



Police should not have used tear gas against a peaceful demonstrator

In today's Chamber judgment in the case [Ali Güneş v. Turkey](#) (application no. 9829/07), 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) of the European Convention on Human Rights.

The case concerned a complaint by a high-school teacher who took part in a demonstration against the 2004 NATO summit in Istanbul that the police had ill-treated him, including by spraying tear gas on him.

The Court found in particular that: 1) the authorities had been unable to justify the use of tear gas against Mr Güneş after he had already been apprehended by the police; and, 2) no effective investigation had been carried out into his related complaints.

Principal facts

The applicant, Ali Güneş, is a Turkish national who was born in 1968 and lives in Istanbul (Turkey).

He is a high-school teacher and a member of the Education and Science Workers' Union and of the Confederation of Public Workers' Unions. In June 2004 he participated in a demonstration against the NATO summit in Istanbul.

According to Mr Güneş, on 28 June 2004 he went to one of the 13 locations where the Istanbul authorities had authorised demonstrations in relation to the NATO summit. He was unarmed and, together with all his colleagues, behaved peacefully. However, the police grabbed him by the arms, sprayed him with tear gas and beat him up, following which they took him to a police station in which they kept him for 11 hours. A prosecutor saw him after that and ordered his release.

According to the Government, Mr Güneş and his colleagues had refused to disperse after reading their press release, and – despite police attempts to persuade them to leave – they had attacked the police with stones and sticks. They also damaged near-by cars and injured a number of police officers. As a result, the police used tear gas in order to disperse them. They also took Mr Güneş to a police station where they kept him for 11 hours before a prosecutor ordered his release. Two doctors examined Mr Güneş on the same day and their reports noted that he had red eyes and no signs of ill-treatment on his body.

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

The incident was widely reported in the national press. A photograph, published in the daily newspaper "Sabah", showed Mr Güneş being held by two police officers, one of whom was spraying his face with gas at a very close range.

Both Mr Güneş and the Turkish Government submitted to the Court a number of documents as evidence, including police and medical reports. Two medical reports had recorded reddened eyes, and one, bruises under his shoulders.

On 7 September 2004, Mr Güneş brought proceedings against the police complaining that they had ill-treated him during the demonstration. According to him, before he had even brought his official complaint, a prosecutor had already decided, on 30 June 2004, not to prosecute the police officers as he considered that they had not committed any offences. Mr Güneş was not informed of that decision which the prosecutor only sent to him in November 2007. In February 2008, a court found that the prosecutor's decision had complied with the applicable laws and rejected Mr Güneş's objection to it.

Complaints, procedure and composition of the Court

Relying in particular on Article 3, Mr Güneş complained that the police had beaten him up and had sprayed him with harmful gases after arresting him during the June 2004 demonstration against a NATO summit, despite the fact that he and all the people who had accompanied him were unarmed and behaved peacefully. He also complained that the Turkish authorities had failed to adequately examine his allegations against the police. Finally, relying on Article 5 (right to liberty and security), he complained that the police had arrested him unlawfully.

The application was lodged with the European Court of Human Rights on 13 January 2007.

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

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

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

Decision of the Court

Article 3

Firstly, the Court noted that "tear gas" or "pepper spray" could cause people breathing problems, nausea, vomiting, irritation, spasms, chest pain, to mention only a few conditions. In strong doses, it could also be damaging to people's lungs or cause necrosis of their breathing or digestive tract, and internal haemorrhaging.

The Court then noted that, although tear gas was not considered a chemical weapon by the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Council of Europe's Committee for the Prevention of Torture (CPT) had expressed concerns about the use of such gases in law enforcement. In particular, the CPT had recommended the drawing up of clear and

specific rules about its usage, having warned that its use in confined spaces could be potentially dangerous.

The Court agreed with the CPT, emphasising that there could be no justification for the use of such gases against individuals already taken into custody. It then noted that the Government had not provided any explanation about why such gas was used on Mr Güneş after the police had apprehended him.

The Court concluded that the unwarranted spraying of the gas into Mr Güneş's face had to have caused him intense physical and mental suffering. Consequently, he had been subjected to inhuman and degrading treatment. In the light of that conclusion, it was not necessary to examine separately his complaint about his beating by the police officers.

In addition, the prosecutor had closed the investigation within 48 hours of opening it. Apart from the prosecutor's decision to close the investigation, the Government had not presented to the Court any documents to show what steps had been taken during it.

In view of the above, the Court held that there had been a violation of Article 3 on account of the spraying of Mr Güneş with tear gas, and as a result of the authorities' failure to carry out an effective investigation into his related complaints.

Article 5 § 1

The Court rejected Mr Güneş's complaint that he had been unlawfully arrested, as it found that the Turkish authorities had complied with the applicable procedures. Furthermore, Mr Güneş had not specified what exactly in his view had gone wrong during his arrest and detention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Güneş 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 for costs and expenses.

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.