

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

SECOND SECTION

CASE OF SUNGUR v. TÜRKİYE

(Application no. 56462/19)

JUDGMENT

Art 3 (substantive and procedural) • Degrading treatment • Spraying of tear gas directly at the applicant by a police officer, from a distance of under one metre, during a demonstration, resulting in a non-serious injury treatable with simple medical care • Use of force not rendered strictly necessary by the applicant's conduct • Domestic authorities' failure to afford sufficient redress • Application of criminal-law system in the case resulted in the impunity of the perpetrator, without providing the requisite deterrent effect

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 March 2026

FINAL

21/09/2026

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



In the case of Sungur v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Gediminas Sagatys,
Juha Lavapuro,
Hugh Mercer*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 56462/19) 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, Ms Ceyda Sungur ("the applicant"), on 14 October 2019;

the decision to give notice to the Turkish Government ("the Government") of the complaint concerning Article 3 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 10 February 2026,

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

INTRODUCTION

1. The case concerns a police officer's spraying of tear gas directly at the applicant during the Gezi Park events. The applicant complained of a violation of Article 3 of the Convention.

THE FACTS

2. The applicant was born in 1986 and lives in Paris. She was represented by Ms S. Doğanoğlu, a lawyer practising in Ankara.

3. The Government were represented by their Agent at the time, 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.

I. INCIDENT OF 28 MAY 2013

5. On 28 May 2013 the applicant attended a sit-in protest in Gezi Park in Istanbul. The protest was held in response to plans to replace the park with a shopping centre as part of the redevelopment of nearby Taksim Square. It took place one day after the State authorities had started demolition work in

the park. The widespread protest movements that followed were later referred to as "the Gezi Park events" (for more information on the Gezi Park events, see *Kavala v. Turkey*, no. 28749/18, §§ 15-22, 10 December 2019).

6. During the security forces' intervention in the sit-in protest, a police officer sprayed the applicant with tear gas at very close range, aiming directly at her head. The officer continued moving towards her and spraying the gas even as she turned away. The photographs of the incident were circulated widely in the media, and the applicant, who was wearing a red dress at the time, came to be known as "the woman in red", one of the symbols of the Gezi Park events.

II. ADMINISTRATIVE INVESTIGATIONS AGAINST THE POLICE OFFICER

7. On 3 June 2013, upon an order from the Ministry of the Interior, the Directorate General of Security assigned a number of inspectors to investigate any deficiencies in the use of force by security forces. In a report dated 22 August 2013, which covered several incidents, the inspectors identified the police officer concerned as F.Z. They noted that he had unnecessarily and unlawfully sprayed tear gas on the applicant and those around her, and had also kicked some individuals.

8. Subsequently, a preliminary investigation and a disciplinary investigation were initiated against F.Z. The preliminary-investigation report of 19 September 2013 concluded that it had been established from the video footage that F.Z. had used tear gas unnecessarily on the applicant – who had not shown any resistance to the police – several times at a distance of less than one metre. He had then continued to move about, spraying other demonstrators with the gas. He had therefore acted in breach of the Directive on the use of tear-gas weapons and munitions (*Göz Yaşartıcı Gaz Silahları ve Mühimmatları Kullanım Talimatı*). His actions had also prompted a public reaction, thereby causing an escalation of the Gezi Park events. The disciplinary-investigation report of the same date reached the same conclusions.

9. Following the preliminary investigation, the Governorship of Istanbul authorised the opening of criminal proceedings against F.Z. on 24 September 2013, pursuant to Law no. 4483 on the prosecution of civil servants and public officials.

10. On 17 December 2013, in line with the conclusions of the disciplinary investigation, the Istanbul Governorship's Police Disciplinary Committee imposed a disciplinary sanction on F.Z. for committing prohibited acts both on and off duty. The Committee stated that, although the sanction corresponding to the act in question was a reprimand, it had decided to impose a lighter sanction on F.Z., namely a warning, in view of his clean employment record.

III. CRIMINAL PROCEEDINGS AGAINST THE POLICE OFFICER

11. On an unspecified date the Istanbul Public Prosecutor's Office initiated a criminal investigation against F.Z. As part of that investigation, F.Z. gave his statement to the Istanbul public prosecutor as a suspect on 12 December 2013. He stated that at the time of the incident in question, he had been working as a police officer in the Rapid Response Force (*çevik kuvvet*) and had been on active duty during the Gezi Park events. Although he had used tear gas as part of his duties, he had noted after watching the relevant video footage that he was not the officer using tear gas on the woman who had come to be known as "the woman in red". He maintained that he had not used tear gas at close range on anyone and denied all claims against him.

12. On 15 November 2013 the Istanbul public prosecutor asked the applicant to give her statement about the incident. As she did not respond, in two letters of 4 December and 26 December 2013 the prosecutor instructed the security forces to bring her in. On 2 January 2014 the applicant gave her statement to the public prosecutor. She stated that on the day of the incident she had gone to Gezi Park – which was very close to the university where she worked as a research assistant on urban planning – to support her friends and to join the peaceful protest against the State authorities' plans for the park. The police had started to use tear gas on the protestors without any prior warning, as a result of which the protestors had started fleeing and she had fallen on the ground. When she had got up, a police officer had sprayed tear gas directly at her, at a distance of half a metre, and had continued to do so after she had turned her back to protect herself. She had heard another officer instigating the act by telling him to start spraying. She had had difficulty breathing and had felt her face burning, but she had been in a state of shock over the incident that she did not have the presence of mind to go to a medical institution.

13. On 9 January 2014 the Istanbul public prosecutor filed a bill of indictment, accusing F.Z. of abuse of duty under Article 257 § 1 of the Criminal Code. Referring to the expert's report on the video footage, the public prosecutor concluded that F.Z. had sprayed tear gas at very close range, aiming directly at the applicant, and had continued to do so after she had turned her back, despite the fact that she had not displayed any unusual behaviour.

14. On 13 May 2014, at the first hearing before the Istanbul Magistrate's Court, the applicant repeated the statements she had made to the public prosecutor and added that the person instructing F.Z. to spray tear gas on her was his superior. She had experienced pain in the hour that followed the incident but had not had any other health complaints subsequently. She nevertheless requested to be referred to the Forensic Medicine Institute to obtain a medical report. The Magistrate's Court accepted her request and ordered that a medical report be issued in relation to her tear-gas exposure.

15. During the subsequent hearings, the Istanbul Criminal Court of First Instance – to which the case had been transferred – heard oral evidence from F.Z. and three commanding officers involved in the events of 28 May 2013. The court also examined two experts' reports on the video footage of the incident. F.Z., in his testimony to the court, stated that on the day of the incident some of the protestors had thrown stones at the police officers and kicked them and that he had used tear gas on the orders of one of his superiors, namely R.E. The difficult working conditions and the pain caused to him by the strap of the tear-gas launcher on account of an existing shoulder injury had made it difficult for him to make a sound decision in the moment. When he had used the gas on the protestors, the launcher had malfunctioned and the applicant had been exposed to the gas for a few seconds as she had suddenly got up from the ground. He also stated that the discrepancy between his statements to the public prosecutor and his testimony before the trial court was due to his initial inability to recognise himself in the video footage.

16. One of the commanding officers, R.E., who was the Deputy Chief of the Istanbul Directorate of Security at the time, denied having ordered the use of tear gas and maintained that, although he could not remember the details, he could see from the footage that the situation did not require the use of such a measure. One of the other two commanding officers, M.Z.B., noted that some of the protestors had been trying to cross through the police barricade to reach the construction equipment and that R.E. had instructed the police teams to spray tear gas. A third officer, M.K., who was F.Z.'s direct supervisor, stated that he had not ordered the use of tear gas and had not seen F.Z. performing that act.

17. During the hearings in September and December 2014, the applicant stated that, although the Criminal Court had referred her to the Forensic Medicine Institute, she had not been notified of a letter sent by that organisation and could not therefore go for an examination. Moreover, the Institute had asked her for a preliminary report which did not exist. She made no claims of a permanent injury and asked the trial court to revoke its preliminary decision to refer her for a medical examination. Her request was rejected by the trial court. Nevertheless, no medical reports were obtained during the proceedings.

18. By a judgment of 10 June 2015, the Criminal Court stated that the police could only use force when absolutely necessary, for instance in the event of resistance or in response to an attack, and that officers could be held criminally liable for arbitrary use of force. In that regard, tear gas could only be used to the extent required, and the fact that a demonstration was not held lawfully did not necessitate the use of force, especially in the absence of violence. In the circumstances of the case, F.Z. had sprayed tear gas without warning, aiming at the applicant's face at a distance of less than one metre, and had continued to do so after the applicant had turned her back, in breach of the Directive on the use of tear-gas weapons and munitions. The applicant

had been subjected to that act despite the fact that she had not displayed any unreasonable behaviour before or during the incident. F.Z.'s claims regarding his superiors' orders to use the gas, his shoulder pain and the alleged violent behaviour of some of the protestors could not be considered sufficient to absolve him of liability. F.Z. had exceeded the authorised limits of the use of force and had caused the applicant to sustain an injury which could be treated with simple medical care and had left no physical marks.

19. The Criminal Court therefore found F.Z. guilty of intentionally causing bodily harm by exceeding his authority to use force in relation to his acts towards the applicant, and sentenced him to ten months' imprisonment under Article 86 § 2 of the Criminal Code (Law no. 5237). It pointed out that it had imposed a sentence which was harsher than the minimum sanction provided for by law because he had committed the offence using tear gas, which was classified as a weapon by the Court of Cassation, and had abused his authority as a public official. The trial court also found him guilty of abuse of duty for his acts against other protestors and sentenced him to another ten months' imprisonment. However, taking into account F.Z's good behaviour during the trial and in the absence of any previous conviction, it concluded that it was unlikely that he would commit any further offence. It accordingly ordered the suspension of the pronouncement of the judgment, under Article 231 § 5 of the Code of Criminal Procedure (Law no. 5271), on the condition that he did not commit any other intentional offence for a period of five years.

20. The Criminal Court further decided to impose a specific measure on F.Z., under Article 231 § 8 of the Code of Criminal Procedure, with the aim of assisting his rehabilitation and providing redress to the applicant. In that regard, it ordered F.Z. to plant 300 trees in an area indicated by the forest authority and to tend to those trees for a period of six months.

21. Lastly, the trial court decided to lodge a criminal complaint with the Istanbul public prosecutor's office against F.Z.'s superiors for abuse of duty. The court stated that the superiors had failed to use their authority as required, resulting in confusion and disorder regarding the use of tear gas.

22. The applicant lodged an objection to that decision, challenging the Criminal Court's suspension of the pronouncement of the judgment against F.Z. In her opinion, the court's decision resulted in F.Z.'s impunity and an appearance of tolerance by the authorities to the unlawful use of force in question, in violation of the prohibition of ill-treatment.

23. On 9 July 2015 the Istanbul Assize Court rejected the applicant's objection, finding that the Criminal Court's decision was in accordance with the law.

24. On 2 May 2016 the Bakırköy Directorate of Conditional Release found that F.Z. had fulfilled the conditions of the measure imposed on him and had planted and tended to 300 trees. Subsequently, his probation file was closed.

IV. CRIMINAL PROCEEDINGS AGAINST OTHER OFFICERS

25. On an unspecified date the applicant lodged a criminal complaint with the Istanbul public prosecutor's office against the President of the Republic, the Minister of the Interior, the Governor of Istanbul and the Istanbul Director General of Security. She also requested the opening of criminal proceedings against the chief of the Rapid Response Force and the officials who had given the instruction to use tear gas during the incident.

26. The Istanbul public prosecutor started an investigation into the applicant's complaints. On 25 June 2014 he decided not to proceed with the complaint against the President and the Minister of the Interior, because they could only be investigated at the request of Parliament. The public prosecutor also decided not to prosecute the Governor and Director General of Security, as the applicant had failed to provide evidence of how they had contributed to F.Z.'s act. However, the investigation into F.Z.'s superiors went ahead.

27. Following the complaint lodged by the Istanbul Criminal Court against F.Z.'s superiors R.E., M.Z.B. and M.K. (see paragraph 21 above), the public prosecutor initiated a fresh investigation, which it subsequently joined to the existing one.

28. On 23 November 2015 the public prosecutor filed a bill of indictment with the Istanbul Criminal Court against commanding officers R.E. and M.Z.B., accusing them of abuse of duty and use of force in excess of the authorised limits, on account of their instruction to F.Z. to use tear gas. The prosecutor decided not to prosecute M.K., finding that there was not sufficient evidence to conclude that he had given any instructions to F.Z. during the incident.

V. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

29. On 18 August 2015 the applicant lodged an individual application with the Constitutional Court, complaining of a violation of the prohibition of inhuman treatment. She stated that she had been exposed to tear gas at very close range – which posed a risk to her life and physical well-being – despite the fact that she had not been engaging in any violent acts. Although the Criminal Court had established that the use of force had been unlawful, suspending the pronouncement of the judgment and ordering the police officer to plant 300 trees did not have a deterrent effect. Referring to the Court's case-law, she argued that the trial court's decision resulted in impunity.

30. By a judgment of 3 April 2019 (no. 2015/14363), the Constitutional Court found the application admissible. It stated that the application was not manifestly ill-founded because, although there was no medical report, the trial court had considered the video footage and photographs of the incident as

evidence for the offence of intentional bodily harm. The application was not inadmissible on any other grounds either.

31. Regarding the substantive aspect, the Constitutional Court, reiterating the principles established in both the Court's and its own case-law, stated that any use of force, when not strictly necessary, would violate the prohibition of ill-treatment. It considered that, in the present case, in the absence of any finding that the applicant had physically assaulted the police officers or acted in an aggressive manner, the use of tear gas had been clearly unnecessary. Nevertheless, the Constitutional Court sought to determine whether the contested act had been proportionate. It noted that, although medical reports were an important factor in determining proportionality, the applicant had failed to obtain one after the incident and had opposed the Criminal Court's attempts to obtain one for her during the criminal proceedings against F.Z. She had also failed to file a criminal complaint after the incident, and the public prosecutor had to make considerable efforts to take her statement. Accordingly, the Constitutional Court noted that it was not able to reach a conclusion regarding the proportionality of the act, due to the applicant's lack of diligence in pursuing her complaint.

32. As to the procedural aspect, the Constitutional Court stated that the State had a positive obligation to impose sanctions that were proportionate to the acts concerned and to provide the victim with appropriate redress. After listing the various steps taken by the public prosecutor and the Criminal Court, it assessed whether the punishment imposed on F.Z. had been proportionate to the act in question and had had a deterrent effect. The pronouncement of a judgment could be suspended on the condition that the suspect's behaviour convinced the domestic court that he or she would not reoffend. In cases where ill-treatment by security forces had been established, both the Court and the Constitutional Court had previously found that decisions to suspend the pronouncement of the judgment were not sufficiently deterrent. For that reason, the likelihood that the suspect would reoffend had to be assessed diligently and in a manner that prioritised the deterrent effect of the punishment.

33. However, the Constitutional Court noted that suspending the pronouncement of the judgment could not, in itself, be considered to render the punishment wholly ineffective. In determining whether the punishment had been proportionate, it took into account the nature, the duration and the severity of the act – factors that had been established by the video footage in the present case – and the effect the act had had on the victim's health. Despite the applicant's failure to pursue her complaint effectively, the judicial authorities had initiated an investigation promptly and of their own motion, had tried to collect all relevant evidence, and had imposed a sentence on F.Z. By imposing a sentence which had been harsher than the minimum sanction provided for by law, the authorities had demonstrated that they did not tolerate such acts. There was nothing to show that F.Z. had not complied with

the measure requiring him to plant and tend to trees. He had also received the disciplinary sanction of a warning for the act in question. The punishment had been deterrent and proportionate to the contested act. All in all, the judicial proceedings regarding the ill-treatment resulting from the unnecessary use of force had been carried out, and the police officer in question had received a proportionate sanction, thus remedying the harm caused to the applicant.

34. The Constitutional Court concluded therefore that there had been no violation of Article 17 of the Constitution pertaining to the prohibition of ill-treatment, under either its substantive or its procedural aspect.

VI. SUBSEQUENT DEVELOPMENTS

35. On 25 May 2023 the Istanbul Criminal Court found that F.Z. had not committed an intentional offence within the five years following its decision of 10 June 2015 (see paragraph 19 above), and accordingly cancelled that decision entirely.

36. In the criminal proceedings against F.Z.'s superiors, on 26 May 2023 the Istanbul Criminal Court acquitted M.Z.B. of the charges against him, finding that there was no credible evidence to establish beyond reasonable doubt that he had instructed F.Z. to use tear gas during the incident in question. At the relevant time, the proceedings against R.E. were still pending as he could not be brought before the trial court.

37. By a decision of 15 December 2023, the Criminal Court discontinued the proceedings against R.E., because the statutory time-limit of eight years for the offences of abuse of duty and use of force in excess of the authorised limits had elapsed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

38. The 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).

39. In particular, 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 gradual 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).

40. The relevant sections of the Directive on the use of tear-gas weapons and munitions, which was issued in February 2008, read as follows:

> "(2) Instructions for the use of tear-gas weapons and munitions
>
> (i) 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;
>
> (ii) 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;
>
> (iii) 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;
>
> (iv) Units which lack suitably trained personnel may not apply for tear-gas supplies;
>
> (v) 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;
>
> (vi) 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];
>
> (vii) No tear-gas projectile may be launched directly at a human body;
>
> (viii) 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;
>
> (ix) 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;
>
> (x) Tear gas must never be used against persons who have ceased to put up resistance or show aggression;
>
> (xi) Personnel called upon to use munitions [of this type] shall be instructed in their use and informed of the warnings issued by their manufacturers."

41. Article 86 of the Criminal Code (Law no. 5237), in so far as relevant, reads as follows:

> "(1) Any person who intentionally causes another person physical pain or who impairs another person's health or ability to see or hear shall be sentenced to a penalty of imprisonment for a term of one to three years.
>
> (2) Where the effect of intentional harm to a person is minor and can be treated by simple medical care, a penalty of imprisonment for a term of four months to one year or a judicial fine shall be imposed following a complaint by the victim ..."

42. Article 231 of the Code of Criminal Procedure (Law no. 5271), in so far as relevant at the time, read:

"(5) If the accused has been ordered to pay a fine or sentenced to imprisonment for a period of less than two years, the court may decide to suspend the pronouncement of the judgment ... The suspension of the pronouncement of the judgment means that the judgment shall not bear any legal consequences for the accused.

(6) A decision to suspend the pronouncement of a judgment may be issued provided that:

(a) the accused has never been found guilty of an intentional offence;

(b) the court is convinced, taking into account the personal traits of the accused and his behaviour during the proceedings, that there is little risk of any further offence being committed; [and]

(c) the damage caused to the victim or to society is redressed by way of restitution or compensation. The pronouncement of the judgment may be suspended only if the accused does not object to it.

...

(8) If the pronouncement of the judgment is suspended, the accused shall be kept under supervision for the following five years. ... During that period ... a probationary obligation may be [imposed on] the accused ...

...

(10) If the accused does not commit another intentional offence and abides by the obligations of the supervision order, the judgment [whose] pronouncement has been suspended shall be cancelled and the case discontinued.

(11) If the accused commits another intentional offence or acts in violation of the obligations of the supervision order within the supervision period, the court shall pronounce the sentence. Nevertheless, the court may evaluate the situation of the accused ... and may decide that ... up to half of the total sentence shall not be executed. If the conditions so permit, the court may also suspend the execution of [any] imprisonment or commute it to other optional measures.

(12) An objection to the decision to suspend the pronouncement of the judgment may be lodged."

43. The relevant parts of the Police Disciplinary Regulations at the time read as follows:

Article 2 – Disciplinary sanctions

"...

(1) A warning is a written notification to a civil servant that he or she needs to act more carefully in his or her duties.

(2) A reprimand is a written notification to a civil servant that he or she is considered at fault in his or her duties or behaviour.

..."

Article 3 – Warning

"Behaviours and actions that warrant the sanction of a warning are as follows:

(1) keeping weapons, equipment, clothing and attire dirty, and not paying attention to the cleanliness of the workplace;

(2) failing to shave one's beard on a daily basis in the absence of a compelling reason."

Article 4 – Reprimand

"Behaviours and actions that warrant the sanction of a reprimand are as follows:

(1) engaging in prohibited behaviours or actions either on or off duty;

..."

Article 15 – Imposition of a lighter sanction

"A sanction one degree lighter than that indicated in these Regulations may be imposed on civil servants who had a history of good services and a clean employment record prior to the decision."

II. RELEVANT PRACTICE OF THE DOMESTIC COURTS

A. Decisions of the administrative courts regarding compensation claims arising from unnecessary use of force

44. The Government referred to sixteen separate administrative court judgments concerning injuries sustained by the claimants during the police intervention as part of the Gezi Park events. In all of those judgments, the administrative courts had awarded the claimants compensation in respect of pecuniary and/or non-pecuniary damage. In doing so, they had found a causal link between the injuries in question and the force used by the security forces, which they had considered either unnecessary or wholly disproportionate. They had concluded that the security forces' acts had constituted a fault on the part of the authorities in the provision of a public service ("service fault" – *hizmet kusuru*), which had required the payment of compensation.

B. Relevant case-law of the Constitutional Court

45. The applicant referred to three judgments delivered by the Constitutional Court in 2019 and 2020 concerning allegations of ill-treatment by the security forces during the Gezi Park events. In those judgments, the Constitutional Court stated that the remedy to be used in cases concerning allegations of wilful ill-treatment by State agents was the criminal remedy.

46. In the case of *Ender Ergün* (no. 2016/1849), the applicant complained of a violation of the prohibition of ill-treatment on account of the injuries caused to him both by the security forces' use of plastic bullets and by a third person, and argued that the security forces had used unnecessary force and had intentionally refrained from preventing attacks by third persons. The public prosecutor had decided not to prosecute the police officers in question and the Istanbul Administrative Court had dismissed the applicant's action for a full remedy. In finding a violation of both the substantive and procedural aspects of the prohibition of ill-treatment, the Constitutional Court stated that,

when an individual had an arguable claim that he or she had been subjected to ill-treatment by a State official, the State had a positive obligation to initiate a criminal investigation which would allow for the identification and punishment of those responsible.

47. In the case of *Davut Yıldız* (no. 2017/39073), which concerned a severe injury to the applicant allegedly caused by a tear-gas grenade and the effectiveness of the ensuing criminal investigation and administrative proceedings, the Constitutional Court found a violation of the procedural aspect of the prohibition of ill-treatment. In assessing the admissibility of the case, the Constitutional Court noted that the remedy to be used in cases concerning ill-treatment on account of the use of force by the security forces was the criminal remedy, because it was the only remedy in which evidence could be gathered to identify those responsible and punish them if necessary. An action for a full remedy before the administrative courts could only be considered a secondary remedy to obtain compensation for damage arising from the incident in question.

48. In its inadmissibility decision in the case of *Ahmet Cihan* (no. 2017/23740), in which the applicant had lodged an individual application with the Constitutional Court following the end of the proceedings before the Istanbul Administrative Court in 2017, the Constitutional Court rejected his complaint regarding certain State officials as being out of time, finding that he should have lodged his application within thirty days of the end of the criminal investigation against those officials in 2014. It stated that in cases concerning ill-treatment, on account of the use of force by State agents, the only effective remedy was the criminal remedy. An action for a full remedy was not effective in that context.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that she had been subjected to ill-treatment as a result of an unnecessary use of force and that the State authorities' failure to punish those responsible had resulted in impunity. She relied on Articles 3 and 13 of the Convention.

The Court considers that the applicant's complaints should be examined only from the standpoint of Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Exhaustion of domestic remedies

(a) Compensatory remedy before the administrative courts

(i) The parties' submissions

50. The Government argued that the applicant had not exhausted the available domestic remedies, because she had failed to bring an action for a full remedy and to seek compensation before the administrative courts. They pointed out that they were aware of the Court's case-law indicating that the domestic remedy to be used with regard to complaints of ill-treatment was, in principle, a criminal investigation. However, in the circumstances of the present case, an action for a full remedy before the administrative courts was the remedy to be used. This was because such an action also allowed for a finding of a service fault, through an assessment of the adequacy of the regulatory framework and of the training and supervision of public officials. In the present case, the domestic judicial authorities had found that, in addition to F.Z., his superiors might also have been responsible for the incident, because they had caused disorder by their failure to use their authority as required. Accordingly, the administrative courts would have been better suited to assess the officers' failures in their duties and to provide appropriate compensation to the applicant. In that regard, the Government presented several administrative court judgments, in which claimants complaining of the bodily harm caused to them during the Gezi Park events had been awarded compensation in respect of pecuniary and non-pecuniary damage (see paragraph 44 above).

51. The applicant referred to the Court's case-law, according to which the obligations of the State under Article 3 could not be satisfied merely by awarding damages. She maintained that she was not required to embark on an attempt to obtain compensatory redress. Moreover, she argued that the administrative court judgments submitted by the Government did not show that that remedy could be regarded as effective *per se*. Lastly, she submitted several decisions given by the Constitutional Court, which found that the criminal remedy was the only effective remedy in cases regarding allegations of ill-treatment (see paragraphs 45-48 above).

(ii) The Court's assessment

52. The Court reiterates that, when domestic courts have examined the substance of an applicant's complaint and reached a decision which has not subsequently been overturned by a higher court on procedural grounds, the applicant cannot be said to have failed to exhaust domestic remedies (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 43-45, ECHR 2009, in which the Federal Court ruled on the merits of the case despite the fact that the applicant barely satisfied the

requirements for an application for review; *Voggenreiter v. Germany* (dec.), no. 47169/99, 28 November 2002, in which the appellate court examined the merits of an appeal even though it considered it inadmissible; and *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008, with further references, in which the competent authority examined the substance of the claim in spite of the applicant's failure to observe the forms prescribed by law).

53. This principle is all the more applicable in the present case, since the Constitutional Court not only examined the applicant's complaint on the merits, finding no violation of the prohibition of ill-treatment, but also clearly assessed the admissibility conditions and stated that her individual application was not inadmissible on any grounds, thereby ruling out any failure by the applicant to exhaust domestic remedies (see paragraph 30 above). The Court notes that the approach adopted by the Constitutional Court in the present case was in line with its case-law, according to which, in cases regarding allegations of ill-treatment by State officials, the appropriate remedy is a criminal one, while an action for a full remedy was either ineffective or merely of a secondary nature in that context (see paragraphs 46-48 above as regards the Constitutional Court's case-law; see also, *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004, with regard to the Court's own case-law).

54. In that regard, the Court also reiterates that in cases of wilful ill-treatment the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 116 and 119, ECHR 2010, and *Jeronovičs v. Latvia* [GC], no. 44898/10, § 105, 5 July 2016).

55. The Court has previously held that a civil action is not capable, without the benefit of the conclusions of a criminal investigation, of making any findings as to the identity of the perpetrators, much less of establishing their responsibility. Awarding damages in civil proceedings could only complement by way of redress the results of a thorough and effective investigation capable of leading to the punishment of those responsible (see *Đurđević v. Croatia*, no. 52442/09, §§ 65-67, ECHR 2011 (extracts), and *Cestaro v. Italy*, no. 6884/11, § 231, 7 April 2015).

56. In the present case, it is not in dispute between the parties that the criminal remedy was used. The force used on the applicant by the police was assessed in two separate sets of criminal proceedings: one against the main perpetrator, F.Z., who was eventually found guilty of intentional bodily harm;

and the other against his superiors, who had been accused of abuse of duty and use of force in excess of the authorised limits.

57. The Government submitted that, in the circumstances of the present case, the administrative courts could have examined whether there had been a service fault through an assessment of the adequacy of the regulatory framework and of the training and supervision of public officials, and could have established the officers' failures in their duties, which would have provided the applicant with an opportunity to obtain compensation. In that regard, the Court takes account of the administrative courts' decisions to award compensation in respect of pecuniary and non-pecuniary damage to people affected by unlawful use of force during the Gezi Park events (see paragraph 44 above), and accepts that it was open to the applicant to bring an action for a full remedy and claim compensation before those courts. However, neither the Government's submissions nor the case-law examples clarify how an investigation carried out by the administrative courts would have been more pertinent and resulted in a more effective examination of the case than the one carried out by prosecutors and criminal courts within the context of criminal-law procedures, which provide for all the legal and practical means necessary for that purpose (see *Jasinskis v. Latvia*, no. 45744/08, §§ 51-52, 21 December 2010).

58. The Court observes that the applicant's complaint pertains to her alleged ill-treatment on account of the use of tear gas by the police, and to the outcome of the disciplinary and criminal proceedings which, according to her, resulted in impunity. Since the applicant made no claim regarding the lack of sufficient compensatory redress, she was not required to initiate an action for a full remedy before the administrative courts. In any event, given that her complaint concerned wilful ill-treatment by State agents, such an action would only have been complementary to the criminal remedy and would not have constituted an effective remedy in itself (see *Đurđević*, cited above, § 66).

59. Accordingly, in view of the Constitutional Court's judgment declaring the applicant's individual application admissible and examining it on the merits, and taking into account that a compensatory action before administrative courts does not constitute an effective remedy in the circumstances of the present case, the applicant cannot be considered to have failed to exhaust domestic remedies.

60. The Court therefore dismisses the Government's objection that the applicant failed to exhaust domestic remedies in that she had not brought compensatory proceedings.

(b) Criminal proceedings against F.Z.'s superiors

61. The Government stated that the criminal proceedings against F.Z.'s superiors, R.E. and M.Z.B., were still pending before the Criminal Court. It was open to the applicant to lodge an appeal when the Criminal Court reached

a conclusion, and to lodge an individual application with the Constitutional Court at the end of those proceedings. The application was therefore premature and should be rejected for failure to exhaust domestic remedies.

62. The applicant argued that there had been no real progress in the criminal proceedings against F.Z.'s superiors since 2015 and that, in any event, the national authorities had already delivered decisions regarding the subject matter of her application.

63. The Court observes that by two decisions delivered in 2023, following the parties' submission of their observations, the Istanbul Criminal Court acquitted M.Z.B. of the charges against him and discontinued the proceedings against R.E. because the statutory time-limit for the offences with which he had been charged had elapsed (see paragraphs 36 and 37 above). Accordingly, it dismisses the Government's objection that the application was premature, because those decisions have since become final.

64. As to the Government's objection that the applicant should have lodged an individual application following the end of those proceedings, the Court considers that it is closely linked to the substance of the applicant's complaint under Article 3, since it concerns the effectiveness of the remedy provided by those proceedings. It must therefore be joined to the merits of that complaint (see, *mutatis mutandis*, *Dink v. Turkey*, nos. 2668/07 and 4 others, §§ 56-58, 14 September 2010).

2. Victim status

65. The Government further argued that the applicant could no longer be considered a victim, because the national judicial and administrative authorities had acknowledged the unlawfulness of the act in question and had afforded sufficient redress, meeting the conditions established in the relevant case-law of the Court. As regards the redress afforded, they stated that the Criminal Court had convicted F.Z. of intentional bodily harm and subjected the decision to suspend the pronouncement of his sentence to the probationary obligation of planting and tending to 300 trees. Moreover, a disciplinary sanction had been imposed on him in the form of a warning. Had the applicant not failed to make a claim before the administrative courts, she might also have been afforded compensation for non-pecuniary damage, which was one of the requirements for sufficient redress according to the Court's case-law. They considered that the combination of the remedies afforded to the applicant under domestic law provided sufficient redress. They thus asked the Court to reject the application on account of loss of victim status.

66. The applicant submitted that the outcome of the criminal and disciplinary proceedings in the present case had not afforded appropriate redress for the treatment to which she had been subjected and that she could thus still claim to be a victim of a violation of Article 3 of the Convention.

67. The Court considers that the questions regarding the nature of the applicant's treatment and whether she remained a victim within the meaning

of Article 34 of the Convention are also closely linked to the substance of her complaint under Article 3 and must therefore be joined to the merits of that complaint (see, *mutatis mutandis*, *Tamazount and Others v. France*, nos. 17131/19 and 4 others, § 143, 4 April 2024).

3. Conclusion on admissibility

68. The Court joins to the merits of the application the examination of the Government's objections regarding the exhaustion of domestic remedies following the criminal proceedings against F.Z.'s superiors and the applicant's victim status. It further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

69. The applicant stated that on the day of the incident in question, she had attended the protests against the demolition work in Gezi Park, both as a local resident and as an urban planner, but that she and other protestors had been exposed to unlawful use of force, even though the protest had been peaceful. The fact that the force used had been wholly unnecessary, which constituted a violation of the substantive aspect of Article 3 under the Court's case-law, had been established by the domestic courts. She submitted that the contested act had amounted to torture, because it was only by chance that she had not been seriously injured by the use of the gas, which had been sprayed directly at her at a distance of less than one metre. She had not been able to go to a doctor, because she had been in shock after the incident, but had actively participated in the criminal proceedings against F.Z.

70. As to the procedural aspect of her complaints under Article 3, she argued that the suspension of the pronouncement of the judgment delivered with respect to the police officer who had used unnecessary force had resulted in that officer's impunity and was incompatible with the Convention standards regarding the prohibition of ill-treatment, since it suggested that the judges had used their power of discretion to minimise the consequences of the contested act. Moreover, the officer had not been suspended from duty during the proceedings but had received only a warning as a sanction. In the applicant's view, there had accordingly been a violation of the procedural aspect of Article 3.

71. The Government stated that the domestic courts had already concluded that the use of tear gas on the applicant by F.Z. had been unnecessary and unlawful. They had no intention to call that finding into question. However, the contested treatment had not attained the minimum level of severity required under Article 3 of the Convention. It was debatable

whether the act of spraying tear gas was sufficiently severe to be considered inhuman treatment, let alone torture as claimed by the applicant. F.Z. had not acted with the intention of humiliating the applicant. The applicant had not even felt the need to go to a doctor; nor did she claim to have suffered any serious medical consequences. Referring to the Court's relevant case-law, they submitted that the Court had previously found claims of ill-treatment on account of the use of tear gas to be inadmissible in the absence of medical reports showing the ill effects of such treatment.

72. As regards the State's procedural obligations under Article 3 of the Convention, the Government noted that the national authorities had initiated disciplinary proceedings against F.Z. and an investigation into the incident of their own motion, even though the applicant had not made any complaints at that stage. Both the administrative authorities and the Criminal Court had concluded that F.Z.'s act had not been in compliance with the law and had been unnecessary. The investigation had been completed promptly, despite the applicant's reluctance to give her statement to the public prosecutor and to obtain a medical report.

73. As to the suspension of the pronouncement of the judgment delivered with respect to F.Z., the Government referred to the findings of the Constitutional Court, stating that the applicant had not shown any injuries caused to her by the incident and that the proportionality of any punishment to the act in issue could not be determined without an assessment of the consequences of that act. Given that F.Z. had also received a disciplinary sanction, the decision to suspend the pronouncement of the judgment did not render the punishment ineffective. In similar cases in which the Court had found a violation, the applicants had shown the damage caused to them. Furthermore, the Criminal Court had ordered F.Z. to plant and tend to 300 trees. Although that was not a criminal sanction, it was a valuable measure in the context of the right to live in a healthy environment. Lastly, the domestic authorities had also initiated criminal proceedings against F.Z.'s superiors, which showed that they had not tolerated the contested act. The Government submitted in conclusion that in view of all the steps taken by the domestic authorities and the measures imposed on F.Z., the State had fully complied with its obligations.

2. The Court's assessment

(a) The applicant's victim status

74. In order to establish whether the applicant could be considered a victim of a violation of Article 3 within the meaning of Article 34 of the Convention, the Court will first assess the nature of the treatment in question, whether the domestic authorities acknowledged a breach of the Convention and, if so, whether they provided sufficient redress (see *Gäfgen*, cited above, § 78).

(i) Nature of the treatment in question and whether the domestic authorities acknowledged a breach of the Convention

75. The relevant principles of the Court's case-law under Article 3 in relation to the use of force to disperse demonstrations have recently been summarised in *Tsaava and Others v. Georgia* ([GC], nos. 13186/20 and 4 others, § 327, 11 December 2025). In particular, the use of force by the authorities to quell unrest in the course of a demonstration, or to carry out arrests in that connection, does not necessarily amount to treatment in breach of Article 3. However, where the use of such force results in treatment which attains a level sufficient to bring it within the ambit of that Article, it will be compatible with the absolute prohibition laid down therein only if it is indispensable and not excessive – or, in other words, only if the force is strictly necessary and proportionate to the aim for which it was used. The key question in that assessment is not whether the use of force was necessary and proportionate in the situation in general, but whether that was so in relation to the individual applicant (ibid., with further references).

76. The Court has previously found in the context of use of tear gas by Turkish security forces to disperse demonstrations, that, in the absence of any medical reports demonstrating the impact of the force used on the applicants, it could not be established that the impugned treatment had been sufficiently severe to fall within the scope of Article 3 of the Convention (see *Oya Ataman v. Turkey*, no. 74552/01, § 26, ECHR 2006-XIV; *Çiloğlu and Others v. Turkey*, no. 73333/01, § 27, 6 March 2007; and *Aytaş and Others v. Turkey*, no. 6758/05, § 14, 8 December 2009).

77. In the present case, both the Criminal Court and the Constitutional Court found that F.Z.'s use of tear gas on the applicant had been unnecessary and had not been warranted by the applicant's behaviour. It had thus fallen short of the standards established for lawful use of force. In examining the applicant's individual application, the Constitutional Court also stated that any use of force that is not strictly necessary would violate the prohibition of ill-treatment (see paragraph 31 above), a consideration in line with the principles established by the Court (see, for example, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01, ECHR 2015, and *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, §§ 70-74, 13 October 2020).

78. Nevertheless, having found that the use of force had been unnecessary, the Constitutional Court proceeded to assess the proportionality of the treatment in question. However, it stated that it could not reach a conclusion in this regard due to the applicant's unwillingness to obtain a medical report either after the incident or during the criminal proceedings, despite the trial court ordering her to do so. That being the case, in reaching the conclusion that there had been no violation of the prohibition of ill-treatment, it also considered that the authorities had carried out judicial proceedings with respect to the ill-treatment resulting from the unnecessary

use of force and that the criminal sanction imposed on F.Z. had remedied the harm caused to the applicant (see paragraph 33 above).

79. Having regard to the findings of the domestic courts and to the material in the case file, the Court concludes that the use of force at issue, namely the police officer's spraying of the applicant with tear gas from a distance of less than one metre, was not rendered strictly necessary by the applicant's conduct, since she had not displayed any violent behaviour or resistance towards the police either prior to or during the incident. As for the severity of the impugned act, it notes that the impact of the force used on the applicant was established by the Criminal Court, which found that F.Z. had aimed directly at the applicant's face at a distance of less than one metre, and had continued to do so after the applicant had turned her back. The domestic court found that as a result of that act, the applicant had sustained an injury which could be treated with simple medical care and had left no physical marks (see paragraph 18 above). The Court notes accordingly that the impact of the impugned act in the present case reached the level sufficient to bring it within the ambit of Article 3 of the Convention (for the relevant principles, see *Tsaava and Others*, cited above, § 327) and thus differs from that assessed in the previous cases against Türkiye concerning the general use of tear gas on the crowd, in which the impact on the applicants could not be established (see *Oya Ataman*, § 26; *Çiloğlu and Others*, § 27; and *Aytaş and Others*, § 14, all cited above).

80. As regards the applicant's victim status, the Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of the status of "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Gäfgen*, cited above, § 115).

81. In that regard, while the Constitutional Court did not find a breach of the substantive aspect of the prohibition of ill-treatment and ultimately concluded that there had been no violation of that provision on the ground that the harm sustained by the applicant had been remedied, it nonetheless follows from the decisions of the administrative authorities, the trial court and the Constitutional Court that the use of force in question had not been rendered strictly necessary by the applicant's conduct. Furthermore, the Constitutional Court expressly stated that any use of force which was not strictly necessary would amount to a violation of the prohibition of ill-treatment (see paragraph 31 above; also see paragraph 57 of the Constitutional Court's decision of 3 April 2019 (no. 2015/14363)). It further held that the criminal proceedings against F.Z. concerned ill-treatment resulting from an unnecessary use of force. The Court considers that, taken together, these elements amount to an acknowledgment by the national authorities of a breach of Article 3 of the Convention, at least in substance.

82. It therefore remains for the Court to assess whether the outcome of the criminal and disciplinary proceedings against F.Z. provided sufficient redress – which the applicant could have complemented by pursuing the compensatory remedy by way of an administrative action – and whether that redress, taken together with the acknowledgment of a breach of Article 3, was sufficient to deprive the applicant of her status as a victim within the meaning of Article 34 of the Convention.

(ii) Whether the domestic authorities provided sufficient redress

83. As regards the redress which is appropriate and sufficient to remedy a breach of a Convention right at the national level, the Court has generally considered this to be dependent on all the circumstances of the case, having particular regard to the nature of the Convention violation at stake. In cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (see *Gäfgen*, cited above, § 116).

84. The essential purpose of an investigation under Article 3 of the Convention is to secure the effective implementation of domestic laws prohibiting torture and inhuman or degrading treatment or punishment in cases involving State agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility. The Convention only requires that there should be an investigation capable of leading to the punishment of those responsible (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 310 and 358, 6 April 2004). Nevertheless, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, has been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Gäfgen*, cited above, § 121, and *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 329, 21 January 2021).

85. The Court reiterates that when an agent of the State is accused of crimes that violate Article 3, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of amnesty or pardon should not be permissible. It further reiterates that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she be suspended from duty during the investigation and trial, and should be dismissed if convicted (see *Ateşoğlu v. Turkey*, no. 53645/10, § 25, 20 January 2015, with further references).

86. In the present case, after finding F.Z. guilty of causing intentional bodily harm to the applicant by abusing his authority to use force, and sentencing him to ten months' imprisonment, the Istanbul Criminal Court decided to suspend the pronouncement of the judgment under Article 231 § 5 of the Code of Criminal Procedure. In this connection, the Court refers to the Constitutional Court's finding that, when deciding to suspend the pronouncement of a judgment, the likelihood that the suspect would reoffend had to be assessed in a diligent manner and by prioritising the deterrent effect of punishment (see paragraph 32 above). However, in the present case, no such assessment was carried out by the Criminal Court, which concluded that F.Z. was unlikely to reoffend solely on the basis of his good behaviour during the trial and the absence of any prior conviction (see paragraph 19 above).

87. The Court has held in a number of previous cases that the suspension of the pronouncement of a judgment cannot be considered compatible with the Convention standard of protection from ill-treatment, and undeniably falls into the category of "measures" which are unacceptable, since its effect is to render convictions ineffective. It results in the impunity of the perpetrators, because its application deprives the judgment of all its legal consequences, including the sentence, provided that the offender abides by the suspension order for a period of five years (see *Ateşoğlu*, cited above, § 28, and *Hasan Köse v. Turkey*, no. 15014/11, § 38, 18 December 2018, with further references). The Court notes that in the present case, the judgment delivered concerning F.Z. was indeed cancelled in all respects in 2023 (see paragraph 35 above).

88. The Court also notes that there is no information in the case file to indicate that F.Z. was suspended from duty during the criminal investigation and proceedings against him. Although the administrative authorities established, as a result of the disciplinary investigation, that his act had been unnecessary and unlawful and had contributed to the escalation of the Gezi Park events, the only disciplinary sanction imposed on him was a warning. This was lighter than the usual sanction and the least harsh option available under the Police Disciplinary Regulations (see paragraphs 8, 10 and 43 above).

89. In view of the foregoing, the Court considers that the domestic authorities' decisions suggest that they exercised their discretionary power to mitigate the consequences of a serious unlawful act, rather than demonstrate that such acts could not be tolerated in any way (see *Ateşoğlu*, cited above, § 28, and *Hasan Köse*, cited above, § 37).

90. In this connection, the Court finds it difficult to endorse the reasoning of the Constitutional Court, according to which the sanctions imposed on F.Z. constituted sufficient redress for the unnecessary use of force in question. Although the Constitutional Court considered that the Criminal Court's decision to impose a sentence which was harsher than the minimum sanction provided for by law demonstrated that the authorities did not tolerate such

acts, the Court cannot but observe once again that the sentence in question was ultimately deprived of any practical effect, as the pronouncement of the judgment was suspended in its entirety.

91. In concluding that the sanctions imposed on F.Z. had been a sufficient deterrent, both the Constitutional Court and the Government further argued that deterrence could be assessed on a case-by-case basis, in the light of the form, duration, intensity and scope of the impugned act, as well as its impact on the applicant's health. In their view, such an assessment was not possible in the present case owing to the applicant's own failure to obtain a medical report. The Court cannot give weight to that argument as it has already found that the treatment in question was unnecessary and that the damage caused to the applicant, which was established by the Criminal Court during the criminal proceedings against F.Z., reached the level required to fall within the ambit of Article 3 (see paragraphs 18 and 79 above).

92. The Court accepts that the present case is not comparable to other cases concerning arbitrary and serious acts of brutality by State agents, in which it has held that the imposition of enforceable prison sentences would have been more appropriate (see *Gäfgen*, § 124, with further references). Nevertheless, the suspension of the pronouncement of the judgment – which, as noted above, resulted in the annulment of the finding of F.Z.'s guilt and the sentence imposed on him – together with the warning issued as a disciplinary sanction, appear manifestly disproportionate to a breach of one of the core rights of the Convention and insufficient to ensure the requisite deterrent effect capable of preventing further violations of the prohibition of ill-treatment (ibid.). Although F.Z.'s compliance with the Criminal Court's order to plant 300 trees and to tend to them for six months may, as argued by the Government, be regarded as relevant to the context in which the unlawful use of force had occurred, that measure did not constitute a criminal sanction and cannot, in itself, be considered sufficiently deterrent.

93. Given that the criminal remedy yielded no results capable of providing sufficient redress for a breach of Article 3 of the Convention, the Court considers that any monetary compensation that the applicant might have been awarded – had she made use of that avenue – would not have afforded such redress either. This is because, as stated above, a compensatory remedy can only be complementary to an effective investigation (see *Đurđević*, cited above, §§ 65-66, and *Cestaro*, cited above, § 231).

94. Consequently, the domestic authorities failed to provide the applicant with sufficient redress for the breach of Article 3 of the Convention, which they had acknowledged in substance (compare *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 63-64, 20 December 2007).

95. The Court therefore dismisses the Government's objection with regard to the applicant's victim status and finds that the applicant may still claim to be the victim of a violation of Article 3 within the meaning of Article 34 of the Convention.

(b) The remedy provided by the proceedings against F.Z.'s superiors

96. As to the Government's objection regarding the applicant's failure to lodge a fresh individual application with the Constitutional Court once the criminal proceedings against F.Z.'s superiors, R.E. and M.Z.B., had come to a close, the Court notes that those proceedings ended with the Istanbul Criminal Court's decisions to acquit M.Z.B. and to discontinue the proceedings against R.E. (see paragraphs 36, 37 and 63 above). There is nothing to show that the applicant lodged a new individual application with the Constitutional Court following the end of those proceedings.

97. In this regard, the Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Shmorgunov*, cited above, § 292).

98. The Court considers that the remedy capable of directly redressing the applicant's grievances was the criminal proceedings initiated against F.Z., who, as the principal perpetrator, was directly responsible for the act affecting the applicant and whose criminal liability was established by the domestic courts, unlike that of R.E. and M.Z.B. Having found that the criminal and disciplinary proceedings against F.Z. failed to afford the applicant sufficient redress (see paragraph 94 above), the Court is not convinced that a fresh individual application to the Constitutional Court following the conclusion of the proceedings against R.E. and M.Z.B. – which were of a merely complementary nature (compare *Elvan v. Türkiye*, no. 64937/19, § 95, 7 February 2023) – would have offered any reasonable prospects of success or could have affected its finding as to the inadequacy of the redress afforded to the applicant (see, *mutatis mutandis*, *Dink*, cited above, § 87).

99. The Court therefore dismisses the Government's objection under this head.

(c) Compliance with Article 3 of the Convention

100. The Court has already found that the use of force in issue was not necessary, because it was not warranted by the applicant's conduct, and that the domestic authorities' findings to that effect constituted an acknowledgment of a breach of Article 3 of the Convention (see paragraphs 79 and 81 above).

101. In the absence of any claim or evidence that the applicant had suffered serious physical or mental pain, the treatment in question cannot be characterised as inhuman, still less as torture. The Court therefore considers

that the facts of the present case disclose degrading treatment (compare *Bouyid*, cited above, § 112).

102. The Court has further found that the domestic authorities failed to afford the applicant sufficient redress and that the criminal-law system, as applied in the present case, resulted in the impunity of the perpetrator, without providing the requisite deterrent effect (see paragraphs 86-94 above).

103. There has accordingly been a violation of Article 3 of the Convention under both its substantive and procedural aspects.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

105. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

106. The Government contested that claim, arguing that it was excessive and inconsistent with the amounts awarded in similar cases.

107. Ruling on an equitable basis, the Court awards the applicant EUR 6,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

108. The applicant also claimed EUR 5,400 for the costs and expenses incurred before the Court. In support of her claim, she submitted a legal-fee agreement entered into with her lawyer, according to which she was to pay EUR 1,000 for the preparation of the application form and an hourly rate of EUR 100 for any further work on the case. She also provided the Court with a breakdown of the time spent by her lawyer on the case, which amounted to forty-four hours of work.

109. The Government contested that claim, arguing that the applicant had failed to show that the costs and expenses had actually been incurred. They submitted that the amount claimed was high in comparison with the amounts awarded under this head in similar cases.

110. 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. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court

may reject the claim in whole or in part (see, among many other authorities, *Danileţ v. Romania* [GC], no. 16915/21, § 211, 15 December 2025).

111. 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 claimed in full for the proceedings before it, plus any tax that may be chargeable to the applicant (see *Aydın Sefa Akay v. Türkiye*, no. 59/17, § 157, 23 April 2024).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection of non-exhaustion of domestic remedies, in so far as it concerns the applicant's failure to lodge an individual application before the Constitutional Court following the end of the criminal proceedings against F.Z.'s superiors, and their objection of loss of victim status, and *dismisses* them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects;

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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,400 (five thousand four hundred 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 17 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Arnfinn Bårdsen President