



No effective investigation was carried out to identify and punish the members of the Turkish armed forces who killed two villagers

In today's Chamber judgment in the case of [Nihayet Arıcı and Others v. Turkey](#) (applications nos. 24604/04 and 16855/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights (in respect of the deaths) ; and,

a violation of Article 2 of the Convention (in respect of the investigation).

The case concerned the deaths of Mehmet Arıcı and Muhsin Güngör, two Turkish villagers who were found dead near the village of Bozyamaç, close to the border with Iraq. The Court held that their deaths were attributable to the Turkish armed forces stationed in the area at the time. It also acknowledged that a more effective and thorough investigation should have been carried out. The Court therefore found a violation of Article 2 of the Convention regarding the deaths and the investigation.

For the first time the Court, in the operative part of the judgment, invited the State "to conclude the preliminary investigation without delay and take the appropriate action regarding the compensation to be awarded to the applicants", that is to say, the victims' relatives.

Principal facts

The applicants, Nihayet Arıcı, Hanefi Arıcı, Siman Töre, Mahsime Arıcı, Sidap Arıcı, Azade Arıcı and Gülendarm Arıcı, who are the wife and children respectively of the late Mehmet Arıcı, and Abdullah Güngör and Hila Güngör, who are the parents of the late Muhsin Güngör, are Turkish nationals who were born in 1951, 1978, 1974, 1980, 1980, 1979 and 1979 respectively, and in 1946 and 1931. They all live in Hakkari (Turkey).

On 29 September 1999 the bodies of Mehmet Arıcı and Muhsin Güngör were found buried under a rock on the plateau of Öveç behind the village of Bozyamaç, close to the Iraqi border.

The *muhtar*² of Bozyamaç informed the public prosecutor of the discovery and brought the bodies back to the village. The public prosecutor wrote a report, which was signed by the *muhtar*, stating that 79 spent cartridges from weapons used by the armed forces had been found at the scene. On 30 September an autopsy report was drawn up, according to which the *muhtar* claimed to have met the commanding officer of two commando battalions based in Kayseri on 28 September 1999. The officer had informed

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

² Village headman.

the *muhtar* that a military operation had been carried out near Bozyamaç and that several persons had been arrested and would be handed over to the gendarmes.

In October 1999 the public prosecutor first took evidence from Mehmet Arıcı's wife and daughter, from the *muhtar* and from Rakıp Onay, another villager. Mr Arıcı's wife and daughter stated, among other things, that Mehmet Arıcı had left home in the morning of 28 September 1999 to put his livestock out to graze, and that soldiers had arrived later and searched their home three times. The soldiers had drawn up a report on the third search after failing to find any incriminating evidence. Mr Arıcı's wife and daughter also said that two shepherds had seen soldiers taking Mehmet Arıcı away, leading his wife and daughter to think that he had been taken into police custody. That evening, they had heard shots coming from behind the village and the bodies had been found there the next day. When questioned, the two shepherds confirmed that they had witnessed Mehmet Arıcı being arrested by soldiers, and stated that the latter had searched and undressed him before tying his hands behind his back. They said they had been arrested at the same time but had eventually been released that evening, unlike Mehmet Arıcı.

Also in October 1999, the public prosecutor asked the military command in Kayseri and the gendarmerie command whether they had carried out any search operations near Bozyamaç. They replied that no operations had been carried out.

On 4 November 1999 the *muhtar* informed the public prosecutor that Muhsin Güngör, who came from a neighbouring village, had been one of the victims. Taking the view that there were grounds for suspecting involvement by the security forces, the public prosecutor's office declined jurisdiction on 15 November 1999 in favour of the Administrative Council. Between February 2000 and March 2001 the official in charge of the investigation, and then the gendarmes, again heard evidence from all the witnesses, who repeated their statements. Muhsin Güngör's father was also questioned twice.

The case was referred to the Criminal Court in July 2001. At the court's request the public prosecutor's office obtained a list of all the military personnel attached to the battalions implicated. However, the court discontinued the proceedings in March 2002, finding that the case had not been duly referred to it since the prosecution had not been brought against clearly identified individuals.

A further investigation was then opened during which most of the witnesses gave evidence again and reiterated their statements. In November 2003 several new witness statements by members of the armed forces – which were missing from the Court's case file or were illegible – were sent to the public prosecutor. A further series of statements was also sent, taken from members of the armed forces under delegated powers between December 2003 and February 2005. While most of the soldiers said that they had not witnessed the incident, some stated clearly that they had been stationed close to the village of Bozyamaç and had carried out operations in the area.

Between March 2005 and 2009 the authorities informed the applicants at intervals that the investigation was still in progress, and interviewed people from the village once again. The investigation is still ongoing.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 of the Convention (right to life), the applicants complained that their relatives had been arrested and killed by members of the armed forces. They further alleged that the investigation carried out by the domestic authorities had been inadequate with regard to the circumstances surrounding the arrest and death of their relatives.

The application was lodged with the European Court of Human Rights on 16 May 2004.

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

Ineta **Ziemele** (Latvia), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Işıl **Karakas** (Turkey),
 Guido **Raimondi** (Italy),
 Paulo **Pinto de Albuquerque** (Portugal),
 Helen **Keller** (Switzerland),

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 2 (deaths)

With regard to the presence of the armed forces in the area where the bodies of the applicants' relatives had been found, the Court noted that two witnesses (the shepherds) had been the last to see the applicants' relatives alive, in the hands of the armed forces. It was also clear from the public prosecutor's decision declining jurisdiction, which reproduced the relevant witness statements, that military units had been stationed in the area and that the dead men had been arrested by them.

Basing its findings on various items of evidence submitted by the parties, and in particular on the witness statements by members of the armed forces, the Court observed that an operation had been carried out in the village of Bozyamaç. It noted that soldiers had searched Mehmet Arıcı's home on three occasions and that a report appeared to have been drawn up during the third search. The Court further observed that the autopsy report on the dead men, and the spent cartridges found in the place where their bodies had been discovered, corroborated the witness statements to the effect that an operation had been conducted by the armed forces at the scene of the incident.

The Court noted that the national authorities had given no explanation as to what had occurred after the men's arrest, nor had they put forward any ground to justify the use of lethal force by their agents.

For the above reasons the Court found it established that the applicants' relatives had been killed by members of the armed forces and that there had therefore been a violation of Article 2.

Article 2 (investigation)

While acknowledging that the national authorities had carried out numerous investigative measures, the Court nonetheless observed that those measures had not shed light on the circumstances in which the applicants' relatives had died, nor had they led to the identification of the person or persons responsible. It also noted the repetitive nature of the interviews conducted and the fact that the investigation was still ongoing.

The Court observed that the public prosecutor, on being informed of the discovery of the bodies by the villagers, had not taken the trouble to go to the scene to gather evidence, but had left it to the *muhtar* to transport the bodies to the village of Bozyamaç for the autopsy. Likewise, the public prosecutor had not ordered ballistics tests on the spent cartridges and live round of ammunition found by the villagers at the scene, nor had he considered it necessary to seize the search report drawn up by the soldiers during the

final search of Mehmet Arıcı's home. Furthermore, Mr Arıcı's other daughter, who had signed the report, had not been questioned. The Court also noted that numerous statements from armed forces personnel were missing from the case file or were illegible, while other members of the armed forces had still not been questioned.

Consequently, the Court considered that the investigation carried out by the authorities had not been sufficiently thorough or effective and that there had been a breach of Article 2 in respect of the investigation.

Just satisfaction (Article 41)

The Court did not make any award by way of just satisfaction or award a sum in respect of costs and expenses. However, it held that Turkey must conclude the preliminary investigation without delay and take the appropriate action regarding the compensation to be awarded to the applicants.

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.