

June 2011

Trévalec v. Belgium - 30812/07

Judgment 14.6.2011 [Section II]

Article 2

Article 2-1

Life

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:
violation; no violation

Facts – 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. At around 1 a.m. on 12 January 2003, in response to a call from a person living nearby, the police radio operator directed police officers, including M.S. and Y.M., to an area of warehouses. The purpose of the operation was 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 M.S. and Y.M. In a reflex action in self-defence in the heat of the moment, mistaking the reporter's camera in the dark for a weapon and feeling threatened, the two officers fired at the applicant, seriously injuring him in the legs.

The persons in charge of the operation were immediately contacted and informed of the accident, and the public prosecutor was notified about ten minutes later. The investigating judge immediately took various measures to establish the facts and preserve the evidence.

Law – Article 2

(a) *Substantive aspect*– M.S. and Y.M. had believed in good faith that their lives were at risk and had used their weapon in self-defence, believing they were acting within the law. Given the subject of his report, it was evident that the applicant was likely to find himself in situations where he risked injury or even death. In that context he depended for his safety on the police, which had accepted that responsibility when authorising his presence. Without any written regulations, decisions in that kind of situation were taken on a case-by-case basis. The police authorities had made sure that the applicant had countersigned the authorisation to film that had been issued by the police chief on the condition that he complied with the safety instructions given by the inspectors. In addition, bullet-proof jackets had been provided to the applicant and his colleague, who had been invited to a preparatory meeting and had been given appropriate instructions. However, the transcription of the communications emitted on the night of the incident from the police "radio-operations centre" showed that the officers on the ground had not been specifically informed of the presence of the applicant and his colleague with the anti-gang squad. The officers who had fired the shots and their colleagues from "Unit 101" and the dog-handling unit, had confirmed that, whilst they had not been unaware that a television crew was

filming a documentary at the time, they had not been informed of the arrangements for the filming or of the applicant's presence that night during the operation. The authorisation to film issued by the police chief had been displayed in the office of the squad's head of station and in the "radio-operations centre" of the police headquarters, with a note stating "for information – filming from 9 to 13 January", but the document had not mentioned the exact times when the journalists would be accompanying the police. In addition, and most importantly, the heads of station and inspectors on duty in "Unit 101" the day before and at the time of the incident and those in charge of the dog-handling unit had not received any note or memorandum giving that information and had not been otherwise informed.

The question whether M.S. and Y.M. 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 and the tragic events might have been avoided if they had known about the situation. As shown above, 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, 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. In conclusion, 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 §§ 2 (a).

Conclusion: violation (unanimously).

(b) *Procedural aspect*– The authorities had reacted to the events promptly and seriously. Numerous measures had been taken to establish the facts and responsibilities and the investigations had taken place under the supervision of an investigating judge, whose impartiality and independence had not been called into question. The applicant had been kept up to date with the progress of the investigation. In addition, the investigating judge had granted his request for a second reconstruction of the incident, and it was on his own initiative that it had ultimately not taken place. The investigation had thus been carried out in conditions apt to make it possible to determine whether the use of force had been justified or not and to identify who was responsible. There were admittedly a number of periods of inactivity, and it would probably have been desirable for the investigation to be completed more quickly, but in view of the circumstances and the measures taken in this case, that was not sufficient for its effectiveness to be called into question.

Conclusion: no violation (unanimously).

Article 41: question reserved.

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