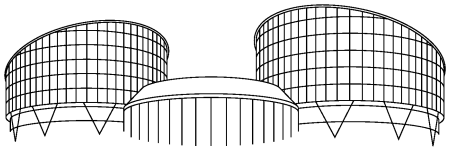

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SİNİM v. TURKEY

(Application no. 9441/10)

JUDGMENT

STRASBOURG

6 June 2017

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

In the case of Sinim v. Turkey,

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

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Işıl Karakaş,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 9 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 9441/10) 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 Arzum Makbule Sinim ("the applicant"), on 21 January 2010.

2. The applicant was represented by Mr E. Kanar, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged under Articles 6 §§ 1 and 3 (d) and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention that the judicial authorities had failed to conduct an effective investigation into the death of her husband.

4. On 18 November 2015 the complaints under Articles 6 §§ 1 and 3 (d) and 13 of the Convention were communicated to the Government under Article 2 of the Convention, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Istanbul.

6. The applicant's husband, Ali Sinim, entered into an agreement with a truck owner, Mr A.S., for the transportation of some personal goods and

furniture from Istanbul to Antalya on 5 August 2006. According to the applicant's allegations, her husband was informed that the truck in question had been booked by a transport company for the same day and that it would also be carrying some raw materials belonging to another client.

7. On the date in question the applicant's husband loaded his goods into the truck and got into it as a passenger. However, before reaching its destination the truck collided with another vehicle and caught fire. The truck's driver and substitute driver died at the scene of the accident as a result of the fire. The applicant's husband died a few days later at the hospital where he had been receiving treatment for his burns.

8. It was discovered after the accident that the "raw materials" being transported in the truck with the applicant's husband's goods were in fact an inflammable liquid, which had caught fire upon impact. According to the police scene-of-incident report, the containers that had contained the spilt inflammable liquid bore the words "Şenocak chafing fuel[1]".

9. An autopsy report issued on 31 January 2007 by the Forensic Medicine Institute stated that the applicant's husband had died as a result of the burns he had sustained at the time of the accident rather than from trauma caused by the impact of the crash.

A. The criminal proceedings

10. According to the initial report prepared by the traffic police at the scene, the driver of the truck, whose identity could not be established at the time, bore the main responsibility for the accident as he had hit the other vehicle, driven by S.S.H., from behind.

11. On 5 August 2006 officers from Sultanbeyli police station took statements from the applicant, S.S.H. and the owner of the truck, A.S., who was also the son of one of the truck drivers, M.S. A.S. confirmed in his statement that he was the owner of the truck, which his father M.S. had loaded with goods to be transported to Antalya. He stated that a third person, namely A.Ç., had also been in the truck to help his father during the journey. He was not asked any questions about the nature of the goods transported.

12. On 4 September 2006 the applicant filed a criminal complaint with the Sultanbeyli public prosecutor's office against A.S., S.S.H, and the transport company to which the truck had been leased, if any, for causing her husband's death by illegally carrying dangerous inflammable goods. The applicant stressed in her complaint that the incident in question had not been a simple traffic accident caused by negligence, and that her husband had lost his life because of the inflammable goods that had been loaded unlawfully in the truck without his knowledge and consent. The applicant

[1] A type of fuel used for heating food, typically placed under a chafing dish.

argued that if her husband had been properly informed of the nature of the truck's cargo, he would never have agreed to travel in it. The applicant therefore requested the identification of all the individuals or companies who may have been responsible for her husband's death, including the transporter, the seller and the buyer of the inflammable goods. She also requested to be informed of developments in the investigation as she intended to join the proceedings as a civil party (*müdahil*).

13. On 9 November 2006 A.S. submitted a petition to the Sultanbeyli public prosecutor's office for an investigation into the liability for the accident of both the transport company which had leased his truck and of the seller and buyer of the inflammable cargo, whom he accused of concealing the dangerous nature of the goods in question. As evidence, he submitted the invoice and delivery note (*sevk irsaliyesi*) prepared on 4 August 2006 by the transport company Salihli Nakliyat Otom. Ltd. Şti. ("Salihli Ltd. Şti.") for the recipient, Şenocak Dış Ticaret ve Turizm Sanayi Ltd. Şti. ("Şenocak Ltd. Şti."), where the shipment was described as "raw materials" without any further details. A.S. stated that if it had been made clear that the goods involved were inflammable then they would have been transported in accordance with the conditions set out in the law, which might have prevented the fatal accident.

14. On 28 November 2006 the applicant filed an additional complaint against the producer of the inflammable liquid, which she had identified as Şenocak Ltd. Şti. based on the information provided in the scene-of-incident report (see paragraph 8 above). The applicant claimed that the liquid in question contained ethanol and methanol, which had both been classified as "hazardous goods subject to control" in the Regulation on Dangerous Goods and the Regulation on the Transport by Land of Dangerous Goods, and which accordingly had to be packed, labelled, stored and transported in compliance with the strict requirements set down in those regulations. Moreover, under the Regulation on the Transport by Land of Dangerous Goods, it was prohibited to carry passengers, apart from a substitute driver and a guard, in vehicles transporting dangerous goods. Having regard to the various responsibilities imposed by the relevant legislation on the producer, seller, transporter and buyer of such goods, the applicant requested that the public prosecutor (i) check if Şenocak Ltd. Şti. was the producer and whether it also engaged in the distribution of such material; (ii) establish whether the truck in question had been leased by a transport company or by Şenocak Ltd. Şti. itself and whether it had a licence to carry such dangerous goods; and (iii) identify the buyer of the goods. She also repeated her request to be informed of developments in the investigation.

15. On 6 May 2007, at the request of the Sultanbeyli prosecutor, a traffic engineer submitted an expert report, where it was found that the deceased truck driver M.S. had been responsible for the accident by failing to comply with the law applying to vehicles carrying inflammable goods on keeping a

distance of fifty metres. The expert found that S.S.H., the driver of the other vehicle, had not been at fault.

16. Relying mainly on the expert report, on 7 May 2007 the Sultanbeyli public prosecutor found that the only person responsible for the accident within the meaning of Article 85 of the Turkish Criminal Code (causing death by negligence – see paragraph 46 below) was M.S. However, since M.S. had also lost his life in the accident, the public prosecutor decided against prosecution. A.S. was listed as the sole complainant in the decision, which was not notified to the applicant.

17. After finding out about the decision on her own initiative, on 29 June 2007 the applicant objected to the public prosecutor's decision not to prosecute, arguing mainly that the issues she had raised in her petitions of 4 September and 28 November 2006 had not been taken into account by the public prosecutor. She reiterated that her husband had not been informed that the truck was carrying inflammable liquids, and also argued that the prosecutor had failed to identify the companies involved in the shipment of such dangerous goods, including the seller, buyer and transport company, and had not established the relations of the truck owner, A.S., to those companies. She argued that it was of the utmost importance to collect that information in order to establish the facts and to identify those responsible for the accident, apart from the driver of the truck. She added that despite the numerous complaints she had lodged with the public prosecutor's office and her requests to be informed of developments in the investigation, she had not been named as a complainant in the public prosecutor's decision and the decision had not been notified to her.

18. It appears that A.S., as the other complainant, did not lodge an objection against the public prosecutor's decision.

19. On 4 September 2007 the Kadıköy Assize Court rejected the objection against the decision of the Sultanbeyli public prosecutor not to prosecute M.S. and S.S.H. It held, nevertheless, that complaints lodged by A.S. against Salihli Ltd. Şti. and Şenocak Ltd. Şti. had remained unanswered and instructed the Sultanbeyli public prosecutor to investigate their liability for the accident. A.S. was once again listed as the sole complainant in the decision, which was not notified to the applicant.

20. On 6 December 2007 the applicant submitted a petition to the Sultanbeyli public prosecutor's office, asking it to investigate the matters raised in her previous petitions. The applicant also stressed that despite her numerous requests, she had, once again, not been recognised as a complainant in the Kadıköy Assize Court's decision.

21. It appears that on 22 January 2008 an agent of the transport company Salihli Ltd. Şti., a certain B.T., was questioned about the accident for the first time by the police. B.T. stated that Şenocak Ltd. Şti. had requested a truck from them to transport some goods. The company had, however, put Şenocak Ltd. Şti. in touch with A.S., who provided transportation services

with his truck upon request, and they had had no further involvement with the shipment in question.

22. In a further petition submitted by the applicant to the Sultanbeyli public prosecutor's office on 23 May 2008, she expressed her concern that the investigation after the Kadıköy Assize Court's decision had appeared to focus solely on the liability of the transport company Salihli Ltd. Şti., whereas both Şenocak Ltd. Şti., as the producer and/or the shipper of the goods, and A.S., as the owner of the truck, also bore responsibility for the accident on account of their failure to comply with the relevant legislation on the transport of dangerous goods.

23. On an unspecified date the Sultanbeyli public prosecutor asked the traffic branch of the Forensic Medicine Institute to prepare a report to determine the respective liability of Salihli Ltd. Şti. and Şenocak Ltd. Şti., or any others, for the accident in question. In its response dated 10 July 2008 the Forensic Medicine Institute stated that there was no information in the case file on Şenocak Ltd. Şti. and that, in the absence of such information, it could not report on the requested matters.

24. On 15 October 2008 S.Ş., the owner of Şenocak Ltd. Şti., was questioned about the accident for the first time by the police. S.Ş. stated that he had requested a truck from Salihli Ltd. Şti. to send goods to his company's Antalya branch. A truck owned by A.S. had been provided to him by Salihli Ltd. Şti. and he had loaded it with the goods in question. He confirmed that the truck had been involved in an accident shortly after loading and that it and his goods had been destroyed in a fire.

25. Following the receipt of the above information, on 19 February 2009 the Forensic Medicine Institute submitted its report on the accident. It found that there was no information in the file that the truck in question had been loaded with inflammable goods by Şenocak Ltd. Şti. There was, furthermore, no information on the identity of the recipient of the shipment. Although containers bearing the name "Şenocak" had been found in the truck after the accident, there was no other evidence in the file to enable the Institute to determine who had loaded the truck. In those circumstances, it had not been possible to establish the liability of Şenocak Ltd. Şti., Salihli Ltd. Şti., or anyone else for the accident.

26. On 8 May 2009 the applicant submitted objections to the Forensic Medicine Institute's report. She contested the finding that there had been no evidence to suggest the involvement of Şenocak Ltd. Şti. with the shipment in question. She argued that the owner of Şenocak Ltd. Şti. had made it clear in his police statement that the truck had been loaded with his company's goods, which had consisted of chafing fuel. Moreover, in response to the compensation request she had made to the Sultanbeyli Civil Court of First Instance (see below paragraph 30 for further details), the owner of Şenocak Ltd. Şti. had stated, *inter alia*, that he had also suffered a loss as a result of the accident as he had lost all of his merchandise.

A representative of Salihli Ltd. Şti. had similarly told the Sultanbeyli Civil Court of First Instance that the truck involved in the accident had been sent to Şenocak Ltd. Şti. for loading, accompanied by a delivery note prepared by them on 4 August 2006. In the applicant's opinion, those statements provided sufficient proof that the inflammable goods loaded in the truck had belonged to Şenocak Ltd. Şti. On the basis of that information, and having regard to the legal requirements in the relevant legislation on the packaging, labelling, storing and transportation of inflammable goods, none of which had been observed in the instant case, it was clear that both Şenocak Ltd. Şti. and Salihli Şti., as well as the owner and driver of the truck, had been responsible for the accident.

27. On 25 May 2009 the Sultanbeyli prosecutor decided not to prosecute representatives of Salihli Ltd. Şti. and Şenocak Ltd. Şti. on the basis of the Forensic Medicine Institute's report of 10 July 2008. In the decision, the public prosecutor did not respond to any of the applicant's allegations.

28. On 17 June 2009 the applicant objected to that decision. Reiterating mainly the arguments she had raised in her objection to the Forensic Medicine Institute's report, she submitted that the public prosecutor had failed to establish the facts of the case and had disregarded essential evidence in the investigation file which pointed to the representatives of Salihli Ltd. Şti. and Şenocak Ltd. Şti, A.S. and the deceased driver of the truck as being criminally liable for the accident.

29. On 23 July 2009 the Kadıköy Assize Court rejected the applicant's objection, without responding to any of her arguments.

B. Compensation proceedings

30. On 16 July 2007 the applicant brought an action for compensation before the Sultanbeyli Civil Court of First Instance against Şenocak Ltd. Şti., Salihli Ltd. Şti, the owner of the truck, A.S., the heirs of both dead truck drivers, and an insurance company. Reiterating the legal requirements for the packaging, labelling, storage and transportation of dangerous goods that she had referred to during the criminal proceedings, the applicant argued that the defendants had caused her husband's death by their failure to comply with the relevant legislation.

31. On unspecified dates, representatives of Salihli Ltd. Şti. and Şenocak Ltd. Şti. responded to the applicant's allegations, as noted in paragraph 26 above.

32. At the request of the Sultanbeyli Civil Court of First Instance, on 19 March 2012 three experts from the traffic branch of the Forensic Medicine Institute submitted a report ("the first report") on the defendants' liability for the accident in question, where they made the following findings:

- Şenocak Ltd. Şti., which was the producer of the inflammable goods in question, had requested Salihli Ltd. Şti.'s services for the transportation of merchandise from its headquarters in Istanbul to its Antalya office;
- Salihli Ltd. Şti. had subcontracted A.S. for the business;
- in the consignment note it had prepared, Şenocak Ltd. Şti. had described the consignment as sixteen tonnes of raw material, without indicating that it consisted of inflammable goods;
- the fire that had broken out upon impact with S.S.H.'s vehicle and that had claimed the applicant's husband's life had been caused by the inflammable goods loaded in the truck;
- Şenocak Ltd. Şti. was liable for the accident because it had failed to comply with the consignor's obligations set out in the relevant legislation;
- Salihli Ltd. Şti. and A.S. were liable on account of their failure to pay heed to the type of raw material they had accepted, which had resulted in the transportation of dangerous goods in a truck which had not fulfilled the relevant criteria for such transportation;
- A.S. was also liable for having unlawfully loaded other goods in the truck and accepting a passenger (the applicant's husband);
- the driver of the truck was liable owing to his failure to drive with care.

In the light of those considerations, the Forensic Medicine Institute found that Şenocak Ltd. Şti. bore 40% of the liability for the accident, Salihli Ltd. Şti. and A.S. bore 20% each, while the remaining liability lay with the driver.

33. On 18 October 2012 Salihli Ltd. Şti. objected to the Forensic Medicine Institute's report.

34. Following that objection, seven experts from the traffic branch of the Forensic Medicine Institute, including the three experts who had prepared the previous report, issued another report on 18 September 2013 ("the second report"). They found that while Salihli Ltd. Şti., Şenocak Ltd. Şti. and A.S. may all have disregarded their legal obligations on the transport of dangerous goods, the accident had been caused by the driver's carelessness rather than the other defendants' failure to comply with those obligations. They could not therefore be held accountable for the accident in any way.

35. On 19 November 2013 the applicant objected to the Forensic Medicine Institute's report, which in her opinion conflicted with its previous report of 19 March 2012. The applicant reiterated that her husband had not died as a result of a simple traffic accident, but had burned to death because of the inflammable goods carried unlawfully in the truck, for which all the defendants bore responsibility. The applicant requested that the Sultanbeyli Civil Court of First Instance obtain a third report from independent experts to resolve the contradictions between the two reports prepared by the Forensic Medicine Institute.

36. At a hearing held on 29 April 2014, the civil court of first instance appointed a group of experts, consisting of a mechanical engineer and

two professors of mechanical engineering and chemistry from Istanbul Technical University. The court asked them to comment on the contradictions between the two Forensic Medicine Institute reports and to state which report they agreed with.

37. In their report dated 13 November 2014 ("the third report"), the experts established at the outset that the action brought by the applicant concerned the death of her husband as a result of the burns he had sustained because of the fire caused by the accident. The examination in the instant case therefore had to focus not on the technical cause of the accident *per se*, which was what the second report had done, but on the reasons and the responsibility for the fire that had claimed her husband's life. The experts stated in that connection that the fire had been caused by chafing fuel, which was a "highly inflammable liquid", according to the Regulation on the Transport by Land of Dangerous Goods and which therefore had to be transported in accordance with the relevant legislation concerning the transportation of such dangerous substances. The truck in which the chafing fuel had been loaded in the instant case had, however, not been suitable for the transportation of dangerous goods: it had not been equipped with an electrical system to prevent short circuits and fire; it had had no warning signs; and the driver had not been trained in the transportation of such goods. Şenocak Ltd. Şti., as the producer of the chafing fuel, bore the principal liability (40%) for the fire on account of its failure to ensure the safe transportation of its merchandise in accordance with the relevant legal requirements. Salihli Ltd. Şti., which had procured the truck in question, and A.S., the owner and operator of the truck, were each 20% liable for agreeing to transport such dangerous goods in a vehicle unfit for the job. A.S. was further liable because he had accepted additional cargo in the truck. The remaining responsibility lay with the deceased driver, who had not kept a safe distance from the vehicle in front. On the basis of those findings, the experts stated that they agreed with the first report's conclusions.

38. At a hearing held on 7 October 2015 the civil court of first instance decided to appoint an expert to calculate the applicant's pecuniary damage, on the basis of the findings of the third report of 13 November 2014.

39. In a report dated 19 November 2015 the expert calculated the applicant's pecuniary damage as 229,613 Turkish liras (TRY) (approximately 75,145 euros (EUR) at the material time).

40. According to the latest information in the case file, the compensation proceedings are still ongoing in the court of first instance.

II. RELEVANT DOMESTIC LAW

A. Regulation on the Transport by Land of Dangerous Goods

41. Articles 2 and 3 of the Regulation on the Transport by Land of Dangerous Goods (no. 15742) provide a classification and a list of dangerous goods that come under the scope of that Regulation, which includes explosives and inflammable, oxidising, poisonous, radioactive and corrosive substances.

Article 4 of the Regulation sets out in detail the transportation requirements for different classes of dangerous goods, including the warning signs that must be displayed by vehicles carrying such goods. Article 8 states that the packaging must also carry warning signs.

Under Article 4.10 vehicles carrying dangerous goods may not carry anyone other than the driver, the substitute driver and a guard, where necessary.

Article 7.01 of the Regulation provides that vehicles carrying dangerous goods must comply with special electrical wiring requirements.

B. Regulation on Dangerous Chemicals

42. Articles 16 and 17 of the Regulation on Dangerous Chemicals (no. 21634) in force at the material time set out labelling requirements for dangerous chemicals, which included, *inter alia*, giving the name and address of the producer, the chemical and commercial name of the goods and the dangers they involved, together with special warning signs.

C. The Land Transport Law

43. Section 5 of the Law on Land Transport (no. 4925) provides as follows in its first and fifth paragraphs:

> "A licence shall be obtained from the Ministry [of Transport] in order to engage in transportation, ... and freight brokerage.
>
> ...
>
> In addition to the licence indicated in the first paragraph, vehicles carrying dangerous goods and their affiliated transporters shall obtain a permit from the relevant authorities on the basis of information and documents demonstrating the suitability of the [vehicle] to the goods they will be transporting."

According to Section 26 of the same Law, transporters who did not comply with Section 5 would be subjected to a fine.

D. Regulation on Land Transport

44. According to Article 22 (e) of the Regulation on Land Transport (no. 25384) in force at the material time, holders of transportation licences were under an obligation to know the relevant regulations that had been brought into force for the protection of health and the environment, and to comply with those regulations.

Under Article 60 (h) of the same Regulation drivers engaging in the transportation of dangerous goods had to obtain a document showing that they had undergone the compulsory training envisaged in the relevant legislation.

E. Road Traffic Regulations

45. According to Article 107 of the Road Traffic Regulations (no. 23053) in force at the material time, vehicles carrying dangerous goods must keep a distance of fifty metres from other vehicles outside urban areas.

Article 132 provides that vehicles carrying dangerous goods must bear a white "dangerous goods" sign on a red background (with lettering of a width of no less than 2.5 cm and no less than 20 cm in height), as well as red flags of at least 30 cm by 30 cm on the front and rear sides. The same provision also states that no other cargo is to be accepted in such vehicles, and no one apart from the owner of the goods or an employee is allowed to travel in them.

Article 134 § 1 (ç) forbids the carrying of dangerous and harmful goods without complying with the relevant requirements and without obtaining the necessary authorisation and taking the necessary precautions.

F. Turkish Criminal Code

46. According to Article 85 of the Turkish Criminal Code (Law no. 5237 of 12 October 2004), anyone who negligently causes the death of another shall be sentenced to a term of imprisonment of between two and six years. If the act results in the death of more than one person, the offender shall be sentenced to a term of imprisonment of between two and fifteen years.

47. Chapter 3 of the Criminal Code deals with crimes against the public, including, *inter alia*, any offences that create a danger to public safety. Article 174, which comes under that Chapter, read as follows at the material time:

> "1. Anyone who engages in the production, import or export of nuclear, radioactive, chemical, or biological substances which have explosive, burning, corrosive, harmful, suffocating or toxic properties, or are capable of causing permanent illness, without the permission of the competent authorities, or who transports the same from one place to another within the country, or stores, sells, purchases or processes such

substances without permission, shall be sentenced to a term of imprisonment of between three and eight years and a fine.

[...]

3. Anyone who purchases, accepts or possesses explosive substances which are insignificant in type and amount shall be sentenced to a term of imprisonment of up to one year, taking into account the purpose of the use [of such substances]."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

48. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that (i) the domestic investigative authorities had delivered decisions not to prosecute that had been in complete disregard of the evidence in the case file; (ii) they had not thoroughly investigated the responsibility of the individuals and companies involved in the shipment for the accident; (iii) they had failed to hear any witnesses or to collect any other evidence regarding the case; and (iv) they had failed to duly inform her of developments in the case. She added under Article 13 that the available domestic remedies had not proved effective as there had been no objective and diligent investigation into the death of her husband.

49. The Court considers that the applicant's complaints fall to be examined under Article 2 of the Convention, the relevant part of which reads as follows:

"1. Everyone's right to life shall be protected by law. (...)."

A. Admissibility

50. The Government argued at the outset that given the nature of the applicant's complaints, which concerned the unintentional killing of her husband as a result of a traffic accident, the effective remedy for her grievances was not a criminal-law remedy but a civil action for compensation. The applicant had, however, complained solely of the effectiveness of the criminal proceedings. In those circumstances, her complaints under Article 2 were incompatible *ratione materiae* with the Convention. In the alternative, the Government argued that the applicant had submitted her application prematurely as the compensation proceedings she had initiated were still ongoing before the civil court and she had not lodged an individual application with the Constitutional Court in relation to her civil claim. She had therefore also failed to properly exhaust the available domestic remedies within the meaning of Article 35 § 1 of the Convention.

51. The applicant stated in response that the issue of the criminal liability of the individuals responsible for her husband's death was at the core of her application to the Court. She therefore rejected the Government's argument that compensation proceedings provided the sole effective remedy for her complaints. She added that contrary to the Government's arguments it would not have been possible for her to bring an individual application before the Constitutional Court as that remedy was only available in respect of events occurring after 23 September 2012.

52. The Court considers that the preliminary objections raised by the Government are closely linked to the merits of the complaints regarding the alleged ineffectiveness of the judicial response to the applicant's husband's death. The Court therefore finds it necessary to join the Government's objections to the merits of the complaints under Article 2 of the Convention (see, *mutatis mutandis*, *Yusupova and Others v. Russia*, no. 5428/05, § 58, 9 July 2009, and *Toptanış v. Turkey*, no. 61170/09, § 33, 30 August 2016).

53. The Court further finds that the applicant's complaints under Article 2 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are, moreover, not inadmissible on any other grounds. The Court therefore declares them admissible.

B. Merits

1. The parties' arguments

54. The applicant maintained her complaints. She stressed that the State authorities had had a positive obligation to ensure the conduct of an effective investigation in order to elucidate the circumstances surrounding the accident and to establish the responsibility of the individuals who had caused her husband's death by transporting a large amount of dangerous goods contrary to the relevant legal requirements.

55. The Government stated that the State authorities had complied with their positive obligations under Article 2 as they had put in place a legal framework governing the transportation of dangerous goods, the effectiveness of which the applicant had not challenged, and they had also carried out an effective investigation into the accident in a prompt manner. The Government emphasised in that connection that the obligation to conduct an effective investigation was not an obligation as to results but as to means, and that, in any event, the civil proceedings in respect of the applicant's claims were still ongoing.

2. The Court's assessment

(a) General principles

56. The Court notes that the basic principles concerning a State's positive obligation to protect the right to life were set out by the Grand Chamber in the case of *Öneryıldız v. Turkey* ([GC], no. 48939/99, §§ 89-96, ECHR 2004-XII), and further elaborated on in *Budayeva and Others v. Russia* (nos. 15339/02 and 4 others, §§ 128-145, ECHR 2008 (extracts)).

57. The Court reiterates in this connection 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 involves a duty to take reasonable measures to ensure the safety and to safeguard the lives of individuals within its jurisdiction as necessary (see, amongst many authorities, *Ciechońska v. Poland*, no. 19776/04, § 60, 14 June 2011, and the cases cited therein).

58. This positive obligation under Article 2 covers a wide range of sectors (see *Ciechońska*, cited above, §§ 62-63) and, in principle, will arise in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız*, cited above, § 71, and *Brincat and Others v. Malta*, no. 60908/11 and 4 others, § 101, 24 July 2014). It entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. This obligation indisputably applies in the particular context of "dangerous activities", where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. Those regulations 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 (see *Öneryıldız*, cited above, §§ 89-90).

59. The Court further reiterates that in the event of serious injury or death, the duty under Article 2 of the Convention must also be considered to require the State to have in place an effective independent judicial system so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. Such a system may, and under certain circumstances must, include recourse to the criminal law (see *Mikhno v. Ukraine*, no. 32514/12, § 131, 1 September 2016). However, where negligence has been shown, the obligation may also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts (see *Ciechońska*, cited above, § 66). The Court stresses that this obligation is not an obligation as to result but as to means only (see *Šilih v. Slovenia* [GC], no. 71463/01, § 193, 9 April 2009).

(b) Application of those principles to the present case

60. The Court notes that there is nothing to indicate that the death of the applicant's husband was caused intentionally, and the circumstances in which it occurred were not such as to raise suspicions in that regard. According to the information gathered from the domestic proceedings, he rather lost his life as the result of a fire that was caused by the accidental collision of a truck loaded with apparently inflammable goods with another vehicle. There is little doubt that the transport of such dangerous substances involved a hazardous activity that required regulation by the State geared to the special features of that activity (see paragraph 58 above). The Court notes that the need for such regulation is not contested by the respondent State, which has put in place an extensive legislative and administrative framework regarding the packaging, labelling, storage and transportation of such substances (see paragraphs 41-45 and 47 above).

61. The applicant in the instant case neither challenges the sufficiency of the regulatory framework in question, nor alleges that the State authorities failed in their obligation to monitor compliance with it or were in any other way responsible for the accident. She rather complains of their failure to establish, by way of an effective criminal investigation, the circumstances of her husband's death, including the responsibility of those who had knowingly infringed the terms of the relevant regulations and had thus disregarded her husband's right to life.

62. The Court reiterates that in cases involving non-intentional infringements of the right to life, the positive obligation under Article 2 does not necessarily require the provision of a criminal-law remedy in every case (see paragraph 59 above, as well as *Ciechońska*, cited above, § 66). There are, nevertheless, circumstances where a civil remedy alone may not suffice to satisfy the requirements of an effective judicial response under Article 2 of the Convention. The Court has so far adopted this approach in the context of dangerous industrial activities, such as the operation of waste-collection sites (see *Öneryıldız*, cited above, § 71), in the public health sphere (see *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, § 104, ECHR 2013) and in the context of military activities (see *Oruk v. Turkey*, no. 33647/04, §§ 56-65, 4 February 2014), when lives have been lost as a result of events occurring under the responsibility of the public authorities and where the negligence attributable to those authorities went beyond an error of judgment or carelessness (see *Asiye Genç v. Turkey*, no. 24109/07, § 73, 27 January 2015). The Court observes that the circumstances of the present case differ from the aforementioned examples, notably because the activity in question, although undoubtedly dangerous, were not carried out by or under the responsibility of public authorities. The Court nevertheless considers that an effective criminal investigation was necessary to satisfy the requirements of Article 2 of the Convention on the present facts for the following reasons.

63. Firstly, while it is not for the Court to assess individual liability for an incident resulting in serious injury or death (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 116), it considers that the omission that led to the applicant's husband's death in the instant case went beyond a mere traffic accident caused by negligence or carelessness, as it also seems to have involved a deliberate disregard of the relevant rules on the transportation of dangerous goods noted in paragraphs 41-45 above, despite the obvious risks involved. It appears from the applicant's unrefuted allegations, which also found support in the expert opinions obtained during the civil proceedings (see paragraphs 32 and 37 above), that the truck in question had not been equipped with an electrical system to prevent short circuits and fire, that it had borne no warning signs, and that the driver had not been trained in the transportation of dangerous goods, contrary to the clear requirements of the law in these respects. The Court further notes that no licence had been obtained for the transportation of such goods and the shipment was incorrectly described as "raw material" in the invoice and delivery note, in a possible attempt to evade inspection by public authorities. All these elements taken together suggest that while it was certainly not caused intentionally, the death in the instant case resulted from the responsible parties' voluntary and reckless disregard of their legal duties under the relevant legislation, as opposed to a simple omission or human error, which in the Court's opinion sets this case apart from other cases of non-intentional deaths where it has found civil remedies to be sufficient. The Court stresses that by their apparently reckless conduct, the persons responsible for the shipment caused the kind of serious harm that the legislation in question was intended to prevent in the first place. Such action, in the Court's opinion, requires a criminal-law reaction to ensure effective deterrence against similar threats to the right to life in the future.

64. Secondly, the Court notes that according to Article 174 § 1 of the Turkish Criminal Code, the transportation of certain categories of dangerous goods without the permission of the competent authorities is an offence punishable by imprisonment, even where such conduct does not result in serious injury or death (see paragraph 47 above). The Court considers that this criminal law provision had been introduced in order to ensure, *inter alia*, the effective enforcement of the regulatory framework on the transportation of dangerous goods, having regard to the serious public safety risks posed by such activity. In these circumstances, a criminal investigation into the accident was necessary in the instant case, if for no other reason than to determine whether the death had been caused on account of the unlawful transportation of one of the dangerous substances referred to in section 174 § 1 of the Criminal Code.

65. In the light of the foregoing, the Court will review whether and to what extent the domestic criminal law authorities may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the

Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life was not undermined (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 96). The Court recalls that compliance of an official investigation with the requirements of Article 2 is assessed on the basis of several essential parameters, including the adequacy of the investigative measures, the promptness of the investigation and the involvement of the deceased person's family. These are criteria which, taken jointly, enable the degree of effectiveness of an investigation to be assessed (see, *mutatis mutandis*, *Lovyginy v. Ukraine*, no. 22323/08, § 103, 23 June 2016).

66. The Court notes in this connection that a criminal investigation was indeed promptly initiated into the circumstances surrounding the applicant's husband's death. That investigation initially focused only on the responsibility of the two drivers involved in the accident, namely M.S. and S.S.H., for causing death by negligence under Article 85 of the Criminal Code. The Court notes that the investigation ended with a decision not to prosecute as M.S., who was found to be solely responsible for the collision, had also lost his life. Upon subsequent instructions by the Kadıköy Assize Court, the scope of the investigation was expanded to determine the possible liability of the producer and the transport company for the accident under Article 85 of the Criminal Code. That investigation, however, also resulted in a decision not to prosecute, on the grounds of an absence of evidence against the suspects.

67. The Court finds the investigation conducted by the Sultanbeyli public prosecutor to have been unsatisfactory for a number of reasons. It notes, first and foremost, that the public prosecutor appears to have treated the incident as an ordinary traffic accident caused by negligent driving. Although it was evident from the autopsy report that the applicant's husband had died as a result of burns, and also evident from the scene-of-incident report that the truck had been loaded with some type of fuel, the investigation was from the beginning geared towards establishing the immediate cause of the accident, that is the responsibility of the truck driver for the collision from a technical point of view, without paying attention to the cause of the fire that claimed the applicant's husband's life. In that connection, even after the scope of the investigation had been expanded following the decision of the Kadıköy Assize Court (see paragraph 19 above), and despite the applicant's persistent requests, the public prosecutor paid no particular attention to the dangerous nature of the truck's cargo, nor did he discuss in any way the extensive legal requirements that the transportation of such material triggered under domestic law for different parties involved in the transportation. According to the information in the case file, the public prosecutor did not take any steps to determine the composition and the chemical properties of the truck's cargo, despite the important legal implications of that information

particularly under Article 174 § 1 of the Criminal Code, nor did he seek to identify the individuals or companies who had been involved in the transportation of such material and who could thus have had liability for the fatal accident under the relevant law. The Court notes that the Sultanbeyli public prosecutor's significant omissions in taking these basic investigatory steps were disregarded by the Kadıköy Assize Court as well, despite the applicant's objections.

68. Secondly, the Court notes that the Sultanbeyli public prosecutor based his decision not to prosecute on an expert report by the Forensic Medicine Institute, which appears to have been prepared without sufficient care (see paragraphs 25 and 27 above). The Court reiterates that the obligation under Article 2 that an official investigation into a death cover all crucial elements that may shed light on the circumstances of the death equally applies in respect of expert reports, particularly where such reports form the main basis of the investigating authorities' decisions as in the present case (see, *mutatis mutandis*, *Aydoğdu v. Turkey*, no. 40448/06, § 96, 30 August 2016). The Court notes that the Forensic Medicine Institute report at issue did not only fall short of shedding light on the circumstances of the death, but appears not to have taken into account the evidence that was readily available in the case file. The Court observes in this connection that, in complete disregard of the evidence in the case file pointing to the contrary, including the scene-of-incident report, the delivery note and the statements by representatives of the suspect companies themselves (see paragraphs 8, 13 and 26 above), the Forensic Medicine Institute's experts were somehow unable to identify Şenocak Ltd. Şti. as the producer or distributor of the dangerous goods in question. Moreover, they declared that Salihli Ltd. Şti. had not been at fault for the accident, without giving any reasons whatsoever for such a finding. The Court notes that the applicant's objections to the experts' unjustified findings were not taken into consideration by the public prosecutor, who accepted what was a clearly defective report without any reservations. The Court stresses that even if the public prosecutor had not been able to find any evidence regarding the specific involvement of Şenocak Ltd. Şti. and Salihli Ltd. Şti. in the shipment in question, as suggested by the expert report, he was still under an obligation to pursue the investigation, if necessary by commissioning another expert report, to establish the identities of the producer, the distributor and the transporter of the dangerous goods, whoever they were.

69. Thirdly, the Court observes that not only did the judicial authorities not display sufficient diligence in the conduct of the investigation, but that they for a considerable length of time ignored the applicant's official complaints and denied her the right to participate effectively in the proceedings. Although the applicant had from the very beginning brought complaints against the producer of the chafing fuel, the transport company and the truck owner A.S., the public prosecutor initially confined the

investigation solely to the liability of the driver for the accident in disregard of the applicant's complaints. The applicant was, moreover, not notified of the expert opinion submitted to the file, or of the decision against prosecution delivered by the public prosecutor. Even after she had found out about those developments through her own efforts, her objections against the public prosecutor's decision were not taken into consideration by the Kadıköy Assize Court. The Court notes from the information in the case file that the applicant was not recognised as a "complainant" by the Kadıköy Assize Court, which expanded the investigation only in line with the complaints of A.S., although A.S. had not even objected to the public prosecutor's decision (see paragraphs 18 and 19 above). As a result, the applicant's complaints against A.S. were never pursued. Moreover, the Kadıköy Assize Court's decision was not notified to the applicant, although she alone had carried the matter before the assize court with her objection (see paragraphs 17 and 18 above), and she was once again left to her own means to find out about the developments in the case.

70. In the Court's opinion, those considerations largely suffice to conclude that the criminal proceedings at issue did not satisfy the State's positive obligations under Article 2 as noted in paragraph 65 above, as they failed to shed light on the circumstances of the death and had little deterrent effect in terms of ensuring the effective enforcement of the regulatory framework on the transportation of dangerous goods. It must be emphasised that although there is no right under Article 2 to have third parties prosecuted or sentenced for a criminal offence, the criminal investigation conducted by the domestic judicial authorities must nevertheless have been capable of leading to the identification and punishment of those responsible, to the extent that this was justified by the findings of the investigation.

71. The Court notes that in parallel to the criminal investigation, the applicant also brought compensation proceedings against the suspects, that so far appear to have involved more comprehensive discussions about the defendants' liability under the relevant legislation on the transport of dangerous material (see paragraphs 32-37 above). The Court has, however, already established that the appropriate judicial response in the instant case was a criminal-law remedy (see paragraphs 62-65 above). For that reason, contrary to the Government's allegations, civil remedies aimed at awarding damages alone would not be sufficient for the fulfilment of the respondent State's obligations under Article 2 in the present circumstances. However, even supposing that the compensatory remedy could alone suffice to provide adequate redress to the applicant, the Court considers the compensation proceedings in question to be far from effective in view of the fact that they have been pending before the first-instance court since July 2007 (see, for instance, *Šilih v. Slovenia* [GC], no. 71463/01, §§ 195-211, 9 April 2009 in respect of the promptness requirement under Article 2).

72. In the light of the foregoing, the Court dismisses the Government's preliminary objections and concludes that there has been a violation of Article 2 of the Convention on account of the lack of an adequate judicial response by the authorities to establish the circumstances of the death of the applicant's husband and to avert similar life-endangering conduct in the future.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

74. The applicant claimed 75,000 Turkish liras (TRY) (approximately 22,100 euros (EUR)) in respect of pecuniary damage and TRY 100,000 (approximately EUR 29,500) in respect of non-pecuniary damage.

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

76. The Court rejects the applicant's claims in respect of pecuniary damage as unsubstantiated. It considers, however, that the applicant has suffered some non-pecuniary damage on account of the deficiencies in the criminal investigation into her husband's tragic death, which cannot be sufficiently compensated for by the finding of a violation alone. Taking into account the particular circumstances of the case and the type of violation found, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant also claimed TRY 12,750 (approximately EUR 3,755) for lawyers' fees and TRY 1,140 (approximately EUR 336) for other costs and expenses incurred before the Court, such as stationery, postage and telephone costs and translation fees. She also claimed TRY 1,650 (approximately EUR 487) for expenses incurred during the domestic proceedings. In support of her claims she submitted a timesheet showing that her legal representative had carried out forty hours' legal work on the application submitted to the Court. The remaining expenses were not supported by any documents.

78. The Government contested those claims, deeming them unsubstantiated.

79. 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 applicant the sum of EUR 3,750 covering costs under all heads.

C. Default interest

80. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's preliminary objections to the merits of the complaint under Article 2 of the Convention and *dismisses* them;

2. *Declares* the application admissible;

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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,750 (three thousand seven hundred and fifty 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 6 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of Judges Spano and Bianku is annexed to this judgment:

R.S.
H.B.

JOINT CONCURRING OPINION OF JUDGES SPANO AND BIANKU

1. While we agree with the finding of a violation in the applicant's case, we have some difficulties with the approach adopted by the majority in reaching that conclusion.

2. As the Court rightly observes, it has thus far only adopted the approach, that a criminal law remedy is required in cases involving non-intentional infringements of the right to life in the context of dangerous activities, when lives have been lost as a result of events "occurring under the responsibility of the public authorities and where the negligence attributable to those authorities went beyond an error of judgment or carelessness" (see paragraph 62 of the judgment).

3. We agree that the facts of the present case do not fall under this framework of analysis, as the activity in question, though dangerous, was not carried out by or under the responsibility of public authorities. In other words, the activities at the origin of the fatal accident did not implicate, directly or indirectly, any exercise of public authority or supervision. Therefore, we cannot see how the case law quoted by the majority in paragraph 62 could have justified the requirement of a criminal investigation per se in the present case, if a civil remedy was afforded that could have allowed for the efficient elucidation of the facts and provided adequate deterrent effect.

4. We thus disagree with our colleagues' view that, on the facts, an effective criminal investigation was "nevertheless" necessary in the present case to satisfy the requirements of Article 2 of the Convention. The Court advances two arguments for this finding.

5. First, in paragraph 63, the Court proceeds by concluding for itself, and without any domestic factual findings, that the accident in question "seems to have involved a deliberate disregard of the relevant rules on the transportation of dangerous goods". Furthermore, the Court finds that all the various factual elements it identifies "taken together suggest that while it was certainly not caused intentionally, the death in the instant case resulted from the responsible parties' voluntary and reckless disregard of their legal duties under the relevant legislation, as opposed to a simple omission or human error" and this in the Court's opinion sets the case apart from other cases of non-intentional deaths where it has found a civil remedy to be sufficient.

6. This goes very far in our view. Even assuming that the Court might have been capable of concluding that the actions seemed to have involved the deliberate and reckless disregard of rules on the storing and transporting of dangerous substances, we are not persuaded by the finding that the performance of a legal commercial activity by a private company or individual, while not in full compliance with the technical and

administrative safety criteria laid down by law, requires automatically the enforcement of criminal law provisions. While it is true that the authorities should endeavour to make sure that the legislation on storing and transporting dangerous substances is implemented in practice, this does not mean that their obligation to initiate a criminal investigation is automatically triggered in every case where life is lost or is put in danger by accidents related to dangerous substances. Importantly, there is no evidence of any shortcomings in the supervision on the part of public authorities, in the sense that they were aware of or in control of the situation when the accident took place, or that they should have been aware of the violation of the applicable rules by the transport company[1]. While it is true that they must always make all efforts to guarantee that the specific legislation adopted in the field is applied in practice, not all accidents involving dangerous substances are such as to call for criminal proceedings.

7. Secondly, we are not convinced by the reasoning elaborated at paragraph 64. It is not for this Court to make findings on whether particular domestic criminal law provisions may be applicable to a particular set of facts. Therefore, we do not agree that the Court was justified in establishing that in the present case the act of transporting certain dangerous goods, without the permission of the competent authorities, where those goods contributed to the loss of life as a consequence of a traffic accident, necessitated, as such, a criminal investigation in accordance with Article 174 § 1 of the Turkish Criminal Code. This is pure fourth-instance reasoning in our view.

8. To sum up, the Contracting Parties are, in accordance with Article 2 of the Convention, under a positive and procedural obligation to provide an effective judicial framework that is capable of elucidating the facts and providing adequate deterrence, when non-intentional deaths occur in private-to-private relations and where there is no indication that lives have been lost as a result of events "occurring under the responsibility of the public authorities". The extension of the Court's case-law to the set of facts in the present case was not warranted as the Turkish judicial system provided the applicant with a civil remedy that, as a general matter, was capable of elucidating the facts and providing deterrence[2].

9. However, the reason why we concurred in the judgment is because, in the specific circumstances of the case and in the final analysis, the compensatory remedy initiated by the applicant has proved also to be ineffective in view of the fact that it has been pending before the first-instance court since July 2007.

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1. In our opinion the circumstances of this case differ from those of the cases of *Öneryıldız v. Turkey* [GC], no. 48939/98, § 116, ECHR 2004-XII, or *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, §§ 128-145, ECHR 2008.

2. See for example *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 72-73, ECHR 2002-VIII. Contrast also the case of *Nencheva and Others v. Bulgaria*, no. 48609/06, 18 June 2013.