



Turkish authorities not to blame for death of girl attacked by stray dogs

In today's Chamber judgment in the case of [Berü v. Turkey](#) (application no. 47304/07), which is not final¹, the European Court of Human Rights held:

by six votes to one, that there had been **no violation of Article 2 (right to life)** of the European Convention on Human Rights, and

unanimously, that there had been **a violation of Article 6 § 1 (right to a fair hearing)**.

The case concerned the death of a child in an attack by stray dogs, which were already known to be dangerous.

Principal facts

The applicants, Zeki, Hacı, Zübeyde, Meral, Keziban and Berivan Berü, are six Turkish nationals, all members of the same family.

On 19 March 2001 their daughter or sister, then aged nine, Gazal Berü, was fatally attacked by stray dogs around Yiğitler cemetery (Bingöl district) just outside their village.

An investigation was immediately opened. According to various concurring statements, the dogs had previously injured other villagers and killed cattle, before the fatal attack in question. The previous year a gendarme had been admitted to hospital after being bitten and villagers had also discussed the matter with the gendarmerie's commanding officer, who had told them to kill the dogs if they were dangerous. Some villagers stated that the dogs belonged to the gendarmerie near the village, but the gendarmes asserted that they were stray dogs who would scavenge in the gendarmerie's dustbins about 200 metres beyond the barbed-wire fence surrounding the station. The gendarme on duty on the day of the incident indicated that he had seen the dogs attack the child but had not fired because he was afraid of injuring her. He had, however, raised the alarm, following which his colleagues had rushed out to chase the dogs away and try to save the child.

On 26 April 2001 the public prosecutor found that the commanding officer's liability might be engaged in the case, in view of the testimony to the effect that the dogs belonged to the gendarmerie. He therefore requested the Karlıova provincial governor's office for authorisation to prosecute for gross negligence manslaughter. After conducting its investigation, the administrative board of the provincial governor's office decided not to authorise the prosecution on the ground that there was no causal link between the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

fatal attack by stray dogs and the commanding officer's liability. On 18 April 2002 the public prosecutor discontinued the criminal proceedings.

The child's father had in the meantime filed a complaint for intentional homicide, alleging that the gendarmes had knowingly ordered the dogs to attack and that the dogs belonged to them. On 12 June 2002 the public prosecutor again issued a discontinuance order, upheld on 18 July by the Muş Assize Court.

On 28 March 2002 the applicants claimed damages before the Malatya Administrative Court against the Ministry of the Interior. On 27 February 2007 their application was dismissed and that decision was upheld on 9 April 2007 by the Supreme Administrative Court. The courts took the view that the dogs were strays and that the authorities could not be found liable for the tragic attack.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) the applicants argued that the dogs belonged to the gendarmerie and that gendarmes had instigated the attack on children, or at least failed to prevent it. Relying on Article 6 §1 (right to a fair hearing within a reasonable time) they further complained about the length of the examination of their application to an administrative court for damages in connection with the incident.

The application was lodged with the European Court of Human Rights on 15 October 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 2 (right to life)

The Court reiterated that the authorities' liability could be engaged (in respect of the right to life) if they knew or ought to have known of the existence of a real and immediate risk to the life of an individual and failed to take measures which, judged reasonably, might have been expected to avoid that risk.

Examining the circumstances of Gazal's death in the light of that principle, the Court first noted that the allegations according to which the dogs belonged to the gendarmes, who had failed to prevent the attack, were not based on any reliable evidence. The Turkish courts had established the facts of the case – finding that stray dogs had been involved – and the Court thus based its analysis on their assessment.

The Court observed that a series of incidents had already taken place before the fatal attack (villagers and a gendarme injured, cattle killed, etc.). However, in the Court's view, those factors were not sufficient for it to find that the authorities had a "positive obligation" to take preventive measures. There was no evidence in the file that the

authorities knew or should have known that there was an immediate risk to Gazal's life because of a few stray dogs outside the village. The incident, admittedly a tragic one, had in reality happened by chance and Turkey's responsibility could not therefore be engaged without extending that responsibility in an excessive manner.

The Court thus found, by six votes to one, that there had been no violation of Article 2.

Article 6 § 1 (right to a fair hearing within a reasonable time)

Like the applicants, the Court took the view that the length of the administrative proceedings they had brought (about five years for two levels of jurisdiction) had been excessive.

It thus found, unanimously, that there had been a violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicants 3,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Popović expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.