KEY THEME[1]
Article 3
The minimum level of severity test in light of *Bouyid v. Belgium*

(Last updated: 31/08/2026)

Introduction

In its judgment in *Bouyid v. Belgium* [GC], 2015, the Grand Chamber adopted the following new principle as regards the ill-treatment of persons wholly under the control of State agents. When a person is deprived of his liberty or is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and constitutes a violation of Article 3 of the Convention (§§ 100 and 101 read together).

The minimum level of severity test under Article 3

Article 3 of the Convention proscribes in absolute terms three forms of ill-treatment: torture, inhuman treatment or punishment and degrading treatment or punishment.

According to Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The Court has held that the assessment of that level is relative and depends on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Muršic v. Croatia* [GC], 2016, § 97).

In order to determine whether the threshold of severity has been reached, the Court may also take other factors into consideration, in particular:

(a) The purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 of the Convention;

(b) The context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions; and

(c) Whether the victim is in a vulnerable situation (*Khlaifia and Others v. Italy* [GC], 2016, § 160).

Prior to *Bouyid v. Belgium* [GC], 2015, this test applied regardless of the category of conduct in issue. Thus, as the Court held in *Ireland v. the United Kingdom*, 1978, there could be cases before the Court where "violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 of the Convention" (§ 167).

[1] Prepared by the Registry. It does not bind the Court.

On this basis, and in the context of alleged ill-treatment by State agents, the Court has found that:

- a degree of intimidation felt by the applicant while being forcibly taken to the police station did not exceed the requisite threshold (see *Foka v. Turkey*, 2008, § 61, and *Protopapa v. Turkey*, 2009, § 49);
- handcuffing an applicant for four hours which had not caused any physical injuries and had had no long-term effect on the applicant's mental state, did not reach the severity threshold required under Article 3 (see *Wieser v. Austria*, 2007);
- the anguish and mental suffering experienced by a person who was taken to a police station and compelled to sign a pre-prepared statement at a time when his son was in a coma did not attain the minimum level of severity required by Article 3 (see *Berktay v. Turkey*, 2001, § 176).

The refinement of the minimum level of severity test in *Bouyid v. Belgium*

In *Bouyid v. Belgium* [GC], 2015, the Court departed from the minimum level of severity test in the very particular context of a person who is deprived of liberty "or, more generally confronted with law-enforcement officers", and it did so as follows.

It began (at § 100) by adopting a bright-line rule: "in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, *in principle*, an infringement of the right set forth in Article 3" (emphasis added). This approach stemmed from the well-established principle laid down in *Ribitsch v. Austria*, 1995, § 38.

It continued (at § 101) by clarifying that the phrase "in principle" could not be understood to mean "that there might be situations in which such a finding of a violation is not called for, because the above-mentioned severity threshold has not been attained" (§ 101). This was because "any interference with human dignity strikes at the very essence of the Convention" (*ibid*), there being a particularly "strong link" between concepts of "degrading" treatment and "respect for human dignity" (§§ 89 and 90 and the cases cited therein).

The Court concluded by setting out the **newly applicable principle** as follows: "any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applied in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question" (§ 101).

In sum, the approach in *Bouyid v. Belgium* [GC], 2015, means that, where an applicant is wholly under the control of State agents, the Court's examination must shift to the necessity, rather than the severity, of the treatment to which the applicant was subjected to in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention. If the treatment is not considered strictly necessary, it amounts to degrading treatment and thus a violation of Article 3 of the Convention (§§ 111 and 112; see also *Perkov v. Croatia*, 2022, § 31).

In cases where *Bouyid v. Belgium* applies, does the severity test have any continued relevance?

The severity test would be still relevant in cases where the treatment took place when the applicant was wholly under the control of the State agents, if the Court also wishes to take one step further and characterise the treatment as inhuman treatment or torture (*Yusiv v. Lithuania*, 2016, §§ 61-62; *R.R. and R.D. v. Slovakia*, 2020, §§ 160-161; *M.B. and Others v. Slovakia (no. 2),* 2023, § 74; *Lapunov v. Russia*, 2023, §§ 107-110).

Noteworthy examples applying *Bouyid v. Belgium*

- *A.P. v. Slovakia*, 2020 – the Court considered the "severity threshold" to have been met by a slap in the face during the course of an arrest after undertaking an assessment of whether or not the physical force used was "strictly necessary" (§§ 59-63). Taking into account the vulnerability of the minor applicant and the professionalism of the officers, the Court felt that, even if the applicant had spat on the officers or attempted to punch them, force had not been strictly necessary (§ 62).
- *Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020 – the Court held that, in the particular circumstances of the case, the use of handcuffs (when the applicant was escorted by force to involuntary psychiatric and psychological examinations in the course of criminal proceedings against him) was not made strictly necessary by his conduct. The handcuffing diminished the applicant's human dignity and was in itself degrading (§ 82).
- *Zakharov and Varzhabetyan v. Russia*, 2020 – the Court found that recourse to physical force by the police during the dispersal of a political rally was not strictly necessary as the applicants were peacefully assembled. The Court attached particular weight to the fact that the injuries had been sustained while the applicants had been within an area in which law-enforcement authorities were conducting an operation, during which they had resorted to the use of force for the purpose of quelling mass disorder. The use of force was held to have diminished the applicants' dignity, thus amounting to degrading treatment (§§ 70-74).
- *Roth v. Germany*, 2020 – the Court held that the repeated strip searches of the applicant, prior and after receiving visitors in prison, lacked any legitimate purpose and resulted in excessive humiliation. The searches therefore diminished the applicant's human dignity and amounted to degrading treatment under Article 3 (§ 72).
- *Navalnyy and Gunko v. Russia*, 2020 – in finding that the applicant had not shown any resistance during his arrest in public and subsequent transfer to the police station, the Court held that the forceful twisting of the applicant's arm by the police during these events was not made strictly necessary by the applicant's own conduct. Such use of force was found to have diminished the applicant's human dignity and amounted to degrading treatment (§§ 43-48).
- *Ilievi and Ganchevi v. Bulgaria*, 2021 – where the Court applied the *Bouyid* test in the context of search and home arrest. It considered excessive the conduct of the police officers in respect of the two male applicants (the suspects), whereas it found that the police officers' actions vis-à-vis the three female applicants (family members), which had been very brief and low-key, to be proportionate in relation to their conduct (§§ 52-57 and §§ 58-62).
- *İşik v. Türkiye*, 2024 – the Court found that the use of a defence weapon during a police intervention in a fight between two groups was not justified despite the violent nature of the fight. The applicant, who was hit three times by the weapon including once to the head, had not been involved in the fight or otherwise violent. The recourse to force had thus not been made strictly necessary for quelling the mass disorder (§§ 57-61).
- *Kasım Özdemir and Mehmet Özdemir v. Türkiye*, 2024 – the Court found that the shots fired by a gendarmerie officer to the applicants' legs during a scuffle between them, which were preceded by prior warnings and shots fired in the air, were necessary and not excessive. In particular, it noted the escalating and unpredictable nature of the confrontation, in which the gendarmerie and their car had been seriously attacked, leading them to the honest belief that their lives had been in danger (§§ 92-98).

Further references

Case-law guides:

- Guide on Mass Protests
- Guide on Prisoners' Rights

KEY CASE-LAW REFERENCES

Leading case:

- *Bouyid v. Belgium* [GC], no. 23380/09, ECHR 28 September 2015 (violation of Article 3 (substantive and procedural)).

Other cases:

- *Şakir Kaçmaz v. Turkey*, no. 8077/08, 10 November 2015 (no violation of Article 3 (substantive) with regards to ill-treatment during custody; violation of Article 3 (substantive) with regards to use of force during arrest; violation of Article 3 (procedural));
- *Caracet v. the Republic of Moldova*, no. 16031/10, 16 February 2016 (violation of Article 3 (substantive and procedural));
- *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, 17 March 2016 (no violation of Article 3 (substantive); violation of Article 3 (procedural));
- *Cazan v. Romania*, no. 30050/12, 5 April 2016 (violation of Article 3 (substantive and procedural));
- *Balajevs v. Latvia*, no. 8347/07, 28 April 2016 (violation of Article 3 (substantive and procedural));
- *Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey*, no. 20347/07, 5 July 2016 (violation of Article 3 (substantive and procedural));
- *Gedrimas v. Lithuania*, no. 21048/12, 12 July 2016 (violation of Article 3 (substantive and procedural));
- *Yusiv v. Lithuania*, no. 55894/13, 4 October 2016 (violation of Article 3 (substantive and procedural));
- *Barakhoyev v. Russia*, no. 8516/08, 17 January 2017 (violation of Article 3 (substantive and procedural));
- *Zherdev v. Ukraine*, no. 34015/07, 27 April 2017 (violation of Article 3 (substantive and procedural));
- *A.P. v. Slovakia*, no. 10465/17, 28 January 2020 (violation of Article 3 (substantive and procedural));
- *Castellani v. France*, no. 43207/16, 30 April 2020 (violation of Article 3 (substantive));
- *Gremina v. Russia*, no. 17054/08, 26 May 2020 (violation of Article 3 (substantive and procedural));
- *Pranjić-M-Lukić v. Bosnia and Herzegovina*, no. 4938/16, 2 June 2020 (violation of Article 3 (substantive));
- *Mitu v. the Republic of Moldova,* no. 23524/14, 30 June 2020 (violation of Article 3 (substantive and procedural));
- *R.R. and R.D. v. Slovakia*, no. 20649/18, 1 September 2020 (violation of Article 3 (substantive and procedural); violation of Article 14 in conjunction with Article 3);
- *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11, 8 October 2020 (violation of Article 3 (substantive and procedural) in conjunction with Article 14);
- *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, 13 October 2020 (violation of Article 3 (substantive and procedural));
- *Roth v. Germany*, nos. 6780/18 and 30776/18, 22 October 2020 (violation of Article 3 (substantive));

- *Navalnyy and Gunko v. Russia*, no. 75186/12, 10 November 2020 (violation of Article 3 (substantive));
- *Akın v. Turkey*, no. 58026/12, 17 November 2020 (violation of Article 3 (substantive and procedural));
- *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, 21 January 2021 (violation of Article 3 (substantive and procedural));
- *Zličić v. Serbia*, no. 73313/17 and 20143/19, 26 January 2021 (violation of Article 3 (substantive and procedural));
- *Ilievi and Ganchevi v. Bulgaria*, nos. 69154/11 and 69163/11, 8 June 2021 (violation of Article 3 (substantive); no violation of Article 3 (substantive));
- *Adzhigitova and Others v. Russia*, nos. 40165/07 and 2593/08, 22 June 2021 (violation of Article 3 (substantive and procedural));
- *Dokukiny v. Russia*, no. 1223/12, 24 May 2022 (violation of Article 3 (substantive and procedural));
- *H.M. and Others v. Hungary*, no. 38967/17, 2 June 2022 (violation of Article 3 (substantive));
- *Skorupa v. Poland*, no. 44153/15, 16 June 2022 (violation of Article 3 (substantive and procedural));
- *Perkov v. Croatia*, no. 33754/16, 20 September 2022 (no violation of Article 3 (substantive); violation of Article 3 (procedural));
- *M.B. and Others v. Slovakia (no. 2)*, no. 63962/19, 7 February 2023 (violation of Article 3 (procedural and substantive); no violation of Article 14 in conjunction with Article 3 (substantive); violation of Article 14 in conjunction with Article 3 (procedural));
- *Lapunov v. Russia*, no. 28834/19, 12 September 2023 (violation of Article 3 (substantive and procedural); violation of Article 14 in conjunction with Article 3).
- *İşik v. Türkiye*, no. 42202/20, 8 October 2024 (violation of Article 3 (substantive and procedural));
- *Lavorgna v. Italy*, no. 8436/21, 7 November 2024 (violation of Article 3 (substantive and procedural));
- *Kasım Özdemir and Mehmet Özdemir v. Türkiye*, no. 18980/20, 3 December 2024 (no violation of Article 3 (substantive and procedural));
- *Eikenaar v. the Netherlands*, no. 52053/18, 30 June 2026 (violation of Article 3 (substantive));
- *Günana v. Bulgaria*, no. 54549/22, 7 July 2026 (violation of Article 3 (substantive and procedural)).