



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

SECOND SECTION

CASE OF İŞİK v. TÜRKİYE

(Application no. 42202/20)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman or degrading treatment • Injuries sustained by the applicant as a result of the use of a defence launcher by the police during their intervention in a fight between two groups of people • Recourse to force not made strictly necessary by the applicant's own conduct or indispensable for quelling mass disorder • Ineffective investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 October 2024

FINAL

08/01/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of *İşik v. Türkiye*,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Diana Sârcu,

Gediminas Sagatys, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 42202/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Şehmus İşik (“the applicant”), on 17 September 2020;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the applicant’s alleged ill-treatment and the effectiveness of the investigation into his allegations;

the parties’ observations;

Having deliberated in private on 3 September 2024,

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

INTRODUCTION

1. The case concerns injuries sustained by the applicant during the security forces’ intervention in a fight between two groups of people. The applicant complained of a violation of Article 3 of the Convention.

THE FACTS

2. The applicant was born in 1988 and lives in Van. He was represented by Mr M. Kaçan, a lawyer practising in Van.

3. The Government were represented by their then Agent, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

5. On 24 August 2014, at around 7 p.m., a scuffle broke out between two groups consisting of approximately thirty persons in the centre of Van. According to the applicant, he was on his way home from the café where he played games and was passing by the scuffle at the moment the police intervened. He claims to have been caught up in the ambush and hit by plastic bullets, eventually finding himself on the ground. He was then taken into custody by the police.

6. At 8.58 p.m. the applicant was examined by a doctor at the Van Education and Research Hospital. The medical report drawn up following his examination noted that the applicant complained of a headache and pain in his arm and that he had a 1 cm laceration to the head, a 1 cm round ecchymosis on the front of his right arm, and a 1 cm round ecchymosis on his left hip. The report concluded that the applicant's life was not in danger and that he could be treated with a simple medical intervention.

7. A photograph submitted in the case file shows the applicant lying on a stretcher with bandages on his head and arm and dark coloured stains on his t-shirt.

8. According to the records drawn up by four police officers at 10.30 p.m., upon information received by the police that a group of people had been fighting, a police team arrived at the scene to find a group of thirty to forty people with large knives and long sticks fighting among themselves in front of a café. The team asked for immediate additional reinforcements and, in the meantime, the group started moving towards a restaurant with sticks in their hands. Upon the arrival of three additional police teams, the police followed the group, warning them to disperse. Subsequently, the Rapid Response Force (*çevik kuvvet*) arrived and necessary precautions were taken at the scene. According to the records, twenty to thirty people had started striking the shutters of the restaurant with sticks. They were warned to disperse. However, as they continued to act aggressively, the Rapid Response Force intervened gradually with bodily force, shields and tear gas. The group continued to resist, this time by throwing stones, as a result of which two police officers were wounded. Eventually, the group was dispersed by use of tear gas. It was not, however, possible to identify those who had resisted the police as they ran away.

9. The records drawn up at 11 p.m. by two other police officers about the unfolding of the events stated that, following the refusal of the group to disperse, the police had used gas and the group had dispersed to other streets following the intervention of the Rapid Response Force. The records noted that the restaurant had a broken window and some damage to its shutters. It also noted that no one had witnessed the events. However, the shops overlooking the restaurant had camera systems.

I. THE INVESTIGATION INITIATED AGAINST THE APPLICANT

10. On the same evening, at 11.45 p.m., the Public Prosecutor instructed the police to carry out an on-site inspection of the damaged restaurant, in order to identify those who had damaged the restaurant and injured the two police officers, to take statements from the restaurant owner and the two police officers concerned as complainants and to obtain the CCTV footage covering the place of the events.

11. The injured police officers both stated that when they had intervened in the fight between the two groups, they had refused to disperse and had all started to throw stones, bottles and sticks at them, as a result of which they had been hurt and had been given three days' medical leave each. Both officers filed a complaint against those involved in the fight, with one of them noting that he had learned that the groups' names were İşik and D.

12. On 25 August 2014, at around 12.30 a.m., the police took the statements of two individuals, M.A.D. and C.D., in relation to the offence of intentionally causing bodily harm and resisting officers on duty. They both stated that while on their way to the restaurant of one of their relatives, the applicant, whose name they had learned at the police station, had hit M.A.D. on the shoulder, whereupon they had started arguing. As the applicant had continued punching them, C.D. had responded with a punch. They claimed that subsequently a group of thirty people had attacked them with knives and sticks and that they had had to run away. They both stated that they had not seen anything regarding the attack on the police officers and that they did not want to file a complaint against anyone.

13. The police also heard three other relatives of M.A.D. and C.D., one of them being the owner of the restaurant at the centre of the events. All three noted, without mentioning anything regarding the applicant, that they had not seen anyone throwing stones at the police and that they did not wish to file a complaint.

14. At 1.16 a.m., on the same day, the police took the applicant's statements regarding the events. The applicant maintained that, after having left the café in the evening, he had seen a group fighting and had approached them out of curiosity. He claimed that, as the Rapid Response Force had used tear gas, he had run away. However, around the corner he had run into a Rapid Response Force officer who had fired three plastic bullets, hitting his head, right arm and upper left leg. He argued that he had not been involved in the fight and had not damaged the restaurant, nor had he thrown stones at the police or seen anyone doing so. Lastly, he stated that he wanted to file a complaint against the police officer who had shot him.

15. On 7 September 2014 two police officers visited the scene of the events and prepared records stating that the restaurant and the other shops in the vicinity had their shutters closed and that, while the other shops did not have camera systems, the CCTV camera located close to the restaurant might have captured the events.

16. On 19 September 2014 the Van Directorate of Security responded to the police request to obtain the CCTV footage, noting that no footage could be obtained as the camera at the scene of the events had been undergoing a software update at the time.

17. On 13 November 2014, upon a request from the Van Public Prosecutor's Office to that effect, the Van Directorate of Forensic Medicine Institute issued final reports summarising the findings of the medical reports

of 24 August 2014 drawn up by the Van Education and Research Hospital with respect to the state of health of all injured parties. As regards the applicant, the forensic report concluded that, as the medical report of 24 August 2014 had not noted any fracture or traumatic change to the skull, or any injury to a large artery or internal organ, the applicant's injuries had not put his life at risk, could be treated with a simple medical intervention and that no bone fracture had been reported.

18. On 23 January 2015 the Van Public Prosecutor's Office issued a decision of permanent search for those involved in the injury of the two police officers, stating that no suspects could be identified.

19. On 17 February 2015 the Public Prosecutor's Office issued a decision not to prosecute the applicant for either of the offences of causing bodily harm to third persons or resisting the officers. As for intentionally causing bodily harm, the Prosecutor's Office found that the offence was subject to a complaint from the other parties, C.D. and M.A.D., who had not filed such a complaint. As for the offence of resisting officers on duty, the Prosecutor's Office concluded that in the absence of CCTV footage, there was not adequate evidence to determine the acts and the suspects who had caused injury to the police officers.

II. THE INVESTIGATION INITIATED INTO THE APPLICANT'S COMPLAINTS

20. On 25 August 2014 at around 2 a.m., following the applicant's statements regarding the events, the Public Prosecutor instructed the police to take the applicant's statement as a complainant in relation to his allegations of having been hit by plastic bullets.

21. On 12 January 2015 the applicant filed a complaint with the Van Public Prosecutor's Office, requesting that the police officer who had shot him be charged with ill-treatment and abuse of duty. He stated that, although he had not been involved in the fight, he had been shot by a police officer in the head, arm and hip from a close distance of around 1 metre, which had resulted in his bleeding from the head and suffering swelling and bruising on the arm. Although in his statements to the police on the night of the events he had complained about the officer who had caused his injury, he had later learned that an investigation had been started against him on the basis of unsubstantiated claims by certain persons, whereas no steps had been taken regarding his complaint against the police for his injury. In that connection, he argued that the initial records drawn up by the police had been misleading as they had referred solely to bodily force, shields and tear gas, without any mention of the plastic bullets that had injured him, and that the security forces' argument about the CCTV cameras not working on the night of the events was not credible.

22. On 30 January 2015 the Van Public Prosecutor's Office requested the Van Directorate of Rapid Response Force ("the Directorate") to identify the personnel, weapons and ammunition used at the events of 24 August 2014, and to provide photographs of the personnel who had used weapons, as well as information as to whether the inventory included any weapons using plastic bullets.

23. On 9 February 2015 the Directorate responded to the Public Prosecutor's request, stating that the Rapid Response Force had intervened in the events to provide support to the security forces who had carried out the initial intervention in the fight between the two groups and that they had used gradual bodily and physical force in order to break the group's resistance to the officers and to prevent them from hurting each other. Nevertheless, as those efforts had remained futile, they had gone on to use gas, at which time two police officers had been injured by stones thrown at them by those involved in the fight. The Directorate submitted that no ill-treatment had taken place and that as the Rapid Response Force had used lawful gradual force, the fight had been dispersed before any irreparable damage had occurred. The letter concluded that, while the applicant's petition referred to plastic bullets so as to give the impression that the police had used disproportionate force, there was neither any cartridge which could be classified as plastic bullets in the Directorate's inventory, nor any firearm available to shoot that sort of cartridge.

24. A four-page report attached to the letter of the Directorate defined a plastic bullet as a cartridge which included gunpowder and in which the shell consisted of plastic pieces. The report noted that the Directorate had no plastic bullets or any other similar cartridges in its inventory, but instead had gas weapons firing tear gas, as well as defence weapons such as the FN 303 and Tippmann, which could fire paint, gas or impact cartridges. This latter group of weapons, which worked with compressed air and did not contain gunpowder, had nothing in common with plastic bullets. Referring to the Directorate of Security's training booklet, the report stated that the defence weapons mentioned did not cause trauma or skin lesions to the head as they had been designed so as not to exceed the minimum energy levels. Lastly, the report included photographs and technical descriptions of both types of defence weapon, as well as the list of relevant cartridges in the Directorate's inventory.

25. Subsequently, on 10 March, 19 June and 5 August 2015 the Public Prosecutor's Office sent three other letters to the Directorate, mainly requesting the latter to submit CCTV footage and photographs of the events, provide information on the identity of the personnel involved, submit their photographs, and to provide information on the weapons and bullets used in the intervention, as well as the identity of those who used different types of weapons and how many bullets were fired. In particular, by its letter of 19 June 2015, the Prosecutor's Office requested the identity and address of

the officer who had used the defence weapon, as well as specific technical information about the rifle. In the absence of any response from the Directorate to that last letter, on 5 August 2015 the Prosecutor's Office sent a warning letter, stating that criminal proceedings for abuse of duty could be initiated in case of failure to comply with the request. The Public Prosecutor's Office also sent a letter to the Van Directorate of Security regarding the CCTV footage and photographs, requesting, in particular, those demonstrating that the applicant had been involved in the events.

26. In response to the letters of the Prosecutor's Office, both the Van Directorate of Security and the Directorate of Rapid Response Force responded that no CCTV footage or photograph had been found relating to the events at the specified time and place. As for the other information requested, by letters dated 14 April and 6 August 2015, the latter Directorate stated that they had FN 303 and Tippmann defence weapons in their inventory and that the bullets used by those defence weapons operated with compressed air, were designed to be used by non-lethal weapons, and aimed to mark or apply light impact on the target with the use of the substances such as paint, gas or bismuth they contained. The Directorate also provided certain specific information about FN 303 defence weapons. On an unspecified date, the Directorate submitted a list of the police officers and team leaders on duty on the evening of the events, which indicated a certain officer E.S. as the only officer using an FN 303.

27. In the meantime, on 10 March 2015 the applicant stated before the Public Prosecutor's Office that, while he had been trying to pass by the fight between the two groups, he had been hit by a police officer who had specifically aimed at his head, arm and leg, from a distance of around 1.5 metres. He maintained that he had suddenly started bleeding heavily from his head and had lost his balance, at which point he had been taken to hospital by a certain H.I.

28. On 18 March 2015 H.I. gave his statement to the Public Prosecutor. He stated that on the day of the events, after having heard a noise, he had gone to check what was going on and had seen the applicant on the ground, wounded and bleeding from the head. He had taken the applicant to hospital and applied compression to his head with clothing so as to stop the bleeding. He maintained that he had not seen the events and that he did not know why the applicant had been there or who had injured him.

29. On an unspecified date, photographs of the officers on duty on 24 August 2014 were submitted to the Public Prosecutor's Office.

30. Subsequently, on 18 June 2015 the applicant was shown photographs of the officers as well as the weapons used that day. He was unable to identify the officer from the photographs shown to him.

31. On 6 October 2015, following several requests by the Van Public Prosecutor's Office to that effect, police officer E.S., who had been identified as the only officer using an FN 303 weapon during the events, gave his

statements at the Istanbul Public Prosecutor's Office. He maintained that at the time of the events, he was working as a police officer with the Van Directorate of Rapid Response Force and that upon the instructions of the team leader he had intervened in the fight, carrying a FN 303 defence weapon, while both groups involved in the fight had thrown stones, bottles and sticks at the officers. He noted that the FN 303 weapons only fired paint bullets, that he had not fired any plastic bullets, that he had taken courses in the use of FN 303 weapons and never fired above the waist with that type of weapon. He concluded that he did not know how the applicant had been injured and that he had not shot him.

32. On 10 November 2015 the Van Public Prosecutor's Office issued a decision not to prosecute the police officer E.S. for the offence of crossing the boundaries of use of force set forth by Section 256 of the Turkish Criminal Code. After reiterating the applicant's and E.S.'s statements, the Public Prosecutor stated that, according to the medical report, the applicant's injury had been of a nature that could be treated by a simple medical intervention and had not put his life at risk. In view of all the information gathered, it had been established that those involved in the fight had thrown stones and bottles at the police officers who had intervened in the events and that the suspect, E.S., had used the FN 303 defence rifle, which could fire paint bullets, in line with the authority bestowed upon him by law, thereby injuring the applicant. The Public Prosecutor concluded that while that act could at first sight bring the offence of crossing the boundaries of use of force to mind, in the circumstances of the present case it was found that the suspect used his authority to apply force without exceeding the limits of his duty and by applying lawful and proportionate force.

33. On 30 November 2015 the Van Magistrates' Court rejected the applicant's objection.

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

34. On 29 December 2015 the applicant filed an individual application with the Constitutional Court, claiming a violation of the prohibition of torture on account of his injury resulting from the police's use of force. Reiterating his arguments before the Public Prosecutor's Office (see paragraph 21 above), he submitted that his being shot had constituted disproportionate use of force and that the investigation into the incident had not been effective.

35. On 2 June 2020 the Constitutional Court found that the complaint regarding treatment contrary to human dignity under Article 17 of the Constitution had been admissible; however, there had been no violation of that provision. After finding that the treatment imposed on the applicant had attained the required minimum level of severity, the Constitutional Court

concluded that the impugned use of force had been necessary and proportionate.

In that connection, it stated that the persons involved in the events had not dispersed despite the prior measures taken by the security forces and that the latter's intervention had been necessary as the failure of the police to intervene could have put the physical integrity of many at risk. It also found that, while security forces were expected to take all necessary measures so as to protect people other than those causing the intervention, that might prove to be difficult in situations of chaos and panic, such as the present case where dozens of people involved had damaged shops and injured each other, refused to disperse and thrown sticks and stones at the police. Moreover, it could be difficult to determine whether the applicant had also participated in the events or not. Taking account of the unfolding of the events and the minor nature of the applicant's injury, the Constitutional Court concluded that the use of force by a defence weapon had been proportionate. In view of its findings regarding the substantive aspect of the provision, the Constitutional Court stated that it was not necessary to assess its procedural aspect.

RELEVANT LEGAL FRAMEWORK

36. Relevant domestic law in respect of the use of force by the police and the Rapid Response Force, as well as the use of tear gas weapons and munitions, has been summarised in *Abdullah Yaşa and Others v. Turkey* (no. 44827/08, §§ 23-28, 16 July 2013) and *Geylani and Others v. Türkiye* (no. 10443/12, §§ 43-44, 12 September 2023).

37. Under section 16 of Law no. 2559 on the Duties and Powers of the Police, when faced with resistance in the performance of their duties, the police may use force for the purpose of, and to the extent necessary for, breaking down such resistance. The use of force means recourse to physical and material force and weaponry in order to immobilise those resisting the police, in a graduated manner depending on the nature and degree of resistance. The term "material force" is defined as including, *inter alia*, handcuffs, truncheons, pressurised water and tear gas. A warning is required before using force; however, depending on the nature and degree of resistance, it may also be possible to use force without any warning. The police determine the equipment and the degree of force to be used. Where the action is taken against a group, that determination is made by the supervisor of the intervening unit (*ibid.*, § 43).

38. The relevant international material regarding the principles of use of force by security forces, in particular the use of non-lethal and less lethal weapons, have been set out in *Geylani and Others* (cited above, §§ 45-49).

39. The relevant paragraphs of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, issued on 1 June

2020 by the Office of the United Nations High Commissioner for Human Rights, provide as follows (footnotes omitted):

“...

7.5.1 A range of kinetic impact projectiles are used by law enforcement officials to tackle violent individuals, including as a less-lethal alternative to lethal ammunition discharged by firearms. Various names are used to describe kinetic impact projectiles, such as rubber bullets, plastic bullets, impact rounds, baton rounds or bean bags.

7.5.2 Kinetic impact projectiles should generally be used only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public.

7.5.3 Targeting the face or head may result in skull fracture and brain injury, damage to the eyes, including permanent blindness, or even death. The firing of kinetic impact projectiles from the air or from an elevated position, such as during an assembly, is likely to increase their risk of striking protesters in the head. Targeting the torso may cause damage to vital organs, and there may be penetration of the body, especially when projectiles are fired at close range. The calibre and velocity of the projectiles, as well as the materials they are composed of, will also affect the likelihood and seriousness of injury.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that he had been subjected to ill-treatment by the police and that the authorities had failed to carry out an effective investigation into his complaints. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

41. The Government argued that the application was inadmissible for being manifestly ill-founded as the Constitutional Court had assessed the applicant’s individual application thoroughly, relying on both its case-law and that of the Court and providing adequate reasoning for each complaint raised by the applicant. They contended accordingly that in the absence of any arbitrariness, and in line with the principle of subsidiarity, there was no reason to deviate from the Constitutional Court’s conclusions.

42. The applicant objected to the Government’s observations without responding to the specific argument raised by them with regard to the admissibility of his application.

43. The Court considers that the Government’s objections on admissibility are closely linked to the substance of the applicant’s complaint

under Article 3 and must therefore be joined to the merits of that complaint (see *Yılmaz Aydemir v. Türkiye*, no. 61808/19, § 30, 23 May 2023). The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The substantive limb of Article 3 of the Convention*

(a) The parties' submissions

(i) *The applicant*

44. The applicant argued that he had been shot at close range by a defence weapon on purpose, which could have been fatal, despite the fact that he had not been involved in the events and that there had been no reason requiring the use of force against him, as demonstrated by the Van Public Prosecutor's decision not to prosecute him. Referring to news articles and a report drawn up by certain experts, he stated that the FN 303 defence weapon which had caused his injuries was classified as a "less lethal weapon" which could cause death if aimed at the head. He also contended that, although he had complained about the treatment inflicted on him immediately after the events, the State authorities had framed him as a suspect, fabricating grounds to conclude that the force used by the police had been proportionate, whereas his being shot above the waist by a less lethal weapon could be considered neither necessary nor proportionate.

(ii) *The Government*

45. The Government argued at the outset that, having regard to the fact that the injuries sustained by the applicant had been of a nature that could be treated with a simple medical intervention, and to the particular circumstances of the events that required the use of force, the impugned treatment had not attained the minimum level of severity required to fall within the scope of Article 3 of the Convention.

46. They submitted that law enforcement officers who encounter resistance while performing their duties are entitled to use force to the extent required, which had been the case in the events at issue, wherein a large number of people had been involved in a fight, using knives and sticks, resisting the security forces' warnings for them to disperse, and attacking the police officers with sticks and stones, causing injury. They pointed to the sudden nature of the events to which the police officers had to react without prior preparation.

47. In the Government's opinion, while law enforcement officers are expected to take necessary measures so as to provide that persons other than those who cause the use of force are not affected by an intervention, in

situations such as in the present case, that proves extremely difficult. In this respect, although the applicant had claimed that he had been a passer-by, there was weighty evidence indicating that he had been involved in the fight and that the non-prosecution decision in his respect had been delivered solely because the other parties, C.D. and M.A.D., had withdrawn their complaints. Lastly, tear gas, gas and defence launchers and their ammunition were used by personnel having attended the relevant specific courses and that between 2013 and 2021, approximately 35,000 law enforcement officers had attended such courses.

(b) The Court's assessment

(i) *General principles*

48. The Court refers to the general principles concerning the substantive limb of Article 3 of the Convention as set out in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, ECHR 2015).

49. It reiterates that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*ibid.*, § 82). When the cause of injury was in dispute between the parties, the Court attached special importance to the fact that the injury had been sustained while the applicant was within the area in which the law-enforcement authorities were conducting an operation during which they resorted to the use of force for the purpose of quelling mass unrest. To discharge the burden of proof, the Government had to provide a satisfactory and convincing explanation as to the cause of the applicant's injuries (see *Geylani and Others v. Türkiye* no. 10443/12, § 69, 12 September 2023, and the cases cited therein).

50. The Court further reiterates that in respect of a person who is deprived of his or her liberty or, more generally, is confronted with law enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3. Specifically, when authorities resort to the use of force for the purpose of quelling mass unrest, such force may be used only if it is indispensable, and it must not be excessive (*ibid.*, § 70).

(ii) *Application of the above principles to the present case*

51. The Court notes that, according to the police records held immediately after the events on the evening of 24 August 2014, the police intervened in a fight between two groups of around thirty to forty people who held sticks and knives. As the latter refused to disperse, they sought additional support from

the Rapid Response Force which intervened with bodily force and tear gas. Although this was not noted in the police records or the first letter submitted by the Directorate of Rapid Response Force to the Public Prosecutor's Office, it became clear during the investigation stage that the Rapid Response Force had also used defence weapons, including a certain FN 303 rifle (see paragraph 26 above).

52. The Court also notes that it is not disputed between the parties that the applicant's injuries, namely a 1 cm laceration to the head and two 1 cm ecchymoses on the front of his right arm and his left hip (see paragraph 6 above), occurred during the security forces' intervention in the fight. It observes that, in its decision regarding the applicant's complaint, the Public Prosecutor's Office concluded that the applicant's injuries had resulted from the security forces' use of force, in particular, the use of a defence weapon named FN 303 (see paragraph 32 above). In view of the State authorities' acknowledgement of the cause of the applicant's injuries, and in the absence of any plausible explanation by the Government, the Court finds it established beyond reasonable doubt that his injuries resulted from the use of force by the police, namely, the use of defence launcher FN 303 (compare *Geylani and Others*, cited above, § 79).

53. In so far as the Government argued that the applicant's injuries had not attained the minimum level of severity required for the purposes of Article 3 of the Convention as they had been of a minor nature, the Court notes that where – as in the present case – an applicant is confronted with law-enforcement officers, its examination shifts to the necessity rather than the severity of the treatment to which the applicant was subjected, in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention (see *Bouyid*, cited above, §§ 100-01, and *Geylani and Others*, cited above, § 71). The Court has already held that if the treatment is not considered strictly necessary by the applicant's own conduct or indispensable for the purpose of quelling mass disorder, it amounts to ill treatment prohibited by Article 3 of the Convention (see *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, §§ 70-74, 13 October 2020). In any event, the Court notes that it has previously pointed to the specific importance of the head and found that an injury to the head, particularly because of its location, is sufficiently serious to bring it within the scope of Article 3 (see *Bouyid*, cited above, § 104, and *Samüt Karabulut v. Turkey*, no. 16999/04, § 41, 27 January 2009).

54. The Court must therefore establish whether the impugned use of force, namely, the use of a defence weapon called FN 303, which resulted in the injuries sustained by the applicant, was made strictly necessary by the applicant's own conduct or was indispensable in order to disperse the crowd (see *Zakharov and Varzhabetyan v. Russia*, cited above, §§ 70-74, and *Geylani and Others*, cited above, § 80).

55. The Court does not overlook the fact that the applicant was injured during an unplanned operation which gave rise to developments to which the police were called upon to react without prior preparation (contrast *Rehbock v. Slovenia*, no. 29462/95, §§ 71-72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the responsibility of the State authorities must be interpreted in a way which does not impose an impossible burden on them (see *Makaratzis v. Greece* [GC], no. 50385/99, § 69, ECHR 2004-XI, and *Tzekov v. Bulgaria*, no. 45500/99, § 61, 23 February 2006). In that connection, the Court observes that some of those involved in the fight between two groups of people indeed vandalised private property and attacked the intervening police units, injuring two officers (see paragraphs 9 and 11 above). The Court accepts that such behaviour may well quickly degenerate into a riot, necessitating an intervention by the security forces (compare *Muradova v. Azerbaijan*, no. 22684/05, § 110, 2 April 2009, and *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, § 41, 16 July 2013).

56. That being so, the Court refers to its previous case-law wherein it held, in the context of Article 3 of the Convention, that police operations, including the launching of tear gas grenades and rubber bullets, 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 (see *Abdullah Yaşa and Others*, § 43; *Kılıcı v. Turkey*, no. 32738/11, § 33, 27 November 2018; and *Geylani and Others*, § 84, all cited above). It considers that these principles should also apply, *mutatis mutandis*, in the present case (*ibid.*, § 84).

57. The Court considers nonetheless that, while the domestic legislation governing the security forces' use of tear gas weapons and munitions (see paragraph 36 above) was in force at the time of the events in the present case, and that launchers, such as the impugned FN 303 could only be used by officers who had undergone the required training, the use of the defence weapon by the officer concerned cannot be said to have followed the safeguards in effect and the international principles regarding the use of such weapons (see paragraphs 38 and 39 above). Although the specific characteristics of the force used, such as the type of ammunition or the shooting distance, were not clarified during the investigation (see paragraph 79 below), it is not disputed that the applicant was hit three times, once to the head, causing a laceration. In the absence of any explanation by the Government regarding how those injuries had occurred, the Court accepts that the defence rifle was fired at close range, as submitted by the applicant, which could have resulted in more serious, or even fatal, injury (compare *Abdullah Yaşa and Others*, cited above, § 48).

58. The Court notes that the use of the police officer's defence weapon at issue was ordered by one of his superiors (see paragraph 31 above).

Nevertheless, although the Public Prosecutor had found that the officer had used the weapon due to the violent nature of the fight (see paragraph 32 above), that explanation cannot be considered sufficient to establish the necessity of using that specific weapon on the applicant or how that use was supervised.

59. While accepting that the police intervention in the fight between two groups of people was justified due to the unfolding of the events and the violent nature of the fight, the Court cannot but note that the dispersal of the crowd was eventually achieved by the use of tear gas and not by any defence weapons. In fact, the records drawn up by the police after the events, and the Directorate's first response to the Public Prosecutor's Office, made no mention of the use of defence weapons and merely indicated the use of gradual bodily force, shields and tear gas as measures that had been taken to disperse the crowd (see paragraphs 8, 9 and 23 above). The Court finds therefore that it has not been demonstrated that the use of a defence weapon was indispensable for the purposes of quelling mass disorder in the present case.

60. As for the applicant's own conduct, the Court notes that while the applicant claimed to have been only a passer-by who was accidentally caught up in the events, the Government argued that there had been weighty evidence demonstrating his involvement in the fight causing the intervention of the security forces and that the non-prosecution decision in his respect had only been delivered as the other parties had withdrawn their complaints. The Court cannot give weight to the Government's submissions in this respect, as it observes that, despite having claimed that the applicant had been the one initiating the fight, the third parties mentioned by the Government did not file any criminal complaints against the applicant, (see paragraph 12 above), and that the Public Prosecutor's Office decided not to prosecute him on account of lack of sufficient evidence as regards the charges of resisting officials, and for lack of an initial complaint for charges of intentional bodily harm, and not due to withdrawal of third parties' complaints (see paragraph 19 above). Moreover, the Court does not consider the third parties' initial submissions regarding the applicant's instigation of the fight relevant for the purposes of assessing the necessity of the use of the impugned force, as even assuming that the applicant was involved in the fight, there is nothing in the case file to demonstrate that he was one of those vandalising shops or attacking the police officers on duty, thereby necessitating the direct use of force against him. Accordingly, the impugned use of force against the applicant cannot be considered to have been warranted by his own conduct.

61. In view of the above, the Court concludes that the recourse to force at issue was neither made strictly necessary by the applicant's own conduct nor indispensable for quelling mass disorder.

62. In that respect, it notes that, in finding the use of force necessary and proportionate, as was the case with the Public Prosecutor's Office, the

Constitutional Court mainly relied on the violent nature of the incident in general, without addressing the specificity of the force used and how the use of a defence weapon against the applicant was called for in the circumstances of the case (see paragraph 35 above).

63. The Court therefore dismisses the Government's objections as to the admissibility of the application and finds that there has been a violation of Article 3 of the Convention under its substantive limb.

2. *The procedural limb of Article 3 of the Convention*

(a) The parties' submissions

(i) *The applicant*

64. As for the effectiveness of the investigation, the applicant submitted that the authorities had failed to initiate an investigation *ex officio*, that they had not taken any steps on the night of the events to obtain CCTV or any other security camera footage, that the Directorate had responded to the Public Prosecutor's request for information with misleading and inadequate information, and that the Public Prosecutor had failed to assess the nature of the object that caused his injury and how the injury had occurred. In that respect, he argued that despite the lack of any finding of paint in the medical reports and in the photographs taken at the hospital, the Public Prosecutor had simply accepted the Directorate's response that the weapon used had fired paint, without carrying out any assessment regarding the features of FN 303 rifles and disregarding the fact that most of his injuries had been above the waist. The applicant lastly maintained that the Public Prosecutor had failed to take account of the statements of witness H.I. and to check the veracity of the information regarding the software update of the CCTV cameras on the day of the events.

(ii) *The Government*

65. The Government argued that the applicant did not have an arguable claim which required an effective investigation and that the medical reports, which noted that his injuries could be treated by a simple medical intervention, did not support his claim of having been subjected to disproportionate force. Referring to the case-law of the Court and the Constitutional Court, they argued that in the absence of an arguable claim under the substantive limb of Article 3 of the Convention, there was no need to examine separately the procedural limb.

66. The Government further contended that in any event, the investigation carried out into the applicant's allegations of ill-treatment had been effective. In that connection, they noted that the Public Prosecutor had initiated the investigation *ex officio* immediately upon the applicant's complaint of his alleged ill-treatment while giving his statements as a suspect. The applicant's medical examination had been carried out on the night of the events and the

Public Prosecutor had requested identity information and photographs of the personnel using weapons, as well as information on the ammunition in the inventory, in particular, whether there had been any plastic bullets. The Public Prosecutor also inquired whether there had been video footage of the incident; however, it had been established that this could not be provided. The Government further noted that the Public Prosecutor had heard the police officer concerned as a suspect and had taken statements from witness H.I. They concluded that the investigation had been carried out expeditiously and that the applicant, who had been represented by a lawyer, had the opportunity to submit his arguments and to access the case file during the course of the investigation.

(b) The Court's assessment

(i) *General principles*

67. The general principles regarding the obligation to carry out an effective investigation may be found in *Jerónovičs v. Latvia* ([GC], no. 44898/10, §§ 103-09, 5 July 2016), and *Bouyid* (cited above, §§ 114-23).

68. The Court reiterates, in particular, that the authorities must act of their own motion (*Bouyid*, cited above, § 119). Where a serious allegation of ill-treatment under Article 3 is made, the authorities have an obligation to take action as soon as an official complaint has been lodged. However, even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred (see *Zakharov and Varzhabetyan*, cited above, § 48, and the cases cited therein).

69. The Court reiterates that the procedural obligation under Article 3 continues to apply in difficult security conditions. Even where events leading to a duty to investigate occur in the context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Article 3 requires that all reasonable steps must be taken to ensure that an effective and independent investigation is conducted (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 319, ECHR 2014 (extracts), and *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 330, 21 January 2021).

70. Although this requirement is not an obligation of result, but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (*ibid.*, § 331).

71. In order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible. It should also be broad enough to permit the investigating authorities to take into consideration

not only the actions of the State agents who directly used force but also all the surrounding circumstances (*Bouyid*, cited above, § 119).

72. Lastly, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (*ibid.*, § 123).

(ii) *Application of the above principles to the present case*

73. The Court observes at the outset that, following his injury during the events of 24 August 2014, the applicant had immediately been taken to hospital where a medical report noting his injuries was drawn up. Subsequently, he gave his statements at the Public Prosecutor's Office as a suspect and complained in the meantime of the use of force against him, claiming that he had been shot by a plastic bullet. The Public Prosecutor initially took account of his complaint and instructed the police to obtain his statements in relation to his claims of having been shot during the events (see paragraph 20 above). However, no steps were taken to that effect and there were no developments in the investigation until January 2015, when the applicant filed a petition with the Public Prosecutor's Office, reiterating his claims and complaining of the lack of any measures taken regarding his initial complaint.

74. The Court finds accordingly that, having been aware of the injuries caused to the applicant during the events as soon as they occurred, as well as having received a specific complaint from the applicant in that respect on the same night, the investigating authorities were fully capable of questioning the applicant as a complainant and taking more effective investigative measures, in particular by seeking to obtain the CCTV footage of the area concerned and identifying the police officers involved (see *Zakharov and Varzhabetyan*, cited above, § 57). However, they failed to initiate an investigation into the cause of the applicant's injuries of their own motion, while the investigation against the applicant regarding the acts resulting in the police officers' injuries was triggered on the night of the events (*ibid.*, §§ 54-55).

75. It is true that following the applicant's official complaint in January 2015, approximately five months after the events, the Public Prosecutor's Office took a number of steps and requested various information and documents from the security forces, in particular the Van Directorate of Rapid Response Force, in order to obtain the CCTV footage, to identify the officers who might have used the impugned force and to clarify the nature and characteristics of the weapon that had caused the applicant's injuries. Following the response of both the Directorate of Security and the Directorate of Rapid Response Force indicating that no CCTV footage could be obtained, information which had already become clear during the investigation against the applicant, the Public Prosecutor did not investigate whether the CCTV camera on the street had indeed been undergoing an update at the time or

whether there were any other means of obtaining camera footage of the area concerned. In that connection, the Public Prosecutor failed to verify whether the other shops on the street had camera systems which might have captured the events, despite the discrepancy between the records held by the police officers on the night of the events, which noted that the shops overlooking the restaurant indeed had cameras, and those issued on 7 September 2014 which indicated that there had been no other cameras on the street (see paragraphs 9 and 15 above, respectively).

76. The Court also observes that following each letter of the Public Prosecutor's Office, the Directorate provided specific technical information on the defence weapons and cartridges in their inventory in response to the questions posed by the former, without any information on either how and on what grounds these weapons could have been used during the events at issue, or who might have used them. Despite three separate letters from the Prosecutor's Office, the Directorate provided the full list of police officers on duty on the night of the events and the weapons used by each of them only after the Prosecutor's warning letter of 5 August 2015 which stated that criminal proceedings might be initiated against those who refused to provide the information requested (see paragraph 26 above).

77. Moreover, the statements of the only police officer on the list with an FN 303 weapon were taken two months after his identification by the Prosecutor's Office (see paragraphs 26 and 31 above). The Court observes that the Prosecutor's Office went on to deliver its decision on the investigation after having obtained that officer's statements, wherein the latter mentioned that he had been instructed to intervene in the events with an FN 303 rifle by his team leader, whose name also appeared on the list of officers on duty submitted to the Prosecutor's Office. The Court considers that, in the absence of any extensive information from the Directorate regarding the safeguards surrounding the use of defence weapons, further statements from the superiors of the police officer concerned could have shed light on the necessity and proportionality of the weapon's use by the security forces in the events at issue.

78. The Court takes note of the investigating authorities' efforts to clarify the circumstances of the case. As noted above, they had extensive correspondence with the Directorate regarding the specificities of the force used and the identity of the officers involved (see paragraphs 25 and 26 above), and also took the statements of the police officer who had used the weapon used against the applicant, as well as that of the witness mentioned by the applicant. However, the Court cannot discern from the facts that they made any attempt to clarify the proportionality of the use of the specific weapon at issue, whether alternative measures could have been taken, and how the applicant's conduct could have called for the use of force against him. Instead, they appear to have merely noted the violent nature of the fight, namely, the fact that those involved had thrown sticks and stones at the

security forces, injuring two police officers, without specifying the requirement for the police to use defence weapons to disperse the crowd and how the applicant might have been shot (compare *Tzekov*, cited above, §§ 70-71).

79. The Court also notes that, despite having requested a range of technical information on FN 303 weapons from the Directorate, in its decision not to prosecute the police officer concerned, the Public Prosecutor's Office made no mention of the possible effects of that weapon's use. Nor did it refer to the medical report in respect of the applicant or assess how his injuries could have been caused, except to note that they resulted from the use of an FN 303 rifle. In that respect, the Court cannot but notice that the investigating authorities did not address the applicant's specific allegations regarding the nature of the use of force against him, namely, that the defence weapon had been fired at very close range and that it had been aimed directly at him, which the Court considers relevant for the assessment of the proportionality of the use of force at issue (compare *Annenkov and Others v. Russia*, no. 31475/10, §§ 97-98, 25 July 2017).

80. Moreover, the Constitutional Court also gave no consideration to the applicant's complaints regarding the deficiencies in the investigation. Rather, it decided that it was not necessary to examine the procedural aspect of Article 17 of the Constitution in view of its finding under the substantive aspect of that provision, which, as noted above, fell short of adequately assessing whether the force used against the applicant was indispensable (see paragraph 62 above).

81. In view of the above shortcomings, the Court concludes that the authorities failed to carry out an effective investigation in the present case. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

"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."

A. Damage

83. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government contested that claim, finding it excessive.

85. Having regard to the nature of the violations found, the Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on an equitable basis, EUR 12,500 under this head.

B. Costs and expenses

86. The applicant also claimed EUR 3,348 for the costs and expenses incurred before the domestic courts and the Court. In support of his claim, he provided the Court with a breakdown of the hours spent by his lawyer on the case and submitted that the hourly rate had been determined based on the recommended sum contained in the minimum scale of fees of the Union of Bar Associations of Turkey.

87. The Government contested that claim.

88. 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 were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungar* [GC], no. 36345/16, § 149, 9 March 2023). 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 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant (see *Elif Nazan Şeker v. Turkey*, no. 41954/10, § 65, 8 March 2022).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objections on admissibility and dismisses them;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
5. *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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 1,000 (one 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President