



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

Information Note on the Court's case-law 16

March 2000

Kılıç v. Turkey - 22492/93

Judgment 28.3.2000 [Section I]

Article 2

Article 2-1

Life

Shooting by unidentified perpetrators and adequacy of investigation: *violation*

Facts: The applicant's brother, K, was a journalist with the newspaper *Özgür Gündem* (see *Özgür Gündem v. Turkey*, judgment of 16 March 2000, under Article 10, below). In December 1992 he requested the Governor to take measures to protect him and other people working for the newspaper's local office, referring to attacks on others associated with the newspaper. The request was refused and the applicant was later charged with insulting the Governor and briefly taken into detention. On 18 February 1993, K got off a bus at a junction. A nightwatchman heard voices arguing, followed by two shots. The gendarmes were called and found K's body with two bullet wounds. He had been gagged and had a rope round his neck. The gendarme captain took photographs and made a sketch of the scene. Ballistic tests later linked a pistol found at a subsequent incident to the murder of K. An individual arrested in that connection was convicted of being a member of Hizbollah, but the court considered that he could not be held responsible for numerous other attacks, including that on K, since different members of the group could have shared the pistol.

A delegation of the European Commission of Human Rights took evidence from witnesses, but several witnesses (the nightwatchman, the Governor and a public prosecutor) did not appear.

Law: The Court found no elements that might require it to exercise its own power to verify the facts and therefore accepted the facts as established by the Commission. Moreover, in the absence of any satisfactory or convincing explanation by the Government with regard to the failure of an important official witness to appear before the delegates, the Court confirmed the Commission's finding that the Government had fallen short of its obligations to furnish all necessary facilities.

Article 2: It has not been established beyond a reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the killing and the question is therefore whether the authorities failed to comply with their positive obligation to protect K from a known risk to his life. The Court has already found that the authorities were aware that persons involved with *Özgür Gündem* feared that there was a campaign against them, tolerated if not approved by State officials. It is undisputed that a significant number of serious incidents occurred and the Court was therefore satisfied that K was at real and immediate risk of unlawful attack at the time. The authorities were aware of that risk and were aware, or ought to have been aware, of the possibility that the risk derived from the activities of persons or groups acting with the

knowledge or acquiescence of elements in the security forces. As to whether the authorities did all that could reasonably be expected of them, there was a framework of law in place with the aim of protecting life (criminal law, police/gendarmerie, prosecutors, courts), but at the relevant time the implementation of the criminal law in south-east Turkey disclosed particular characteristics which undermined the effectiveness of criminal law protection (in particular, the transfer of jurisdiction to administrative councils, the series of failures to investigate allegations of wrongdoing by the security forces and the attribution of responsibility for incidents to the PKK, resulting in the matter falling within the jurisdiction of State Security Courts). This permitted or fostered a lack of accountability of members of the security forces which was not compatible with the rule of law in a democratic society. In addition, there was an absence of operational measures of protection: a wide range of measures was available which would have assisted in minimising the risk to K's life and which would not have involved an impractical diversion of resources, but there is no evidence that any steps were taken in response to his request. The authorities failed to take reasonable measures available to them to prevent a real and immediate risk to his life.

Conclusion: violation (6 votes to 1).

As to the investigation, this did not include any enquiries as to the possible targeting of K due to his position and there is no indication that any steps were taken to investigate any collusion on the part of the security forces. Having regard to the limited scope and short duration of the investigation, the authorities failed to carry out an effective investigation.

Conclusion: violation (unanimously).

Article 10: As the complaints arose out of the same facts, the Court did not consider it necessary to examine this complaint separately.

Conclusion: not necessary to examine (unanimously).

Article 13: Although the Court found that it had not been proved beyond reasonable doubt that State agents were implicated in the killing of K, this does not mean that the complaint under Article 2 is not an "arguable" one. There was an arguable claim and therefore an obligation to carry out an effective investigation. Since no effective criminal investigation can be considered to have been conducted, the applicant has been denied an effective remedy.

Conclusion: violation (6 votes to 1).

Alleged practice infringing Articles 2, 10 and 13: The Court did not find it necessary to determine whether the failings identified were part of a practice adopted by the authorities.

Article 14: The Court considered that these complaints arose out of the same facts examined under Articles 2 and 13 and did not find it necessary to examine them separately.

Conclusion: not necessary to examine (unanimously).

Article 41: The Court did not find it appropriate to make any award to the applicant in respect of pecuniary damage, since the claims related to alleged losses accruing subsequent to the death of K, who was unmarried and had no children, and not to losses actually incurred by either K before his death or the applicant after the death. The Court awarded the applicant 2,500 pounds sterling (GBP), in respect of the non-pecuniary damage sustained by him. It also made an award in respect of costs.

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