



Lack of cooperation between Cyprus and Turkey resulted in an ineffective investigation in a murder case

In today's **Chamber judgment**¹ in the case of **Guzelyurtlu and Others v. Cyprus and Turkey** (application no. 36925/07) the European Court of Human Rights held:

by five votes to two, that there had been a **violation of Article 2 (right to life/investigation)** of the European Convention on Human Rights by Cyprus and,

unanimously, that there had been a **violation of Article 2 (right to life/investigation)** of the European Convention by Turkey.

The case concerned the killing of Elmas, Zerrin and Eylül Güzelyurtlu, who were shot dead in the Cypriot-Government controlled area of Cyprus on 15 January 2005. The killers fled back to the "Turkish Republic of Northern Cyprus" (the "TRNC"). Parallel investigations into the murders were conducted by the authorities of the Cypriot Government and the Turkish Government, including those of the "TRNC". The "TRNC" authorities insisted that the case file containing the evidence against the suspects be handed over so that they could conduct a prosecution. The Cypriot authorities refused. On the strength of the evidence gathered during their investigation, the Cypriot authorities sought the extradition of the suspects who were within Turkey's jurisdiction (either in the "TRNC" or in mainland Turkey) with a view to their trial. The extradition requests were returned to the Cypriot authorities without reply. The investigations of both respondent States thus reached an impasse in 2008.

The applicants, relatives of the victims, complained that both the Cypriot and Turkish authorities (including those of the "TRNC") have failed to co-operate and conduct an effective investigation into the killing of their relatives.

The Court found that, where – as in the applicants' case – the investigation of unlawful killings unavoidably implicated more than one State, the States concerned were obliged to cooperate effectively and take all reasonable steps necessary to facilitate and realise an effective investigation into the case overall. However, it was clear from all the material before the Court, that both Governments had not been prepared to make any compromise on their positions and find middle ground, despite various options having been put forward, including by the United Nations. That position arose from political considerations which reflected the long-standing and intense political dispute between Cyprus and Turkey. A situation thus resulted in which the respondent Governments' respective investigations – which the Court found adequate up until the impasse – remain open. Nothing has therefore been done for more than eight years to bring to a close what is ultimately a straightforward case.

Principal facts

The applicants are all relatives of Elmas, Zerrin, and Eylül Güzelyurtlu, who were shot dead on the Nicosia-Larnaca highway in the Cypriot-Government-controlled areas on 15 January 2005. Elmas was found dead in a ditch and his wife, Zerrin, and daughter, Eylül, in the back seat of their car parked on

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.

the hard shoulder. The three victims were all Cypriot nationals of Turkish Cypriot origin. The killers fled back to the “TRNC”.

Parallel investigations into the murders were conducted by the authorities of the Cypriot Government and the Turkish Government, including those of the “TRNC”.

The Cypriot authorities, among other things, collected and secured evidence at the scene of the crime and at the victims’ house, conducted post-mortem examinations, took statements from numerous witnesses (including the victims’ relatives), carried out a ballistic examination and DNA tests, searched the records of vehicles that had gone through the crossing points, and examined the security system of the victims’ house and computer hard discs. The investigative steps quickly led the authorities to conclude that the victims had been kidnapped and murdered in the early hours of 15 January 2005 and then to identify eight suspects. In the days after the shootings, domestic and European arrest warrants were thus issued and the Cypriot police submitted requests to Interpol to search for and arrest the suspects with a view to their extradition. Red notices were published by Interpol in respect of all suspects. The suspects were also all added to the Cypriot Government’s “stop list” (a register of individuals whose entry into and exit from Cyprus is monitored or banned). On 24 April 2008 the case file was classified as “otherwise disposed of” pending future developments.

The Turkish (including the “TRNC”) authorities equally took a number of investigative steps following the news of the murders, and by the end of January 2005 all of the suspects had been arrested. Statements were taken from the suspects – who denied any involvement in the crime – and persons who knew or were connected to them as well as from the applicants. Evidence was also collected. However, the suspects were released on or around 11 February 2005 due to lack of evidence connecting them to the murders. The file was classified as “non-resolved for the time being” in March 2007.

The “TRNC” authorities insisted that the case file containing the evidence against the suspects be handed over so that they could conduct a prosecution. The Cypriot authorities refused. On the strength of the evidence gathered during their investigation, the Cypriot authorities – in November 2008 – sought the extradition of the suspects who were within Turkey’s jurisdiction (either in the “TRNC” or in mainland Turkey) with a view to their trial. The extradition requests were returned to the Cypriot authorities without reply. The investigations of both respondent States thus reached an impasse and have remained open since then.

Following the murders the Cypriot Government, the “TRNC” and the applicants were in contact with the United Nations Peacekeeping Force in Cyprus (“UNFICYP”) about the case. A number of meetings were held and there was also an exchange of telephone calls and correspondence. However, UNFICYP’s efforts to assist the sides to bring the suspects to justice have proved unsuccessful.

The applicants are Mehmet Güzelyurtlu, Ayça Güzelyurtlu, Deniz Erdinç, Emine Akerson, Fezile Kirralar, Meryem Özfirat and Muzaffer Özfirat. They are Cypriot nationals of Turkish Cypriot origin who were born in 1978, 1976, 1980, 1962, 1956, 1933, and 1933 respectively. They live in the “Turkish Republic of Northern Cyprus” or in the United Kingdom.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that both the Cypriot and Turkish authorities (including those of the “TRNC”) had failed to conduct an effective investigation into the killing of their relatives. They further alleged that as a result of the refusal of Turkey and Cyprus to co-operate the killers have not yet faced justice. Relying on Article 13 (right to an effective remedy) in conjunction with Article 2, they complained of a lack of an effective remedy in respect of their Article 2 complaint.

The application was lodged with the European Court of Human Rights on 16 August 2007.

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

Helena **Jäderblom** (Sweden), *President*,

Branko **Lubarda** (Serbia),

Işıl **Karakaş** (Turkey),

Helen **Keller** (Switzerland),

Pere **Pastor Vilanova** (Andorra),

Alena **Poláčková** (Slovakia),

Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

The Court recalled that, generally, the procedural obligation under Article 2 to carry out an effective investigation fell on the State under whose jurisdiction the victim was at the time of death. Nonetheless, where there is a cross-border dimension to an incident of unlawful violence leading to loss of life, Article 2 requires that the authorities of the Contracting State to which the suspects have fled and in which evidence of the offence could be located, take it upon themselves to take effective measures in that regard. Otherwise, those involved in cross-border attacks would be able to operate with impunity and the authorities of the State where the unlawful attacks have taken place would be prevented from protecting the fundamental rights of their citizens and, indeed, of any individuals within their jurisdiction. In the present case, the suspects are or were within Turkey's jurisdiction, either in the "TRNC" or in mainland Turkey. The Turkish (including the "TRNC") authorities had been informed of the crime and Red Notices concerning the suspects had been published. A departure from the general approach was therefore justified and not only the Republic of Cyprus but also Turkey's obligations under Article 2 were engaged. The Court further noted that the "TRNC" authorities had instituted their own criminal investigation and that their courts had jurisdiction.

First, it was clear that the authorities of the respondent States had taken a significant number of investigative steps promptly. A considerable amount of evidence had been collected and eight suspects had quickly been identified, traced and arrested. Prior to the impasse, the Court therefore found on the facts of the case that there had been no shortcomings in the respective investigations in themselves.

However, in assessing whether there had been a violation of Article 2, the Court also examined whether the authorities had done all that could be reasonably expected of them in the circumstances. Where – as in the applicants' case – the investigation of the unlawful killing unavoidably implicated more than one State, the respondent States concerned were obliged to cooperate effectively and take all reasonable steps necessary to facilitate and realise an effective investigation into the case overall. Despite this, the authorities of the respondent States in the present case had failed to co-operate resulting in a situation in which their respective investigations remain open. Nothing has therefore been done for more than eight years to bring to a close what is ultimately a straightforward case.

Moreover, although the respondent States had had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they had not used that opportunity to the full. Any suggestions made in an effort to find a compromise solution or that the authorities concerned meet each other half way had been met with downright refusal on the part of those authorities. A number of options have been put forward, including: organising meetings on neutral territory between the Cypriot and "TRNC" police, UNFICYP and the Sovereign Base Areas police; questioning of the suspects through a video recording interview method at the Ledra Palace Hotel in the UN buffer

zone; the possibility of an *ad hoc* arrangement or trial at a neutral venue; the exchange of evidence (under certain conditions); and dealing with the issue on a technical services level.

It was therefore clear from all the material before the Court, including the 2005 UN Secretary-General's report on the UN operation in Cyprus, that both Governments had not been prepared to make any compromise on their positions and find middle ground. That position arose from political considerations which reflected the long-standing and intense political dispute between Cyprus and Turkey. On the Cypriot Government's side it was evident that what had driven the unwillingness to cooperate was the refusal to lend (or the fear of lending) any legitimacy to the "TRNC" – an argument that this Court rejected. The Court ruled in this respect that it did not accept that steps taken to cooperate in order to further the investigation in this case would amount to recognition, implied or otherwise of the "TRNC". Nor would it be tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus. On the other hand, the Court found it striking that the extradition requests made by the Cypriot Government, the sole legitimate government of Cyprus, had been completely ignored by the Turkish Government.

The failure to cooperate directly or through UNFICYP had resulted in the suspects' release. If there had been cooperation, in line with the procedural obligation under Article 2, criminal proceedings might have ensued against one or more of the suspects or the investigation might have come to a proper conclusion. Therefore, the Court held that there had been a violation of Article 2 of the Convention under its procedural aspect on account of the failure of the two Governments to cooperate.

Given that conclusion, the Court was of the opinion that there was no need to examine separately the applicants' complaint under Article 13 of the Convention taken in conjunction with Article 2.

Just satisfaction (Article 41)

The Court held, by five votes to two, that each respondent Government was to pay each applicant 8,500 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Serghides and Pastor Vilanova each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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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.