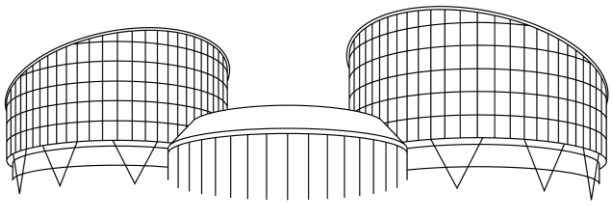

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÇOŞELAV v. TURKEY

(Application no. 1413/07)

JUDGMENT

STRASBOURG

9 October 2012

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

In the case of Çoşelav v. Turkey,

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

Ineta Ziemele, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 1413/07) 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 two Turkish nationals, Mrs Hanife Çoşelav and Mr Bekir Çoşelav ("the applicants"), on 26 December 2006.

2. The applicants were represented by Mr Murat Timur, a lawyer practising in Van. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that the national authorities had failed to protect the right to life of their son while he was being detained in prison.

4. On 6 September 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1957 and 1961 respectively and live in Istanbul.

6. On 29 December 2003 the applicants' then sixteen-year-old son, Bilal Çoşelav, was serving a prison sentence in the juvenile wing of Kars Prison when he made an attempt to take his own life by hanging himself in the

courtyard. Prison warders arriving at the scene resuscitated him and he was subsequently returned to his prison wing. In a statement taken by the prison governor, Bilal Çoşelav was reported as having explained that he was finding it difficult to adapt to prison life and that he was suffering from psychological problems.

7. Disciplinary proceedings were brought against Bilal Çoşelav for his attempted suicide but the disciplinary board decided not to impose a punishment. The board told him that "he was setting a bad example to other inmates", and warned him that if he were to do "such things" again he would be treated more severely.

8. Bilal Çoşelav made another attempt to kill himself on 19 January 2004 by taking an overdose. He was taken to hospital for treatment and then on 28 January 2004 he was transferred to Erzurum Prison.

9. On 9 February 2004 a prisoner told the governor of Erzurum Prison that Bilal Çoşelav had been "behaving oddly", had talked about hanging himself, and his behaviour had been causing concern in the juvenile wing.

10. On the same day, Bilal Çoşelav was transferred from the juvenile wing of the prison to another wing which housed adult prisoners from his home town. According to a report drawn up by prison officers, this had been at the request of Bilal Çoşelav, who had claimed that "although his identity card showed that he was seventeen years old, he was actually older" and could therefore be detained in an adult wing.

11. On 16 February 2004 Bilal Çoşelav told the prison governor that he wanted to be transferred to another wing because he did not get on with the people in his wing.

12. Between 27 February and 10 December 2004 Bilal Çoşelav sent twenty-two letters to the prison governor and the prosecutor of Erzurum Prison stating that he urgently needed to see the governor to discuss his personal problems. On the few occasions on which his requests were granted he told the governor that he wanted to be transferred to another wing in the prison. He also informed the governor that he had not been visited regularly by his family, that he did not have any money and that he wanted to work in the prison to earn some.

13. According to two reports drawn up by prison officers, on 15 December 2004 Bilal Çoşelav met with the deputy governor and asked to be transferred to another cell. When his request was refused he tried to attack a prison warder with a razor blade, kicked and broke the sink in his cell and set fire to his mattress.

14. According to another report drawn up by prison officers, on 17 December 2004, at approximately 10.00 a.m., Bilal Çoşelav injured his head by repeatedly hitting it against his cell walls and was then taken to the infirmary to have the injury treated. Later on the same day, he was brought back to the wing and placed in a cell on his own.

15. At around 1.30 p.m. that same day, Bilal Çoşelav hanged himself from the iron bars of his cell with his bed sheets. A doctor arrived and for five minutes tried unsuccessfully to resuscitate him, finally pronouncing him dead.

16. Later on the same day, the Erzurum prosecutor and a doctor arrived at the prison and photographed Bilal Çoşelav's body. They then took the body to the local hospital where, on the same day, a post-mortem examination was carried out. According to the post-mortem report, the cause of death was asphyxia. Samples taken from the body were sent for further forensic examination.

17. Between 17 and 21 December 2004 prosecutors questioned the prison officers. Their statements agreed with the above-mentioned reports. The prisoners questioned by the prosecutors stated that they had not seen the incident. Both the prison officers and the prisoners claimed that they knew Bilal Çoşelav had problems.

18. It appears from a report that, on 30 December 2004, a prosecutor instructed the prison governor to inform the family of Bilal Çoşelav's death. Later on the same day the prison governor obtained the telephone number of the second applicant (Bekir Çoşelav) from the prison records and informed him of the death of his son.

19. On 3 January 2005 the second applicant formally identified the body of his son. On the same day, the prosecutor released the body for burial.

20. On 7 January 2005 the second applicant met with the Erzurum prosecutor and told him that he had not been informed of the death of his son until 30 December 2004. He alleged that Bilal had not had any problems with his family and that he might have been killed by two prison warders with whom he had argued in the days leading up to his death. He also wanted the prison officers prosecuted for their failure to inform him promptly of his son's death.

21. Proceedings were brought by the disciplinary board of the prison against two prison warders who had been on duty in Bilal Çoşelav's wing on the day he committed suicide. On 3 February 2005 the disciplinary board decided to give formal warnings to these warders. It was noted in the disciplinary board's report that the large number of cells in the wing had made it impossible for the warders to keep a constant watch on Bilal Çoşelav, who had been suffering from psychological problems. However, adequate precautions could have been taken by increasing the number of prison warders there, which would have ensured that he was under sufficient surveillance.

22. On 10 February 2005 both applicants, with the assistance of their legal representative, submitted a detailed complaint to the prosecutor claiming, *inter alia*, that the iron bars from which their son had allegedly hanged himself were too low - for a person of his height (180 cm) - to have been effective for this purpose.

23. The doctors who had examined the samples taken from Bilal Çoşelav's body stated in their report of 29 March 2005 that his death had been caused by hanging.

24. On 29 April 2005 the Erzurum prosecutor decided to close the criminal investigation stating that, in his opinion, no one had incited or encouraged Bilal Çoşelav to commit suicide.

25. On 3 May 2005 the Directorate for Prisons informed the second applicant that disciplinary proceedings had been brought against the prison officers who had failed to inform the family of the suicide of their son.

26. The applicants filed an objection against the prosecutor's decision to close the criminal investigation. They argued that the prosecutor had failed to carry out a thorough investigation into the facts surrounding their son's death.

27. The objection was dismissed by the Oltu Assize Court on 7 February 2006. That decision was communicated to the applicants on 6 September 2006.

28. In the meantime, on 21 November 2005, the applicants wrote to the Ministry of Justice claiming compensation for the death of their son. In their letter the applicants argued, *inter alia*, that even assuming that their son had committed suicide, this was on account of the prison authorities' failure to take adequate steps to protect his right to life. When the Ministry of Justice failed to respond to their letter, the applicants brought an action against the Ministry before the Erzurum Administrative Court on 8 February 2006.

29. On 29 December 2006 the Erzurum Administrative Court, by a majority of two to one, rejected the applicants' case, with the majority considering that the prison authorities could not be blamed for Bilal Çoşelav's suicide, which had occurred as a result of his family problems. The dissenting judge, however, noted in his separate opinion that Bilal Çoşelav was being held in an adult wing of the prison in breach of the applicable domestic law, which required that he be kept in a juvenile wing. The judge argued that the possibility that his detention with adults had contributed to his psychological problems could not be excluded. He added that the fact that Bilal had repeatedly asked to be transferred showed that he had been having problems with the adult prisoners in his wing. The dissenting judge concluded by arguing that Bilal Çoşelav should have been kept under constant observation, at least on that particular day when he had injured himself by hitting his head against the wall, some hours before he had succeeded in killing himself.

30. On 12 March 2007 the applicant lodged an appeal against the Erzurum Administrative Court's decision. On 15 December 2010 the Supreme Administrative Court quashed the decision and held that the file should be returned to the Erzurum Administrative Court for reconsideration. In its decision the Supreme Administrative Court also referred to the prison disciplinary board's conclusion (see paragraph 21 above), and concluded

that the decision adopted by that disciplinary board proved that the prison authorities had acted in breach of their duties by failing to ensure an adequate watch on Bilal Çoşelav, who had been suffering from psychological problems. It also held that the prison authorities' failure to inform the family in a timely manner of the death of their son must have contributed to the family's suffering. According to the information provided by the applicants, the Ministry of Justice requested a rectification of the Supreme Administrative Court's decision and the examination of that request is still continuing before the Supreme Administrative Court.

II. RELEVANT DOMESTIC LAW

31. Article 107 (b) of the Regulations on Prison Administration and Execution of Sentences (which entered into force on 5 July 1967 and was repealed in 2006) stipulated that prisoners under the age of eighteen were to be kept separately from other prisoners. According to Article 106 of the Regulations, prisoners were to be given the opportunity to "inform prison governors, prosecutors and the Ministry of Justice of their complaints and requests".

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Council of Europe

32. Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules of 11 January 2006 ("the European Prison Rules") includes in its basic principles:

> "...
>
> 11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.
>
> 11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.
>
> ...
>
> 35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.
>
> ...
>
> 35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.
>
> ..."

33. The recommendation of the Committee of Ministers to Member States of the Council of Europe on social reactions to juvenile delinquency (no. R (87)20), adopted on 17 September 1987 at the 410th meeting of the Ministers' Deputies, in so far as relevant, reads as follows:

> "Recommends the governments of member states to review, if necessary, their legislation and practice with a view: ...
>
> 7. to exclude the remand in custody of minors, apart from exceptional cases of very serious offences committed by older minors; in these cases, restricting the length of remand in custody and keeping minors apart from adults; arranging for decisions of this type to be, in principle, ordered after consultation with a welfare department on alternative proposals ..."

34. In the report pertaining to its visits carried out in Turkey between 5 and 17 October 1997 (CPT/Inf (99) 2 EN, publication date: 23 February 1999), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") expressed its serious misgivings "as regards the policy of having juveniles (i.e. 11 to 18 year olds) who are remanded in custody placed in adult prisons".

35. In a report on its visit to Turkey between 16 and 29 March 2004 (CPT/Inf (2005) 18), the CPT stated the following:

> "[i]n the reports on its visits in 1997 and September 2001, the CPT has made clear its serious misgivings concerning the policy of having juveniles who are remanded in custody placed in prisons for adults. A combination of mediocre material conditions and an impoverished regime has all too often created an overall environment which is totally unsuitable for this category of inmate. The facts found in the course of the March 2004 visit have only strengthened those misgivings. Here again, the laudable provisions of the Ministry of Justice circular of 3 November 1997 ('the physical conditions of the prison sections allocated to juvenile offenders shall be revised and improved to conform with child psychology and enable practising educative programmes, aptitude intensive games and sports activities') have apparently had little practical impact."

B. United Nations

36. The 1989 United Nations Convention on the Rights of the Child (hereafter, "the UN Convention"), adopted by the General Assembly of the United Nations on 20 November 1989, has binding force under international law on the Contracting States, including all of the member States of the Council of Europe.

Article 1 of the UN Convention states:

> "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

Article 3(i) states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 37 (c) provides:

"States Parties shall ensure that:

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; ..."

Article 40 provides in so far as relevant:

"1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the reintegration and the child's assuming a constructive role in society.

..."

37. The relevant part of the Concluding Observations of the United Nations Committee on the Rights of the Child in respect of Turkey (09/07/2001(CRC/C/15/Add.152.)) provides as follows:

"65. ... The fact that detention is not used as a measure of last resort and that cases have been reported of children being held incommunicado for long periods is noted with deep concern. The Committee is also concerned that there are only a small number of juvenile courts and none of them are based in the eastern part of the country. Concern is also expressed at the long periods of pre-trial detention and the poor conditions of imprisonment and at the fact that insufficient education, rehabilitation and reintegration programmes are provided during the detention period.

66. The Committee recommends that the State party continue reviewing the law and practices regarding the juvenile justice system in order to bring it into full compliance with the Convention, in particular articles 37, 39 and 40, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), with a view to raising the minimum legal age for criminal responsibility, extending the protection guaranteed by the Juvenile Law Court to all children up to the age of 18 and enforcing this law effectively by establishing juvenile courts in every province..."

38. According to UNICEF, the juvenile justice system was in its infancy in Turkey in 2008. Judges were still learning about child-sensitive detention centres, alternative dispute resolution procedures and due process for children in conflict with the law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3, 6 AND 13 OF THE CONVENTION

39. In their application form the applicants complained, under Articles 2 and 3 of the Convention, about the death of their son. They alleged that he had either been deliberately killed or that the authorities had failed to take the necessary precautions to protect his right to life. Relying on Articles 6 and 13 of the Convention, the applicants also complained that the authorities had failed to conduct an effective investigation into the circumstances surrounding his death.

40. In their observations on the admissibility and merits of the case the applicants did not maintain their allegation that their son had been killed deliberately, but continued to hold that the national authorities had failed to take necessary steps to protect his right to life.

41. The Court considers that the applicants' complaints should be examined solely from the standpoint of Article 2 of the Convention, which provides, in so far as relevant, as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> ..."

42. The Government contested the applicants' arguments.

A. Admissibility

43. The Government argued that the applicants had failed to exhaust domestic remedies because the proceedings for compensation were still pending before the Supreme Administrative Court.

44. The Court reiterates that, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and might be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90, 94 and 95, ECHR 2002-VIII,and *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VII).

45. In the present case the consideration of the Government's objection to the admissibility of this complaint requires an examination to be made of the effectiveness of the administrative proceedings brought by the applicants. As such, it is closely linked to the substance of the applicants' complaints and cannot be examined at this stage of the proceedings. The

Court thus concludes that the Government's objection should be joined to the merits (see paragraph 78 below). Noting that no other obstacle to its admissibility exists, the Court declares the complaint admissible.

B. Merits

46. The applicants maintained that there was a causal link between the prison authorities' negligent behaviour and their son's death, and that the authorities had failed to take the necessary steps to protect the right to life of their son, notwithstanding the fact that he was known to be at risk of killing himself. They submitted that, as an absolute minimum, their son could have been seen by a specialist. Furthermore, the prison authorities could have kept him under constant watch at least on that particular day on which he had injured himself - just hours before his death.

47. The applicants also complained that no effective investigation had been carried out by the authorities and that the post mortem examination had not been conducted in accordance with the applicable procedure. Had they been informed about the death of their son immediately, they would have hired their own forensic expert to attend the post mortem examination and could thus have eliminated the family's suspicions of the involvement of a third party in their son's death. The applicants also alleged that the investigating authorities had not questioned all the witnesses.

48. The Government submitted that the applicants' son had experienced problems adapting to the prison regime and had attempted to kill himself on a number of occasions. After each of those attempts the authorities had been "patient" and taken him to the infirmary. They had thus taken the necessary precautions promptly in order to protect his right to life.

49. The Government also submitted that, at the time of his death, Bilal Çoşelav had been detained in a prison wing appropriate for his age and condition.

50. In the Government's opinion, the prison authorities could not have foreseen that Bilal Çoşelav would commit suicide. Nevertheless, the authorities had done all that was necessary to prevent that occurrence. Although Bilal Çoşelav had shown signs of mental and emotional disturbance on occasions, his suicide could not have been predicted from his behaviour and the prison staff could not be criticised for failing to recognise his mental state or for not having taken sufficient preventive measures to avoid his suicide.

51. The Government also claimed that an effective investigation had been conducted by the authorities. It had not been possible to inform the family promptly because the authorities had been unable to contact them. The second applicant had been contacted on 3 January 2005 and called to the hospital to identify the body of his son. Afterwards the applicants had been in a position to take an active part in the investigation.

1. The Government's alleged responsibility for Bilal Çoşelav's death

52. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 of the Convention be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

53. The first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). As regards the rights of prisoners, the Court has had previous occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent when an individual dies (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

54. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every alleged risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise regarding a prisoner with suicidal tendencies, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to prevent that risk from materialising (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 92, ECHR 2001-III).

55. The Court has recognised in the past that prison authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual prisoner concerned. There are general measures and precautions which ought to be available to diminish the opportunities for self-harm, without infringing personal autonomy (*ibid*., § 92).

56. Turning to the facts of the present application, the Court observes that the Government, while claiming that it was not possible for the prison staff to foresee that Bilal Çoşelav would commit suicide, also maintained

that all possible steps had been taken by the prison authorities to prevent him from doing so.

57. In the light of the documents detailing his two suicide attempts, his repeated requests for help and the incidents of self-harm, the Court considers that the prison authorities had been given ample indication that Bilal Çoşelav was at risk of suicide. Indeed, the fact that he had been suffering with psychological problems was documented by almost every national authority who dealt with him or his death, and every prisoner and prison officer was aware of his problems.

58. The Court also considers, like the Administrative Court judge who dissented from the majority decision rejecting the applicants' compensation claim (see paragraph 29 above), that the detention of Bilal Çoşelav - who had already made two attempts to kill himself – in contravention of the applicable domestic Regulations (see paragraph 31 above) and in a wing together with adult prisoners may well have contributed to his existing problems which, in turn, tragically led him to take his own life. In this connection, the Court cannot accept the respondent Government's submissions that, at the time of his death, Bilal Çoşelav was detained in a wing designed for juvenile prisoners, when, according to the documents summarised above, he was clearly being kept together with adults (see paragraph 10 above).

59. The decision to transfer him to the adult wing, according to a prison report, was taken at the request of Bilal Çoşelav himself. The Court finds it surprising that such a request was considered without any verification of his age, and considers that decision to be a clear illustration of the prison authorities' lack of respect for both the domestic regulations and the international instruments regulating the detention of juvenile prisoners.

60. The Court observes that the detention of Bilal Çoşelav in an adult wing was in contravention of the applicable regulations which were in force at the time (see paragraph 31 above) and which laid down Turkey's obligations under international treaties. The unlawful practice of detaining minors with adults at that time, as well as the Turkish authorities' failure to cater for the needs of juvenile prisoners, were noted and criticised by the United Nations Committee on the Rights of the Child, the CPT and UNICEF (see paragraphs 32-38 above).

61. The Court has also previously had occasion to examine the issue of the detention of minors in adult prisons in its judgment in the case of *Güveç v. Turkey*, where the applicant – a minor at the time – was being held on pre-trial detention in an adult prison and made numerous attempts to take his own life. The Court concluded, in that judgment, that the detention of the applicant in a prison with adults had increased his psychological problems which, in turn, had led to his repeated attempts to take his own life (no. 70337/01, § 92, ECHR 2009 (extracts)).

62. Having regard to the fact that the national authorities were aware of Bilal Çoşelav's problems, the Court considers that those authorities were under an obligation to take "measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk" (*ibid.*). In the circumstances of the present application, that obligation did not only require them to keep a constant watch on Bilal Çoşelav, but also to provide adequate medical help for his psychological problems. The Court will thus examine whether any such steps were taken by the national authorities.

63. According to the documents in the case file, the first indication that Bilal Çoşelav was at risk of suicide was his first attempt to take his own life in the courtyard of Kars Prison on 29 December 2003. After having been resuscitated he was simply returned to his cell and the prison authorities' only response was to threaten him with disciplinary action for "setting a bad example to other inmates" by attempting to take his own life (see paragraph 7 above).

64. His second attempt to kill himself on 19 January 2004 also failed to induce the authorities to provide him with the psychological assistance he evidently needed. Instead, some nine days later the authorities transferred him to Erzurum Prison and placed him in an adult wing.

65. The indifference displayed by the prison authorities towards Bilal Çoşelav's problems continued in Erzurum Prison, notwithstanding his repeated requests for help. The Court considers it unfortunate that such indifference was referred to as "patience" by the respondent Government (see paragraph 48 above). In the opinion of the Court, what Bilal Çoşelav needed at the time was urgent and specialist help - not patience or threats of disciplinary sanctions. Moreover, contrary to the respondent Government's submission (see paragraph 48 above), the fact that, after each suicide attempt, Bilal Çoşelav was examined at the infirmary is not sufficient to deduce that he was provided with adequate medical care; the subject matter for the Court's examination is not whether or not adequate steps were taken to resuscitate him, but whether or not reasonable steps were taken to prevent him from attempting to take his own life in the first place.

66. The gradual worsening of Bilal Çoşelav's problems and his frustration must have become apparent to the prison authorities when, after his request to be transferred to another ward was rejected by the deputy governor of the prison on 15 December 2004, he tried to attack a prison warder with a razor blade, kicked and broke the sink in his cell and set fire to his mattress.

67. The serious and critical level to which his state of mind had deteriorated in the final hours of his life was demonstrated when he repeatedly hit his head against the walls of his cell at 10.00 a.m. on 17 December 2004. His head injury was treated in the prison infirmary and

he was then returned to his cell, where, within a matter of hours, he hanged himself at 1.30 p.m.

68. The Court considers that no adequate watch was kept on Bilal Çoşelav by the prison authorities. The Court finds it striking that after having harmed himself by hitting his head against the walls, Bilal Çoşelav was left in his cell on his own, without any supervision. In this connection, the Court notes that the failure to keep an adequate watch on him was also noted by Erzurum Prison's disciplinary board, which stated that this failure had been due to a shortage of staff (see paragraph 21 above).

69. Having regard to the disciplinary proceedings brought against Bilal Çoşelav and the indifference displayed to his grave psychological problems, the Court concludes that the national authorities were not only responsible for the deterioration of Bilal Çoşelav's problems by detaining him with adult prisoners, but also manifestly failed to provide any medical or other specialist care to alleviate those problems.

70. In the light of the foregoing the Court finds that there has been a violation of Article 2 of the Convention in its substantive aspect owing to the national authorities' failure to protect the right to life of Bilal Çoşelav.

2. Effectiveness of the criminal investigation and the administrative proceedings concerning Bilal Çoşelav's death

71. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 of the Convention entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II). What an effective investigation in this context entails was recently summarised by the Court in its judgment in the case of *Shumkova v. Russia* (no. 9296/06, §§ 106-109, 14 February 2012).

72. In the present case two sets of proceedings were instigated into Bilal Çoşelav's death. The first is the criminal investigation which began when the prosecutor became aware of the death on 17 December 2004, and ended on 29 April 2005 when that prosecutor decided that no one had incited or encouraged Bilal Çoşelav to commit suicide. The applicants' objection against the prosecutor's decision was rejected by the Oltu Assize Court on 7 February 2006.

73. The Court reiterates that one of the important requirements of an effective investigation is the existence of a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all instances, however, the next-of-kin of the victim

must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, 27 July 1998, §§ 78 and 82, *Reports* 1998-IV).

74. In the present case the applicants were not informed of the death of their son until 30 December 2004. Thus, for a period of thirteen days the applicants were not only unable to participate in the investigation, but were also not informed about the steps taken by the prosecutors.

75. The Government submitted that the authorities had been unable to contact the family promptly because they could not find them. Nevertheless, the Court observes that, according to the documents submitted by the Government, contact details of Bilal Coşelav's family were already in the prison records and, indeed, the prison governor obtained the telephone number of the second applicant, Bekir Çoşelav, from those records and informed him on 30 December 2004 when instructed do to so by the prosecutor (see paragraph 18 above). The Court thus cannot find credible the Government's submissions about the authorities' inability to contact the family in the immediate aftermath of the incident. It therefore considers that the family were prevented from taking part in the investigation in its early and crucial stages directly as a result of the authorities' failure to inform them in a timely manner.

76. The Court notes that no attempts appear to have been made by the prosecutor to examine any alleged failures in preventing Bilal Çoşelav from committing suicide. It was sufficient for the prosecutor to establish that he had taken his own life and that no one had incited him to do so. There are no documents in the file to show, for example, that the prosecutor made enquiries about any reasons which may have led Bilal Çoşelav to take his own life and whether there had been any actions or omissions attributable to the prison officers. Taking such steps would have been a logical way to proceed in the investigation and would have been in compliance with the respondent State's positive obligations under Article 2 of the Convention to take pre-emptive steps to protect the right to life of those under their control.

77. The second set of proceedings into Bilal Çoşelav's death is the administrative proceedings which are currently pending before the Supreme Administrative Court. Having regard to the lengthy period which has elapsed since they were instigated, the Court considers that they do not meet the requirement of promptness and reasonable expedition implicit in the context of effective investigations (see *Yaşa v. Turkey*, 2 September 1998, § 103, *Reports* 1998-VI).

78. Furthermore, as already noted above (see paragraph 45 above), the Court considers that in cases concerning positive obligations under Article 2 of the Convention, compensation proceedings may be regarded as an effective remedy. In the present case the administrative courts could have examined the applicants' claims within a reasonable time, to decide whether or not the prison authorities had been negligent in the matter of the death of

their son. Nevertheless, the proceedings which were initiated in 2006 are still pending before the Supreme Administrative Court (see paragraph 30 above). Having regard to the national courts' failure to show diligence in expediting those proceedings, the Court finds that the applicants were not required to await their conclusion before lodging their application with it. It therefore rejects the Government's objection based on the issue of exhaustion of domestic remedies (see paragraph 45 above), and concludes that the national authorities have failed to carry out an effective investigation capable of establishing the responsibility of those whose actions or failures led to Bilal Coşelav's death. It follows that there has been a violation of Article 2 of the Convention in its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

79. Lastly, the applicants alleged, without specifying in which respect, a violation of Article 5 § 1 (a), (b), (d) and (e) of the Convention. Under Article 14 of the Convention and Protocol No. 12 to the Convention, the applicants also alleged that their son's rights under the Convention had been violated because of his Kurdish origin. Finally, the applicants alleged a violation of Articles 17 and 18 of the Convention.

80. Concerning the complaint under Protocol No. 12 to the Convention the Court observes that Turkey has not ratified that Protocol. The applicants' complaint in this regard is therefore incompatible *ratione personae* with the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

81. The Court has examined the applicants' remaining complaints. It finds that, in the light of all the material in its possession, those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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. Damage

83. The applicants claimed 200,000 euros (EUR) in respect of pecuniary and EUR 200,000 in respect of non-pecuniary damage.

84. The Government considered the sums claimed to be excessive and unsubstantiated by documentary evidence.

85. On account of the applicants' failure to submit documentary evidence in support of their claim for pecuniary damage, the Court cannot determine any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicants jointly EUR 45,000 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicants also claimed EUR 99,549 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In respect of EUR 9,549 of that claim the applicants submitted a timesheet to the Court, showing that a total of thirty-one hours had been spent by their legal representative on the case. In respect of their claim for the remaining EUR 90,000 the applicants argued that they had agreed to pay that sum to their legal representative in fees.

87. The Government considered the sum claimed to be excessive and unsupported by any documentary evidence. They also invited the Court not to make an award in respect of the costs and expenses incurred at the national level.

88. In response to the Government's argument concerning the costs and expenses relating to the proceedings at the national level, the Court reiterates that, if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred before the domestic courts for the prevention or redress of the violation (see *Société Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III, and the cases cited therein). In the present case the applicants brought the substance of their Convention rights, that is, their son's right to life, to the attention of both the prosecutors and the administrative courts. The Court thus considers that the applicants have a valid claim in respect of part of the costs and expenses incurred at the national level.

89. The Court also observes that, contrary to the Government's assertion, the applicants did submit a timesheet to the Court showing the hours spent by their lawyer on the case. It also observes that such time sheets have been accepted by the Court as supporting documents in a number of cases (see, *inter alia*, *Beker v. Turkey*, no. 27866/03, § 68, 24 March 2009 and the cases cited therein).

90. According to the Court's case-law, 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. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 covering costs under all heads.

C. Default interest

91. 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. Joins to the merits the Government's objection to the admissibility of the complaints under Article 2 of the Convention, and dismisses it;

2. *Declares* the complaints concerning the applicants' son's right to life admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in its substantive aspect on account of the national authorities' failure to protect the right to life of the applicants' son Bilal Çoşelav;

4. *Holds* that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an effective investigation into the death of the applicants' son;

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, 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 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand 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;

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

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Ineta Ziemele
Registrar	President