



Turkey failed to cooperate in murder case, while Cyprus did all that could be reasonably expected

In today's **Grand Chamber** judgment¹ in the case of [Güzelyurtlu and Others v. Cyprus and Turkey](#) (application no. 36925/07), the European Court of Human Rights held:

by 15 votes to two, that there had been **no 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** of the Convention by Turkey.

The case concerned the investigation into the killing of three Cypriot nationals of Turkish Cypriot origin in the Cypriot-Government controlled area of Cyprus in 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". Both investigations reached an impasse in 2008.

In their case before the European Court, the applicants, the victims' relatives, alleged that the refusal of Turkey and Cyprus to co-operate meant that the killers had not faced justice.

The Court considered that both States had had an obligation to cooperate with each other.

It found that Cyprus had done all that could reasonably have been expected of it to obtain the surrender/extradition of the suspects from Turkey, submitting "Red notice" requests to Interpol and, when this proved unsuccessful, extradition requests to Turkey. The Cypriot authorities could not be criticised for refusing to submit all the evidence and to transfer the proceedings to the authorities of the "TRNC" or Turkey. That would have amounted to Cyprus waiving its criminal jurisdiction over a murder committed in its controlled area in favour of the courts of an unrecognised entity set up within its territory.

Turkey, on the other hand, had not made the minimum effort required in the circumstances of the case. They had ignored Cyprus's extradition requests, returning them without reply, contrary to their obligation under Article 2, read in the light of other international agreements, to cooperate by informing the requesting State of its decision and, in the case of rejection, to give reasons.

Principal facts

The applicants are Cypriot nationals of Turkish Cypriot origin who live in the "Turkish Republic of Northern Cyprus" ("TRNC") or in the United Kingdom.

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 of the island 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, which was parked on the hard shoulder. The three victims were all Cypriot nationals of Turkish Cypriot origin. The killers fled back to the "TRNC".

The authorities of the Cypriot Government and the Turkish Government, including those of the "TRNC", carried out parallel investigations into the murders.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The Cypriot authorities, among other things, secured evidence at the scene of the crime and at the victims' house, carried out post-mortem examinations, took statements from witnesses (including the victims' relatives), and performed ballistics examination and DNA tests. The authorities concluded that the victims had been kidnapped and murdered in the early hours of 15 January 2005 and identified eight suspects. Domestic and European arrest warrants were issued and the Cypriot police asked Interpol to search for and arrest the suspects with a view to extradition. Red notices were published by Interpol on all the suspects and they were added to the Cypriot Government's "stop list" of individuals whose entry into and exit from Cyprus is monitored or banned. In April 2008 the case file was classified as "otherwise disposed of" pending future developments.

The Turkish (including the "TRNC") authorities also took a number of investigative steps and by the end of January 2005 all of the suspects had been arrested. They denied any involvement in the crimes and were released on or around 11 February 2005 owing to a 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 requested that the case file with the evidence against the suspects be handed over so that they could conduct a prosecution. The Cypriot authorities refused and in November 2008 they sought the extradition of the suspects who were within Turkey's jurisdiction (either in the "TRNC" or in mainland Turkey) with a view to a 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.

The Cypriot Government, the "TRNC" and the applicants were in contact with the United Nations Peacekeeping Force in Cyprus ("UNFICYP") about the case. Meetings were held and there was an exchange of telephone calls and correspondence. However, UNFICYP's efforts to assist the sides to bring the suspects to justice have proved unsuccessful.

Complaints, procedure and composition of the Court

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

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicants complained that both the Cypriot and Turkish authorities (including those of the "TRNC") had failed to conduct an effective investigation into the killings. They further alleged that the refusal of Turkey and Cyprus to co-operate meant that the killers had not 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.

In its Chamber [judgment](#) of 4 April 2017, the Court held, by five votes to two, that there had been a violation of Article 2 by Cyprus and, unanimously, that there had been a violation of the same provision by Turkey. The Chamber found in particular that neither Government had been prepared to compromise and find a middle ground, despite various options having been put forward, including by the United Nations. A situation had resulted in which the respondent Governments' investigations – which the Chamber found adequate up until the impasse – remained open. The Court saw no need to examine separately the complaint under Article 13 in conjunction with Article 2.

On 18 September 2017 the Grand Chamber Panel accepted the requests of the Governments of Cyprus and Turkey that the case be referred to the Grand Chamber.

The AIRE Centre organisation was granted leave to intervene in the written proceedings as a third party.

A [Grand Chamber hearing](#) was held in Strasbourg on 28 March 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,
Angelika Nußberger (Germany),
Linos-Alexandre Sicilianos (Greece),
Ganna Yudkivska (Ukraine),
Robert Spano (Iceland),
Vincent A. De Gaetano (Malta),
Işıl Karakaş (Turkey),
Kristina Pardalos (San Marino),
André Potocki (France),
Aleš Pejchal (the Czech Republic),
Yonko Grozev (Bulgaria),
Gabriele Kucsko-Stadlmayer (Austria),
Pauliine Koskelo (Finland),
Georgios A. Serghides (Cyprus),
Marko Bošnjak (Slovenia),
Jolien Schukking (the Netherlands),
Lado Chanturia (Georgia),

and also Roderick Liddell, *Registrar*.

Decision of the Court

[Article 2 \(alleged failure to conduct an effective investigation into the killings\)](#)

First, the Court dismissed the Turkish Government's argument that it did not have jurisdiction to deal with the applicants' complaints under Article 2 in respect of Turkey because the murders had occurred in Cyprus.

The Court reiterated that, as a rule, the obligation to ensure an effective investigation into a murder applied to the State in whose jurisdiction the victim was found to be at the time of death. However, a departure from this general approach could be justified if there were "special features".

It considered that there had been two "special features" related to the situation in Cyprus which justified making Turkey answerable under the Convention in the applicants' case. Firstly, the northern part of Cyprus was under the effective control of Turkey. Secondly, the suspects had fled to the northern part of Cyprus, and the Cypriot authorities had thus been prevented from pursuing their own case.

In addition, the "TRNC" authorities had in any event instituted a criminal investigation into the murder of the applicants' relatives.

Next, the Court endorsed the Chamber's findings that both Cyprus and Turkey had conducted adequate parallel investigations into the murder.

The crux of the case was therefore whether and to what extent the two States had had a duty to cooperate under Article 2 of the Convention as regards their investigations. The Court considered that, given the European Convention's special character as a collective enforcement treaty, both States had had an obligation to cooperate, involving both seeking as well as providing assistance.

The Court then went on to examine whether Cyprus and Turkey had taken all reasonable steps they could to cooperate with one another in the light of both international treaties or agreements applicable between them as well as any informal or *ad hoc* channels of cooperation, given the fact that the States had no formal diplomatic relations.

Cyprus

The Court concluded that the Cypriot authorities had used all the means reasonably available to them to obtain the suspects' surrender/extradition from Turkey.

At the early stages of the investigation, they had submitted "Red Notice" requests to Interpol in order to locate the suspects and have them arrested with a view to their extradition and had further tried to negotiate the suspects' surrender by the "TRNC" through UNFICYP. The Cypriot Bureau of Interpol had also sent emails to the Turkish authorities along the same vein. Cyprus could not be criticised for first trying negotiations via UNFICYP and only submitting the extradition requests to Turkey when their efforts had proved unsuccessful, even if that meant that three and half years had passed after publication of the Red Notices.

Although the Turkish Government alleged that the extradition requests had not been valid, the Court accepted that their delivery through the staff of the Cypriot and Turkish embassies in Athens had been the only channel available, given the absence of diplomatic relations. Indeed, the Turkish Government had not referred to any alternative that Cyprus could have used.

There had also been no breach by Cyprus of its duty to cooperate under Article 2 by refusing to submit all the evidence and to transfer the proceedings to the authorities of the "TRNC" or Turkey.

Cyprus had sent the DNA results to the "TRNC" via UNFICYP and had been ready to hand over all the evidence to UNFICYP, subject to the undertaking by the "TRNC" authorities that the suspects would be surrendered to them. However, no such undertaking was forthcoming and the "TRNC"'s stance throughout, which became even more evident in the proceedings before the European Court, had indicated its intention to prosecute and try the suspects before its courts rather than surrendering/extraditing them to Cyprus.

Supplying the whole investigation file to the "TRNC" with the possibility that the evidence would be used for the purposes of trying the suspects there, without any guarantee that they would be surrendered to the Cypriot authorities, would have gone beyond mere cooperation between police or prosecuting authorities. It would have amounted in substance to Cyprus waiving its criminal jurisdiction over a murder committed in its controlled area in favour of the courts of an unrecognised entity set up within its territory. The Court therefore agreed with the Cypriot Government that, in the specific situation of the case, it had not been unreasonable to refuse to waive its criminal jurisdiction in favour of the "TRNC" courts. That position was also consistent with the tenor of the relevant Council of Europe agreements to which both States were parties and the legislation of some member States.

Lastly, the Court found that Cyprus had not been required to use the alternative options for cooperation suggested by UNFICYP, such as the possibility of arranging an *ad hoc* trial at a neutral venue. It had not been established that those alternatives would have had a sufficiently solid basis in domestic or international law.

Turkey

Turkey, on the other hand, had not made the minimum effort required in the circumstances of the case to comply with its obligation to cooperate with Cyprus for an effective investigation into the murder of the applicants' relatives.

During the attempts to find an agreement through UNFICYP, the "TRNC" authorities had made it clear from the outset that they could not surrender the suspects to Cyprus since there was no legal or constitutional basis to do so.

Furthermore, the "TRNC" authorities' insistence on obtaining all the evidence from Cyprus had been more to do with them justifying the continued detention of the suspects with a view to bringing proceedings against them, rather than as a precondition for considering the extradition requests.

Turkey had even ignored Cyprus's extradition requests, returning them to the Cypriot embassy in Athens without reply. It would have been expected that the Turkish authorities indicate why they considered that the extradition had not been acceptable under their legislation or under the Council of Europe's European Convention on Extradition of 1957, which both States had ratified.

The Court was of the opinion that the obligation to cooperate under Article 2, read in the light of the Extradition Convention, should involve the State examining and providing a reasoned reply to any extradition request from another Contracting State regarding suspects wanted for murder who were known to be present on its territory or within its jurisdiction.

Other articles

The Court held, unanimously, that there was no need to examine separately the complaint under Article 13 in conjunction with Article 2.

Just satisfaction (Article 41)

The Court held that Turkey was to pay each applicant 8,500 euros (EUR) in respect of non-pecuniary damage. It further awarded the applicants a combined sum of EUR 10,000 in respect of costs and expenses.

Separate opinions

Judge Serghides expressed a concurring opinion, while Judges Karakaş and Pejchal expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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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.