



Disproportionate use of force by police to disperse a violent demonstration

In today's Chamber judgment in the case of [Abdullah Yaşa and Others v. Turkey](#) (application no. 44827/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

Numerous – unlawful – demonstrations were held in Diyarbakır in March 2006 following the deaths of fourteen members of the PKK (the Kurdistan Workers' Party) during armed clashes. The demonstrations were violent and eleven demonstrators lost their lives. On 29 March 2006 the applicant, who was thirteen at the time, was injured in the head by a tear-gas grenade.

Under **Article 46 (binding force and execution of judgments)**, the Court held that the safeguards surrounding the proper use of tear-gas grenades needed to be strengthened in order to minimise the risk of death and injury resulting from their use.

Principal facts

The applicant, Mr Abdullah Yaşa (A.Y.), is a Turkish national who lives in Diyarbakır (Turkey). He was thirteen years old at the relevant time.

Between 28 and 31 March 2006 numerous unlawful demonstrations took place in Diyarbakır, following the deaths of fourteen members of the PKK (the Kurdistan Workers' Party) during armed clashes on 24 March 2006. Eleven demonstrators died during the demonstrations.

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 hospital the same day and underwent an operation.

On 14 April 2006 the applicant lodged a complaint with the Diyarbakır public prosecutor's office against the police officers concerned for abuse of power and assault. On 6 November 2007 the public prosecutor decided not to take any action on the complaint.

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.

In his findings 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

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

basis of the images studied by the Ankara criminal police laboratory, to establish that the applicant had taken part in the demonstration in question.

On 10 July 2008 the Assize Court endorsed the prosecutor's findings and acquitted A.Y.

During the proceedings before the Court the Government produced video footage recorded by the law-enforcement agencies. The footage showed that the demonstrators were mostly young adolescents, some with their faces covered, who were throwing stones. The applicant appeared in some sequences among the demonstrators but it was not possible to establish with certainty that he was one of them. Although the applicant could be seen being hit by a tear-gas grenade, the footage did not show exactly how the police officer had fired. The impact suggested that the grenade had been fired directly and in a straight line rather than at an upward angle.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy), the applicant complained that the police had used unjustified force and that no effective investigation had been carried out.

The application was lodged with the European Court of Human Rights on 10 September 2008.

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

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 3

The Court observed that the moments before and after the use of the tear-gas grenade by the police to disperse the demonstrators had been filmed, and that the authenticity of the footage had not been called into question.

Having watched the video footage and examined all the evidence in the file, the Court observed that the demonstration had not been a peaceful one. The demonstrators had thrown stones at the law-enforcement officers. Thus, the fact that tear gas had been used to disperse the gathering did not in itself give rise to a particular issue under Article 3 of the Convention.

However, what was in issue was not simply the fact that tear gas had been used, but the fact that a tear-gas grenade had been fired at the demonstrators. The firing of tear-gas grenades using a launcher entailed a risk of causing serious injury or even death if the launcher was used improperly.

In view of the dangerous nature of the equipment used the Court considered that its case-law concerning the use of potentially lethal force should apply in this case. As well

as being authorised under national law, policing operations had to be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness, abuse of force and avoidable accidents.

The Court noted that it was not possible to establish with certainty that A.Y. had been taking part in the demonstration. It observed that the Government had a duty to conduct the necessary investigations in order to establish the manner in which the tear gas had been fired. Since the Government had not produced any evidence capable of disproving the applicant's allegations, the Court accepted that the grenade had been fired directly and in a straight line. The firing of tear gas in this way using a launcher could not be considered as an appropriate police action, given that it could result in serious injury or even death.

Furthermore, the Court observed that Turkish law at the relevant time had not contained any provisions regulating the use of tear-gas grenades during demonstrations, or any guidelines concerning their use. In view of the fact that two people had been killed by tear-gas grenades during the events in Diyarbakır and that the applicant had been injured on that occasion, it could be inferred that the police officers had enjoyed a greater autonomy of action and been left with more opportunities to take unconsidered initiatives than would probably have been the case had they had the benefit of proper training and instructions. Such a situation did not afford the level of protection of individuals' physical safety that was required in contemporary democratic societies in Europe.

From the standpoint of the requirements of Article 3 of the Convention it was not established that the use of force against the applicant had been an appropriate response to the situation or that it had been proportionate to the aim sought to be achieved, namely the dispersal of a non-peaceful gathering. The seriousness of the applicant's injuries was not consistent with the strict use by the police of a degree of force made necessary by his conduct.

There had therefore been a violation of Article 3 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Turkey was to pay the applicant 15,000 euros (EUR) to cover all heads of damage and EUR 5,000 in respect of costs and expenses.

[Article 46](#)

The Court observed that at the time of the events Turkish law had not contained any specific provisions regulating the use of tear-gas grenades during demonstrations and that no guidelines concerning their use had been available to the law-enforcement agencies.

It noted that on 15 February 2008 a circular laying down the conditions governing the use of tear gas had been issued to all the security forces. Nevertheless, the Court considered that the safeguards surrounding the proper use of tear-gas grenades needed to be strengthened in order to minimise the risk of death and injury resulting from their use.

The judgment is available only in French.

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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.