



**FORENSIC MEDICAL ASPECT OF RIGHT TO LIFE VIOLATION CASES
IN ECHR DECISIONS ABOUT TURKEY FROM 1998 TO 2002:
REVISITING THE COMMON ERRORS IN DEATH INVESTIGATIONS**

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ARTICLE INFO	ABSTRACT
<p>Article History: Received: 21 January 2018 Accepted: 28 January 2018</p>	<p>Violation of the right to life is the most severe type of physical assault against humans. In this study decisions by the European Court of Human Rights (ECHR) about violation of the right to life cases in Turkey are investigated, with the aim of determining deficiencies and errors in forensic medical procedures and to discuss the effect of these on the violation decision. Digital court files with decisions made by the ECHR from 1998 to 15.05.2002 published on the internet were retrospectively investigated. Cases with decisions against Turkey for right to life violations were determined. This study assessed data related to death investigations. Data analysis was performed with the Epi-Info 2000 program. From a total of 21 files (22 cases) with decisions of right to life violation and/or torture, there were 12 cases with decision of right to life violation (54.5%). For 11 cases (91.7%) examination of the deceased was performed, with this examination only performed by a forensic medicine specialist for 2 cases (18.2%). It was determined that autopsy was not performed for 8 cases (66.7%). Of the 4 cases with autopsy performed, none (100.0%) had photographs or radiologic imaging taken, skin sampling for microscopic and chemical analysis or sampling of any biological material performed. This research showed that, there were serious deficiencies and errors in forensic medical procedures and those investigations of death are not standardized. To prevent violations of the right to life and to efficiently perform inquiries related to death, doctors with sufficient knowledge and skills about forensic medical procedures should be required to abide by the Minnesota autopsy protocol.</p>
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1. INTRODUCTION

The Universal Declaration of Human Rights was proclaimed by the United Nations (UN) General Assembly in 1948 to define and protect human rights was a giant step in the international area (United Nations General Assembly-Declaration, 1948; Gemalmaz, 2001; Gölcüklü and Gözübüyük, 2002). In 1950 the European Convention on Human Rights was signed, and Turkey ratified the Convention in 1954 (Gemalmaz, 2001). Within the scope of the Convention, the European Court of Human Rights (ECHR) is an organ working on a continuous basis since 1998 (Gölcüklü and Gözübüyük, 2002). The second article in the Convention states “Everyone’s right to life shall be protected by law”. The right to life is a precondition for the existence of all rights and freedoms (Gölcüklü and Gözübüyük, 2002). Violations of this right appear to infringe on the principle of “personal immunity”.

In the field of medicine, many regulations have been made related to human rights since the 1970s (Soyer, 1996). These regulations emphasize the principle of using a standard medical approach (Jandoo, 1987; American College of Physicians, 1995; Thomsen and Voight, 1998; Council of Europe, 1997). The basis of this approach comprises the clinical knowledge and skills of doctors and their ethical behavior. The Minnesota autopsy protocol accepted by the UN in 1989 states that it “will guide research into all types of violent, sudden, unexpected and suspicious deaths” (United Nations-Minnesota Protocol, 1991). Investigations into death in Turkey are performed by practitioner doctors and doctors from other branches as well as by forensic medicine specialists and pathologists (Petekkaya, 2012). In the cases associated with the right of life, ECHR decisions against Turkey mention a range of deficiencies and errors related to the application of forensic medicine procedures (Gülsoy, 2002; Kök, 2007; Gültekin, 2011). For this thereby, this study aimed to investigate and reevaluate the files of cases in the ECHR with results against Turkey due to violation of the right to life and to discuss the effect of deficiencies and errors experienced in forensic medicine procedures on the decision-making process.

2. MATERIAL AND METHODS

2.1. Materials

The decisions of the ECHR published in the internet environment were retrospectively investigated (European Court of Human Rights-Decisions, 1998-2002). From 1998 to 15.05.2002, decisions against Turkey involving violations of the right to life and torture laws (Convention articles 2 and 3) were reviewed. Decisions where deficiencies and errors in forensic medicine applications were primarily discussed were determined. Within the scope of this study cases were limited to those with the decision that the right to life was violated. Inclusion criteria for the study were deficiencies and errors in the postmortem forensic medicine procedures shown as justification for the violation decision.

2.2. Data Collection Tools

The data collection tool used was a case analysis form developed by the researcher. This form included a total of 63 questions, with the first 8 questions about sociodemographic data. The other questions were parameters that varied according to the event involved. These parameters included data related to witness statements, crime scene investigation findings, examination after death, autopsy findings, live case examinations, specialist and/or doctor reports and the findings of the court.

2.3. Data collection and statistical analysis

The data analysis form was completed for each case. This broad data set was recorded by obtaining the texts of ECHR decisions. In this study findings of cases resulting in death only were statistically evaluated. Data analysis used the Epi-info 2000 program. For presentation of descriptive data number, percentage and minimum and maximum values were used. Permission for the research was obtained from the Institute of Forensic Medicine Ethics Committee. The results were assessed together with current ECHR statistics and the literature.

3. RESULTS

In the ECHR for the period from 1998 to 15.05.2002 there were a total of 21 court cases resulting in decisions against Turkey with the decision that “right to life and/or torture laws were violated” which abided by the study inclusion criteria. The total number of individuals involved in these court cases was 22. From a total of 22 court cases with decisions of right to life violation and/or torture, there were 12 cases with decision of right to life violation

(54.5%). Of cases 11 were male (84.6%) and 2 were female (15.4%) (Case 8 reported two deaths). The age distribution was minimum 15 and maximum 45 years. In 3 cases (25.0%) both violations, of right to life and torture, were made together. In 3 of the cases (25.0%) death occurred while in custody. The sociodemographic characteristics, province and year of the event, year of ECHR decision and compensation amounts are shown in Table 1 (Table 1).

According to court reports, 11 cases (91.7%) were determined to have examination of death performed. Death examinations of 7 cases (63.6%) were performed by a health organization, while in 4 cases it was performed at the scene (36.4%). Two of the doctors (18.2%) performing the death examination were forensic medicine specialists, while 9 (81.8%) were specialists and practitioner doctors from other branches. Of the 12 cases investigated in the study, 8 cases (66.7%) were determined not to have autopsy performed. The number of cases with autopsy performed was 4 (33.3%). Of these 4 cases, 1 autopsy (25.0%) was performed in a forensic medicine center, while the other 3 (75.0%) were performed in any health organization. For 8 cases (66.7%) it appeared a firearm was used. For 7 of these cases (87.5%) ballistic investigations were performed. For only 1 case (12.5%) were clothes described. None of the 4 cases with autopsy performed (100%) had any photographs or radiological images obtained, had sampling for microscopic or chemical investigations from wounds on the skin or any biological material sampling performed. For 2 of these cases sampling was not performed from tissue or organs for histopathological and toxicological investigations. For all cases, the ECHR stated that the investigations performed were not sufficient or effective. For some cases resulting in death, though medical interpretation of the trauma factor was made, the results reflected in the autopsy reporting were not seen to be persuasive or sufficient by the ECHR. During the court cases, the court obtained expert reports from specialists working in forensic medicine departments outside of Turkey for 2 cases (16.7%).

Table 1. Distribution of cases based on violation type, gender, age, occupation, year of event and year of ECHR decision and compensation amount

Case No	Violation type	Gender	Occupation	Age	Event year	Decision Year	Compensation Amount***	
Case1	Violation of right to life and torture	M	Doctor	*	1993	2000	17,500 STR + (15,000 STR -15095 FF)	
Case2	Violation of right to life and torture	M	Laborer	23	1993	2002	75,617 Euro - 4100 FF	
Case 3	Violation of right to life	M	Doctor	*	1993	1999	15,000 STR + (15,000 STR -13,495 FF)	
Case 4	Violation of right to life	M	Farmer	*	1993	1998	27,000 STR	
Case 5	Violation of right to life and torture	M	Driver	45	1992	2000	74,320 STR + (21,544 STR -11195 FF)	
Case 6	Violation of right to life	M	Guard	*	1990	1999	130,000 FF	
Case 7	Violation of right to life	M		*	*	1994	2000	40,000 USD + (2000 USD -3700 FF)
Case 8	Violation of right to life	M and F**		*	*	1993	2002	29,000 Euro + 17,500 STR
Case 9	Violation of right to life	M	Teacher	*	1993	2000	75,000 STR + (13,634 STR - 3600 FF)	
Case 10	Violation of right to life	F	Teacher	*	1993	2000		
Case 11	Violation of right to life	M	Student	15	1991	1998	60,000 FF	
Case 12	Violation of right to life	M	Manager	*	1993	2000	86,000 STR	

*: Data could not be obtained **:Two people reported killed. ***: STR: British sterling, FF:French Franc, USD: American dollars.

4. DISCUSSION

In this study investigating court cases with decisions against Turkey in the ECHR from a medicolegal perspective, there were 12 cases found with the right to life violated and in 3 of these cases (25.0%) death was determined to have occurred while in custody. In nearly all of the investigated court cases, 11 cases (91.7%), the death examination reports were discussed in terms of deficient and erroneous aspects. Additionally the ECHR stated that in the majority of cases (66.7%) autopsy was not performed and this situation was a significant deficiency preventing effective investigations. These results show that a standard postmortem forensic medicine procedure was not applied for cases with violations of the right to life.

According to statistical data about the number of applications against Turkey and rights violations, at the beginning of 2001 the country with most court case applications to the ECHR was Turkey (European Court of Human Rights, 1998-2002; Tezcan *et al.*, 2002; Tanrikulu, 2002; Dođru, 2001; Karakuş, 2001). In the period from 1987 to 15.04.2002 there were 148 applications with the claim of right to life violations and it was reported that 23 court cases resulted in violation decisions (Tezcan *et al.*, 2002). In the period from 2003 to 2014, there were 100 decisions about right to life violation and 147 active investigations not completed decisions about Turkey (Republic of Turkey Ministry of Justice Department of Human Rights, 2014). According to ECHR 2017 statistics, there were a total of 62800 applications in front of the court, with the distribution of application numbers according to country reported as Hungary 10100 (16.1%), Romania 9850 (15.7%), Turkey 7650 (12.2%) and Russia 7650 (12.2%) (European Court of Human Rights, 2017). When the current statistics for the ECHR are investigated according to the distribution of Convention articles in all decisions given about the party states from 1959 to 2016, Turkey is first place in the general total for violation decisions (European Court of Human Rights, 1959-2016). From 1959 to 2016, there were a total of 133 right to life violations and 204 effective investigation not completed decisions given against Turkey (European Court of Human Rights, 1959-2016). According to this current data, Turkey is in second place after Russia when examined in terms of right to life violations (European Court of Human Rights, 1959-2016). Due to the 2nd article of the European Convention on Human Rights, the positive obligations of states are “to take precautions to protect the right to life and to perform effective investigations into events of death”, with negative obligations of “not to unlawfully end the lives of those who are under their sovereignty” (Kocabaş, 2009; Cengiz, 2011; Stan, 2012; Bilge, 2014). Similarly the court states that in cases of death occurring while in custody, states are obligated to present a reasonable explanation of any kind of worsening of the individual’s health state (Cengiz, 2011; Bilge, 2014). In this study it was identified that in 3 cases (25.0%) deaths were identified to occur while the individual was still held in custody. For these cases the effective research indicated by the court requires a full and accurate autopsy to show whether the death occurred as a result of torture of the individual and objective analysis of results (Stan, 2012; Bilge, 2014). In the literature, research related to right to life violations after 2002, there are court cases cited that ended after 2002 similar to the court case topics cited in this investigation (Kocabaş, 2009; Cengiz, 2011; Bilge, 2014). When these results and the statistics about the ECHR and Turkey from past to present are noted, “right to life violations and lack of effective investigation into deaths” still continues to be a current problem (Republic of Turkey Ministry of Justice Department of Human Rights, 2014; European Court of Human Rights, 2017; European Court of Human Rights, 1959-2016). In medicolegal terms, these results show that the Minnesota autopsy protocol is not routinely applied in researching suspected illegal deaths in Turkey.

The Minnesota protocol is an important guide used in death investigations in events linked to torture and similar illegal deaths including analysis of autopsy and skeletal remains (United Nations-Minnesota Protocol, 1991; Vieira *et al.*, 2012). A significant difference in this

protocol is the approach that “crime scene investigation is an inseparable part of death investigations” (Polat, 2002; İnanıcı *et al.*, 2004).

The cases investigated in this study had the common characteristic of having deficiencies and errors mentioned in ECHR decision; for 11 cases (91.7%) the court debated the death examination reports from a variety of angles. The case without discussion was a death linked to firearm injury. In this case, the court identified deficiencies related to the crime scene and ballistic investigations and that no autopsy was performed, and focused on the failure to protect the right to life of the individual. For the other 11 cases (91.7%), it was identified that deficiencies in the death examination, autopsy, crime scene investigation and ballistic investigation were debated with priority. The court particularly mentioned the critical importance of the autopsy procedure to reveal conditions of death. Additionally, forensic medicine research limited to death examination for cases with accusations of human rights violations was emphasized as being insufficient. When dealing with deficiencies of the autopsies in these cases, the Minnesota autopsy protocol was cited. The main framework of autopsies were criticized in light of the recommendations in this protocol. It was stated that lesions observed on external examination were not described in detail, clinical analysis about the trauma factor was not completed, differentiation of antemortem and postmortem findings was unsuccessful, normal postmortem findings were mistakenly assessed, lesions were not photographed, sampling of wounds on skin for wound age was not completed, clothing was not described, firearm wounds were not numbered and findings related to localization and firing distance identification were not appropriately defined. Crime scene investigations frequently had deficiencies mentioned for topics such as “photography, sketch plan, description of the placement of the body, determination of localization of bullets if a firearm was used and numbering and separate collection of these”. The deficiencies and errors identified in death investigations were found to form the basic justification for the violation decisions given by the ECHR. These identifications used as ECHR justification overlap with research findings debating the deficiencies in forensic medicine training and applications in Turkey (Gürpınar *et al.*, 1997; Salaçın *et al.*, 1997; Çolak *et al.*, 2001; Gülsoy, 2002; Çolak *et al.*, 2004; Kök, 2007; Adli Tıp Uzmanları Derneği, 2007; Demirer, 2007; Gültekin, 2011; Petekkaya, 2012; Kumral and Özdeş, 2014).

The other common characteristics of the court decisions for the investigated cases was the scrutiny of the area of speciality of doctors performing the investigations. Topics of debate were whether doctors performing medical investigations were specialists on the procedures performed or what their previous experience was. For only 2 cases (16.7%) were death examinations performed by forensic medicine specialists. The forensic medicine specialists decided these two cases required autopsies. This result may be interpreted as a finding showing that forensic medicine specialists have a different approach to death investigations. The Minnesota protocol explaining crime scene investigation in systematic form defines this team work between forensic medicine specialists as an important obligation (United Nations-Minnesota Protocol, 1991). To resolve the problems identified by the court with “crime scene investigation, collection and assessment of evidence”, it may be beneficial for experienced forensic medicine specialists to contribute to these investigations (Polat, 2002; İnanıcı *et al.*, 2004, Gültekin, 2011).

5. CONCLUSION

In this research, cases with violation of right to life show the necessity of standardizing death investigations. However, the standards emphasized in different autopsy protocols can

only be assured by using audit mechanisms in autopsies (Pakiş and Yaycı, 2006). The ECHR decisions investigated in this study identified serious deficiencies and errors in the postmortem forensic medicine procedures. As a result, in general the “efficient organization of investigations into deaths and protection of the right to life” were found to be unsuccessful. One of the main reasons for this is the lack of a standard and/or official protocol for death investigations such as the Minnesota protocol and lack of auditing of the quality and reporting processes for the performed investigations. In postmortem forensic medicine procedures, experienced doctors play an important role in revealing the truth and as a result protecting the right to life. To fulfill this role death investigations should be performed according to a sufficient protocol. To prevent right to life violations and effectively organize inquiries into deaths, doctors with sufficient knowledge and skills relating to forensic medicine applications should be required to abide by the Minnesota protocol.

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