

ATTACKS ON THE PHYSICAL INTEGRITY OF JOURNALISTS

I. Relevant case-law of the European Court of Human Rights

Article 3 of the European Convention on Human rights: Prohibition of torture and of inhuman or degrading treatments

Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation.

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

Rizvanov v. Azerbaijan - 31805/06 17 July 2012

This case concerned an Azeri journalist who alleged that a police officer had hit him while he was covering a demonstration in Baku held by a group of opposition political parties.

The Court considered that the applicant has been able to produce sufficiently strong evidence supporting the fact that he was subjected to the use of force by the police. In particular, the applicant produced a medical certificate delivered a day after the incident, certifying that he had contusions of the left leg and left upper arm. Moreover, the applicant produced witness testimonies which supported his allegation. The Court further noted it was undisputed that the applicant had not used violence against the police or pose a threat to them. Moreover, despite the Government’s arguments to the contrary, it has not been convincingly established at the outcome of the criminal inquiry and other domestic

¹ This document presents a non-exhaustive selection of the CoE instruments and of the ECtHR relevant case law. This information is not a legal assessment of the alerts and should not be treated or used as such

proceedings that, by using a metal construction as a viewpoint, the applicant was actually creating serious danger for the people in the square. In such circumstances, the Court considered that the Government have not shown convincingly that the recourse to physical force against the applicant had been made strictly necessary by his own conduct. Therefore, it concluded that the use of force was excessive and unnecessary.

Despite the relatively minor character of injuries sustained by the applicant, the Court considered that the ill-treatment complained of was such as to arouse in the applicant feelings of fear, anguish or inferiority and capable of humiliating and debasing him and, therefore, was sufficiently serious to attain a minimum level of severity to be considered as inhuman and degrading treatment under Article 3.

Conclusion: violation of Article 3 (ill-treatment by the police)

Najafli v. Azerbaijan - 2594/07
2 October 2012

The case concerned a journalist who had been beaten by the police while covering an unauthorised demonstration in Baku. The evidence produced by the applicant before the Court was considered sufficiently strong and consistent to establish at least a presumption that the applicant had been beaten with truncheons by police officers during the dispersal of the demonstration. In the Court's opinion, neither the Government in their submissions, nor the domestic authorities in their decisions, provided a convincing rebuttal of this presumption. The Court considered that it had not been shown that the recourse to physical force against the applicant was made strictly necessary by his own conduct. It was undisputed that the applicant did not use violence against the police or pose a threat to them. It had not been shown that there were any other reasons justifying the use of force. Therefore, the Court concluded that the use of force was unnecessary, excessive and unacceptable.

The Court found that the injuries sustained by the applicant establish the existence of serious physical pain and suffering. The applicant suffered a cranio-cerebral trauma and concussion, which required long-term medical treatment. The ill-treatment and its consequences must have also caused the applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

Conclusion: violation of Article 3 (ill-treatment by the police)

Emin Huseynov v. Azerbaijan - 59135/09
7 August 2015

The case concerned the alleged ill-treatment of a journalist arrested in Baku and subsequently admitted to intensive care in a hospital following his release from police custody.

The Court noted that the very fact that an individual, even with a history of health problems, when taken into custody, has no apparent health problems, but is transferred by ambulance from a police station to a hospital, raises a serious issue under Article 3 of the Convention and it is incumbent on the State to provide a plausible explanation for such a situation. The Court accepted in this respect that in

some circumstances a measure, such as an arrest or a detention, may cause an individual, in particular with previous health problems, stress, psychological tension and inevitable suffering inherent in any measure which could trigger his previous diseases. However, in the present case the Government contented themselves with submitting that the applicant's in-patient treatment was related to his previous diseases, without giving any explanation and account of events which could explain why the applicant was subsequently transferred by ambulance from the police station to the hospital. In these circumstances, the Court considers that the respondent Government failed to discharge their burden of proof and to submit any evidence refuting the applicant's account of events.

Having regard to the available evidence supporting the applicant's version of events and to the Government's failure to provide any explanation about the event or factor resulting in the applicant's admission to hospital and triggering his previous diseases, the Court considers that the applicant's account of events was accurate.

As to the seriousness of the act of ill-treatment, the Court considers that the applicant's ill-treatment during his arrest and at the police station must have caused him serious physical pain and suffering. The ill-treatment in question and its consequences must have also caused the applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

Conclusion: violation of Article 3 (ill-treatment by the police)

Article 2 of the European Convention on Human rights: Prohibition of killings and States' positive obligation to protect the right to life

The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual.

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.

Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Death of a journalist allegedly as a result of a forced disappearance and failure of the authorities to protect his life

Gongadze v. Ukraine 34056/02

8 November 2005

The applicant is the wife of a disappeared journalist, well known for his political independence and denunciation of corruption cases. She complained that the State authorities failed to protect the life of her husband.

The Court noted that the elements in its possession demonstrate with a high degree of probability that police officers were involved in his disappearance and murder. It noted that in an open letter of to the Prosecutor General, the disappeared journalist had reported several facts concerning the questioning of his relatives and colleagues by police officers about him and his surveillance by unknown persons. He had requested an investigation of these facts and the implementation of measures for his protection.

Despite clear indications in Mr Gongadze's letter about the inexplicable interest in him shown by law enforcement officers, the response of the investigative authorities was, in the eyes of the Court, not only formalistic, but also blatantly negligent. The authorities, primarily prosecutors, ought to have been aware of the vulnerable position in which a journalist who covered politically sensitive topics placed himself vis-à-vis those in power at the material time (as evidenced by the death of eighteen journalists in Ukraine since 1991). The Court considered therefore that the authorities failed to comply with their positive obligation to protect the journalist from a known risk to his life.

Conclusion: violation of Article 2 (positive obligation to protect the right to life)

Death of a journalist and failure of the authorities to protect his life

Kiliç v. Turkey -22492/93

28 March 2000

The applicant alleged that the State was responsible, through lack of protection, for the death of his brother Kemal Kiliç, a journalist working for the newspaper Özgür Gündem.

The Court noted that Mr Kiliç had made a request for protection just two months before he had been shot dead by unknown gunmen. His petition showed that he had considered himself and others to be at risk because they worked for Özgür Gündem. Moreover, a 1993 report by a Parliamentary Investigation Commission informed the Prime Minister's Office that the authorities were aware of killings being carried out to eliminate alleged supporters of the PKK, including journalists. The Court noted the report provided strong substantiation for allegations, current at the time and since, that "contra-guerrilla" groups or terrorist groups were targeting individuals perceived to be acting against State interests, with the acquiescence, and possible assistance, of members of the security forces. Therefore, the authorities were aware, or ought to have been aware, of the risk to life uncured by Mr Kiliç derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces. That said, the Court considered whether the authorities did all that could reasonably be expected of them to avoid that risk.

It found that, that, in addition to defects which removed the protection which Mr Kiliç should have received by law, there was an absence of any operational measures of protection. The Government

disputed that they could have effectively provided protection against attacks. The Court was not convinced by this argument. It considered that a wide range of preventive measures were available which would have assisted in minimising the risk to Mr Kılıç's life and which would not have involved an impractical diversion of resources. On the contrary however, the authorities denied that there was any risk. There was no evidence that they took any steps in response to Mr Kılıç's request for protection either by applying reasonable measures of protection or by investigating the extent of the alleged risk to Özgür Gündem employees in with a view to taking appropriate measures of prevention.

The Court concluded that in the circumstances of this case the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of Mr. Kılıç.

Conclusion: violation of Article 2 (positive obligation to protect the right to life)

Death of a journalist allegedly caused by or with the connivance of State agents

Adali v. Turkey - 38187/97

31 March 2005

The applicant is the wife of Kutlu Adalı, a well-known writer who had written and published articles strongly criticising the policies and practices of the Turkish Government, and who was shot dead in front of their home in the "Turkish Republic of Northern Cyprus" (TRNC).

The Court noted that the applicant made serious allegations about the involvement of a number of individuals and institutions in the killing of her husband. Nevertheless, the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Turning to the particular circumstances of the case, the Court observed that there was no eyewitness to the murder of the applicant's husband. The witnesses referred to by the applicant have remained anonymous and have failed to give evidence for various reasons. The only evidence available in this connection was two bullet shells extracted from the body of the deceased journalist. A forensic examination of these bullet shells resulted in a finding that they did not match with any other cartridges or bullet shells found within the territory of the "TRNC" or recorded in the files on murders by unknown assailants. The persons named by the applicant as suspects vigorously denied the allegations pertaining to their involvement in the murder of the applicant.

The Court concluded that the allegations concerning the circumstances in which the applicant's husband met his death did not go beyond speculation and assumption. It considers therefore that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicant's husband was killed by or with the connivance of any State agent or person acting on behalf of the State authorities in the circumstances alleged by the applicant.

Conclusion: no violation of Article 2 (prohibition of killing)

Death of a journalist allegedly caused by State agents or with their connivance

Tepe v. Turkey - 27244/95

9 August 2003

This case concerned the death of Mr Ferhat Tepe, a reporter for the Özgür Gündem newspaper. The Court recalled that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. It noted that it was undisputed that a significant number of killings which included prominent Kurdish figures and other journalists were perpetrated by that time which became known as the “unknown perpetrator killing” phenomenon. In this respect, the Court considered that the circumstances in which Mr. Tepe met his death and the fact that he was working for a pro-Kurdish newspaper were militating in favour of the applicant’s allegations.

However, for the Court, the required evidentiary standard of proof for the purposes of the Convention was that of “beyond reasonable doubt”, and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court considered that the applicant’s allegations have not been sufficiently proved. The material in the case file did not enable the Court to conclude beyond all reasonable doubt that Mr Tepe had been abducted and killed by any State agent or person acting on behalf of the State authorities.

Conclusion: no violation of Article 2 (prohibition of killing)

Death of a journalist and failure of the authorities to protect his life

Dink v. Turkey - 2668/07, 6102/08, 30079/08

14 September 2010

The applicants are a journalist, now deceased, and five of his close relatives. The first applicant, a Turkish national of Armenian extraction, was publication director and editor-in-chief of a Turkish-Armenian weekly newspaper. In 2003 and 2004 he wrote a series of articles for the newspaper in which he expressed his views on the identity of Turkish citizens of Armenian extraction. He commented, among other things, that Armenians’ obsession with having their status as victims of genocide recognised had become their *raison d’être*, that this need on their part was treated with indifference by Turkish people and that, as a result, the traumas suffered by Armenians remained a live issue. In his view, the Turkish component in Armenian identity was both poison and antidote. He also wrote that “the purified blood that will replace the blood poisoned by the ‘Turk’ can be found in the noble vein linking Armenians to Armenia”. He wrote a further article in which he referred to the Armenian origins of Atatürk’s adopted daughter. Extreme nationalists reacted to the articles by staging demonstrations, writing threatening letters and lodging a criminal complaint. In 2005 a criminal court found the journalist guilty of denigrating “Turkishness” (Turkish identity) and imposed a suspended prison sentence on him.

The Court considered that, in view of the reactions to the articles in question, the security forces could reasonably be considered to have been informed of the intense hostility towards the journalist in extreme nationalist circles. Furthermore, it appeared that two police departments and one gendarmerie department had been informed of the likelihood of an assassination attempt and even of the identity of the alleged instigators. The threat of an assassination could therefore be said to have been real and

imminent. However, none of the three authorities concerned had taken action to prevent the crime. Admittedly, the journalist had not requested increased protection; however, he could not have known about the plan to assassinate him and it had therefore been for the authorities in question to take action. In sum, the latter had not taken the reasonable measures available to them to prevent a real and immediate risk to the journalist's life.

Conclusion: violation of Article 2 (positive obligation to protect the right to life)

Death of a journalist and alleged failure of the authorities to protect his life

Huseynova v. Azerbaijan - [10653/10](#) Judgment 13.4.2017

The applicant's husband, Mr Elmar Huseynov, was a prominent independent journalist in Azerbaijan. In March 2005 he was shot dead on his way home from work. Criminal proceedings were instituted and two Georgian nationals were identified as suspects. The Georgian authorities refused to extradite them from Georgia to Azerbaijan. The applicant complained under Article 2 that her husband had been murdered by State agents.

There was no evidence enabling the Court to find beyond reasonable doubt that the applicant's husband had been murdered by State agents or that the State was behind his murder. Although the applicant submitted that her husband had been regularly threatened because of his articles, she did not dispute the Government's submission that he had never applied to the domestic authorities or informed them of any danger or threat to his life. The Court further observes that there was no material in the case file indicating that at any time before the murder of the applicant's husband the law-enforcement authorities had been aware of any danger to his life or had held any information which might give rise to such a possibility. For those reasons, the Court considered that it had no evidence indicating that the domestic authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant's husband and failed to protect his right to life.

Conclusion: no violation of Article 2 (positive obligation to protect the right to life)

II. Other relevant Council of Europe instruments

- [Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies](#)
- [Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies](#)

"1. Journalists and other media actors in Europe are increasingly being harassed, intimidated, deprived of their liberty, physically attacked and even killed because of their investigative work, opinions or reporting. (...) Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but

deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy.(...).”

- [Declaration](#) of the Committee of Ministers on the Charlie Hebdo attacks in Paris, adopted on 14 January 2015
- [Guidelines](#) of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- [Declaration](#) by the Committee of Ministers on the protection and promotion of investigative journalism, adopted on 26 September 2007
- [Resolution 2035 \(2015\)](#) and [Recommendation 2062 \(2015\)](#) Protection of the safety of journalists and of media freedom in Europe
- [Doc. 13664 Report 2015 \(G. S. FLEGO\)](#) Protection of media freedom in Europe
- [Resolution 1535 \(2007\) of the Parliamentary Assembly: “Threats to the lives and freedom of expression of journalists”](#)
- “4. (...) to make democracy meaningful, freedom of expression and freedom of religion should go hand in hand. Violent attacks and threats, by any group invoking their religion, against expressions of opinion by words, speech or visual images, have no place in European democracies.”
- Resolution 1438 (2005) [Freedom of the press and the working conditions of journalists in conflict zones](#)