



Death during a demonstration: Turkey must regulate the use of tear-gas grenades

In today's Chamber judgment in the case of [Ataykaya v. Turkey](#) (application no. 50275/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the death of Mr Ataykaya's son, caused by a tear-gas grenade fired by the police during an illegal demonstration.

The Court considered that no meaningful investigation had been carried out at domestic level to enable identification of the person who had fired the fatal shot, and that there was nothing to indicate that the use of fatal force against Mr Ataykaya's son had been absolutely necessary and proportionate.

As to the execution of its judgment (Article 46), the Court reiterated its findings in the *Abdullah Yaşa and Others v. Turkey*² and *Izci v. Turkey*³ judgments, and emphasised the need to reinforce, without further delay, the safeguards surrounding the proper use of tear-gas grenades, so as to minimise the risks of death and injury stemming from their use. It emphasised that, so long as the Turkish system did not comply with the requirements of the European Convention, the inappropriate use of potentially fatal weapons during demonstrations was likely to give rise to violations similar to that in the present case.

The Court also held that, in order to ensure effective implementation of its judgment, fresh investigative measures were to be taken under the supervision of the Committee of Ministers to identify and – if appropriate – punish those responsible for the death of Mr Ataykaya's son.

Principal facts

The applicant, Mehmet Nesip Ataykaya, is a Turkish national who was born in 1951 and lives in Diyarbakır (Turkey).

Between 28 and 31 March 2006 many illegal demonstrations were held in Diyarbakır, following the death of fourteen members of the PKK (Workers' Party of Kurdistan, an illegal armed organisation) during an armed clash which had occurred on 24 March 2006. During those demonstrations, nine persons were killed.

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

² *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, §61, 16 July 2013.

³ *Izci v. Turkey*, no. 42606/05, §99, 23 July 2013.

On 29 March 2006, as Tarik Ataykaya was leaving the workshop where he worked, he unexpectedly found himself in the middle of a demonstration and was hit in the head by one of the tear-gas grenades fired by the police in order to disperse the demonstrators. Tarik died of his injuries a few minutes later. The autopsy performed on the following day, and an expert examination conducted a few days later, formally established that death had been caused by a type no.12 tear-gas grenade, as used by the police, which had struck the deceased's head. As the cartridge extracted from the dead man's head had no distinguishing marks, it was impossible to identify the weapon from which it had been fired.

On 19 April 2006 Mr Ataykaya lodged a complaint and a criminal investigation was carried out by the Diyarbakir public prosecutor. In particular, several eye-witnesses were questioned by the prosecutor's office; they claimed to have seen a police officer, whose face was hidden by a balaclava, fire at Tarik Ataykaya during the demonstration on 29 March 2006. The investigation did not succeed in identifying the perpetrator of the fatal shot. On 3 April 2008 the Diyarbakir prosecutor's office issued a permanent search warrant for the purpose of identifying the person who had fired the shot in question; it was valid until 29 March 2021, the date on which the offence would become time-barred.

At the same time, an administrative investigation was carried out by the Diyarbakir Provincial Governor's Office in order to determine the responsibility of fourteen police officers who had used tear-gas grenades during the incident. On 30 January 2008 the police disciplinary board decided to close the investigation and not to impose any disciplinary sanction against them, on the ground that there was no evidence to prove their involvement in Tarik Ataykaya's death.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), Mr Ataykaya alleged that his son had died as a result of excessive use of force and that no effective investigation into his death was carried out by the authorities. He also considered that the death of his son and the failure to prosecute the police officers amounted to inhuman and degrading treatment, contrary to Article 3 (prohibition of inhuman and degrading treatment). Relying on Article 13 (right to an effective remedy), the applicant submitted that he did not have an effective remedy in domestic law that would allow him to sue the perpetrator of the fatal shot. Lastly, under Article 14 (prohibition of discrimination), he alleged that his son had been murdered on account of his Kurdish origins. He also relied on Article 17 (prohibition of abuse of rights).

The application was lodged with the European Court of Human Rights on 17 October 2008.

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

Guido Raimondi (Italy), *President*,
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Paul Lemmens (Belgium),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),

and also **Abel Campos**, *Deputy Section Registrar*.

Decision of the Court

Article 2

The Court noted firstly that it was not disputed that Mr Ataykaya's son had been killed on 29 March 2006 by a tear-gas grenade fired by the police.

The Court then examined whether the investigation had been effective, that is, whether it had been capable of determining whether the force used was or was not justified in the circumstances.

An investigation had indeed been opened, but it had not enabled the person who had fired the fatal shot to be identified, as that individual's face had been hidden by a balaclava and there were no distinguishing marks on his clothing. The Court considered that, in the present case, the fact that the police were wearing balaclavas had conferred immunity from prosecution on those responsible, notably because it had made it impossible for the eye-witnesses to identify them, a circumstance that the Court considered troubling. It concluded that the domestic authorities had deliberately created a situation of impunity, making it impossible to identify those police officers who were suspected of having fired tear-gas grenades inappropriately, to establish the responsibilities of the senior officials, and to carry out an effective investigation.

Considerable delays had also occurred in the investigation, particularly with regard to the taking of oral evidence, and no steps had been taken to reduce the risk of collusion between the investigating authorities and the police. The Court also noted the failure to order an expert report to determine the manner in which the shot had been fired, although everything seemed to indicate that it had been a direct, flat-trajectory shot (a type of shot which could cause serious or even fatal injuries), and thus that there had been inappropriate use of force.

The Court then examined the regulatory framework concerning the use of non-lethal weapons such as tear-gas grenades. It referred to its conclusions in the case of *Abdullah Yaşa and Others v. Turkey*⁴, finding that at the time of the events Turkish law lacked any specific provisions governing the use of tear-gas grenades during demonstrations and did not lay down any instructions for their use. The State had thus failed in its positive obligation to protect life, as required by Article 2.

Thus, there was nothing to indicate that the use of lethal force against Mr Ataykaya's son had been absolutely necessary and proportionate, or that the police had taken the appropriate care to ensure that any risk to life was minimised.

Consequently, there had been a violation of Article 2, in its substantive aspect (right to life) and procedural aspect (the investigation).

Other articles

The Court dismissed the complaints under Articles 3, 14 and 17 as manifestly ill-founded.

Article 13

The Court considered that the complaint made under this Article was identical to that submitted by Mr Ataykaya under the procedural aspect of Article 2, and held that it was not necessary to examine it separately.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Ataykaya 65,000 euros (EUR) in respect of non-pecuniary damage, and EUR 5,000 in respect of costs and expenses.

⁴ *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, §61, 16 July 2013.

Article 46 (binding force and execution of judgments)

General measures

Reiterating the findings made in the *Abdullah Yaşa and Others v. Turkey*⁵ and *Izci v. Turkey*⁶ judgments, the Court insisted on the need to reinforce, without further delay, the guarantees on the proper use of tear-gas grenades, in order to minimise the risks of death and injury stemming from their use.

In this connection, it emphasised that, so long as the Turkish system did not comply with the requirements of the Convention, the inappropriate use of these potentially fatal weapons in the course of demonstrations was likely to give rise to violations similar to that found in the present case.

Individual measures

Given that the investigation file was still open at national level, the Court considered that fresh investigative measures ought to be taken, under the supervision of the Committee of Ministers, with a view to identifying and – if appropriate – punishing those responsible for the death of Mr Ataykaya's son.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.

⁵ *Abdullah Yaşa and Others v. Turkey* cited above.

⁶ *Izci v. Turkey*, no. 42606/05, §99, 23 July 2013.