



Inadequate investigation into the death of a phone operator employee allegedly linked to a high profile wiretapping affair

In today's **Chamber** judgment¹ in the case of **Tsalikidis and Others v. Greece** (application no. 73974/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life/investigation) of the European Convention on Human Rights.

The case concerned the investigation into the death of a phone operator employee, Costas Tsalikidis. He was found hanging in his apartment, the day before the Greek Government was informed that many of its members, including the Prime Minister, had had their mobile phones wiretapped. There were two investigations into the death. The initial investigation, between 2005 and 2006, found that the cause of death had been hanging with a noose; and the supplementary investigation, between 2012 and 2014, upheld the initial investigation's conclusions, even though two of the three coroners who prepared the new forensic reports concluded that the cause of death remained unclarified. The applicant family do not believe that their relative committed suicide, alleging that both the initial and the supplementary investigation had had serious shortcomings.

The Court considered that the Greek authorities had failed to carry out an adequate and effective investigation into the death of Costas Tsalikidis. It found in particular that the authorities had decided to close the supplementary investigation, simply citing the relevant steps that had been taken and referring to new reports, without addressing any of the inconsistencies that had been identified, such as the lack of injuries normally associated with hanging and contradictions in the rope mark on the deceased's neck. Other inconsistencies had not been resolved either, including the striking difference in the conclusions of the coroners' forensic reports in the initial and the supplementary investigations, the apparent lack of motive for suicide and the broken hyoid bone, a finding consistent with strangulation. Indeed, it was not even clear on what grounds the public prosecutor had based his decision not to prosecute or to order further investigative measures as his decision to close the investigation had contained no reasoning. In reaching that conclusion, the Court notably bore in mind that the public prosecutor, during the initial investigation, had mentioned that the death had been causally linked to the wiretapping case. It had therefore been all the more important to take every measure necessary to investigate Costas Tsalikidis' death.

Principal facts

The applicants, Panagiotis Tsalikidis, Georgia Tsalikidi, and Georgios Tsalikidis are Greek nationals who were born in 1963, 1926, and 1926 respectively. The case concerns the investigation into the death of their brother and son, Costas Tsalikidis, an employee of a phone operator. Mr Tsalikidis was found hanging in his apartment on 9 March 2005. His family allege that he did not commit suicide, as was concluded in an official investigation into his death. They believe that his death is connected to a wiretapping affair in Greece.

The wiretapping affair involved the tapping through spyware of more than 100 mobile phones belonging to members of the Greek Government, including the Prime Minister and many senior

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

members of the Cabinet. A parliamentary investigation revealed in 2006 that the unauthorised spyware had been implanted in software provided to the phone operator for whom Mr Tsalikidis was working by another telecommunications company. Mr Tsalikidis was responsible for accepting the software and met regularly with the other company's representatives. The taps had begun sometime near June 2004 and were removed on 8 March 2005, a day before Mr Tsalikidis' death. The Prime Minister was informed about the taps on 10 March 2005, the day after Mr Tsalikidis' death. The affair assumed large dimensions both within Greece and beyond and was widely reported in the media.

There were two investigations into the death. The first investigation was conducted by the public prosecutor's office between 2005 and 2006 and concluded that the cause of death was hanging with a noose. The public prosecutor thus archived the case, concluding that – even though the death was causally linked with the wiretapping affair – there was no indication of any criminal act having been committed against Mr Tsalikidis. Following an appeal this decision was upheld by the public prosecutor at the Court of Appeal in September 2006.

However, following new evidence brought forward by the applicants, the authorities agreed to reopen the case file. The new evidence included two reports prepared at the applicants' request by a British expert and by a coroner identifying a number of inconsistencies, namely: the lack of injuries which would have been caused by crashing against nearby furniture (a common feature of suicide by hanging); contradictions concerning the rope mark on the deceased's neck; and the complexity of the knot in the noose which would have required sailing knowledge (which Mr Tsalikidis did not apparently have). One of the scenarios advanced was sedation/poisoning and hanging after death.

The supplementary investigation was conducted between 2012 and 2014. Following the reopening of the case, an exhumation of the body took place and histology, toxicology and forensic reports were prepared. Although no poison or drugs were found in the body, the histology report found that Mr Tsalikidis' hyoid bone had been broken, a finding consistent with strangulation. The applicants also requested a psychiatric report, which concluded that their relative's personality was not compatible with a suicide profile. Two of the three coroners who prepared the new investigation's reports went on to conclude that the cause of death remained unclarified.

In June 2014 the public prosecutor closed the supplementary investigation, finding that the new reports, considered in conjunction with evidence from the main investigation, were sufficient to allow the case to be archived. The applicants had no remedy available to them to challenge this decision.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy), the applicant family complained that both the initial and the supplementary investigation had had serious shortcomings and that the authorities had thus failed to clarify the circumstances surrounding their relative's death.

The application was lodged with the European Court of Human Rights on 19 November 2014.

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

Kristina **Pardalos** (San Marino), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel Campos, Section Registrar.

Decision of the Court

First, the Court rejected the applicants' complaint about the initial investigation into the death of their relative as inadmissible. This was because they had failed to comply with the rule that applications should be introduced within six months of the final decision at national level. In their case this should have been as soon as the public prosecutor had confirmed that the preliminary investigation would be archived, namely in September 2006.

As concerned the supplementary investigation, the Court found that it had been reasonably prompt as it had been instituted immediately after the applicants' request for reopening and had lasted about two years. Carried out by the public prosecutor's office, it had moreover been institutionally independent, and had involved the applicants at the various stages of the proceedings.

However, the public prosecutor had decided to close the supplementary investigation, simply citing the relevant steps that had been taken, without addressing any of the inconsistencies identified in the reports drawn up by the technical experts at the applicants' request. Other contradictions, such as the apparent lack of motive for suicide, as confirmed in the psychiatrist's report, and the broken hyoid bone, a finding consistent with strangulation, had not been addressed either. Furthermore, there had been a striking difference between the initial autopsy, which found that Mr Tsalikidis had been hanged with a noose, and the new forensic reports drawn up following the exhumation of the body, which concluded that the cause of death was unclarified.

Indeed, it was not even clear on what grounds the public prosecutor had based his decision not to prosecute or to order further investigative measures. The order to close the investigation, merely referring to the new reports, had contained no reasoning or analysis of the evidence available.

Thus, such measures as a reconstruction of the incident, a forensic examination of the place of death or a new forensic report which could have addressed the inconsistencies had never been ordered. It had been even more important to take all the necessary measures to investigate the death, bearing in mind that the public prosecutor, during the initial investigation, had mentioned that the death had been causally linked to the wiretapping case.

The Court therefore found that the Greek authorities had failed to carry out an adequate and effective investigation into the death of Mr Tsalikidis, in violation of Article 2 of the Convention.

The Court considered that no separate issues arose under Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicants jointly 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.