



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ABDULLAH YAŞA AND OTHERS v. TURKEY

(Application no. 44827/08)

JUDGMENT

STRASBOURG

16 July 2013

FINAL

16/10/2013

This judgment is final but it may be subject to editorial revision.

In the case of Abdullah Yaşa and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

Dragoljub Popović,

Işıl Karakaş,

Nebojša Vučinić,

Paulo Pinto de Albuquerque, *Judges*, and Stanley Naismith, *Section*

Registrar,

Having deliberated in private on 25 June 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44827/08) against the Republic of Turkey, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Turkish nationals, Mr Abdullah Yaşa, Mr Eşref Yaşa and Ms Sahile Yaşa (“the applicants”), on 10 September 2008. The applicant Abdullah Yaşa is the son of Mr Eşref Yaşa and Ms Sahile Yaşa.

2. The applicants were represented by Ms R. Yalçındağ Baydemir, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants complained, in particular, of the trauma inflicted on Abdullah Yaşa by a tear-gas grenade and of the lack of an effective investigation of the police officers responsible.

4. On 20 September 2011 the application was declared partly inadmissible in respect of the second and third applicants. Furthermore, the complaints under Articles 3 and 13 of the Convention concerning the applicant Abdullah Yaşa were communicated to the Government. It was also decided that the Chamber would examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Abdullah Yaşa (“A.Y.”), a Turkish national, was born in 1993 and lives in Diyarbakır. He was thirteen years old at the time of the events to which the present case relates.

A. The 29 March 2006 incident

6. Following the deaths of fourteen members of the PKK (the Kurdistan Workers’ Party) during an armed clash on 24 March 2006, numerous unlawful demonstrations took place in Diyarbakır between 28 and 31 March 2006, during which eleven demonstrators died. In particular, two persons, namely T. Atakkaya and M. Mızrak, were killed by tear-gas grenades in the course of these events.

7. On 29 March 2006 A.Y., who was at the scene of a demonstration, was injured in the nose by a tear-gas grenade fired by the police while he was allegedly on his way to his aunt’s house. He was taken to the Diyarbakır public hospital the same day.

8. On 5 April 2006 A.Y. left hospital, where he had undergone an operation for a maxillo-facial trauma on the day of his arrival, according to the discharge report.

9. On 14 April 2006 the applicant lodged a complaint with the Diyarbakır public prosecutor’s office (the “public prosecutor’s office”) against the police officers of the Diyarbakır security police headquarters, alleging assault and abuse of power. He explained that he had been hit directly on the nose by a tear-gas grenade.

10. On 2 August 2006 the public prosecutor’s office interviewed the applicant and his father and mother. A.Y.’s father said that he had been at work at the time of the incident and demanded the conviction of the police officers responsible for the assault on his son.

11. In her depositions the same day, A.Y.’s mother stated that she had been at home at the time of the incident, and she also demanded the conviction of the police officers responsible for her son’s injuries.

12. In substance, A.Y. himself testified as follows: while on his way to his aunt’s house he had been hit on the nose by an object as he was watching the police officers. At the time of the incident he had seen the helmeted police officers shooting a projectile in his direction by means of a shoulder-borne device. He had been unable to identify his exact position at the time of the incident, nor had he previously seen anyone throwing objects at the police officers. He did not think that the police officers could have shot at him without noticing his presence, since they had seen him when he had been in the street. He did not know the police officer who had shot at

him. He requested the identification and punishment of this officer. He had been taken to hospital by a stranger.

13. His lawyer, having confirmed his statements, requested the formulation of a forensic report and the submission of medical reports from Diyarbakır public hospital. He also requested the identification of the police officers involved on the day of the incident.

14. On 6 November 2007 the public prosecutor's office issued the following decision not to prosecute:

“... It emerged from the inquiries launched after the complaint ... that A.Y. had not been injured on his way to his aunt's house. According to video recordings ... and photographs ... the complainant was injured during a demonstration in which he had been actively participating by chanting slogans in support of the PKK terrorist organisation and its leader Abdullah Öcalan, and throwing stones, sticks and Molotov cocktails at the police officers.

Consequently, the police officers were not criminally liable because they had acted in self-defence within the meaning of Article 25 § 1 of the Criminal Code, and in the exercise of their functions as set out in Article 24 of the same Code. [They] had shot tear-gas grenades in order to disperse the demonstrators who had gathered illegally and were attacking the officers by throwing stones, sticks and Molotov cocktails.

In the light of the foregoing comments ... no action is required against the police officers accused of overstepping the bounds of the use of force”

15. On 13 November 2006 the Diyarbakır Department of Forensic Medicine issued a medical report reading as follows:

“... A.Y. underwent operations on a haemorrhage, a facial oedema, a fractured nose bone and a series of concave incisions.

Conclusion:

The patient cannot be treated by means of a straightforward operation,

His condition is not life-threatening,

The bone fractures constitute moderately severe damage to the applicant's vital body functions.”

16. On 3 December 2007 the applicant appealed to the Siverek Assize Court (“the Assize Court”) against the decision not to prosecute. He denied his alleged participation in the demonstration in question and argued that the video recordings and photographs on which the decision not to prosecute had been based in no way constituted sufficient evidence of such participation.

17. By a decision of 31 December 2007, served on the applicant on 10 March 2008, the President of the Assize Court dismissed the appeal. It considered that the police officers' acts had remained within the framework of the law, since the officers had not acted intentionally but had merely endeavoured to discharge their duties.

B. Criminal proceedings against the applicant in the Youth Assize Court

18. It emerges from the case-file that an investigation was automatically launched in respect of the applicant for his alleged participation in an illegal demonstration. On 28 November 2007, as part of this investigation, he was questioned by the public prosecutor's office. The relevant parts of his statements may be summarised as follows:

"I completely reject the charges levelled against me. [On the day of the incident] I had left home to visit my aunt, who lives in Bağlar, when I saw a group of police officers near the street where the clinic is located. The officers launched a tear-gas grenade, which hit me in the nose. I had eight days of medical treatment in hospital. I had been alone during this incident, I had not thrown any stones, sticks or Molotov cocktails at the police officers, I did not chant slogans supporting the terrorist organisation, and I reject the photographs taken, the video recordings and the police reports. I agree to have a medical check-up."

19. On 25 February 2008 criminal proceedings were brought against the applicant on charges of membership of a terrorist organisation, propaganda in support of that organisation and resisting the police.

20. In his submissions on the merits of the case the public prosecutor sought the applicant's acquittal for lack of evidence. He stressed in particular that it was not possible, on the basis of the images studied by the Ankara criminal police laboratory, to establish that the applicant had taken part in the demonstration in question.

21. On 10 July 2008, the Assize Court endorsed the prosecutor's arguments and acquitted A.Y. According to the case file, in the absence of an appeal on points of law, that judgment became final.

C. Audio-visual material produced by the parties

22. During proceedings before the Court, the Government produced a CD-ROM containing a police video recording. The CD-ROM shows several phases of the demonstrations which took place in Diyarbakır on 29 March 2006, and contains images of the period before and after the launching of the tear-gas grenade which injured the applicant's head. It also shows that most of the demonstrators were teenagers, some of them with their faces covered, who were throwing stones. Moreover, it is clear that the event took place on a very busy boulevard. Some sequences show the applicant among the demonstrators, although it cannot be clearly ascertained that he was taking part in the demonstration. In the course of the events it can be seen that the applicant has been hit by a tear-gas grenade. Although it is impossible to make out exactly how the police officer fired the tear-gas grenade, it would appear from its impact that it was a direct, flat-trajectory shot (that is, it had been fired horizontally, or else at an angle of under 45°),

rather than a high-angle shot (where the launcher is aimed as high as possible so that the tear-gas grenades explode in the air and break up before falling back to earth, thus preventing injuries to demonstrators in the event of an impact).

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant part of section 16 of the Police Powers and Responsibilities Act (Law no. 2559) enacted on 4 July 1934 and published in the Official Gazette on 14 July 1934, as in force at the material time, read as follows:

“... Police officers may only use their weapons

(a) in cases of self-defence;

...

(h) or where an individual or group is resisting the police force and preventing it from discharging its duties, or else in the event of an assault on the police ...”.

24. Law No. 5681 as published in the Official Gazette on 14 June 2007 amended section 16 of Law No. 2559. This provision now reads as follows:

“The police

...

(c) may use firearms to arrest an individual who is the subject of an arrest warrant or detention order ... or a suspect caught red-handed, to the extent required for the purpose.

Before using firearms, the police ... must first of all shout ‘halt!’... If the individual continues running, the police may fire a warning shot. If, despite these warnings, the individual continues running and there is no other possible means of stopping him or her, the police may use firearms in order to arrest the individual, to the extent required for the purpose (*kişinin yakalanmasını sağlamak amacıyla ve sağlayacak ölçüde silahla ateş edilebilir*) ...”.

25. Section 24 of the Assemblies and Marches Act (Law no. 2911) provides as follows:

“If a gathering or demonstration which has begun lawfully... becomes an unlawful gathering or demonstration:

...

(b) The highest local civilian authority ... shall send one or more local security officers to the scene of the incidents.

This officer shall warn the assembled crowd that it must disperse in accordance with the law and that should it fail to do so, force will be used. If the crowd fails to disperse, it will be dispersed by the use of force....

In the situations described ... in the event of assault on or actual resistance to the security forces or the property and persons which they are protecting, force will be used without the need to issue a prior warning.

...

Where a gathering or demonstration is unlawful from the outset ... the security forces ... shall take all necessary precautions. The commanding officer shall warn the crowd that it must disperse in accordance with the law and that should it fail to do so, force will be used. If the crowd fails to disperse, it shall be dispersed by the use of force.”

26. At the time of the facts, by virtue of Article 6 as appended to the Police Powers and Responsibilities Act (Law no. 2559):

“The use of force means recourse to physical and material force and weaponry in order to immobilise offenders, in a gradual manner proportionate to [their] characteristics and degree of resistance and aggressiveness.”

27. Article 25 of the 30 December 1982 Directive on the rapid reaction forces (*Polis Çevik Kuvvet Yönetmeliği*) lays down the principles governing surveillance, monitoring and intervention of the rapid reaction forces in the event of demonstrations.

Under the terms of this Article, in cases of unlawful gatherings or demonstrations necessitating the intervention of the rapid reaction forces, the local civilian authority, the highest-ranking police officer or another senior police officer entrusted with this task must first of all address the crowd by means of a loudhailer or other means of communication. He must then warn the crowd that “that it must disperse in accordance with the law and that should it fail to do so, force will be used.” This order must be repeated two or three times and a report drawn up to confirm that the warning could be heard from the furthest point in the crowd. The warning is not necessary in the case of an actual assault on and resistance to the police or in the case of an actual attack on the property which the police are protecting.

Should the crowd fail to disperse despite the warning given, use is to be made, in a gradual manner, of physical force, material force and weapons, depending on the nature of the crowd’s movements, the degree of violence, threats or assaults, or of the resistance put up by the offenders.

Where dispersal has been planned and is being carried out by use of force, several exit routes must be left for the crowd so that it can disperse. No attempt must be made to disperse the crowd until such exit routes are available.

28. On 15 February 2008 a circular setting out the conditions for using tear gas (*E.G.M. Genelge No. 19*) was sent by the Director General of Security (*Emniyet Genel Müdürlüğü*) to all national security services. This circular referred to a directive concerning the use of tear-gas weapons and munitions (*Göz Yaşartıcı Gaz Silahları ve Mühimmatları Kullanım Talimatı*) issued in February 2008.

This directive explains the characteristics of tear-gas weapons and the physiological effects of the gas used. The relevant sections of the directive may be summarised as follows:

“...

(2) Instructions for the use of tear-gas weapons and munitions

- ✓ Tear-gas weapons and munitions must not be used for purposes other than those specified in the rules or before the necessary measures (such as ensuring the presence of medical personnel) have been taken;
- ✓ Prior to the use of tear gas, the crowd must be audibly warned that in the event of non-dispersal, use will be made of such gas;
- ✓ The gas shall be used in accordance with tactics and dosages determined by the head of the tear-gas intervention team following an assessment of the situation by the latter;
- ✓ Units which lack suitably trained personnel may not apply for tear-gas supplies;
- ✓ In order to increase the effectiveness of the tear-gas canisters, regard must be had to wind direction and speed, and also to air temperature and other meteorological factors;
- ✓ Tear-gas dosage may be increased in a gradual manner in proportion to the characteristics and degree of resistance of the crowd or individual [in question];
- ✓ No tear-gas projectile may be launched directly at a human body;
- ✓ The upper and lower lids of the gas filters ... may not be opened and filters may not be placed on the gasmasks unless so ordered;
- ✓ Gas sprays may be used in a gradual manner in proportion to the degree of resistance; they should not be used from a distance of under 1 metre;
- ✓ Tear gas must never be used against persons who have ceased to put up resistance or show aggression;
- ✓ Personnel called upon to use munitions [of this type] shall be instructed in their use and informed of the warnings issued by their manufacturers.

3. Instruction for the use of weapons and munitions in open and confined spaces

a) Open spaces

Tear gas may be used to disperse crowds by splitting them up and disrupting communication with a view to isolating agitators from the rest of the crowd. Where tear gas is used during social events, the following points must be taken into account.

- ✓ Wind direction must be ascertained and targets pinpointed to ensure that the crowd is affected by the tear gas...
- ✓ Security forces must be supplied with gasmasks in view of the fact that the gas could affect them following a change in wind direction.
- ✓ Evacuation routes for persons affected by tear gas must not be blocked. If the evacuation routes are blocked the crowd is liable to become more aggressive. Furthermore, the evacuation routes must be properly marked. The crowd might cause damage to business or residential areas, in which case the areas in question can be shut off...
- ✓ It is important to ascertain the range of the munitions and to launch them from an appropriate distance in order to reach the chosen target. Moreover,

in the light of the specific characteristics of the social event, appropriate munitions must be used as they might be thrown back [by demonstrators at the police forces].

- ✓ Regard must be had to the characteristics and size of the crowd. Where an item of munition has been launched into a large crowd, it must not be forgotten that demonstrators in the middle of the crowd risk being trampled underfoot...

4. Levels of use of tear gas

The following are the tear-gas munitions which should be selected depending on the distance between the crowd and the police:

(a) Level 1: Short range (1-15 metres). Intervention with gas in the form of sprays and model 5 gas cylinders. ...

(b) Level 2: Medium range (15-30 metres). Intervention with hand-held tear-gas grenades. This is possible where the group refuses to disperse and remains aggressive, despite the level-1 intervention. A hand-held tear-gas grenade can be effective at over 50 metres, depending on meteorological conditions.

(c) Level 3: Long range (30-150 metres) 37/38 mm. Intervention with grenade launcher. This intervention is geared to dispersing gatherings occurring after the intervention described under Level 2 above. A grenade launched at a 45° angle to the body of the officer concerned under appropriate meteorological conditions has a range of over 150 metres...”

III. USE OF TEAR GAS: RELEVANT INTERNATIONAL PRINCIPLES AND DOCUMENTS

29. Tear gas has been used by police forces in Europe for many years. Regulations on the use of tear gas vary according to the form in which it is used. Tear gas is used either in the form of sprays or grenades shot from a launcher. If the grenade launcher is improperly used, the grenade can kill or cause serious injuries.

30. Under Article I § 5 of the United Nations Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (“CWC”), each State Party undertakes not to use riot control agents as a method of warfare. The CWC came into force in Turkey on 11 June 1997.

According to this instrument, tear gas and “pepper spray” are not considered to be chemical weapons. It is, however, well-known that the use of this product can cause temporary discomfort, with, for instance, breathing difficulties, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pains, dermatitis and allergies. In high doses it can cause necrosis of the tissue in the respiratory tract and the digestive system, pulmonary oedema and internal bleeding (haemorrhaging of the suprarenal glands).

Under the CWC, use of such resources is authorised for the purposes of law enforcement, including domestic riot control (Article II § 9, d) – see

also *Çiloğlu and Others v. Turkey*, no. 73333/01, §§ 18-19, 6 March 2007, and *Oya Ataman v. Turkey*, no. 74552/01, §§ 17-18, ECHR 2006-XIII).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

31. The applicant, A.Y., complained of unjustified use of force by police officers and the lack of an effective investigation into their actions. He relied on Articles 3 and 13 of the Convention.

The Court considers that the complaints in question do not call for examination under Article 13, given that the applicant has not complained of an inability to have recourse to the system of financial compensation which must be put in place under the terms of this provision, in conjunction with Article 3 (see *Keser and Kömürcü v. Turkey*, no. 5981/03, § 37, 23 June 2009).

Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or inhuman or degrading treatment or punishment.”

32. The Government contested the applicant’s arguments.

A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The applicant reiterated his allegations.

35. The Government did not contest the use of tear-gas grenades in the instant case, but submitted that the police forces had acted in conformity with the relevant legislation, namely section 16 of the Police Powers and Responsibilities Act (Law no. 2559), in order to pacify the demonstrators, who had been displaying violent behaviour.

36. In the Government’s submission, the police action had been proportionate and geared to dispersing a group which had gathered for an unlawful demonstration and had attacked the police officers. In their view, the use of force had been necessary and the dispersal had been intended to

protect the whole assembled crowd from incidents which would have proved much more damaging than those which had resulted from the use of force. Furthermore, the injuries complained of had been a mere consequence of this use of force, legitimated in the Government's view by the need to contain the crowd in the main street and thus prevent disturbances.

37. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2, even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999–V).

38. In the instant case, the parties did not dispute the fact that on 29 March 2006 the applicant had been injured in the nose by a tear-gas grenade launched by a police officer and that the applicant's injuries, namely a facial oedema, a fractured nose bone and a series of concave incisions, had been acknowledged as having caused moderately severe damage to his vital functions. His injuries were therefore undeniably serious. The Court cannot see any reason to cast doubt on the origin of these injuries, which may therefore be considered to have resulted from the launching of a tear-gas grenade by the police officers. It therefore considers that the treatment inflicted on the applicant attained the level of severity required to fall within the scope of Article 3 of the Convention, which none of the parties contested.

The Court therefore has to examine whether the use by the police officers of the tear-gas grenade was an appropriate response to the situation, in the light of the relevant requirements of Article 3 of the Convention.

39. The Court notes that the moments leading up to and following the use of the tear-gas grenade by the police officers to disperse the demonstrators were filmed (see paragraph 22 above). The Court has been able to view these video recordings, the authenticity of which has not been challenged.

40. The Court observes that it has previously been called on to examine the issue of the use of "tear gas" and "pepper spray" in the context of a public-order operation, and has acknowledged that the use of such a spray may produce unpleasant effects (see *Oya Ataman*, cited above, §§ 17-18; *Ali Güneş v. Turkey*, no. 9829/07, § 37, 10 April 2012; and *Petruş Iacob v. Romania*, no. 13524/05, § 33, 4 December 2012). Moreover, the Court has endorsed the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the use of pepper spray (see *Ali Güneş*, cited above, § 40). The Court has also specified that this gas, which is used in a number of Council of Europe member States to contain demonstrations or to disperse them in the event of a risk of uncontrolled behaviour, is not included in the list of toxic gases appended to the 13 January 1993 United

Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (“CWC”). Furthermore, according to the CWC, the use of such means is authorised for the purposes of law enforcement, including domestic riot control (Article II § 9 d) (see *Çiloğlu and Others*, no. 73333/01, §§ 18-19, 6 March 2007, and *Oya Ataman*, cited above, §§ 17-18).

41. In this connection, having viewed the video recordings and examined all the evidence in the case file, the Court observes that the demonstration was not peaceful. In particular, the demonstrators, most of whom were teenagers, some with their faces concealed, were throwing stones at the police (paragraph 22 above). In the instant case the Court considers that the mere fact of using tear-gas to disperse this gathering does not raise any particular issue under Article 3 of the Convention; the applicant did not contest this.

42. However, this case is very different from previous ones in which the Court examined the effects of the use of tear gas or pepper spray against demonstrators (see *Çiloğlu and Others* and *Oya Ataman*, both cited above) or against persons immobilised by the police (*Ali Güneş* and *Petruş Iacob*, both cited above). The instant case concerned not only the use of “tear gas” but also the launching of a tear-gas grenade at the demonstrators. In fact, firing a grenade by means of a launcher generates the risk of causing serious injury, as in the instant case, or indeed of killing someone, if the grenade launcher is used improperly.

43. Consequently, given the dangerous nature of the equipment used, the Court considers that its case-law on the use of potentially lethal force should apply in the instant case *mutatis mutandis*. It should be noted in this connection that in the context of Article 2 of the Convention, the Court has always held that unregulated and arbitrary action by State agents is incompatible with effective respect for human rights (see *Makaratzis v. Greece* [GC], no. 50385/99, § 58, ECHR 2004-XI). The same applies to Article 3 of the Convention. This means that police operations – including the launching of tear-gas grenades – should not only be authorised but should also be sufficiently delimited by domestic law, under a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents.

For that reason, the Court must now consider whether the police officers’ actions were attended by sufficient safeguards and whether the launching of a tear-gas grenade at the applicant could be deemed compatible with the requirements of Article 3.

44. The Court observes that according to the Government and the public prosecutor who conducted the investigations into the applicant’s complaint, the applicant was actively participating in the demonstration in question, chanting slogans in support of a terrorist organisation and throwing stones,

sticks and Molotov cocktails at the police officers. The applicant contested this contention.

45. The Court notes that even though the applicant could be seen among the demonstrators on the video recordings, it is impossible – and the public prosecutor at the Assize Court acknowledged this fact (see paragraph 20 above) – to establish with any certainty that he was actually taking part in the demonstration. In any event, in the Court's view, this fact is not decisive in the circumstances of the instant case, given that it was not disputed that the applicant had been present during the event and that he had been hit by a tear-gas grenade launched by a police officer at demonstrators on that occasion.

46. The applicant had told the public prosecutor that the grenade had been fired directly (see paragraph 10 above), adding that the police officers had shot a projectile at him by means of a shoulder-borne device (see paragraphs 10 and 13 above).

47. The Court notes that in his decision not to prosecute, the public prosecutor merely pointed out that the applicant had been injured during a demonstration in which he had been actively participating. He noted that the police officers had launched tear-gas grenades in order to disperse demonstrators, without bothering to consider how the grenade in question had been launched. In the Court's view, regardless of whether or not the applicant had been participating actively in the demonstration, such an approach would appear clearly insufficient in the light of the applicant's contention that he was directly hit on the nose by a grenade, especially since the event took place on a boulevard with many passers-by (see paragraph 22 above), who thus risked becoming the potential targets of such a launch.

48. In this connection, while it is not even clear from the video recordings how the tear-gas grenade had been launched, in view of its impact and the injuries caused the Court observes that, as maintained by the applicant, it had been a direct, flat-trajectory shot, not a high-angle shot. The Government ought to have conducted the requisite investigations to ascertain how the grenade had been shot, preferably with the help of an expert. Since the Government have failed to produce evidence to refute the applicant's contentions, the Court accepts that the shot was direct and followed a flat trajectory. In the Court's view, firing a tear-gas grenade along a direct, flat trajectory by means of a launcher cannot be regarded as an appropriate police action as it could potentially cause serious, or indeed fatal injuries, whereas a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of an impact.

49. Moreover, the Court observes that at the time of the facts Turkish law lacked any specific provisions on the use of tear-gas grenades during demonstrations, and did not lay down instructions for their utilisation. Given that during the events in Diyarbakır between 28 and 31 March 2006

two persons were killed by tear-gas grenades and that the applicant was injured on the same occasion, it may be deduced that the police officers were able to act very independently and take ill-considered initiatives, which would probably not have been the case if they had been given appropriate training and instructions. In the Court's view, such a situation is incompatible with the level of protection of the physical integrity of individuals which is required in contemporary democratic societies in Europe.

50. In view of the foregoing considerations, it has clearly not been established that the use of force against the applicant under the conditions described above was an appropriate response to the situation, in the light of the requirements of Article 3 of the Convention, or was proportionate to the aim pursued, namely to disperse a non-peaceful gathering. In fact, the severity of the injuries noted to the applicant's head could not have been commensurate with the strict use by the police officers of the force necessitated by his behaviour (see, *mutatis mutandis*, *Zülcihan Şahin and Others v. Turkey*, no. 53147/99, § 54, 3 February 2005).

51. There has accordingly been a violation of Article 3 of the Convention.

52. The Court notes that the applicant also complained that the investigations had been insufficient. In this connection, it observes that in its assessment of whether the force used was necessary and proportionate, it has taken sufficient account of the manifest lack of diligence on the part of the public prosecutor's office in dealing with the applicant's allegations (paragraph 47 above). Consequently, it is unnecessary to consider the case under the procedural aspect of Article 3 of the Convention.

II. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

53. Articles 41 and 46 of the Convention provide:

Article 41

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

Article 46

“1. The High Contracting Parties undertake to abide by the final judgment of the la Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

...”

A. Damage

54. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. In this connection he argued that he had been thirteen years old at the time of the events and that the injuries which he had suffered had caused moderately severe damage to his vital functions. He explained that he had undergone an operation on his nose and that he was still receiving medical treatment. He produced two CD-ROMs containing the relevant images and medical reports.

55. The Government contested the amounts claimed by the applicant.

56. Having regard to the evidence before it and deciding on an equitable basis, as required by Article 41, the Court awards the applicant a total of EUR 15,000 to cover all damage suffered.

B. Costs and expenses

57. The applicant also claimed EUR 9,723 for the costs and expenses incurred before the Court. He produced a breakdown of the work carried out by his lawyer.

58. The Government contested this claim.

59. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

60. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

D. Article 46

61. Furthermore, the Court observes that in the instant case it has found a violation of the Convention on the grounds that it had not been established that the use of force against the applicant had been an appropriate response to the situation, in the light of the requirements of Article 3 of the Convention. Moreover, it noted that at the time of the events, Turkish law lacked any specific provisions governing the use of tear-gas grenades during demonstrations and did not lay down any instructions for their utilisation by the police forces (see paragraph 48 above). The Court notes that on 15 February 2008 (see paragraph 28 above) a circular setting out the conditions for the use of tear gas was issued to all national security services by the Director General of Security. Nevertheless, the Court considers it necessary to reinforce the guarantees on proper use of tear-gas grenades in order to minimise the risks of death and injury stemming from their use, by adopting more detailed legislative and/or statutory instruments, in accordance with the principles set out in paragraph 48 above.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention in its procedural aspect;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of all heads of damage, plus any tax that may be chargeable;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President