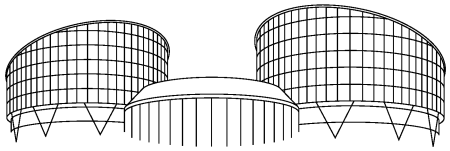

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DURMAZ v. TURKEY

(Application no. 3621/07)

JUDGMENT

STRASBOURG

13 November 2014

FINAL

13/02/2015

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

In the case of Durmaz v. Turkey,

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

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

Having deliberated in private on 14 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 3621/07) 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 a Turkish national, Ms Ümran Durmaz ("the applicant"), on 11 January 2007.

2. The applicant, who had been granted legal aid, was represented by Ms Yüksel Kavak Kılınç and Mr Ümit Kılınç, lawyers practising in İzmir and Strasbourg respectively. The Turkish Government ("the Government") were represented by their Agent.

3. Relying on Article 2 of the Convention the applicant alleged, in particular, that the national authorities had failed to carry out an effective investigation into her daughter's suspicious death.

4. On 24 January 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in İzmir.

6. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

7. The applicant's daughter, Gülperi O., worked as a nurse at the Aegean University Hospital in İzmir. She was married to O.O., who worked in the pharmacy at the same hospital.

8. According to the applicant, the couple had frequent rows and O.O. used violence against Gülperi O. on a number of occasions.

9. At 5.30 p.m. on 18 July 2005 O.O. brought Gülperi O. to the accident and emergency department of the Aegean University Hospital and told the doctors and nurses at the hospital that she had taken an overdose of two medicines called "Prent" and "Muscoril".

10. A police officer at the hospital took a statement from O.O. at 6.45 p.m. In his statement O.O. was reported as having stated that he and Gülperi O. had had a row earlier in the day; she had attacked him and he had hit her. He had then left home and some time after his return at 3.00 p.m. Gülperi O. had felt unwell. He had then brought her to the hospital.

11. It was stated in a report prepared by police officers that a police officer had spoken to the prosecutor over the telephone at 6.50 p.m. and that the prosecutor had instructed that police officer to question Gülperi O. and her husband, O.O.

12. At the time of her admission to the hospital, Gülperi O. was conscious but drowsy. Doctors and nurses, who had been informed about O.O.'s assertion that she had taken an overdose of the two medicines, pumped her stomach. When her pulse slowed down the doctors unsuccessfully tried to resuscitate her. Gülperi O. died at 10.10 p.m.

13. The doctor and the prosecutor who subsequently examined her body were unable to establish the cause of death and they decided, in view of the fact that the deceased's husband, O.O., had told the police officers that he had hit her, that a post-mortem examination was necessary.

14. The post-mortem examination was carried out the following day and samples taken from Gülperi O.'s body were sent for forensic analysis.

15. On 20 July 2005 the police prepared a report summing up their inquiry. It was stated in this report that Gülperi O. had committed suicide by taking an "overdose of medicines".

16. On 22 July 2005 the applicant's husband, Mr Elaattin Kanter, lodged an official complaint with the İzmir prosecutor against O.O., and alleged that O.O. had been responsible for the death of his daughter. Mr Kanter stated in his complaint petition that O.O. had beaten Gülperi O. up on a number of occasions and, as a result, she had been thinking of divorcing him. However, O.O. had apologized and had persuaded her to change her mind by promising to her that he would not be violent towards her again. Mr Kanter informed the prosecutor that Gülperi O. had telephoned her sister during the afternoon of the day of her death, and that they had had a normal conversation; she had not been suicidal at all.

17. Mr Kanter alleged that O.O. had forced Gülperi O. to take the medicines and had subsequently dumped her body at the hospital. The

family had heard nothing from O.O. since that date and he had not even attended the funeral.

18. On 25 July 2005 the İzmir prosecutor questioned the applicant and her husband. The applicant told the prosecutor that O.O. had beaten up her daughter before and that as a result she had had to be hospitalised twice with suspected head injuries. Mr Kanter told the prosecutor that his daughter had never been suicidal and that in his opinion O.O. had been responsible for her death.

19. On 29 July 2005 police officers forwarded photographs of Gülperi O.'s body to their head office with a covering letter stating "...find attached photographs of Gülperi O. who committed suicide by taking an overdose of medicines".

20. Also on 29 July 2005 the İzmir prosecutor questioned the hospital personnel who had been on duty on the day in question and had tried to resuscitate Gülperi O. A doctor told the prosecutor that O.O. had told him that Gülperi O. had taken "Muscoril" and "Prent".

21. On 19 December 2005 the İzmir prosecutor informed the Registry Office for births, marriages and deaths that Gülperi O. had taken an overdose on 18 July 2005 and had killed herself and that her death could be entered in the records.

22. According to a report drawn up by the Forensic Medicine Institute on 30 December 2005, no medicines, other drugs or alcohol had been found in the blood and other bodily samples taken from Gülperi O.'s body.

23. On 30 January 2006 the Forensic Medicine Institute published its report on the post-mortem examination and other forensic examinations carried out on the samples taken from Gülperi O.'s body. According to the report, there was advanced oedema in her lungs and there were no drugs or other foreign substances in her body. The cause of death was established as "acute alveolar swelling and intra-alveolar haemorrhage" in the lungs.

24. On 13 February 2006 the İzmir prosecutor in charge of the investigation sent a letter to the Forensic Medicine Institute and asked whether suicide or some form of illness could have been the cause of death.

25. In its response to the İzmir prosecutor the Forensic Medicine Institute confirmed on 24 February 2006 that there had been no foreign substances or medicines – including "Prent" and "Muscaril" (see paragraph 9 above) – in Gülperi O.'s body. The Institute also stated in its letter that, should the judicial authorities conclude that Gülperi O. had committed suicide by taking an overdose, then those judicial authorities should also conclude that the medicines she had used were of a type which could not be detected in forensic examinations of samples taken from internal organs.

26. On 28 February 2006 the İzmir prosecutor decided to close the investigation. In the decision the prosecutor stated that "the post-mortem report of 30 January 2006 states that Gülperi O. died as a result of lung complications caused by medicinal intoxication". In the opinion of the

prosecutor, Gülperi O. had committed suicide because she had had an argument with her husband.

27. On 4 April 2006 the applicant lodged an objection with the Karşıyaka Assize Court against the prosecutor's decision. The applicant drew the Assize Court's attention to the prosecutor's failure to question O.O., despite the fact that by his own admission he had beaten Gülperi O. up on the day of her death. She also argued that the prosecutor's conclusion that her daughter had committed suicide by taking an overdose ran contrary to the conclusions set out in the two reports issued by the Forensic Medicine Institute. She added that the prosecutor had not visited the flat where Gülperi O. used to live with O.O., even though they had informed the prosecutor that the flat had been a mess and that windows had been broken. She alleged in her petition that the prosecutor had accepted from the outset that Gülperi O. had committed suicide and that that had been the reason why she had not conducted an investigation into the allegations brought to her attention.

28. On 20 June 2006 the applicant and her husband, assisted by a lawyer, submitted another petition to the Assize Court in which they set out additional arguments in support of their request for the prosecutor's decision to be set aside.

29. The objection was dismissed by the Karşıyaka Assize Court on 11 July 2006. The Assize Court considered that the prosecutor's decision had been correct and in accordance with domestic law and procedure.

30. When notice of the application was given to the respondent Government, the Court asked the Government – pursuant to the parties' duty to cooperate with the Court under Article 38 of the Convention – to invite the Forensic Medicine Institute to prepare a report, based on the above-mentioned existing medical reports and the prosecutor's decision of 28 February 2006, and to render an expert opinion as to whether there exist medicines which cannot be detected in forensic examinations of samples taken from internal organs and which could nevertheless have caused the fatal lung problems. The Government were also asked, should the Institute's answer be in the negative, to invite the Institute to elaborate, on the basis of the documents in the investigation file, on the cause of the lung problems which, according to the report of 30 January 2006, caused the death.

31. The Government complied with that request and submitted to the Court two reports prepared by the Forensic Medicine Institute on 16 April 2013 and 15 July 2013.

32. In these two reports, three experts working for the Forensic Medicine Institute confirmed that the samples taken from Gülperi O.'s body had been checked against the list of known substances in their database – including the two medicines named specifically by Gülperi O.'s husband, O.O. (see above in paragraph 9) – and stated that she had not died as a result of having taken any of those substances. It was also stated in the report that

the possibility could not be completely ruled out that she might have taken another toxic substance which was not in their database.

33. The experts at the Forensic Medicine Institute also stated in their reports that they did not agree with the conclusion reached in the autopsy report of 30 January 2006, namely that Gülperi O. had died as a result of "acute alveolar swelling and intra-alveolar haemorrhage" in the lungs. In their opinion, the "acute alveolar swelling and intra-alveolar haemorrhage" was a histopathological finding often caused by anoxia (total oxygen depletion), and could thus not be stated as the cause of death. In the opinion of the three experts, it should have been stated in the autopsy report of 30 January 2006 that the cause of Gülperi O.'s death could not be established.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. Section 172 of the Code of Criminal Procedure, after a new sub-section 3 was added in 2013, provides as follows:

> "*Decisions not to prosecute*
>
> Section 172- (1) If, at the end of the investigation, no evidence is discovered capable of creating a sufficient reason to instigate a criminal prosecution, or if instigating a prosecution is not possible, the public prosecutor shall render a decision not to prosecute. This decision shall then be communicated to the victim of the offence and to the suspect whose statement was taken or who was questioned in the course of the investigation. The right to lodge an objection, as well as the authority to which the objection may be lodged and the time-limit for lodging it, shall be set out in the decision.
>
> (2) No prosecution may be brought in respect of the act at issue unless new evidence is uncovered after the decision not to prosecute has been taken.
>
> (3) (Added on 11/04/2013 pursuant to section 19 of Law No. 6459) If it is established in a final judgment of the European Court of Human Rights that the decision not to prosecute was taken without an effective investigation having been carried out and if a request is made to that effect within three months of the [European Court of Human Right's] judgment becoming final, a new investigation shall be opened."

THE LAW

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

35. The applicant complained under Articles 2, 6 and 13 of the Convention that the national authorities had failed to carry out an effective investigation into the death of her daughter.

36. The Court considers it appropriate to examine these complaints solely from the standpoint of Article 2 of the Convention, which reads 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.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

37. The Government contested that argument.

A. Admissibility

38. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The applicant

39. The applicant alleged that the cause of her daughter's death had not been established by the domestic authorities. Although it had not been stated in the autopsy reports that the death had been caused by any drug, the prosecutor had wrongly concluded that the death had been caused as a result of lung complications caused by medicinal intoxication. In the opinion of the applicant, the prosecutor should have sought further expert reports on the cause of death. The applicant also alleged that the Government had failed to comply with the Court's request and had failed to obtain further medical reports from their forensic authorities.

40. Furthermore, despite the fact that O.O. had told the police officer that he had hit Gülperi O. on the day in question, the prosecutor had not investigated whether the cause of death could have been an internal haemorrhage caused by the blows inflicted by O.O.

41. The applicant maintained that the prosecutor had failed to question O.O. despite the seriousness of the allegations directed against him. The statement taken from O.O. by the police officer had been too brief and had

not addressed the issues surrounding the death. O.O. had not been questioned, for example, as to why he had falsely informed the doctors that Gülperi O. had taken the medicines "Prent" and Muscoril".

42. The applicant also highlighted the authorities' failure to visit the couple's flat, where the couple had allegedly had a fight, and submitted that such a visit would have helped the authorities to clarify the nature of that fight.

43. The applicant considered it unfortunate that even before the investigation had been concluded the prosecutor had referred to her daughter's death as "suicide". In the opinion of the applicant, this showed that the prosecutor had not been impartial and had made her mind up prematurely.

44. Finally, the applicant alleged that the real problem in the present case was the national authorities' continuing tolerance towards domestic violence against women, which was a systemic problem in Turkey. Referring to the Court's findings about the national authorities' approach to domestic violence in Turkey in the case of *Opuz v. Turkey* (no. 33401/02, §§ 192-198, ECHR 2009), the applicant alleged that the national authorities would have complied with their procedural obligation and carried out an effective investigation had her case not involved the issue of domestic violence.

b. The Government

45. The Government were of the opinion that their authorities had carried out an effective investigation into the applicant's daughter's death. The prosecutor, who had been informed about the incident by the police, had immediately started an investigation without waiting for an official complaint to be lodged. The family's access to the investigation had been ensured and the investigation had been conducted with the requisite expediency.

46. The Government considered that the applicant's argument that domestic violence against women was a systemic problem in Turkey which was tolerated by the authorities was baseless. The Government also contested the applicant's allegation that the Government had failed to comply with the Court's request to obtain further expert reports, and submitted that they had obtained additional reports and had provided them to the Court.

47. In Turkish law it was not necessary for all statements to be taken by a prosecutor. In any event, the prosecutor had instructed the police to question Gülperi O.'s husband, O.O., and the police officers had complied with those instructions and had taken a statement from O.O. Thus, the fact that O.O.'s statement had not been taken by the prosecutor herself did not constitute a deficiency that would tarnish the effectiveness of the investigation.

48. Regarding the fact that the prosecutor had not visited the couple's flat, where the incident had taken place, the Government submitted that a crime scene investigation had been conducted by police officers at the hospital and that they had photographed the scene. Consequently, the fact that the prosecutor had not visited the flat did not have a negative bearing on the effectiveness of the investigation. In this connection the Government invited the Court to take into account the crime scene investigation that was conducted, the existence of photographs and the absence of any suspicious findings on the body.

49. As regards the prosecutor's references to the death as "suicide" in his correspondence to the Registry Office for births, marriages and deaths (see paragraph 21 above), the Government were of the opinion that the classification of the incident as suicide did not have any impact on the merits of the ongoing investigation, such as preventing further examination.

50. Concerning the prosecutor's conclusion that the applicant's daughter had died after taking an overdose, the Government referred to the expert report of 24 February 2006 summarised above (see paragraph 25) and argued that it could not be denied that Gülperi O. might have taken a substance which could not be detected in the samples taken from the body. The conclusion reached by the prosecutor could not, therefore, be considered as false or misleading; the prosecutor had reached that conclusion on the basis of the medical report referred to above, the witness statements, and other evidence in the case-file.

2. The Court's assessment

51. The Court deems it appropriate to reject at the outset the applicant's allegation that the Government have not complied with their obligations under Article 38 of the Convention. The Court draws the applicant's attention to the two medical reports, drawn up at the request of the Court by three experts at the Forensic Medicine Institute on 16 April 2013 and 15 July 2013, summarised above (see paragraphs 30-33). These reports were made available to the Court by the Government as part of the annexes to their observations of 17 July 2013, and the Registry of the Court forwarded them to the applicant's legal representatives on 24 July 2013.

52. The Court observes that the applicant did not argue that her daughter had been killed by an agent of the State. Neither did she allege that her daughter's life had been at risk from the criminal acts of another individual and that there had thus been a real and immediate risk to her life of which the national authorities of the respondent State had been or should have been aware but that they had nevertheless failed to take preventive operational measures to protect her life (see, *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 93, ECHR 2001-III).

53. Her complaint relates solely to the effectiveness of the investigation carried out by the national authorities into the death of her daughter and, as

such, falls to be examined from the standpoint of the procedural obligation to carry out effective investigations.

54. To that end, the Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I). In that connection, and having regard to the facts of the present application, the Court points out that this obligation is not confined to cases where it is apparent that the killing was caused by an agent of the State (see *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII).

55. It must be reiterated that the obligation to investigate "is not an obligation of result, but of means"; as such, not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006 and the cases cited therein). The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Aktaş v. Turkey*, no. 24351/94, § 300, ECHR 2003-V (extracts) and the cases cited therein).

56. Turning to the facts of the case, the Court observes at the outset that the documents summarised above illustrate that neither the prosecutor nor the investigating police officers kept an open mind during the investigation as to the cause of the applicant's daughter's death. Both the prosecutor and the police seem to have accepted from the outset that Gülperi O. had committed suicide when they had no evidence to support such a conclusion, and in their correspondence – before even concluding the investigation – those authorities stated that Gülperi O. had taken an overdose and killed herself (see paragraphs 15, 19 and 21).

57. There were apparently no steps taken by the prosecutor that would indicate that she had contemplated any other explanation for the death. Indeed, the prosecutor's premature conclusion that Gülperi O. had taken her own life also seems to be responsible for her subsequent inaction and explains her failure to take action in respect of the credible and serious allegations brought to her attention. More incomprehensibly, even when the results of the post-mortem and toxicology examinations – which confirmed

that Gülperi O. had not taken an overdose – were made available to the prosecutor, her attitude did not change and she insisted that Gülperi O. had taken an overdose.

58. The Court considers that the starting point for the prosecutor should have been the questioning of Gülperi O.'s husband, O.O., who, by falsely informing the doctors and nurses at the hospital that Gülperi O. had taken two medicines, led them to treat Gülperi O. as a suspected suicide case, thus preventing them from devoting precious time to trying to establish the actual cause of her problem in order to save her life. The importance of questioning O.O. is highlighted even more strongly in the light of the information which O.O. gave to the police officer at the hospital – namely that he and Gülperi O. had hit each other (see paragraph 10 above) – and the information provided to the prosecutor by the applicant and her husband that O.O. had beaten their daughter up twice before, as a result of which she had had to be hospitalised with suspected head injuries (see paragraphs 16 and 18 above).

59. Nevertheless, the prosecutor took no steps to question O.O. at any stage of her investigation. At the time of giving notice of the application to the Government, the Court asked them to elaborate on the prosecutor's failure to question O.O. and questioned whether that failure had had any bearing on the effectiveness of the investigation. The Court has examined the Government's response to that question (see paragraph 47 above), and considers that it does not dispel the serious misgivings the Court has about the negative impact of the failure to question O.O. had on the effectiveness of the investigation.

60. The Court must stress in this connection that, contrary to the Government's submissions (see paragraph 47 above), it is not concerned as to which national authority might have questioned O.O. Thus, the fact that the only statement from O.O. was taken by a police officer, rather than by a prosecutor, does not have any impact on the Court's examination in the particular circumstances of the present case and the Government were not invited to elaborate upon that aspect. What is crucial for the Court's examination is the fact that O.O. was not questioned by any investigating authority in relation to the pertinent points, such as the misleading and potentially life-threatening information he provided to the doctors regarding the underlying cause of Gülperi O.'s condition and the fight he had had with Gülperi O., during which – by his own admission – he had hit her.

61. In this connection, the Court also considers the Government's submission that O.O. had been questioned by the police upon an instruction from the prosecutor to be baseless. It notes that the prosecutor issued his instruction to the police officer over the telephone at 6.50 p.m. (see paragraph 11 above), that is to say after the only statement taken from O.O. in the entire investigation had already been drawn up at 6.45 p.m. (see paragraph 10 above).

62. The Court agrees with the submissions made by the applicant that a visit to the couple's flat, where the couple had had a fight earlier on the day Gülperi O. lost her life, would have helped the authorities to draw a clear picture of the background to the events leading up to Gülperi O.'s death and to assess the importance, if any, of the fight the couple had there. Yet it appears that the flat was never visited by the prosecutor or the investigating police officers, let alone by any scene of crime experts. In this connection the Court is unable to understand how it is, as suggested by the Government (see paragraph 48 above), that photographing Gülperi O.'s body and "carrying out a crime scene investigation at the hospital" might somehow be a substitute for a visit to the couple's flat where a fight had taken place. The Court considers that, as a result of that failure, the prosecutor wasted a genuine opportunity to collect crucial evidence and/or to dispel doubts about the role of that fight in Gülperi O.'s death.

63. The Court notes that the prosecutor's conclusion that the investigation should be closed was based solely on the misleading information given by O.O. to the doctors that Gülperi O. had taken an overdose of two medicines. That decision is not supported by any other evidence. No evidence exists, for example, to support the prosecutor's conclusion that Gülperi O. had taken an overdose because she had had an argument with O.O. Even the statement made by O.O. to the police officer does not mention that Gülperi O. had taken an overdose, let alone her having done so because of the argument she had had with O.O. (see paragraph 10 above). Contrary to the Government's submissions (see paragraph 50 above), none of the witnesses questioned in the investigation said that Gülperi O. had committed suicide. The Court also observes, contrary to the Government's reference to "other evidence in the file", that there is no other evidence in the file.

64. Having regard to the reports obtained from the forensic authorities at its request (see paragraphs 32-33 above), the Court does not have any grounds to call into question the existence of the theoretical possibility that Gülperi O. might have committed suicide by taking a medicine which was not included in the forensic authorities' database. Nevertheless, when examined against the background of the serious failures in the investigation which are highlighted above and the misleading information provided by O.O. to the doctors – which should have generated serious doubts in the mind of the prosecutor about the suicide theory – the Court considers that a theoretical possibility is not sufficient to support the prosecutor's decision. To this end the Court must also draw attention to the conclusion reached in the above-mentioned reports that the cause of Gülperi O.'s death could not be established (see paragraph 33). That conclusion, in the opinion of the Court, further undermines the prosecutor's conclusion that Gülperi O. died as a result of a drug overdose.

65. The Court considers that the failures in the investigation in the present case bear the hallmarks of other investigations in Turkey into allegations of domestic violence, one of which the Court has had the opportunity to examine. In that judgment the Court concluded that there existed a *prima facie* indication that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence (see *Opuz*, cited above, § 198). As evidenced in the present case, the Court considers that the prosecutor's above-mentioned serious failures are part of that pattern of judicial passivity in response to allegations of domestic violence.

66. As set out above, according to the Court's case-law, any deficiency in an investigation which undermines its ability to establish a cause of death – or the person responsible for such a death – will risk falling foul of the standard of effectiveness expected from the national authorities (see paragraph 55 above). Having examined and highlighted the numerous deficiencies in the investigation in the present case, the Court finds that the authorities have failed to carry out an effective investigation into Gülperi O.'s death.

67. Having established that the national authorities have not conducted an effective investigation capable of establishing the cause of death and leading to the identification and punishment of anyone who might have been responsible for the death, the Court concludes that there has been a violation of Article 2 of the Convention in its procedural aspect in respect of the applicant's daughter Gülperi O.'s death.

68. In the particular circumstances of the present application the Court considers it appropriate to refer to a set of recent amendments introduced in the Turkish legal system. According to those amendments, in cases in which the Court finds a violation of the Convention on account of a failure to carry out an effective investigation, the applicants have the opportunity to ask the national authorities to reopen investigations into the deaths of their relatives (see paragraph 34 above). It is therefore possible for the applicant in the present case to ask the investigating authorities to reopen the investigation into the death of her daughter, and to ask those authorities to conduct a new and effective investigation by taking into account the deficiencies identified by the Court in the previous investigation as well as the two medical reports prepared by the Forensic Medicine Institute at the request of the Court (see paragraphs 32-33 above).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. As set out above (see paragraph 35), in respect of her complaint that the national authorities had failed to carry out an effective investigation into the death of her daughter, on her application form the applicant relied on Articles 2, 6 and 13 of the Convention, and the Court considered it

appropriate to examine the complaints solely from the standpoint of the procedural obligation inherent in Article 2 of the Convention.

70. In the observations she submitted to the Court on 28 August 2013, the applicant also complained that the national authorities' failure to carry out an effective investigation had also deprived her of the possibility of obtaining compensation and that there had thus been a violation of Article 13 of the Convention.

71. The Government objected to the applicant's submissions in this respect which, they argued, concerned matters of which they had not been given notice.

72. The Court observes that, as set out above, on her application form the applicant complained under Article 13 of the Convention solely of the deficiencies in the investigation and did not allege that she had been unable to seek and obtain compensation as a result of those deficiencies. The first time she complained about that alleged inability was in her observations which, as explained above, were submitted to the Court on 28 August 2013.

73. The Court notes that the final domestic decision taken in this present application was the decision of the Karşıyaka Assize Court on 11 July 2006. The complaint under Article 13 of the Convention concerning the issue of compensation was not made until 28 August 2013, i.e. more than six months later.

74. In light of the foregoing, the Court considers that this complaint has been introduced out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and EUR 50,000 in respect of non-pecuniary damage.

77. The Government considered that there was no causal link between the alleged violations and the pecuniary damage claimed. They also submitted that the claim for non-pecuniary damage was excessive.

78. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicant claimed EUR 8,000 for costs and expenses incurred before the Court. In respect of the claim for her lawyers' fees the applicant submitted a breakdown of the hours spent by her lawyers in representing her before the Court. According to that document, the applicant's lawyers had spent a total of 31 hours on the case for which they claimed a total of 9,565 Turkish liras (TL) (approximately EUR 3,480 at the time of submission of the claims). This sum comprised TL 1,900 for verbal advice given to the applicant, and TL 7,665 for the written work. Both sums were calculated in accordance with the fee scales recommended by the Turkish Bar Association.

80. In support of the above-mentioned claim the applicant also submitted to the Court the copy of a fee agreement which shows that she agreed to pay her lawyers TL 10,000 plus value added tax, as well as 20% of any compensation awarded to her by the Court. Finally, she submitted two postal receipts, showing that her lawyers had incurred costs totaling TL 14 (approximately EUR 5) when corresponding with the Court.

81. The Government were of the opinion that the claims in respect of costs and expenses were excessive and not itemised. As such, it was not clear how much the applicant had claimed in respect of the lawyers' fees as opposed to the other costs and expenses. In any event, the applicant had failed to specify how many hours had been spent by her lawyers on the case. They invited the Court not to make an award to the applicant in respect of costs and expenses other than for the postal expenses which were documented.

82. The Court observes that, contrary to the Government's submissions, the applicant did in fact clearly itemise her claim in respect of costs and expenses and specified the exact hours spent by her lawyers on the case. She also submitted a fee agreement. However, 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.

83. Taking into account the documents in its possession and the above criteria, as well as the sum of EUR 850 already paid to the applicant's legal representative by the Council of Europe by way of legal aid (see paragraph 2 above), the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

84. 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* admissible the complaints under Article 2 of the Convention concerning the effectiveness of the investigation;

2. *Declares* inadmissible the remainder of the application;

3. *Holds* that there has been a violation of Article 2 of the Convention in its procedural aspect on account of the national authorities' failure to carry out an effective investigation into the death of the applicant's daughter;

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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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 13 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President