REPUBLIC OF TURKEY

CONSTITUTIONAL COURT

FIRST SECTION

JUDGMENT

FİLİZ AKA APPLICATION

(Application Number: 2013/8365)

Date of Judgment: 10/6/2015

Official Gazette Date- Issue: 14/7/2015-29416

FIRST SECTION

JUDGMENT

President : Burhan ÜSTÜN

Judges : Hicabi DURSUN

Erdal TERCAN

Hasan Tahsin GÖKCAN

Kadir ÖZKAYA

Rapporteur : Cüneyt DURMAZ

Applicant : Filiz AKA

Counsel : Att. Utku ÇİMEN

I. SUBJECT OF APPLICATION

1. The applicant alleged that the right to a fair trial as stipulated in Article 36 of the Constitution was violated since the criminal case filed against the person who caused the death of her spouse was concluded in about 8 years 1 month, an unreasonable period of time, with a decision of discontinuance.

II. APPLICATION PROCESS

2. The application was lodged on 6/11/2013 by the counsel of the applicant through the 9th Assize Court of İzmir. In the preliminary examination held on administrative terms, it has been determined that there is no circumstance to prevent the submission of the application to the Commission.

3. It was decided by the Third Commission of the First Section on 30/12/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. In the session held by the Section on 6/3/2014, it was decided that the examination of admissibility and merits be jointly carried out.

5. The opinion on the application, submitted by the Ministry of Justice to the Constitutional Court on 7/4/2014, was notified to the applicant on 8/4/2014 and the applicant did not make any counter-opinions against the opinion of the Ministry.

III. THE FACTS

A. The Circumstances of the Case

6. As expressed in the application form and the annexes thereof, the relevant incidents are summarized as follows:

7. On 12/2/2005, when an overspeed car driven by S.G., who was found to be on 185 permilles of alcohol, violated traffic lights and crashed into the taxi, which Çetin AKA, the applicant's spouse, had taken as a customer, Çetin AKA died and G.K., the taxi driver, was injured.

8. Following the incident, the Chief Public Prosecutor's Office of Izmir started an *ex officio* investigation with the file no. 2005/8269 and a criminal case was lodged against S.G. and G.K. with the 3rd Criminal Court of First Instance of Izmir on 15/2/2005 based on the allegation that they caused the death of a person and the injury of another person due to negligence. The applicant intervened in the case as an intervening party.

9. The court held a viewing on 18/4/2005. In the expert report of 30/4/2005 issued after the viewing, defendant S.G. was found to be negligent at a rate of 8/8.

10. Following the entry into force of the Turkish Criminal Code No. 5237 of 1/6/2005, the 3rd Criminal Court of First Instance of Izmir made a judgment of lack of jurisdiction and the file was sent to the 4th Assize Court of Izmir.

11. In its judgment (No. E.2005/371, K.2006/250 of 6/7/2006), the court referred to the need "*to hold that, as per Article 455/1 of the Law No. 765, this defendant acted on conscious negligence in the incident since he was fully negligent... violated the red light and did not check the road*" and made a judgment regarding the defendant S.G. that "*applying the law no. 5237, the defendant shall be given an aggravated imprisonment penalty of 3 years as per Article 85(1) of this law, ... an imprisonment penalty of 4 years with a 1/3 aggravation of his penalty as per Articles 22(2-4) of the Law No. 5237... be deprived of the rights in Article 53(1) of the Turkish Criminal Code No. 5237 for durations stated in Article 53(2) thereof*". The defendant G.K. was acquitted.

12. The judgment was appealed by both defendant S.G. and the applicant, and was quashed by the judgment (No. E.2008/5283, K.2008/13303 of 3/12/2008) of the 9th Criminal Chamber of the Court of Cassation on the ground that "... *without considering the fact that the provision of Article 53(1) of the Turkish Criminal Code No. 5237 cannot be applied in the case of the defendant since the crime S.G. is charged with is a crime of negligence and not a crime committed intentionally, the fact that a written adjudication is rendered on the basis of Article 85(1) of the Turkish Criminal Code No. 5237 in evaluation of the laws which is more favorable is unlawful...*" and was returned to the 4th Assize Court of Izmir.

13. The 4th Assize Court of Izmir held ten hearings as part of the case following the judgment of quashing and adjudged in its judgment (No. E.2009/88, K.2010/368 of 22/9/2010) that defendant S.G. be given a sentence to imprisonment for 4 years and to a judicial fine of TRY 600. The relevant part of the reasoning of the said judgment is as follows:

"*As a result of trial by our court in compliance with the writ of quashing,, considering the evidence collected, the accident report, the examination report and the autopsy report of the victim, the medical report issued for the intervening defendant Gürcan, the expert report from the on-site viewing by the Criminal Court of First Instance, the alcohol report issued for defendant Süleyman, the sworn-in statements of witnesses Mustafa Donat, Hakkı Tekoğlu and Kadir Keçeci, the negligence report of 22/03/2006 by the Department of Traffic Specialty of the Forensic Medicine Institution, partly the allegation to the extent that it overlaps with these evidences, and by taking in to account the defense of intervening defendant Gürcan, it has to be adopted that the incident took place in the way stated below.*

It is inferred that, at around 00:45 on 12/12/2005, defendant Süleyman Gediz, whose driver's license had been previously confiscated due to driving under the influence of alcohol, arrived to the roundabout at the crime scene. He drove his car under the influence of 2.09 permilles of alcohol at a speed of 90-100 km/h and violated the red light at the roundabout that was on for his driving direction. Right at that moment, the taxi driven by intervening defendant Gürcan, for whom the green light was on, entered the roundabout from the road that was to the left of the driving direction of defendant Süleyman. With the car that he drove, defendant Süleyman severely crashed into the right side of the car driven by the other defendant Gürcan. As a result of the crash, Çetin Aka, who was sitting in the front passenger seat of the car driven by Gürcan, died due to injuries from the traffic accident, in a way the details of which are specified in the autopsy report, and defendant Gürcan was injured and incapacitated for 7 days. It is also inferred that defendant Süleyman was fully negligent during the incident and defendant Gürcan had no negligence at all. According to how the court considers the incident took place, it is concluded that, on the incident date, defendant Süleyman, despite the fact that his driver's license had been previously confiscated, drove into the roundabout without a driver's license at a speed almost double the 50 km/h speed limit under the influence of 2.09 permilles of alcohol despite the red light which was on in his driving direction and then crashed into the car driven by the other defendant Gürcan, leading to the death of Çetin, the victim, and the injury of defendant Gürcan. It is inferred that, since defendant Süleyman was driving under the influence of alcohol, his act constituted the crimes of causing death through conscious negligence as defined in Articles 455(1) and 45(3) of the Turkish Criminal Code, which was in effect on the date of the crime, and causing the death of a person on eventual intent as defined in Articles 81(1) and 21(2) of the Turkish Criminal Code No. 5237, which was in effect on the date of the judgment, as defendant Süleyman drove into the roundabout at the crime scene without a driver's license, under the influence of alcohol, violating the red light and speeding, conscious of the fact that he could cause an accident if he drove into the roundabout that way and someone could die as a result of this accident but did not want such a consequence since there was no enmity between the victim and defendant Süleyman that would require murder. It is also inferred that defendant Süleyman had to be given an imprisonment penalty of 20 years if he was given a penalty over the minimum limit and the penalty was abated over the maximum limit as per the provisions of the Law No. 5237, which was in effect when defendant Süleyman committed the crime. It is also concluded that this penalty bore consequences against the defendant as per the provisions of the Law No. 765 and that Article 2 of the Turkish Criminal Code No. 765 and Article 7(2) of the Turkish Criminal Code No. 5237 prescribed the application of provisions which were in favor of the defendant. Therefore, considering the way the crime was committed and the characteristics of the crime and the severity of the defendant's negligence, it had to be decided that defendant Süleyman be given an imprisonment penalty of 3 years and a judicial fine of TRY 450 as per Article 455(2) of the Turkish Criminal Code No. 765, which was in favor of defendant Süleyman regarding the crimes of causing the death of a person and causing the injury of a person under conscious negligence and at full fault, for which defendant Süleyman was found guilty. Since the crime was committed under conscious

negligence, it had to be further decided that defendant Süleyman be given an imprisonment penalty of 4 years with a 1/3 increase of the penalty already given to the defendant as per Article 45 of the Turkish Criminal Code No. 765. It had to be adjudged that there were no grounds to apply the discretionary extenuation article for the defendant, considering his behaviors during and after the crime, his failure to make a positive contribution to the trial process and the potential effects of the sentence on the defendant's future, and that the driver's license of the defendant be confiscated for a period of 3 years.

Although a public prosecution case was lodged against intervening defendant Gürcan with a request for him to be penalized for the charged crime, the court is of the conscientious conviction that defendant Gürcan had no fault in the incident at all and that any convincing and conclusive evidence, free from all kinds of doubt, in relation to the fact that the incident happened due to a fault by defendant Gürcan, was not present and, therefore, defendant Gürcan had to be acquitted since he was not found guilty for the charged crime. The court thus holds the following judgment."

14. When the defendant appealed the judgment, the 12th Criminal Chamber of the Court of Cassation decided (Judgment No. E.2012/27837, K.2013/5770 of 11/3/2013) that the public prosecution case be discontinued due to statute of limitations. The relevant part of the said judgment is as follows:

"*Article 455(1) of the Turkish Criminal Code No. 765 prescribes sanctions on the action attributed to the defendant which does not have any likelihood to constitute a graver crime and the said crime is subject to a 5-year statute of limitations as per Article 102(4) of the same Code. Although the time runs again in the presence of intercepting reasons, since this time can be extended by half at maximum as per Article 104(2) and the statute of limitations of 7 years and 6 months prescribed in Articles 102(4) and 104(2) of the Turkish Criminal Code No. 765 was completed before the date of examination since 12/02/2005, the date of the crime, the appeal objections of the defendant were considered to have valid grounds. It is unanimously decided on 11.03.2013 that the judgment be QUASHED due to statute of limitations that matured as per Article 321 of the Law of Criminal Procedure No. 1412, which is still in effect in line with Article 8 of the Law No. 5320 and that, based on the authority assigned by Article 322 of the same Code, the public prosecution case be DISCONTINUED as per Articles 102(4) and 104(2) of the Turkish Criminal Code No. 765 and Article 223(8) of the Law of Criminal Procedure Code No. 5271.*"

15. The applicant stated that she was informed of this judgment on 31/10/2013 and filed an individual application to the Constitutional Court on 6/11/2013 within due time considering the date she had been informed.

B. Relevant Law

16. Article 455 of the Turkish Criminal Code No. 765 is as follows:

"*A person who causes the death of another through imprudence or carelessness or lack of experience in profession and non-compliance with regulations and orders and instructions shall be sentenced to an imprisonment penalty of two to five years and a heavy fine of 250 Liras to 2,500 Liras.*

If the act has caused the death of several persons or the injury of one person or several persons along with the death of one person and if such injury is found to be at a degree stated in paragraph 2 of Article 456, the person shall be sentenced to an imprisonment penalty of four to ten years and a heavy fine of no less than 1,000 Liras.

The penalties stated in the paragraphs above may be reduced down to one eighth according to the degree of negligence."

17. Article 102 of the said Code regulates that public prosecution cases shall be discontinued in five years in crimes requiring an imprisonment penalty of no more than five years and Article 104 of the same Code regulates that conditions stalling statute of limitations would not extend the statute of limitations for the case by more than half of the durations stated in Article 102.

18. Article 85 of the Turkish Criminal Code No. 5237 titled "involuntary *manslaughter*" is as follows:

"*(1) A person who causes the death of another negligently shall be sentenced to an imprisonment penalty of two to six years.*

(2) If the act has caused the death of more than one person or the injury of one or more persons along with the death of one or more persons, the person shall be sentenced to an imprisonment penalty of two to fifteen years."

19. Article 53 of the Code No. 5237 provides that a person will be deprived from enjoying certain rights mentioned in the rule as a legal consequence of the sentencing of that person to imprisonment due to a crime s/he committed deliberately.

IV. ASSESSMENT AND GROUNDS

20. The individual application of the applicant (App No:2013/8365 of 6/11/2013) was assessed during the session held by the Court on 10/6/2013 and the following were ordered and adjudged:

A. The Applicant's Allegations

21. The applicant alleged that the right to fair trial as defined in Article 36 of the Constitution was violated since the public prosecution case filed against the person who caused the death of her spouse was concluded in about 8 years 1 month, an unreasonable period of time, with a decision of discontinuance and thus requested compensation.

B. Assessment

22. Assessment of the application form and the annexes thereof reveal that the application is relevant to criminal investigation and prosecution that were concluded without efficient conduct following an incident of death arising from a traffic accident. The Constitutional Court is not bound by the legal qualification of the incidents by the applicant but it appraises the legal definition of the facts and circumstances themselves. Therefore, the Court considered these allegations of the applicant to be relevant to Article 17 of the Constitution and evaluated them within this scope.

1. Admissibility

23. In the opinion of the Ministry, it was stated, regarding the allegations of the applicant that, as per the ECtHR case law, the relevant party could not propound that they were victims if the national authorities determined a violation and that violation was appropriately and sufficiently remedied through the judgment rendered, that the positive obligation of establishing an effective judicial system would not oblige the existence of criminal law remedies in each incident if the right to life was not violated intentionally, that whether the victim status still qualified or not could be evaluated in the event that the applicant lodged a case for compensation and was awarded compensation as a result of that case.

24. Within the scope of Article 17 of the Constitution, the type of investigation required by the procedural obligation that the state is obliged to fulfill in an incident needs to be determined depending on whether the obligations as regards the essence of the right to life require a criminal sanction or not. Accordingly, the positive obligation regarding the "*establishment of an effective judicial system*" in cases of death arising generally from negligence does not necessarily require the filing of a criminal action in each and every incident. It may suffice that the legal, administrative and even disciplinary legal remedies are available for victims (*Serpil Kerimoğlu and Others*, App. No: 2012/752, 17/9/2013, § 59). However, such an acceptance does not mean that the criminal investigations carried out in such incidents shall not be evaluated by the Constitutional Court (*Nail Artuç*, App. No: 2013/2839, 3/4/2014, §§ 37-38).

25. It is seen that the applicant only has complaints as regards the criminal investigation due to the incident of death as a result of a traffic accident. In terms of these complaints, the procedural aspect of the positive obligations which the state has to fulfill within the scope of the right to life enshrined in Article 17 of the Constitution requires the conduct of an effective investigation which allows for the revelation of all aspects of the incident of death that occurred and the identification of individuals who are responsible (*Sadık Koçak and others*, App. No: 2013/841, 23/1/2014, § 94).

26. This obligation does not only apply to the incidents of death due to the act or negligence of a public official (For ECtHR judgments in the same vein, see *Salman v. Turkey [BD]*, App. No: 21986/93, 27/6/2000, § 105, *Şener Can and others v. Turkey*, App. No: 27446/12, 24/11/2014, § 37). The failure of the state to conduct an effective investigation to reveal the cause of death and, if any, the persons responsible for it in any unnatural incident of death (even if it did not violate its obligations to not kill or to protect life) may lead to a violation of the obligation for investigation. As a matter of fact, conducting an effective investigation in such incidents constitutes the guarantee for the effective implementation of the legal and administrative framework established in order to protect the right to life.

27. Due to the reasons explained above, it should be decided that the application is admissible since it is considered not to be manifestly ill-founded as per Article 48 of the Law No. 6216 and includes allegations that Article 17 of the Constitution was violated as effective investigation and prosecution were not conducted.

2. Merits

28. As stated in the section regarding the admissibility assessment, the procedural aspect of the positive obligations which the state has to fulfill within the scope of the right to life enshrined in Article 17 of the Constitution requires the conduct of an effective investigation which allows for the revelation of all aspects of each incident of unnatural death and the identification and, if necessary, the punishment of individuals responsible for it (*Serpil Kerimoğlu and Others*, § 54). In order to ensure the effectiveness and sufficiency of the investigation, the investigation bodies need to take action *ex officio* and all evidence that could elucidate the death incident and serve to identify those responsible need to be collected. A deficiency in the investigation that reduces the likelihood of revealing the cause of the death or those responsible bears the risk of contradicting with the rule of effective investigation (*Serpil Kerimoğlu and Others*, § 57, *Sadık Koçak and Others*, § 94).

29. In addition to those stated above, the obligation to conduct investigations at a reasonable speed and act prudently during investigations also implicitly exists. It goes without saying that, in some special instances, there may be elements or challenges hindering the progress of the investigation or prosecution. However, the officials' acting swiftly during an investigation and the subsequent prosecution is of critical importance in terms of elucidating the incidents in a sounder manner, ensuring that persons maintain their loyalty to the rule of law and preventing the impression that unlawful acts are tolerated or disregarded (*Deniz Yazıcı*, App. No: 2013/6359, 10/12/2014, § 96, for an ECtHR judgment in the same vein, see *Maiorano and Others v. Italy*, 28634/06, 15/12/2009, § 124).

30. Although it needs to be analyzed more thoroughly in deaths arising from the use of public force, in order to determine possible criminal responsibility in each unnatural death incident as it is the case in the present incident, the whole process, in cases when prosecution stage follows investigation, including the trial stage before the court of first instance, needs to have the capacity to respond to the requirements of Article 17 (For ECtHR judgments in the same vein, see *Ali and Ayşe Duran v. Turkey*, App. No: 42942/02, 8/4/2008, § 61, *Öneryıldız v. Turkey [BD]*, App. No: 48939/99, 30/11/2004, §§ 95-96). Therefore, courts of instance will be able to guarantee that under no circumstances assaults on the right to life and material and spiritual entity of victims go unpunished (*Sadık Koçak and Others*, § 77).

31. As it is frequently stated in the judgments of the Constitutional Court regarding this issue, the aim of criminal investigations which need to be conducted within the scope of the right to life is to ensure that the provisions of the legislation protecting the right to life are implemented effectively and that those who are responsible, if any, in the incident of death that occurred are identified and brought to justice in order for their responsibilities to be determined. This is not a consequential obligation but the obligation to use the appropriate means. Provisions of Article 17 of the Constitution do not mean in any way that they grant applicants the right to have third parties tried or punished due to a certain crime or impose an obligation of concluding all trials with a conviction or a certain criminal sentence (*Serpil Kerimoğlu and Others*, § 56).

32. Although this is the basic understanding, on the condition that the circumstances of each given case are assessed separately, courts of instance should not allow expressly jeopardizing life offences and grave assaults on material and spiritual entity to go unpunished

(For ECtHR judgments in the same vein, see *Ali and Ayşe Duran v. Turkey*, § 61, *Öneryıldız v. Turkey [BD]*, § 96).

33. In this context, another important point that the Constitutional Court needs to address is to assess whether courts of instance, as they arrive at a conclusion in trials they conduct in relation to such incidents, make an assessment with the depth and care required by Article 17 of the Constitution or to what extent they do so. The sensitivity the courts of instance will display to this end will avoid any damage to the role that the judicial system has in terms of preventing similar violations of the right to life to arise in the future (*Cemil Danışman*, App. No: 2013/6319, 16/7/2014, § 110, For ECtHR judgments in the same vein, see *Ali and Ayşe Duran v. Turkey*, § 62, *Okkalı v. Turkey*, App. No: 52067/99, 17/10/2006, § 66).

34. The applicant stated that Çetin Aka, her husband, lost his life on 12/2/2005 when the car driven by S.G., who was under the influence of alcohol, apparently had his driver's licence confiscated previously due to drunk driving, was excessively speeding and violated the red light, crashed into the taxi her husband was in. She also stated that there was no complexity in the facts nor the legal matters of the case, that the public prosecution case had been discontinued 8 years 1 month later as a result of the failure of the trial organs to conduct a swift trial although prosecution had started only three days after the incident when the Chief Public Prosecutor's Office in İzmir issued the indictment. The applicant stated that amendments to laws or delays due to the right to appeal granted to the parties can not be considered reasonable. Therefore, the applicant alleged that her right to obtain a judgment within reasonable time was violated.

35. It is stated in the opinion of the Ministry on the issue that, as per the case law of the Constitutional Court and the ECtHR, the state has the duty to investigate the reasons for death and identify and punish those responsible under its positive obligation if a death has occurred and that it cannot be identified whether the state actually complied with its negative and positive obligations in the event that such procedural obligation is not duly fulfilled. It is also stated that, in order for a criminal investigation to be conducted within the scope of the right to life as a result of an unnatural death to be effective, authorities need to act *ex officio*, persons who are appointed for investigation and who conduct the investigation need to be independent from the persons who might be involved in the incidents, the investigation process needs to be sufficiently open to the family of the deceased so as to protect their legitimate interests, the investigation process needs to be conducted at a reasonable speed and in a manner that allows for the identification and, if necessary, punishment of those responsible.

36. In the opinion of the Ministry, the procedures undertaken during the investigation and prosecution stages in relation to the present application were described, including their duration, and as a result, it was stated that, although the preliminary investigation was concluded swiftly and effectively in the present case, the case file was held at the Court of Cassation stage for a total of about 4 years and 10 months. Therefore, it was also stated that the points described during the examination of the complaint that an effective investigation had not been held in relation to the protection of the right to life of the applicant needed to be submitted to the attention of the Constitutional Court.

37. In the present case, it is seen that a public prosecution case was lodged by the Chief Public Prosecutor's Office of Izmir three days after the accident in which the husband of the applicant lost his life, that an accident report, an examination report and an autopsy report for the deceased in addition to the medical report issued for the intervening defendant (taxi driver) were provided during the stages of investigation and trial at the court of first instance, that an expert report was obtained as a result of the on-site viewing by the Criminal Court of First Instance, that an alcohol report for the defendant was also obtained, that the sworn-in statements of witnesses were taken and that a negligence report dated 22/3/2006 was taken from the Department of Traffic Specialty of the Forensic Medicine Institution. About one year and five months after the accident, on the basis of the evidence stated above, the court of first instance adjudged (Judgment Date: 6/7/2006) that S.G. be penalized for involuntary manslaughter with an imprisonment penalty of 4 years and be deprived of the rights in Article 53(1) of the Law No. 5237 for durations stated in Article 53(2) of the same Law. It is seen that, upon an appeal request by the parties, the Court of Cassation quashed the judgment of the Court of First Instance two years and five months later on 3/7/2008, citing that the provision of Article 53(1) of the Law No. 5237 which prescribed deprivation from certain rights could not be applied. It is also concluded that, as a result of the retrial held after the judgment of quashing, the Court of First Instance rendered a judgment of conviction again on 22/11/2010 following ten hearings as part of the case and that the file was concluded with a decision of discontinuance dated 11/3/2013, stating that it had been subject to statute of limitations while it was pending before the Court of Cassation where it had been sent for appellate review (§§ 11-15).

38. As a rule, the Constitutional Court adopts that it cannot be alleged that the investigations conducted and the judgments delivered are insufficient or controversial on the condition that there is no deficiency which would impact the depth and severity of the cases and the investigations conducted, in situations when, following an incident of unnatural death, a criminal investigation is initiated *ex officio* on the day the relative of the applicant died. There is no doubt that the bodies of investigation and first instance trial want to shed light on how the incidents unfolded in the light of evidence obtained as a result of diligent and swift work, and the conviction that the investigations conducted allow for the conclusive determination of causes of death and the punishment of the persons responsible (*Sadık Koçak and Others*, § 95).

39. Nevertheless, the legally sole existence of a remedy that would enable the investigation is not sufficient. This remedy also needs to be effective in practice and the institution that is applied to needs to have the authority to dwell on the essence of the violation claim. It is possible to refer to a remedy as being effective only if it is capable of preventing an allegation on the violation of a right, terminating it if it is ongoing or deciding on a violation of a right that has already ended and offering a reasonable compensation for it (*Tahir Canan,* App. No: 2012/969, 18/9/2013, § 26).

40. In the present case, although it is understood that sufficiently broad and meticulous efforts were made at the stage of investigation by the Office of the Chief Public Prosecutor and the stage of trial by the Court of First Instance, it is also seen that the application appealing the judgment of the Court of First Instance was decided upon about two years and five months after and the judgment was quashed solely on the ground that the provisions of "*being deprived of enjoying certain rights*" prescribed in Article 53 of the Law No. 5237 were applied to the incident erroneously. During the second trial held after the quashing, the Court

of First Instance reached the same conclusion and this judgment was also concluded in a decision of discontinuance on 11/3/2013 due to statute of limitations after pending for assessment before the relevant Chamber of the Court of Cassation for about two years and five months.

41. Although it is understood that the appeal assessment conducted twice during the trial at hand lasted for a total of about five years most possibly due to the workload of the relevant Chamber of the Court of Cassation, Article 36 of the Constitution delegates to the state the responsibility of regulating the legal system in a way that the conditions of fair trial are fulfilled including the obligation to conclude cases in a reasonable period of time (*Güher Ergun and Others,* App. No: 2012/13, 2/7/2013, § 44). Within this scope, excluding some exceptional matters, the responsibility of competent authorities comes to the fore in the event that the reasonable period is exceeded in trial due to insufficiency in the number of personnel and judges and the severity of workload (*Selahattin Akyıl,* App. No: 2012/1198, 7/11/2013, § 55).

42. In the present case, it is concluded that the trial which lasted more than eight years due to delays specifically during the appeal process was not conducted with the sufficient speed and diligence *per se* in terms of making sure that specifically the applicant and generally the other individuals in the society have a sustained loyalty to the rule of law and preventing the impression that unlawful acts are tolerated or disregarded, when especially the interest that the applicant is taken into consideration , who lost her husband, has in the speedy conclusion of the case, irrespective of what the consequence of the judgment made is.

43. In the incident that is the subject matter of the application, beyond the fact that the overall trial process was too long, the rendering of a decision of discontinuance due to statute of limitations in a way removing the possibility of arriving at a final verdict, in direct connection with the delay in the trial process, led specifically the applicant and generally the other individuals in the society to deduce that an act which was alleged to explicitly threaten human life (and had to be acted upon *ex officio* by the investigation bodies and be disclosed in all transparency) remained unpunished. It is seen that the applicant expressed her feelings on this in the application form, stating that "*she suffered strong grief due to her husband's death and, in connection, wished that a court judgment was rendered within a reasonable period"*.

44. In the present case, when all these findings are assessed as a whole, it is seen that prosecution process started in a reasonable period of time after the investigation bodies acted *ex officio* and obtained all required evidence and, during the stage of investigation by the prosecutor's office and the trial at the court of first instance, a process that allowed for revealing all aspects of the death incident and identifying and penalizing the persons responsible took place. However, without any significant reasoning following the appeal request, it is impossible to say that the first appeal assessment, and the second appeal assessment for the new judgment of the Court of First Instance rendered after the judgment of quashing, had been conducted with due diligence and speed. In the two-stage trial process, when matters such as the interest of the applicant in the speedy and effective conclusion of the case and the fact that she did not have any interference in the delay thereof are taken into account and it is considered that the case had a small number of defendants and was not very complicated, it is inferred that the investigation and prosecution process which lasted more than eight years was too long. Furthermore, a decision of discontinuance was rendered at the end of the trial due to statute of limitations and in a way removing the possibility of arriving

at a final verdict. Therefore, it is concluded that the trial process, as a whole, did not have the speed and sufficiency required by Article 17 of the Constitution.

45. Due to the reasons explained, it should be decided that the obligation to conduct an effective investigation as required by the right to life, which is guaranteed in Article 17 of the Constitution, was violated.

3. Article 50 of the Law No. 6216

46. Article 50(2) of the Law No. 6216 is as follows:

> "*If the determined violation arises out of a court judgment, the file shall be sent to the relevant court for holding the retrial in order for the violation and the consequences thereof to be removed. In cases where there is no legal benefit in holding the retrial, a compensation may be adjudged in favor of the applicant or the remedy of filing a case before the general courts may be shown. The court which is responsible for holding the retrial shall deliver a judgment over the file, if possible, in a way that will remove the violation and the consequences thereof that the Constitutional Court has explained in its judgment of violation."*

47. The applicant filed a request for non-pecuniary damages of TRY 100,000 due to the violation of the right to life.

48. In the application, it was concluded that the procedural aspect of Article 17 of the Constitution was violated. Due to the lack of an effective and dissuasive criminal investigation and prosecution into the death of the applicant's husband, it is concluded by discretion that exact amount of TRY 20,000.00 be paid to the applicant in exchange for her non-pecuniary damages, which cannot be compensated by the mere determination of the violation, by taking into account the characteristics of the incident at hand.

49. It needs to be decided that the trial expenses of TRY 1,698.35 in total, composed of the fee of TRY 198.35 and the counsel's fee of TRY 1,500.00 which were incurred by the applicant and determined in accordance with the documents in the file be paid to the applicant and a copy of the judgment be sent to the relevant court.

V. JUDGMENT

In the light of the reasons explained, it was **UNANIMOUSLY** and finally held on 10/6/2015 that:

A. The application is **ADMISSIBLE** in terms of the allegations that the right to life guaranteed under Article 17 of the Constitution was violated,

B. The obligation to conduct an effective investigation within the scope of the right to life was **VIOLATED** in the present case,

C. Non-pecuniary **DAMAGES** of exact amount of TRY 20,000 **BE PAID** to the applicant as per Article 50(2) of the Law No. 6216,

D. Surplus claim for damages of the applicant **BE REJECTED**,

E. The trial expenses of TRY 1,618.35 in total composed of the fee of TRY 198.35 and the counsel's fee of TRY 1,500.00 which were incurred by the applicant **BE PAID TO THE APPLICANT**,

F. The payments be made within four months as of the date of application by the applicant to the Ministry of Finance following the notification of the judgment; that, if a delay occurs as regards the payment, the statutory interest be charged for the period which elapses from the date, on which this duration ends, to the date of payment.

G. A copy of the judgment be sent to the relevant Court.