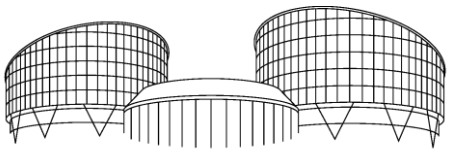

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TAHIROVA v. AZERBAIJAN

(Application no. 47137/07)

JUDGMENT

STRASBOURG

3 October 2013

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 Tahirova v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 47137/07) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Surayya Musa gizi Tahirova (*Sürəyya Musa qızı Tahirova* - "the applicant"), on 28 March 2007.

2. The applicant, who had been granted legal aid, was represented by Mr A. Mustafayev, a lawyer practising in Sumgayit. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that she had been beaten up by the police during the dispersal of a demonstration and that the domestic authorities had failed to investigate this incident. She also alleged that the police intervention in the demonstration had constituted a violation of her right to freedom of peaceful assembly.

4. On 10 November 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Sumgayit.

6. She is a person with a Category 2 disability and receives a disability pension.

A. Events of 26 November 2005

7. On 6 November 2005 parliamentary elections were held in Azerbaijan.

8. Following the announcement of the results of the elections, the opposition electoral coalition Azadliq decided to hold demonstrations to protest against alleged irregularities during the parliamentary elections of 6 November 2005.

9. On 26 November 2005 Azadliq held a demonstration, scheduled from 3 p.m. to 5 p.m. at Galaba Square in Baku, to protest against alleged election irregularities. Shortly after 5 p.m. police began an operation to forcibly disperse the demonstrators, because the demonstration had continued beyond the authorised time-limit. The dispersal operation was conducted by riot police units fully equipped with helmets, shields and truncheons.

10. The applicant and her family participated in the demonstration. According to the applicant, at around 4.45 p.m. she was walking slowly to the edge of the square to wait for her husband to join her so that they could go home. Suddenly, she saw demonstrators beginning to run away from the square in a chaotic manner. At the same moment she was hit on the head and back several times from behind. When she turned round she was kicked in the chest and abdomen area. She managed to see that the persons who had kicked her were police officers in uniform and equipped with shield and truncheon. She lost consciousness and fell to the ground.

11. Several news agencies managed to take photographs of the applicant lying unconscious on the ground surrounded by police officers. Some of these photographs were published in various newspapers and other news outlets.

12. The applicant lay in the same spot for an unspecified period of time. She lost and regained consciousness several times. According to the applicant, when she was conscious she saw several civilians trying to help her, but these attempts were actively prevented by the riot police and their police dogs. For a long time the riot police did not allow the ambulance units stationed at the square to provide her with any assistance, and she was finally taken to hospital only after a number of civilians had urged the riot police to allow this.

13. The applicant was admitted to the hospital at 6.30 p.m. The medical record concerning the applicant reads as follows:

> "Tahirova Surayya Musa gizi, born in 1953 and lives in Sumgayit, does not work, admitted at 6.30-35 p.m. on 26 November 2005 and left on 27 November 2005.

Full diagnosis of the main disease, other diseases: blunt trauma of the abdomen and diabetes.

The patient was admitted to the hospital with pain under the left ribs and general weakness. According to her, she was beaten up by police officers at Galaba Square on 26 November 2005 at around 5 p.m. She was taken to the hospital from the scene of the incident by an ambulance. She was examined in the hospital. In the objective examination, in palpation the abdomen is not hard, and is involved in respiration. There is a little sharp pain under the left ribs. Ultrasound examination does not reveal free liquid or traumatic changes in the abdomen. No fracture is apparent in the left part of the rib cage during X-ray examination. The patient was transferred for further examination and dynamic observation to Reanimation and Intensive Therapy Department. On 27 November 2005, at the request of the patient and her relatives, she left the hospital (in a stable condition)."

14. The applicant spent the night in the hospital and received in-patient treatment. Her condition was stabilised and she was discharged the next morning.

B. The proceedings before the domestic courts

15. On an unspecified date the applicant lodged a civil action against the Ministry of Internal Affairs, asking for compensation for pecuniary and non-pecuniary damage caused by ill-treatment and breach of her right to freedom of peaceful assembly. She argued that the riot police units of the Ministry of Internal Affairs had used unlawful, unjustified and excessive force against her, and had failed to comply with their duty to provide urgent medical assistance to persons injured as a result of the use of force. In support of her claims she submitted copies of the relevant medical documents and photographs of the incident.

16. In the course of the proceedings, the representative of the Ministry of Internal Affairs rejected the applicant's claim. His submissions were as follows:

"Firstly, the duration of the demonstration was determined in advance. The event should have begun at 3 p.m. and end at 5 p.m. However, without taking into consideration the end of this period, the demonstrators stayed there with the intention of continuing unlawfully the demonstration. It should be noted that soldiers of Internal Troops were not there. Only police officers and Riot Police Regiment were at the square. They asked with loudspeakers the demonstrators to leave the square after the end of the demonstration. The police officers did not infringe the requirements of the legislation. On the contrary, numerous demonstrators did not leave the square unlawfully after the end of the period determined in advance."

17. The representative of the Ministry of Internal Affairs was silent as to the applicant's particular complaint on her ill-treatment by the police.

18. On 31 March 2006 the Sabayil District Court dismissed the applicant's claim, finding that she had failed to prove her allegations, in particular that she had been beaten or had otherwise sustained physical or psychological damage as a result of the police actions. In this connection,

the court held, without further explanation, that the medical record and photographs submitted to the court did not constitute proof of the applicant's allegations. The court also held that the forcible dispersal of the demonstration was lawful, because the demonstrators had stayed at Galaba Square beyond 5 p.m., the time-limit permitted by the authorities. The relevant part of the judgment reads as follows:

> "Article 7 of the Law on Freedom of Assembly of the Republic of Azerbaijan provides the possibility to place restriction on freedom of assembly for the prevention of disorder or crimes, for the protection of public interests and state security, as well as for the protection of other interests which are necessary in a democratic society.
>
> According to Article 14 of the same law, the police authorities are entitled to warn organisers and participants that force will be used in the event that an order to suspend the assembly and for its participants to disperse is not executed, and to use appropriate force to ensure the suspension of the assembly and the dispersal of its participants...
>
> At the court hearing, the applicant failed to submit any evidence proving that the police dispersed the gathering of 26 November 2005 before 5 p.m. On the contrary, it was established that police officers did not intervene in the demonstration until 5 p.m. and, only after the end of the determined period and following numerous warnings, the demonstrators were dispersed...
>
> Moreover, the applicant failed to submit to the court reliable evidence proving that she was injured because she had been beaten by the police and as a result she lost consciousness and fell to the ground. The medical record and the photographs do not mean that the claim was substantiated."

19. On 5 June 2006 the applicant appealed against this judgment, reiterating her complaints. In particular, she noted that the court had not examined in detail copies of the relevant medical documents and photographs, which showed that she had been ill-treated by the police.

20. On 11 August 2006 the Court of Appeal upheld the first-instance court's judgment. The Court of Appeal's judgment is almost identical in its wording to the first-instance court's judgment and reiterates the same reasons for the dismissal of the applicant's appeal.

21. On 12 December 2006 the Supreme Court upheld the lower courts' judgments.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

22. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads as follows:

> "No one shall be subjected to torture or ill-treatment. No one shall be subjected to degrading treatment or punishment. ..."

23. Article 49 of the Constitution provides:

"I. Everyone has the right to freely assemble together with others.

II. Everyone has the right, upon notification to relevant Government bodies in advance, to assemble peacefully with others, without arms, and to hold rallies, meetings, demonstrations, street marches and pickets."

B. Law on Police of 28 October 1999

24. The relevant part of the Law on Police reads as follows:

Article 1. Basic Terms

"Special equipments are truncheons, arm-restraining instruments, tear gas, rubber bullets, water cannons, special devices forcible stopping of vehicles and other special equipments provided by the legislation of the Republic of Azerbaijan..."

Article 26. Use of physical force, special equipments and firearms by the police

"VI. According to the requirements of this law, use of physical force, special equipments or firearms in cases of extreme necessity shall be proportionate to the danger posed...

VII. The relevant police authorities must carry out an inquiry into every incident involving the use of physical force, special equipments or firearms by a police officer and must issue a pertinent opinion on its lawfulness.

IX. Unlawful use of physical force, special equipments or firearms by a police officer entails the officer's responsibility under the relevant legislation."

Article 27. Duties of the police officer in respect of use of physical force, special equipments and firearms

"I. The police officer in the course of the implementation of his duties in respect of use of physical force, special equipments or firearms should:

1. use physical force, special equipments or firearms against a person only in the event of absolute necessity or necessary self-defence, after all other means of coercion have failed to produce the required result, and in proportion to the gravity of the offence and the personality of the offender;

5. provide the necessary medical aid to anyone injured as a result of the use of physical force, special equipments or firearms;

7. report to the police office where he or she serves or to the police office of the area where firearms have been used, in writing, on the occasions he or she used physical force, special equipments or firearms;

8. inform the relevant prosecutor, in writing, of any use of physical force, special equipments or firearms within twenty-four hours."

C. The Code of Criminal Procedure ("the CCrP"), as in force at the material time

25. The relevant provisions of the CCrP concerning the institution of criminal proceedings read as follows:

Article 37. Types of criminal prosecution

"37.1. Depending on the nature and severity of the offence, the criminal prosecution shall be carried out in the form of private, public-private or public charges in accordance with the provisions of this Code.

37.2. A private criminal prosecution shall take place only upon a complaint by the victim concerning offences under Articles 147 [defamation], 148 [insult], 165.1 [infringement of copyrights and related rights] and 166.1 [infringement of patent and invention rights] of the Criminal Code and shall be discontinued in the event of reconciliation between the victim and the accused before the court deliberates.

37.3. A public-private criminal prosecution shall take place upon a complaint by the victim or, in the circumstances provided for in Article 37.5 of this Code, on the initiative of the prosecutor for offences under Articles 127 [deliberate infliction of less serious injury to health], 128 [deliberate infliction of minor injury to health], 129.2, 130.2, 131.1 [inflection of less serious injury to health by negligence], 132-134 [beating; ill-treatment; death threat or threat of inflection of serious injury to health], 142.1, 149.1, 150.1, 151, 156-158, 163, 175-177.1, 178.1, 179.1, 184.1, 186.1, 190.1, 197 and 201.1 of the Criminal Code of the Republic of Azerbaijan...

37.5. Where no complaint is made by the victim, a public-private criminal prosecution may be initiated by the prosecutor only in the following cases:

37.5.2. if the offence was committed by or against a representative of the authority or other officials of State authorities;

37.6. In respect of other offences which are not provided for in Articles 37.2. and 37.3. of this Code, the criminal prosecution shall be carried out in the form of public charges."

Article 39. Circumstances which preclude criminal prosecution

"39.1. A criminal prosecution may not be launched or, if already launched, shall be discontinued (as well as the criminal case may not be instituted or proceedings in the criminal case shall be discontinued) in the following circumstances:

39.1.8. if the victim has not lodged a complaint (in the case of a private prosecution or if the prosecutor does not take the initiative in launching the criminal prosecution in the case of public-private charges)..."

Article 46. Characteristics of the institution of the criminal prosecution in connection with the opening of the criminal case

"46.1. There shall be proper reason and grounds for the institution of criminal proceedings relating to a public or semi-public prosecution.

46.2. The reason for instituting criminal proceedings may be an application from an individual, information from a legal entity (official) or the media, or information directly obtained by the investigator or the prosecutor, concerning an offence committed or in preparation."

D. Law on Freedom of Assembly of 13 November 1998, as in force at the material time

26. Article 7 provides that any restriction on freedom of assembly may be placed only by law and for the purposes of protection of the following interests necessary in a democratic society: 1) for the protection of the interests of public and state security 2) for the prevention of disturbance of public order 3) for the prevention of disorder or crime 4) for the protection of the health of the population 5) for the protection of morals 6) for the protection of the rights and freedoms of others.

27. Article 14 sets out the powers and duties of the police in connection with the holding of an assembly. According to Article 14.I.3, the police have the right to suspend an assembly, if the need arises, when the conduct of the assembly does not meet the conditions provided in the prior written notification. Article 14.II also provides that the police have the right to inform organisers of and participants in an assembly of its suspension and dispersal, to order organisers and participants to use all available means for suspension of the assembly and dispersal of participants, to warn organisers and participants that force will be used in the event that an order to suspend the assembly and for its participants to disperse is not executed, and to use appropriate force to ensure the suspension of the assembly and the dispersal of its participants. Use of physical force or special equipments by the police should in any case be proportional to the danger in question (Article 14.6).

III. RELEVANT INTERNATIONAL DOCUMENTS AND REPORTS

A. Basic principles on the use of force adopted by the United Nations

28. The relevant extracts from the Code of Conduct for Law Enforcement Officials (adopted by the UN General Assembly Resolution 34/169 of 17 November 1979) read:

Article 3

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

Article 5

"No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

29. The relevant extracts from the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) read:

> "13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary."

B. Reports by international bodies

30. The relevant extracts from the Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Election Observation Mission Final Report on parliamentary elections of 6 November 2005 (1 February 2006) read:

> "On 9, 13 and 19 November Azadliq organized and received permission to hold rallies at Galaba Square to protest election irregularities. No serious incidents were reported...
>
> The Azadliq and other opposition parties organized another protest meeting on November 26 at Galaba Square. This meeting took place after the departure of the EOM (Election Observation Mission) from Azerbaijan. Police dispersed the participants, using considerable force, immediately after expiration of the allotted time for the meeting."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. Relying on Articles 2, 3, 6 and 13 of the Convention, the applicant complained that the police had used unjustified and excessive force against her during the dispersal of the demonstration of 26 November 2005 and that the domestic authorities had failed to conduct an effective investigation of her complaints of ill-treatment. The Court considers that the present complaint falls to be examined solely under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Alleged ill-treatment of the applicant by the police

1. Admissibility

32. The Court observes that no objection was raised by the Government in respect of the admissibility of this complaint. However, the Court

considers it necessary to note that in the present case the applicant brought a civil action against the Ministry of Internal Affairs complaining of her ill-treatment by the police. In this connection, the Court is satisfied that by bringing this action before the domestic courts which had the possibility to examine whether the applicant had been ill-treated by the police or not the applicant complied with the requirement of the exhaustion of domestic remedies in respect of substantive limb of Article 3.

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

2. Merits

(a) The parties' submissions

34. The Government submitted that the applicant had not been subjected to inhuman or degrading treatment. In this connection, the Government argued that the applicant had failed to submit sufficient evidence that she had been subject to ill-treatment by the police. The Government contested the medical record submitted by the applicant, arguing that the diagnosis of "blunt trauma of the abdomen" was based only on the applicant's subjective statements. In particular, the Government relied on a letter dated 7 February 2011 from, the director of the Forensic Medical Examination and Pathological Anatomy Association of the Ministry of Health issued at the request of the Ministry of Internal Affairs. According to this letter, the diagnosis of "blunt trauma of the abdomen" was based only on the applicant's statements, and no contusions, fractures or traumatic changes were revealed in the abdomen. Therefore, this diagnosis could not be qualified as an injury according to the forensic rules. As to the photographs, the Government submitted that they showed the applicant lying on the ground, but were not evidence that she had been beaten by police.

35. The applicant contested the Government's submissions. She submitted that the police had used excessive force against her without any justification during the dispersal of the demonstration of 26 November 2005. She relied in particular on the medical record and photographs taken during the dispersal of the demonstration.

(b) The Court's assessment

36. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for

exceptions, and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

37. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

38. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009, and *Avşar*, cited above, §§ 283-84).

39. Turning to the circumstances of the present case, the Court observes at the outset that the parties are in dispute about the question of whether the applicant was subjected to the use of force by the police at all (see *Rizvanov v. Azerbaijan*, no. 31805/06, §§ 46-48, 17 April 2012, compare also with *Muradova*, cited above, § 107).

40. The Court considers that the applicant has been able to produce sufficiently strong evidence in support of her statement that she was subjected to the use of force by the police on 26 November 2005. In particular, the applicant produced a medical record drawn up on 27 November 2005, a day after the incident. Admittedly, this record was not issued by a forensic expert, and did not provide a detailed forensic description of the injuries; nor did it attempt to determine their cause using

forensic methods. Nevertheless, it certified that the applicant had been transported to the hospital by an ambulance from Galaba Square, where the demonstration had been held, and that she had been admitted to the hospital with the diagnosis of "blunt trauma of the abdomen" on 26 November 2005. She was immediately hospitalised and spent the night in the Reanimation and Intensive Therapy Department of the hospital. She left the hospital the next day, after her condition had been stabilised.

41. In this connection, the Court cannot accept the Government's interpretation of the medical record of 27 November 2005, which relied on the letter of 7 February 2011 issued by the director of the Forensic Medical Examination and Pathological Anatomy Association of the Ministry of Health at the request of the Ministry of Internal Affairs. The Government argued that as the diagnosis of "blunt trauma of the abdomen" was based only on the applicant's statements, the medical record of 27 November 2005 does not prove that the applicant was subjected to ill-treatment. However, the Court does not consider that the letter of 7 February 2011 can be used to call into question the medical record of 27 November 2005. In particular, the Court observes that the medical record of 27 November 2005 was delivered immediately after the incident, following a medical examination of the applicant by a doctor, whereas the letter of 7 February 2011 was issued without any medical examination of the applicant, more than five years after the incident. In any event, the Court does not see how the author of the letter of 7 February 2011 could challenge a diagnosis established five years before, without examining the patient at the material time. In view of the above, the Court considers that the medical record of 27 November 2005, despite certain shortcomings, constitutes reliable medical evidence and that, for the purposes of the present complaint, its content is sufficient to conclude that the applicant suffered "blunt trauma of the abdomen" (compare *Rizvanov*, cited above, § 47).

42. The Court notes that the applicant's version of events was also supported by the photographs taken at the scene of the incident. In particular, the photographs submitted show the applicant lying unconscious on the ground surrounded by police officers with shields and truncheons. The Court further observes that upon her arrival at the hospital the applicant stated that she had been beaten in Galaba Square by police officers. In any event, there is no indication that any other person or group other than the police used force on 26 November 2005 at Galaba Square during the dispersal of the demonstration. In these circumstances, the Court does not see any contradiction or inconsistency in the applicant's submission that the "blunt trauma of the abdomen" described in the medical certificate of 27 November 2005 was inflicted by the police on 26 November 2005. The concordant evidence produced before the Court is sufficient to establish that the police officers kicked the applicant in the abdominal area during the dispersal of the demonstration. In the Court's opinion, neither the

Government in their submissions, nor the domestic courts in their decisions, provided a convincing rebuttal of this presumption (see, *mutatis mutandis*, *Najafli v. Azerbaijan*, no. 2594/07, § 37, 2 October 2012).

43. The Court will consequently examine whether the use of force against the applicant was excessive. In this respect, the Court attaches particular importance to the circumstances in which force was used (see *Güzel Şahin and Others v. Turkey*, no. 68263/01, § 50, 21 December 2006, and *Timtik v. Turkey*, no. 12503/06, § 49, 9 November 2010). When a person is confronted by police or other agents of the State, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Kop v. Turkey*, no. 12728/05, § 27, 20 October 2009, and *Timtik*, cited above, § 47).

44. The Court considers that it has not been shown that the recourse to physical force against the applicant was made strictly necessary by her own conduct. It is undisputed that the applicant did not use violence against the police or pose a threat to them. It has not been shown that there were any other reasons justifying the use of force. Therefore, the Court cannot but conclude that the use of force was unnecessary, excessive and unacceptable (see *Najafli*, cited above, § 39, and *Rizvanov*, cited above, § 50).

45. The Court finds that the injuries sustained by the applicant establish that there was serious physical pain and suffering. The applicant suffered a "blunt trauma of the abdomen", which required medical treatment. The ill-treatment and its consequences must have also caused the applicant considerable mental suffering, diminishing her human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

46. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

B. Alleged failure to carry out an effective investigation

1. Admissibility

47. The Government submitted that the applicant had failed to lodge a complaint with the Ministry of Internal Affairs or the Office of the Prosecutor General concerning the alleged unlawful actions of the police. Therefore, the domestic authorities were not able to conduct an effective investigation of the applicant's allegations of ill-treatment.

48. The applicant maintained her complaints.

49. The Court considers that in so far as the Government's submissions concerning the applicant's failure to submit a criminal complaint with the

relevant domestic authorities may be understood as an objection concerning non-exhaustion of domestic criminal remedies, it raises issues which are closely related to the merits of the complaint. Having regard to this, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

50. The parties did not make any specific observations on the merits.

(b) The Court's assessment

51. Where an individual raises an arguable claim that he or she has been ill-treated by police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

52. Any investigation of allegations of ill-treatment must be thorough. That 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 or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

53. Turning to the circumstances of the present case, the Court observes that the applicant lodged a civil action against the Ministry of Internal Affairs complaining of her ill-treatment by the police and seeking compensation for this ill-treatment. Whereas the Court has found that in the circumstances of the present case and in the absence of an objection by the

Government, an issue of non-exhaustion did not arise in respect of the substantive aspect of Article 3 (see paragraph 32 above), the Court notes that this remedy cannot be regarded as sufficient in terms of a Contracting State's obligations under procedural limb of Article 3 of the Convention in a case like the present concerning alleged ill-treatment by the police, as it is aimed at awarding damages rather than identifying and punishing those responsible (see *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI, and *Gladyshev v. Russia*, no. 2807/04, § 49, 30 July 2009).

54. In this connection, the Court observes that no criminal investigation was carried out in the present case. It is also undisputed by the parties that the applicant never lodged a formal criminal complaint with the police or the prosecution authorities concerning her allegations of ill-treatment. In these circumstances, the Court considers that in the instant case the question which should be addressed by it is not to establish whether the investigation was effective because there was none, but to determine whether the applicant's failure to lodge a formal criminal complaint in the circumstances either prevented them from carrying out such an investigation, or relieved them of their general duty to do so.

55. The Court finds in this regard that nothing under domestic law prevented the authorities in the circumstances from commencing a criminal investigation.

56. In particular, the Court observes that the Ministry of Internal Affairs was the defendant in the domestic civil proceedings and its representative took the floor at the court hearings. The police authorities were thus aware of the applicant's allegations of ill-treatment, which were supported by the medical record and photographs.

57. The Court reiterates in this respect that whatever mode or form of investigation is employed at the domestic level in respect of Article 3 complaints, once the matter has come to the attention of the authorities, they must act of their own motion and cannot leave it to the applicant to take responsibility for the conduct of investigatory procedure (see *Muradova*, cited above, § 123). This rule is especially relevant in a case where the police used physical force and special equipments in dispersing a demonstration. The Court notes in this regard that the police authorities were under an obligation, in accordance with Article 26.VII of the Law on Police, to carry out an inquiry into every incident involving the use of physical force, special equipments or firearms, and to issue a pertinent opinion on its lawfulness (see paragraph 24 above).

58. The Court further observes that, under Article 27.I.8 of the Law on Police, the police should also inform the relevant prosecutor of any use of physical force, special equipments or firearms within twenty-four hours. In the present case, the Government were silent as to whether the police had

informed the relevant prosecutor that force had been used during the dispersal of the demonstration of 26 November 2005.

59. The Court also observes that under the CCrP, as in force at the material time, the criminal prosecution concerning offences of infliction of less serious or minor harm to health, beating or ill-treatment were carried out in the form of public-private charges; in other words, the criminal prosecution in respect of these offences was instituted upon a complaint by the victim or on the initiative of the prosecutor. In particular, Article 37.5. of the CCrP provided that a criminal prosecution in the form of public-private charges might be instituted by the prosecutor, in the absence of a complaint by the victim, if the offence was committed by or against a representative of the authority or other officials of State authorities (see paragraph 25 above). Therefore, the absence of a criminal complaint by the applicant could not prevent the prosecutor to institute the criminal prosecution in respect of the use of force by a representative of the authority, namely the police as in the present case.

60. The foregoing considerations are sufficient to enable the Court to conclude that the Government's argument that the domestic authorities were not able to conduct an effective investigation of the applicant's allegations of ill-treatment because she had failed to lodge a complaint with the police or the prosecution authorities is irrelevant in the particular circumstances of the present case.

61. Furthermore, having regard to the undisputed fact that the authorities were aware of the applicant's allegations of ill-treatment, the Court finds that the authorities were under an obligation, under the procedural aspect of Article 3 of the Convention in conjunction with Article 1 of the Convention, to carry out an effective official investigation. In the absence of an investigation of the applicant's allegations of ill-treatment, the Court cannot but conclude that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

62. The applicant complained that the police intervention in the demonstration amounted to a violation of her right to freedom of peaceful assembly. The relevant part of 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 ... for the prevention of disorder or crime ... or for the protection of the rights and freedoms of others ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

64. The Government submitted that the police intervention in the demonstration after 5 p.m. was prescribed by law, namely Articles 7 and 14 of the Law on Freedom of Assembly, pursued the legitimate aim of preventing disorder and protecting the rights of others, and was necessary in a democratic society as the demonstrators had behaved aggressively and had intended to continue an unlawful demonstration. The Government noted that the demonstration took place without any police intervention from 3 p.m. to 5 p.m., which was the period notified by the organisers. However, as the demonstrators had refused to disperse after 5 p.m., the time the assembly was supposed to end, despite numerous warnings by the police, the latter had to intervene.

65. The applicant contested the Government's submissions. She argued in particular that the demonstration was peaceful and there was no need for violent interference by the police.

2. The Court's assessment

(a) Whether there was interference

66. The Court notes that there is no dispute between the parties, and the Court agrees, that there was an interference with the applicant's right to freedom of assembly.

(b) Whether the interference was justified

67. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2, and is "necessary in a democratic society" for the achievement of those aims (see *Djavit An v. Turkey*, no. 20652/92, § 63, ECHR 2003-III; *Balçık and Others v. Turkey*, no. 25/02, § 44, 29 November 2007; and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 37, 23 October 2008).

68. The potential dispersal of a demonstration by the police and the use of force by the latter in this respect were set out in Articles 7 and 14 of the Law on Freedom of Assembly, which were the legal basis for the police

intervention in the present case. The Court accepts that the interference was "prescribed by law" and that it pursued "legitimate aims" within the meaning of paragraph 2 of Article 11, those of preventing disorder and protecting the rights of others. It remains to be determined whether it was "necessary in a democratic society".

69. In this connection, the Court reiterates at the outset that the right to freedom of assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Djavit An*, cited above, § 56). Accordingly, States must not only safeguard the right to assemble peacefully, but must also refrain from applying unreasonable indirect restrictions upon that right. In view of the essential nature of freedom of assembly and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right (see *Ouranio Toxo v. Greece*, no. 74989/01, § 36, ECHR 2005-X (extracts), and *Adalı v. Turkey*, no. 38187/97, § 267, 31 March 2005, with further references).

70. Turning to the circumstances of the present case, the Court notes that the only reason advanced by the Government for the police intervention was the fact that the demonstrators, including the applicant, did not disperse after the end of the allotted time for the demonstration, despite numerous warnings by the police. The Court observes that the demonstration which was held on 26 November 2005 in Galaba Square was peaceful and was carried out according to the rules on holding of assemblies.

71. The Court points out that it is undisputed by the parties that the assembly was conducted peacefully until 5 p.m., the time scheduled for the end of the demonstration in the notification given. It appears that the demonstrators, including the applicant, were informed by the police after 5 p.m. that the continuation of their demonstration was unlawful, and they were ordered to disperse. In this connection, the Court reiterates that associations and others organising demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force (see *Oya Ataman v. Turkey*, no. 74552/01, § 38, ECHR 2006-XIII).

72. The Court cannot, however, consider acceptable the forcible dispersal of a peaceful demonstration by the police and their treatment of the applicant, merely on account of a delay on the part of the demonstrators in dispersing. It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. However, there is no evidence to suggest that in the instant case the applicant or other demonstrators presented a danger to public order. The Government failed to submit any evidence in that respect. In particular, the Government have not submitted any evidence which could cast doubt on the

facts submitted by the applicant, namely that she was about to leave the place and go home.

73. Moreover, the Court points out that the demonstrators, including the applicant, wished to draw attention to a vital issue in a democratic society, namely alleged election irregularities. The Court is therefore particularly struck by the authorities' impatience in seeking to end the demonstration by forcible dispersal (see *Balçık and Others*, cited above, § 51).

74. In the Court's view, 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 *Oya Ataman*, cited above, § 42, and *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007). However, the Court sees no sign of tolerance in the present case.

75. Having regard to the above, the Court considers that in the instant case the forceful intervention of the police vis-à-vis the applicant was disproportionate and was not necessary for the prevention of disorder or the protection of the rights of others within the meaning of the second paragraph of Article 11 of the Convention. There has accordingly been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 11

76. The applicant further complained that she had been discriminated against by the police because of her participation in the opposition demonstration.

77. However, having regard to all the material in its possession, and in so far as these complaints are within its competence, the Court finds that they do not disclose any appearance of discrimination as alleged by the applicant. It follows this part of the application is inadmissible under Article 35 § 3 (a) as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 40,000 euros (EUR) in compensation for pecuniary and non-pecuniary damage.

80. The Government submitted that the applicant's claim was unsubstantiated and excessive. They considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

81. The Court observes that the applicant did not submit any documentary evidence supporting her claim for pecuniary damage. Accordingly, the Court rejects that claim. However, the Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 11,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

82. The applicant claimed EUR 1,700 for costs and expenses incurred before the domestic courts. She also claimed EUR 1,100 for costs and expenses incurred before the Court. She further claimed EUR 800 for translation expenses, EUR 200 for stationery expenses and EUR 900 for transport expenses. In support of her claim, she submitted a contract for legal services rendered in the proceedings before the domestic courts and the Court.

83. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant had failed to produce all the necessary documents in support of her claims.

84. 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 have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the global sum of EUR 2,650 in respect of costs and expenses, less the sum of EUR 850 received in legal aid from the Council of Europe.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 11 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the ill-treatment by the police;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of effective investigation of the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 11 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,650 (two thousand six hundred and fifty euros), less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President