

Thematic factsheet <sup>1</sup>  
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## ATTACKS ON THE PHYSICAL INTEGRITY OF JOURNALISTS



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## Introduction

Under the European Convention on Human Rights – in particular Article 10 (freedom of expression)– member States have a positive obligation to establish a sound legal framework for journalists and other media actors to work safely. However, threats, harassment, legal and administrative restrictions, as well as physical attacks are widespread, as in some countries, especially investigative journalists of affairs involving corruption or abuse of power, or who merely voice criticism of political leaders and governments in power, are physically attacked, arbitrarily imprisoned, tortured or even murdered, with constant cases of impunity.

378 cases of attacks on physical safety and integrity of journalists are reflected in the Council of Europe Platform to promote the protection of journalism and safety of journalists, from April 2015 to June 2023. In

<sup>1</sup> This document presents a non-exhaustive selection of relevant provisions of the European Convention on Human Rights, related case-law of the European Court of Human Rights (source: [HUDOC](#) database), and other relevant Council of Europe instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to impair relevant provisions of the Convention and applicable instruments. It is not a legal assessment of Platform alerts and should not be treated or used as such.

preventing, as well as properly addressing these issues, the Council of Europe applies a consolidated set of standards on the safety, security and protection of journalists and other media actors, while the European Court of Human Rights reflects a cohesive case law regarding physical attacks against journalists, finding specifically violations of Article 3 (prohibition of torture), Article 2 (right to life) and Article 10 (freedom of expression), in their substantive and procedural dimensions.

In assessing interferences with a right protected under the Convention, the Court carries out a three-fold test, by which it determines whether the interference:

⇒ is “prescribed by law”, i.e. sufficiently accessible, clear, unambiguous and precise to enable individuals to regulate their conduct;

⇒ “pursues one or more of the legitimate aims” set out in the provision, and

⇒ is “necessary in a democratic society” in order to achieve the legitimate aims.

In addition, the Court evaluates other relevant ECHR articles in comparison, to be able to strike a fair balance between other affected human rights as opposed to freedom of expression.

## Standards of the Council of Europe

### Safety, security, protection [DF1]

1. The State must guarantee the safety and physical integrity of everyone within its jurisdiction and this entails not only the negative obligation to refrain from the intentional and unlawful taking of life, but also the positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction, in the substantive and procedural dimensions.
2. Primary obligation for the State to secure the right to life under Article 2 of the Convention, by putting in place effective criminal law provisions to deter the commission of offences against individuals, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions, especially pay attention to the vulnerable position in which journalists who cover politically sensitive topics place themselves vis-à-vis those in power.
3. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. Policing operations, including the policing of public demonstrations, must be sufficiently regulated by it, within a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident. A clear chain of command, coupled with clear guidelines and criteria are required. In any case, the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals and Article 3 of the Convention does not allow authorities to weigh the physical integrity of an individual against the aim of maintaining public order.
4. The positive obligation on the State to carry out effective, independent and prompt investigations into alleged unlawful killings or ill-treatment, either by State or non-State actors, with a view to prosecuting the perpetrators of such crimes and bringing them to justice. Article 13 of the Convention also requires States to ensure that an effective remedy is available whenever any of the substantive rights in the Convention are violated.
5. The absence of such effective measures gives rise to the existence of a culture of impunity, which leads to the tolerance of abuses and crimes against journalists and other media actors.
6. The State has an obligation to guarantee the substantive liberty of everyone within its jurisdiction and to that end must ensure that journalists and other media actors are not subjected to arbitrary arrest, unlawful detention or enforced disappearance.
7. The State should not unduly restrict the free movement of journalists and other media actors, including cross-border movement and access to particular areas, conflict zones, sites and forums, as appropriate, because such mobility and access is important for news and information-gathering purposes.
8. The effectiveness of a system of protection may be influenced by contextual factors, such as in crisis or conflict situations, where there are heightened risks for the safety and independence of journalists and other media actors, and where State authorities may experience difficulties in exerting de facto control over the territory. Nevertheless, the relevant State obligations apply mutatis mutandis in such specific contexts, which are at all times subject to international human rights law and international humanitarian law.
9. Ensuring the safety and security of journalists and other media actors is a precondition for ensuring their ability to participate effectively in public debate. The persistence of intimidation, threats and

violence against journalists and other media actors, coupled with the failure to bring to justice the perpetrators of such offences, engender fear and have a chilling effect on freedom of expression protected by Article 10 of the Convention and on public debate. States are under a positive obligation to protect journalists and other media actors against intimidation, threats and violence irrespective of their source, whether governmental, judicial, religious, economic or criminal.

[DF1] Committee of Ministers, Recommendation [Rec\(2016\)4](#) to Member States on the protection of journalism and safety of journalists and other media actors (13 April 2016)

## Case law of the European Court of Human Rights

### **Alleged ill-treated and the domestic authorities failure to conduct an effective investigation into ill-treatment**

*Haziyev And Others V. Azerbaijan, application No. [3650/12](#), judgment of 5.11.2020*

*The applicants complained about ill-treatment and failure of the domestic authorities to conduct an effective investigation into their ill-treatment. The first applicant, a journalist, complained that he had been beaten by two persons in plain clothes who had been strangers to him in a detention facility cell, where he had been taken by a prison warder.*

The European Court of Human Rights held that there had been no violation of Article 3 (prohibition of torture) and Article 10 (freedom of expression) of the Convention, finding in particular that the investigating authorities conducted criminal inquiries and refused to open criminal cases. Their decisions were upheld by the domestic courts. The Court notes that despite its explicit request the Government has not provided the relevant case files relating to the present cases. In view of the available material in its possession and the parties' submissions the Court notes that the criminal investigations in each of the present cases had been plagued by a combination of the same or similar defects. The domestic authorities had failed to take effective investigative measures and all steps reasonably available to them to secure the evidence concerning the applicants' allegations, despite explicit requests lodged by the latter for them to do so. The Court emphasised that contact with family members and access to a lawyer are among the significant legal safeguards against ill-treatment.

Given the circumstances and having regard to the parties' submissions and all the material in its possession, the Court considered that the evidence before it did not enable it to find beyond reasonable doubt that the first applicant was subjected to treatment contrary to Article 3.

The Court, however, emphasised that its inability to reach any conclusions as to whether there was, in substance, any treatment prohibited by Article 3 derived, at least in part, from the failure of the domestic authorities to react effectively to the first applicant's complaints at the relevant time. Consequently, it could not establish a substantive violation of Article 3 in respect of the first applicant's alleged ill-treatment while in detention. As regards the first applicant's complaint that his right to freedom of expression had been violated on account of the domestic authorities' failure to conduct an effective investigation into the attack on him, the Court noted that these allegations arose out of the same facts as those already examined under Article 3 and the Court has already found a violation of Article 3 under its procedural limb.



**Criminal investigation into the killing of a journalist focused on a single line of inquiry without exploring other allegations and still pending after more than eleven years**

*Mazepa and Others v. Russia, application No. [15086/07](#), judgment of 17.10.2018*

*The applicants are relatives of Anna Politkovskaya, a renowned investigative journalist covering, inter alia, alleged violations of human rights in the Chechen Republic and an adamant critic of President Putin's politics. She was fatally shot in her block of flats in Moscow in 2006. The prosecutor's office opened a criminal investigation the same day. In 2014 five persons were convicted of the murder, which the Moscow City Court characterised as one committed by an organised group for a fee in connection with the victim's performance of her professional and civic duties. They were sentenced to prison terms ranging between twelve years and life imprisonment. The investigation was, at the time of the Court's consideration of the case, still pending.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) of the Convention, it noted that the investigation had brought tangible results as it had led to the conviction of five persons directly responsible for the killing. However, when investigating a contract killing, genuine and serious investigative efforts had to be taken with a view to identifying the intellectual author of the crime, that is, the person or people who had commissioned it. Given the respondent State's failure to provide copies of the investigation file, the Court's capacity to assess the nature and degree of the investigation's scrutiny in the present case was restricted to the analysis of the parties' written submissions before it.

(a) With regard to the adequacy of the investigation, the Court held that the respondent State had not explained why the investigation had chosen to focus for a considerable number of years on a single line of inquiry, which had remained unsupported by tangible evidence, given Politkovskaya's work on the conflict in Chechnya, which the investigative authorities should have explored, it found that the investigation into Anna Politkovskaya's killing had not met the adequacy requirement.

(b) With regard to the promptness and reasonable expedition of the investigation, the Court held that the criminal investigation had started on 7 October 2006 and was not yet terminated. The respondent State had not provided highly plausible and convincing reasons to justify the length of the proceedings. In particular, its reference to the number of volumes of the investigative file and that of witnesses questioned appeared irrelevant in the absence of tangible results in the investigation in respect of those who had commissioned the killing. The investigation had thus been in breach of the promptness and reasonable expedition requirement.

(c) With regard to the involvement of the relatives in the investigation, the Court held that although several of the family's requests for investigative measures had been refused, considering the proceedings as a whole, they had not been excluded from the investigation to the extent that they had been deprived of the opportunity to participate effectively in the proceedings.

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

*Huseynova v. Azerbaijan, application No. [10653/10](#), judgment of 13.4.2017*

*The applicant's husband, Elmar Huseynov, was a prominent journalist in Azerbaijan. In March 2005 he was shot dead. Criminal proceedings identified two Georgian nationals as suspects. The Georgian authorities refused to extradite them to Azerbaijan. The applicant complained that Huseynov had been murdered by State agents.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) of the Convention, in particular in regard to the investigation into the murder of the journalist. The Court noted that the Azerbaijani authorities had not taken all the measures available to them to obtain the prosecution of the suspects who had been identified, such as transferring the criminal case to the Georgian authorities for the murder charge to be prosecuted there. Also, even though the applicant had been granted victim status in the investigation, the authorities had constantly denied her access to the case file. Moreover, the investigation has not been carried out promptly, taking into account its overall length so far, over 12 years. Lastly, the Court found that no adequate steps had been taken to explore whether Huseynov's murder could have been linked to his work as journalist, despite there having been every reason to do so in view of his

strongly critical articles as well as the related criminal and civil proceedings brought against him. The Court therefore found that the domestic authorities had failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of Huseynov.

**Alleged ill-treatment of a journalist arrested and admitted to intensive hospital care following his release from police custody**

*Emin Huseynov v. Azerbaijan, application No. [59135/09](#), judgment of 7.8.2015*

*The applicant, Emin Rafik oglu Huseynov, alleged his detention and ill-treatment by the police after he had attended a gathering at a privately owned café that was suspended by the police. Huseynov claimed that he identified himself to the police as a journalist and called a media agency to inform them of the police presence at the café. According to the applicant, he was then punched and taken to the police station, where he was threatened verbally and struck on the back of the neck, which caused him to pass out. He was then taken to hospital by ambulance where he was diagnosed with a traumatic brain injury and admitted to intensive care. Huseynov also contended that the ensuing investigation into the incident had been ineffective.*

The European Court of Human Rights held that there had been a violation of Article 3 (prohibition of torture), noting 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, and it is incumbent on the respondent 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 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 to the hospital. The Court therefore considered that the respondent failed to discharge their burden of proof and to submit any evidence refuting the applicant's account of events. As to the seriousness of the act of ill-treatment, the Court considered 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 considered 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. As to the investigation into the alleged ill-treatment, even though the police had found that there was no need to institute criminal proceedings, the Court observed that the fact that the complaint was examined by an investigator 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 Huseynov had not been ill-treated even before the investigation was concluded, threw doubts on the independence and impartiality of the investigation. It also noted that the authorities had decided not to pursue criminal proceedings, but Huseynov was not given a copy of the medical examiner's report at the time. The Court therefore concluded that there had been no effective investigation into Huseynov's claim of ill-treatment.

**Journalist beaten by the police while covering an unauthorised protest**

*Najafli v. Azerbaijan, application No. [2594/07](#), judgment of 2.10.2012*

*The applicant, Ramiz Huseyn oglu Najafli, was a journalist and the editor-in-chief of a newspaper. In 2005, he was sent to cover an unauthorised protest in Baku, during which he was beaten and received serious injuries. Najafli alleged that he told the police officers that he was a journalist and asked them to stop. He later received a medical certificate with a diagnosis of closed cranio-cerebral trauma, concussion and soft-tissue damage to the crown of the head. Najafli also contended that the ensuing investigation into the incident had been ineffective.*

The European Court of Human Rights held that there been a violation of Article 3 (prohibition of torture) and Article 10 (freedom of expression) of the Convention, considering the evidence produced by Najafli sufficiently strong and consistent to establish at least a presumption that he 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. The Court therefore concluded that the use of force was unnecessary, excessive and unacceptable. The Court found that the injuries sustained by the applicant established the existence of serious physical pain and suffering. The ill-treatment and its consequences must have also caused the applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considered 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. As to the investigation into the alleged ill-treatment, the Court noted that no relevant procedural steps had been taken until Najafli had been questioned, more than three months after the incident, and that no documentary evidence had been produced as to the allegedly ordered forensic examination. It then observed that the identification of those responsible had been delegated to the same authority whose agents had allegedly committed the offence. Finally, 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, which constituted an insurmountable obstacle given that the criminal investigation had not identified those police officers. The Court therefore concluded that there had been a violation of Article 3 concerning the investigation into Najafli's claim of ill-treatment.

#### **Journalist allegedly hit by a police officer while covering a protest**

*Rizvanov v. Azerbaijan, application No. [31805/06](#), judgment of 17.7.2012*

A former journalist, Sarvan Samad oglu Rizvanov alleged that a police officer had hit him with a truncheon in November 2005, while he was covering a protest. He also contended that the ensuing investigation into the incident had been ineffective.

The European Court of Human Rights held that there had been a violation of Article 3 (prohibition of torture) of the Convention, considering that the applicant had been able to produce sufficiently strong evidence supporting the fact that he was subjected to the use of force by the police. In particular, Rizvanov produced a medical certificate delivered a day after the incident, certifying that he had contusions of the left leg and left upper arm, as well as witness testimonies that 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, it had not been convincingly established at the outcome of the criminal investigation and other domestic proceedings that, by using a metal construction as a viewpoint, the applicant was actually creating serious danger for the people. In such circumstances, the Court considered that the Government had not shown convincingly that the recourse to physical force against the applicant had been made strictly necessary by his own conduct. It therefore concluded that the use of force had been 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. It found the ill-treatment sufficiently serious to attain the minimum level of severity to be considered as inhuman and degrading treatment under Article 3. As to the investigation into the alleged ill-treatment, the Court noted that the authorities refused to give any importance to the medical certificate and failed to order a forensic examination until twenty-one days after the incident. The Court reiterated that a failure to secure the forensic evidence in a timely manner is one of the most important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment. It therefore held that the investigation into Rizvanov's claim of ill-treatment fell short of the requirements of Article 3 and dismissed the objection as to the exhaustion of domestic remedies.

#### **Non-fatal shooting of journalist by special operations police unit which had not been informed that his presence had been authorised by local chief of police**

*Trévalec v. Belgium, application No. [30812/07](#), judgment of 14.6.2011*

*The applicant, a reporter, was engaged by a production company which had obtained police authorisation for him and a journalist colleague to film the operations of a special unit, the anti-gang squad. In response to a call from a person living nearby, the police radio operator directed police officers to an area of warehouses to apprehend two individuals who had been acting*

*suspiciously and seemed to be armed. Shortly after the interception and immobilisation of the suspects by other police officers, the applicant appeared a few metres behind two officers, who in a reflex action in self-defence fired at the applicant, seriously injuring him in the legs.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) of the Convention, considering whether the two officers had been aware that the police intervention was being followed by a reporter was a decisive point in relation to Article 2, as it could not be excluded that they might have acted differently if they had known about the situation. The reason for their being unaware of this could be put down to shortcomings in the flow of information that were attributable to the authorities. Even though the applicant, who could not have been unaware of the risks involved, had probably not acted with all the requisite caution, he had not received any safety instructions on the day of the accident or any order to remain on the sidelines after his arrival at the scene.

Having regard to the failure to properly supervise the applicant that was attributable to the authorities, and to the shortcomings in the flow of information, the Court found that it could not be asserted that the applicant's imprudent conduct had been the decisive cause of the accident of which he had been victim. Therefore, the authorities, who had been responsible for his safety in a context where his life was potentially in danger, had not shown all the vigilance that could reasonably be expected of them. This lack of vigilance had been the essential cause of the use, by mistake, of potentially lethal force which had exposed the applicant to a serious risk to life and limb and had resulted in his sustaining serious injury. Accordingly, the use of force had not been absolutely necessary "in defence of any person from unlawful violence", within the meaning of Article 2.

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

*Dink v. Turkey, applications No. [2668/07](#), [6102/08](#) and [30079/08](#), judgment of 14.9.2010*

*The applicants are a journalist, Firat Dink, now deceased, and five of his close relatives. The first applicant was publication director and editor-in-chief of a Turkish-Armenian weekly newspaper. In 2003 and 2004 he wrote and published a series of articles in which he expressed views on the identity of Turkish citizens of Armenian extraction. Extreme nationalists reacted to the articles by staging demonstrations, writing threatening letters and lodging a criminal complaint. In 2005 a criminal court found Dink guilty of denigrating "Turkishness" (Turkish identity) and imposed a suspended prison sentence on him. In 2007 Dink was shot dead. The suspected perpetrator was arrested and the Istanbul public prosecutor's office instituted criminal proceedings against 18 accused.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) and Article 13 (right to an effective remedy) of the Convention, considering 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 and one gendarmerie departments 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. Though admittedly, the journalist had not requested increased protection, he could not have known about the plan to assassinate him and it had therefore been for the authorities in question to take action. The Court also noted that the provincial governor's office had refused to authorise criminal proceedings against gendarmerie officers, with the exception of two NCOs; that the prosecuting authorities' decision to take no further action had been based on arguments which were contradicted by other evidence in the case file. It considered that overall, the prosecuting authorities' investigation had 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. It then observed that the investigations concerning the gendarmerie and the police had been conducted by officials belonging to the executive, and that the dead Dink's relatives had not been involved in the proceedings, a fact which served to undermine the investigations. The Court therefore held that no effective investigation had been carried out into the failures which occurred in protecting the life of Dink.



## **Death of a journalist as an alleged result of a forced disappearance and failure of the authorities to protect his life**

*Gongadze v. Ukraine, application No. [34056/02](#), judgment of 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, which caused her serious moral suffering.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life), Article 3 (prohibition of torture) and Article 13 (right to an effective remedy) of the Convention, finding in particular that the elements in its possession demonstrate with a high degree of probability that police officers were involved in Gongadze's disappearance and murder. It noted that in an open letter to the Prosecutor General, the journalist had reported the questioning of his relatives and colleagues by police officers about him and his surveillance by unknown persons and requested an investigation of these facts and the implementation of measures for his protection. Despite clear indications in Gongadze's letter about the inexplicable interest in him shown by police 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. The Court also considered that during the investigation, the authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than discovering the truth about the circumstances of Gongadze's disappearance and death. It therefore found that the authorities failed to comply with their positive obligation to protect the journalist from a known risk to his life. The Court also found that the attitude of the investigation authorities to the applicant and her family caused her serious suffering which amounted to degrading treatment. It further held that the applicant was denied an effective remedy with respect of the death of her husband.

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

*Adalı v. Turkey, application No. [38187/97](#), judgment of 31.3.2005*

*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 the "Turkish Republic of Northern Cyprus" (TRNC).*

The European Court of Human Rights held that there had been violation of Article 2 (right to life) and Article 13 (right to an effective remedy) of the Convention, noting 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 un rebutted presumptions of fact. Turning to the specific circumstances of the case, the Court observed that there was no eyewitness to the murder of Adalı. 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 their involvement in the murder of Adalı. The Court found that the allegations concerning the circumstances in which the applicant's husband met his death did not go beyond speculation and assumption. It therefore held that the material in the case file did 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. As to the investigation into the killing, the Court noted that there was no real coordination or monitoring of the scene of the incident by the investigating authorities; the ballistic examination carried out by the authorities was insufficient, and the investigating authorities failed to take statements from some key witnesses. It also observed that the authorities failed to inquire sufficiently into the motives behind the killing of Adalı, as 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. It further expressed concern about the lack of public scrutiny of the investigation and of the lack of information provided to the deceased's family. The Court therefore held that the authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of



Adalı.

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

*Tepe v. Turkey, application No. [27244/95](#), judgment of 9.8.2003*

*The applicant alleged that his son, Ferhat Tepe, a reporter for Özgür Gündem, had been tortured and killed after being abducted by undercover agents of the State or by persons acting under their instructions. He also contended that the authorities had failed to carry out an effective and adequate investigation into his death.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) and Article 13 (right to an effective remedy) of the Convention, recalling that, in the light of the importance of the protection afforded by Article 2 of the Convention, 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 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, 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 material in the case file did not enable it to conclude beyond all reasonable doubt that Tepe had been abducted and killed by any State agent or person acting on behalf of the State authorities. As to the investigation into Tepe's disappearance and death, the Court noted that there had been striking omissions in the conduct of the investigation; 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; no full forensic autopsy had been carried out by a qualified forensic expert. The Court therefore found that the authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of Tepe.

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

*Kılıç v. Turkey, application No. [22492/93](#), judgment of 28.3.2000*

*The applicant alleged that the State was responsible, through lack of protection, for the death of his brother, Kemal Kılıç, a journalist with Özgür Gündem.*

The European Court of Human Rights held that there had been a violation of Article 2 (right to life) of the Convention, noting that Kılıç had made a request with the Governor 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. The Court also noted that a report by a Parliamentary Investigation Commission had informed the Prime Minister's Office that the authorities were aware of killings being carried out to eliminate alleged supporters of the PKK. 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. The Court held that, the authorities were therefore aware, or ought to have been aware, of the risk to life incurred by Kılıç derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces. The Court then considered whether the authorities did all that could reasonably be expected of them to avoid that risk. It found that, in addition to defects that removed the protection which Kılıç should have received by law, there was an absence of any operational measures of protection. It considered that a wide range of preventive measures were available, which would have assisted in minimising the risk to Kılıç's life and which would not have involved an impractical diversion of resources. The Court found that there was no evidence that the authorities took any steps in response to 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 with a view to taking appropriate measures of prevention. The Court held 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 Kılıç.

## **Other relevant Council of Europe instruments**

### **Committee of Ministers**

Recommendation [Rec\(2022\)11](#) to member States on principles for media and communication governance (6 April 2022)

Recommendation [Rec\(2016\)4](#) to Member States on the protection of journalism and safety of journalists and other media actors (13 April 2016)

[Declaration](#) on the recent attacks in Paris (14 January 2015)

[Declaration](#) on the protection of journalism and safety of journalists and other media actors (30 April 2014)

[Guidelines](#) on eradicating impunity for serious human rights violations (30 March 2011)

[Declaration](#) on the protection and promotion of investigative journalism (26 September 2007)

Recommendation [Rec\(2006\)8](#) to Member States on assistance to crime victims (14 June 2006)

Recommendation [Rec\(2005\)10](#) to Member States on "special investigation techniques" in relation to serious crimes including acts of terrorism (20 April 2005)

Recommendation [Rec\(2001\)10](#) to Member States on the European Code of Police Ethics (19 September 2001)

Recommendation [Rec\(2000\)7](#) to Member States on the right of journalists not to disclose their sources of information (8 March 2000)

Recommendation [R\(96\)4](#) to Member States on the protection of journalists in situations of conflict and tension (3 May 1996)

## Parliamentary Assembly

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## Other Factsheets

[Brief overview of the latest Council of Europe guidelines and activities to promote the safety of journalists](#)

[Factsheet on detention and imprisonment of journalists](#)

[Factsheet on impunity of the perpetrators of physical attacks on journalists](#)