REPUBLIC OF TURKEY

CONSTITUTIONAL COURT

FIRST SECTION

DECISION

Application No: 2013/1280

Date of Decision: 28/5/2014

FIRST SECTION

DECISION

President	: Serruh KALELİ
Members	: Zehra Ayla PERKTAŞ
	Hicabi DURSUN
	Erdal TERCAN
	Zühtü ARSLAN
Rapporteur	: Elif KARAKAŞ
Applicants	: 1- Mehmet ÇETİNKAYA 2- Maide ÇETİNKAYA
Counsel	: Att. Rehşan BATARAY SAMAN

I. SUBJECT OF APPLICATON

1. The applicants alleged that their rights guaranteed under articles 10, 17, 36 and 40 of the Constitution were violated by indicating that the compensation ruled upon in the case they filed following the death of their child Nazar Çetinkaya on 12/9/2006 as a result of the detonation of a bomb placed in the proximity of the wall of Diyarbakır Koşuyolu Park for the purpose of terrorism was insufficient, that the trial period exceeding seven years was long and that the administration could not ensure the required security in the mentioned incident and they requested the determination of the violation and that a decision be delivered to compensate the material and moral damages which they incurred.

II. APPLICATION PROCESS

2. The application was lodged on 1/12/2013 via the Regional Administrative Court of Diyarbakır. As a result of the preliminary administrative examination of the petition and its annexes, it was determined that there was no deficiency to prevent the submission thereof to the Commission.

3. It was decided by the First Commission of the First Section to send the file to the Section in order for its admissibility examination to be carried out by the Section.

4. Pursuant to the interim decision of the First Section dated 4/12/2013, it was decided that the examination of admissibility and merits be conducted jointly and that a copy of it be sent to the Ministry of Justice for its opinion.

5. The opinion of the Ministry of Justice dated 6/1/2014 was notified to the counsel of the applicants, the counsel of the applicants submitted the statement petition with the referral date of 23/1/2014 within the legal period of fifteen days.

III. FACTS AND CASES

A. Facts

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

7. The child of the applicants, Nazar Çetinkaya, born on 21/10/2004, lost her life on 12/9/2006 upon the detonation of a bomb placed for the purpose of terrorism in the proximity of the wall of Diyarbakır Koşuyolu Park, located on Koşuyolu Avenue in the center of Diyarbakır province.

8. As per the decision of the Damage Assessment Commission dated 18/5/2007 and numbered 193, it was decided to pay 18.000,00 TL to the applicants who applied to the administration on 13/11/2006 within the framework of the Code on the Compensation of Damages Resulting From Terrorism and the Fight Against Terrorism numbered 5233 with the claim to be compensated for the material and moral damages they had incurred as a result of the incident in question.

9. Upon the refusal of the applicants in relation to the sum in question, minutes of dispute were drafted and a case was filed by the applicants before the administrative court with the request that a decision be delivered for the payment of a total of 100.000,00 TL in compensation, of which 30.000,00 TL material and 70.000,00 TL moral.

10. With the decision of the 2nd Administrative Court of Diyarbakır dated 23/11/2007 and numbered M.2007/1107, D.2007/1619, it was decided to dismiss the petition in order for a counter case to be filed against the Diyarbakır Governor's Office for the material compensation as per the provisions of the Code numbered 5233 and against the Ministry of Interior for the moral compensation as per general provisions.

11. Upon the mentioned decision to dismiss the petition, a case was filed by the applicants with a renewed petition with the request that the decision of the Damage Assessment Commission dated 18/5/2007 and numbered 193 be annulled and that a material compensation of 30.000,00 TL be paid.

12. The case was rejected with the decision of the 2nd Administrative Court of Diyarbakır dated 5/3/2010 and numbered M.2008/876, D.2010/571. The justification section of the decision is as follows:

> *"As it is also stipulated in the decision of the Tenth Chamber of the Council of State dated 14/11/2007 and numbered M.2006/208, D.2007/5162, regarding the compensation of material damages of individuals which have been incurred due to the acts of terrorism or activities conducted within the framework of fight against terrorism, the Code numbered 5233 envisages a trial procedure which is different from the regulation of article 13 of the Code numbered 2577 which envisages applying to the administration prior to filing a case regarding the compensation of the damages incurred by those whose rights have been generally violated due to administrative actions. There is no restriction regarding the matter as to according to which one of the two codes individuals will apply to the administration concerning the compensation of incurred damages. Therefore, different means are made available to the concerned regarding the compensation of incurred damages in the face of these two different regulations, the individuals will be able, if they choose to do so, to apply to the administration as per article 13 of the Code numbered 2577 and file a case following the preliminary decision delivered in the event of the dismissal of their request, or they can also exercise their right to file a case according to the circumstances after they have waited for the conclusion of their application as per the Code numbered 5233.*
>
> *In the dispute which is the subject of the case, the plaintiffs exercised their preferential right in question to favor the Code numbered 5233 and they requested the compensation of the*

incurred damages according to this Code. As a result, whether or not the material compensation which has been decided to be paid by the defendant administration to the plaintiffs was determined in compliance with the procedure envisaged by the Code numbered 5233 needs to be determined.

In the incident which is the subject of the case, given that it was observed that a payment would be made by multiplying by 50 the sum obtained as a result of the multiplication of the indicative number of (7000) by the coefficient applied to the salaries of civil servants and adding the funeral expenses and that it was decided that this sum be paid to the plaintiffs as per articles 7 and 9 of the Code numbered 5233 due to the death of the plaintiffs' testator, there is no unlawfulness in the action of payment which was carried out in compliance with the legislation as per the Code numbered 5233."

13. The decision which was appealed by the applicants was approved with the decision of the 15th Chamber of the Council of State dated 14/3/2012 and numbered M.2011/10216, D.2012/1113, the request for the correction of the decision was rejected with the decision of the same Chamber dated 24/9/2012 and numbered M.2012/6891, D.2012/5738.

14. The decision was notified to the counsel of the applicants on 2/1/2013.

Criminal Investigation and Prosecution Process

15. According to the information and documents contained within the file of the Local Court and obtained through UYAP, the criminal investigation and prosecution process pertaining to the incident which is the subject of the application is as follows:

16. One day after the explosion incident which is the subject of the application, photographs of the thermos contraption used in the incident were made available on a website and a grouping called Türk İntikam Tugayı (Turkish Revenge Brigade) claimed responsibility for the explosion incident in question responsibility for the explosion incident in question. In the examinations and researches carried out by the officials of the Diyarbakır Provincial Security Directorate, it was determined that the photograph made available on the website and the contraption used at the site of the incident matched, that the contraption was remotely detonated by using a radio and that the website in question was only recently created.

17. As the investigations and researches of the relevant competent authorities were continuing, two e-mail notifications were made to the Directorate of Electronics Branch of the Diyarbakır Police Department on 7/4/2008 and 19/2/2009 and it was indicated in the notification in question that B.G. was one of the individuals who created the website where responsibility was claimed for the explosion and various personal information pertaining to B.G. was provided.

18. As a result of the investigation which was deepened and extended upon the notification in question, the information contained in the notification was confirmed, it was determined that B.G. had accessed the website where responsibility was claimed for the explosion and strong findings to the effect that the website was created by B.G. as well as numerous technical details leading to the conclusion that B.G. was involved in the explosion incident were determined. After it was determined that the radio which had been seized at the site of the incident had been procured by H.T. who is a relative of B.G. by purchasing it via a website, B.T. and M.E., who had been the flatmate of B.T. prior to the explosion incident, were taken into custody on 22/3/2009; H.T. was taken into custody on 23/3/2009 in line with

the defenses of B.T. and M.E. The individuals in question were then detained on 27/3/2009 as per court decision.

19. As a result of the searches which were conducted as per court decision in the houses and on the persons of the individuals in question, numerous documents of various types spreading the propaganda of the illegal PKK terrorist organization were seized. The statements that the individuals in question made in the presence of law enforcement, public prosecutor and accompanied by defense counsel are briefly to the effect that *the bomb which caused the explosion was prepared by H.T., in the house where B.G. and M.E. resided, who was using his leave from military service, that H.T. took the decision to carry out this act on his own with motives such as taking revenge for his uncle's son (paternal side) who had lost his life as a result of a firefight which broke out when he was part of the organization's mountain squads, taking revenge from police officers for having mistreated youngsters of Kurdish origin in illegal demonstrations and that he carried out this act in favor of the organization without receiving instructions from the organization, that it was H.T. who had placed the bomb contraption inside the thermos in the proximity of the park's wall and pressed the button to detonate it, that B.G. had also helped him, that M.E. had witnessed the preparation of the bomb by coincidence without providing assistance.*

20. Upon the completion of the investigation stage regarding the incident, a public case was filed by the Chief Public Prosecutor's Office of Diyarbakır regarding H.T., B.G. and M.E. before the 5th Assize Court of Diyarbakır with the indictment dated 9/6/2009 and numbered 2009/857. In the indictment, it was requested that H.T. and B.G. be punished for the crimes of disrupting the unity and territorial integrity of the State, voluntary manslaughter, attempted voluntary manslaughter, unauthorized possession or transfer of hazardous materials and damage to property; that M.E. be punished for the crime of unauthorized possession or transfer of hazardous materials for having actively participated in the act of preparing the handmade bomb utilized by H.T. and B.G. in the incident as well as assisting the crimes of disrupting the unity and territorial integrity of the State, voluntary manslaughter, attempted voluntary manslaughter and damage to property.

21. With the decision of the 5th Assize Court of Diyarbakır dated 17/5/2012 and numbered M.2009/405, D. 2012/102 it was decided that *the accused H.T. and B.G. be sentenced separately to aggravated life imprisonment as per article 302/1 of the Turkish Criminal Code (TCC) numbered 5237; separately to ten times the aggravated life imprisonment as per article 82/1-a-c of the TCC; separately to fourteen times fifteen years of imprisonment as per* article 82/1-a-c of the *TCC, separately to six years and eight months of imprisonment and 80.000,00 TL administrative fine as per article 174/1 of the TCC; that the accused M.E. be sentenced to seven years and six months of imprisonment as per article 314/2 of the TCC, to five years of imprisonment and 160,00 TL administrative fine as per article 174/1 of the TCC by indicating that although the accused B.G. and M.E. reneged on their statements during the interrogation defense, at the court stage they reiterated sincerely and consistently their statements given in the presence of law enforcement and public prosecutor, that although the accused H.T. rejected his statements of acknowledgment at the interrogation and court stages and indicated that these statements had been obtained by force by being subjected to pressure and violence it was against the usual course of life that torture could be inflicted in the presence of the prosecutor, accompanied by the defense counsel and in front of a camera, that the events described by all of the accused in their statements of acknowledgment overlapped with each other and that they matched one hundred percent with the way the incident took place, that it was clearly understood that the statements reflected the reality in terms of the hour, minute and timing, that it was concluded that the material findings supported the descriptions when the actions and behaviors of the accused in the aftermath of the incident, the places to which they went, the HTS reports obtained as a result of the research that was conducted, the signal information and the statements of the witnesses were taken into account, that the statements of rejection made by the accused H.T. were left groundless and had the intention of saving himself from the crime, that he described in detail, in a hands-on fashion and in the presence of the public prosecutor how he had*

prepared the bomb contraption, that it was understood that he was an experienced specialist in terms of bombs.

22. The decision which was appealed by the defense counsels of the accused, the public prosecutor and the attorneys of the intervenors was approved with a view to the judgments made regarding H.T. and B.G. with the decision of the 9th Criminal Chamber of the Supreme Court of Appeals dated 6/12/2013 and numbered M.2013/4628, D.2013/14930 and the judgments in question were finalized on the same date. The judgment which was delivered regarding M.E. due to aiding the terrorist organization and possessing explosive substances was reversed on the ground that an error had been made regarding the nature of the crime. The trial is currently under way before the 1st Assize Court of Diyarbakır under the merits number of 2014/229.

B. Relevant Law

23. Article 1 of the Code on the Compensation of Damages Resulting From Terrorism and the Fight Against Terrorism dated 17/7/2004 and numbered 5233 with the side heading *"Purpose"* is as follows:

> "*The purpose of this Code is to determine the principles and procedures regarding the compensation of damages incurred by individuals as a result of the acts of terrorism or activities conducted within the framework of fight against terrorism.*"

24. Paragraphs one and three of article 6 of the Code in question with the side heading *"Period, form, examination and conclusion of the application"* are as follows:

> "*In the event that the damaged or his/her heirs or authorized representatives apply to the Governor's Office of the province where the damage occurred or where the incident which is the subject of the damage took place within sixty days of the date when the incident which is the subject of the damage became known, in any case within a year starting from the date when the incident took place, the required actions shall be initiated. Applications which will be filed after these periods shall not be accepted. In circumstances of injury and disability which are within the scope of this Code, the period which elapses from the hospitalization of the injured to his/her discharge from the hospital shall not be taken into consideration in the calculation of the application period.*"

> "*The Commission shall be obliged to complete its works regarding the damaged and each of the applications within six months starting from the date of application. In compulsory circumstances, this period can be extended by three months by the Governor.*"

25. The relevant section of article 7 of the same Code with the side heading *"Damages To Be Compensated"* is as follows:

> "*The damages which can be compensated through settlement as per the provisions of this Code shall be as follows:*
>
> *...*
>
> *b) Damages incurred in circumstances of injury, disability and death as well as treatment and funeral expenses.*
>
> …

26. The relevant sections of article 9 of the Code in question with the side heading "*Payments to be made in circumstances of injury, disability and death*" are as follows:

"In circumstances of injury, disability and death, of the sum obtained as a result of the multiplication of the indicative number of (7000) by the coefficient applied to the salaries of civil servants;

…

e) To the heirs of the deceased, fifty times,

Cash payment shall be made.

The sum which will constitute the basis for the determination of the cash payment shall be determined by taking into account the applicable indicative and coefficient numbers at the time of payment approval by the governor or the Minister.

The provisions of the Turkish Civil Code numbered 4721 concerning inheritance shall apply regarding the transfer of the cash payment determined according to subparagraph (e) of paragraph one to heirs.

The Council of Ministers shall be authorized to increase by up to thirty percent the indicative number taken as the basis for the cash payment or to reduce it down to the legal threshold.

…

The principles and procedures pertaining to the form and sum of the cash payment, the determination of the degrees of injury and disability shall be determined via regulation."

27. Article 12 of the same Code with the side heading *"Negotiated settlement regarding the compensation of damages"* is as follows:

"*The Commission shall determine the net amount that will compensate the incurred damages by way of settlement after having taken into account the damage determined as per article 8 following the designation made directly or via an expert, the amount of cash payment in circumstances of injury, disability and death calculated as per article 9, the execution method as per article 10 and the sums to be deducted as per article 11. A copy of the draft negotiated settlement prepared by the Commission according to these principles shall be notified to the right holder along with the summons document.*

In the summons document, it shall be indicated that the right holder should come within thirty days to sign the draft negotiated settlement or send an authorized representative, that otherwise s/he will be considered not to have accepted the draft negotiated settlement and that his/her right to request his/her damage to be compensated by resorting to the legal remedy remains reserved.

In the event that the right holder or his/her authorized representative who comes upon summons accepts the draft negotiated settlement, this draft shall be signed by him/her or his/her authorized representative and the president of the commission.

In cases where the draft negotiated settlement is not accepted or is considered not accepted as per paragraph two, minutes of dispute shall be drafted and a copy of its shall be sent to the concerned.

In disputes which cannot be solved through settlement, the right of the concerned to resort to the legal remedy shall remain reserved."

28. Paragraph (2) of article 1 of the Code of Administrative Procedure dated 6/1/1982 and numbered 2577 with the side heading *"Scope and quality"* is as follows:

"*Written adjudication procedure shall apply in the Council of State, regional administrative courts, administrative courts and tax courts and the examination shall be carried out over the documents.*"

29. Paragraphs (3) and (4) of article 14 of the Code numbered 2577 with the side heading *"First examination on petitions"* are as follows:

"*(3) The petitions shall be examined by a rapporteur judge to be assigned by the head of the chamber in the Council of State, by the chief judge in the administrative and tax courts or a member to be assigned by him/her in terms of the following aspects in the following order:*

a) Competence and venue,

b) Breach of administrative authority,

c) Capacity,

d) Whether there is a final act to be performed that will be subject to the administrative action or not,

e) Statute of limitations,

f) Hostility,

g) Whether they comply with Articles 3 and 5 or not,

(4) If the petitions are considered to be contrary to the code in terms of these aspects, this matter shall be notified to the competent administration or court through a report. No report shall be arranged for the petitions of an action to be settled through a single judge and the provisions of Article 15 shall be applied by the related judge. The examination to be performed according to paragraph 3 and the procedures to be performed according to this paragraph and paragraph 5 shall be finalized within fifteen days at most following the date on which the petition is received."

30. Paragraphs (1) and (5) of article 20 of the Code numbered 2577 with the side heading *"Examination of files"* are as follows:

"*(1) The Council of State and administrative and tax courts shall perform all types of examinations pertaining to the cases which they are trying ipso facto. The courts can request from the parties and the other related authorities the sending of the documents that they deem necessary and the provision of all types of information within the specified period. It shall be obligatory that the decisions on this matter be fulfilled by those concerned within the period thereof. In the event that there are valid reasons, this period can be extended for once only.*

…"

"*(5) The files before the Council of State, regional administrative, administrative and tax courts shall be ascertained by their subjects by the Board of Presidents for the Council of State; by the High Council of Judges and Prosecutors for the other courts according to their status of priority or urgency stipulated in this Code and other codes, examined by the date, on which they come, by considering the priority actions to be proclaimed in the Official Gazette and finalized in the order that they are completed. The files which are not covered by these shall be finalized according to the order that they are completed and within six months at most following the date of completion.*"

31. Article 60 of the Code numbered 2577 with the side heading *"Notification actions and fees"* is as follows:

"*All types of the notification actions in relation to the Council of State and the regional administrative, administrative and tax courts shall be performed according to the provisions of the Notification Code. The fees in relation to the notifications to be made in this way shall be paid by the concerned in advance.*"

IV. EXAMINATION AND JUSTIFICATION

32. The individual application of the applicant dated 1/2/2013 and numbered 2013/1280 was examined during the session held by the court on 28/5/2014 and the following are ordered and adjudged:

A. Claims of the Applicants

33. The applicants alleged that their rights defined under article 17 of the Constitution were violated by stating that they had lost their child due to the fact that a bomb contraption could be left easily and was detonated in a place where there were numerous citizens, that the state did not fulfill its security service appropriately, that the administration was negligent and at fault in the incident, that, on the other hand, the material compensation ruled upon by the court in the full remedy action they had filed was not sufficient, that factors such as age, education status, economic and social circumstances and the support that was bereaved of were not taken into consideration during the calculation of the compensation, that the fact that a fixed compensation amount was determined for everyone was unlawful and that a decision should be made according to the principles of general compensation law.

34. The applicants alleged that their rights defined under article 17 of the Constitution were violated by stating that the trial conducted regarding the dispute was not concluded within a reasonable period and that the trial period in excess of seven years had turned into a form of moral torture for them.

35. The applicants alleged that the principle of equality defined under article 10 of the Constitution was violated by stating that Türk İntikam Tugayı (Turkish Revenge Brigade) shortly claimed responsibility for the bombing, that those who lost their lives in the incident in question were of Kurdish origin and that they were selected as the target for this reason and that the courts also practiced discrimination in this matter by way of ruling on the payment of far higher amounts in compensation cases filed for those who lost their lives in incidents resulting from the neglect of the administration in different regions.

36. The applicants alleged that their rights defined under article 40 of the Constitution were violated by stating that their requests and justifications were not evaluated by judicial instances during the stages of appeal and correction and their requests were dismissed through the same justifications.

B. Evaluation

1. In Terms of Admissibility

a. The Claim That Article 17 of the Constitution Was Violated

37. In paragraph (1) of article 46 of the Code numbered 6216, it is adjudged that only those whose current and personal right is directly affected due to the act, action or negligence that is claimed to result in the violation have the right to individual application. Due to the inherent quality of the right to life, regarding individuals who have lost their lives, an application pertaining to this right can only be lodged by the relatives of the deceased individuals, who have been aggrieved by the incident of loss of life, which has taken place. The applicants are the mother and father of the individual who lost her life in the incident,

which is the subject of the application. As a result, there is no deficiency in terms of the capacity of application (App. No. 2013/841, 23/1/2014, § 65).

38. It is seen that the part of the application lodged by the mother and father of Nazar Çetinkaya, which is to the effect that article 17 of the Constitution was violated is not clearly devoid of basis as per article 48 of the Code numbered 6216. As no other reason for inadmissibility has been observed, it should be decided that this part of the application is of an admissible nature.

b. The Claim That the Case Was Not Concluded in a Reasonable Period

39. The complaint of the applicants regarding the length of the trial is not clearly devoid of basis, nor is there any other reason of inadmissibility for this complaint. Therefore, it should be decided that this part of the application is admissible.

c. The Claim That the Principle of Equality Was Violated,

40. The applicants alleged that all those who lost their lives in the bombing in which their daughter lost her life were selected as the target due to the fact that they were of Kurdish origin and that the courts also practiced discrimination in this matter by way of ruling on the payment of far higher amounts in compensation cases filed for those who lost their lives in incidents resulting from the neglect of the administration in different regions, and that this situation violated the principle of equality defined under article 10 of the Constitution.

41. Paragraph three of article 148 of the Constitution is as follows:

"...In order to make an application, ordinary legal remedies must be exhausted."

42. Paragraph (2) of article 45 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 with the side heading *"Right to individual application"* is as follows:

"*All administrative and judicial remedies stipulated in the code in relation to the act, action or neglect which is claimed to have caused the violation must be exhausted before an individual application is lodged.*"

43. As per the aforementioned provisions of the Constitution and the Code, individual application to the Constitutional Court is "*a legal remedy of secondary nature*", and, as a rule, ordinary legal remedies must be exhausted prior to resorting to this remedy.

44. Respect for fundamental rights and freedoms is a principle which all of the organs of the state must abide by, and in the event that this principle is not abided by, administrative instances and the courts of instance that have venue must be applied to against the resulting violation.

45. Due to the secondary nature of the individual application, the applicant needs to primarily convey the claims that his/her fundamental rights and freedoms were violated to the administrative authorities and the courts of instance of venue in accordance with the due procedure, to submit the information and evidence that s/he has about this subject to these instances within due period and to pay required attention to following his/her case and application in this process. The claims pertaining to the violation of fundamental rights and freedoms, which are not brought forward and pursued in this manner before ordinary review mechanisms cannot be made the subject of an individual application before the Constitutional Court (App. No: 2012/1049, 16/4/2013, § 32).

46. In the incident, which is the subject of the application, it is seen that the applicants did not bring forward, at any stage of the trial, a claim to the effect that they were subjected to discrimination due to their ethnic origin.

47. As it is understood that the individual application was lodged without the claims of violation regarding this part of the application being brought forward by the applicants in the legal remedies envisaged for the administrative action, which is the subject of the violation claim, it should be decided that the claims regarding this part are inadmissible due to the fact that "*the remedies were not exhausted*".

d. The Claim That Article 40 of the Constitution Was Violated,

48. The applicants alleged that their right to an effective remedy defined under article 40 of the Constitution was violated by stating that the requests and justifications they brought forward during the case, appeal and correction stages were insistently not evaluated and that their requests were rejected with the same justifications.

49. Paragraph (2) of article 48 of the Code numbered 6216 with the side heading *"The conditions of admissibility and the examination of individual applications"* is as follows:

> *"The Court, ... can rule on the inadmissibility of applications, which are clearly devoid of basis."*

50. Under subparagraph (d) of paragraph (2) of article 59 of the Internal Regulation of the Constitutional Court with the side heading "*Individual application form and its annexes*", it is indicated that which of the rights under the scope of individual application has been violated for what reason, and succinct explanations pertaining to related justifications and evidence shall be indicated in the individual application form.

51. Although the liability to prove his/her claims regarding the incident by presenting evidence related to the claim of violation, which is the subject of the application, and his/her legal claims by means of making explanations as to which article of the Constitution was violated rests with the applicant, and even though a reference was made by the applicants to article 13 of the European Convention on Human Rights and accordingly to the provisions of article 40 of the Constitution, since it is understood that which request justifications were not evaluated during the trial process was not indicated and no concrete explanation or evidence was provided regarding how the provisions in question were violated, it should be decided that this part of the application is inadmissible due to it "*being clearly devoid of basis*" without examining it with a view to other conditions of admissibility (App. No. 2013/2103, 14/1/2014, § 40).

2. In Terms of Merits

a. The Claim That Article 17 of the Constitution Was Violated,

52. The applicants alleged that their rights defined under article 17 of the Constitution were violated by stating that they had lost their child due to the fact that a bomb contraption could be left easily and was detonated in a place where there were numerous citizens, that the state did not fulfill its security service appropriately, that the administration was negligent and at fault in the incident, that, on the other hand, the material compensation ruled upon by the court in the full remedy action they had filed was not sufficient, that factors such as age, education status, economic and social state and the support that was bereaved of were not taken into consideration during the calculation of the compensation, that the fact that a fixed compensation amount was determined for everyone was unlawful and that a decision should be made according to the principles of general compensation law.

53. In the opinion letter of the Ministry, it was indicated that the differences between local courts in evaluating cases or the law cannot be made the subject of an individual application unless the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (the Convention) are violated, that it is stipulated in paragraph four of article 148 of the Constitution and paragraph (6) of article 49 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 that matters which need to be taken into consideration during the legal remedy shall not be examined in examinations pertaining to an individual application, and in paragraph (2) of article 48 of the Code numbered 6216 that the Court can rule on the inadmissibility of applications which are clearly devoid of basis and that the Constitutional Court shall not intervene in courts' appraisal of evidence unless there is clear arbitrariness in this appraisal.

54. In his bill of answer, the applicant stated that the purpose and process of enactment of the Code numbered 5233 should be taken into consideration in undertaking evaluations pertaining to the compensation amount, that the aforementioned code was passed also with the purpose of compensating aggrievements experienced since 1987, that a fixed compensation amount was determined in order to conclude in a more practical and economical manner the numerous retroactive applications to be lodged as a natural result of this degree of retroaction of the provisions of the Code, that, however; these fixed amounts led to injustice in terms of damages, which occurred after the entry into force of the aforementioned Code, since that in actions for compensation filed prior to the enactment of the Code, the material compensation calculation was done by taking different criteria into account and that far higher amounts of compensation were thus ruled upon, that the problem did not stem from the different evaluation of the evidence by the local court, as the Ministry indicated, but from its lack of evaluating the evidence, the nature of the incident and the requests in any way.

55. The complaints of the applicants will be examined within the framework of the right to life guaranteed under article 17 of the Constitution.

56. Paragraph one of Article 17 of the Constitution with the side heading "*Inviolability and material and spiritual existence of the individual*" *is as follows:*

> *"Everyone has the right to life and the right to protect and improve their material and spiritual existence."*

57. An individual's right to life and his/her right to protect his/her material and spiritual existence are among the rights, which are closely connected, nontransferable and inalienable, and the state has positive and negative liabilities in this matter. As a negative liability, the state has the liability not to end the life of any individual within its jurisdiction intentionally and unlawfully; moreover, it has the positive liability to protect the right to life of all individuals within its jurisdiction against risks which can stem from the actions of public instances, other individuals or the individual himself/herself (App. No. 2013/841, 23/1/2014, § 72).

58. According to the principal approach adopted by the Constitutional Court regarding the positive liabilities assumed by the state within the framework of the right to life, in incidences of death, which occur under circumstances that can require the responsibility of the state, article 17 of the Constitution assigns to the state the duty of taking effective administrative and judicial measures, by making use of all the means at its disposal, which would ensure the due implementation of the legal and administrative framework established

in this matter with a view to protecting the individuals whose lives are endangered, and the halting and punishment of violations in relation to this right. This liability is applicable for all sorts of activities, be it public or not, in which the right to life can be endangered (App. No. 2013/841, 23/1/2014, § 73).

59. Within this framework, the state also has the liability to take general preventive security measures in order to protect the lives of individuals within its domain of sovereignty (for the judgments of the ECtHR in the same vein see *L.C.B v. United Kingdom*, 9/6/1998, §36; *Osman v. United Kingdom*, 28/10/1998, §115; *Belkıza Kaya and Others v. Turkey*, 33420/96 and 36206/97, 22/11/2005, §77). This requirement becomes rather more obvious in cases where the lives of individuals are under threat as a result of the actions of criminal nature of third persons.

60. However, one cannot expect the competent authorities to be forced into taking concrete measures to prevent all sorts of potential threats related to life from occurring (see *Tanrıbilir v. Turkey*, 21422/93, 16/11/2000, § 71; *Belkıza Kaya and Others v. Turkey*, 33420/96 and 36206/97, 22/11/2005, §78).

61. The positive liability should not be interpreted in such a way as to create an excessive burden on the authorities by taking into account especially the difficulties encountered by the police in fulfilling their duty, the difficulty of governing modern societies, the unpredictability of human behavior and the preference for the action to be fulfilled or the activity to be carried out by assessing priorities and resources. In order for the positive liability to emerge, once the existence of a real and imminent danger towards a certain individual's life is known or the existence of cases where this should be known is acknowledged by the authorities, it must be determined that the public instances failed in taking precautions so as to prevent this danger from occurring within reasonable limits and the authorities they possess with a view to this kind of a situation (for the judgments of the ECtHR in the same vein see *Keenan/v. United Kingdom*, 27229/95, 3/4/2001, §§ 89-92, and *A. and Others v Turkey*, 27/7/2004, 30015/96, § 44-45, *İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, 19986/06, 10/4/2012, § 28) (App. No: 2012/752, 17/9/2013, § 53).

62. This approach, which renders the accountability of the state within the framework of the positive liability to protect life conditional on certain circumstances, is also applicable to situations where the right to life of individuals is under a terror-related threat (see *Belkıza Kaya and Others v. Turkey*, 33420/96 and 36206/97, 22/11/2005; *Amaç and Okkan v. Turkey*, 54179/00 and 54176/00, 20/11/2007).

63. In the incident, which is the subject of the application, the daughter of the applicants, Nazar Çetinkaya lost her life on 12/9/2006 upon the detonation of a bomb placed in the proximity of the wall of Koşuyolu Park located on Koşuyolu Avenue in the center of Diyarbakır province. There is no dispute between the Ministry and the applicants regarding the fact that the incident in question took place as a result of a terrorist act.

64. With a view to the concrete case, in order to determine whether or not the state substantially fulfilled its positive liability to protect life, it should be demonstrated, within the framework of the circumstances of the case, whether or not the existence of a real and imminent risk to the effect that the bombing, which led to the loss of life of the applicants' daughter, would take place was known by the public authorities, or whether or not it was necessary that this be known; if it was known, whether or not the relevant measures were taken in order to prevent the danger in question within reasonable limits and the possessed authorities.

65. As it is also indicated under the section "Facts and cases" and based on the information and documents contained within the file, it is understood that it was also proven with the court decision, which was delivered after an effective criminal investigation and trial process, that the incident, as a result of which a total of ten people, including Nazar Çetinkaya, the daughter of the applicants, Abdullah and Nazlıcan Çetinkaya, who are also the children of the applicants as well as the sister and four nephews of Maide Çetinkaya, one of the applicants, lost their lives, fourteen people were injured and numerous houses, workplaces, vehicles and property were damaged as a result of the detonation, at approximately 21:10 on 12/9/2006, of a hand-made bomb placed inside a thermos in close proximity of the wall of Koşuyolu Park located on Koşuyolu Avenue in the center of Diyarbakır province, took place as a result of a terrorist act.

66. Although the province of Diyarbakır, where the explosion that led to the death of the applicants' daughter took place, is located in the Southeastern Anatolia Region, where terrorist incidents occur from time to time, the terror-related acts in the region have occurred, for the most part, in the rural part of the region, in the form of armed clashes between the members of the terrorist organization and the members of the armed forces or the explosion of mines laid by terrorists along roads. The incident, which is the subject of the application, occurred as a result of the detonation of the bomb contraption that was left in the city center of Diyarbakır province and at a location where people were found in considerable numbers. Therefore, even though the likelihood of predicting this kind of an act can be considered by the authorities as a faint possibility for the center of Diyarbakır province, it is natural that security measures of a certain degree are to be taken by the competent authorities in the province in question, given the overall sensitivity of the region vis-a-vis terrorism.

67. On the other hand, even in the event that security measures of a certain degree are taken, it is clear, given technological means that are becoming constantly more advanced and complicated, that it is very difficult for the authorities to spot in advance bomb contraptions, which can be hidden with various types of camouflage without attracting people's attention and can thus be easily placed in places with a high population density, and that, in addition, the likelihood of predicting these kinds of acts without a suspicious matter or intelligence is very slim.

68. In the concrete case, there is no doubt that the explosion in question was a stand-alone act of terrorism and that no notification or intelligence was provided to the competent authorities prior to the incident, and therefore the incident was of an unpredictable nature. Moreover, it is also seen from the statements of H.T., who is one of the perpetrators of the incident, to the effect that *he intended to carry out the act after midnight against police vehicles, that however, on the day of the incident, as he was strolling in the proximity of Koşuyolu, he went home to pick up the bomb after having seen police vehicles on duty in order to target the police officers there, that when he got back, he saw that the police officers had left, that since he was already on site he left the bomb at the location of the incident, that he could see the bomb contraption from the balcony of the house where he lived with his family, that after having seen a police vehicle pass by the bomb he saw that the bomb was no longer in place as he was waiting for another police vehicle to pass by and that he made a snap decision to detonate the bomb by pressing the button* that there was no clear decision as to the location and time where the bomb would be placed, that the incident unfolded spontaneously, and therefore, there was uncertainty and unpredictability even for the perpetrators.

69. Under the specified circumstances, it has been concluded that the competent authorities did not know, and could not be expected to know, that the incident, which is the subject of the application, was going to take place. Although it is debatable whether or not the presence of the thermos-shaped bomb contraption near the wall of the park would arouse the suspicion of the authorities, considering the fact that not a lot of time elapsed between the bomb being left by the perpetrator near the park and its detonation, it is clear that the

authorities cannot be held responsible for this reason. On the other hand, given the fact that there were police officers on duty at the site of the incident prior to the explosion, and that a police vehicle was on patrol at the site of the incident just before the explosion, as it is understood from the statements of the perpetrator H.T., it has been concluded that the general security measures, which can be expected from the authorities, were in place at the site of the incident.

70. As a result, it cannot be claimed that there was any negligence or fault, which would require the competent authorities to be held responsible for the explosion that led to the death of the applicants' daughter.

71. Even though no responsibility of the state with a view to its liability to protect was determined in the occurrence of the incident, which is the subject of the application, it was decided to pay 18.000,00 TL in material compensation to the applicants as a result of the incident, which is the subject of the application, as per the Code numbered 5233, which was drafted in line with the principle of social risk based on objective responsibility. However, the applicants, who did not accept the amount in question, filed a case with the request for the annulment of the decision and the payment of 30.000,00 TL in material compensation. The Administrative Court rejected the case on the ground that there was no unlawfulness in the action of payment, which had been fulfilled as per the legislation within the framework of the Code numbered 5233.

72. The compensation which was ruled upon to be paid to the applicants is determined according to the method stipulated in the Code, by Damage Assessment Commissions, based on the provisions of the Code on the Compensation of Damages Resulting From Terrorism and the Fight Against Terrorism numbered 5233. The Code in question was drafted, as it is indicated in its general preamble, with a view to the compensation of the material damages of individuals who have incurred damages due to the acts of terror or the activities conducted within the framework of fight against terrorism by the administration within the shortest period of time and by making use of the settlement remedy, without them having to resort to judicial remedy, without necessitating the relation of causality or the requirement of the administration's fault as per the principle of social risk acknowledged in scientific and judicial case law as an exception to the rule that the administration's legal responsibility depends upon the principle of fault.

73. Although it is alleged by the applicants that the compensation amount proposed to be paid to them by the Damage Assessment Commission within the framework of the Code numbered 5233 was determined in a fixed manner without taking into account various criteria applied at courts and that it was insufficient, the Constitutional Court cannot intervene in the compensation amount determined as per the Code 5233, which grants the possibility of the compensation of damages stemming from terrorism by the concerned without filing a case, and the manner in which this amount is calculated as long as it ensures a certain level of satisfaction.

74. In the concrete case, it is observed that there is no clear disproportion between the amount of the material compensation determined as per the Code numbered 5233 and the circumstances of the case and the damages incurred by the applicants.

75. On the other hand, the calculation of compensation, which is undertaken in actions for compensation (compensation for the loss of support) filed based on the principles of responsibility of fault, absolute liability or social risk, rests upon the principle of actualizing the potential revenue the late individual would have generated in the future and

especially in the event that the late individual is a child, the calculation of damages is based, for the most part, on hypothetical assumptions, and it has been determined that the compensation amounts ruled upon to be paid in actions for material compensation filed, as per the principle of the administration's fault or social risk, by relatives of small children who have lost their lives in the acts of terrorism do not vary greatly and that, contrary to the claims of the applicants, the amounts in question are compatible with the amount that was proposed to be paid to them (See the 10th Chamber of the Council of State, M.2002/1160, D.2004/160, D.D. 14/1/2004; M.2002/578, D.2004/161, D.D. 14/1/2004; M.2005/803, D.2007/4649, D.D. 10/10/2007; M.2007/8106, D.2010/5562, D.D. 22/6/2010; M.2009/5798, D.2012/5746, D.D. 16/11/2012).

76. For the aforementioned reasons, it should be decided that the applicants' right to life, which is enshrined in article 17 of the Constitution, was not violated.

b. The Claim That The Case Was Not Concluded in a Reasonable Period

77. Although it is claimed by the applicants that their right defined under article 17 of the Constitution was violated by indicating that the failure of completion within a reasonable period of the trial pertaining to the case they filed on 17/7/2007 had turned into moral torture for them, the Constitutional Court is not bound by the judicial qualification of the events made by the applicants. As a result, the claims of the applicants in this sense have been evaluated by the Court to be within the framework of the right to a fair trial guaranteed under article 36 of the Constitution.

78. In the opinion of the Ministry of Justice, it was indicated that it was not deemed necessary to submit an opinion in relation to the claim that the right of the applicant to trial within a reasonable period was violated by referring to the decisions of the Constitutional Court pertaining to the right to trial within a reasonable period.

79. According to the provisions of paragraph three of article 148 of the Constitution and paragraph (1) of article 45 of the Code numbered 6216, in order for the merits of an individual application lodged to the Constitutional Court to be examined, the right, which is claimed to have been intervened in by public power, must fall within the scope of the European Convention on Human Rights (the Convention) and the additional protocols to which Turkey is a party, in addition to it being guaranteed in the Constitution. In other words, it is not possible to decide on the admissibility of an application, which contains a claim of violation of a right that is outside the common field of protection of the Constitution and the Convention.

80. Paragraph one of article 36 of the Constitution with the side heading "*Freedom to claim rights*" is as follows:

> *"Everyone has the right to make claims and defend themselves either as plaintiff or defendant and the right to a fair trial before judicial bodies through the use of legitimate ways and means."*

81. Paragraph four of article 141 of the Constitution with the side heading of *"Publicity of hearings and the need for verdicts to be justified"* is as follows:

> "*It is the duty of the judiciary to conclude cases with minimum cost and as soon as possible.*"

82. The relevant part of article 6 of the Convention with the side heading *"Right to a fair trial"* is as follows:

"*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fairand public hearing within a reasonable time by an independentand impartial tribunal established by law.*"

83. The sub-principles and rights which stem from the text of the Convention and the judgments of the ECtHR and are concrete manifestations of the right to a fair trial are, in fact, also the elements of the right to a fair trial stipulated under article 36 of the Constitution. In many decisions where it carried out the examination as per article 36 of the Constitution, the Constitutional Court refers, within the scope of article 36 of the Constitution, to the principles and rights that are either contained within the wording of the Convention or incorporated in the right to a fair trial through the case law of the ECtHR by interpreting the relevant provision in the light of article 6 of the Convention and the case law of the ECtHR (App. No: 2012/13, 2/7/2013, § 38).

84. The right to trial within a reasonable period, which serves as the basis for the concrete application, is also included within the scope of the right to a fair trial as per the principles stipulated above, and it is also clear that article 141 of the Constitution, which stipulates that it is the duty of the judiciary to conclude cases with minimum cost and as soon as possible, should also be taken into consideration when assessing the right to trial within a reasonable period due to the principle of integrity of the Constitution (App. No: 2012/13, 2/7/2013, § 39).

85. As per article 36 of the Constitution and article 6 of the Convention, disputes pertaining to civil rights and liabilities need to be resolved within a reasonable period. As it is seen that the case, which is the subject of the application, relates to a dispute that concerns the compensation of the damages incurred by the applicants due to the death of their daughter as a result of the explosion of a bomb placed in the proximity of Diyarbakır Koşuyolu Park, there is no doubt that the concrete trial activity, which aimed the solution of this issue and was performed according to the procedural provisions contained within the Code numbered 2577, corresponds to a trial that concerns civil rights and liabilities.

86. The objective of the right to trial within a reasonable period is the protection of the parties from material and moral pressure and problems that they would be subject to as a result of a lengthy trial activity, and since the requirement of paying due attention in the solution of the judicial dispute cannot be neglected, whether or not the trial duration is reasonable should be evaluated individually for each application (App. No:2012/13, 2/7/2013, § 40).

87. Matters such as the complexity of the case, the number of instances in the trial, the attitude of the parties and the relevant authorities during the trial period and the nature of the applicant's benefit in the speedy conclusion of the case are criteria that need to be taken into consideration in determining whether or not the duration of a case is reasonable (App. No: 2012/13, 2/7/2013, § 41–45).

88. However, none of the indicated criteria is conclusive on its own regarding the evaluation of reasonable period. Which matter has been more influential in terms of the delay in the trial needs to be ascertained by determining separately all the delay periods within the trial process and assessing the total impact of these criteria (App. No: 2012/13, 2/7/2013, § 46).

89. In order to determine whether or not the trial activity was concluded within a reasonable period, the beginning and ending dates, which can change according to the type of the dispute, need to be determined first.

90. In the evaluation of reasonable period pertaining to disputes concerning civil rights and liabilities, although the beginning of the period is, as a rule, the date on which the trial process that will conclude the dispute starts to run, or, in other words, the date on which the case is filed, in certain special circumstances, an earlier date on which the dispute emerged can be accepted as the beginning date by taking into account the nature of the initiative. (App. No:2012/1198, 7/1/2013, § 45). A similar situation applies to the concrete application, and the beginning date of the duration that will be taken into account in the evaluation of reasonable period is the date of 13/11/2006 when the applicants applied to the Damage Assessment Commission with a view to the compensation of the damages, which they claim to have incurred due to the passing away of their daughter.

91. In the event that the date on which the case is filed and the date on which the temporal jurisdiction of the Constitutional Court to examine individual applications begins are different, the period to be taken into account is not the period that has elapsed since 23/9/2012, but the period that has elapsed since the beginning date of the dispute (App. No: 2012/13, 2/7/2013, § 51).

92. The ending date of the period is, most of the time, the date of conclusion of the trial in such a way as to also cover the enforcement stage, and for the application in question, this date is the date of 24/9/2012, which is the date of the decision of the 15th Chamber of the Council of State numbered M.2012/6891, D.2012/5738 pertaining to the dismissal of the correction request (App. No. 2012/13, 2/7/2013, § 52).

93. In the concrete application, it is seen that the applicants applied to the Damage Assessment Commission on 13/11/2006 with a view to the compensation of the damages they incurred as a result of the passing away of their daughter due to the bombing act and that a decision was delivered by the Commission in relation to their request on 18/5/2007, after approximately six months and five days.

94. Under paragraph three of article 6 of the Code numbered 5233, it is adjudged that the Commission must complete its work pertaining to all applications to be filed by the damaged within six months starting from the date of application, that this period can be extended for three months by the governor in compulsory circumstances, and in the incident, which is the subject of the application, it is seen that the compensation request of the applicants was concluded by the Commission within the indicated period.

95. It is understood from the examination of the trial process, which is the subject of the application, that an application was filed by the applicants to the Damage Assessment Commission for the compensation of the damage they incurred due to the passing away of their daughter, Nazar Çetinkaya, in the explosion that took place in the proximity of Diyarbakır Koşuyolu Park, and that a case was filed against the Governor's Office of Diyarbakır on 17/7/2007 with the request of annulling the action pertaining to the payment of 18.000,00 TL to them and the compensation of 30.000,00 TL. of material and 70.000,00 TL. of moral damages following the minutes of dispute drafted after their refusal of the amount that was proposed to be paid by the Commission.

It is seen that the first examination of the file was carried out by the Court on 7/8/2007 and that the trial was continued after having detected no problems in this matter and that a

decision was delivered concerning the applicants' request for legal aid, that the actions of notification to the parties were carried out, that no defense was provided by the defendant administration and that the file was thus consummated, and that the petition was dismissed with the decision of the Court dated 23/11/2007 and numbered M.2007/1107, D. 20071619 with the justification that separate cases needed to be filed for the requests of material and moral compensation. It is understood that the applicants, to whom the decision pertaining to the dismissal of the petition was notified on 13/2/2008, filed a new case on 13/3/2008 with the request of annulment of the action that is the subject of the case and 30.000,00 TL in material compensation and that the first examination was conducted within the legal period of fifteen days in the case that was heard under the Court's registry number of M.2008/876, that a new decision was delivered concerning the request for legal aid and that the consummation of the file was ensured as of 23/8/2008 by means of abiding by the period for the response and the second response, that the investigation file was requested from the Chief Public Prosecutor's Office of Diyarbakır with the interim decision dated 26/6/2009 by inquiring the outcome of the investigation that had been conducted regarding the death, which is the subject of the case, approximately ten months after this date, that the interim decision was renewed on 30/12/2009 upon the failure of the Chief Public Prosecutor's Office of Diyarbakır to provide any answer to the interim decision and that as the requirement of the interim decision, which was notified to the relevant institution on 20/1/2010, a copy of the indictment was submitted to the Court on the same date, that the file was subsequently concluded by the Court of first instance on 5/3/2010.

96. Regarding the file, which is understood to have been sent by the Court of first instance by drafting the appeal first examination minutes within its due period to the Council of State on 14/6/2010 for appeal examination after the decision was appealed and to have been registered at the appeal instance on 18/6/2010, a decision of approval was delivered by the 15th Chamber of the Council of State on 14/3/2012, approximately after one year and nine months. It is understood that the request for correction brought forward by the applicants upon the notification of the decision to the parties on 1/6/2012 was sent by the Court to the Presidency of the Council of State on 10/7/2012, that regarding the file, which was registered on 13/7/2012, a decision of dismissal of the request of correction was delivered by the 15th Chamber of the Council of State on 24/9/2012, approximately after two months and ten days.

97. It is understood that the trial activity, which was concluded with this decision, lasted five years two months and seven days in total.

98. It is seen from the examination of the relevant trial documentation that in the case, which was filed on 17/7/2007, the first examination minutes were drafted by the court of first instance within the period stipulated under article 14 of the Code numbered 2577, that the periods that elapsed during the notification actions and the appeal and correction stages, in the process of referring the file to the Council of State were generally reasonable, that the drafting of the reasoned decision was completed within a reasonable period, that, however, in the first examination to be carried out as per article 14 of the Code numbered 2577, despite the fact that the actions to be carried out in the event that an unlawfulness was observed in terms of the matters being examined should have been concluded within fifteen days starting from the date on which the petition was received at the latest, in the first examination carried out in the case filed on 17/7/2007, no violation of the matters stipulated under article 14 in question was observed and a decision was delivered regarding the request of legal aid by pursuing the trial, that the notification actions were taken with a view to the consummation of the file and that a decision was delivered to dismiss the petition, which is a decision that must be delivered during the first examination phase and within a period of fifteen days, approximately four

months after the filing of the case, that the actions that had been carried out in the preceding period of four months were repeated upon the renewal of the case on 13/3/2008 after this decision, that in the file, which was consummated on 23/8/2008 and should have been concluded within six months starting from this date at the latest as per article 20 of the Code numbered 2577, an interim decision was delivered approximately ten months after the date of consummation, that no time limitation was imposed on the institution in question for the fulfillment of the interim decision despite the fact that it is stipulated under article 20/1 of the Code numbered 2577 and that the decision was repeated approximately after six months upon the lack of response to the interim decision and that it was notified to the institution in question after twenty days.

99. It is understood from the evaluation of the processes involved in the legal remedy examination that upon the appeal of the decision of the court of first instance, a decision of approval was delivered approximately one year and nine months after when the date of registry at the appeal instance is taken into account, that after the request for correction brought forward by the applicants, the request for correction was evaluated and its dismissal was decided upon after a total of two months and ten days, that the period, which elapsed from the date of first registry of the file at the Presidency of the Council of State to the date on which the request for correction was dismissed, was approximately two years and three months.

100. The delays that are to be attributed to the competent authorities in the prolongation of the trial process can stem from the lack of proper care to the matter of speedily concluding the trial, they can also result from structural problems and lack of organization. Indeed, article 36 of the Constitution and article 6 of the Convention attribute the responsibility of organizing the judicial system in such a way as to fulfill the conditions of a fair trial including the liability of the courts to conclude cases within a reasonable period (App. No: 2012/13, 2/7/2013, § 44).

101. Within this framework, the responsibility of competent authorities becomes relevant in the event that reasonable period is exceeded in trials as a result of the structure of the judicial system, disruptions during routine duties at the clerk's office, delays in drafting of judgment, sending a file or a document from one court to another and assigning rapporteurs, insufficiency of the number of judges and personnel and heavy workload (App. No:2012/1198, 7/11/2013, § 55).

102. When the trial process, which is the subject of the application, is evaluated, it is understood that especially in the processes of delivering the decision of dismissal of the petition by the Court of first instance, issuing the interim decision pertaining to the inquiry into the investigation concerning the death incident, which is the subject of the application, and the sending of the response to this interim decision to the Court, delays were experienced due to the failure of the competent authorities to show sufficient diligence in procedural actions pertaining to the trial and that the delay periods, which correspond to four months, ten months and six months, respectively, had a dominant impact on the prolongation of the trial.

103. On the other hand, although it is seen that the total period of two years and three months, which elapsed at the appeal and correction stages, also partly led to a delay in the trial activity, it is understood, in the light of the observations mentioned above, that the stages in question stemmed especially from the workload and lack of organization resulting from the structure of the judicial system. However, when the obligation of organizing the judicial system in such a way as to fulfill the conditions of a fair trial including the liability of the courts to conclude cases within a reasonable period as per article 36 of the Constitution and article 6 of the Convention is taken into consideration, the structural and organization-related

deficiencies that exist within the judicial system cannot be accepted as excuses for the failure to conclude the trial activity within reasonable period.

104. No special impact of the applicants' attitude on the prolongation of the trial was detected.

105. When a holistic approach is adopted towards the case within the framework of these observations, despite the fact that the dispute, which is the subject of the application, concerns the compensation of the material damages incurred by the applicants as a result of the passing away of their daughter due to the detonation of a bomb left in the proximity of Diyarbakır Koşuyolu Park, that the calculation of the material compensation does not require examination by expert and is based on a simple method stipulated in the relevant Code and that therefore, the subject of the case does not contain any complexity, it has been concluded that there is an unreasonable delay in the trial activity, which is the subject of the application, that lasted five years ten months and eleven days.

106. For the aforementioned reasons, it should be decided that the applicants' right to trial within a reasonable period guaranteed by Article 36 of the Constitution was violated.

3. In Terms of Article 50 of the Code Numbered 6216

107. The applicants requested material and moral compensation to be ruled upon in the event that the violations of rights they claim are determined by the Court.

108. In the opinion of the Ministry of Justice, no opinion was expressed as regards the request of compensation of the applicant.

109. Paragraph (2) of article 50 of the Code numbered 6216 with the side heading *"Decisions"* is as follows:

> *"If the determined violation arises out of a court decision, 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 interest in holding the retrial, the 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 decision 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 decision of violation."*

110. Although a request for material and moral compensation was filed by the applicants and it has been determined that article 36 of the Constitution was violated in the application in question, since it is understood that there is no casual relation between the violation that has been determined and the material damage that is claimed, it should be decided to dismiss the applicant's request for material compensation.

111. When considering the trial period of approximately five years and ten months pertaining to the dispute, to which the applicants were a party, it should be decided that discretionary moral compensation of 4.150,00 TL be paid to the applicants in exchange for their moral damages, which cannot be remedied with the mere determination of violation, due to the length of the applicants' trial activity.

112. It should be decided that the trial expenses of 1,698.35 TL in total composed of the fee of 198.35 and the counsel's fee of 1,500.00 TL, which were made by the applicants and determined in accordance with the documents in the file, be paid to the applicant.

V. JUDGMENT

In the light of the reasons explained, it was decided **UNANIMOUSLY** on 28/5/2014 that;

A. The applicants'

1. Claim as to the point that their right guaranteed under Article 17 of the Constitution was violated is ADMISSIBLE,

2. Claim as to the point that the right to trial within a reasonable period guaranteed under Article 36 of the Constitution was violated is ADMISSIBLE,

3. Claim as to the point that the principle of equality guaranteed under Article 10 of the Constitution was violated is INADMISSIBLE as "*legal remedies were not exhausted*",

4. Claim as to the point that the right to effective remedy guaranteed under Article 40 of the Constitution was violated is INADMISSIBLE as "*it is clearly devoid of grounds*",

B. The applicants'

1. Right to life guaranteed under Article 17 of the Constitution WAS NOT VIOLATED,

2. Right to trial within a reasonable period guaranteed under Article 36 of the Constitution WAS VIOLATED,

C. A moral compensation of 4.150,00 TL be PAID separately to each of the applicants,

D. The other requests of the applicants pertaining to compensation be DISMISSED,

E. That the trial expenses of 1,698.35 TL in total composed of the fee of 198.35 and the counsel's fee of 1,500.00 TL, which were made by the applicants be PAID TO THE APPLICANTS,

F. That the payments be made within four months as of the date of application by the applicants to the Ministry of Finance following the notification of the decision; that in the event that a delay occurs as regards the payment, the legal interest be charged for the period that elapses from the date, on which this period comes to an end, to the date of payment.

President	Member	Member
Serruh KALELİ	Zehra Ayla PERKTAŞ	Hicabi DURSUN

Member	Member
Erdal TERCAN	Zühtü ARSLAN