

Press release issued by the Registrar

Chamber judgment¹

[Perisan and Others v. Turkey](#) (application no. 12336/03)

**DISPROPORTIONATE USE OF FORCE TO QUELL DISTURBANCES IN A PRISON AND
LACK OF EFFECTIVE INVESTIGATION**

***Violation of Article 2 (right to life) of the European Convention on Human Rights in
respect of eight prisoners who died and six who survived their injuries***

***Violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of six
other prisoners***

***Violation of Articles 2 and 3 (lack of effective investigation) in respect of all the
applicants***

No violation of Article 3 in respect of the 34 applicants related to the prisoners who died

Principal facts

The applicants are 46 Turkish nationals. 34 of them were acting both in their own name and on behalf of eight of their relatives, prisoners who died during a security forces operation at Diyarbakır Prison (Turkey) on 24 September 1996. The remaining 12 applicants, prisoners who were injured during the events, were acting in their own name.

The applicants and the Government presented differing accounts of the events. According to the applicants, following scuffles between two prisoners and the chief warden during a long wait by a group of prisoners to enter the visiting room, police officers and gendarmes armed with truncheons and batons had beaten the offending prisoners and their fellow inmates, in some cases to death. According to the Government a riot had taken place that morning and prisoners armed with a variety of metal objects (taps, radiator pipes, lead piping, etc.) had attacked the warders. The prosecutor attached to the prison informed the Justice Minister, who ordered the deployment of around 200 gendarmes and police officers from the rapid-reaction force. The Government maintained that around 50 officers equipped with truncheons, helmets and riot shields had been sent to confront the prisoners while the remaining officers secured the premises.

The operation left 33 prisoners injured and 27 gendarmes with minor injuries. Eight prisoners died shortly afterwards, having sustained serious injuries including fractured skulls. The forensic medical institute and the prison doctor examined the other injured prisoners on the day of the events. They pronounced the lives of six of them to be in danger in view of the seriousness of their injuries; however, the prisoners in question survived. Convalescence

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

periods of between 10 and 15 days were prescribed for the remaining applicants who had been injured.

Various investigations were opened into the events. The Diyarbakır public prosecutor's office commenced an investigation and, as early as 26 September 1996, heard evidence from warders and prisoners who had been present. On 8 October 1996 a human rights sub-committee of the National Assembly also launched an inquiry and took evidence from, among others, the public prosecutor, the prosecutor attached to the prison, the prison governor and his deputies and the chief warder (all of whom had been removed from office in the meantime), and also from doctors and prisoners.

In November 1996 criminal proceedings were instituted against 24 prisoners for rioting and assaulting persons exercising public authority. However, the offences of which they were accused were covered by an amnesty law of 22 December 2001 and the proceedings were suspended. Meanwhile, in December 1996, criminal proceedings were started against various members of the prison staff and against 65 gendarmes and police officers. On 27 February 2006 the Assize Court acquitted three of the accused, declared the prosecution of seven others time-barred and found 62 gendarmes and police officers guilty of causing death by the use of excessive and unnecessary force. It sentenced each of them to 18 years' imprisonment, reduced to five years on account of extenuating circumstances and good conduct, and to a three-year ban on holding public office. The case was referred to the Court of Cassation, which quashed the judgment on 15 May 2007 on account of a number of irregularities. The case is currently pending again before the Assize Court.

Complaints, procedure and composition of the Court

Relying on Articles 2 and 3, the applicants complained of the killing of their relatives and the ill-treatment inflicted by the security forces during the operation in question. The relatives of those who died also considered that their own suffering as a result of the appalling circumstances of the deaths amounted to a separate violation of Article 3. All the applicants further complained of shortcomings in the preliminary investigation and of the dilatory attitude of the Assize Court, which in their view were in breach of the procedural obligations under Articles 2 and 3 and of Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy). Under Article 14 (prohibition of discrimination), the applicants further complained that they had been subjected to discriminatory treatment on account of their ethnic origin and their political views. Lastly, the relatives of the prisoners who died claimed to be the victims of a violation of Article 8 (right to respect for private and family life).

The applications were lodged with the European Court of Human Rights on 21 March 2003, 21 May 2004 and 24 March 2005.

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

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
İşıl **Karakaş** (Turkey), **judges**,

and Sally **Dollé**, **Section Registrar**.

Decision of the Court

Complaints concerning the alleged breach of the right to life and alleged inhuman and degrading treatment under Articles 2 and 3

The Court examined first of all whether Turkey was responsible for a breach of the right to life in respect of the **eight prisoners who died**. It noted that it was not in dispute that on 27 September 1996 clashes had taken place in Diyarbakır Prison between approximately 30 prisoners and the security forces. It therefore considered that the authorities' intervention could be regarded as being aimed at quelling a "riot or insurrection" within the meaning of Article 2. At first glance there was nothing to indicate that the security forces, who had used truncheons among other implements, had employed methods prohibited by Turkish law in the course of the operation. The Court nevertheless had to ascertain whether the use of force had been compatible with the State's obligation to protect the lives of persons under its responsibility such as prisoners. Although the security forces had been ordered not to strike prisoners on the head and had received the relevant training, a fact stressed by the authorities, the Court could not overlook the seriousness of the outcome of the operation. Eight individuals who had been entirely under the authority and responsibility of the State had died from multiple injuries and fractures, in particular of the skull and ribs, inflicted by truncheons and other blunt instruments. The Government's contention that the force used had been in response to an attack by prisoners armed with dangerous implements (taps, radiator pipes, lead piping, etc.) was undermined by the fact that the injuries sustained by the gendarmes had been localised and minor. In any event, there was no verifiable evidence in the file to indicate that the deceased and the applicants, or at least some of them, had played an active part in the "riot" or had attacked the police officers and soldiers. In the Court's view the present case demonstrated above all the absence of a system of adequate and effective safeguards against arbitrariness and abuse of force. It further considered that the force used against the prisoners, which had led to the deaths of eight of them, had not been "absolutely necessary" within the meaning of Article 2. There had therefore been a breach of that Article in respect of the prisoners who died.

As to the **six applicants who had sustained life-threatening injuries**, the Court considered – in view of the prognosis and the aforementioned considerations regarding the use of force in this case – that they too had been the victims of violence placing their lives in danger, notwithstanding the fact that they had ultimately survived. Accordingly, there had been a violation of Article 2 in respect of these applicants also.

With regard to the **six other applicants who had been injured**, the Court examined the issue from the standpoint of Article 3, as their lives had not been in danger. It reiterated that where an individual was deprived of his or her liberty, the use of physical force not rendered absolutely necessary by his or her conduct amounted in principle to a breach of the prohibition of inhuman or degrading treatment, which was absolute even in the most difficult circumstances. It was not in dispute that the six applicants concerned had been seriously injured (as demonstrated by the periods of convalescence prescribed) while they had been under the authority and responsibility of the State. It was equally clear that they had suffered physical pain and a deep sense of anxiety in the face of indiscriminate lethal violence of such intensity that they could not have been sure whether they would survive. The treatment to which they had been subjected was therefore sufficiently severe to fall within the scope of Article 3. As the Government had provided no justification for the suffering thus inflicted on the six applicants concerned, or proved that their allegations were false, the Court could not but find a violation of Article 3 in this regard.

Lastly, with regard to the **34 applicants related to the prisoners who died**, the Court could not discern the existence of a sufficient number of special factors giving their suffering a dimension and character distinct from the emotional distress inevitably caused to relatives of a victim of a serious human rights violation. There were therefore no grounds for finding a separate violation of Article 3.

Complaints under Articles 2 and 3 concerning the alleged lack of an effective investigation into the events and complaints under Articles 6 and 13

The Court did not deem it necessary to examine separately the applicants' complaints under Articles 6 and 13, as the arguments submitted in that connection had been analysed under Articles 2 and 3. On the merits, the Court accepted that procedural steps had been taken by the authorities in charge of the preliminary investigation and by the trial court. However, in cases of this type, the State was bound by requirements of promptness and reasonable expedition. At the present time (over 13 years and seven months after the events), the criminal proceedings against the officers concerned remained pending before the first-instance court without the slightest tangible and reliable sign of progress capable of leading to the establishment of responsibility. That was sufficient for the Court to conclude that the proceedings in question could not be said to satisfy the requirements of Articles 2 and 3, which had been breached (in their procedural aspect) in respect of all the applicants.

Complaints concerning the alleged breach of the right to respect for private and family life and alleged discrimination (Articles 8 and 14)

In view of the circumstances of the case as a whole and the fact that the main legal issues had been addressed under Articles 2 and 3, it was not deemed necessary to examine these complaints.

Just satisfaction (Article 41)

The Court held that Turkey was to pay, in respect of non-pecuniary damage, 60,000 euros (EUR) jointly to the heirs of the prisoners who had died (minus any sum which might be paid at domestic level in respect of one of them, whose family had successfully brought administrative proceedings in Turkey). Turkey was also to pay, in respect of non-pecuniary damage, EUR 36,000 to each of the six applicants who had been the victims, among other things, of a breach of the right to life and had survived, and between EUR 12,000 and EUR 21,000 (depending on the seriousness of the injuries) to each of the six other applicants who had sustained, in particular, inhuman and degrading treatments. Finally, the Court awarded the applicants EUR 12,000 jointly for costs and expenses.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.