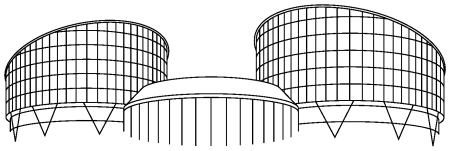

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KARATAŞ AND OTHERS v. TURKEY

(Application no. 46820/09)

JUDGMENT

STRASBOURG

12 September 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 Karataş and Others v. Turkey,

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

Julia Laffranque, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 11 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 46820/09) 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 ten Turkish nationals, Ms Güler Karataş, Ms Pınar Şafak Karataş, Mr Berdan Ulaş Karataş, Mr Bıra Karataş, Ms Kumru Karataş, Ms Perince Ataş, Ms Nebahat Ateş, Ms Serincan Çiçek, Ms Yıldız Deniz and Mr Rıza Çiçek ("the applicants"), on 19 August 2009.

2. The applicants, who had been granted legal aid, were represented by Mr Hüseyin Aygün and Mr Cihan Söylemez, lawyers practising in Tunceli. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that the killing of their relative Mr Bülent Karataş by soldiers and the injury caused to Mr Rıza Çiçek ("the tenth applicant"), by the same soldiers had been in breach of Article 2 of the Convention.

4. On 21 September 2010 the complaints concerning the killing of Bülent Karataş, the wounding of the tenth applicant and the alleged ineffectiveness of the investigation conducted by the domestic authorities into the incident were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1984, 2002, 2005, 1935, 1948, 1973, 1983, 1973, 1969 and 1976 respectively and live in Tunceli. The first applicant is the wife, the second and third applicants are the children, the fourth and fifth applicants are the parents and the sixth to ninth applicants are siblings of Mr Bülent Karataş, who was killed on 27 September 2007. The tenth applicant was injured in the same incident.

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

A. The incident

7. On 27 September 2007 at 12.35 p.m. first lieutenant İ.Y., who was the commander of the gendarmerie station in Yenibaş village in south-east Turkey, was informed by radio that an armed clash had taken place at a location approximately six kilometres away from his station. The clash had been between members of "the terrorist organisation" and military units from the 51st Motorised Infantry Brigade, which is based in the nearby town of Hozat. The first lieutenant informed the Hozat public prosecutor and the Hozat gendarmerie command about the incident before setting off, on foot, to the scene of the incident together with a number of gendarmes under his command. While they were on their way the first lieutenant was informed by radio that "there were [a number of] injured persons" at the scene of the incident. They then encountered a villager on his tractor and asked him to take them to the scene of the incident. On their arrival at the scene at 3 p.m. they were asked to assist two injured persons, whom they loaded onto the trailer of the tractor and took to a place from which a helicopter picked them up and took them to the military hospital in Elazığ.

8. The first lieutenant and his gendarmes, who were informed that the Hozat public prosecutor and crime-scene investigators from the Hozat gendarmerie would be coming to the scene of the incident, took the necessary security measures in the area. However, since it was getting dark and as a result of security concerns, the prosecutor did not visit the area that day and instead instructed the gendarmes to secure any objects found in the area. A search was then conducted during which the gendarmes found, amongst other things, a horse and its saddle, a motorbike and sidecar, a chainsaw, a grey jumper, a black T-shirt, a brown cardigan, a red hat, an old and torn sports shoe, a video camera and a rucksack. These were put on the trailer and taken to the Yenibaş gendarmerie station at 7.30 p.m. the same day. The gendarmes returned to the scene of the incident at 12.50 a.m. on

28 September 2007 and awaited the Hozat public prosecutor and the crime-scene investigators, who arrived in a helicopter at 8.45 a.m.

B. The investigation conducted by the civilian prosecutor

9. The Hozat public prosecutor prepared his report on his visit to the area on 28 September 2007. The gendarmes who were guarding the area showed the prosecutor the exact place where the soldiers from the 51st Motorised Infantry Brigade had taken cover the previous day and told the prosecutor what they had been told by the soldiers. According to the information given to the prosecutor, "two terrorists" had been walking along a nearby country lane and had been warned by the soldiers to stop. However, the terrorists had failed to obey the soldiers' orders and had started running down the hill towards a river bed. The soldiers had fired warning shots in the air and immediately afterwards the soldiers had been fired at from the river bed. The soldiers had then returned fire.

10. The prosecutor went to the exact spot in a country lane where the soldiers had been the previous day when they opened fire, where he found six spent bullet cases discharged from G-3-type automatic rifles and six spent bullet cases discharged from BKC-type automatic rifles. While walking down the hill which the "two terrorists" had run down the previous day towards the river bed, the prosecutor noticed that it was very steep and densely covered with trees; from a distance of 35 metres it was impossible to see the top of the hill where the soldiers had been standing the previous day. As the prosecutor walked down the hill, he noted bullet holes in the trees and 35 metres further on noted blood stains on the ground and ordered samples to be taken. After following the trail of blood stains for 172 metres he arrived at the place where the tenth applicant had been found by the soldiers the previous day. The prosecutor continued walking for a further 143 metres and arrived at the spot where the applicants' relative Bülent Karataş had been found. There were more extensive blood stains in the two places where the men had been found.

11. After crossing the river bed and walking for 35 metres the prosecutor found eight spent bullet cases discharged from Kalashnikov-type automatic rifles. The distance between the place where the bullet cases were found and the country lane where the soldiers had been standing was 120 metres. After another 54 metres the prosecutor noted two large pits in the ground in which there were supplies of food in plastic bags, batteries and power cables, which the prosecutor instructed the soldiers to destroy. On his way back up the hill the prosecutor noted more holes in the trees caused by bullets fired from the direction of the river bed. The findings described above were photographed and videoed during the course of the prosecutor's visit.

12. In the meantime, on the evening of 27 September 2007 a post mortem examination was carried out in Elazığ on the body of the applicants'

relative Bülent Karataş. He was formally identified by a relative who also told the authorities that he had gone to that place to collect wood.

13. The doctors who conducted the examination noted that Bülent Karataş's body had been stripped of its clothes except for his underpants. In a plastic bag placed next to the body the doctors found a single sports shoe and a pair of blood-stained jeans which had been cut off when they had been removed from the body. There was nothing in the pockets of the jeans. A prosecutor from Elazığ was present during the examination and placed the jeans and the shoe in a bag as evidence. The prosecutor also instructed a police chief to secure the clothing of the tenth applicant, who at that time was being treated in the intensive care unit.

14. Examining Bülent Karataş's injuries, the doctors noted that there was a bullet entry hole on the upper left arm and a corresponding exit hole on the other side of the arm. Another bullet had entered his body on the upper lateral of the left femur and exited the body. A third bullet had entered the body on the left scapula, travelled through an area near the vertebrae and exited the body. An abrasion measuring 6.5 x 1.5 centimetres on the anterior superior iliac spine had been caused by a fourth and final bullet. The doctors observed that all the bullets had entered the body through clothed areas but noted that there was no clothing such as a vest or a shirt in the bag which could be examined with a view to establishing the distance from which he had been shot. In their report the doctors also noted a number of "fresh and superficial" abrasions and a broken rib. The doctors established the cause of death as hypovolemic shock caused as a result of the laceration of the left great saphenous vein.

15. According to a second medical report pertaining to the examination of the tenth applicant, he had been shot in the upper left chest by a bullet which had exited his body from behind the left arm.

16. On 2 October 2007 the Hozat public prosecutor took a statement from the tractor driver who had assisted the gendarmes on 27 September 2007 (see paragraph 7 above). He told the prosecutor that he and the gendarmes had driven to a location "which was a dangerous area and was therefore avoided by the locals". At that place the gendarmes had loaded onto his trailer "an injured person" whom he had then taken to another location, where he had been transferred to a helicopter.

17. On 2 and 3 October 2007 the prosecutor questioned six military personnel from the 51st Motorised Infantry Brigade who had taken part in the operation. One of the six military personnel was first lieutenant A.S.Ç., who had been in charge of the five other soldiers questioned by the prosecutor the same day.

18. First lieutenant A.S.Ç. told the prosecutor that on the day of the incident he and his soldiers had gone to the area for reconnaissance duties. The area in question was a place where members of the terrorist organisation had been carrying out intensive activities. The reason for their

presence in that place on that day had been to look for members of the terrorist organisation who, according to the intelligence in their possession, had been transporting food supplies and other equipment to their hiding places before the onset of winter. At 3 a.m. they had seen an abandoned motorbike and sidecar and had taken cover in order to observe it. At midday they had heard a horse and a number of people but had been unable to see them. Two persons had then approached the motorbike and the soldiers had asked them to stop. However, they had failed to obey the warning and had started running down the hill. The soldiers had fired in the air and repeated their warnings and at that moment fire which sounded as though it was from a Kalashnikov-type rifle had been opened in the direction of the soldiers from the river bed. The soldiers had then returned fire in the direction of the river bed.

19. After a short while the first lieutenant had asked his soldiers to stop firing and they had walked towards the river bed where they had found an injured person whom they later identified as the tenth applicant Rıza Çiçek. They had left behind some of the soldiers to guard the tenth applicant and to provide him with first aid and continued their search. After searching for one and a half to two hours they had found the second person, who was later identified as the first applicants' relative Bülent Karataş. He was also injured and was hiding under a rock approximately 100-150 metres away from the tenth applicant. They had provided first aid to Bülent Karataş as well, requested that a helicopter be sent to the area and then transported the tenth applicant on a makeshift stretcher and Bülent Karataş on the trailer of the tractor to an area approximately one and a half to two kilometres away, from where the two men had been picked up by helicopter. They had then returned to the scene of the incident and conducted a search during which they had found two pits in the ground containing food supplies. At dawn the following day they had continued their search and found eight to ten spent cartridges discharged from Kalashnikov rifles. They had then secured the area and subsequently the prosecutor and the crime scene investigators had arrived at 8.30 a.m.

20. The other five military personnel gave similar statements to the prosecutor.

21. On 9 October 2007 the Hozat public prosecutor took a statement from M.Ç., a military officer who worked at the Yenibaş gendarmerie station (see paragraph 7 above). M.Ç. told the prosecutor how he, together with thirty-nine other soldiers and their commander, first lieutenant İ.Y., had gone to the area where the two persons had been injured. He added that when they were taking the motorbike back to their station on the trailer (see paragraph 8 above) they had encountered four persons on the road who asked them to stop. The tractor driver had told him that one of the four was the brother of Bülent Karataş. M.Ç. had told the driver not to stop because he considered that it was not safe to do so. He added that he knew that

Bülent Karataş's brother was a farmer in the area and did not think that he and the three others had been waiting on the road specifically for them; in his opinion the brother had asked them to stop because he had recognised Bülent Karataş's motorbike on the trailer.

22. On 10 October 2007 the prosecutor questioned B.A., a villager who had been working in the fields on the day of the incident together with his fellow villager, the driver of the tractor. B.A. confirmed that a number of gendarmes had arrived in the field and asked his friend to assist them with his tractor. After his friend and the gendarmes had left he, his wife and another villager had stayed behind. At around 4 p.m. the same day, while they were waiting for the tractor to return, Bülent Karataş's brother had arrived on his motorbike and asked them whether they had seen his brother Bülent or the tenth applicant who, he said, had not returned to their homes the previous evening. When they had told him that they had not seen the two men, he had left on his motorbike in the direction of his village.

23. On 15 October 2007 the Hozat public prosecutor took a formal decision to secure as evidence the objects found by the gendarmes during their search at the scene of the incident. The prosecutor's decision was endorsed by the Hozat Magistrates' Court the same day.

24. On 6 November 2007 the tenth applicant was questioned by the Tunceli prosecutor as a "suspect". He told the prosecutor that he used to live in Istanbul but after losing his job he had moved back to his home town of Hozat. His deceased cousin Bülent Karataş, who had been a bee-keeper, had told him that he had seen a bee colony in a field and asked him to accompany him there to collect it. On the morning of 27 September 2007 they had left on the motorbike and the horse and had put a chainsaw in the sidecar of the motorbike. After their arrival they had left the road, collected the bee colony from a tree and taken it on horseback to the motorbike at around 11 a.m. At that moment a group of eight or nine soldiers had appeared and asked them what they were doing. They had shown the soldiers their identity cards and told them that they were in the area looking for bees. The soldiers had told them to leave, as they were in a "terrorist area". Bülent had told the soldiers that they would finish their job and then leave. The soldiers had then left and gone into the forest but approximately twenty minutes later they had returned and asked to see their identity cards again, before asking them to take off their jumpers. He and Bülent had then walked away approximately ten metres and taken their jumpers off. On the orders of the soldiers they had then lain on the ground. The officer in charge of the soldiers had walked towards them and told them to get up and run away. Immediately after he had stood up and started running he had heard a rifle being cocked. Two rounds of shots had then been fired in his direction, followed by a few more rounds of fire. Bülent had at that time been running in another direction. The tenth applicant added that he had rolled down the hill which was next to the road. He had been shot in his chest and arm.

Within minutes the soldiers had encircled him and he had started begging the soldiers not to kill him. One of the soldiers had then radioed his commander and said that he did not want to kill him. The commander had then replied, over the radio, "give him first aid and take him to hospital". He had then been taken to the hospital in Elazığ.

25. The tenth applicant added that although he had not seen it personally, he had heard on the soldiers' radio that Bülent had been shot in the foot. Bülent had not been taken to hospital with him and it was only after he was put in prison that he found out that Bülent had died. He maintained that their reason for going to the area was to collect bee colonies. As he was a nature-lover, he had taken his camera with him. He denied that they had gone to the area to help terrorists; he had never had anything to do with terrorism.

26. On 9 November 2007 the tenth applicant was brought before the Hozat Magistrates' Court, which ordered his detention on remand in prison pending institution of criminal proceedings against him for terrorism-related offences. It is apparent from this order that a decision was taken two days after the incident to classify the file relating to the investigation into the actions of the soldiers as confidential in order to prevent the applicants from having access to it.

27. During the hearing the tenth applicant told the Hozat Magistrates' Court that he stood by what he had already told the prosecutor. His lawyer told the court that no weapons had been found in the area and that it was not possible to link the spent bullet cases found in the area to his client; it was possible that those spent bullets had been left there from another incident. The lawyer also stated that according to the doctors who conducted the post mortem (see paragraph 14 above), forensic examinations of the men's clothing would be needed in order to establish the distance from which his client and Bülent Karataş had been shot; however, as noted by the prosecutor, the clothing was missing.

28. On 4 December 2007 the eight bullet cases found in the area (see paragraph 11 above) were subjected to ballistic examination and it was established that they had been discharged from the same rifle.

29. The single sports shoe and the pair of blood-stained jeans found in the bag during Bülent Karataş's post mortem examination, as well as a pair of shoes and a track-suit bottom which apparently belonged to the tenth applicant, were analysed at the Forensic Medicine institute on 31 January 2008. It was established that the blood samples taken from near the river bed by the prosecutor on 28 September 2007 (see paragraph 10 above) belonged to the tenth applicant, Bülent Karataş and a third person.

30. On 31 March 2008 the Malatya public prosecutor filed an indictment with the Malatya Assize Court, charging the tenth applicant with the offence of aiding and abetting a terrorist organisation. The prosecutor alleged that the tenth applicant and the applicants' deceased relative Bülent Karataş had

been supplying food and other materials to a terrorist organisation on 27 September 2007 when they had come across a group of soldiers with whom they had had an armed clash. In the indictment the prosecutor also alleged that statements taken from two of the applicants, namely Güler Karataş and Bıra Karataş, as well as statements taken from two other persons, namely Özgür Bozkaya (the son of the applicant's' deceased relative Bülent Karataş) and Zeynep Çiçek (the tenth applicant's mother), indicated that the tenth applicant had committed the offence in question. The prosecutor also listed in his indictment as evidence the food supplies and the other materials found in the two pits (see paragraph 11 above).

31. The Malatya Assize Court declined to institute criminal proceedings against the tenth applicant and returned the indictment to the Malatya public prosecutor on 11 April 2008. The Assize Court noted that the statements taken from Güler Karataş, Bıra Karataş, Özgür Bozkaya and Zeynep Çiçek were in fact statements of complaint against the soldiers and therefore not statements in support of the prosecutor's allegations. The Assize Court also held that the prosecutor, who alleged that the tenth applicant had been supplying food and other materials to a terrorist organisation, had not specified in his indictment what kind of food and materials they were.

32. On 15 April 2008 the Malatya public prosecutor objected to the Assize Court's decision not to entertain the indictment. The prosecutor argued, in particular, that he had mentioned the statements taken from the four persons because in accordance with the applicable legislation he was duty-bound to include in his file not only evidence against a suspect but also any evidence which was favourable to the suspect. The prosecutor also stated that a list of the items which the tenth applicant had been supplying to the terrorist organisation had been included in the indictment.

33. The Malatya Assize Court rejected the prosecutor's objection that same day. It referred to the report drawn up by the Hozat public prosecutor on 28 September 2007 in which it was stated that the food supplies and other materials referred to in the Malatya public prosecutor's indictment had indeed been found in the two pits, but noted that there was no evidence in the prosecutor's indictment showing that the tenth applicant had had anything to do with those items. On 7 May 2008 the Malatya Assize Court ordered the tenth applicant's release from the prison.

34. On 15 May 2008 the Hozat public prosecutor took statements from four of the six military personnel who had already been questioned between 2 and 3 October 2007 (see paragraph 17 above). The remaining two military personnel were also questioned, on 26 May and 10 June 2008. In the statements the six personnel were referred to as "suspects".

35. First lieutenant A.S.Ç. repeated his earlier statement (see paragraphs 18-19 above) and denied the allegation that he and his men had stopped the tenth applicant and the applicants' deceased relative Bülent Karataş, checked their identity documents, asked them to take their jumpers

off and then shot them. He added that the fact that they had then requisitioned a helicopter in order to have the two injured men taken to hospital proved that the allegations against them were baseless. Four of the remaining five military personnel made similar statements. The fifth person stated that he remembered that he had made a statement to the Hozat public prosecutor soon after the incident but added that he could not now remember the events in question.

36. On 23 June 2008 the Hozat public prosecutor ruled that he did not have jurisdiction to carry out the investigation and forwarded the investigation file to the Elazığ military prosecutor's office. The prosecutor concluded that the incident had taken place while the soldiers had been carrying out their duties as military personnel and that jurisdiction to conduct the investigation therefore lay with the military prosecutor. In the Hozat public prosecutor's decision the six military personnel were referred to as "suspects" of the offences of "attempted murder" and "murder". The first applicant Güler Karataş, the fourth applicant Bıra Karataş and the tenth applicant's mother Ms Zeynep Çiçek were referred to as the "complainants". It appears from this decision that the tenth applicant had also made an official complaint to the Hozat public prosecutor about the injury caused to him.

37. On 4 July 2008 the applicants Rıza Çiçek, Güler Karataş, Bıra Karataş and the tenth applicant's mother filed an objection against the prosecutor's decision. In their objection they repeated their allegation that the soldiers had unlawfully opened fire with the intention of killing Bülent Karataş and the tenth applicant, and complained that the Hozat public prosecutor had not conducted a serious investigation into their allegations. In this connection they pointed out, in particular, that the prosecutor's examination of the scene of the incident (see paragraphs 9-11 above) had not been conducted in an impartial manner because the prosecutor had been accompanied by a number of soldiers and that the family's requests to visit and examine the place with the attendance of all the parties had been unreasonably rejected. They also stated that the food supplies and other materials allegedly found at the scene of the incident had been destroyed on the orders of the prosecutor, and yet the prosecutor had gone on to rely on those items as evidence against the two men. They argued that a prosecutor's duty was to preserve evidence, not destroy it. They also noted that the tenth applicant had been questioned only as a "suspect" (see paragraph 24 above) and never as a "complainant". Similarly, although they had asked for the tenth applicant to be given the opportunity to identify the suspected soldiers in person, that request had not been granted.

38. The applicants also criticised the decision to classify the investigation file as confidential, arguing that it had had a negative effect on their rights and had also prevented the public from exercising its right to obtain information. They argued that the offence committed did not fall

within the jurisdiction of the military prosecutor. The offence committed by the soldiers was murder and the jurisdiction to investigate it lay with the Hozat public prosecutor. They argued that if the file were to be forwarded to the office of the military prosecutor, the investigation would be closed altogether.

C. The investigation conducted by the military prosecutor

39. On 18 August 2008 the Hozat public prosecutor forwarded to the military prosecutor's office in Elazığ a statement taken from a certain M.D., who had been a member of an outlawed organisation but had given himself up on 17 July 2008. The Hozat public prosecutor considered that the information M.D. had provided to the authorities in his statement referred to the incidents which form the subject matter of the present application. The relevant parts of M.D.'s statement are as follows:

> "I do not remember the exact date but I remember that when I first arrived in the Tunceli area, a member of the PKK with the code name "Savaş" met with a number of persons in an area not far from the Yenibaş gendarmerie station. Those people were providing [Savaş] with food but at that moment an armed clash ensued between them and soldiers who had been conducting security operations in the area. I heard that Savaş managed to run away. I have also heard that the persons in question were working both for the State and for the PKK and that one of them was a militiaman."

40. On 26 December 2008 the Elazığ military prosecutor decided to close the investigation and not to bring criminal proceedings against the soldiers for the killing of the applicants' relative Bülent Karataş or for the injury caused to the tenth applicant.

41. It was noted in the decision that the tenth applicant had been found injured approximately 150-200 metres away from the place where the soldiers had been standing and that the applicants' deceased relative Bülent Karataş had been found approximately 100-150 metres away from the tenth applicant. Both injured men had been put into the helicopter at 3.25 p.m. and the helicopter had arrived at the hospital at 4 p.m.; Bülent Karataş had died on the way to the hospital. On their arrival at the hospital the tenth applicant had been wearing a track-suit bottom and Bülent Karataş a pair of jeans. Neither man had had any clothing covering the upper part of his body.

42. The military prosecutor's decision recorded that another statement had apparently been taken from the tenth applicant in his capacity as a "suspect", by the prosecutor on 9 November 2007 before he was brought before the Hozat Magistrates' Court (see paragraphs 26-27 above) in which he had apparently told the prosecutor that he and Bülent Karataş had gone to the area on the evening of 26 September 2007 and not on the morning of 27 September 2007. He had also stated that when the soldiers opened fire, he and Bülent Karataş had been on the road and the soldiers had been below

the road down by the river bed. After he had been shot he had rolled down the hill approximately 4-5 metres and was only prevented from rolling down further by the trees and bushes.

43. Two separate complaints, apparently handed in to the prosecutor by the applicants' legal representative on 10 October and 18 December 2007, were also summarised in the military prosecutor's decision. In the petitions the legal representative stated that, after checking their identity cards, the soldiers had allowed the tenth applicant and Bülent Karataş to go down to the river bed to collect their belongings and come back up again. After they had come back their identity cards had been checked once again and they had been ordered to take their clothes off. At that moment Bülent Karataş had been taken to a different location by the soldiers and the tenth applicant had been ordered to kneel down. When he refused to do so the soldiers had hit him with the butts of their rifles and he had therefore rolled down the hill. While doing so, the officer in charge of the soldiers had opened fire at him. The officer had then provided first aid to him and arranged for him to be taken to hospital by helicopter. The legal representative also stated that no weapons allegedly belonging to the tenth applicant or Bülent Karataş had been found, that the former had been shot at close range, and that clothing which would have shown the distance from which he had been shot was missing.

44. It also appears from the military prosecutor's decision that sergeant H.A., who is one of the six military personnel who were questioned on 2 October 2007 (see paragraph 17 above) and again on 15 May 2008 (see paragraph 34 above), was questioned for a third time in the course of the military prosecutor's investigation. The sergeant had apparently told the military prosecutor that the day in question had been hot and the tenth applicant and Bülent Karataş had only had [sleeveless] vests on. The sergeant did not know what happened to the vests but thought that they might have been cut off the bodies to be used as tourniquets to stop their bleeding, or might have fallen off the stretchers while the two men were being transported to the helicopter, or might have been left behind in the trailer of the tractor or in the helicopter.

45. It also appears that a forensic pathologist was asked by the military prosecutor to examine the post mortem report of 27 September 2007 (see paragraph 12 above) in order to assist the military prosecutor in his investigation. The forensic pathologist observed that the tenth applicant had been shot by a single bullet and he was of the opinion that, since he had not been wearing a top and there were no burn marks around the bullet entry hole, he had been shot from a distance. The bullet had entered on a downward trajectory.

46. The forensic pathologist noted that Bülent Karataş had been shot with four bullets, two of which had entered the back of his body; it was not possible to establish the trajectory of the remaining two bullets. Given that

there were no burn marks around the bullet entry holes, it appeared that he had also been shot from a distance.

47. In his decision the military prosecutor noted that, although neither the tenth applicant nor Bülent Karataş had any previous convictions, there had been a number of criminal investigations against them for terrorism-related offences. Moreover, a number of members of outlawed organisations had provided information to the authorities according to which Bülent Karataş had been implicated in aiding and abetting outlawed organisations. In the light of that information, together with the information provided by M.D., the former member of the outlawed organisation (see paragraph 39 above), the military prosecutor had "strong suspicions" that both the tenth applicant and Bülent Karataş had had dealings with terrorist organisations.

48. The military prosecutor argued that the tenth applicant's version of the events − namely that after he had been shot he had rolled downhill for four or five metres − was contradicted by the fact that stains of his blood had been found some 315 metres away from the place where he claimed to have been shot. His allegation that the soldiers had been positioned lower than him when they opened fire was also contradicted by the medical reports.

49. In the light of the foregoing the military prosecutor was of the opinion that the version of the events put forward by the military personnel represented the truth. The two men, although unarmed at the time, had been in the area to assist the terrorists by supplying them with the food found in the two pits. Furthermore, the bullet entry points on the bodies of the two men showed that the soldiers had not opened fire on them with the intention of killing them and Bülent Karataş had died as a result of the blood-loss sustained whilst hiding. In the opinion of the prosecutor, the soldiers had opened fire in self-defence when they had come under fire.

D. The applicants' objection against the military prosecutor's decision

50. The tenth applicant, the applicants Güler Karataş and Bıra Karataş, and the tenth applicant's mother lodged an objection against the military prosecutor's decision. In their objection they repeated the allegation that the two men had been shot intentionally by the soldiers. They also criticised the fact that the investigation had been conducted by a military prosecutor rather than a civilian prosecutor, and argued that the former had failed to conduct a thorough investigation. In that connection they contended, in particular, that the military prosecutor had never sought to question the tenth applicant, who was both a victim and a witness to the events in question. They also complained that the military prosecutor had failed to conduct a visit to the scene with them in attendance, had not given the tenth applicant

the opportunity to identify the soldiers in person, and their effective participation in the investigation had not been ensured as a result of the previous investigating prosecutor's decision to have the file classified as confidential (see paragraph 26 above). They also repeated their argument that a prosecutor's duty was to preserve the evidence and not to destroy it; and yet the investigating prosecutor had ordered the destruction of the food supplies found in the pit (see paragraph 11 above), only to rely on them later as evidence against the tenth applicant.

51. They were also critical of the military prosecutor's reliance on the contradictions contained in the tenth applicant's statements when closing the investigation. In that connection they argued that the tenth applicant had survived a life-threatening injury and had been detained in prison immediately after his discharge from the hospital, facing very serious criminal charges. It was therefore normal that some of his statements might appear contradictory. The fact that both men had been shot from the front also discredited the soldiers' allegation that they had been shot whilst running away.

52. In their objection the four above-mentioned persons pointed out that a criminal court had refused to entertain the prosecutor's allegations that the tenth applicant had been aiding and abetting an outlawed organisation (see paragraphs 30-33 above). In his decision, however, the military prosecutor still insisted that the tenth applicant had been in the area to deliver food supplies to terrorists. Furthermore, the allegations made by the former member of the terrorist organisation could not be accepted as representing the truth because what he had told the authorities was only hearsay and vague, and he had not actually witnessed anything in person. Moreover, the spent bullet cases found in the area had nothing to do with the two men in question.

53. In their objection the four persons concerned also referred to Article 2 of the Convention and alleged that the use of lethal force against Bülent Karataş and the tenth applicant had been in breach of that provision. In particular, the soldiers had not opened fire on the two men in order to achieve one of the aims set out in Article 2 § 2 of the Convention because they had been unarmed and had not been running away. The soldiers could have tried to apprehend them without opening fire. All the evidence in the file showed that the two men had been shot in an execution-style killing.

E. The Malatya Military Court's decision

54. The objection was rejected by the Malatya Military Court on 23 March 2009. In the opinion of the military court, the decision to classify the investigation file as confidential two days after the incident was a justifiable action and in accordance with the applicable procedure because there had been ongoing military operations against terrorist organisations in

the area at the time and allowing access to the investigation file could have facilitated the terrorists' escape and led to destruction of the evidence.

55. The military court stated in its decision that a jumper and a cardigan belonging to the tenth applicant and Bülent Karataş had been placed in the sidecar of the motorbike and at the time of the events they had been wearing only their vests, which despite all efforts had never been found. Furthermore, it had not been possible to conduct a forensic examination of the jeans worn by Bülent Karataş on that day. The allegation made by the complainants, namely that all the evidence in the file indicated that the two men had been shot at close range, could therefore not be accepted.

56. The military court did not accept the complainants' allegation that, despite the criminal court's decision not to bring criminal proceedings against the tenth applicant (see paragraph 33 above) the military prosecutor had used the finding of food supplies as grounds for concluding that the two men had been aiding and abetting a terrorist organisation. It accepted the argument that the eight spent bullet cases had nothing to do with the two men but in any event those spent bullet cases had not been relied on by the military prosecutor when closing the investigation. The military prosecutor had not been concerned with the question of whether or not the two men had committed any offences; he had been investigating whether the use of force by the soldiers against them had been justified. The military court concluded that the soldiers had remained within the remit of their powers in resorting to the use of force because they had been following two men who had been trying to escape and had come under fire while doing so, even though there was no clear evidence that that fire originated from the two men.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

57. The applicants Güler Karataş, Pınar Şafak Karataş, Berdan Ulaş Karataş, Bıra Karataş, Kumru Karataş, Perince Ataş, Nebahat Ateş, Serincan Çiçek and Yıldız Deniz complained under Article 2 of the Convention that their relative Bülent Karataş had been killed in breach of Article 2 of the Convention. The tenth applicant alleged that he had been injured in breach of Article 2 of the Convention. Relying on Articles 6 and 13 of the Convention the applicants also complained that the national authorities had failed to conduct an effective investigation into the killing of Bülent Karataş and the wounding of the tenth applicant.

58. The Government contested those arguments.

59. The Court notes at the outset that the Government did not challenge the applicability of Article 2 of the Convention in respect of the tenth

applicant. In any event, the Court considers that the tenth applicant's fortuitous survival does not prevent it from examining the complaint under Article 2 of the Convention, since the use of force against him and the ensuing injury were potentially fatal and put his life at risk (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52 and 55, ECHR 2004-XI, and *Peker v. Turkey (no. 2)*, no. 42136/06, §§ 41-42, 12 April 2011 and the cases cited therein).

60. The Court also considers that the applicants' complaints can be examined solely from the standpoint of Article 2 of the Convention, the relevant parts of which read:

> "1. Everyone's right to life shall be protected by law...
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

61. The Government submitted that not all the applicants had filed complaints with the domestic authorities concerning the killing of Bülent Karataş and the wounding of the tenth applicant. Likewise, not all of them had filed objections against the non-prosecution decision issued by the military prosecutor. In the opinion of the Government, the application – in so far as it was introduced by those applicants, namely Pınar Şafak Karataş, Berdan Ulaş Karataş, Kumru Karataş, Perince Ataş, Nebahat Ateş, Yıldız Deniz and Serincan Çiçek – should therefore be dismissed on the grounds of non-exhaustion of domestic remedies.

62. The Court reiterates that killing of a person gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding that person's death (*Süheyla Aydın v. Turkey*, no. 25660/94, § 171, 24 May 2005 and the cases cited therein). Thus, bearing in mind the national authorities' above-mentioned obligation to investigate deaths, together with the fact that three of the applicants had made use of the available domestic remedies and had brought their Convention complaints to the attention of the national authorities (see paragraph 53 above), the Court considers that the involvement of three of the applicants was sufficient and that it was not necessary for the remaining applicants to intervene in the investigation (see, most recently, *Sultan Dölek and Others v. Turkey*, no. 34902/10, §§ 43-45, 28 April 2015 and the cases cited therein).

63. In view of the above, the Court dismisses the Government's objection based on the non-exhaustion of domestic remedies. The Court also notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

64. The applicants alleged that the evidence in the file showed that Bülent Karataş and the tenth applicant had been shot in execution-style. They argued that the use of lethal force should have been the soldiers' last resort and that in the present case there had been no justification for the use of such force. This was proved by the fact that the soldiers, when questioned by the prosecutors, had admitted that neither Bülent Karataş nor the tenth applicant had opened fire on them. Indeed, no weapons had been found in the area in which the two men had been observed. It would therefore have been possible to apprehend them without opening fire.

65. The applicants also complained that no effective investigation had been conducted by the national authorities into the killing of Bülent Karataş and the injury caused to the tenth applicant. In this connection they complained that their requests for the prosecutor to carry out another visit to the scene of the incident with their legal representatives in attendance and for the tenth applicant to identify the soldiers in person had been rejected. Moreover, the soldiers responsible for the incident had not been put on trial and the incident had been examined by a military prosecutor and subsequently by a military court instead of by a civilian prosecutor and a civilian court. They also alleged that they had not been informed about the steps taken during the course of the military prosecutor's investigation.

66. The Government argued that the use of force against Bülent Karataş and the tenth applicant had been lawful under the relevant domestic legislation. They submitted to that end that the soldiers who had wanted to stop the two men had fired a warning shot in the air but had then come under fire themselves. They had therefore had to respond in order to protect their lives. In any event, it was clear from the locations of the two men's injuries that the soldiers had not opened fire on them with the intention to kill; Bülent Karataş had died as a result of the loss of blood sustained whilst hiding. That indicated that the soldiers had used their weapons in circumstances in which it had been absolutely necessary to do so. After the incident the military personnel had taken all necessary precautions in the area in accordance with the applicable international standards expected of security officials who use firearms. They had administered first aid to the two injured men and had had them taken to hospital in a helicopter.

67. The Government also rejected the applicants' complaints and argued that an effective investigation had been carried out by the authorities. The prosecutor had arrived at the incident scene early in the morning following the incident and had inspected the area. The requisite forensic examinations had been carried out by the relevant independent authorities. At the end of the investigation a decision had been taken by the military prosecutor not to bring criminal charges against the soldiers. That decision, which was based on a thorough evaluation of the evidence and was properly reasoned, was capable of establishing that the force used by the soldiers had been justified.

68. The Court reiterates that the text of Article 2 of the Convention read as a whole demonstrates that paragraph 2 does not primarily define instances where it is permitted to intentionally kill an individual, but rather describes situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of any of the purposes set out in subparagraphs (a), (b) or (c). In this respect the use of the term "absolutely necessary" in Article 2 § 2 indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraph 2 of Articles 8-11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in the subparagraphs of the Article (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 148-149, Series A no. 324).

69. Turning to the circumstances of the present case, it is not disputed between the parties that the applicants' relative Bülent Karataş was killed and the tenth applicant was shot and critically injured by the soldiers of the respondent State. The Court will therefore examine whether the Government have discharged their burden of justifying the use of lethal force against the two men. In doing so, it will consider in particular the investigation carried out at the domestic level since in cases such as the present one where the respondent Government bear the burden of justifying a killing, the examination of the steps taken in an investigation does not only serve the purpose of assessing whether the investigation was in compliance with the requirements of the procedural obligation, but also of deciding whether it was capable of leading to the establishment of whether the force used was or was not justified in the circumstances and whether the Government have thus satisfactorily discharged their burden to justify the killing (*Cangöz and Others v. Turkey*, no. 7469/06, § 115, 26 April 2016 and the cases cited therein).

70. The Court notes at the outset that the initial and critical phases of the investigation were carried out by the Hozat public prosecutor and not, as has been noted in a number of comparable cases against Turkey, by the soldiers who were implicated in the events (see *Gülbahar Özer and Others*

v. Turkey, no. 44125/06, § 62, 2 July 2013, and *Cangöz and Others*, cited above, §§ 125-126). The Hozat public prosecutor visited the scene of the incident promptly in person and was accompanied by crime-scene investigators. They carried out a thorough search of the area, secured some of the important evidence such as the Kalashnikov-type spent bullet cases (see paragraph 11 above) and took samples of the bloodstains found in the places where the two men had been discovered the previous day (see paragraph 10 above) and sent those findings for forensic examinations (see paragraph 28 above).

71. A prosecutor was also present during the post mortem carried out on the body of Bülent Karataş and secured the clothes worn both by Bülent Karataş and the tenth applicant. Those clothes were then sent for forensic examination (see paragraph 29 above).

72. The military prosecutor – who was subsequently entrusted with the task of continuing the investigation after the Hozat public prosecutor had decided that he lacked jurisdiction – questioned additional witnesses, including one of the implicated soldiers (see paragraph 44 above). A forensic medical expert was appointed by the military prosecutor to assist him in his investigation (see paragraph 45 above). The Court observes that the military prosecutor's decision not to prosecute was based on the above-mentioned steps taken by the Hozat public prosecutor and subsequently by the military prosecutor himself.

73. Nevertheless, despite the steps taken in the investigation which are detailed in the foregoing paragraphs, there were also a number of important shortcomings in the investigation.

74. In this connection the Court must highlight at the outset that, according to a statement made by the first lieutenant A.S.Ç. who was in charge of the soldiers from the 51st Motorised Infantry Brigade who killed Bülent Karataş and injured the tenth applicant, the first lieutenant and the soldiers under his command were still in the area the following morning when the prosecutor arrived at 8.30 a.m. (see paragraph 19 above). Nevertheless, no attempts appear to have been made by the prosecutor to question any of those soldiers. Instead, the prosecutor was content with the second-hand information given to him by the gendarmes from a nearby gendarmerie station who had arrived at the scene of the incident upon the request of the soldiers from the 51st Motorised Infantry Brigade to guard the area (see paragraph 7 above). It was those gendarmes who showed the prosecutor the exact place where the soldiers from the 51st Motorised Infantry Brigade had taken cover the previous day and told the prosecutor what they had been told by those soldiers about the incident (see paragraph 9 above).

75. The report of the visit to the scene of the incident, which was drawn up by the prosecutor and which was summarised above (see paragraphs 9-11), does not offer any explanations about the prosecutor's

failure to obtain first-hand information from those soldiers about the armed clash.

76. The Court also observes that the prosecutor's failure to question the soldiers from the 51st Motorised Infantry Brigade continued until 2 and 3 October (see paragraph 17 above). Although there is no evidence to suggest that during that time the soldiers colluded with each other in order to align their stories, the Court considers that the failure to question them immediately when the prosecutor was presented with that opportunity, coupled with the failure to question them for a further period of five to six days, meant that no steps were taken to reduce the risk of such collusion and amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II). The Court observes that, other than the soldiers from 51st Motorised Infantry Brigade and the tenth applicant, there were no eyewitnesses to the incident.

77. Having reviewed its case-law, the Court observes that one of the common features of investigations conducted by prosecutors in Turkey into killings by members of the security forces is the failure to question the perpetrators in a timely manner or to question them at all (see, most recently, *Cangöz and Others*, cited above, § 127; *Makbule Kaymaz and Others v. Turkey*, no. 651/10, § 142, 25 February 2014; *Benzer and Others v. Turkey*, no. 23502/06, § 188, 12 November 2013; *Gülbahar Özer and Others*, cited above, § 69; and *Özcan and Others* v. Turkey, no. 18893/05, § 67, 20 April 2010).

78. In the opinion of the Court, the investigating authorities' failure to question the soldiers in a timely manner was exacerbated by the same authorities' subsequent failure to question the tenth applicant, despite the fact that he was the only civilian eyewitness to the events and was one of the direct victims (see also, in this connection, *Muhacır Çiçek and Others v. Turkey*, no. 41465/09, § 75, 2 February 2016). Although the tenth applicant made very serious allegations in his written complaint statements (see paragraphs 37 and 50 above) and his version of the events contradicted the version of the events proffered by the soldiers (see paragraphs 17-19, 34-35 and 44 above), the prosecutors did not seek to summon him with a view to eliminating those inconsistencies. In this connection the Court notes that the statements taken from the tenth applicant by different prosecutors (see paragraphs 24-25 and 42) and by the Hozat Magistrates' Court (see paragraph 27 above) were taken in his capacity as a "suspect" in the course of the investigation against him for the allegation that he had aided and abetted an outlawed organisation and not in the course of the investigation into the actions of the security forces. Nevertheless, although the military prosecutor relied on the contents of some of those statements to substantiate his decision to discontinue the investigation against the soldiers (see paragraph 42 above), he did not deem it necessary to provide the tenth

applicant with an opportunity to give a first-hand account of his version of the events and to explain his inconsistent statements.

79. Indeed, the investigating authorities appear to have been more concerned whether Bülent Karataş and the tenth applicant were members of an outlawed organisation, instead of trying to find out how exactly they had been shot by the soldiers. To that end the Court notes that the first step taken by the civilian prosecutors when faced with the tenth applicant's serious allegations against the soldiers was to attempt to prosecute him for the offence of aiding and abetting a terrorist organisation (see paragraph 30 above). Although the prosecutors' repeated attempts to put him on trial were countered by the criminal court for lack of any evidence against him (see paragraphs 31 and 33), the military prosecutor who subsequently took over the investigation continued to make unfounded allegations against him when he was in fact supposed be investigating how he came to be shot (see paragraphs 47 and 49 above). Having regard to the fact that the investigating authorities already accepted that the tenth applicant and Bülent Karataş had been unarmed at the time of the events (see paragraph 49 above), the Court does not see what bearing their allegedly aiding and abetting a terrorist organisation would have in an investigation into their shooting by the soldiers.

80. The Court further observes that the applicants also complained that the request they had submitted for the prosecutor to carry out another visit to the scene of the incident with their legal representatives in attendance and their request for the tenth applicant to identify the soldiers in person had been rejected.

81. In this connection the Court reiterates that Article 2 of the Convention does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure (see *Ramsahai and Others*, cited above, § 348). However, in the circumstances of the present case where the investigating authorities were faced with very conflicting version of the events, carrying out another visit to the scene of the incident with the applicants' legal representatives in attendance and giving the tenth applicant the opportunity to identify the soldiers in person would have presented the investigating authorities with the opportunity to establish the accuracy of the applicants' allegations.

82. Another failure which must be highlighted is that, according to the documents in the file, the investigating authorities do not seem to have taken adequate steps to identify and find the persons who allegedly fired in the direction of the soldiers after those soldiers had fired warning shots in the air (see paragraph 18 above). The only step taken in that regard was to send the eight Kalashnikov-type bullets to the forensic authorities (see paragraph 28 above). The Court considers that making attempts to find those persons should have been a priority for the investigating authorities with a view to verifying the accuracy of the soldiers' version of the events

according to which it was those persons' alleged actions that had led the soldiers to resort to the use of lethal force.

83. The Court also notes that according to the doctors who carried out the autopsy on Bülent Karataş's body on 27 September 2007 and in the presence of a prosecutor, all the bullets had entered the body through clothed areas but that there was no clothing such as a vest or a shirt in the bag which could be examined with a view to establishing the distance from which he had been shot (see paragraph 14 above). The authorities' attention to the missing clothing was drawn once again on 9 November 2007 when the tenth applicant was being questioned as a suspect before the Hozat Magistrates' Court. The tenth applicant's lawyer informed the Hozat Magistrates' Court that according to the doctors who conducted the post mortem examination, forensic examinations of the men's clothing would be needed in order to establish the distance from which his client and Bülent Karataş had been shot (see paragraph 27 above). Nevertheless, the only action undertaken by the authorities aimed at ascertaining the whereabouts of the vests did not take place until many months after the incident and even then it was limited to the military prosecutor asking a question to a sergeant involved in the incident. As set about above (paragraph 44), the sergeant apparently told the military prosecutor that the day in question had been hot and the tenth applicant and Bülent Karataş had only had [sleeveless] vests on. The sergeant did not know what happened to the vests but thought that they might have been cut off the bodies to be used as tourniquets to stop their bleeding, or might have fallen off the stretchers while the two men were being transported to the helicopter, or might have been left behind in the trailer of the tractor or in the helicopter.

84. Although subsequently the Military Court stated in its decision of 23 March 2009 when rejecting the applicants' objection against the closing of the investigation that "despite all efforts" the vests had never been found, it did not seek to explain what those "efforts" were. The Court considers the failure to take meaningful steps to find the vests to be a serious failure, given that the vests would have been the only tangible evidence to establish the distance from which the two men had been shot. Finding and examining the vests would also have been instrumental in establishing the accuracy of the tenth applicant's allegation that he had been "shot at close range" (see paragraph 43 above).

85. The Court also notes that the applicants complained that after the investigation was handed over to the military prosecutor they were not provided with any information concerning the steps taken in the investigation (see paragraph 65 above). Indeed, the Court notes that even before the investigation was handed over to the military prosecutor a decision had already been taken to classify the file as confidential in order to prevent the applicants from having access to it (see paragraph 26 above). The applicants complained about that decision before the national

authorities and argued that it had been preventing their effective participation in the investigation (see paragraph 38 above). They repeated their arguments when they lodged their objection against the military prosecutor's decision to close the investigation (see paragraph 50 above). In response, the Military Court stated that the decision to classify the investigation file as confidential two days after the incident had been a justifiable action and in accordance with the applicable procedure because there had been ongoing military operations against terrorist organisations in the area at the time and allowing access to the investigation file could have facilitated the terrorists' escape and led to destruction of the evidence (see paragraph 54 above).

86. The Court has already had occasion to examine the practice of classifying investigation files as confidential in cases concerning killings by law enforcement officials in Turkey (see, *inter alia*, *Cangöz and Others*, cited above, §§ 145-146, 26 April 2016; *Benzer and Others*, cited above, § 193; and *Anık and Others v. Turkey*, no. 63758/00, §§ 75-79, 5 June 2007). As it has done in those judgements, the Court reiterates that for an investigation to be effective, it must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests and there must also be a sufficient element of public scrutiny of the investigation.

87. In the present case, the Court observes that the Military Court did not challenge the applicants' arguments that the decision to classify the file as confidential had prevented them from effectively participating in the investigation, but simply gave justifications for it and held that it had been in accordance with the applicable procedure (see paragraph 54 above). The Military Court did not, for example, seek to elaborate what alternative actions could have been taken by the investigating authorities to ensure the applicants' effective participation in the investigation while maintaining the confidentiality of the investigation.

88. Indeed, the Court observes that, as the applicants alleged (see paragraph 65 above), no information seems to have been provided to the applicants after the investigation file was handed over to the military prosecutor and there was therefore no input in that crucial part of the investigation from the applicants.

89. In the light of the foregoing the Court considers that, as a result of the above mentioned defects, the prosecutor's reasoning when closing the investigation was based, to a very large extent, on the statements given by the soldiers and it was not, therefore, adequately corroborated by other evidence. The above mentioned failures thus had direct and negative repercussions on establishing the truth.

90. Thus, as the investigation cannot, because of the shortcomings highlighted above, be regarded as capable of leading to a determination of whether the force used was justified in the circumstances, the Court cannot

conclude that the use of force against Bülent Karataş and the tenth applicant had been absolutely necessary and proportionate.

91. It follows that there has been a violation of Article 2 of the Convention in respect of Bülent Karataş's demise and the injury caused to the tenth applicant Rıza Çiçek.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The first nine applicants jointly claimed the sum of 50,000 euros (EUR) in respect of pecuniary damage. They argued that at the time of his death Bülent Karataş was thirty-three years of age and was working as a farmer and that following his death his family had been deprived of Bülent Karataş's financial support. The first nine applicants also jointly claimed the sum of EUR 100,000 for non-pecuniary damage.

94. The tenth applicant claimed the sum of EUR 25,000 in respect of pecuniary and EUR 75,000 for non-pecuniary damage.

95. The Government asked the Court not to make any awards because in their opinion the sums claimed were excessive and unsubstantiated and that awarding them would lead to unjust enrichment.

96. As regards the first nine applicants' claim for pecuniary damage, the Court's case-law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C).

97. The Court notes that at the time of his killing Bülent Karataş was thirty-three years of age, married to the first applicant Güler Karataş and had two children aged five and two, namely Pınar Şafak Karataş and Berdan Ulaş Karataş, who are the second and third applicants respectively (see paragraphs 1 and 5 above).

98. The Court also notes that the first nine applicants have failed to submit to the Court an itemised claim detailing the financial loss suffered by them. However, the Court has found that the authorities were accountable for the death of Bülent Karataş and the fact that Bülent Karataş had been providing his wife and two children with a living has not been disputed by

the Government. In these circumstances, a direct causal link has been established between the violation of Article 2 and those three applicants' loss of the financial support provided by Bülent Karataş (see *Özcan and Others*, cited above, §§ 85-87; see also *Tanış and Others v. Turkey*, no. 65899/01, § 231, ECHR 2005–VIII).

99. Having regard to the family situation of the deceased Bülent Karataş, his age and his professional activities which provided his wife and two children with support, the Court awards EUR 20,000 jointly to the first three applicants, namely Güler Karataş, Pınar Şafak Karataş and Berdan Ulaş Karataş, in respect of pecuniary damage and rejects the claim for pecuniary damage by the remaining six applicants.

100. Concerning the claim made by the tenth applicant Rıza Çiçek for pecuniary damage in the sum of EUR 25,000, the Court notes that the tenth applicant did not seek to substantiate that claim with any evidence or argumentation. Accordingly, the Court makes no award to the tenth applicant under this head.

101. The Court observes that it has found that the authorities were accountable for the death of Bülent Karataş and the injury caused to the tenth applicant Rıza Çiçek. The Court thus accepts that the applicants have suffered non-pecuniary damage and awards the first nine applicants jointly EUR 65,000 and the tenth applicant Mr Rıza Çiçek EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

102. The applicants also claimed EUR 3,750 for the costs and expenses incurred before the Court. They argued that their legal representatives had spent a total of 50 hours in preparing their application form, having meetings with them, visiting the place of the incident and in representing them before the Court.

103. The Government asked the Court not to make any award to the applicants for their claim for costs and expenses because they were of the opinion that the applicants had not submitted any proof to show that the costs and expenses had actually been incurred by them.

104. 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 applicants jointly the sum claimed by them in full, that is EUR 3,750, covering costs under all heads. From this sum there should be a deduction of EUR 850 in respect of legal aid granted under the Council of Europe's legal aid scheme.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Bülent Karataş's demise and the injury caused to the tenth applicant Rıza Çiçek;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, jointly to the first three applicants, namely Güler Karataş, Pınar Şafak Karataş and Berdan Ulaş Karataş, in respect of pecuniary damage;
      (ii) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, jointly to the first nine applicants, namely Ms Güler Karataş, Ms Pınar Şafak Karataş, Mr Berdan Ulaş Karataş, Mr Bıra Karataş, Ms Kumru Karataş, Ms Perince Ataş, Ms Nebahat Ateş, Ms Serincan Çiçek and Ms Yıldız Deniz, in respect of non-pecuniary damage;
      (iii) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to the tenth applicant Rıza Çiçek in respect of non-pecuniary damage;
      (iv) EUR 3,750 (three thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicants, jointly to the ten applicants, less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid, 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President