



## Turkey did not conduct an effective investigation following the death of a young man during military service

In today's Chamber judgment in the case [Serdar Yigit and Others v. Turkey](#) (application no. 20245/05), which is not final<sup>1</sup>, the European Court of Human Rights held :

by a majority, that there had been **a violation of Article 2 (right to life – lack of an effective investigation)** of the European Convention on Human Rights, and

unanimously, that there had been **no violation of Article 2 (right to life – question of the authorities' responsibility for the death)** of the Convention.

The case concerned the death of a young man doing military service; the investigation concluded that he had committed suicide.

### Principal facts

The applicants are 11 Turkish nationals from a family living in Van (Turkey). They are the relatives (partner, son, parents and brothers) of Mevlüt Baysan, who died on 27 July 2003 in the circumstances set out below.

On 27 May 2003 Mevlüt Baysan began his military service in Ovacık (Tunceli). He underwent the standard medical tests, including a psychological examination. The report of 28 May 2003 indicated that he had stated, among other things, that he did not smoke, drink or take drugs, did not have any family-related or other problems, was financially stable, was in good health and was fit to perform military service.

On 27 July 2003 Mevlüt was found dead from a rifle shot in the head at point-blank range.

An internal investigation and a criminal investigation were opened. It quickly became apparent that the weapon used in Mevlüt's death, and which was found near his body, was that of another soldier. The latter initially claimed that Mevlüt had ripped the weapon out of his hands; he subsequently explained that in fact he had handed it over himself, so that Mevlüt could continue guard duty in his place after Mevlüt had told him that the commandant wished to see him. The internal report drawn up by the administrative investigation committee found that, following an ambush in which Mevlüt Baysan and his unit had been caught on 5 July 2003 and during which one of his close friends had been killed, Mevlüt had become depressed, had trouble sleeping and had

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1 Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's 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. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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](http://www.coe.int/t/dghl/monitoring/execution)

become withdrawn. In addition, his pregnant girlfriend had almost suffered a miscarriage after a fall, but Mevlüt could not be authorised to return home immediately. To help him deal with those problems, Mevlüt's commandant had provided for his transfer to the dispensary, then to the kitchen, but he had refused those transfers because he wished to continue to conduct military tasks. Furthermore, the soldier who had handed over his weapon to Mevlüt had acted in violation of the rules.

On 30 December 2003 the military procurator concluded that Mevlüt had committed suicide and, finding that no negligence could be attributed to the military authorities, held that there was no case to answer. The applicants appealed against that order. On 18 February 2004 the Malatya military court ordered an additional judicial investigation on the ground that there were various shortcomings in the investigation (failure to question several witnesses, failure to establish the exact location of the soldier who had handed over the weapon when the incident took place, etc.) and that documents were missing from the case file. On 25 October 2004 the Malatya military court, finding that those shortcomings had been corrected, dismissed the applicants' appeal against the order of 30 December 2003 that there was no case to answer.

The soldier who had provided the weapon was disciplined.

## Complaints, procedure and composition of the Court

Relying in particular on Article 2, the applicants complained that the authorities had not taken any measures to prevent the suicide of their relative, assuming that it actually was the cause of death, and had not envisaged the hypothesis of murder. They also argued that the investigation into their relative's death had been insufficient and inadequate.

The application was lodged with the European Court of Human Rights on 20 May 2005.

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

Françoise **Tulkens** (Belgium), *President*,  
Ireneu **Cabral Barreto** (Portugal),  
Dragoljub **Popović** (Serbia),  
Nona **Tsotsoria** (Georgia),  
Işıl **Karakaş** (Turkey),  
Kristina **Pardalos** (San Marino),  
Guido **Raimondi** (Italy), *Judges*,

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

## Decision of the Court

### Article 2 (Mevlüt Baysan's death)

Firstly, the Court emphasised that there was no evidence in the case file to support the theory of murder and that such a theory was speculative. Any lack of rigour in the investigation was not in itself a sufficient basis for a presumption of any kind against the State. In other words, the Court found no reason to challenge the premise of suicide.

Secondly, the Court examined whether the military authorities knew or should have known that there was a genuine risk that Mevlüt would commit suicide and, if so, whether they did everything that could reasonably have been expected of them to prevent that risk. In that connection, the Court noted that the results of the medical examination conducted at the beginning of Mevlüt's military service had been normal, and that it was not claimed that Mevlüt had been subjected to debasing treatment by his

colleagues. The Court was not therefore convinced that he would have required special or strict monitoring, at least until 5 July 2003, the date of a military operation during which the young man lost one of his close friends. That incident had resulted in a certain psychological fragility, and his commandant has responded by proposing measures which would remove him from military tasks, measures that Mevlüt had, however, refused. The Court considered that, while the military authorities had admittedly taken adequate measures, it would have been desirable had they verified the exact nature of Mevlüt's problems. Nonetheless, like the national authorities, the Court considered that it could accept that Mevlüt might have been pushed to commit suicide by a form of psychological depression that was unpredictable, since, when alive, he had apparently never behaved in a way that indicated a real and immediate risk that he would take his own life.

In conclusion, the Court considered that criticising the authorities for not doing more to prevent Mevlüt Baysan's suicide would be tantamount to imposing an excessive burden on them in the light of the evidence in the case file and their obligations under Article 2 of the Convention. Accordingly, the Court held, by six votes to one, that there had been no violation of Article 2 concerning Turkey's responsibility for Mevlüt Baysan's death.

### Article 2 (the investigation)

The Court reiterated that an independent investigation should have been conducted, capable of determining the circumstances surrounding Mevlüt Baysan's death and establishing those responsible for it.

A criminal investigation had been opened on the day of Mevlüt Baysan's death, as well as an internal administrative investigation. However, although there was no evidence of a lack of willingness on the part of the authorities to establish the facts, it remained the case that certain crucial factors seemed not to have been investigated. In particular, the case file contained no information as to whether the shortcomings in the investigation identified by the Malatya military court had been corrected by the prosecutor's office following the request for an additional judicial investigation (that court finally decided that it had been done, but there was no evidence in the file to support such a claim). In addition, the applicants had been excluded from the investigation and had not had an opportunity to be heard by a judge prior to the finding that there was no case to answer; although the next of kin should always be associated with the investigation.

The Court concluded unanimously that the investigation into Mevlüt Baysan's death had not been effective, in violation of Article 2.

### Article 41

Under Article 41 (just satisfaction), the Court held that Turkey was to pay, in respect of non-pecuniary damage, 18,000 euros [EUR] jointly to Mevlüt Baysan's partner and son, EUR 12,000 jointly to his parents and EUR 9,000 jointly to his brothers.

### 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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