



Turkey needs to adopt new measures to prevent the police from using disproportionate violence and unnecessary and excessive tear gas during peaceful demonstrations

In today's Chamber judgment in the case of [İzci v. Turkey](#) (application no. 42606/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of **Article 3 (prohibition of inhuman or degrading treatment/lack of effective investigation)** of the European Convention on Human Rights, and

a violation of **Article 11 (freedom of assembly)**

The case concerned in particular a Turkish woman who complained that she had been attacked by the police following her participation in a peaceful demonstration to celebrate Women's Day in Istanbul and that such police brutality in Turkey was tolerated and often went unpunished.

The Court considered that, as in many previous cases against Turkey, the police officers had failed to show a certain degree of tolerance and restraint before attempting to disperse a crowd which had neither been violent nor presented a danger to public order, and that the use of disproportionate force against the demonstrators had resulted in the injuring of Ms İzci. Moreover, the failure of the Turkish authorities to find and punish the police officers responsible raised serious doubts as to the State's compliance with its obligation under the European Convention to carry out effective investigations into allegations of ill-treatment. Finally, the use of excessive violence by the police officers had had a dissuasive effect on people's willingness to demonstrate.

The Court reiterated that a great number of applications against Turkey concerning the right to freedom of assembly and/or excessive use of force by law enforcement officials during demonstrations were currently pending. Considering the systemic aspect of the problem, it therefore requested the Turkish authorities to adopt general measures, in accordance with their obligations under Article 46 of the Convention, in order to prevent further similar violations in the future.

Principal facts

The applicant, Nergiz İzci, is a Turkish national who was born in 1974 and lives in Istanbul (Turkey).

On 6 March 2006, she took part in a demonstration in Beyazıt Square in Istanbul to celebrate Women's Day which ended in clashes between police and protesters. Video footage of the events examined by the Court showed police officers hitting a large number of demonstrators with their truncheons and spraying them with tear gas.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Women who had taken refuge in shops were also dragged out by the police and beaten up. According to the report of an expert appointed by the Turkish authorities to examine the video footage, police officers had not issued any warnings to disperse demonstrators before attacking them. The demonstrators, for their part, had not tried to respond to the attack but had only tried to flee.

Following the incident, Ms İzci alleged that she had been injured as a result of the excessive force used by the police officers and requested a medical examination. The doctors found bruising all over her body and concluded that her injuries would prevent her from working for a period of five days. Ms İzci subsequently lodged an official complaint against the police officers whom she considered to be responsible for her ill-treatment.

In December 2005, the prosecuting authorities accused a total of 54 police officers of having caused injuries by excessive use of force. The trial started immediately and was concluded in May 2011. 48 police officers were acquitted for lack of evidence. The six remaining defendants were sentenced to terms of imprisonment ranging from 5 to 21 months for having used excessive force against the demonstrators. However, the criminal proceedings against them were discontinued in September 2011 due to the statute of limitations.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment/lack of effective investigation), Ms İzci claimed that she had been beaten up, sprayed with various gases, sworn at and insulted by the police officers. She also alleged that such attacks by police officers had been tolerated for many years and had gone unpunished in Turkey. She further complained in particular of a violation of Article 11 (freedom of assembly).

The application was lodged with the European Court of Human Rights on 9 November 2005.

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

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

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

Decision of the Court

Article 3

The Court reiterated that, while Article 3 did not prohibit the use of force for making an arrest, such force should only be used when strictly necessary and should never be excessive. In this case, it considered that Ms İzci's injuries as described in her medical report had been severe enough to amount to ill-treatment. Moreover, the authorities had not challenged her allegations that the injuries had been caused by the police officers, whose violent methods had been confirmed by the video footage of the events. Furthermore, the authorities had not submitted any evidence to show that Ms İzci had resisted the police. In any case, the fact that she had neither been arrested nor

prosecuted for any criminal offences following the events proved that she had not caused any danger to public order or to the police officers.

The Court found that the absence of clear and adequate instructions regulating the use of tear gas in Turkey had contributed to the excessive reliance on such weapons by the police officers. It also considered that the police officers had failed to show a certain degree of tolerance and restraint before attempting to disperse a crowd which had neither been violent nor presented a danger to public order. Indeed, the police's hasty response to a peaceful gathering had caused mayhem and the ensuing use of disproportionate force against the demonstrators had resulted in the injuring of Ms İzci.

Moreover, the Turkish courts had admitted that the police officers had hidden their identity numbers and faces to avoid being recognised. Therefore, the victims had difficulties in identifying them, which had contributed to the delay in the criminal proceedings. Furthermore, the authorities had allowed the police officers to go unpunished by discontinuing the criminal proceedings on account of the statute of limitations. The failure to identify and assess the criminal liability of the majority of the police officers, only six having been found guilty and the remaining 48 acquitted, raised serious doubts as to the compliance of the Turkish authorities with their obligation under the European Convention to carry out effective investigations into allegations of ill-treatment.

The Court reiterated that when a State official was accused of ill-treatment, criminal proceedings and sentencing should never be time-barred and the granting of an amnesty never envisaged. Similarly, State officials charged with crimes involving ill-treatment should be suspended from duty during both the investigation and the trial. However, the accused police officers in this case had not apparently been suspended in the course of the six years of criminal proceedings against them.

The Court therefore concluded that the excessive use of violence against Ms İzci, and her being sprayed with tear gas, coupled with the failure of the Turkish authorities to find and punish those responsible had amounted to a violation of Article 3 both in its substantive and procedural aspect.

Article 11

The Court accepted that the interference with Ms İzci's right to freedom of assembly had had a legal basis. It had also pursued the legitimate aim of preventing disorder and crime as well as maintaining public order. The applicant's behaviour had not, however, required such heavy-handed intervention. Therefore, the violence used towards Ms İzci by the police officers had been disproportionate to the aim pursued and had had a dissuasive effect on people's willingness to demonstrate, in violation of Article 11.

Article 46

The Court noted that it had already found in over 40 of its judgments against Turkey that the heavy-handed intervention of law enforcement officials in demonstrations had amounted to a violation of Article 3 and/or Article 11 of the Convention. The common feature of those cases was the failure of the police forces to show a certain degree of tolerance towards peaceful gatherings and, in some instances, the precipitate use of force, including tear gas, by the police. In over 20 of those judgments, the Court had already observed the failure of the Turkish investigating authorities to carry out effective investigations into allegations of ill-treatment by law enforcement personnel during demonstrations. It further stressed that 130 applications against Turkey concerning the right to freedom of assembly and/or use of force by law enforcement officials during demonstrations were currently pending.

Having classified these problems as "systemic", the Court requested the Turkish authorities to adopt general measures in order to prevent further similar violations in the future. In particular, it asked the Turkish authorities to take steps to ensure that the police act in accordance with Articles 3 and 11 of the Convention, that the judicial

authorities conduct effective investigations into allegations of ill-treatment in conformity with the obligation under Article 3 of the Convention and in such a way as to ensure the accountability of also senior police officers. Finally, the Court highlighted the need for a clearer set of rules to be adopted as regards the use of violence and weapons such as tear gas during demonstrations, especially against demonstrators who do not put up violent resistance.

Just satisfaction (Article 41)

The court held that Turkey was to pay the applicant 20,000 euros (EUR) in respect of pecuniary damage.

The judgment is available only in English.

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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.