



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

THIRD SECTION

CASE OF USTA AND OTHERS v. TURKEY

(Application no. 57084/00)

JUDGMENT

STRASBOURG

21 February 2008

FINAL

07/07/2008

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 Usta and Others v. Turkey,

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

Boštjan M. Zupančič, *President*,

Corneliu Bîrsan,

Rıza Türmen,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

David Thór Björgvinsson,

Ineta Ziemele, *judges*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 31 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 57084/00) 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 three Turkish nationals, Mrs Fatma Usta, Mr Hüseyin Usta and Ms Hacer Bakkal Usta (“the applicants”), on 3 January 2000.

2. The applicants were represented by Mr Ali Yaşar, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged, in particular, that there had been a violation of Article 2 on account of the unlawful killing of their relative, Mr Taşkın Usta, by police officers.

4. On 3 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the killing of the applicants’ relative to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The facts as submitted by the parties

5. The applicants were born in 1938, 1938 and 1964 respectively and live in Istanbul. The first two applicants are the parents and the third applicant is the wife of Mr Taşkın Usta, who was shot dead by police officers at a flat in the Kadıköy district of Istanbul on 17 April 1992.

1. The killing of Taşkın Usta

6. According to the facts established by the Kadıköy public prosecutor, on 16 April 1992 following the receipt of an anonymous phone call stating that THKP-C militants were preparing an assault, police officers of the anti-terror branch of the Istanbul Security Directorate arrived, at around 11.00 p.m., in Çiftehavuzlar Cezmi Or Street, in the Kadıköy district of Istanbul. After securing the surroundings of an apartment building, the police officers knocked on the door of a flat on the 12th floor of the building, in the presence of the building manager and asked the suspects to open the door in order to check their identities. One of the suspects opened the door an inch and closed it immediately stating that he would bring the identity papers. The suspects then proceeded to hang the flag of the illegal organisation from the window of the flat and to shout slogans. They also set fire to some furniture in the flat. At that point the police were unaware of the number of suspects. An ambulance was brought to the scene. The suspects were told to surrender themselves and to open the door of the flat.

7. However, the occupants of the flat refused to do so and opened fire. At this point, a team headed by Mr R.A., decided to enter the flat by force. At 2.30 a.m. the police tried to open the steel front door using an explosive material called *cortex*. A clash broke out between the three suspects, including Taşkın Usta and the police officers Mr R.A., Mr A.D., Mr I. S., Mr A.T, Mr A.U., Mr M.B.A, Mr A.Ç and Mr A.T. as a result of which Taşkın Usta and two other suspects died and Mr. I.S. was injured.

8. The police officers then searched the flat and found nineteen different types and calibres of pistols, two hand grenades, cartridge clips, silencers, wigs, twenty-four percussion bombs, three wirelasses and a number of cartridges. Following the ballistic examination of the guns, it appeared that one of the pistols had previously been extorted from a night guard, K.T., in Eyüp district.

9. The Kadıköy public prosecutor started an investigation into the events surrounding the circumstances in which Taşkın Usta and the two other suspects met their death. He took statements from all police officers who were on duty on the day of the incident.

10. On 18 April 1992 an autopsy was carried out on the deceased by forensic experts at the Istanbul Cerrahpaşa Medical Faculty. According to the report, the body of Taşkın Usta bore forty-five bullet entry wounds, thirteen of which were fatal. The report concluded that nine of the shots had been fired at a long range but that a further examination needed to be conducted on the clothes of the deceased in order to determine the shooting range of the others. The report also stated that, according to the toxicology report, no foreign substance, such as alcohol or drugs, had been found in Taşkın Usta's blood sample. The cause of death was determined as a fractured skull and ribs, internal bleeding and cerebral haemorrhage.

11. In a ballistics report dated 28 April 1992, prepared by the criminal police laboratory following the examination of the pistols and cartridge cases collected from the scene, it appeared that the 141 Parabellum type 9 mm calibre cartridges, two Browning type 9 mm calibre cartridges and four Magnum type 44 calibre cartridges had been fired from the pistols of the deceased.

12. On 18 May 1992 the Forensic Institute issued a report concerning the shooting ranges subsequent to the examination of the deceased's clothes. The report concluded that the shots had been fired from a long distance.

13. Between 18 January 1993 and 31 January 1995 a number of public prosecutors took statements from police officers who were on duty on 16 and 17 April 1992.

2. Criminal proceedings against the police officers

14. On 18 April 1995 the Kadıköy public prosecutor filed a bill of indictment with the Kadıköy Assize Court against nineteen police officers who took part in the operation. The charges were brought under Articles 450 § 5, 463, 251, 281, 49 § 1, 31 and 33 of the Criminal Code. The defendants were accused of manslaughter without the actual offender being identified. With an additional indictment of 28 March 1996 three other police officers were also charged with the same offence.

15. At the first hearing held on 15 June 1995, the Kadıköy Assize Court decided to conduct the proceedings in camera given that a fight had broken out in the court room.

16. On 3 June 1996 the Court of Cassation decided to transfer the case to the Kayseri Assize Court for security reasons. The criminal proceedings were conducted before the latter court which heard oral evidence from the accused police officers and witnesses. The accused claimed that the operation had been conducted in accordance with the law and that they had been compelled to use weapons since the militants had opened fire on them.

17. On 13 July 2001 Kayseri Assize Court acquitted the police officers of all charges. In its decision, the court, referring to the evidence in the case-file, (i.e. ballistics reports, incident report, firearms and bombs found in the flat, photographs taken after the incident, witness statements) found that the police officers had done everything in their power to capture the deceased alive and that they had fired their weapons only after the deceased had opened fire and for self-defence. It stated, *inter alia*, that the operation had lasted for more than nine hours and that throughout this time the police officers had repeatedly ordered the deceased to surrender. Relying on the evidence given by the witnesses and considering the mindset of the police officers during the operation, the court concluded that the police officers had had no intention to kill the militants since they had brought an ambulance to the scene of the incident before the operation and had asked them to surrender by megaphone several times. The police officers had opened fire only after the deceased had started firing on them. With reference to the ballistics report issued by the Forensic Institute, the court also found that the deceased had discharged 700 bullets and the police officers had discharged 420 bullets. It therefore opined that both parties had been equally armed during the clash and that they had both fired on each other.

18. On 19 June 2002, the Court of Cassation quashed the judgment of 13 July 2001 on the grounds that there were procedural defects in the investigation. It noted in particular that the accused S.K. and A.T., whose defence submissions had been obtained by a rogatory judge, had not been asked whether they wished to be absent at the hearing. Furthermore, the first instance court had not given any response to the intervention request in so far as it concerns the accused A.Ç., S.T. and Y.K.

19. On 21 October 2003, having remedied the procedural defects in the investigation, the Kayseri Assize Court again acquitted the police officers. The court found that the police team which carried out the operation had repeatedly asked the persons in the flat to surrender. However the deceased had shouted slogans and hung a flag of the organisation from a window. Then they had started a fire in the flat and opened fire on the police officers, following which a team led by R.A. had decided to enter the flat considering that the militants would not surrender. The police team had opened the flat door using an explosive. The militants had started firing on the police officers and the clash which followed had resulted in the death of the three militants. The police officers had found a number of documents belonging to the illegal organisation, weapons, ammunition and partly burned banknotes at the scene of the incident. The evidence submitted by the parties led the court to conclude that the police officers had acted in self-defence. The fact that the operation had started at 11 p.m. and ended next day at 8 a.m. and that the militants had repeatedly been asked to surrender indicated that the police officers had had no intention to kill. The

court attached importance to the fact that the police officers' statements were consistent as regards the course of events.

20. On 25 July 2005 the Court of Cassation upheld the above judgment.

3. Civil proceedings brought by and against the applicants

21. On 8 July 1992 the Pendik Magistrates' Court declared the applicants legal heirs of Taşkın Usta. This decision became final on 9 July 1992.

22. On 20 September 1994 the Istanbul State Security Court ordered the confiscation of two cars and a flat registered under Taşkın Usta's name pursuant to Article 36 of the Criminal Code. The applicants were a civil party to the proceedings and their objection to that decision was dismissed by the court on the ground that the impugned property belonged to and was used by the illegal organisation despite the fact that it was registered under the name of Taşkın Usta.

23. On 22 May 1996 the Court of Cassation upheld the first instance court's judgment.

a) Civil proceedings brought by the applicants

24. On 24 December 1997 the applicants filed an action with the Kadıköy Civil Court of First Instance (3rd Chamber) and requested the determination of the title to the confiscated flat and the two cars.

25. On 24 June 1998 the first-instance court dismissed the applicants' request holding that the applicants' objections had already been dismissed by the State Security Court on the ground that the flat in question and the two cars were the property of the illegal organisation and that this decision had become final. On 2 March 1999 the Court of Cassation held a hearing and upheld the judgment of the first-instance court.

b) Civil proceedings brought against the applicants

26. On 31 October 1997 the Ministry of Treasury filed an action with the Kadıköy Civil Court of First Instance (2nd Chamber) and requested the annulment of the title-deed of the confiscated flat.

27. On 28 October 1998 the first-instance court, considering that the legal consequence of a decision of confiscation was the transfer of property rights, annulled the title-deed of the confiscated flat and ordered it to be registered under the name of the Treasury. In its decision the court noted that the applicants' representative had failed to attend the hearings and that the decision had been taken in his absence.

28. The applicants appealed against the judgment of the first-instance court. In their petition they submitted that the court had given a judgment without giving them the opportunity to prove their case and that it had not

taken any decision as regards their request for an adjournment, submitted prior to the adoption of the judgment.

29. On 27 April 1999 the Court of Cassation held a hearing and upheld the judgment of the first-instance court. On 1 July 1999 the Court of Cassation dismissed the applicants' request for rectification of its decision. This decision was notified to the applicants on 13 July 1999.

B. The documents submitted by the parties

30. A booklet published by the THKP-C in July 1992 described the events of 16-17 April 1992 and contained transcripts of telephone conversation between G.Ş. and the deceased Sabahat Karataş, who was a board member and the wife of the leader of the illegal organisation. The booklet, which was entitled "Our flag will fly all around the country", praised socialism and stated that Taşkın Usta and the other two deceased had resisted the fascist forces for eight and a half hours. According to the transcripts in the booklet, Sabahat Karataş and Eda Yüksel stated, as relevant, the following:

"Sabo (Sabahat Karataş): Hello. They have surrounded the flat. I am together with two comrades. We have been keeping them busy for the last half an hour. We burned all documents in the bathroom. ... They will start firing soon. We are going to fight. We will join ... the martyrs of 12 July. My comrade wants to talk to you.

Eda: We will become martyrs for the fighters of Devrimci Sol and the people of Turkey. We are fine, very calm. As our comrades who embraced the death with a smile on 12 July in Kızıldere, we will also meet the death smiling and fighting...

Sabo: I was wounded in my arm. A bullet entered and exited. I can still fire. ..

Eda's voice: Come with your tanks and cannons, cowards...

Sabo: They are trying to open the door with a bomb. We can't come closer as the telephone is by the door. We are going back. They are entering...

Sabo: We are embracing death with guns in our hands and slogans.... Goodbye...

Intense gunfire can be heard on telephone..."

31. The survey and assessment report dated 17 April 1992 described the course of events leading to the killing of the three militants and listed the guns, ammunition and the materials found in the flat. The report also described the bodies of the deceased found in one of the rooms. It stated that a sketch map of the scene of the incident had been drawn and photos had been taken by the police officers. The sketch map indicated the positioning of the bodies.

32. The post-mortem examination report dated 17 April 1992 contained a detailed account of the examination conducted on the bodies of the

deceased. It indicated the number and location of the wounds and injuries on the corpses.

33. The incident report dated 18 April 1992 described the state of the flat where the clash took place.

34. The autopsy report dated 18 April 1992, prepared by six specialist doctors from the Cerrahpaşa Medical Faculty, stated that the death of Taşkın Usta had been caused by bullets which shattered his internal organs. According to the report, seven 9 mm. bullets had been extracted from the body of Taşkın Usta.

35. The ballistics report, prepared by a specialist from the Regional Criminal Police Laboratory, gave a detailed account of the examination carried out on the weapons and bullets used at the scene of the incident. The report also indicated the type and number of bullets discharged from each pistol.

36. Between 17 April 1992 and 29 April 1992 the Kadıköy public prosecutor took witness statements from eighteen persons, including the second applicant and the residents of the building, as regards the killing of the THKP-C militants. The witnesses, except the second applicant, stated in general that the terrorists had refused to surrender to the police, started a fire in the flat and had opened fire on the police following which a clash had occurred. The clashes had caused the killing of the three suspects and the wounding of a police officer.

37. In a report dated 18 May 1992, the Physics and Ballistics Department attached to the Istanbul Forensic Medicine Institute issued a report concerning the range of the shootings subsequent to the examination of the clothes of the deceased. The report concluded that long range shootings had caused the death of the deceased.

38. The autopsy report dated 20 May 1992 indicated the entry and exit location of the bullets on the body of Taşkın Usta and concluded that death had been caused by bullets which shattered internal organs and broken the ribs and the skull of the deceased. The report gave a detailed account of the external and internal examination conducted on the body.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. A description of the relevant domestic law at the material time and international law can be found in *Erdoğan and Others v. Turkey* (no. 19807/92, §§ 51-58, 25 April 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

40. The applicants complained that the killing of Taşkın Usta had violated Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided 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

41. The Court notes that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

42. The applicants alleged that police officers could have captured Taşkın Usta alive. In their opinion, if he was known to be a terrorist, as alleged by the Government, the police officers should have apprehended him prior to the incident which led to his killing. Alternatively, given that his address was known to the police, they could also have arrested him during the day when he went out of his flat.

43. The Government submitted that the police officers had acted on receipt of information that there were terrorists in the flat in question and that the operation had been planned in order to minimise the use of lethal force. They noted that the police had used firearms acting in self-defence and in accordance with the requirements of the Law and Regulation on

Duties and Powers of the Police. In their view, the death of Taşkın Usta resulted from a use of force which was no more than absolutely necessary. It was also established by the domestic courts that the police officers had started firing only after the deceased had opened fire and in order to protect themselves. Furthermore, the authorities had carried out an adequate and effective investigation into the impugned events.

2. The Court's assessment

(a) As to the alleged violation of the right to life of Taşkın Usta

i. General principles

44. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted (see *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI). Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII). The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47).

45. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction (see *Kiliç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

46. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted to intentionally kill an individual, but 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*, cited above, p. 46, §§ 148-9).

47. In this connection, the Court reiterates that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first instance tribunal of facts, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic authorities, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those authorities (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 18, §§ 29-30).

48. However, the central importance of the protection afforded under Article 2 is such that the Court is required to subject allegations of breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination even where domestic proceedings and investigations have already taken place (see *Erdoğan and Others*, cited above, § 71).

ii. Establishment of the facts

49. The Court notes that it is undisputed between the parties that Taşkın Usta was shot dead by the police officers in the course of a clash between the latter and the THKP-C militants. However, the parties disagreed on the account of the events leading to the killing of Taşkın Usta. The applicants alleged that the police officers arrived at the scene of the incident in order to kill Taşkın Usta and his two friends although he could have been apprehended prior to the events. The Government, on the other hand, claimed that Taşkın Usta and his two friends had refused to surrender and had opened fire. The Government contended that they had died as a result of an armed clash during which the police officers acted in self-defence and in compliance with Law no. 2559 on the duties and legal powers of police.

50. The Court observes that a judicial determination of the facts took place in the course of the criminal proceedings brought against the police officers before the Kayseri Assize Court. Even if certain facts remain unclear, the Court considers, in the light of all the material produced before it, that there is a sufficient factual and evidentiary basis on which to assess

the case, taking as a starting point the findings of the national court (see *Makaratzis v. Greece* [GC], no. 50385/99, § 47, ECHR 2004-XI; and *Perk and Others v. Turkey*, no. 50739/99, § 57, 28 March 2006).

iii. Application in the present case

51. The Court notes that Taşkın Usta was killed in the course of an anti-terrorist operation conducted by police officers from the anti-terror branch of the Istanbul Security Directorate. Having regard to the material in its possession, it does not find it sufficiently established that the police officers acted from the outset with aim of killing Taşkın Usta and his two friends.

52. As regards the legal framework defining the circumstances in which law enforcement officials may use force and firearms, the Court recalls that it has already held that the applicable legislation at the time of the incident, namely Law no. 2559, enacted in 1934, would not appear sufficient to provide the level of protection “by law” of the right to life that is required in present-day democratic societies in Europe (see *Erdoğan and Others*, cited above, § 77 and *Makaratzis*, cited above, § 59). In this connection, it is to be noted that by virtue of Article 17 of the Constitution recourse to lethal force can only be justified “in case of absolute necessity authorised by law”. Thus, in the Court’s view, the difference between the national standard and the standard of Art 2 of the Convention is not sufficiently great that a violation of Art 2 § 1 could be found on this ground alone (see *McCann and Others*, cited above, p. 47, §§ 154-155).

53. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 182).

54. In this connection, the Court notes that the police officers arrived at the scene of the incident following an anonymous phone call on 16 April 1992 according to which members of an illegal organisation were preparing an assault in the Kadıköy district of Istanbul (see paragraph 6 above). Accordingly, this was an emergency situation which required the security forces to act with great rapidity.

55. Referring to the findings of the Kayseri Assize Court, the Court observes that, in the circumstances of the case, the use of force by the security forces was the direct result of the unlawful violence emanating from the deceased suspects. In this respect, it recalls that the police officers arrived at the scene of the incident, secured the surroundings of the flat and asked the suspects to open the door to carry out an identity check. However, the suspects proceeded to shout slogans through the window, displayed the flag of an illegal organisation and opened fire on the police officers. Consequently, the operation in question must be considered to have been

effected “in defence ... from unlawful violence” and “in order to effect a lawful arrest” within the meaning of Article 2 § 2 of the Convention.

56. The Court must therefore determine whether the use of force in the instant case was no more than absolutely necessary and strictly proportionate to the achievement of the aforementioned aims.

57. The Court notes that the Kayseri Assize Court found it established, on the basis of the evidence before it, that the first gunshot came from the deceased. As the statements of the eye witnesses demonstrate, the police officers repeatedly asked the suspects to surrender and gave the necessary warnings before shooting and they started shooting only after being fired at (see paragraphs 6, 7, 17, 19 and 36 above).

58. The Court notes also that when the police officers were confronted with gunfire from the suspects, they believed that it was necessary to return fire until the suspects ceased firing (see *Perk and Others*, cited above, § 68). In this connection, the Court finds it significant that, according to the ballistic examination reports, the deceased had discharged 700 bullets and the police officers had discharged 420 bullets and that the police officers’ shots had all been fired at long range (see paragraphs 17 and 37 above). Furthermore, the fact that the operation lasted nine hours and that the police authorities brought an ambulance to the scene of the incident indicate that the operation was conducted with a view to apprehending the suspects and that measures were taken to provide any necessary medical assistance.

59. The Court further considers that it is not necessary to speculate on the question of the possibility to use non-lethal methods by the security forces in order to arrest the deceased. In this connection, it recalls that in the cases of *Andronicou and Constantinou* and *Perk and Others*, where the applicants’ relatives had been killed as a result of use of force by the security forces, it held that it could not with detached reflection substitute its own assessment of the situation for that of the officers who were required to react in the heat of the moment. The Court further considered that to hold otherwise would be to impose an unrealistic burden on the States and their law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see *Andronicou and Constantinou*, cited above, § 192; and *Perk and Others*, cited above, § 72). It sees no reason to reach a different conclusion in this case, where a violent confrontation took place between the parties and the police officers had to act in self-defence when confronted with three armed suspects.

60. The Court considers therefore that the use of lethal force in the circumstances, however regrettable it may have been, did not exceed what was “absolutely necessary” for the purposes of self-defence and effecting a lawful arrest and did not amount to a breach by the respondent State of their obligations under Article 2 § 2 (a) of the Convention.

61. It follows that there has been no violation of Article 2 of the Convention as regards the killing of Taşkın Usta.

(b) As to the alleged inadequacy of the investigation

i. General principles

62. The Court has already held that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, with the purpose of securing the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

63. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84).

64. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 87) and to the identification and punishment of those responsible (*Oğur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, concerning autopsies, *Salman*, cited above, § 106, concerning witnesses, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; concerning forensic evidence, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard.

65. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-2440, §§ 102-104; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80-87 and 106, ECHR 1999-IV; *Tanrıkulu*, cited above, § 109; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt

response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Avşar v. Turkey*, no. 25657/94, § 395, ECHR 2001-VII (extracts)).

ii. Application in the present case

66. The Court observes a comprehensive investigation has indeed been carried out by the authorities into the circumstances surrounding the killing of the three suspects. In this connection, it notes that immediately after the impugned incident, an incident report and a survey report describing the course of events and the state of the flat were prepared by the police officers (see paragraph 31 and 33 above). A sketch map of the flat which indicated the positioning of the deceased's bodies was drawn up and photos were also taken (*ibid.*). The weapons used in the clash and the cartridges retrieved from the scene of the incident were subjected to ballistics examination. The cartridges discharged from every weapon had been identified and the range of the shootings also been determined subsequent to the examination of the clothes of the deceased (see paragraphs 35 and 37 above). Furthermore, six forensic experts carried out a classic and comprehensive autopsy on the body of the deceased (see paragraph 34 above).

67. Nevertheless, the investigation at issue cannot be considered to be an effective one given the substantial delays. In this connection, the Court notes that the prosecuting authorities waited for more than eight months to take statements from police officers who took part in the operation and that it took them more than two years to complete this exercise (see paragraph 13 above). The Kayseri Assize Court, which took over the case-file from the Kadıköy Assize Court, took more than seven years in reaching a final judgment in the proceedings against the accused police officers and another two years elapsed before the Court of Cassation (see paragraphs 16-20 above).

68. In view of the foregoing, the Court considers that the proceedings in question, which lasted more than thirteen years, cannot be described as a prompt response by the authorities in investigating the alleged unnecessary and disproportionate use of force. Accordingly, given the delays in the criminal investigation and the overall duration of the proceedings, the Court concludes that there has been a violation of the State's procedural obligation under Article 2 of the Convention.

69. There has therefore been a violation of Article 2 under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants claimed 400,000 euros (EUR) in respect of pecuniary damage. They noted that this sum corresponded to the value of the flat and two cars confiscated by the authorities (see paragraph 22 above). Without specifying any sum, the applicants asked the Court to award them non-pecuniary damage.

72. The Government asked the Court to dismiss the applicants' claims for just satisfaction.

73. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, having regard to its finding of a violation of Article 2 under its procedural limb (see paragraph 69 above) and ruling on an equitable basis, it awards the applicants EUR 10,000 jointly in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicants asked the Court to make an award for the costs and expenses incurred before the Court.

75. The Government contended that the applicants' claim was unsubstantiated.

76. 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 were reasonable as to quantum. In the present case, regard being had to the above criteria and the applicants' failure to submit any quantified claim, the Court makes no award under this head.

C. Default interest

77. The Court considers it appropriate that the default interest 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 remainder of the application admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention as regards the killing of Taşkın Usta;
3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into New Turkish liras at the rate applicable at the date of settlement free of any taxes or charges that may be payable;
 - (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 point;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President