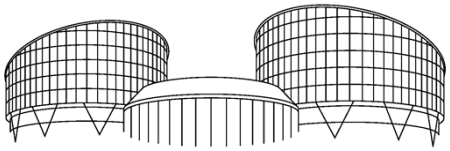

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CEVRİOĞLU v. TURKEY

(Application no. 69546/12)

JUDGMENT

STRASBOURG

4 October 2016

FINAL

04/01/2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Cevrioğlu v. Turkey,

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

Julia Laffranque, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 6 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 69546/12) 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 a Turkish national, Mr Ali Murat Cevrioğlu ("the applicant"), on 13 September 2012.

2. The applicant was represented by Mr M. Yalçın, a lawyer practising in Hatay. The Turkish Government ("the Government") were represented by their Agent.

3. On 17 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Hatay.

5. On 20 February 1998 the applicant's ten-year-old son, Erhan Cevrioğlu, was found dead, together with his friend G.B., who was around the same age, after falling into a water-filled hole on a construction site where they had apparently been playing. The cause of death was determined as drowning.

6. The hole on the construction site was covered by the Municipality of Antakya ("the Municipality") in the aftermath of this tragic incident.

1. Criminal proceedings against the owner of the construction site and municipality officials

7. Shortly after the incident, criminal proceedings were instigated against the owner of the construction site, H.C. (also referred to as "the employer") and three officials from the Antakya Municipality for causing death by negligence and failing to comply with the regulations and orders, pursuant to Article 455 of the Criminal Code in force at the material time (Law no. 765).

8. During the course of the criminal proceedings the Hatay Criminal Court of First Instance obtained three different expert reports with a view to determining liability for the death of the applicant's son.

(a) The first expert report

9. The first report, dated 16 April 1998, was drawn up by three civil engineers. The report noted at the outset that the hole in question, which measured 5 x 15 metres with a 2 metre depth, had been dug in the side yard of the construction for use as a shelter and no safety measures had been taken to enclose it. The hole was located 36 metres from the main avenue and 18 metres from the closest apartment building. The witnesses interviewed at the scene of the incident, including two construction workers, confirmed that no precautions had been taken to cover or otherwise enclose the hole. The two workers indicated that they had initially placed wooden planks on the south side of the hole but had later removed them after discovering that children were throwing them into the hole. They further stated that the construction workers were aware that the hole in question regularly filled up with rainwater and one of them said that they occasionally used the water that accumulated in the hole for construction work. The workers disagreed, however, as to when the hole had been dug: while one of them claimed that it had been there since June or July 1997, the other one said that it had been dug only two months prior to the incident.

10. On the basis of their observations and the witness statements, the committee of experts concluded that the deceased children had been partly at fault for the incident (25%), as the construction site where they had been playing was clearly not a play area. The experts noted that the Municipality also bore 25% responsibility for the two children's deaths, as (i) they had failed to duly inspect whether the construction, for which it had issued a permit, had complied with the rules on work safety, and to ensure that the construction site had been properly closed off with wooden panels as a safety measure, and (ii) it was not clear on what legal ground it had allowed the digging and the use of the hole in question as a shelter, as such shelters had to be built beneath buildings and not in open spaces. According to the experts, the remaining responsibility (50%) lay with the owner, H.C., who had failed to put in place the necessary safety measures on the construction

site, such as building a wooden fence around the hole, erecting warning signs or recruiting a security guard to control access to the construction site.

(b) The second expert report

11. On 25 May 1998 a second report was prepared by three occupational safety experts. Reiterating the factual findings in the previous report of 16 April 1998, the experts identified four main causes of the accident in question: (i) absence of wooden panels around the construction site, which was located in a residential area in close proximity to other houses and public roads; (ii) absence of any railing around the hole; (iii) absence of signs prohibiting entry into the construction site or warning against the water-filled hole on the site; and (iv) lack of diligence of the deceased children. The experts indicated that responsibility for all of the causes identified, save for the last one, lay with the employer, in accordance with the relevant provisions of the Labour Code (Law no. 1475) and the Regulation on Workers' Health and Occupational Safety in Construction Work (*Yapı İşlerinde İşçi Sağlığı ve İş Güvenliği Tüzüğü*) in force at the material time. They noted that, according to the information provided to the investigation authorities by the applicant, the hole in question had been open for the past eight to ten months, and a number of residents from the neighbourhood had warned H.C. to take the necessary safety measures against the hazards on the construction site, particularly *vis-à-vis* children. However, H.C. had disregarded all their warnings, saying that parents were responsible for attending to the safety of their children. They further noted that at the time of the incident the construction work had been suspended and the site had been unsupervised.

12. Relying on the information and evidence they had gathered, the experts concluded that H.C. had principal liability for the incident (75%) on account of his failure to take the necessary safety precautions in and around the construction site in compliance with the relevant laws and regulations. They stressed that the failure to install wooden panels around the construction site was one of the principal reasons for the accident. They further found that the remaining responsibility lay with the deceased children, as they should have been aware of the perils of entering a construction site and approaching a water-filled hole, even at their young age. The experts considered, lastly, that while the Municipality had a general duty to inspect construction sites and impose penalties for breaches of the laws, they could not be held accountable for failing to conduct inspections, impose safety precautions or issue penalties unless it could be proven with conclusive evidence that the authorities had overlooked the deficiencies on the construction site despite having been aware of them, or had otherwise neglected their duties, which evidence was lacking in the instant case.

(c) The third expert report

13. On 4 April 1999 a third expert report was issued by a committee of experts from the Istanbul Technical University. The report indicated that neither the construction site nor the hole in which the deceased children had drowned had been surrounded by panels or a wooden fence to prevent unauthorised access. Similarly, there had been no warning signs around the construction site or the hole. According to the expert report, H.C. had made the following statements in the aftermath of the incident before the investigative authorities and the trial court:

> "... [After digging the hole on the construction site], I enclosed the hole with wooden planks. Children kept removing the planks. That is why the hole was not closed off. [At the time of the incident] the hole was filled with water following rainfall. On a previous occasion, we had pumped the rainwater out. I was in Ankara at the time [of the incident]. I have no fault here... . If I had not been out of town, I would have checked the hole and covered it.
>
> ...
>
> In view of the size and depth of the hole, it was not possible to cover it. We had therefore put planks around it... There were no warning signs around the hole. I was in Ankara when the incident took place, and the construction had stopped while I was gone. The hole filled up with water whenever it rained... It must have filled up again when I was away, there was no opportunity to remove the water."

14. Referring to the relevant provisions of the Labour Code, the Regulation on Workers' Health and Occupational Safety in Construction Work and the Municipalities Act (Law no. 1580) in force at the material time (see "Relevant domestic law", below, for further details), the experts from the Istanbul Technical University found that H.C. and the Municipality were 75% and 25% at fault respectively and that no liability could be attributed to the deceased children. They indicated that since the construction work had started, none of the safety measures required under the relevant legislation had been put in place. Moreover, no permission had been obtained for the digging of the hole or the "shelter" in question, which had claimed the two children's lives; nor had any safety measures been taken around it to prevent accidents. The experts stressed that the dangers posed by the hole had been aggravated when it rained, as the muddy surface made it easier for people to slip and fall in. The responsibility for failure to take any safety measures around the hole or to prevent access to the construction site, despite the knowledge that the site attracted children, fell firstly on the contractor and then on the Municipality, which was required to inspect the construction site periodically in order to identify deficiencies and issue the necessary warnings; the Municipality authorities had clearly neglected that duty.

(d) Judgment of the Hatay Criminal Court of First Instance

15. On 14 April 2000, relying on the third expert report, the Hatay Criminal Court of First Instance held that İ.H.S., who was the director of reconstruction at the Municipality (*belediye imar müdürü*), and the construction owner, H.C., were 25% and 75% responsible for the incident respectively. Accordingly, the court found the accused guilty as charged.

16. However, on 9 July 2001 the Court of Cassation quashed that judgment, finding that the case should have been examined under Law no. 4616, which provided, *inter alia*, for the suspension of criminal proceedings in respect of certain offences committed before 23 April 1999.

17. Accordingly, on 6 August 2001 the trial court decided, pursuant to section 1(4) of Law no. 4616, that the criminal proceedings should be suspended and eventually discontinued if no offence of the same or of a more serious kind was committed by the defendants within the next five years.

2. Compensation proceedings before the civil courts

18. On 16 September 2002 the family members of both deceased children, including the applicant, initiated compensation proceedings before the Hatay Civil Court of First Instance against H.C., his construction company and the Antakya Municipality, arguing that they bore joint responsibility for their children's deaths. The applicant and his family claimed 5,000,000,000 Turkish liras (TRL)[1] in respect of pecuniary damage and TRL 3,000,000,000[2] in respect of non-pecuniary damage, together with interest accrued from the date of the incident.

19. On 5 November 2004 an expert report was prepared by a mechanical engineer, who was also an expert on occupational safety, and an architect at the request of the Hatay Civil Court of First Instance. After setting out the circumstances in which the incident had occurred, much like in the previous reports submitted to the criminal court, and referring to the relevant provisions of the Labour Code and the Regulation on Workers' Health and Occupational Safety in Construction Work, the experts concluded that H.C. bore 85% of the responsibility for the incident on account of his failure to take the necessary safety measures on the construction site, such as erecting wooden panels or other fencing around the site, taking special precautions in those parts of the site that presented a danger of falling, placing warning signs as necessary, informing the construction workers of possible hazards at the construction site and employing a guard to control access to the site. They indicated in particular that the unenclosed hole, which had been opened in June or July 1997, had presented a grave danger for the residents

1. Approximately 3,200 euros (EUR) at the material time
2. Approximately EUR 2,000 at the material time

and the children in the neighbourhood, which risk increased when the hole filled with water and became slippery on the edges following rainfall. They also stressed that, according to the relevant Court of Cassation jurisprudence, the responsibility of the employer was not limited to putting the necessary safety measures in place to avert the existing and potential dangers on the construction site, but he or she was also required to supervise compliance with those measures.

20. Turning to the liability of the deceased children, the report held that while it was natural for the children to have been playing out on the street, they should not have entered the construction site and approached the water-filled hole, the dangers of which were obvious bearing in mind in particular that the ground had been slippery at the relevant time. It therefore found that the children bore the remainder of the liability for their own deaths on account of their failure to display the necessary care and diligence.

21. As for the alleged responsibility of the Municipality, the experts stated that the latter had had no involvement in the construction, apart from issuing the necessary permits. Moreover, the accident had occurred within the boundaries of the construction site, and not in a public space or other area under the direct responsibility of the Municipality. In such circumstances, the Municipality could not be held responsible for the deficiencies on the construction site; otherwise, the Municipality would have to be held liable for all accidents occurring in any construction. They accordingly concluded that the owner of the construction site bore sole responsibility for the site.

22. On 22 March 2005 the Hatay Civil Court of First Instance upheld the applicant's case in part. The court stated that, after examining the findings of the Hatay Criminal Court of First Instance and the expert reports submitted to that court, it had requested a further expert report in order to clarify the conflicting aspects of the previous reports. On the basis of that final report, the court established that the responsibility of H.C. and his construction company for the incident was 85%. It thus concluded that H.C. and the construction company were to pay TRL 5,000,000,000 in respect of pecuniary damage to the applicant and his wife and TRL 3,000,000,000 in respect of non-pecuniary damage to the applicant, his wife and their three surviving children as requested, with interest accrued from the date of the incident. The court dismissed the case concerning the Municipality, as no fault could be attributed to it on the facts before it.

23. On 12 April 2006 the applicant, along with the other claimants, appealed against the decision of the first-instance court. They mainly argued that, despite the Municipality's liability for the incident having been established in the criminal proceedings, the Hatay Civil Court of First Instance had ordered a new expert report against their wishes, and moreover had disregarded their objections concerning the findings in the said report. The Municipality was clearly responsible for the deaths of the two children

for having tolerated the presence of a large and uncovered water-filled hole in the very centre of the city for months on end, yet its responsibility had been disregarded by the first-instance court.

24. On 18 June 2007 the Court of Cassation quashed the judgment with regard to the part concerning the Municipality. It noted that the first-instance court should have dismissed the case against the Municipality at the outset for procedural reasons, without examining its substance, as the complaints concerning the Municipality's responsibility to inspect the construction site fell within the jurisdiction of the administrative courts. The Court of Cassation upheld the rest of the judgment.

25. Accordingly, on 11 December 2007 the Hatay Civil Court of First Instance dismissed the case against the Municipality. The court also noted that its previous judgment concerning H.C. and his construction company had become final and that there was no need to render a new judgment in respect of that part of the case.

26. The applicant did not appeal against that judgment, which eventually became final on 16 February 2009.

3. Compensation proceedings before the administrative courts

27. On an unspecified date in 2009 the applicant, together with other family members, brought compensation proceedings before the Hatay Administrative Court against the Municipality for the death of their son and brother Erhan Cevrioğlu due to the alleged negligence on the part of the Municipality in the discharge of its inspection duties.

28. On 31 December 2009 the Hatay Administrative Court requested a copy of the case file pertaining to the compensation proceedings initiated by the applicant and others from the Hatay Civil Court of First Instance. Subsequently, on 29 January 2010 the Administrative Court requested the case file of the criminal proceedings against H.C. and the municipality officials from the Hatay Criminal Court of First Instance. On 23 March 2010 the Administrative Court also requested the applicant's lawyer to submit the relevant criminal court decision along with the expert reports submitted to that court.

29. On 9 December 2010 the Hatay Criminal Court of First Instance informed the Administrative Court that the relevant criminal case file could not be found. However, on 14 February 2011 the applicant's lawyer submitted the requested documents to the administrative court. In the meantime, the case file pertaining to the compensation proceedings was also made available by the Hatay Civil Court of First Instance.

30. On 11 March 2011, relying solely on the expert report submitted to the Hatay Civil Court of First Instance on 5 November 2004, and without undertaking any analysis of its own as to the responsibilities of the Municipality under the applicable legislation and whether it had fulfilled those responsibilities, the Hatay Administrative Court held that no fault was

attributable to the Municipality on the facts of the instant case and thus dismissed the compensation claims of the applicant and his family. The Hatay Administrative Court emphasised in its judgment that the earlier ruling of the Hatay Civil Court of First Instance, which had apportioned liability for the incident between H.C. and his company and the deceased children, had also been upheld by the Court of Cassation.

31. On 15 November 2011 the Adana District Administrative Court upheld the judgment of the first-instance court, and on 26 April 2012 it rejected rectification requests lodged by the applicant and his family.

4. Subsequent developments

32. According to a declaration submitted to the Hatay Civil Court of First Instance on 23 October 2013 by the lawyer who had represented the applicant in the proceedings before that court, the applicant and his family had not received any compensation from H.C. and his company, nor had they commenced enforcement proceedings against the latter.

II. RELEVANT DOMESTIC LAW IN FORCE AT THE MATERIAL TIME

A. The regulatory framework regarding the safety measures to be taken on construction sites

1. Labour Code (Law no. 1475 of 1 September 1971 repealed on 10 June 2003)

33. The relevant provisions of the Labour Code in force at the material time read as follows:

Article 73

"Employers shall be responsible for taking all necessary measures to protect workers' health and ensure occupational safety in the workplace ..."

Article 74

"The Ministry of Labour and the Ministry of Health and Social Assistance shall jointly issue one or more regulations setting out ... the precautions to be taken to prevent accidents in workplaces."

Article 88

"Compliance with any labour legislation shall be monitored, supervised and inspected by the State.

This duty shall be carried out by officers ... attached to the Ministry of Labour."

2. Regulation on Workers' Health and Occupational Safety in Construction Work (Yapı İşlerinde İşçi Sağlığı ve İş Güvenliği Tüzüğü) (*repealed on 26 July 2014*)

34. Articles 8 and 18 of the Regulation on Workers' Health and Occupational Safety in Construction Work in force at the material time, in so far as relevant, provided as follows:

Article 8

"Dangerous areas on construction sites shall be clearly enclosed and illuminated with red lights at night, and visible warnings signs shall be placed in such areas."

Article 18

"Prior to commencement of any construction work in residential areas within municipal boundaries, the periphery of the construction site shall be surrounded by wooden panels of approximately two metres in height ... which must be maintained until the termination of the building."

3. Regulation on Workers' Health and Occupational Safety (İşçi Sağlığı ve İş Güvenliği Tüzüğü*)* (*repealed on 23 July 2014*)

35. Article 506 of the Regulation on Workers' Health and Occupational Safety in force at the material time, in so far as relevant, read as follows:

Article 506

"Ditches and holes [in workplaces], and other excavated areas, shall be buttressed or otherwise railed off and these areas shall be signalled with illuminated warning signs at night time."

4. Regulation on Work Inspection (İş Teftişi Tüzüğü)

36. The relevant parts of Article 17 of the Regulation on Work Inspection provide:

Article 17

"Workplaces shall be inspected in accordance with the inspection programmes.

...

Workplaces that present a danger to the health and safety of workers, or where heavy or dangerous work is undertaken or non-compliance with the [relevant] regulations has become a habit, shall be frequently inspected."

5. The Municipalities Act (*Law no. 1580 of 14 April 1930 repealed on 24 December 2004*)

37. Section 15 of the Municipalities Act in force at the material time indicated the following among the municipalities' duties:

Section 15

"...

12. To issue permits for constructions and renovations ... or to abort construction of buildings which are built without the required permit ..., to demolish damaged buildings, chimneys and walls and to cover wells and holes on building sites ... or to take precautionary measures to prevent dangers which might be caused by these.

..."

B. Other relevant domestic law

38. Article 455 of the Criminal Code in force at the material time (Law no. 765, repealed on 1 June 2005), under which charges were brought against the construction owner H.C. and three Municipality officials, reads as follows:

"Anyone who, through carelessness, negligence or inexperience in his profession or craft, or through non-compliance with laws, orders or instructions, causes the death of another shall be liable to a term of imprisonment of between two and five years and to a fine of ...

If the act causes the death of more than one person ... [the offender(s)] shall be liable to a term of imprisonment of between four and ten years and to a fine of ..."

39. Under section 1(4) of Law no. 4616 in force at the material time, criminal proceedings in respect of offences committed before 23 April 1999, which were punishable by a maximum prison sentence of ten years, could be suspended if no final judgment had yet been delivered on the merits of the case. Under the same provision, the suspended proceedings would subsequently be discontinued if no crime of the same or a more serious kind was committed by the offender within the next five years.

III. RELEVANT INTERNATIONAL MATERIALS

40. On 1 January 1992 the International Labour Organisation issued a Code of Practice on "Safety and Health in Construction", the purpose of which was to provide practical guidance on a legal, administrative, technical and educational framework for safety and health in construction work. The relevant parts of this Code of Practice read as follows:

"2. General duties

2.1. General duties of competent authorities

2.1.1. The competent authorities should, on the basis of an assessment of the safety and health hazards involved and in consultation with the most representative organisation of employers and workers, adopt and maintain in force national laws or regulations to ensure the safety and health of workers employed in construction projects and to protect persons at, or in the vicinity of, a construction site from all risks which may arise from such site.

2.1.2. The national laws and regulations adopted in pursuance of paragraph 2.1.1 above should provide for their practical application through technical standards or codes of practice, or by other appropriate methods consistent with national conditions and practices.

2.1.3. In giving effect to paragraphs 2.1.1 and 2.1.2 above, each competent authority should have due regard to the relevant standards adopted by recognized international organisations in the field of standardisation.

2.1.4. The competent authority should provide appropriate inspection services to enforce or administer the application of the provisions of the national laws and regulations and provide these services with the resources necessary for the accomplishment of their task, or satisfy itself that appropriate inspection is carried out.

...

2.2. General duties of employers

...

2.2.4. Employers should take all appropriate precautions to protect persons present at, or in the vicinity of, a construction site from all risks which may arise from such site.

2.2.5. Employers should arrange for regular safety inspections by competent persons at suitable intervals of all buildings, plant, equipment, tools, machinery, workplaces and systems of work under the control of the employer at construction sites in accordance with national laws, regulations, standards or codes of practice. As appropriate, the competent person should examine and test by type or individually to ascertain the safety of construction machinery and equipment.

...

3. Safety of workplaces

3.1. General provisions

3.1.1. All appropriate precautions should be taken:

(a) to ensure that all workplaces are safe and without risk of injury to the safety and health of workers;

(b) to protect persons present at or in the vicinity of a construction site from all risks which may arise from such site."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

41. The applicant complained under Articles 1, 5 § 3 and 8 of the Convention that the State authorities had failed to protect his son's right to life and had failed to provide him with timely and adequate redress for his son's death.

42. The Government contested the applicant's arguments.

43. The Court considers at the outset that the applicant's complaints should be examined from the standpoint of Article 2 of the Convention alone, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally (...)."

A. Admissibility

44. The Government did not raise any objection as to the admissibility of the applicant's complaints.

45. The Court notes that the relevant complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicant submitted that his son had died tragically after falling into a hole on a construction site in the vicinity of their house, on account of the failure of the relevant State authorities to inspect and enforce the safety measures on the construction site necessary for the protection of his life. He further maintained that the judicial response in the aftermath of the incident had not been adequate, mainly because no responsibility had been attributed to the State authorities in relation to the death of his son and the relevant proceedings had not been conducted expeditiously.

47. The Government argued that the State authorities could not be held accountable for the death of the applicant's son as, according to the relevant domestic law at the material time, the responsibility for taking the necessary safety measures on a construction site, including covering any holes and putting up warning signs, lay with the owner of the site; municipalities could therefore not be held liable for failings in that regard. They referred in this connection to the Labour Code, the Regulation on Workers' Health and Occupational Safety in Construction Work, the Regulation on Workers' Health and Occupational Safety (*İşçi Sağlığı ve İş Güvenliği Tüzüğü*) and the Municipalities Act, all noted above in the relevant domestic law section. The Government added that the sole responsibility of the owner for the incident had also been established in the criminal and compensation proceedings in the instant case. The Government emphasised that the duty imposed on municipalities, under section 15 of the Municipalities Act, to cover holes on building sites was irrelevant in the instant case because the hole in which the applicant's son had drowned had been a man-made hole and not a natural one. The Government argued, further, that the risk posed

by the hole in question had not been foreseeable prior to the incident, as the relevant construction work had only recently started, although they did not indicate the start date. In those circumstances, holding the Municipality officials accountable for the applicant's son's death would be tantamount to imposing an excessive burden on the State in the Government's opinion.

48. As for the alleged inadequacy of the judicial response to the applicant's son's death, the Government maintained that the procedural obligations arising from Article 2 of the Convention had also been complied with in the present case. Accordingly, liability for the accident had been determined in both criminal and civil proceedings at the national level and compensation had been awarded as appropriate.

2. The Court's assessment

(a) General principles

49. The Court reiterates that the first sentence of Article 2 § 1 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; *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

50. Such a positive obligation may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act (see, for instance, *Paul and Audrey Edwards*, cited above, § 57 (murder of a prisoner); *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 52-53, 15 January 2009; and *Opuz v. Turkey*, no. 33401/02, § 129, ECHR 2009 (killings in the context of domestic violence); *Van Colle v. the United Kingdom*, no. 7678/09, § 88, 13 November 2012 (killing of a witness); *Kılıç v. Turkey*, no. 22492/93, § 63, ECHR 2000-III, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 88, ECHR 2000-III (killing of an individual in a conflict zone); and *Yabansu and Others v. Turkey*, no. 43903/09, § 91, 12 November 2013 (killing of an individual by a third party during military service)), but also in cases raising the obligation to afford general protection to society (see *Maiorano and Others v. Italy*, no. 28634/06, § 107, 15 December 2009; *Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 32, 12 January 2012; and *Ercan Bozkurt v. Turkey*, no. 20620/10, § 54, 23 June 2015). In the latter circumstances, the positive obligation covers a wide range of sectors (see *Ciechońska v. Poland*, no. 19776/04, §§ 62-63, 14 June 2011), including dangers emanating from buildings and construction work (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003; *Banel v. Lithuania*, no. 14326/11, §§ 67-73, 18 June 2013; and *Kostovi v. Bulgaria* (dec.), no. 28511/11, 15 April 2014). In principle,

this positive obligation will arise in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII, and *Bljakaj and Others v. Croatia*, no. 74448/12, § 108, 18 September 2014).

51. The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include a positive obligation to take regulatory measures as appropriate, which measures must be geared to the special features of the activity in question, with particular regard to the level of the potential risk to human lives involved. The regulatory measures in question must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. The relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (see *Öneryıldız*, cited above, §§ 89-90, and *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 131-132, ECHR 2008 (extracts)).

52. That said, the Court has also held in many cases that the positive obligation under Article 2 is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Ciechońska*, cited above, § 64).

53. The Court further notes that the State's duty to safeguard the right to life does not only involve the taking of reasonable measures to ensure the safety of individuals as necessary; in the event of serious injury or death, this duty must also be considered to require an effective independent judicial system to be set up so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Byrzykowski v. Poland*, no. 11562/05, §§ 104-118, 27 June 2006, and *Dodov v. Bulgaria*, no. 59548/00, § 83, 17 January 2008). The Court reiterates that this procedural obligation is not an obligation of result but of means only (see *Šilih v. Slovenia* [GC], no. 71463/01, § 193, 9 April 2009). However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory, and does not operate effectively in practice (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 53, ECHR 2002-I).

54. In some exceptional situations the Court has held that the authorities' positive obligations under Article 2 of the Convention extend to criminal law remedies (see *Öneryıldız*, cited above, § 93, and *Oruk v. Turkey*, no. 33647/04, §§ 50 and 65, 4 February 2014). However, if the infringement

of the right to life is not intentional, and save for exceptional situations in the aforementioned cases where negligence went beyond a mere error of judgment or carelessness, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil law remedy, either alone or in conjunction with a criminal law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see, among other authorities, *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006, and *Anna Todorova v. Bulgaria*, no. 23302/03, § 73, 24 May 2011).

55. The Court reiterates in this connection that the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are a number of avenues for ensuring Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means (see *İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 37, 10 April 2012, and *Ciechońska*, cited above, § 65).

(b) Application of those principles to the present case

56. The Court notes at the outset that it is undisputed between the parties that the applicant's son died as a result of falling into a large water-filled hole outside a private building under construction in a residential area. It is further undisputed that neither the hole nor the construction in question had been enclosed in any way to mark the boundaries of the construction area, which was thus readily accessible to all passersby.

57. The Court considers that there is little doubt that the positive obligation enshrined under Article 2 applied in the context in question; as already indicated in paragraph 50 above, activities carried out on construction sites are amongst those that may pose risks to human life due to their inherently hazardous nature, and may therefore require the State to take reasonable measures to ensure the safety of individuals as necessary, including through regulations geared to the special features of the activity (see, *mutatis mutandis*, *Pereira Henriques and Others*; *Banel*; and *Kostovi*, all cited above).

58. The Court notes in this connection that, according to the information provided by the Government, the principal piece of legislation concerning safety on construction sites at the relevant time was the Regulation on Workers' Health and Occupational Safety in Construction Work, which had been enacted as the *lex specialis* to the more general obligation under Article 73 of the Labour Code requiring employers to take necessary measures to ensure the health and security of workers at all workplaces. This regulation accordingly placed the employers under an obligation to take measures for the safety of workers in the specific context of

construction sites, including enclosing hazardous areas at the site, placing visible warning signs against dangers, and fencing off the periphery of the construction site prior to commencing any work, to be maintained until the end of the construction project.

59. The Government also referred to the Regulation on Workers' Health and Occupational Safety. This regulation, which aimed to set out the general occupational safety measures to be applied across the board in any work sector, provided in its Article 506 that excavated areas in workplaces were to be buttressed or otherwise railed off and also to be signalled with illuminated warning signs at night time. The implementation of the safety measures noted in the regulation was, once again, placed under the responsibility of the employer.

60. The Government referred, lastly, to the Municipalities Act in force at the material time. Whereas the aforementioned Labour Code and regulations specifically concerned the safety and security of workers in workplaces and placed the responsibility for maintaining a safe working environment on the employer, the Municipalities Act governed, *inter alia*, the responsibility of municipalities in ensuring the safety and well-being of the local community in their respective districts, including *vis-à-vis* buildings and building sites in the area. In this connection, under section 15(12) of the Act, municipalities were put in charge of issuing permits for constructions and renovations and halting unlawful construction work in accordance with the relevant legislation, as well as demolishing damaged buildings, chimneys and walls, and covering wells and holes in building sites or preventing the dangers posed by such wells and holes by other means.

61. The Court notes that neither before the domestic courts nor during the Strasbourg proceedings has the applicant contested the adequacy of the safety measures provided in the aforementioned laws and regulations to ensure safety in construction sites. He has, however, alleged that the State authorities had failed to enforce the relevant safety measures as the construction site at issue had never been subjected to an inspection. In these circumstances, while the Court has some doubts regarding the efficacy of the safety measures in question, particularly as regards section 15 (12) of the Municipalities Act which, according to the Government, offered no protection against "man-made" holes, it will confine its examination under this head to the alleged shortcomings in the enforcement of the safety measures set out in the law.

62. The Court notes in this connection that the obligation of the State under Article 2 in cases involving non-intentional infringements of the right to life is not limited to adopting regulations for the protection of people's safety in public spaces, but also includes a duty to ensure the effective functioning of that regulatory framework (see *Ciechońska*, cited above, § 69, and *Banel*, cited above, § 68). It goes without saying that the protection offered by the relevant safety measures would be illusory in the

absence of an adequate mechanism of inspection to ensure compliance. The importance of inspections in this context has also been stressed by the ILO Code of Practice on Safety and Health in Construction noted in paragraph 40 above, which urged the competent authorities to provide "appropriate inspection services to enforce or administer the application of the provisions of the national laws and regulations and provide these services with the resources necessary for the accomplishment of their task, or satisfy itself that appropriate inspection is carried out".

63. The Court notes that the respondent Government were specifically requested to provide information regarding the domestic law and practice that governed the inspection of construction sites at the material time. They have not, however, submitted any information in that regard.

64. The Court has, however, discovered *proprio motu* that Article 88 of the Labour Code provided a general enforcement provision indicating that compliance with any labour legislation was to be monitored, supervised and inspected by the State, without any further details on the scope of this duty or how it would be carried out in practice (see paragraph 33 above). Moreover, the Regulation on Work Inspection (*İş Teftişi Tüzüğü*) required the inspection of all workplaces and ordered, in particular, the frequent inspection of workplaces that involved "dangerous work" (see paragraph 36 above). This regulation, however, similarly failed to provide more concrete information on what this "dangerous work" involved and how the authorities' duty of inspection would be executed, nor did it refer to other laws, regulations or guidelines where these issues were addressed.

65. The Court notes that the domestic proceedings in the instant case did not offer any further clarification on the exact nature of the State's duty of inspection in the relevant context either; on the contrary, they confused the matter altogether. While the first and the third expert reports submitted to the Hatay Criminal Court of First Instance, and the criminal court itself, referred to the Municipality's obligation to inspect the relevant construction site, which inspection, according to the third expert report, was to be conducted on a periodic basis, the second expert report submitted to that court claimed that such duty of inspection only arose upon actual knowledge of deficiencies in a construction site, and did not require a periodic control. Neither of these views was backed up by a reference to a legal provision. Moreover, a fourth expert report submitted to the Hatay Civil Court of First Instance, which formed the basis of the Antakya Administrative Court's subsequent judgment, did not mention a duty of inspection at all, thus absolving the Municipality of all responsibility *vis-à-vis* private construction sites.

66. In view of the ambiguities surrounding the scope and conditions of the exercise of the authorities' duty of inspection, which even experts in the field and domestic courts could not agree upon, and in the absence of any further information from the Government, it can hardly be argued that an

adequate enforcement mechanism, that offered a precise and compelling supervisory obligation that would ensure compliance with the safety measures on construction sites and that functioned effectively, had been put in place, contrary to the respondent State's obligation in this regard as mentioned in paragraph 62 above (see, also, *Iliya Petrov v. Bulgaria*, no. 19202/03, §§ 61-63, 24 April 2012). The Court reiterates that an excessive burden must not be placed on the authorities with regard to their obligations under Article 2 and that that provision cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake (see *Koseva v. Bulgaria* (dec.), no. 6414/02, 22 June 2010). It nevertheless deems it reasonable to expect the respondent State to have put in place an effective mechanism for the inspection of construction sites for which it issues permits, having regard to the gravity of the potential dangers that may emanate from unsafe construction sites, particularly where such sites are located in highly populated residential areas.

67. The Court considers that in the absence of the necessary safety precautions, any construction site, and especially those in residential areas, has the potential for life-endangering accidents, that may impact not only the professional construction workers who are more familiar with the possible risks but also the public at large, including vulnerable groups such as children, who may easily become subject to those risks. This is why, unlike some other activities where the absence of a strict inspection mechanism may not pose a problem in view of the nature and the limited extent of the activity in question, the absence of an imminent risk and the State's relatively wider margin of appreciation in the choice of means to deal with that non-imminent risk (see, for instance, *Prilutskiy v. Ukraine*, no. 40429/08, § 35, 26 February 2015, and *Tınarlıoğlu v. Turkey*, no. 3648/04, §§ 104-106, 2 February 2016), the respondent State in the present context had a more compelling responsibility towards the members of the public who had to live with the very real dangers posed by construction work on their doorsteps. The Court acknowledges that the primary responsibility for the accident in the instant case lay with H.C. However, the failure of the State to enforce an effective inspection system may also be regarded as a relevant factor in these circumstances, as also discussed in the domestic criminal proceedings and in some of the expert reports.

68. The Court next notes the Government's argument that the accident at issue could not have been foreseeable to the Municipality since the construction in question had only recently started. Whereas the parties did not submit exact information as to when the construction had commenced and the hole in question had been dug, the information in the case file suggests that the hole had been in existence for at least two to eight months prior to the incident (see paragraphs 9, 11 and 19 above). In the Court's

opinion, this does not appear to be an unreasonable period in terms of holding the State accountable to its inspection duty, considering in particular that the Municipality had been aware of the ongoing construction work from day one as the authority that had issued the construction permit. The Court's assessment in this regard also finds support in the domestic criminal proceedings initiated into the incident. The Court notes in this connection that an expert report submitted to the Hatay Criminal Court of First Instance on 4 April 1999 had established that the Municipality "was required to inspect the construction site periodically" but "had clearly neglected that duty" in the circumstances (see paragraph 14 above), and, relying on that report, the criminal court had found an official of the Municipality to be criminally responsible for negligently causing the death of the applicant's son (see paragraph 15 above). Admittedly, the judgment of the Hatay Criminal Court of First Instance never became final on account of the suspension, and the eventual discontinuation, of the criminal proceedings pursuant to section 1 (4) of Law no. 4616 (see paragraphs 16 and 17 above). The Court, nevertheless, finds it of relevance for the purposes of its assessment of the respondent State's obligations under Article 2.

69. In the light of the foregoing, the Court concludes that while there existed some regulations regarding the safety measures to be taken on construction sites that could have served to protect the applicant's son's life, the overall legislative and administrative framework governing construction activities at the material time failed to avert effectively the risks to life emanating from construction work, on account of the absence of an adequate and unequivocal supervisory mechanism that functioned effectively in practice to ensure compliance with the relevant safety measures (see, *mutatis mutandis*, *Banel*, cited above, § 69). The Court points out that it cannot be concluded that a periodic or an *ad hoc* inspection in relation to specific safety concerns would have resulted in measures which would have excluded any possibility of an accidental death on the site, and it acknowledges that no causal link may exist for the purposes of civil liability. Nevertheless, it recalls that its task is not to establish individual liability but rather to determine whether the State has fulfilled its obligation to protect the right to life through the adoption and effective implementation of an adequate regulatory framework, including a mechanism of inspection. In that respect, the Court is of the view that proper implementation of an inspection mechanism would undoubtedly have increased the possibility of identifying and remedying the failings which were responsible for the death of the applicant's son. By failing to adopt any inspection measures whatsoever, the State thus failed to fulfil its obligations under Article 2 of the Convention.

70. The Court wishes to stress in this connection that, contrary to the claim made in the expert report submitted to the Hatay Civil Court of First

Instance on 5 November 2004 (see paragraph 21 above), establishing the State authorities' liability for the incident in the instant case is in no way tantamount to holding the State liable for all accidents occurring on construction sites, as demonstrated in the case of *Pereira Henriques* (cited above), where the respondent State escaped such liability once it was established that it had performed its duty to put in place an effectively functioning regulatory framework as regards the demolition of buildings and could not be expected to have taken any further measures to prevent the particular accident in question. The obligation in this type of cases is therefore one of means and not of result, which can be satisfied by adopting reasonable measures on construction sites to ensure the safety of the construction workers and the general public and setting up an effective mechanism for the enforcement of such measures, the latter of which was lacking at the material time in the respondent State. While the Court cannot speculate as to whether the proper inspection of the construction site would have prevented the tragic accident in question, it cannot be denied that such inspection would have forced the construction owner to close off the construction site and to take precautions around the relevant hole, which, judged reasonably, might have exonerated the respondent State from liability under Article 2 on the particular facts of the instant case.

71. As regards the judicial response provided for the establishment of the responsibility of any State agents or authorities – as opposed to that of the construction owner who was a private individual – in relation to the applicant's son's death, the Court notes that two sets of proceedings were instituted for that purpose, namely criminal proceedings instituted by the prosecutor against some officials of the Antakya Municipality and administrative proceedings instituted by the applicant against the Municipality itself. The Court notes, however, that in neither of those proceedings did the domestic courts definitively establish the shortcomings identified above. The Court observes in this connection that the criminal proceedings in question were suspended as per section 1 (4) of Law no. 4616 and thus did not result in a final establishment of the facts and a judicial assessment of the responsibility of the relevant Municipality officials (see paragraph 17 above). As for the administrative proceedings, the Court notes that the Hatay Administrative Court did not engage in an in-depth examination of the regulatory framework concerning the inspection of construction sites and the Municipality's responsibility for enforcing it (see paragraph 30 above).

72. In these circumstances, and in particular having regard to the absence of an adequate inspection mechanism that was enforced effectively by the relevant State authorities, the Court holds that there has been a violation of Article 2 of the Convention on the facts of the instant case.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. Relying on Articles 1, 5 § 3 and 8 of the Convention, the applicant argued that none of the domestic remedies available to him had been effective and that the compensation awarded by the Hatay Civil Court of First Instance had never been paid to him by H.C.

74. The Government submitted that the applicant had had effective domestic remedies available to him in the instant case. In that connection, the individuals responsible for the death of his son had been determined by the civil and criminal courts and the Hatay Civil Court of First Instance had also afforded him redress, in the form of pecuniary and non-pecuniary damages. He had not collected the damages awarded by the Hatay Civil Court of First Instance, however, on account of his failure to institute enforcement proceedings.

75. The applicant maintained that payment could not be enforced against H.C. because the latter had found a way of disposing of all the assets of his construction company during the course of the judicial proceedings.

76. The Court considers at the outset that these complaints should be examined from the standpoint of Article 13 of the Convention alone, in conjunction with the applicant's Article 2 complaints.

77. The Court further reiterates that Article 13 of the Convention requires domestic legal systems to make available an effective remedy empowering the competent national authority to address the substance of an "arguable" complaint under the Convention (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 108, ECHR 2001-V). Its object is to provide a means whereby individuals can obtain appropriate relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

78. However, the protection afforded by Article 13 does not go so far as to require any particular form of remedy, Contracting States being afforded a margin of discretion in complying with their obligations under this provision (see, for example, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

79. The nature of the right at stake has implications for the type of remedy the State is required to provide under Article 13. Where violations of the rights enshrined in Article 2 are alleged, compensation for pecuniary and non-pecuniary damage should in principle be possible as part of the range of redress available (see *Öneryıldız*, cited above, § 147).

80. Turning to the facts of the case before it, the Court considers in the first place that the present complaint, in as much as it concerns the proceedings before the criminal and administrative courts, does not raise a separate issue that needs to be examined under Article 13, taken in conjunction with Article 2, having regard to its findings in paragraphs 56-72

above (see, *mutatis mutandis*, *Kolyadenko and Others v. Russia*, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, § 228, 28 February 2012).

81. The Court secondly notes that the applicant was nevertheless able to resort to civil law remedies before the Hatay Civil Court of First Instance against the owner of the construction site, H.C., and his construction company, who were found partially liable by that court for the death of his son, and he was moreover awarded compensation for pecuniary and non-pecuniary damage. The Court notes that the applicant has not particularly contested the effectiveness or the outcome of the said proceedings as regards H.C. and his company, nor has he raised any complaints regarding the adequacy of the compensation awarded by the civil court. The applicant claims, however, that the compensation awarded to him by the Hatay Civil Court of First Instance has not been paid to him by H.C.

82. The Court reiterates in this connection that while the execution of a final and binding judicial decision is an essential element of the right to a court and to an effective remedy (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 152), the State's responsibility for enforcement of a judgment against a private person extends no further than the involvement of State bodies in the enforcement procedures (see, among other authorities, *Lăcătuş and Others v. Romania*, no. 12694/04, §§ 117-122, 13 November 2012, and *Demir v. Turkey* (dec.), no. 34885/06, § 76, 13 November 2012). Having regard to the documentary evidence available to it, and in particular to the declaration made by the applicant's lawyer to the Hatay Civil Court of First Instance as noted in paragraph 32 above, the Court observes that the applicant has not instituted enforcement proceedings against H.C. or his company to recover the judgment debt, which he could have done as early as 22 March 2005, that is, the date on which the compensation award was first made by the civil court, as the appeal against that judgment did not suspend its execution under Article 433 of the Code of Civil Procedure (Law no. 1086) in force at the material time. In these circumstances, the applicant's unsubstantiated allegation that the construction company in question had no assets against which the judgment debt could be enforced cannot of itself exempt him from the obligation to instigate enforcement proceedings to recover his judgment debt. This is particularly so bearing in mind that H.C. was liable jointly and severally with his company for the compensation awarded by the civil court, and the applicant could, therefore, have sought to enforce the judgment debt against him personally as well if he deemed his company to be insolvent.

83. Having regard to the foregoing, and in the absence of any apparent failure on the part of the State authorities in relation to the execution of the judgment in question, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The Court notes that the applicant requested to be compensated for his pecuniary and non-pecuniary damage, without indicating any particular amounts. In this connection, he claimed that he had had to sell his house in the aftermath of his son's death and had not been able to work for two years. He did not provide any supporting documents in relation to his claims.

86. The Government contested these claims, arguing that they were unsubstantiated and there was no causal link between the alleged violations of the Convention and the purported damage.

87. The Court rejects the applicant's unsubstantiated claims in respect of pecuniary damage. It considers, however, that the applicant may be deemed to have suffered a considerable amount of distress and frustration on account of his son's tragic death, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the particular circumstances of the case and the type of violation found, and having regard to the outcome of the compensation proceedings before the Hatay Civil Court of First Instance, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. Without indicating any particular amount, the applicant claimed the expenses he had incurred during the domestic proceedings, including the lawyer's fees, but did not submit any documentation in support of his claims, except for an invoice in the amount of 433.5 Turkish liras (TRY)[3] in relation to a payment made to the Hatay Civil Court of First Instance on 30 October 2009 (approximately EUR 196 at the material time). As for the expenses incurred before the Court, the applicant requested the reimbursement of his lawyer's fees without, however, submitting any invoices or a legal services agreement made with his representative. The applicant sent only an invoice in the amount of TRY 7.15 (approximately

---

3. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

EUR 2.5 at the material time), which was the postage fee for a parcel he had sent to the Court.

89. The Government left this matter to the discretion of the Court.

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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200 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. *Declares* the complaints under Article 2 of the Convention admissible and the complaint under Article 13 of the Convention concerning the ineffectiveness of the remedy before the Hatay Civil Court of First Instance inadmissible;

2. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 13 of the Convention concerning the ineffectiveness of the remaining remedies;

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

4. *Holds*

   (a) that the respondent State is to pay the applicant, 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 200 (two hundred euros), plus any tax that may be chargeable to the applicant, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Julia Laffranque President