



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

SECOND SECTION

CASE OF GEYLANI AND OTHERS v. TÜRKİYE

(Application no. 10443/12)

JUDGMENT

Art 3 (procedural and substantive) • Art 11 • Degrading treatment • Freedom of assembly • Use of water cannon by the police to disperse a peaceful demonstration resulting in injury to the second applicant from being hit by pressurised water • Case-law on the use of tear-gas grenades and rubber bullets applicable *mutatis mutandis*, given dangerous nature of water cannons: police operations – including use of water cannons - to be authorised and sufficiently delimited by domestic law within the framework of a system of adequate and effective safeguards against arbitrariness, abuse of force and avoidable accidents • Domestic legal framework lacking specific provisions on the use of water cannons during demonstrations as well as any instructions for their deployment • Not shown that the security forces' intervention was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of bodily harm to the demonstrators • Use of force neither strictly necessary by second applicant's own conduct nor indispensable for the purpose of quelling a mass disorder • Ineffective investigation • Police intervention disproportionate and “not necessary in a democratic society”

STRASBOURG

12 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Geylani and Others v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Davor Derenčinović, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 10443/12) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Turkish nationals, Mr Hamit Geylani, Ms Sevahir Bayındır (“the second applicant”) and Mr Hasip Kaplan (collectively “the applicants”), on 27 January 2012;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the dispersal by the police of the demonstration in which the applicants participated, the alleged ill-treatment of the second applicant in the course of the dispersal and the alleged lack of an effective investigation into the matter, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 11 July 2023,

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

INTRODUCTION

1. The case concerns the dispersal by the police of a demonstration organised by a political party and the injuries sustained by the second applicant during the dispersal. The applicants complain of a violation of their rights under Article 11 of the Convention. The second applicant alleges a further violation of Article 3 of the Convention.

THE FACTS

2. The applicants’ details are set out in the appended table. They were represented initially by Mr E. Cinmen, a lawyer practising in Muğla, and subsequently also by Mr R. Demir and Ms Y. Kılıç, lawyers practising in Istanbul.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

5. At the time of the events giving rise to the present application, the applicants were members of the Turkish Grand National Assembly (“the National Assembly”) and the Peace and Democracy Party (“the BDP”, a left-wing pro-Kurdish political party).

I. BACKGROUND INFORMATION AS SUBMITTED BY THE GOVERNMENT

6. According to a number of police reports issued in May and June 2010, two websites which were considered to have links with the PKK (Workers’ Party of Kurdistan, an armed terrorist organisation) mainly reported that various wings of the PKK would put an end, as of 1 June 2010, to the ceasefire which they had declared thirteen months previously. The information on the websites in question also contained statements by the leader of the PKK and invited people to “resist” and to “join” the PKK.

7. On 29 May 2010 the security forces received an intelligence report indicating that as of 1 June 2010 the PKK would incite people to acts of civil disobedience across the country. The report further mentioned possible attacks against the security forces and public buildings, involving the use of stones, sticks and Molotov cocktails as well as the burning of vehicles.

8. On 31 May 2010 the General Security Directorate issued a similar report about possible attacks in the Silopi district of Şırnak province.

9. On 2 June 2010 one of the above-mentioned websites reported that the Silopi branch of the BDP would organise a march the following day with the participation of some members of parliament, with a view to protesting against the increased military operations in the region. The march was to begin at 4 p.m. in front of the BDP party office in Silopi and to continue towards the Habur border post between Türkiye and Iraq (situated approximately fifteen kilometres from Silopi).

10. Referring to the planned demonstration, a police report of 2 June 2010 indicated that a crowd of people intended to block the main road leading to the Habur border post and march towards the border post, where a statement to the press would be read out. The report mentioned that the group might, if provoked, attack the security forces and their vehicles with stones.

11. On 3 June 2010 the Silopi Security Directorate issued an internal document outlining the measures to be taken and the instructions to be followed by the police before and during the forthcoming demonstration. The document contained, *inter alia*, the following instructions: (i) the police officers were to avoid provoking the demonstrators, follow the warning procedure at all times and comply with the chain of command; and (ii) force might be used in a graduated manner only if necessary and subject to the instructions of the superior officer.

II. EVENTS OF 3 JUNE 2010 AND INJURIES OF THE SECOND APPLICANT

12. On 3 June 2010, at about 2 p.m., representatives of the BDP had a meeting with the District Governor of Silopi (“the District Governor”) and the officers in command of the security forces in that district. The representatives of the BDP informed the District Governor of their intention to organise the aforementioned march. The District Governor proposed alternative venues for the planned demonstration, but these were rejected by the organisers, who argued that the degree of public attention would be diminished in such circumstances. The District Governor further informed them that the security forces would have to intervene in the event of the demonstration being held on the main road.

13. According to the police reports, at about 3 p.m., people began gathering in front of the BDP party office; their number had reached approximately three thousand by around 4.30 p.m. At about that time, a bus belonging to the BDP arrived on the right-hand side of the main road leading to the Habur border post, and the demonstrators suddenly headed towards the bus and gathered around it. Both sides of the road were then blocked by the police and by three water-cannon vehicles, which, according to the statements of the police officers, were initially stationed about 100 to 150 metres from the demonstrators (see paragraph 24 below).

14. Some demonstrators were holding banners displaying slogans such as “The only interlocutor is esteemed Öcalan” (“*Tek muhatap sayın Öcalan*”), “The Republic of Türkiye needs you, esteemed Öcalan” (“*T.C. ’nin size ihtiyacı var sayın Öcalan*”), “Our leadership is looking for an interlocutor for a solution” (“*Önderliğimiz çözüm için muhatap arıyor*”), “Take the esteemed leader of the Kurdish people Abdullah Öcalan as an interlocutor for a democratic solution of the Kurdish issue” (“*Kürt sorununun demokratik çözümü için Kürt önderi sayın Abdullah Öcalan muhatap alınsın*”), “End the operations” (“*Operasyonlara son*”) and “Keep your dirty hands off our free mountains” (“*Kirli ellerinizi özgür dağlarımızdan çekin*”). A number of demonstrators were carrying wooden sticks, as well as flags of the PKK and posters of its leader or members. Some demonstrators’ faces were covered.

15. The police warned the participants several times that the demonstration was unlawful and ordered them to disperse immediately, failing which it would use force.

16. According to the police reports, at about 4.40 p.m., the applicants joined the front lines of demonstrators. Shortly afterwards the group, accompanied by the bus, began marching on the main road towards the police. As the demonstrators continued to march despite another warning, the police dispersed them by using water cannon and tear gas.

17. During the first moments of the police intervention, the second applicant fell to the ground and sustained injuries to her hip (see also

paragraphs 28 and 38 below). She was subsequently taken to the Silopi Public Hospital. The medical report drawn up by the hospital at 5.25 p.m. mentioned that she had a fractured neck of femur (a type of hip fracture), which could not be treated by a simple medical procedure. Furthermore, the “history” section of a second report drawn up by the same hospital on that day noted that the second applicant had “slipped and fallen when Panzers had sprayed water during the demonstration”.

18. The second applicant was subsequently transported to a private hospital in Ankara, where she was operated on the same day. She was discharged from the hospital on 11 June 2010, after which she received physiotherapy owing to her inability to walk and was prescribed several consecutive periods of sick leave lasting until 24 March 2011. A medical report from 2014 indicated, among other things, that she was able to walk with crutches. In her submissions to the Court the second applicant stated that she was still receiving treatment for her injury.

19. A police officer (S.Y.) reported that he had sustained injuries to his left leg caused by a stone thrown by the demonstrators before the intervention of the security forces. The medical report issued on 3 June 2010 by the Silopi Public Hospital mentioned soft tissue damage rendering him unfit for work for ten days.

20. Another police officer (İ.K.), who stated that he had been injured during the intervention of the security forces, was prescribed seven days’ sick leave.

21. The police records drawn up on the date of the events noted that several vehicles belonging to the security forces had been damaged by stones, but did not mention whether the damage had occurred before or during the police intervention.

III. ADMINISTRATIVE INVESTIGATION

22. On 14 June 2010 the presidency of the Inspection Board of the Ministry of the Interior appointed two chief inspectors to investigate the incidents that had taken place during the demonstration.

23. The chief inspectors collected documents and evidence, including the video footage of the incidents recorded by the police. They also took statements from, *inter alia*, the Şırnak Governor (“the Governor”), the District Governor, the officers in command of the security forces in Silopi, the chair of the Silopi branch of the BDP and the police officers driving the water-cannon vehicles, as well as those who had operated the water jets during the events of 3 June 2010.

24. According to the police officers, one of the water-cannon vehicles had been stationed on the right-hand side of the road leading to the Habur border post, while the other two vehicles had been on the opposite side of the road. The officers maintained that the initial distance between the crowd and the

vehicles had been about 100 to 150 metres. They explained that they had used water cannons because the demonstrators had begun advancing towards the vehicles. One of the operators (S.T.) stated that water had been sprayed in accordance with the instructions they received when the group had advanced about 50 metres towards the police. One of the drivers (H.S.Ş.) stated that they had received an instruction to intervene once the initial distance had been halved. Another operator (M.K.) maintained that the demonstrators had started to throw stones from a distance of 50 metres. S.Y. reported that he had been injured when some demonstrators had begun to throw stones from a distance of approximately 50 metres (see also paragraph 19 above).

25. Some police officers further stated that water had been sprayed only once by each vehicle, for a duration of between eight and ten seconds. They maintained that they could not have, and had not, targeted a specific person when using the water cannon. Furthermore, since visibility from within the water-cannon vehicles had been poor, they had been watching the events from the monitors inside the vehicles. One of the drivers (D.A.) maintained that it was a coincidence that the second applicant had been hit by water and been injured as a result of her fall. S.T. stated that water had caused the second applicant to fall and be injured through an unfortunate coincidence.

26. The police officers maintained that if they had not intervened at that moment it would have not been possible to move the water-cannon vehicles because of the approaching crowd of demonstrators, and a direct confrontation between the latter and the police officers positioned behind the vehicles would have been inevitable. According to the police officers, this would have caused even more serious incidents.

27. In their statements, the representatives of the BDP maintained that they had been informed by some members of parliament that the Governor had given them permission to hold the march on one side of the main road. The Governor and the District Governor denied this claim.

28. On 14 September 2010 the chief inspectors submitted their report to the presidency of the Inspection Board.

The report stated that the Governor had not given permission for the demonstration to be held on the main road and that the District Governor had also proposed alternative venues to the organisers.

According to the report, the police had taken the necessary preparatory measures as they had deployed three water-cannon vehicles which were stationed at a distance about 100 to 150 metres from the gathering point. Furthermore, the officials had expressed concerns that if the police did not intervene, the number of participants might increase, rendering it impossible to intervene. The report further referred to concerns about possible provocative acts and serious incidents targeting the military barracks situated further along the road taken by the demonstrators.

The report mentioned that the police had warned the protestors many times that the demonstration was unlawful and had ordered them to disperse. As the

crowd had not stopped advancing towards the police, the latter had used water cannon and tear gas, prompted by concerns that it would become impossible to intervene if the crowd reached the police barricade. The intervention had lasted eight to ten seconds, and pressurised water had been sprayed only once.

According to the report, there was nothing to indicate that the members of parliament had been targeted by the police officers, and it was pure coincidence that the second applicant had been hit by water (*tamamen tesadüfen suya hedef olduğu*). The injury sustained by the second applicant had been the result of her falling awkwardly (*biçimsiz bir şekilde*) owing to physical weakness. Indeed, the other demonstrators who had been hit by the same pressurised water had not been injured.

The report found that the police had intervened at the right moment, given that there had been more than three thousand demonstrators and that their number could have reached ten thousand at any moment. There had been no serious injuries apart from that of the second applicant. Therefore, the intervention had been carried out in such a manner as to cause the least possible damage.

Accordingly, the chief inspectors concluded that there were no grounds for instituting criminal or administrative proceedings against the Governor and the law-enforcement personnel.

29. On 30 December 2010, on the basis of the aforementioned report and pursuant to Law no. 4483 on the prosecution of civil servants, the Ministry of the Interior decided not to authorise the prosecution of the Governor and the law-enforcement personnel in relation to the events of 3 June 2010.

30. On 28 January 2011 the applicants lodged an objection against that decision.

31. On 6 July 2011 the Supreme Administrative Court dismissed the applicants' objection, taking the view that the intervention had been carried out in such a manner as to cause the least possible damage.

IV. CRIMINAL INVESTIGATION

32. On an unknown date the Silopi public prosecutor's office initiated, of its own motion, an investigation into the events of 3 June 2010.

33. On 8 June 2010 the public prosecutor's office requested information from the District Governor's Office as to whether a preliminary investigation into the matter had been initiated pursuant to Law no. 4483. It further requested that a decision be taken on whether to authorise the prosecution of the law-enforcement personnel in Silopi for the offence of misconduct in office.

34. On 28 June 2010 the applicants filed a complaint against the police officers and other officials involved in the incidents at issue. They claimed that they had been ill-treated and that their rights to freedom of expression and freedom of assembly had been violated.

35. On 9 February 2012 the Silopi public prosecutor issued a decision not to bring a prosecution against the law-enforcement personnel and their superior officers in relation to the events at issue. Referring to the Ministry of the Interior's decision of 30 December 2010, he considered that no prosecution could be brought in respect of the offence of misconduct in office, since the latter fell within the scope of Law no. 4483 (see paragraph 29 above). As regards the other offences, the public prosecutor reiterated the conclusions of the chief inspectors' report (see paragraph 28 above) and found that there was no indication that the officials had acted with an intention to directly or indirectly inflict bodily harm and that no negligence was attributable to them. The public prosecutor further held that freedom of expression and of assembly were subject to limitations and that the intervention of the security forces in an unlawful demonstration could not be regarded as preventing the exercise of the right to freedom of expression or other rights of the applicants.

36. On 21 March 2012 the applicants objected to that decision, which was amenable to judicial review except in so far as it concerned the alleged offence of misconduct in office.

37. On 8 May 2012 the Siirt Assize Court dismissed the applicants' objection on the grounds that the demonstration had not been duly notified to the authorities, that the demonstrators had been warned and ordered to disperse, that the injuries complained of had occurred in a moment of panic during the police intervention and that there had been no direct intervention by the police officers.

V. VIDEO FOOTAGE SUBMITTED BY THE GOVERNMENT

38. The Government provided the Court with several video recordings made by the police during the events of 3 June 2010. The footage shows the second applicant in the front lines immediately before the spraying of pressurised water towards that area. Although it is impossible to see clearly the exact moment when she fell, it can be seen that she was on the ground immediately after the first round of water spraying and that she attempted to stand up after her fall but was unable to do so. The footage also shows that pressurised water was sprayed more than once during the intervention.

39. The video footage shows that the traffic on the road in question was not stopped until the demonstrators began heading towards the bus (see also paragraph 13 above). It also appears from the footage that the police intervention began less than two minutes after the applicants joined the front lines (see also paragraph 16 above). It can be seen from the footage that at least three adolescents among the demonstrators threw stones at the security forces shortly after the group began heading towards the road, that some of the demonstrators reacted against this behaviour and that the vast majority of the participants were not involved in any violent act during the period before

the intervention of the police. The footage also shows some demonstrators throwing stones at the police after the dispersal of the march.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

40. The relevant domestic law in respect of freedom of assembly and the prosecution of civil servants and public officials is set out in *Oya Ataman v. Turkey* (no. 74552/01, §§ 13-15, ECHR 2006-XIV) and *Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey* (no. 20347/07, §§ 42-52, 5 July 2016).

41. At the material time section 10 of the Meetings and Demonstration Marches Act (Law no. 2911) was worded as follows:

“In order for a meeting to take place, the governor’s office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least seventy-two hours prior to the meeting, by a notice containing the signature of all the members of the organising committee ...”

42. Section 22 of the same Act, as in force at the material time, prohibited demonstrations and processions on, *inter alia*, public streets and highways. Section 24 provided that demonstrations and processions which did not comply with the provisions of the Act would be dispersed by force on the order of the governor’s office and after the demonstrators had been warned.

43. Under section 16 of Law no. 2559 on the Duties and Powers of the Police, when faced with resistance in the performance of their duties, the police may use force for the purpose of, and to the extent necessary for, breaking down such resistance. The use of force means recourse to physical and material force and weaponry in order to immobilise those resisting the police, in a graduated manner depending on the nature and degree of resistance. The term “material force” is defined as including, *inter alia*, handcuffs, truncheons, pressurised water and tear gas. A warning is required before using force; however, depending on the nature and degree of resistance, it may also be possible to use force without any warning. The police determine the equipment and the degree of force to be used. Where the action is taken against a group, that determination is made by the supervisor of the intervening unit.

44. Article 25 of the Directive of 30 December 1982 on the rapid reaction forces (*Polis Çevik Kuvvet Yönetmeliği*) lays down the principles governing the supervision, control and intervention of those forces during demonstrations (for a summary of the text, see *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, § 27, 16 July 2013).

II. INTERNATIONAL MATERIAL

A. United Nations

45. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provide, *inter alia*, that “the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimise the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”

46. On 6 July 2018 the Human Rights Council adopted Resolution 38/11 on the promotion and protection of human rights in the context of peaceful protests, the relevant parts of which read as follows:

“The Human Rights Council,

...

13. *Calls upon* States to investigate any death or significant injury, including those that lead to disability, incurred during protests, including those resulting from the discharge of firearms or the use of less-lethal weapons by officials exercising law enforcement duties or by private personnel acting on behalf of the State;

...

15. *Encourages* States to make appropriate protective equipment and less-lethal weapons available to their officials exercising law enforcement duties in order to decrease their need to use weapons of any kind, while pursuing efforts to regulate and establish protocols for the training and use of less-lethal weapons, bearing in mind that even less-lethal weapons can result in a risk to life;

16. *Underlines* the importance of thorough and independent testing of less-lethal weapons prior to procurement and deployment to establish their lethality and the extent of likely injury, and of monitoring appropriate training and use of such weapons;”

47. The relevant paragraphs of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, issued on 1 June 2020 by the Office of the United Nations High Commissioner for Human Rights, provide as follows (footnotes omitted):

“7.7.2 In general, water cannon should only be used in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury or the widespread destruction of property. In order to meet the requirements of necessity and proportionality, the deployment of water cannon should be carefully planned and should be managed with rigorous command and control at a senior level.

...

7.7.3 Water cannon should not be used against persons in elevated positions, where there is a risk of significant secondary injury. Other risks include hypothermia and cold-water shock in cold weather (especially if the water is not heated), and the risk of persons slipping or being forced by the jet against walls or other hard objects. Certain

water cannon are indiscriminate in their effects, as they are unable to target individuals accurately.

...

7.7.4 Water cannon shall not target a jet of water at an individual or group of persons at short range owing to the risk of causing permanent blindness or secondary injuries if persons are propelled energetically by the water jet. Water cannon shall not be used against restrained persons or persons otherwise unable to move.”

B. Council of Europe

48. The relevant part of Parliamentary Assembly of the Council of Europe Resolution 2435 (2022) on fighting and preventing excessive and unjustified use of force by law-enforcement officers, adopted on 27 April 2022, reads as follows:

“9. The Assembly, therefore, calls on member States of the Council of Europe and observer States, where applicable, to:

...

9.3. ensure that the use of weapons and other lethal or non-lethal tools by law-enforcement agencies is thoroughly regulated by their national legislation, which should lay down instructions and safeguards against abuse;”

49. The Council of Europe Commissioner for Human Rights published a Human Rights Comment on 25 February 2014 entitled “Police abuse – a serious threat to the rule of law”. It reads, in so far as relevant, as follows:

“States should develop clear guidelines concerning the proportionate use of force by police, including the use of tear gas, pepper spray, water cannons and firearms in the context of demonstrations, in line with international standards.”

C. Guidelines on Freedom of Peaceful Assembly

50. The Guidelines on Freedom of Peaceful Assembly (third edition, 2019), prepared by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe in consultation with the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, read, in so far as relevant, as follows:

“185. **Specific means for officials to address disorder at an assembly.** The following good practice guidance relating to the specific means by which law enforcement officials may exercise, or seek to regain, control when an assembly becomes disorderly, draws on the developing practices of national policing institutions:

...

• The use of plastic/rubber bullets, baton rounds, attenuated energy projectiles (AEPs), or water cannons and other forceful methods of crowd control must be strictly regulated and recorded ...;”

THE LAW

I. PRELIMINARY REMARKS

51. The Government argued that the application was not in compliance with Rule 47 of the Rules of Court, pointing out that although the application form was signed by the applicants' initial representative Mr Cinmen, the authority forms submitted to the Court at the time of the lodging of the application did not contain his signature.

52. The applicants maintained that their signatures on the authority forms in question demonstrated that they had given their initial representative specific and explicit instructions to lodge an application before the Court on their behalf.

53. The Court notes that where applicants choose to be represented under Rule 36 § 1 of the Rules of Court rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim, within the meaning of Article 34, on whose behalf they purport to act before the Court (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 102, ECHR 2014).

54. Turning to the present case, the Court observes that the authority forms in question containing the applicants' signatures were submitted to the Court by their initial representative, together with the application form signed by the latter. However, the authority forms contained neither his signature nor his name.

55. That being said, the Court notes that the version of Rule 47 of the Rules of Court in force at the time of the lodging of the application did not make any reference to the format of the authority form. Furthermore, the Court sees no reason to doubt that the signatures contained in the authority forms, whose authenticity was not challenged by the Government, belonged to the applicants. It is also to be noted that the authority forms expressly referred to the applicants' representation before the Court.

56. Moreover, prior to the submission of their observations, the applicants duly designated additional representatives (see paragraph 2 above). They further confirmed, through their additional representatives, that they had authorised their initial representative to lodge an application with the Court on their behalf (see paragraph 52 above). There is thus nothing to indicate that the authority forms were signed without the applicants' understanding and consent to designate Mr Cinmen as their representative before the Court (see, to similar effect, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 52, ECHR 2012).

57. As to the fact that the initial representative's signature does not appear on the authority forms, the Court considers that by sending the signed

application form and the relevant documents, as well as by communicating with the Court on several occasions in connection with the present application, the initial representative implicitly but necessarily accepted the authority granted to him by the applicants (see *Alican Demir v. Turkey*, no. 41444/09, § 64, 25 February 2014).

58. In the light of the foregoing considerations, the Court rejects the Government's objection in this regard (see, *mutatis mutandis*, *Randelović and Others v. Montenegro*, no. 66641/10, §§ 78-79, 19 September 2017).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

59. The second applicant complained that she had been subjected to ill-treatment by the police and that the authorities had failed to carry out an effective investigation into the matter. She relied on Articles 3 and 6 of the Convention.

60. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 3 of the Convention only, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

61. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Substantive aspect of Article 3 of the Convention

(a) The parties' submissions

62. The second applicant contended that her hip had been injured as a result of pressurised water sprayed by the police during the demonstration. She argued that she had not committed any violent act or resisted the police. She further maintained that even if she had not been specifically targeted by the police officers, the area where she had been standing during the march had been exposed to pressurised water in such a manner as to potentially cause injuries.

63. The second applicant argued that the police had failed to take the necessary precautions when using water cannons. She added that even assuming that certain individuals had been throwing stones during the

demonstration this could not absolve the police of their obligation to take the relevant precautions. She further maintained that the police had not been called upon to react in the course of an unexpected event, since they had been able to take a number of preparatory measures.

64. The Government argued that the second applicant's injury had not constituted ill-treatment within the meaning of Article 3 of the Convention and had not attained the requisite minimum level of severity. They contended in this connection that the second applicant's injury had not been caused by the use of pressurised water but rather as a result of her falling on the ground during the scuffle that had broken out during the dispersal of the demonstration. Referring to the second medical report issued by the Silopi Public Hospital (see paragraph 17 above), they maintained that the applicant had stated during her medical examination that her injury had occurred as a result of her fall. The Government further maintained that although the injuries sustained by the applicant might be considered to be of a serious nature, those injuries had been the result of her own actions since she had fallen to the ground after losing her footing during the scuffle.

65. According to the Government, the use of pressurised water in the circumstances of the present case could cause only minor or no injuries, having regard to the fact that other demonstrators who had been standing close to the second applicant had not sustained any injuries as a result of the use of water. Furthermore, the area where the applicant had been standing had been sprayed with pressurised water only once and for less than ten seconds. There had been no intention on the part of the security forces to inflict bodily harm on the demonstrators, including the second applicant, or to humiliate them. Moreover, it was not possible to target specific individuals by water cannon.

66. The Government maintained that the gathering had not been peaceful. The use of force had been absolutely necessary as some demonstrators had attacked the police and their vehicles with stones even before the intervention. Some demonstrators had been armed with sticks and had carried banners and chanted slogans containing violent language. Furthermore, the demonstration had been organised in response to a call made by the PKK. The Government referred also to various security concerns and to the public disturbance caused by the demonstration, advancing arguments similar to those put forward with respect to Article 11 of the Convention (see paragraph 108 below).

67. Lastly, the Government submitted that the police had warned the demonstrators many times and had thus shown a certain degree of tolerance before dispersing the crowd. The intervention had also been undertaken in accordance with the domestic law.

(b) The Court's assessment*(i) General principles*

68. The Court refers to the general principles concerning the substantive limb of Article 3 of the Convention as set out in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, ECHR 2015).

69. It reiterates, in particular, that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *ibid.*, § 82). As to the burden of proof in relation to alleged ill-treatment inflicted in the context of the policing of a demonstration, the Court has found in previous cases that the applicants were required to make a *prima facie* case that their injuries had resulted from the use of force by the police before the burden could be shifted to the Government to refute those allegations (see *Muradova v. Azerbaijan*, no. 22684/05, §§ 107-08, 2 April 2009, and *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, § 63, 13 October 2020). When the cause of injury was in dispute between the parties the Court attached special importance to the fact that the injury had been sustained while the applicant was within the area in which the law-enforcement authorities were conducting an operation during which they resorted to the use of force for the purpose of quelling mass unrest (see *Zakharov and Varzhabetyan*, cited above, § 63). To discharge the burden of proof the Government had to provide a satisfactory and convincing explanation as to the cause of the applicant's injuries (*ibid.*).

70. The Court further reiterates that in respect of a person who is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, § 88). Specifically, when authorities resort to the use of force for the purpose of quelling mass unrest, such force may be used only if it is indispensable, and it must not be excessive (see *Muradova*, § 109, and *Zakharov and Varzhabetyan*, § 62, both cited above).

(ii) Application of these principles to the present case

71. At the outset, the Court takes note of the Government's argument that the second applicant's injury had not attained the minimum level of severity required for the purposes of Article 3 of the Convention (see paragraph 64 above). The Court notes, however, that where – as in the present case – an applicant is confronted with law-enforcement officers, its examination shifts to the necessity rather than the severity of the treatment to which the applicant

was subjected, in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention (see paragraph 70 above; see also *Bouyid*, cited above, §§ 100-01). Specifically in the context of demonstrations, the Court has already held that if the treatment is not considered strictly necessary by the applicant's own conduct or indispensable for the purpose of quelling mass disorder, it amounts to ill-treatment prohibited by Article 3 of the Convention (see *Zakharov and Varzhabetyan*, cited above, §§ 70-74). In any event, the Court notes that the second applicant's injury and its seriousness, which the Government appear to accept as such (see paragraph 64 *in fine*), are confirmed by her medical records (see paragraphs 17 and 18 above). Lastly, in so far as the Government argued that the injuries in question had been the result of the second applicant's own actions (see paragraph 64 above), the Court refers to its analysis below concerning the establishment of the facts (see paragraphs 72-79 below).

(α) Establishment of the facts

72. The Court notes that the moments leading up to and following the use of water cannon by the police were filmed (see paragraphs 38 and 39 above). The Court has been able to view those video recordings, which were submitted by the Government.

73. The Court further notes that it is not disputed between the parties that the second applicant participated in the demonstration of 3 June 2010 and that she was injured during the first moments of the police intervention involving the use of water cannon. Moreover, it appears from the video footage that the second applicant was in the front lines of demonstrators at the moment when that area was exposed to pressurised water, although it is impossible to see clearly whether she was hit by water. It can also be seen that she was already on the ground immediately after the first round of water spraying and that she attempted to stand up after her fall but was unable to do so (see paragraph 38 above).

74. In this regard, the Court observes that the chief inspectors who conducted the administrative investigation acknowledged that the second applicant had been hit by pressurised water (see paragraph 28 above). This conclusion – which was also corroborated by the statements of the police officers (see paragraph 25 above) – was not contested by the domestic authorities, including the public prosecutor. Neither did the Government expressly argue that the second applicant had not been hit by pressurised water; instead, they confined themselves to maintaining that the injuries sustained by her had not been caused by the pressurised water itself but rather by her fall (see paragraph 64 above).

75. As regards the Government's argument that the second applicant sustained her injuries by falling to the ground, the Court notes that as jets of pressurised water can knock a person off balance, they may not only inflict primary injuries due to their direct impact, but can also cause secondary

injuries triggered by such an impact (see paragraph 47 above). Therefore, the Court considers that it is not decisive whether the injuries sustained by the second applicant were caused before or after her fall to the ground, as long as it has not been convincingly shown that her fall was not affected by the impact of the pressurised water to which, as acknowledged by the domestic authorities, she was exposed.

76. In that connection, the Court notes that the authorities' assumption that the second applicant suffered a bad fall owing to physical weakness was not substantiated by any factual elements (see paragraph 28 above). The Court is also not persuaded by the Government's argument that other persons who were standing close to the second applicant did not sustain any injuries, since the effects of water jets on other demonstrators may have varied depending on numerous factors such as the point of impact on their bodies. Therefore, the lack of injuries to other protesters cannot in itself demonstrate that the second applicant's fall was not triggered or affected by the use of pressurised water.

77. In so far as the Government referred to the second medical report issued by the Silopi Public Hospital (see paragraphs 17 and 64 above), the Court observes that the statement contained in the report at issue, to the effect that the second applicant had slipped and fallen at the moment when water was being sprayed, was not a medical conclusion. Even assuming that, as the Government contended, the statement in question was based on the second applicant's account of events, such a statement does not suggest that there was no causal link between the spraying of pressurised water and her injuries; quite the opposite, it might arguably be construed as implying the existence of a link between her fall and the use of water.

78. The Court further notes that the second applicant's injuries were sustained while she was within an area in which the authorities were using force (see *Zakharov and Varzhabetyan*, cited above, § 63).

79. Accordingly, having regard to the fact that the domestic authorities acknowledged that the second applicant had been hit by pressurised water, and in view of the absence of a plausible explanation by the Government, the Court finds it established beyond reasonable doubt that her injuries resulted from the use of force by the police and, specifically, from her being hit by pressurised water during the dispersal of the demonstration of 3 June 2010.

(β) Whether the use of force was justified

80. The Court must next ascertain whether the recourse to force by the police was made strictly necessary by the second applicant's own conduct and whether it was indispensable for the purpose of quelling mass disorder (see *Muradova v. Azerbaijan*, § 109, and *Zakharov and Varzhabetyan*, §§ 70-74, both cited above).

81. The Court observes that at no stage in the domestic proceedings or the proceedings before the Court was the second applicant's peaceful conduct during the demonstration called into question.

82. In so far as the Government maintained that the gathering had not been peaceful and relied on various security concerns and on the disturbance caused by the demonstration, the Court refers to its analysis below concerning Article 11 of the Convention and notes that the demonstration was mainly conducted in a peaceful manner until the intervention of the police (see paragraphs 116-126 below).

83. The Court also notes that the police had prior information about the planned gathering and took some measures such as deploying water-cannon vehicles before the march commenced (see paragraphs 11 and 13 above). Thus, it cannot be said that the police were called upon to react without prior preparation (see *Zakharov and Varzhabetyan*, cited above, § 64, and the cases cited therein).

84. Furthermore, the Court notes that although water cannon is classified as a "less-lethal weapon", its use without adequate safeguards can cause serious harm, depending on factors such as the distance from which the water is sprayed as well as the water pressure level (see also paragraph 47 above). In that connection the Court observes that it has previously held, in the context of Article 3 of the Convention, that police operations, including the launching of tear-gas grenades and rubber bullets, should not only be authorised but should also be sufficiently delimited by domestic law, under a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents (see *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, § 43, 16 July 2013, and *Kılıcı v. Turkey*, no. 32738/11, § 33, 27 November 2018). Having regard to the relevant international materials, which, although not entirely in force or published at the time, provide guidance on good practices (see paragraphs 45-50 above), and bearing in mind the potentially dangerous nature of water cannon, the Court sees no reason why these principles should not also be applied, *mutatis mutandis*, in the present case.

85. In this regard, the Court observes that the Government did not seek to argue that there existed at the time of the events clear and adequate instructions regulating the use of water cannon, but instead referred to the general domestic legal framework concerning the use of force by the police (see paragraphs 42-44 above). However, beyond listing water cannon as one of the means which could be used by police officers as part of "material force", the domestic legal framework lacked any specific provisions on the use of water cannons during demonstrations, and did not lay down instructions for their deployment (see, *mutatis mutandis*, *Abdullah Yaşa and Others*, cited above, § 49; *İzci v. Turkey*, no. 42606/05, § 65, 23 July 2013; *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, § 75, 30 September 2014; and *Kılıcı*, cited above, §§ 34-35).

86. Admittedly, according to the applicable domestic law, the equipment and the degree of force to be used had to be determined by the supervisor of the intervening unit in the context of demonstrations (see paragraph 43 above). The evidence before the Court suggests that this was the case in the circumstances of the present application, since it appears that the police officers received orders to intervene and were thus not acting independently (see paragraph 24 above). However, there is nothing to indicate that the police officers or the supervisors of the intervening units took the necessary precautions concerning, for instance, the appropriate distance and water pressure in order to prevent or at least minimise the risk of serious injury such as that sustained by the second applicant. In this regard, the Court also notes that the internal document issued by the Silopi Security Directorate before the demonstration made no mention of specific instructions or precautions concerning the use of water cannon (see paragraph 11 above). Therefore, the Court considers that the Government have failed to show that the intervention of the security forces was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of bodily harm to the demonstrators (see *Kemal Baş v. Turkey*, no. 38291/07, § 30, 19 February 2013).

87. The Court further refers to the considerations outlined below concerning the effectiveness of the investigation into the matter, and notes that the domestic authorities failed to make a specific assessment concerning the important characteristics of the force at issue, such as the exact distance from which the pressurised water was sprayed, the angle of spraying and the level of water pressure (see paragraphs 94-96 below).

88. In view of the above, it has not been demonstrated that the recourse to force at issue was made strictly necessary by the second applicant's own conduct or was indispensable for the purpose of quelling mass disorder. Consequently, the State is responsible, under Article 3 of the Convention, for the injuries sustained by the second applicant.

89. There has accordingly been a violation of that provision in its substantive limb.

2. Procedural aspect of Article 3 of the Convention

(a) The parties' submissions

90. The second applicant claimed that the domestic authorities had failed to conduct an effective investigation into the incident. She argued in this regard that the prosecutor had failed to take statements from her and to assess whether she had committed any act warranting the intervention of the police. She further maintained that the prosecutor had mainly relied on the conclusions of the administrative investigation conducted pursuant to Law no. 4483 on the prosecution of civil servants.

91. The Government argued that the criminal investigation conducted by the public prosecutor had not been affected by the fact that no authorisation had been granted under Law no. 4483, since such authorisation was not required in respect of allegations of torture, ill-treatment and excessive use of force. Accordingly, the public prosecutor had made an assessment regarding the alleged offences with the exception of the alleged offence of misconduct in office, in respect of which administrative authorisation had been refused. The Government further argued that the domestic authorities had taken into account all the relevant evidence, including the video footage of the events and the statements of the officials and the police officers involved in the incident. The Government added that both the chief inspectors and the public prosecutor had concluded that the police intervention had been necessary and proportionate.

(b) The Court's assessment

92. The principles concerning the obligation to carry out an effective investigation into allegations of treatment infringing Article 3 of the Convention can be found in *Jeronovičs v. Latvia* ([GC], no. 44898/10, §§ 103-09, 5 July 2016) and *Bouyid* (cited above, §§ 114-23).

93. The Court reiterates, in particular, that the victim should be able to participate effectively in the investigation of allegations of ill-treatment. Furthermore, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Bouyid*, cited above, §§ 122-23, and *Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey* no. 20347/07, §78, 5 July 2016).

94. The Court notes that although the chief inspectors acknowledged that the second applicant had sustained serious injuries after having been hit by pressurised water, they concluded that those injuries had been the result of a coincidence and had occurred owing to her physical weakness (see paragraph 28 above). However, they failed to duly establish whether the force used in the circumstances of the case was of a nature to cause such harm. In this regard, the Court notes that neither the chief inspectors nor the public prosecutor sought to determine the exact distance from which the pressurised water was sprayed or examined other important elements such as the angle of spraying and the level of water pressure (see, *mutatis mutandis*, *Abdullah Yaşa and Others*, cited above, §§ 47-48). In particular, it appears that the authorities based their conclusions mainly on the police officers' statements regarding the relevant distance and the manner in which the water cannons were used, without assessing the veracity of those statements (see, *mutatis mutandis*, *Archip v. Romania*, no. 49608/08, § 70, 27 September 2011). In that connection, the Court observes that although the police officers stated that pressurised water had been sprayed only once by each vehicle, the video footage of the events shows that this was not the case (see paragraphs 25 and

38 above). Furthermore, the police officers' statements concerning the distance from which the pressurised water was sprayed lacked precision and thus warranted verification, bearing in mind also that they mentioned that visibility from within the water-cannon vehicles had been poor (see paragraphs 24 and 25 above). The Court also reiterates that the chief inspectors' report did not refer to any factual elements regarding the second applicant's alleged physical weakness, although her fall was considered to be linked to such a weakness.

95. The Court further observes that the chief inspectors relied also on the fact that the second applicant had not been targeted. Although the Court has no reason to doubt this assertion, such a circumstance cannot suffice to conclude that the injuries at issue were the result of a coincidence, regard being had to the potentially dangerous nature of the force used.

96. The fact that the public prosecutor made a separate assessment with regard to the alleged offences which did not fall within the scope of Law no. 4483 had no bearing on the adequacy of the investigation at issue, as there is nothing to suggest that the aforementioned crucial elements concerning the characteristics of the force used were taken into account in his assessment (see paragraph 35 above). In these circumstances the Court considers that the public prosecutor's conclusion that no negligence was attributable to the police officers lacked adequate reasoning.

97. The Court notes in addition that neither the chief inspectors nor the public prosecutor heard evidence from the second applicant in person.

98. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the matter was not capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible.

99. There has accordingly been a violation of Article 3 of the Convention in its procedural limb.

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

100. The applicants complained that the dispersal of the demonstration by the police had violated their rights to freedom of expression and freedom of assembly as provided for in Articles 10 and 11 of the Convention.

101. The applicants' complaints under this head were communicated to the Government with questions under Articles 10, 11 and 13 of the Convention.

102. The Government submitted that the applicants had not raised any complaints under Article 13 read in conjunction with Articles 10 and 11 of the Convention.

103. Having regard to the wording of the applicants' complaints as set out in the application form, the Court considers that these complaints should be

examined under Article 11 of the Convention only, which must be interpreted where appropriate in the light of Article 10 (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 85-86, ECHR 2015, and *Zakharov and Varzhabetyan*, cited above, § 77). Article 11 of the Convention reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Admissibility

104. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

105. The applicants claimed that there had been no violent incidents during the demonstration until the police had intervened. They maintained that the march had been organised by a political party, with a view to demonstrating against the increased military operations and in support of peace. They further argued that the police had used excessive force to disperse the demonstrators.

106. The Government maintained that the interference had had a legal basis and pursued several legitimate aims including the protection of national security, public safety and the rights of others, as well as the prevention of disorder and crime.

107. The Government argued that the demonstration had been held without prior notification and in response to a call made by the PKK. They further submitted that some demonstrators had carried banners and chanted slogans in support of the PKK. They added that the demonstrators had attacked the security forces before and during the march, had inflicted injuries on two police officers and had damaged several police vehicles.

108. The Government further maintained that the demonstration had been held in a region where the PKK had committed acts of violence over many years. They referred to the intelligence reports of the domestic authorities (see paragraphs 7, 8 and 10 above) and argued that serious incidents might have

occurred targeting the buildings of the security forces located along the route used by the demonstrators. The Government also submitted that the road in question, which was a major route for international transport and commerce, had been blocked because of the demonstration and that the shopkeepers could not open their shops owing to the possibility of violent incidents.

2. *The Court's assessment*

(a) **General principles**

109. The Court refers to the principles established in its case-law regarding the right to freedom of peaceful assembly (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 98-103, 114-15, 120-22, and 128, 15 November 2018).

110. It reiterates that an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour (see *Primov and Others v. Russia*, no. 17391/06, § 155, 12 June 2014, and *Frumkin v. Russia*, no. 74568/12, § 99, 5 January 2016). Even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1 of the Convention, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 103, ECHR 2011, and *Frumkin*, cited above, § 99).

111. Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic (see *Kudrevičius and Others*, cited above, § 155; *Disk and Kesik v. Turkey*, no. 38676/08, § 29, 27 November 2012; and *İzci*, cited above, § 89). This fact in itself does not justify an interference with the right to freedom of assembly, as it is important for the public authorities to show a certain degree of tolerance (see *Kudrevičius and Others*, cited above, § 155). The appropriate “degree of tolerance” cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly at the extent of the “disruption to ordinary life” (*ibid.*, and *Primov and Others*, § 145, cited above).

(b) **Application of these principles to the present case**

(i) *Existence of an interference, its legal basis and the legitimate aims pursued*

112. It is not in dispute between the parties, and the Court accepts, that the intervention of the police to disperse the demonstration at issue constituted an interference with the applicants’ right to freedom of assembly.

113. The Court further accepts that the interference in question had a legal basis, namely sections 22 and 24 of Law no. 2911 (see paragraph 40-42 above). It was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention (see *Oya Ataman v. Turkey* no. 74552/01, § 30, ECHR 2006-XIV).

114. The disputed measure may also be regarded as having pursued at least two of the legitimate aims set out in paragraph 2 of Article 11, namely the prevention of disorder and the protection of the rights of others (*ibid.*, § 32).

(ii) Necessity of the interference in a democratic society

115. Turning to the question of the “necessity” of the interference, the Court notes at the outset that in the absence of notification in accordance with Law no. 2911, the demonstration was unlawful in terms of domestic law (see paragraph 41 above). Furthermore, the march was held on a main road in contravention of section 22 of the same Law as in force at the material time (see paragraph 42 above). However, the Court points out that an unlawful situation does not necessarily justify an interference with a person’s right to freedom of assembly (see *Oya Ataman*, cited above, § 39). In particular, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Kudrevičius and Others*, § 150; *Oya Ataman*, § 42; and *İzci*, § 89, all cited above).

(α) The conduct of the demonstrators

116. The Court observes that it is not disputed between the parties that the applicants did not engage in acts of violence. As to the conduct of the other demonstrators, the Court notes that one police officer reported that he had been injured by a stone thrown by the demonstrators before the police intervention (see paragraph 19 above). Furthermore, the video footage shows that at least three adolescents among the demonstrators threw stones at the security forces when the group was heading towards the main road before the beginning of the march (see paragraph 39 above). The Court notes, however, that some of the demonstrators reacted against this behaviour and that, more importantly, the vast majority of the demonstrators were not involved in any violent acts during the period before the intervention of the police (*ibid.*). As to the damaged vehicles, there is nothing to indicate that the damage in question occurred before the intervention of the police (see paragraph 21 above). Therefore, having viewed the video footage and examined all the evidence in the case file, the Court considers that despite certain sporadic violent acts involving the throwing of stones – which were not committed by

the applicants – the demonstration was mainly of a peaceful character before the intervention of the police.

117. The Court further observes that the Government referred to various security considerations and to the disruption to ordinary life caused by the demonstration, in order to justify its dispersal.

(β) Security considerations

118. As regards the security risks, the Court has to examine first whether any such risk was “demonstrated”, that is, supported by ascertainable facts, and, secondly, whether its “scale” was such as to justify the authorities’ actions (see *Primov and Others*, cited above, § 150).

119. In this regard, the Court notes that the reports of 29 and 31 May 2010 referred to by the Government did not specifically concern the demonstration at issue (see paragraphs 7 and 8 above). As to the report of 2 June 2010, it mainly mentioned that the protestors might, if provoked, attack the security forces and their vehicles with stones. In the Court’s view, such a report could not demonstrate in itself that the participants of the gathering had violent intentions.

120. In so far as the Government argued that the demonstration had been organised in response to calls made by the PKK, the Court notes that the demonstration was organised by a political party (see paragraphs 9 and 12 above). As to the banners present during the demonstration, the Court notes that these were displayed during a peaceful gathering, which limited their potential impact on “national security” and “public order” (see *Belge v. Turkey*, no. 50171/09, § 35, 6 December 2016).

121. In view of the above and having regard also to the overall conduct of the demonstrators before the intervention of the police (see paragraph 116 above), the Court considers that in the circumstances of the present case, the mere existence of some buildings belonging to the security forces along the road taken by the demonstrators cannot be considered, in itself, sufficient to justify the dispersal of the demonstration.

(γ) The level of disruption to ordinary life and the authorities’ conduct

122. As to the extent of the disruption to ordinary life caused by the demonstration, the Court notes that the organisers of the gathering insisted on holding the march on the main road, although the authorities had proposed alternative venues (see paragraph 12 above). In this regard, the Court notes that restrictions on freedom of peaceful assembly in public places may serve to protect the rights of others with a view to preventing disorder and maintaining an orderly flow of traffic (see *Kudrevičius and Others*, cited above, § 157, and *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008). Since overcrowding during a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions

on the location, date, time, form or manner of conduct of a planned public gathering (see *Primov and Others*, cited above, § 130). Furthermore, it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force (see *Kudrevičius and Others*, cited above, § 155).

123. Furthermore, according to the information available to the authorities, the aim of the gathering was to march towards the Habur border post, where a statement to the press would be read out (see paragraph 10 above). The Court notes that the border is approximately 15 kilometres from Silopi, where the march started. The Court considers that such a march, held on a main road of international importance – if it had continued as planned – would certainly have resulted in a considerable level of disruption to ordinary life. However, the Court must also look at the particular circumstances of the case during the period before the dispersal of the march.

124. In this regard, the Court observes that although the demonstrators began gathering in front of the BDP party office at about 3 p.m. that day, traffic on the road in question was not stopped until about 4.30 p.m., when the demonstrators were heading towards the road (see paragraphs 13 and 39 above). Furthermore, it appears from the police reports that the applicants joined the front line of demonstrators at about 4.40 p.m. (see paragraph 16 above). Moreover, the video footage shows that the police intervention began less than two minutes after the applicants joined the front lines (see paragraph 39 above). Therefore, it appears that the flow of traffic was affected only for a period of less than twenty minutes before the intervention of the police (compare and contrast *Kudrevičius and Others*, cited above, § 169, where the disruption on three major highways lasted for more than forty-eight hours; *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, § 102, 1 September 2022, where the disruption lasted for at least a day and a half; *Barraco v. France*, no. 31684/05, § 47, 5 March 2009, where the disruption lasted for five hours; and *Éva Molnár*, cited above, § 42, where the disruption lasted for several hours).

125. As to the authorities' conduct, the Court notes that the police warned the demonstrators a number of times. However, the Court cannot overlook the fact that the authorities dispersed the march swiftly only a few minutes after it had started and less than twenty minutes after the traffic had been blocked (compare and contrast *Kudrevičius and Others*, §§ 176-77; *Éva Molnár*, § 43; *Barraco*, § 47; and *Makarashvili and Others*, § 102, all cited above).

126. In these circumstances, the Court considers that the extent of the disruption to ordinary life caused by the demonstration at issue prior to its dispersal was not such as to justify such swift intervention by the police.

127. The Court further refers to its findings in relation to the use of water cannon in the circumstances of the case, which led to a violation of Article 3

of the Convention under its substantive limb in respect of the second applicant, and notes that the manner in which the demonstration was dispersed resulted in a serious injury (see paragraph 88 above).

(δ) Conclusion

128. The Court accepts that the organisers of the demonstration at issue failed to comply with the regulations in force at the material time (see *Eğitim ve Bilim Emekçileri Sendikası and Others*, cited above, § 108). However, taking into account the authorities' impatience in seeking to disperse the march and the manner in which the force was used, the Court considers that the intervention of the police was disproportionate and not necessary in a democratic society.

129. There has accordingly been a violation of Article 11 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The second applicant claimed 30,000 euros (EUR) in respect of pecuniary damage. She submitted in that connection various medical reports and invoices regarding her treatment in Türkiye and abroad, as well as a number of documents relating to the allegedly associated transport and accommodation expenses. She maintained that she had had to continue her medical treatment abroad owing to the unavailability of such treatment in Türkiye. She alleged in that regard that she had borne nearly all the expenses related to her medical treatment abroad. She further argued that her capacity to work had been reduced. The second applicant also claimed EUR 50,000 in respect of non-pecuniary damage. The other applicants each claimed EUR 10,000 in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

132. The Government contested these claims. Referring to the relevant domestic legal framework, they maintained in particular that medical expenses and associated costs incurred by former members of the National Assembly, both domestically and abroad (in instances where the unavailability of domestic treatment was confirmed by medical reports meeting certain criteria), were covered by the Presidency of the National

Assembly but that the second applicant had failed to request reimbursement of the expenses claimed.

133. As regards pecuniary damage, the Court notes that the second applicant failed to demonstrate that the medical expenses and associated costs claimed by her were not covered or could not have been reimbursed by the medical insurance scheme for former members of the National Assembly, as stated by the Government (compare and contrast *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, §§ 132 and 136, 14 December 2021, where the applicant explicitly claimed an amount not covered by the State medical insurance scheme). The Court further notes that according to the information provided by the Government, the relevant expenses incurred abroad were also covered by the same insurance scheme if the treatment was confirmed to be unavailable in Türkiye (see paragraph 132 above). The second applicant did not contest the Government's assertion, but instead confined herself to maintaining that her treatment was unavailable in Türkiye and that she had borne the majority of the costs incurred abroad, without submitting any relevant documents to support her claims about the unavailability and lack of cover for the treatment. In these circumstances, the Court cannot speculate about the extent of cover under that medical insurance scheme. Lastly, in so far as the second applicant's claims can be understood to concern any loss related to her alleged reduced capacity to work (see paragraph 131 above), the Court notes that she did not present any relevant documents allowing the Court to assess the extent of such an alleged pecuniary loss, if any. The Court therefore concludes that the second applicant failed to properly substantiate her claims for pecuniary damage (see, *mutatis mutandis*, *Gadamauri and Kadyrbekov v. Russia*, no. 41550/02, § 60, 5 July 2011). As to the other applicants' claims for pecuniary damage, the Court does not discern any causal link between the violation found and the alleged damage. It therefore rejects the applicants' claims in respect of pecuniary damage in their entirety.

134. However, having regard to the nature of the violations found in respect of the second applicant, the Court considers that she must have suffered some non-pecuniary damage and awards her, on the basis of equity, EUR 26,000 under this head.

As to the other applicants' claims for non-pecuniary damage, the Court considers that the finding of a violation can be regarded as sufficient just satisfaction in the present case, and thus rejects their claims (see *Oya Ataman*, cited above, § 48).

B. Costs and expenses

135. The applicants also claimed a total of EUR 7,930 for the costs and expenses incurred before the Court, without producing any supporting documents.

136. The Government contested these claims.

137. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022). The Court reiterates in addition that Rule 60 §§ 2 and 3 of the Rules of Court requires the applicant to submit itemised particulars of all claims, together with any relevant supporting documents, failing which the Court may reject the claims in whole or in part. Accordingly, in the absence of any supporting documentation, the Court rejects these claims in their entirety (see *Paksas v. Lithuania* [GC], no. 34932/04, § 122, ECHR 2011 (extracts)).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in respect of the second applicant;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb in respect of the second applicant;
4. *Holds* that there has been a violation of Article 11 of the Convention in respect of all the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

GEYLANI AND OTHERS v. TÜRKİYE JUDGMENT

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Place of residence
1.	Hamit GEYLANI	1947	Ankara
2.	Sevahir BAYINDIR	1969	Hamburg
3.	Hasip KAPLAN	1954	Istanbul