

## IMPUNITY AGAINST PERPETRATORS OF PHYSICAL ATTACKS ON JOURNALISTS

### Relevant case-law of the European Court of Human Rights

#### **Article 2 (right to life): Positive obligations to carry out effective investigations following journalists' killing or disappearance**

The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, requires that there should be some form of effective official investigation when journalists or other media workers have been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedure.

For an investigation into an alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation should be independent from those implicated in the events and to the identification and punishment of those responsible. The authorities must take all reasonable steps to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible, whether the direct offenders or those who ordered or organised the crime, risks falling foul of this standard. There is also a requirement of promptness and reasonable expedition implicit in this context. A prompt response by the authorities in investigating the use of lethal force or a disappearance is essential in ensuring public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

#### **Lack of effective investigation into murder of journalist critical of the Government**

**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

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

from Georgia to Azerbaijan. The applicant complained under Article 2 that her husband had been murdered by State agents and that the domestic authorities had failed to carry out an adequate and effective investigation.

International instruments such as the European Convention on Extradition and the 1993 Minsk Convention, to which both States were parties, clearly provided for the transfer of the criminal case to the Georgian authorities in order for the murder charge to be prosecuted in Georgia. Indeed, the Georgian authorities had expressly referred to that possibility in their reply to the extradition request. There was no evidence that the Azerbaijani authorities had examined such a possibility.

Even though the applicant had been granted victim status in the investigation, the investigating authorities had constantly denied her access to the case file. The relevant domestic law provided no right of access, a situation the Court found to be unacceptable. That situation deprived the applicant of the opportunity to safeguard her legitimate interests and prevented any scrutiny of the investigation by the public.

Having regard to the overall factual context of the case, the applicant's allegations that the killing of her husband was related to his activities as a journalist were not at all implausible. The magazine that he had operated independently had a reputation of being strongly critical of the Azerbaijani Government and the opposition; its publication or dissemination had been interfered with by the Azerbaijani authorities; and over thirty civil and criminal proceedings had been brought against him. It was apparent that his murder could have a chilling effect on the work of other journalists in the country. In such circumstances, there had been every reason for the investigating authorities to explore with particular diligence whether the murder, which appeared to have been carefully planned, could have been linked to his journalistic activities.

The European Court on Human Rights concluded that the Azerbaijani authorities had failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband.

Conclusion: violation of Article 2 (lack of effective investigation)

### **Death of a political journalist allegedly as a result of a forced disappearance and failure of the authorities to ensure effective investigations**

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#### **Gongadze v. Ukraine 34056/02 Judgment 8.11.2005**

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 and to investigate his disappearance and death. She also submitted that the latest information provided by the Ukrainian Government confirmed the direct involvement of State agents in the murder of her husband, but that the investigation seemed to limit the case to the prosecution of direct offenders, and not those who ordered and organised it.

The European Court on Human Rights noted that the domestic authorities ought to have been aware of the vulnerable position of a journalist who covered politically-sensitive topics. Nevertheless, their response was not only formalistic, but also blatantly negligent.

The Court further noted that the subsequent events, revealing the possible involvement of State officials in the journalist's disappearance and death, were neglected or simply denied without proper investigation for a considerable period of time. For more than four years, no effective criminal investigation could be considered to have been conducted at the domestic level. There was no reaction to the alleged involvement of the police in his disappearance when information about such a possibility was disseminated publicly by the editor-in-chief of the Grani newspaper. The fact that the alleged offenders, two of them active police officers, were identified and charged with the kidnap and murder of the journalist just a few days after the change in the country's leadership, raised serious doubts as to the genuine wish of the authorities under the previous Government to investigate the case thoroughly. The absence of any outcome concerning the main criminal proceedings also prevented the applicant from receiving compensation, since in practice a civil claim for compensation would not be examined prior to a final determination of the facts in pending criminal proceedings.

Conclusion: violation of Article 2 (lack of effective investigation)

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**Lack of protection and failure to provide an effective investigation into journalist's death**

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**Kiliç v. Turkey - 22492/93**

**Judgment 28.3.2000**

The applicant alleged that the State was responsible for the death of his brother Kemal Kılıç, a journalist working for the newspaper Özgür Gündem, through lack of protection and failure to provide an effective investigation into his death.

The European Court on Human Rights noted that Mr Kemal Kılıç had made a request for protection just two months before he had been shot dead by unknown gunmen. His petition shows that he considered himself and others to be at risk because they worked for Özgür Gündem. He claimed that distributors and sellers of the newspaper had been threatened and attacked in different towns in the south-east region. Nevertheless, the investigation by the gendarmes and the Public prosecutor did not include any inquiries as to the possible targeting of Kemal Kılıç due to his work as an Özgür Gündem journalist. The fact that the case was transferred to the National Security Court prosecutor indicated that it was regarded as a separatist crime. There was no indication that any steps had been taken to investigate any collusion by security forces in the incident.

Conclusion : violation of Article 2 (lack of effective investigation)

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**Obligation to involve the families of the deceased or their legal representatives in the investigation**

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**Adalı 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 national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband. The Court was struck by the fact that

the that investigation, which included key witnesses whose evidence could have shed light on the killing, was conducted only after the applicant's case before the European Court had been communicated to the Turkish Government. It deplored that there was no real coordination or monitoring of the scene of the incident by the investigating authorities, that the ballistic examination carried out was insufficient, and that the investigating authorities failed to take statements from some key witnesses.

Also, the authorities failed to inquire sufficiently into the motives behind the killing of Mr Adalı. Thus it was not established that any adequate steps were taken to investigate the possibility that the murder was politically motivated or had any link with his work as a journalist. On the contrary it appeared that the responsible authorities had, at an early stage of the investigation and on an insufficient basis, ruled out that possibility.

Emphasising the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information as well as enabling them to present other evidence, the European Court on Human Rights noted that the investigation file was inaccessible to the applicant, who had no means of learning about the conduct of or the progress made in the investigation.

Conclusion : violation of Article 2 (lack of effective investigation)

### **Failure of the authorities to carry out an effective and adequate investigation**

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**Tepe v. Turkey - 27244/95**

**Judgment 9.8.2003**

This case concerned the alleged failure of the Turkish authorities to carry out an effective and adequate investigation into the death of Ferhat Tepe, a reporter for the Özgür Gündem newspaper.

The European Court on Human Rights could not conclude beyond all reasonable doubt that Ferhat Tepe had been abducted and killed by State agents or by person acting on their behalf. However, with regard to the procedural aspect of Article 3, the Court noted that there had been striking omissions in the conduct of the investigation into Ferhat Tepe's disappearance and death. There had been no proper co-ordination between the police authorities and the various prosecutors, who, moreover, had failed to broaden the investigation or take steps on their own initiative to identify possible witnesses. The Court also found it regrettable that no full forensic autopsy had been carried out by a qualified forensic expert.

Conclusion : violation of Article 2 (lack of effective investigation)

### **Deceased journalist's relatives not involved in judicial proceedings**

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

**Judgment 14.9.2010**

This case concerned the alleged failure of the Turkish authorities to carry out an effective and adequate investigation into the death of Mr. Dink, a director and editor-in-chief of a Turkish-Armenian weekly newspaper. In 2003 and 2004 he wrote a series of articles 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. 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. In 2006 the Court of Cassation upheld the finding of guilt. In early 2007 the criminal court to which the case had been remitted discontinued the proceedings on account of the death of the journalist, who had been assassinated a few weeks earlier.

The European Court on Human Rights noted that 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 authorities concerned had taken action to prevent a real and immediate risk to the journalist’s life.

Taken overall, the prosecuting authorities’ investigation amounted to little more than a defence of the police officers concerned, without providing any answers to the question of their failure to take action vis-à-vis the suspected assassins. No explanation had been provided as to why the police had not taken the measures which the situation required. The Court acknowledged that criminal proceedings were still in progress against the suspected perpetrators of the attack. However, it could not but note that all the proceedings in which the authorities were implicated had been discontinued. Lastly, the Court observed that the investigations had been conducted by officials belonging to the executive, and that the journalist’s relatives had not been involved in the proceedings, facts which also undermined the effectiveness of the investigations.

Conclusion: violation of Article 2 (lack of effective investigation)

**Article 3 of the Convention (prohibition of torture and of inhuman or degrading treatment): failure to carry out effective investigations following inhuman or degrading treatments**

Where a journalist or any media worker raises an arguable claim that he or she has been ill-treated, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, requires by implication that there should be an effective official investigation.

This investigation should be capable of leading to the identification and punishment of those responsible. Those who carry out the investigation must be independent and impartial, in law and in practice. Such investigation must also be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

**Obligation to conduct a prompt forensic examination**

**Rizvanov v. Azerbaijan - 31805/06**

**Judgment 17.7.2012**

This case concerned an alleged failure of the domestic authorities to carry out an effective investigation capable of identifying and punishing the police officer who had caused an Azeri journalist serious physical and mental suffering while he was covering a demonstration in Baku.

Prompt forensic examination was crucial as signs of injury might have disappeared rather quickly, resulting in the complete or partial loss of evidence before the forensic examination was carried out. Nevertheless, the applicant's complaint had not been handled with sufficient diligence: even though he brought his claim of ill-treatment to the Prosecutor General's Office in a prompt manner, the authorities failed to order a forensic examination until twenty-one days after the incident. A timely medical examination could have enabled the medical expert to reach a definitive conclusion as to the existence and time of infliction of the injuries. However, the investigation authorities refused on the one hand to attach any importance to the medical certificate provided by the applicant, while on the other hand they failed to procure a "proper" forensic report in a timely manner. In the Court's opinion, this deficiency undermined the overall effectiveness of the investigation.

The European Court on Human Rights noted in addition several deficiencies in the criminal proceedings conducted at the domestic level. The reasoning provided for the prosecutor decision to discontinue the investigation did not contain any assessment of the witness testimonies in favour of the applicant. Furthermore, the investigation authorities ignored other evidence presented by the applicant, such as the tape recording and the photos, which *prima facie* appeared to be relevant.

Conclusion: violation of Article 3 (lack of effective investigation)

### **Lack of independence and impartiality of the investigation**

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**Najafli v. Azerbaijan - 2594/07**

**Judgment 2.10.2012**

The case concerned a journalist who had been beaten by the police while covering an unauthorised demonstration in Baku. The criminal investigation was suspended on the grounds that the officers responsible for his injuries could not be identified.

The European Court on Human Rights noted that there had been significant procedural delays and the investigation had not been handled with sufficient diligence. There were also serious doubts as to whether the applicant had been informed of all the procedural steps in a timely manner. Most problematic, however, was the question of the independence and impartiality of the investigation: the task of identifying those responsible for the applicant's beating had been delegated to the same authority whose agents had allegedly committed the offence. The investigation had been suspended on inadequate grounds (an alleged inability to identify the police officers concerned). Lastly, the applicant had been deprived of the opportunity to effectively seek damages in civil proceedings, as he had been required to name specific police officers as defendants. That requirement had constituted an insurmountable obstacle, since the identification of those police officers was the task of the criminal investigation, which in that case was ineffective and lacked independence.

Conclusion: violation of Article 3 (lack of effective investigation)

## **Legitimate doubts on the independence and impartiality of the investigation**

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**Emin Huseynov v. Azerbaijan - 59135/09**

**Judgment 7.8. 2015**

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

The responding Government argued that it had taken the necessary steps to investigate Mr Huseynov's claim of ill-treatment by the police and had found that there was no need to institute criminal proceedings. However, according to the Court, the fact that the complaint was examined by an investigator – who apparently did not identify or question the police officers involved – from the same police station where the offence had allegedly occurred, and the fact that the spokesman for the Ministry of Internal Affairs told the media that Mr Huseynov had not been ill-treated even before the investigation was concluded, threw doubts on the independence and impartiality of the investigation.

Conclusion: violation of Article 3 (lack of effective investigation)

## **European regulations and standards**

### **Council of Europe**

[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. These abuses and crimes are often met with insufficient efforts by relevant State authorities to bring the perpetrators to justice, which leads to a culture of impunity. (...)

5. 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.(...)

8. Eradicating impunity is a crucial obligation upon States, as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.<sup>7</sup> All attacks on journalists and other media actors should be vigorously investigated in a timely fashion and the perpetrators prosecuted. The effective investigation of such attacks requires that any possible link to journalistic activities be duly taken into account in a transparent manner.”

[Resolution 2035 \(2015\) of the Parliamentary Assembly: Protection of the safety of journalists and of media freedom in Europe](#)

“(…) the Assembly calls on member States to fully investigate all violent deaths of journalists.”

#### [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.

5. The Assembly recalls the legal obligation of member states, in accordance with Articles 2 and 10 of the ECHR, to investigate any murders of journalists as well as acts of severe physical violence and death threats against them. This obligation stems from the individual journalist’s rights under the Convention as well as from the necessity for any democracy to have functioning media free from intimidation and political threats. Where attacks against journalists can be carried out with impunity, democracy and the rule of law suffer. (...)

10. The Assembly calls on national parliaments to closely monitor the progress of such criminal investigations and hold the authorities accountable for any failures to investigate or prosecute (...)

11. The Assembly calls on all parliaments concerned to conduct parliamentary investigations into the unresolved murders of journalists as well as attacks and death threats against them, in order to shed light on individual cases and develop as a matter of urgency effective policies for the greater safety of journalists and their right to carry out their work without threats.”

#### **European Union**

#### [Declaration by the High Representative Federica Mogherini on behalf of the European Union on the occasion of the International Day to End Impunity for Crimes against Journalists, 2 November 2015](#)

“Media are the mirror of our societies: if they are free and critical, we are free and safe. Nevertheless, while we mark the International Day to End Impunity for Crimes against Journalists, reporters in many countries across the world face an increasing level of intimidation and violence.

Attacks on journalist are not only attacks on the victims, but also on freedom of expression and freedom of the media. The EU expects State authorities to fully abide by their international obligations to effectively, promptly and in an independent manner investigate such crimes and to ensure that both state and non-state perpetrators and instigators of such violence are brought to justice.”

#### **Organisation for Security and Co-operation in Europe (OSCE)**

#### [OSCE Guidebook on Safety of Journalists \(2014\)](#)

##### **“Ending impunity: an imperative for the OSCE**

Impunity represents a systemic failure of the functions of government and the rule of law, on which the safety and rights of everyone depends. Ending impunity is therefore an absolute imperative for the OSCE. In every case impunity represents a double injustice to the victims of crimes of violence and undermines the rule of law in societies where it occurs. It leads to a loss of public confidence in the independence of law-enforcement agencies and judicial systems, and encourages more criminal acts because those who have an intention to commit assault or murder know that previous crimes have gone unpunished.



Investigations of attacks on journalists require particular sensitivity and expertise to ensure that any possible link between the crime and the journalist's professional activities is uncovered and taken into account. A newspaper article, broadcast item, or any form of published material, may be a significant piece of evidence.

Timely and effective investigations are critical so that evidence is preserved and justice can be done. Regrettably, in a number of cases within OSCE participating States, the authorities have been overly quick to dismiss the possibility of such a link, with the result that proper investigations were not carried out.

Appropriate training of police officers, prosecutors, lawyers and judges is therefore recommended to give them the necessary skills.

Police and governmental authorities should also be mindful of the fact that journalists may be especially vulnerable to malicious physical attacks on account of their work. They should be prepared to take steps to provide protection in cases when there is a substantial or imminent fear of assault or harm."