



Turkish military responsible for bombing civilians in 1994; State must carry out effective criminal investigation

The case **[Benzer and Others v. Turkey](#)** (application no. 23502/06) concerned the applicants' allegation that the Turkish military bombed their two villages by aircraft in March 1994, killing more than 30 of their close relatives, injuring some of the applicants themselves, and destroying most of the property and livestock. The Turkish government claimed that this attack was carried out by the PKK (The Kurdistan Workers Party, an illegal organisation).

In today's Chamber judgment in the case, 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 on account of the deaths of 33 of the applicants' close relatives and the injuries caused to three of the applicants themselves;

a further violation of Article 2 because of the extremely inadequate investigation into the incident;

a violation of Article 3 (prohibition of inhuman or degrading treatment) because the villagers had been forced to witness the deaths of their relatives and the destruction of their homes, and the Turkish government had not provided even the minimum of humanitarian aid to deal with the aftermath of the attack; and,

a failure to comply with Article 38 (obligation to provide all necessary facilities for the examination of the case) because the Government had withheld vital evidence, namely the flight log of the planes which had carried out the bombing.

Bearing in mind that the investigation is still pending at national level, the Court found in particular that this was an exceptional case where it was appropriate to indicate **under Article 46 (implementation of judgments)** that the Turkish government should carry out further investigative steps into the incident, with the help of the flight log, in order to identify and punish those responsible for the bombing of the applicants' two villages and prevent further impunity.

Principal facts

The applicants are 41 Turkish nationals born between 1907 and 1984. They claimed that, during the Turkish government's attempts to combat the PKK in 1994, the residents of the villages of Kuşkonar and Koçağılı had refused to work for the state security forces and that the military believed that they gave assistance to the PKK. The applicants alleged that on 26 March 1994 a range of Turkish military aircraft fired on and bombed their villages, killing a large number of the inhabitants, injuring others and destroying most of the property and livestock. Though the residents of the villages heard the sound of aircraft prior to the attack, they did not expect the bombing; planes and helicopters had

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

often been heard in the area conducting reconnaissance and bombing missions against the PKK in the nearby mountains, but they had never attacked the villages. As the majority of the men from the villages were out working in the fields, most of the victims were children, women or the elderly. The applicants claimed that no members of the PKK were in the villages at the time.

The Turkish government maintained that the attack was not conducted by Turkish military aircraft, but was instead carried out by the PKK because the villages had refused to celebrate Newroz, the traditional Kurdish new year festival. It alleged that there was no evidence of state involvement.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy), the applicants complained of the killing of their relatives and the injuries caused to some of them during the attack, and that there had been no effective investigation. They also relied on Article 3 (prohibition of inhuman or degrading treatment) to complain of the terror caused by the bombing, and the failure of the national authorities to help the villages in the aftermath.

The application was lodged with the European Court of Human Rights on 26 May 2006.

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

Guido Raimondi (Italy), *President*,
Danutė Jočienė (Lithuania),
Dragoljub Popović (Serbia),
András Sajó (Hungary),
Işıl Karakaş (Turkey),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Admissibility

As the complaints of three of the applicants were dismissed in their entirety, the subsequent conclusions of the Court only concerned 38 of the 41 applicants.

Article 38 (obligation to provide all necessary facilities for the examination of the case)

The Court noted that, although the Turkish government had been asked to provide a full copy of the case file in 2009, it had not supplied the relevant flight log. This was supplied to the Court by the applicants in June 2012, after the government had already submitted its observations on the case. The Turkish government did not dispute the authenticity of the flight log, argue that it was unaware of its existence, or provide any explanation as to why it had not previously been supplied to the Court. Bearing in mind the importance of a Government's co-operation in Convention proceedings, the Court held that the failure to provide the flight log had amounted to a failure of the Turkish government to comply with its obligations under Article 38 to provide all necessary facilities to the Court in its task of establishing the facts.

Article 2 (killing of the applicants' relatives and investigation)

The Court began by examining the Government's arguments to support its claim that the PKK had been responsible for the attack on the village. It noted that the Government relied only on witness statements written in 2008, and the investigations of Turkish prosecutors in 1994, 1996 and 2006

which had found that the PKK had carried out the attack. In regard to the witness statements, all but one of these had been written by people, who were not resident in either of the applicants' two villages and who had not been present at the incident, and were therefore merely hearsay. Moreover, most of those villagers had been questioned by members of the military and not by an independent judicial authority. The only statement that had been written by a witness to the event was authored by a village guard employed by the State, and the Court therefore held that its independence and impartiality was also questionable. In regard to the investigations, the Court noted that the files of those which had been conducted in 1994 and 1996 contained absolutely no evidence that the PKK had been involved, and the conclusions reached by the prosecutors that the PKK were responsible were therefore baseless. The investigation in 2006 was based on evidence that was now clearly untenable, and involved reasoning that was illogical.

In regard to the applicants' allegation that the attack had been carried out by government aircraft, the Court noted that the applicants had consistently maintained this account over a number of years. Further investigations by the prosecuting authorities conducted in 2004 and 2005 based on eyewitness testimonies had concluded that the village was bombed by aircraft and not the PKK, and flight logs drawn up by the Civil Aviation Directorate established that missions had been flown to the villages' locations at the time that the applicants claim the attack had occurred. In the light of this evidence, the Court concluded that the Turkish government had conducted an aerial attack killing 33 of the applicants' relatives and injuring three of the applicants themselves, in violation of Article 2.

The Court also found that Turkey had violated Article 2 by failing to properly investigate the attack. In particular, it found that almost no steps had been taken immediately after the bombing to investigate what had happened, and when the incident had actually been looked into the investigators were not independent, formed baseless conclusions on extremely minimal investigations, and attempted to withhold the investigation documents from the applicants. The prosecutors' conclusions demonstrated that none of them had an open mind as to what could have happened in the applicants' villages; as was generally the case in south-east Turkey at the time, they hastily blamed the killings on the PKK without any basis. Most crucially, no investigation was apparently carried out into the the flight log, the key element for the possible identification and prosecution of those responsible. Indeed, given the abundance of information and evidence that the applicants' villages had been bombed by the Turkish Air Force, the Court could only come to one conclusion, namely that the inadequacy of the investigation had been the result of the national investigating authorities' unwillingness to officially establish the truth and punish those responsible.

Article 3 (inhuman or degrading treatment)

The Court noted that the bombing had been ordered and carried out without the slightest concern for human life by the pilots or by their superiors, which they had then tried to cover up by refusing to hand over the flight log. Furthermore, a number of applicants had had to witness the killing of their relatives (or the immediate aftermath) and the destruction of their homes, and had been forced to deal with the after-effects of the incident without even the minimum of humanitarian assistance from the Turkish authorities. In particular, in the aftermath of their relatives' deaths, the applicants had had to personally collect what was left of the bodies and take them to nearby villages for burial, some of them from Kuşkonar village even having to place the bodies in plastic bags for burial in a mass grave. The three applicants who were critically injured had to be taken to hospital on tractors by neighbouring villagers. The Court considered that the anguish and distress suffered by the applicants had been sufficiently severe as to be categorised as inhuman and degrading. Consequently, the Court held that there had been a violation of Article 3.

Article 46 (implementation of judgments)

In exceptional circumstances, the Court will indicate the type of measure that must be taken by a member State after a violation has been found against it. In this case, having regard to the fact that

the investigation file was still open at the national level, and having further regard to the documents in its possession, the Court considered that new investigatory steps should be taken under the supervision of the Committee of Ministers. It held, in particular, that the steps to be taken by the national authorities in order to prevent impunity should include the carrying out of an effective criminal investigation, with the help of the flight log, with a view to identifying and punishing those responsible for the bombing of the applicants' villages.

Article 41 (just satisfaction)

The Court held that Turkey was to pay the 38 applicants whose applications were admissible a total of 2,305,000 euros (EUR) of non-pecuniary damage, and EUR 5,700 jointly in respect of costs and expenses.

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.