006), and which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

40. The Government considered the application manifestly ill-founded.

41. The Court considers that the application raises issues of fact and of law which necessitate an examination of the merits of the case. Therefore, the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The parents submitted that the authorities had been responsible for their daughter's sequelae, which had been the result of the doctors' negligence in practising their profession. The applicants further alleged that

they had not had access to a remedy capable of determining the relevant liabilities. They submitted, in particular, that the civil proceedings which they had brought had been ineffective. They complained about the medical expert report drawn up by the board of experts, and criticised the CCGJ's decision to reject their request for a second expert assessment. The applicants stated that the experts had merely analysed the content of the medical file and had at no stage examined the patient. Moreover, the expert report had merely quoted statistics to demonstrate that there had been a risk, but had not considered whether any negligence had been committed in the actual case in hand.

43. The Government contested that argument.

44. They stated that the medical reports and the decisions of the domestic courts had ruled out any fault or negligence in the occurrence of the harm sustained by the patient, and that there had been no arbitrariness in the said decisions. Under its well-established case-law, it was not, in principle, the Court's task to deal with errors of fact or of law allegedly committed by a domestic court or to substitute its own assessment of factual evidence or applicable legislation for that of the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I); nor was it its function to question the conclusions of exert assessments or to speculate, on the basis of the medical information submitted to it, on whether the conclusions reached by the experts were correct (see *Tysiąc v. Poland*, no. 5410/03, § 119, ECHR 2007-I).

45. As regards the failure of the board of experts to examine the patient, the Government pointed out that the experts had had the option of examining the patient themselves or of requesting any type of examination or analysis which they deemed necessary. The reason why they had not exercised that option in the instant case was that they had not considered it necessary, thus using the discretionary power conferred on them by national law and by the Convention.

46. As regards the reliability of the report's findings, the Government argued that the experts had scrutinised the patient's medical file and had based their conclusions on scientific research and specialist articles.

47. They added that the domestic courts had not based their decisions solely on that report but had also had regard to the report included in the criminal case file.

48. The Government considered that the applicants had exercised their right to challenge the report and that the court had rejected their request for a second expert assessment by a reasoned decision based on the existence of previous reports. They considered that the applicants had in fact had the opportunity to contest the aforementioned report not only before the CCGJ but also before the Court of Cassation.

49. Furthermore, the Government considered that the present case differed from that of *Mantovanelli v. France* (18 March 1997, *Reports of*

Judgments and Decisions 1997-II) in that it concerned the judicial expert report, since, on the one hand, the board had comprised three experts and, on the other, the experts in the instant case had not interviewed the patient.

50. Lastly, the Government stated that the parents had explicitly consented to their daughter's surgical operations.

2. The Court's assessment

a) General principles

51. The Court reiterates that it is now well established that although the right to health is not as such among the rights guaranteed under the Convention or its Protocols, the High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under its Article 8, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, to provide victims of medical negligence with access to proceedings in which they could, where appropriate, obtain compensation for damage (see *Jurica v. Croatia*, no. 30376/13, § 84, 2 May 2017, and the references therein). It also reiterates that the principles emerging from its case-law on Article 2 of the Convention in the sphere of medical negligence also apply under Article 8 where an individual has suffered physical harm falling short of a violation of the right to life (see, among other authorities, *Vasileva v. Bulgaria*, no. 23796/10, § 63, 17 March 2016, and *Codarcea v. Romania*, no. 31675/04, § 101, 2 June 2009).

52. The State must not only refrain from the "intentional" taking of life, but also take appropriate steps to safeguard the lives of those within its jurisdiction. Those principles apply in the public-health sphere too (see, for example, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 48, ECHR 2002-I). It cannot be excluded that the acts and omissions of the authorities in the context of public health policies may, in certain circumstances, engage their responsibility under the substantive limb of Articles 2 and 8 (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V).

53. The positive obligations imposed on States require them to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives and physical integrity. That obligation is based on the need to protect patients as far as possible from the possibly serious consequences of medical interventions (see *Codarcea v. Romania*, no. 31675/04, § 104, 2 June 2009).

54. Articles 2 and 8 of the Convention also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see *Calvelli and Ciglio*, cited above, § 49).

55. The State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009).

56. Moreover, even if the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties, the Court has said on a number of occasions that the effective judicial system required by Article 2 may, and under certain circumstances must, include recourse to the criminal law (see *Calvelli and Ciglio*, cited above, § 51). However, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation imposed by Articles 2 and 8 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII, and *Gray v. Germany*, no. 49278/09, §§ 80 to 82, 22 May 2014).

b) Application of those principles to the present case

57. The Court observes that the applicant Duru Kurt underwent two surgical operations, one for an extremely serious congenital heart disorder and the other to remedy a complication stemming from the first operation. That second operation caused severe neurological sequelae. The parents hold the doctors responsible for their daughter's current disability and consider that the judicial authorities were inefficacious in their attempts to determine the responsibilities.

58. The Court notes that the parties do not dispute the existence of a legislative and statutory framework compelling both public and private hospitals to adopt measures for the protection of patients' lives. The dispute concerns the capacity of the judicial system to determine, in the instant case, whether the medical team honoured their professional obligations and to sanction any breach of those obligations.

59. Accordingly, the Court's task is to verify the effectiveness of the remedies used by the applicants and thus to determine whether the judicial system ensured the proper implementation of the legislative and statutory framework designed to protect patients' physical integrity. That entails ascertaining whether the remedy in question actually enabled the applicants to have their allegations examined and to ensure that any breach of the regulations by the doctors was penalised.

60. In the present case, the Court notes that the domestic judicial system provided the applicants with two remedies, one civil and one criminal. However, it considers that in the circumstances of the case it is unnecessary to dwell on the criminal proceedings because, as emphasised previously, the procedural obligation under Article 2 of the Convention does not necessarily require the State to guarantee criminal proceedings in cases of medical negligence (see, to similar effect, *Delice v. Turkey* (dec.), no. 38804/09, § 54, 10 November 2015). Furthermore, it notes that the parties' observations mainly concern the claim for compensation.

61. The Court observes that following the civil proceedings the courts dismissed the applicants' compensation claims after having obtained an expert report finding that the doctors had not committed any errors.

62. The applicants contested the relevance and adequacy of that report and requested, unsuccessfully, the commissioning of a second expert assessment.

63. It is not the Court's function to question the experts' findings by speculating, on the basis of the medical information submitted to it, on their scientific accuracy (see *Tysiąc v. Poland*, cited above, § 119, and *Yardımcı v. Turkey*, no. 25266/05, § 59, 5 January 2010). The Court holds that the requirement on the courts to assess medical expert reports in cases of alleged medical negligence cannot extend to imposing unnecessary or disproportionate burdens on the State in the enforcement of its positive obligations under Article 8. The intensity of the work required of the courts in terms of evaluation should be assessed on a case-by-case basis, having regard to the nature and complexity of the medical issue concerned and, in particular, to whether the claimant alleging negligence on the part of medical practitioners had been able to put forward concrete, specific allegations of negligence necessitating a reply from medical experts mandated to draw up a report. Nevertheless, the Court reiterates that it has previously held that proceedings were ineffective *vis-à-vis* the procedural obligations where the final decision had been based on expert reports that had evaded or unsatisfactorily addressed the central question to be answered by the experts and where the applicants' decisive, or at least primary, arguments had not received a specific and explicit response (see *Altuğ and Others v. Turkey*, no. 32086/07, §§ 77-86, 30 June 2015, where the medical reports had highlighted the existence of a risk to life in the event of a penicillin injection and found that the doctors had not been at fault without seeking to establish whether they had fulfilled their professional obligations).

64. In the present case, the Court notes that the report commissioned by the CCGJ quotes the rates of complications and mortality during or following operations such as that undergone by the child in the present case, setting out a lengthy bibliography. It concludes that the doctors committed

no fault and therefore bear no responsibility, owing to the very high risks involved in such operations.

65. The Court notes that Duru Kurt's illness necessitated highly complex cardiovascular surgery. It therefore accepts that, in the specific circumstances of the present case, the applicants cannot be blamed for having requested that the domestic courts commission a second expert assessment in general terms, criticising in particular the lack of reasoning in the 31 July 2009 report and the absence of an explanation of the correlation between the relevant applicable standards and the actual medical treatment undergone by the patient.

66. The question to be determined by the experts was whether, irrespective of the risk surrounding the operation, the doctors had contributed to the damage. Indeed, only if it can be established that the doctors carried out the operation in a *lege artis* manner, taking proper account of the inherent risks, can the sequelae be attributed to the therapeutic risks. Otherwise, no surgeon would ever have to answer for his actions in view of the risks inherent in any surgical operation.

67. The fact is that the 31 July 2009 expert report does not at all refer to this matter, given its failure to consider whether or to what extent the doctors in question acted in accordance with the standards of modern medicine before, during and after the operation. For example, it does not describe the medical acts actually performed by the doctors during the operation and the post-operative follow-up, when the neurological accident would appear to have occurred, comparing the steps taken with the rules and protocols governing such matters.

68. While the aforementioned report ultimately concludes that the doctors did not commit any error or fault, it does not specify the concrete facts, apart from bibliographical references attesting to the existence of risks, on which it bases that conclusion, which is therefore more akin to affirmation than to demonstration. Consequently, the report is insufficiently reasoned in terms of the question on which it was supposed to shed technical light (see, *mutatis mutandis*, *Eugenia Lazăr v. Romania*, no. 32146/05, §§ 82 to 85, 16 February 2010).

69. Even though the conclusions of an expert report are not binding on the courts, it cannot be overlooked that they clearly may exert decisive influence on the courts' assessment inasmuch as they concern a technical field of which the courts have no specialist knowledge.

70. The CCGJ, faced with the inadequate reasoning of the report in question and the applicants' objections, did not see fit to accede to their request for a second expert report, considering the first report to be sufficient. The Court of Cassation also rejected the request for a second report, in support of which the applicants had put forward a series of arguments (see paragraph 32).

71. In the light of all those facts, the Court considers that the applicants did not benefit from an appropriate judicial reaction complying with the inherent obligation to protect Duru Kurt's right to physical integrity.

72. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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."

74. The applicants claimed various amounts in compensation for the pecuniary damage suffered. They based the following claims on an expert report prepared for the civil proceedings:

- 223,981 Turkish liras (TRY) in respect of loss of earning arising from the child's permanent disability;
- TRY 234,685 in respect of the cost of assistance in all the basic activities of everyday life;
- TRY 240,799 in respect of interest applicable to both the foregoing amounts since the date of the operation.

75. Those sums total TRY 699,465, that is to say 299,483 euros (EUR), according to the applicants' calculations at the date on which they filed their pleadings.

76. In respect of the non-pecuniary damage which they claimed to have suffered, the applicants requested payment of the same amount as they had claimed before the CCGJ, that is to say TRY 80,000 (or EUR 34,261 at the date on which they had filed their pleadings). They submitted that that sum should be extended to include arrears. According to their calculations, a total of EUR 17,987 was due in arrears.

77. As regards costs and expenses, the applicants claimed TRY 2,390 (or EUR 1,023 at the date on which they had filed their pleadings). That sum corresponded to costs in proceedings before the CCGJ, for which they submitted a number of vouchers.

78. The Government contested those claims, deeming them excessive, unjustified and contrary to the Court's case-law, and submitted that they should be rejected in their entirety.

79. The Court considers that the causal link between the pecuniary damage suffered by the applicants and the violation found has not been established and therefore rejects the claims under that head. The Court cannot speculate on the hypothetical outcome of the remedies used by the applicants in the absence of the shortcomings to which they adverted.

80. However, the Court considers that the applicants undoubtedly suffered non-pecuniary damage, and holds that it would be reasonable to award them EUR 7,500 jointly under that head.

81. As regards costs and expenses, having regard to its case-law and the documents presented by the applicants, the Court awards the latter the sum of EUR 1,023.

82. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,023 (one thousand and twenty-three euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 6 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President