

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

SECOND SECTION

CASE OF TAYDAŞ v. TURKEY

(Application no. 52534/09)

JUDGMENT

STRASBOURG

26 November 2013

FINAL

26/02/2014

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



In the case of Taydaş v. Turkey,

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

Guido Raimondi, *President,*
Işıl Karakaş,
Peer Lorenzen,
Dragoljub Popović,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Egidijus Kūris, *judges,*

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 52534/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Hıdır Taydaş ("the applicant"), on 29 September 2009.

2. The applicant was represented by Mr B. Yıldırım, a lawyer practising in Tunceli. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that he had been shot by the gendarmerie; that the force used against him had not been absolutely necessary; and that the domestic authorities had failed to carry out an effective investigation into the circumstances of his wounding.

4. On 7 September 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Izmir.

6. On 3 September 2007 at around 8.10 p.m. the applicant was shot by officers from a gendarmerie special operations team immediately after he

and his brother left a neighbouring house in the vicinity of their hamlet, Gölek, in the district of Mazgirt, in Tunceli, south-east Turkey.

7. As a result of the shooting, the applicant was hit with a total of eight bullets and suffered injuries to his arms, his legs, and his left shoulder. According to a medical report issued by the Forensic Medicine Department of Fırat University dated 13 November 2007, the injuries that the applicant sustained were life-threatening. According to the report, the applicant received medical treatment and underwent surgical operations at the cardiac surgery units at the Elazığ Military Hospital and the Fırat University Hospital between 3 and 19 September 2007. He was then transferred to the Ege University Hospital in Izmir upon the request of his family members. A further medical report issued on 27 June 2011 by a board of doctors from the Karşıyaka State Hospital stated that the applicant was experiencing difficulties in walking and using his left shoulder as a result of firearm injuries. In particular, he had suffered a 48% loss of function in his legs and a 10% loss of function in his left shoulder. According to the report, the applicant was permanently disabled and only able to walk with the aid of two crutches. The applicant's brother was not injured during the shooting.

A. Crime scene investigation of 4 September 2007

8. On 4 September 2007 a crime scene investigation was carried out by gendarmerie officers from the Tunceli Provincial Gendarmerie Command, who then drafted a crime scene report. The report was signed by six gendarmerie officers, including İ.S. and M.K., who had taken part in the operation of 3 September 2007. The report drafted by the officers stated that the special operations team had received information that members of the PKK[1], an illegal organisation, would be going to the house where the applicant and his brother had gone. The information had been given by B.B., the son of M.B., the owner of the house, who had been threatened by members of the PKK. The security forces began search and detection activities in the region at around 3.30 a.m. after the receipt of this information and at 3.30 p.m. the commander of the operation, together with two team commanders, identified four points in the vicinity of M.B.'s house at which the officers could position themselves. At around 7.40 p.m. gendarmerie officers arrived in the vicinity, took up position at the four different points identified earlier by their commanders and waited for PKK members. The applicant and his brother arrived at the house at 8 p.m. and left at 8.10 p.m. When they had left the house, E.Ö. and G.A., officers positioned at point no. 3 who had a thermal camera and a night vision device, informed the commander of the operation, İ.S., who was positioned at point no. 2, that the applicant and his brother might have weapons on

[1] Kurdistan Workers' Party.

them. They also informed the commander that the applicant and his brother were acting suspiciously and that they had checked the area around the house with their torches and then turned them off. The team commander subsequently asked M.A. and Y.S., officers who were positioned at the same point and who had thermal cameras, whether the applicant and his brother were carrying weapons. The officers informed the commander that the applicant and his brother had objects in their hands which looked like weapons. The team commander then ordered the applicant and his brother to stop when they were 60 metres away. As they failed to do so, officers first fired warning shots in the air (3-5 shots) and then opened fire in the direction of the applicant and his brother (13-14 shots) towards their feet. They stopped firing when the applicant and his brother shouted that they were villagers. The report further stated that when the officers approached the applicant and his brother and found that the former was wounded, they gave him first aid straight away and the applicant was transferred to Elazığ Military Hospital by helicopter. According to the report, a total of twenty-six spent bullet cases were found where the officers had been located and there was a distance of 15 to 30 metres between the officers and the applicant and his brother.

9. A gendarmerie officer also drew a sketch of the scene, according to which the applicant was 60 metres away from M.B.'s house and 15 and 30 metres away from points no. 2 and 1, respectively, where spent bullet cases had been found.

B. Investigation carried out by the Mazgirt Public Prosecutor

10. On an unspecified date the applicant and his brother lodged a complaint against the gendarmerie officers who had been responsible for the applicant's shooting. The Mazgirt Public Prosecutor subsequently initiated an investigation against six gendarmerie officers on a charge of exceeding the limits of their powers in resorting to force.

11. On 6 September 2007 the Mazgirt Public Prosecutor took statements from the applicant's brother, S.T. He submitted that they had gone to M.B.'s house because they had wished to inform his son, B.B., that their mother would not be going to the town centre with him the next day. S.T. further maintained that they had walked with their torches on and that there had been no warning or warning shots before the shooting. He contended that when the shooting had started, he had been 1-2 metres behind his brother. They had both thrown themselves on the ground when the shooting had started.

12. On 6 and 13 September 2007 the public prosecutor obtained statements from B.B. and M.B., the occupants of the house, respectively. They both maintained that they had informed the security forces of the threats that M.B. had received. B.B. further contended that he had seen the

applicant's mother at around 5 p.m. on the same day and that she had asked him to take her to the town centre the next day. B.B. and M.B. stated that the applicant and his brother had come to their house in order to tell them that their mother would not be going to the town centre with B.B after all and that they had subsequently left. B.B. maintained that he had been surprised when he first saw the applicant and S.T., given that their visit had occurred after sunset. B.B. further noted that he had told the applicant and S.T. to turn their torches on when they left and that they had said "OK". M.B. maintained that the applicant and his brother had had lit torches in their hands when they had arrived at his house. He also contended that the gunfire had started 2-3 minutes after the applicant and his brother had left; that it had lasted a few minutes; and that at the same time as the gunfire he had heard the applicant and S.T. shouting "We are villagers. Do not fire." M.B. submitted that his house had also been hit by bullets.

13. On 11 September 2007 the Mazgirt Public Prosecutor took statements from a number of gendarmerie officers who had been involved in the operation of 3 September 2007. İ.S., the team commander, maintained before the public prosecutor that they had started the operation upon receipt of information that terrorists would be going to M.B.'s house. He noted that a total of twenty-six gendarmerie officers had taken part in the operation. He further contended that E.Ö. and G.A. had informed him that there had been a flash of light from an object carried on the shoulder of one of the suspects which extended to hip level. He further stated that M.A. and Y.S. had also informed him that one suspect was carrying an object that extended from the shoulder to the hip. The commander maintained that the applicant and his brother had come within 10 metres of the point where they were positioned when he shouted at them to stop. According to the commander, the applicant and his brother had failed to stop despite the warning and had attempted to escape when they heard the warning shots. At that point he instructed the officers to open fire. İ.S. noted that a total of five officers had fired towards their feet and that they had stopped firing when the applicant had been shot and his brother had shouted that they were villagers. İ.S. lastly contended that the applicant's injuries had been his own fault and that they had not intended to kill the applicant or his brother. According to İ.S., if they had intended to kill them, neither the applicant nor his brother would have survived.

14. In their statements before the public prosecutor, E.Ö. and G.A. maintained that they had seen the applicant and his brother by using a night vision device and a thermal camera while the suspects were walking towards M.B.'s house. They had observed that the suspects had stopped when they were close to the house and had remained kneeling down for a while before entering into the house. They further maintained that they had seen shiny objects on the suspects' shoulders. The officers noted that when they had left the house the suspects had lit their torches, had pointed them

towards the path that they would take and had then turned them off. The officers had informed İ.S. of the aforementioned observations and had considered that the suspects might have been sending a message to another group in the area with their torches. They had then heard İ.S. ordering the suspects to stop and had subsequently heard firing for around five seconds.

15. M.A., Y.S., and three other officers, R.E., B.B.A and M.K., in almost identical statements before the Mazgirt Public Prosecutor, maintained that İ.S. had told them that officers from another position had informed him that one of the two suspects was carrying an object on his shoulder which extended to hip level. Y.S. and M.K. further noted that they had also received this information through their radio transmitters. They further stated that the applicant and his brother had attempted to run away when their commander had told them to stop. As the suspects had not complied with the commander's instruction, they had first fired warning shots and had then opened fire towards the suspects' feet. They had stopped firing when one of the suspects had shouted that they were villagers a few seconds later. They maintained that it had been dark when the shootings occurred and that the applicant and his brother had not had lit torches with them. They stated that the applicant had been wounded because of his own conduct and that they would not have opened fire if the applicant and his brother had stopped in the first place. According to these five officers, the applicant must have been shot in the shoulder after falling to the ground upon being shot in the legs. They lastly contended that they had not intended to kill the applicant or his brother and that if they had had that intention, neither the applicant nor his brother would have survived.

16. In their statements before the public prosecutor, Ş.Y. and A.Ş., two officers who had been positioned at the farthest point from the house, stated that they had not heard their commander give the order to stop, as it had been impossible due to the distance between them, and that they had heard gunfire for a few seconds. They had also heard their commander's instruction to hold fire over the radio transmitter.

17. On 13 September 2007 the Mazgirt Public Prosecutor held an onsite inspection in Gölek. The public prosecutor observed the area where the applicant had been shot and heard İ.S., M.K. and A.Ş., who reiterated their statements given on 11 September 2007. During the inspection, a gendarmerie officer took photographs of the area under the instructions of the Mazgirt Public Prosecutor.

18. On 1 February 2008 the Mazgirt Public Prosecutor decided that his office did not have jurisdiction over the prosecution, given that the suspects had allegedly committed the offence of excessive use of force. The Mazgirt Public Prosecutor then sent the investigation file to the Elazığ Military Prosecutor's Office.

C. Decision of the Elazığ Military Prosecutor

19. On 31 December 2008 the Elazığ Military Prosecutor decided not to bring criminal proceedings against the six gendarmerie officers. The military prosecutor noted that the applicant had stated that he and his brother had had their torches on when he had been shot and that there had been hundreds of shots. The prosecutor found these claims unfounded, considering that at the time of the shootings night had not entirely fallen and that it would not therefore have been reasonable to have torches switched on. In the light of the statements of the applicant and his brother that they had not at first realised that they were being targeted and had only thrown themselves to the ground after the shooting had started, the prosecutor considered that the accused officers had not fired directly towards the applicant and his brother. The prosecutor further noted that the applicant's brother, M.B. and B.B. had all stated that the officers had fired because they had considered the applicant and his brother to be terrorists, a statement which was in line with the accused officers' defence submissions. According to the prosecutor, the manner in which the applicant and his brother had acted (staying in the house only for 5 minutes, leaving the house without the hosts coming out of the house, keeping a distance between them and turning their torches off while walking) had justified the officers' suspicions that they were terrorists. The prosecutor further noted that, had there been hundreds of shots fired, the applicant's brother would also have been injured. The prosecutor considered that it had been reasonable for the gendarmerie officers to think that the torches had been weapons as it had been dark and because the torches, whose dimensions were 25 cm x 15 cm, had not been switched on, and that the information given to the security forces had corresponded to the circumstances as they unfolded. The military prosecutor finally found it established that gendarmerie officers had fired towards the ground and towards the feet of the applicant, whom they had considered to be a terrorist, and with a view to effecting his arrest in accordance with the law. He therefore concluded that the officers had not been at fault and had not used excessive force.

20. On an unspecified date the applicant lodged an objection against the decision of the military prosecutor.

21. On 6 April 2009 the Malatya Military Court upheld the Elazığ Military Prosecutor's reasoning and dismissed the applicant's objection.

II. RELEVANT DOMESTIC LAW

22. A description of the relevant domestic law can be found in *Mustafa Aldemir v. Turkey*, no. 53087/07, §§ 28-31, 2 July 2013.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2, 3, 6 AND 13 OF THE CONVENTION

23. The applicant complained under Articles 2 and 3 of the Convention that the force used by the gendarmerie officers had not been absolutely necessary, that the excessive nature of the use of force had shown that the officers had in fact intended to kill him, and that he had suffered bodily harm as a result of the shootings. He further complained under Articles 2, 6 and 13 of the Convention that the domestic authorities had failed to carry out an effective investigation into the circumstances of his wounding.

24. The Government contested that argument.

25. The Court notes at the outset that the Government did not challenge the applicability of Article 2 of the Convention. In any event, the Court considers that the applicant's fortuitous survival does not prevent the Court from examining the complaint under Article 2 of the Convention, since the use of firearms in the instant case was potentially fatal and put the applicant's life at risk (see paragraph 7 above). Indeed, the Court has examined complaints under this provision in a number of cases where the alleged victim did not die as a result of the impugned conduct (see *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI); *Peker (no. 2) v. Turkey*, no. 42136/06, §§ 39-43, 12 April 2011 and the cases cited therein; *Evrim Öktem v. Turkey*, no. 9207/03, §§ 42 and 43, 4 April 2008 and the cases cited therein; and compare with *Mustafa Aldemir*, cited above, §§ 28-31). Thus, having regard, in particular, to the fact that the injuries that the applicant sustained were life-threatening and in the light of the aforementioned case-law, the Court deems it more appropriate to examine the applicant's complaints solely from the standpoint of Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

26. The Government submitted that the applicant had failed to exhaust domestic remedies as the domestic proceedings were still pending. In the alternative, they maintained that the applicant, who claimed that the investigation had been ineffective, should have applied to the Court within six months after the shooting.

27. The applicant replied that he had exhausted domestic remedies and had introduced the application within six months after the final domestic decision.

28. The Court observes that the investigation into the applicant's allegations ended on 6 April 2009, when the Malatya Military Court dismissed the applicant's objection to the decision of 31 December 2008, whereas the application was introduced on 29 September 2009. It therefore dismisses the Government's objection that the domestic proceedings were pending at the time of the introduction of the present application. Similarly, given that the application was lodged within six months after the final decision in the domestic proceedings, the Court also dismisses the second limb of the Government's objections.

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. The applicant argued that the force used by the gendarmerie officers against him had been unlawful. He maintained that the excessive nature of the use of force, as a result of which he had become disabled, showed that the security forces had in fact intended to kill him. He further contended that the security forces had not warned him and his brother to stop and that he had not attempted to escape, as the members of the security forces had alleged. According to the applicant, the security forces had actually seen him and his brother carrying torches, and not weapons, before firing but had fired anyway, since they had thought that he and his brother were terrorists.

31. The applicant further submitted that the investigation carried out by the Mazgirt Public Prosecutor and the military prosecutor had been ineffective. He stated in this respect that the investigation had been conducted by the gendarmerie forces and that the Mazgirt Public Prosecutor had only gone to the place where he had been shot after 10 days had passed. The applicant further maintained that neither he nor his lawyer had been allowed access to the investigation file. He contended, in this connection,

that the onsite inspection conducted by the Mazgirt Public Prosecutor had also been inadequate, as the fact that M.B.'s house had also been hit by bullets had not been noted in the report prepared afterwards. In addition, the Elazığ Military Public Prosecutor had also failed to carry out an onsite visit.

32. The Government submitted that the security forces had acted in accordance with the law. According to the Government, the torches carried by the applicant and his brother had been identified as weapons by the gendarmerie officers because the nature of the area had prevented the security forces from having a clear view of the applicant and his brother. Furthermore, the information given to the security forces had corresponded to the circumstances in which they had found themselves. The Government maintained that the gendarmerie officers had first warned the applicant and his brother and had fired warning shots before opening fire towards them. They concluded that the force used against the applicant had been absolutely necessary and proportionate.

33. As regards the investigation, the Government submitted that the Mazgirt Public Prosecutor had conducted an onsite visit and prepared a report and a sketch of the scene of the incident. Furthermore, the evidence found at the scene had been safeguarded. The Government contended that both the Mazgirt Public Prosecutor and the Elazığ Military Public Prosecutor had conducted an adequate investigation, to which the applicant had had access. According to the Government, both prosecutors had heard the applicant, his brother, the accused officers and witnesses. They maintained that the investigation had been effective and had been concluded within a year and seven months.

2. The Court's assessment

34. The Court reiterates that the text of Article 2 of the Convention read as a whole demonstrates that paragraph 2 does not primarily define instances where it is permitted to intentionally kill an individual, but describes situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of any of the purposes set out in subparagraphs (a), (b) or (c). In this respect the use of the term "absolutely necessary" in Article 2 § 2 indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraph 2 of Articles 8-11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in the subparagraphs of the Article (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 148-149, Series A no. 324).

35. Turning to the circumstances of the present case, it is not disputed between the parties that the applicant was shot and seriously injured by the

security forces of the respondent State. The Court will therefore examine whether the Government have discharged their burden of justifying the shooting. In doing so, it will have particular regard to the investigation carried out at the domestic level in order to establish whether that investigation was effective, in the sense that it was capable of leading to the determination of whether the force used was or was not justified in the circumstances (see, for example, *Gülbahar Özer and Others v. Turkey*, no. 44125/06, § 59, 2 July 2013, and *Özcan v. Turkey*, no. 18893/05, § 61, 20 April 2010).

36. The central importance of the protection afforded under Article 2 of the Convention is such that the Court is required to subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination – even where domestic proceedings and investigations have already taken place (see *Özcan*, cited above, § 63, and *Erdoğan and Others v. Turkey*, no. 19807/92, § 71, 25 April 2006).

37. As for the planning of the operation, the Court observes that the security forces had received information from B.B. that members of the PKK would be going to his father's house, where the applicant and his brother subsequently went. They therefore instigated an operation in the area during the early hours of 3 September 2007. After almost twelve hours of work, the operation commander and team commanders chose four points facing M.B.'s house at which the members of the security forces could position themselves. Gendarmerie officers then took up position at those points and began waiting. The gendarmerie officers thus had adequate time and resources to give thought to different ways of observing possible suspects and apprehending them by using non-lethal methods. Thus, it cannot be said that the security forces had to take decisions and act in the heat of the moment (compare with *Anik and Others v. Turkey*, no. 63758/00, § 63, 5 June 2007). In this connection, the Court has serious doubts regarding the Government's submissions that the officers – who had a thermal camera and a night vision device – were unable to have a clear view of the applicant and his brother from where they were positioned.

38. As to the investigation, the Court observes at the outset that the initial and critical phases of the investigation were carried out by members of the gendarmerie unit who had carried out the operation of 3 September 2007. M.K. and the four other officers who signed the crime scene report were subsequently identified as suspected of being responsible for the applicant's wounding by the Mazgirt Public Prosecutor. In fact, İ.S. was the commander of the whole operation of 3 September 2007. The same officers also secured the crucial evidence, such as the spent bullet cases found in the area. The Court considers that allowing the same unit of gendarmerie

officers involved in the operation to take such an active part in the investigation was not only so serious as to taint the independence of the entirety of the investigation but also entailed the risk that evidence crucial for establishing the responsibility of the gendarmerie officers would be destroyed or ignored (see *Gülbahar Özer and Others,* cited above, § 63; *Mižigárová v. Slovakia*, no. 74832/01, § 100, 14 December 2010 and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 333-341, ECHR 2007-II).

39. Furthermore, the Mazgirt Public Prosecutor failed to conduct an onsite inspection in the area for ten days, which entailed a further risk of the evidence being destroyed. What is more, when the public prosecutor visited the area in question three of the members of the security forces who had directed and taken part in the operation accompanied him. The Court does not ignore the fact that they made statements to the public prosecutor in their capacity as suspects. Yet, the Court finds the absence of the applicant's lawyer, his brother or the witnesses during that visit inappropriate. In the Court's view, their presence would not only have helped the public prosecutor in establishing the circumstances of the incident, it would have also given the applicant's representative or his brother a chance to challenge the statements of the officers on the spot. The Court further observes that the Mazgirt Public Prosecutor failed to inspect M.B.'s house with a view to verifying his statements that his house had been hit by the bullets and, thus, assessing the proportionality of the force used. Neither did he ensure the collection of the bullets used during the operation.

40. The Court further observes that the Mazgirt Public Prosecutor did not take any steps aimed at resolving the inconsistency between the account of the applicant and his brother and that of the security forces. In particular, he failed to establish with specific evidence whether the security forces had actually fired warning shots before shooting the applicant. The public prosecutor should have ensured that the bullets, the empty cartridges and the firearms of the gendarmerie officers were collected and sent for ballistic examination (see *Mustafa Aldemir*, cited above, §§ 49 and 55).

41. Moreover, there is a serious inconsistency between the account of events as described by İ.S. and that of M.A. and Y.S., the officers who were also positioned at point 2. İ.S. maintained before the Mazgirt Public Prosecutor that he had received information from both the officers at point no. 3 and M.A. and Y.S. that one suspect had an object that extended from the shoulder to the hip, whereas M.A. and Y.S. stated that it had been İ.S. who had told them about that object. There is nothing in the documents submitted to the Court demonstrating that the Mazgirt Public Prosecutor attempted to eliminate this inconsistency. He also failed to enquire why and how the statements of five gendarmerie officers, namely M.A., Y.S., R.E., B.B.A. and M.K., regarding the operation were almost identical to the extent that most of the texts were word-for-word the same. The Court also

cannot overlook the fact that only ten of the twenty-six officers who took part in the operation of 3 September 2007 made statements before the Mazgirt Public Prosecutor.

42. In their observations to the Court, the Government submitted that the accused officers, the applicant and the witnesses had given evidence to the Elazığ Military Public Prosecutor. However, they failed to produce any document in support of these submissions. What is more, the military public prosecutor's decision of 31 December 2008 does not contain any reference to statements taken at his office. It appears that the Elazığ Military Public Prosecutor simply took into account the statements taken by the Mazgirt Public Prosecutor, as well as the documents prepared by the latter. It appears that he did not conduct an onsite inspection either. The Court is therefore led to conclude that the Elazığ Military Public Prosecutor rendered his decision solely on the basis of the investigation conducted by the Mazgirt Public Prosecutor, contrary to what was claimed by the Government.

43. Similarly, the applicant alleged that he and his lawyer had not been allowed to have access to the investigation file at the initial stages of the investigation by a decision of Mazgirt Magistrates' Court. However, he did not submit the decision in issue. As a result, the Court cannot give further consideration to the applicant's allegation.

44. Nevertheless, in the light of the serious defects in the investigation which are highlighted above and which are in breach of the obligation under Article 2 of the Convention to carry out effective investigations, the Court considers that the investigation carried out at the domestic level was clearly inadequate and left many important questions unanswered. As a result, the investigation was not capable of establishing the true circumstances surrounding the applicant's shooting. The Court therefore concludes that the Government have failed to show to the Court's satisfaction that the resort to the use of lethal force against the applicant was absolutely necessary and proportionate (see *Gülbahar Özer and Others,* cited above, §§ 74 and 75, and *Peker (no. 2),* cited above, § 59).

45. There has accordingly been a violation of Article 2 of the Convention in its substantive and procedural aspects in respect of the shooting of the applicant.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 700,000 Turkish liras (TRY), approximately 304,000 euros (EUR), in respect of non-pecuniary damage. He further claimed TRY 500,000 in respect of pecuniary damage. This sum concerned medical expenses incurred and loss of earnings arising as a result of his incapacity for work. In support of his claims, the applicant submitted medical reports issued by the Karşıyaka State Hospital and the Ege University Hospital. The report by the Karşıyaka State Hospital demonstrates his permanent disability. According to the report of the Ege University Hospital, the applicant was hospitalised and received medical treatment, including surgical operations, between 3 October and 14 December 2007. The applicant also submitted a number of invoices in relation to his medical examinations between December 2007 and August 2008 at the Orthopaedics Department of the Ege University Hospital amounting to a total of EUR 285.

48. The Government considered that the claims for non-pecuniary and pecuniary damage were excessive and unsubstantiated.

49. Having regard to the applicant's failure to submit any evidence or other information in support of his claim for pecuniary damage in so far as it concerns his loss of earnings and incapacity for work, the Court rejects this part of the applicant's claim for pecuniary damage. On the other hand, the Court considers that there is a direct causal link between the applicant's injuries sustained as a result of the shooting and the applicant's medical examinations between December 2007 and August 2008 for which invoices were submitted to the Court. In addition, the Government did not challenge this causal link. The Court accordingly awards the applicant EUR 285 in respect of pecuniary damage.

50. As to the claim in respect of non-pecuniary damage, in the light of the violation of Article 2 of the Convention found above and taking into account the applicant's permanent disability, the Court awards the applicant EUR 52,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed TRY 5,100, approximately EUR 2,200, for costs and expenses incurred before the Court. He sought EUR 650 to cover administrative costs, such as postage and translation fees. He further claimed EUR 1,550 for his lawyer's fee, referring to the recommendations of the Union of Bar Associations of Turkey regarding lawyers' fees.

52. The Government submitted that the applicant's claims were not supported by documentary evidence.

53. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant failed to substantiate that he actually incurred the costs claimed. In particular, he failed to submit documentary evidence, such as invoices demonstrating administrative costs, a contract, a fee agreement or a breakdown of the hours spent by his lawyer on the case. Accordingly, the Court makes no award under this head.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in both its substantive and procedural aspects;

3. *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 285 (two hundred and eighty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 52,000 (fifty-two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President