Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15498
11 April 2022

Fighting and preventing excessive and unjustified use of force by law enforcement officers

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Oleksandr MEREZHKO, Ukraine, European Conservatives Group and Democratic Alliance

Summary

The Committee on Legal Affairs and Human Rights regrets that law enforcement officers in Council of Europe member States have used excessive force in many cases, violating the principles of necessity, proportionality, precaution, and non-discrimination. The Black Lives Matter movement triggered by the death of George Floyd in the United States of America drew attention to the fact that excessive use of force by police is part of a pattern, also in Europe.

In accordance with international legal instruments, law enforcement officers may use force only to the extent strictly necessary for achieving a legitimate objective. While the European Convention on Human Rights and other Council of Europe and United Nations treaties form a solid normative basis providing clear standards and principles governing the use of force by law enforcement officers, these standards would benefit from being brought together in a consolidated form. This could be done by drafting specific recommendations and guidelines to member States. The committee considers that a new Council of Europe Convention on the prevention of excessive police violence, with a follow-up mechanism, would be the logical next step.

All member States should use the relevant international legal instruments and case law as a model on which to align their domestic legislation and practices.

1. Reference to committee: Doc. 15137, Reference 4534 of 12 October 2020.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 5
C. Explanatory memorandum by Mr Oleksandr Merezhko, rapporteur 6
1. Introduction 6
2. The analysis of the current situation of law enforcement in Europe 6
2.1. Using force in the custodial context 7
2.2. Using force to suppress/disperse peaceful protests 7
2.3. Using force during crowd control 9
2.4. Using force in post-conflict situations 10
3. International legal framework on using force in policing and law enforcement 10
3.1. Relevant legal instruments of the Council of Europe 10
3.2. Relevant standards of the United Nations 15
4. Implementation of the international standards 17
5. What are the possible solutions? 18
5.1. Institutional reforms 18
5.2. Regulatory reforms 18
5.3. Good practices in policing 19
6. Conclusions 20

A. Draft resolution[2]

1. The death of George Floyd in the United States of America sparked a wave of protests against impunity for the unlawful use of lethal force by law enforcement officers, particularly against people of African descent and Black people, which quickly spread to Europe. Unfortunately, law enforcement agencies in Europe and elsewhere continue to be accused of using excessive force in violation of their obligations under national and international legal instruments.

2. The Parliamentary Assembly regrets that law enforcement officers in member States of the Council of Europe have used excessive force in many cases, violating the principles of necessity, proportionality, precaution, and non-discrimination, notably in policing peaceful demonstrations and counter-demonstrations, in handling irregular migration flows, and in restoring public order in post-conflict situations. The Black Lives Matter movement proved that excessive use of force by police is not a number of isolated incidents but part of a pattern, including in Europe. In some situations, police officers themselves caused mass disorder by infiltrating *provocateurs* in peaceful demonstrations, or by violently cracking down on peaceful rallies by the political opposition.

3. The Assembly recalls that national and international law prohibits any acts of torture and inhuman or degrading treatment, without exception. This includes the excessive use of force during arrests or the dispersal of assemblies, unnecessarily harsh restraint measures and the forcible extraction of confessions for criminal investigations and security operations. In accordance with international legal instruments and the case law of international courts, law enforcement officers may use force only to the extent of achieving a legitimate objective and when strictly necessary. The use of potentially lethal force may only be permitted for very specific purposes in cases of absolute necessity. Any use of force that violates these principles is unnecessary and excessive, therefore, prohibited.

4. The Assembly finds that the most important factor contributing to the use of excessive force is impunity for violations of the law and international standards. It would appear that in some member States, law enforcement agencies consider relevant international standards in this area as non-mandatory. While it may be the case that these standards are uncodified and difficult to apply in practice as they are based on different international legal instruments and the case law of international courts, it is important to stress that the prohibition of excessive and unnecessary force is absolute, and nothing can justify impunity and non-compliance with the law.

5. The principles of legality, necessity, proportionality, precaution and non-discrimination in the use of force by law enforcement agents, as established in the case law of the European Court of Human Rights, must be upheld by the Council of Europe.

6. The Assembly considers that the European Convention on Human Rights (ETS No. 5) in conjunction with other relevant specialised treaties such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), form a solid normative and institutional basis providing clear standards and principles governing the use of force by law enforcement officers. These standards would however benefit from being brought together in a consolidated form for clarity and ease of use. This could be done by drafting or updating specific recommendations and guidelines to member States. The Assembly considers that a new Council of Europe Convention on the prevention of excessive police violence codifying the highest standards and best practices in this field, with a strong follow-up mechanism, would be the logical next step after the drafting of up-to-date recommendations by the Committee of Ministers as a first step.

7. The Council of Europe should also support its member States by collecting and disseminating good policing practices and providing the necessary technical support.

8. All member States should actively implement the relevant international legal instruments governing the use of force by law enforcement officers, including the case law of the European Court of Human Rights, the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Assembly's resolutions and the Committee of Ministers' recommendations. States should use these instruments as a model to improve their domestic legislation and practices to ensure better compliance with the absolute prohibition of torture and ill-treatment. A series of other measures should be implemented, such as institutional and regulatory reforms, training and change of practices.

---

2. Draft resolution adopted by the committee on 4 April 2022.

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

9.1. review the compatibility of their domestic legislation and practices with the relevant international legal principles governing the use of force by law enforcement officers, as derived from the case law of the European Court of Human Rights, the recommendations of the CPT, relevant Assembly resolutions and Committee of Ministers recommendations, as well as from United Nations instruments;

9.2. ensure that their national laws criminalise all acts of torture and inhuman or degrading treatment and that such provisions are effectively enforced in practice to prevent and punish excessive use of force by law enforcement officers in whatever context, in police custody, detention, or while policing assemblies, using crowd control measures, in emergency situations, in handling irregular migration flows, etc.;

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;

9.4. establish independent mechanisms, within or outside police institutions, to prompt efficient, thorough, and expedient investigations into the causes of excessive use of force to ensure accountability of those involved;

9.5. increase their efforts to fight impunity by improving the efficiency of their judicial and prosecutorial systems, including by providing adequate and dissuasive criminal and disciplinary sanctions for offences associated with police brutalities and excessive use of force;

9.6. provide compensatory remedies and rehabilitation for the victims of excessive force;

9.7. collect and codify good practices in policing and provide special training programmes for law enforcement officers on the use of force and respect for human rights;

9.8. provide effective protection for whistle-blowers who expose excessive use of force within law enforcement agencies, in accordance with Assembly Resolution 1729 (2010) “Protection of “whistle-blowers” and Resolution 2300 (2019) “Improving the protection of whistle-blowers all over Europe”;

9.9. increase the transparency of law enforcement agencies and the publicity of their decision-making process on using force, including instructions given to the police by the political authorities;

9.10. consider granting national anti-torture mechanisms and other relevant national human rights institutions the competence to monitor the use of force by law enforcement officers, both in custodial and non-custodial contexts;

9.11. ensure that masked police officers, particularly during arrests, policing of assemblies and crowd control measures, are required to wear and display distinctive identification signs;

9.12. strengthen parliamentary oversight over the activities of law enforcement agencies;

9.13. give priority to the execution of the judgments of the European Court of Human Rights relating to excessive or unjustified use of force by law enforcement officers which have given rise to violations of Articles 2 or 3, alone or in conjunction with Article 14, or of Article 11 of the Convention, and to take all individual and general measures necessary to remedy the root causes of the problems and prevent further violations.

B. Draft recommendation[3]

1. Referring to its Resolution... (2022) "Fighting and preventing excessive and unjustified use of force by the law enforcement officers", the Parliamentary Assembly, recommends the Committee of Ministers to:

1.1. adopt a recommendation to member States of the Council of Europe on the use of force in law enforcement activities, taking due account of all international legal standards governing the use of force by law enforcement officers, and focussing in particular on:

1.1.1. definitions of "law enforcement officers", "use of force", "policing of demonstrations and protests", "crowd control measures", and other relevant concepts;

1.1.2. principles of legality, necessity, proportionality, precaution, and non-discrimination in the use of force;

1.1.3. situations when the use of force may be authorised, including the use of special equipment and weapons;

1.1.4. rights and duties of law enforcement officers in these situations;

1.1.5. rights and remedies for the victims of excessive use of force;

1.1.6. positive obligations to prevent violence, including during demonstrations and counter-demonstrations, and clashes between participants of the two;

1.1.7. duty to investigate and hold to account law enforcement agencies and individual officers in cases of excessive use of force;

1.1.8. institutional and functional independence of law enforcement agencies and officers in taking operative decisions whilst maintaining their accountability vis-à-vis the elected political authorities;

1.1.9. transparency of law enforcement institutions and publicity of their decision-making process on using force;

1.1.10. collection and analysis of good practices in policing, plus the implementation of special training programmes on the use of force and respect for human rights;

1.1.11. other issues deemed appropriate to the use of force in law enforcement activities;

1.2. review and update Recommendation Rec(2001)10 on the European Code of Police Ethics and the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies;

1.3. launch the drafting process for a new Council of Europe Convention on the prevention of excessive police violence codifying the highest standards and best practices in this field, with a strong follow-up mechanism;

1.4. collect good policing practices and promote initiatives, including technical assistance, to help implement such practices in all member States;

1.5. prioritise the supervision of the execution of the European Court of Human Rights' judgments relating to excessive use of force by law enforcement officers that give rise to violations of Articles 2 and 3, alone or in conjunction with Article 14, or of Article 11 of the European Convention on Human Rights (ETS No. 5);

1.6. continue to follow closely the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), particularly its public statements adopted under Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), in line with the Assembly's Recommendation 2146 (2019) "Improving follow-up to CPT recommendations: enhanced role of the Parliamentary Assembly and of national parliaments", and Recommendation 2100 (2017) "25 years of the CPT: achievements and areas for improvement".

3. Draft recommendation unanimously adopted by the committee on 4 April 2022.

C. Explanatory memorandum by Mr Oleksandr Merezhko, rapporteur

1. Introduction

"Violence begets violence"

Martin Luther King Jr.

1. Following a motion for a resolution that I tabled on 1 October 2020 and which was referred to our committee for report[4], I was appointed rapporteur on 14 October 2020. The committee held a hearing with two experts, and I consulted experts in policing.[5]

2. The motion stated that one of the most pressing problems of human rights protection was police violence and discrimination, which the Black Lives Matter movement had recently brought into the limelight. Therefore, it called on the Assembly to develop standards on the use of force by law enforcement officers, on the basis of the existing soft law and the well-established case law of the European Court of Human Rights, in compliance with the underlying principles of necessity, proportionality, justice, and non-discrimination. It also proposed that the Assembly examine the feasibility of drafting an internationally binding instrument that addressed the excessive and unjustified use of force by police and other human rights violations by police forces.

3. Some terminological clarifications are needed. For the purposes of the present report, I refer to "law enforcement officer" as any State agent or police officer exercising policing or law enforcement powers, irrespective of the position in the State institutional hierarchy. The words "police" and "law enforcement officers" are interchangeable. I also refer to "excessive force" as the disproportionate use of legitimate powers granted to law enforcement officers, which could be physical or psychological pressure, with or without special equipment and weapons, intentional or unintentional, regardless of the degree of suffering inflicted on the victims.

4. I should like to stress that no consensus has been reached about the meaning of these concepts, especially on the definition of "excessive police force". However, my report draws a distinction between manifestly unlawful police conduct, such as beating a suspect to extort confessions, and excessive use of legitimate policing powers, for example, overzealously arresting a dangerous suspect. Both acts are prohibited, but they differ in substance, and the report aims to clarify these differences and to identify the relevant legal standards.

2. The analysis of the current situation of law enforcement in Europe

5. On 25 May 2020, Minneapolis police arrested George Floyd, a 46-year-old black man. A police officer laid him flat on the ground with his knee on his neck for almost nine minutes, leading to his asphyxiation and death while three other officers just watched. The police officer who used force was later found guilty of murder and pleaded guilty to the charges of violating Mr Floyd's civil rights by using unreasonable force and ignoring the victim's serious medical needs. Other police officers have been found guilty of depriving Mr Floyd of his civil rights by showing deliberate indifference and failing to intervene to stop the use of force by their colleague.

6. Mr Floyd's death immediately sparked a wave of protests leading to the Black Lives Matter movement, alleging that law enforcement officers in the United States use lethal force against black people with impunity. The movement quickly spread from Minneapolis to the entire country and then to Europe.

7. This incident served as an impetus for the Parliamentary Assembly's Resolution 2389 (2021) "Combating Afrophobia, or anti-Black racism, in Europe". Unfortunately, it was not the only incident to reveal that police and law enforcement agencies continue to use excessive force despite its absolute prohibition by international legal instruments. Many other Assembly resolutions mentioned such incidents occurring on massive scales, which I intend to describe in my report.

---

4. Doc 15137.

5. On 14 September 2021, the committee held a hearing with Mr Nick Glynn, from Open Society Initiative for Europe, and Mr David Martin Abánades, a Spanish Police Inspector, an expert on policing with the Council of Europe's Commissioner for Human Rights, the Organization for Security and Co-operation in Europe (OSCE), and the United Nations.

8. For obvious reasons, my report cannot cover every incident of police brutality. Therefore, I chose to reflect on some widely known incidents in Europe. And most importantly, I focused on those incidents where excessive force was used on a massive scale. In my opinion, these incidents underlined the existence of structural dysfunctions, including discriminatory attitudes, in police and other law enforcement agencies.

2.1. Using force in the custodial context

9. Sometimes, the expression "excessive use of force" is confused with certain forms of police brutalities, such as forcible extractions of confessions and intelligence during criminal investigations or security operations. However, in these situations, the police force cannot be qualified as merely "excessive" because any use of force is prohibited in these circumstances.

10. In other situations, the law allows using force under specific circumstances and certain conditions. If such a force is abused, it will become excessive and thus unlawful. For example, using force during police arrests or applying restraining measures in prisons is allowed but subject to limitations. It will become excessive if the limits placed on the use of force are not respected.

11. All these situations essentially have one common feature, namely that use of force is linked with the police taking or keeping persons in custody. That is why I called them "using force in the custodial context". Unfortunately, despite the existing limits, the excessive use of force in the custodial context continues, sometimes revealing a pattern of systemic police misbehaviour. Indeed, the arrest George Floyd has proven such a systemic pattern.

2.2. Using force to suppress/disperse peaceful protests

12. In the situations described below, the use of force was covered by a legitimate purpose. Force was employed to restore public order while policing mass events and controlling crowds. But in these situations, I observed a predisposition of the police to use force excessively, on a massive scale, leading to the escalation of violence.

13. The tragic events in Armenia referred to as "March First" is the first example. On 1 March 2008, early in the morning, police started forcibly dispersing thousands of persons who camped overnight at the central square in Yerevan and were peacefully protesting for the last ten days against the results of the presidential elections. Law enforcement agents started beating the protesters with truncheons and electric-shock devices, causing a wave of violence. The street violence lasted two days and eventually involved armed forces using assault rifles against the protesters. Hundreds of protesters and police officers were seriously injured, eight were killed, many went missing.[6]

14. Similar events, called "7 April", took place in the Republic of Moldova after the general parliamentary elections in 2009. Thousands of young people peacefully protested in the centre of the capital for two days. On 7 April 2009, a relatively small number turned violent and took over the presidential palace and the parliament building. Police failed to intervene and witnessed the destruction, looting and partial burning of these buildings. In the following days, the media and human rights defenders reported massive arrests and beatings of young people in the streets. They published video records depicting police officers and agents of special forces, wearing no uniforms, hiding behind masks or baklavas, arresting and beating young people in plain sight. Many complained about ill-treatment in police custody; one person was found dead near the buildings. A subsequent public inquiry concluded that excessive force had been used against protesters.[7]

15. The "Euromaidan" protests in Ukraine illustrated how the authorities' decision to disperse the protests led to the escalation of violence. In Kyiv, minor clashes between police and protesters were registered during the so-called first wave of the protests. On 30 November 2013, the situation deteriorated after the special "Berkut" police intervened in force, causing the second wave of clashes. The law enforcement agencies involved private individuals, known as "titushky", who beat and apprehended the protesters, thus amplifying the violence. As a result, hundreds of people were killed, and thousands were injured. The Assembly and the European Court of Human Rights found the Ukrainian authorities at the time responsible for using excessive force and for the ill-treatment of protesters.[8]

---

6. Resolution 1609 (2008) "The functioning of democratic institutions in Armenia"; Mushegh Saghatelyan v. Armenia, Application No. 23086/08, judgment of 20 September 2018.
7. Resolution 1666 (2009) "The functioning of democratic institutions in Moldova"; Taraburca v. Moldova, Application No. 18919/10, judgment of 6 December 2011.
8. Resolution 1974 (2014) and Recommendation 2035 (2014) "The functioning of democratic institutions in Ukraine"; Shmorgunov and Others v. Ukraine, Applications Nos. 15367/15 and others, 21 January 2021.

16. August 2020 in Belarus was marked by the same widespread use of police violence. People peacefully protesting the fraudulent re-election of President Lukashenko were violently dispersed. Police and security forces used excessive force, special equipment and non-lethal, nevertheless dangerous, weapons, water cannons, batons, stun and flash grenades, and rubber bullets. Many people were injured, at least two were killed, two died in detention after being arrested for participation in the protests.[9]

17. France also faced criticism for excessive use of police force. The Assembly criticised the extensive emergency powers used during the COP21 Climate Change Conference, one week after the terrorist attacks in Paris in 2015. The police used disproportionate force during the 2016 demonstrations known as "Nuit debout". Media and the Council of Europe Commissioner for Human Rights reported numerous cases of police violence in the context of the *gilets jaunes* movement in 2018. In 2020, the press continued to report incidents of police violence, such as the death of Cédric Chouviat after his arrest by police in Paris, the racist remarks of police officers in Seine-Saint-Denis, the clashes during the evacuation of the migrant camp at Place de la République, etc. The assault on music producer Michel Zecler by police officers has rekindled the debates in connection with the Black Lives Matter movement.[10]

18. According to the European Court of Human Rights and the Committee of Ministers, suppressing peaceful protests by excessive force used by the police has already become a systemic problem in Russia. The Commissioner expressed numerous concerns about the excessive force used against protesters and journalists who were not offering resistance. The problem endures as media and human rights organisations continue to report that Russian law enforcement agencies regularly employ force and non-lethal weapons to disperse demonstrations. According to Russian non-governmental organisations, the protests often end with dozens of injured people and hundreds of persons arrested or ill-treated.[11] Most recently, the recent crackdown against peaceful protests in numerous Russian cities and towns against the brutal military attack on Ukraine provides new, shocking examples, on a daily basis.

19. Similarly, systemic use of force has continued in Turkey since the beginning of the 2000s. Turkish law enforcement agencies habitually employ crowd control weapons and tear gases to shut down protests. The Committee of Ministers expressed concerns about this practice and noted no progress in resolving this problem. The Assembly also referred to the numerous incidents of forcible suppression of peaceful protests in Turkey. Human rights defenders outlined the rollback of human rights and the rule of law in Turkey, linked to mass anti-government protests in 2013. According to some organisations, the last years were marked by an increasing number of police torturing and ill-treating detainees, particularly after the failed coup of 2016. Such incidents were considered part of a disturbing pattern of violent arrests, beatings, and mistreatment of protesters.[12]

20. In Azerbaijan, forcible suppression of peaceful demonstrations involved massive arrests of political opponents and journalists, allegedly subjected to torture in police custody and prisons.[13] Estonian law enforcement officers reportedly used excessive force during riots sparked by the authorities' decision to relocate a monument in Tallinn in 2007.[14] A series of the most violent protests in the United Kingdom, known as the "2011 England riots", were catalysed by the death of a young man shot dead by police. Allegations of disproportionate use of force were brought against Spanish law enforcement agencies in the context of protests held in Catalonia in October 2017 and 2019.[15] Alleged excessive use of force (tear gas and rubber bullets) by the law enforcement officers was reported. The protests started as peaceful, but later transformed

---

9. Resolution 2372 (2021) and Recommendation 2201 (2021) "Human rights violations in Belarus require an international investigation".

10. Rapporteur Mr Raphaël Comte, (Switzerland, ALDE), Report, Doc. 14506, "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", § 63; La preuve par limage: "Gilets jaunes : violences policières"; Memorandum on maintaining public order and freedom of assembly in the context of the "yellow vest" movement in France (CommDH(2019)8); "Police violence in France: 'Structural' issues behind the brutality".

11. Annenkov and Others v. Russia, Application No. 31475/10, judgment of 25 July 2017; Committee of Ministers, Decision CM/Del/Dec(2021) 1406/H46-29; Amnesty International, Russia: No Place for Protest; Russian Federation: failure to respect human rights while policing peaceful protests. Letter to the authoritites of the Russian Federation (CommHR/DM/sf 028-2019); Chargé d'Affaires Courtney Austrian, Statement on "Continued Suppression of Protests in the Russian Federation and the Sentencing of Alexei Navalny" to the Permanent Council, OSCE.

12. Oya Ataman v. Turkey, Application No. 74552/01, judgment of 5 December 2006; Committee of Ministers, Decision CM/Del/Dec(2021)1411/H46-38; Resolution 2121 (2016) and Resolution 2156 (2017) "The functioning of democratic institutions in Turkey"; Human Rights Watch, "Turkey's Human Rights Rollback: Recommendations for Reform" and "Turkey: Police, Watchmen Involved in Torture, Ill-Treatment".

13. Resolution 2184 (2017) "The functioning of democratic institutions in Azerbaijan"; Resolution 2185 (2017) "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?"

14. Korobov and Others v. Estonia, Application No. 10195/08, judgment of 28 March 2013.

into a violent one and the law enforcement officers felt obliged to confront the protesters who, following calls by opposition leaders, tried to storm into the parliament building. The protests were held to condemn the participation of a Russian MP in the Inter-parliamentary Assembly on Orthodoxy (IAO) event taking place in the Parliament of Georgia in June 2019.[16]

21. In July 2020, in Serbia, police fired tear gas and stun grenades indiscriminately into the crowd and beat demonstrators and passers-by, including journalists.[17] In Albania, clashes between police and protesters escalated following the fatal shooting of a young man by the police in December 2020.[18] In Greece, massive demonstrations became violent in March 2021 after a police officer assaulted a student with an iron baton for violating containment measures.[19] In January 2021, a protest in Belgium turned violent as demonstrators clashed with police over the death of a man of North African descent who had died in police custody.[20] In March 2021, violent riots re-emerged following the attempts by the Belgium police to enforce Covid-19 restrictions.[21] Following the COVID-19 restrictions, waves of protests erupted regularly in Austria, the Netherlands, Italy, France, Germany, Croatia, etc. Many of them turned into violent clashes with the police, though it was not always clear whether the police were at the origin of the escalation.[22]

22. Unfortunately, these are not the only examples of police using excessive force. Excessive force has been used in policing peaceful protests and, recently, to enforce sanitary restrictions during the Covid-19 pandemic. In some instances, law enforcement officers triggered clashes or contributed to the escalation of violence. These examples show that the excessive use of force by the police has become a persistent problem across Europe. It requires a systemic approach.

2.3. Using force during crowd control

23. The following examples point to different patterns of systemic police misbehaviour. In these situations, law enforcement officers exceeded their powers while confining crowds of people who were not protesting. As many commentators observed, these incidents were different because of the discrimination underlying the police conduct. They also include the failure to prevent counter-demonstrations from turning violent, especially protests motivated by racism, xenophobia, anti-Semitism, nationalism, or homophobia.

24. In every cycle of the migrant crisis in Europe, police violence during crowd control measures becomes apparent. During the 2015 refugee crisis, while attempting to stop the influx of migrants, law enforcement in some member States of the Council of Europe pushed back migrant crowds using special tools indiscriminately. For example, in 2014 in Ceuta, the Spanish Civil Guard reportedly used rubber bullets and tear gas canisters against migrants, causing deaths.[23] In 2015, many Syrian refugees were sent back to Serbia by the Hungarian police using tear gas and water cannons against women and children.[24] In France in 2017, migrants living in the “Great Jungle” of Calais claimed to have suffered police violence.[25]

25. Greece has reportedly operated secret extrajudicial migrant detention facilities to prevent the recurrence of the 2015 migrant crisis. The Greek police and security forces, including armed civilians, were accused of torture, discrimination, violations of anti-racism laws, sexual abuse, and physical assaults of

15. Commissioner calls on Spain to investigate allegations of disproportionate use of police force in Catalonia. Letter to the authorities of Spain (CommHR/NM/jp 036-2017); “Protection of the rights to freedom of expression and peaceful assembly during last week’s demonstrations in Catalonia”; Amnesty International, “Authorities in Spain must de-escalate tensions and guarantee the right to public assembly”.
16. Human Rights Watch, “World Report 2020 – Georgia”.
17. “Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop”; “Coronavirus: Belgrade protesters storm Serb parliament over curfew”; “Commissioner calls for effective investigations into cases of police violence in Belgrade”.
18. “Albanian authorities must prevent further police violence and uphold the right to freedom of peaceful assembly”.
19. “Greek PM appeals for peace after police brutality ignites riots”.
20. “Brussels protest over police brutality turns violent; More than 100 arrested after protests over a Black man’s death in police custody”.
21. “Belgian police clash with partiers over Covid-19 restrictions”.
22. “Protests Erupt Across Europe Against COVID-19 Passports & Further Restrictions”.
23. European Parliament, Question for written answer E-001281/2014 to the Commission, “Death of immigrants at the border at Ceuta; European Council on Refugees and Exiles”, “At least 13 people die in an attempt to enter Spain – Migrants accuse Guardia Civil of using rubber bullets and tear gas against them”.
24. ONU Info, “L’ONU condamne la réponse de la Hongrie à la crise des réfugiés”.
25. M. Welander, “Twelve months on. Filling information gaps relating to refugees and displaced people in northern France a year from the demolition of the Calais camp”, Refugee Rights Europe, 2018, p. 18.

migrants.[26] Non-governmental organisations documented increased violence and abuse by Croatian police at the border with Bosnia and Herzegovina, where migrants had been tied up and physically assaulted by police officers.[27]

26. All these and other documented examples of forcible removals were often associated with police brutalities and xenophobic, nationalistic, or other discriminatory attitudes of law enforcement officers. A key issue is that of proportionality, given that the protection of the national borders against the massive influx of illegal immigrants is a legitimate aim.

2.4. Using force in post-conflict situations

27. Systemic abuse of the police force often follows armed conflicts and continues in the transition periods. The "Greek case" was the first example revealing massive torture suppressing political opposition and civil unrest after the 1967 *coup d'état*.[28] Another well-known example is the case of Northern Ireland, where the authorities used coercive interrogation methods to investigate and prevent terrorism and civil disorders in the 1971 crisis.[29]

28. In this context, I must also refer to the "many serious violations of the rights of Crimean Tatars, including torture and inhuman or degrading treatment by members of the security forces and law-enforcement officials attributed to Russia".[30] Allegations were brought about 'inhuman and degrading treatment and torture of Armenian prisoners of war by Azerbaijanis, as well as a number of allegations of similar treatment of Azerbaijani prisoners of war by Armenians in the context of the recent conflict in Nagorno-Karabakh[31]. According to the European Court of Human Rights, after the cessation of hostilities between the Russian Federation and Georgia in 2008, many civilians and prisoners of war were exposed to torture and humiliating acts amounting to a widespread administrative practice.[32]

3. International legal framework on using force in policing and law enforcement

29. All these incidents of systemic overuse of police force raise concerns about the efficiency of the international legal instruments prohibiting the use of excessive force. To answer these concerns, I will first identify the relevant international instruments and describe briefly the standards they provide. Then I will evaluate the status of their implementation.

3.1. Relevant legal instruments of the Council of Europe

30. Two internationally binding treaties concluded under the aegis of the Council of Europe are relevant for policing and law enforcement: the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126). The Convention and the European Court of Human Rights' s case law establish the most comprehensive framework for the operational work of law enforcement agencies, while the European Convention for the Prevention of Torture applies to a lesser extent, and I will explain later why.

3.1.1. The European Convention on Human Rights

31. Articles 2 and 3. of the Convention are the main provisions governing the use of force by law enforcement officers. Article 2, which protects the right to life, limits the use of lethal or potentially lethal force to a few specific situations when such use is absolutely necessary. Article 3 imposes an absolute prohibition on torture and inhuman and degrading treatment or punishment. These articles require national legislation

---

26. "We Are Like Animals": Inside Greece's Secret Site for Migrants"; "New York Times accuses Greece of operating an extrajudicial center for migrants"; "'Les policiers grecs nous ont traités comme des bêtes': des Afghans refoulés de Grèce vers la Turquie témoignent"; Human Rights Watch, "Greece: Violence Against Asylum Seekers at Border"; InfoMigrants, "À Lesbos, quatre policiers inculpés pour avoir battu des migrants".
27. Amnesty International, "Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers".
28. European Commission of Human Rights, "The Greek case"; Resolution 346 (1967), Resolution 351 (1967), Resolution 361 (1968), Resolution 519 (1972) "Situation in Greece".
29. Ireland v. the United Kingdom.
30. Resolution 2387 (2021) "Human rights violations committed against Crimean Tatars in Crimea", § 5.
31. Resolution 2391 (2021) "Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict", § 8.2.
32. Georgia v. Russia (II), Application No. 38263/08, judgment of 21 January 2021.

and specific measures by the State to prevent the prohibited conduct. In addition, they require that credible allegations of abusive force by State agents in breach of Articles 2 and 3 be effectively investigated by independent authorities.

32. With respect to the use of lethal force, Article 2 imposes an assessment that requires that any force deployed by the State must not exceed what is "absolutely necessary". In particular, the force used must be strictly proportionate to the purposes mentioned in Article 2. Article 2 applies to the conduct of officers using force and to officers responsible for planning and controlling police operations where lethal force is a possibility. Police operations must be planned and controlled by the authorities in such a manner as to minimise to the greatest extent possible recourse to lethal force and human losses. Police officers must be given clear guidance on how and when they may use their weapons: a legal and administrative framework must define the limited conditions under which law enforcement officials may use force and firearms, taking into account the international standards developed in this area. It is of primary importance that domestic legislation is guided by the principle of "absolute necessity" and contain clear indications to that extent, including the obligations to decrease the risk of unnecessary harm and exclude the use of weapons and ammunition that carry unwarranted consequences. Law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms on the basis of the relevant regulations. Moreover, States are expected to set high professional standards within their law-enforcement systems and ensure that law enforcement officers meet the requisite criteria.[33]

33. In order to assess whether the use of lethal force is "absolutely necessary" under Article 2 in the particular circumstances of each case, the European Court of Human Rights has to establish whether the actions of the police officers involved were based on an honest and genuine belief which was perceived to be valid at the time, even if such belief subsequently turns out to be mistaken. In this regard, the Court has admitted that Article 2 obligations cannot impose an unrealistic burden on the State and its law enforcement officers in the execution of their duties, to the detriment of their lives and the lives of others.[34]

34. The Court has had occasion to apply the principles developed under Article 2 regarding the use of lethal force by law enforcement officers in different contexts: policing demonstrations, attempted arrests, anti-terrorist operations, rescue operations in the context of hostage-taking, border control, or anti-riot operations in prison. In certain cases where the death was hastened by the use of specific arrest techniques, the Court examined whether there was a causal link between the force used and the death of the individual and/or whether State agents took the appropriate steps to safeguard his or her life after the arrest, for instance by providing the required medical assistance.[35]

35. Article 3, on the other hand, imposes an absolute prohibition on torture and inhuman or degrading treatment or punishment. The guarantee is expressed in absolute terms and includes no exceptions, contrary to Article 2 and other normative clauses of the Convention. Even in the most difficult circumstances, such as the fight against terrorism and organised crime or influx of migrants, Article 3 does not allow for any balancing of interests. No derogation from it is permitted under Article 15 in time of war or other public emergency threatening the life of the nation. However, the treatment must attain a minimum level of severity to fall within the scope of Article 3: the assessment of that level is relative and depends on all the circumstances of the case (duration, effects, characteristics and vulnerability of the victim, purpose, context).[36]

36. In recent years, the European Court of Human Rights seems to have 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". In such a situation, any recourse to physical force which has not

---

33. *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 149; *Bubbins v. the United Kingdom,* Application No. 50196/99, judgment of 17 March 2005, § 136.; *Makaratzis v. Greece*, Judgment of 20 December 2004, § 59; *Giuliani and Gaggio v. Italy,* Application No. 23458/02, 24 March 2011 (Grand Chamber), § 209; *Bakan v. Turkey,* Application No. 50939/99, judgment of 12 June 2007, § 51; *Tagayeva and Others v. Russia,* Application No. 26562/07 and Others, judgment of 13 April 2017, § 595; *Kakoulli v. Turkey,* Application No. 38595/97, judgment of 22 November 2005, § 110; *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia,* Application No. 49382/06, 19 April 2012, § 51.

34. *McCann and Others v. the United Kingdom,* § 200; *Huohvanainen v. Finland,* Application No. 57389/00, judgment of 13 March 2007, § 96-98; *Bubbins v. the United Kingdom,* § 138.

35. *Güleç v. Turkey,* Application No. 21593/93, judgment of 27 July 1998; *Nachova and Others v. Bulgaria,* Applications Nos. 43577/98 and 43579/98, 6 July 2005; *Tagayeva and Others v. Russia,* Application No. 26562/07 and others, 13 April 2017; *Bisar Ayhan v. Turkey,* Applications Nos. 42329/11 and 47319/11, judgment of 18 May 2021; *Kukhalashvili and Others v. Georgia,* Applications Nos. 8938/07 and 41891/07, 2 April 2020; *Semache v. France,* Application No. 36083/16, 21 June 2018.

36. *Gäfgen v. Germany,* Application No. 22978/05, judgment of 1 June 2010 (Grand chamber), §§ 87 and 107; *Z.A. and Others v. Russia,* Applications Nos. 61411/15 and others, judgment of 21 November 2019 (Grand chamber), §§ 187-188; *Ireland v. the United Kingdom,* Application No. 5310/71, judgment of 18 January 1978, § 162 and 167.

been made strictly necessary by that person's conduct, whatever the impact on the person in question, diminishes human dignity and constitutes a violation of Article 3. This principle, which implies a "strict necessity" and proportionality assessment of the State conduct, has been applied in cases concerning the use of force by law enforcement officers during the course of an arrest, the dispersal/quelling of mass protests, or the application of security measures in a prison context. In this connection, the Court has underlined that article 3 does not prohibit as such the use of force by State agents for effecting a lawful arrest; such force may, however, be used only if indispensable and must not be excessive. For instance, it is important to determine whether there was reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence. Police operations should be planned and carried out in such a way as to ensure that the means employed were strictly necessary in order to attain the ultimate objective of arresting the person.[37]

37. As regards the use of specific instruments by law enforcement agents, the Court has generally endorsed the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). For instance, pepper spray should not be used in confined spaces, and there should be clear safeguards in place for its use in open spaces. The firing of tear gas grenades during demonstrations must be sufficiently regulated by national law, with appropriate safeguards against abuse. Similarly, electroshock weapons used in contact mode, should in principle, be avoided.[38]

38. Where an individual raises an arguable claim that the use of force by State agents was in breach of Articles 2 or 3, the procedural aspect of these provisions requires that there should be an effective official investigation aimed at ensuring their accountability for any unlawful killing or ill-treatment. The relevant criteria for assessing the effectiveness of an investigation include the adequacy of the investigative measures, the promptness of the investigation, the involvement of the victim or the deceased person's family and the independence of the investigation. Independence means a lack of any hierarchical or institutional connection between the persons responsible for carrying it and those targeted by it, but also practical independence. Moreover, the investigation should address the issue of the proportionality of the use of force and whether the law enforcement operation was properly organised in such a way as to minimise any risk. In the context of police operations dealing with mass protests, masked officers should be required to visibly display some distinctive insignia, enabling their later identification and questioning in the event of challenges to their conduct. Moreover, procedural obligations under Articles 2 and 3 extend to issues related to prosecution and sanction of law enforcement officers when the official investigation has led to the institution of proceedings. Therefore, the Court may find violations of these articles in cases of manifest disproportion between the gravity of the conduct and the sanction, taking into account the fact that the officer was not suspended from duty nor dismissed. In this regard, States' positive obligations include a requirement to introduce efficient criminal-law provisions. Last but not least, in cases of use of force in breach of Articles 2 or 3 by State agents, besides the obligation to conduct an effective investigation capable of leading to the identification and punishment of those responsible, an award of compensation to the victim or the family is required as a form of redress.[39]

39. Article 14 of the Convention prohibits discrimination. It has been applied in conjunction with Articles 2 and 3 when discriminatory attitudes are a possible causal factor of the alleged abuse by law enforcement officers. Although proving discriminatory motivation will often be difficult in practice, States have a procedural

---

37. *Bouyid v. Belgium,* Application No. 23380/09, judgment of 28 September 2015 (Grand chamber), § 100-101; *A.P. v. Slovakia,* Application No. 10465/17, judgment of 28 January 2020, §§ 59-63; *Navalnyy and Gunko v. Russia,* Application No. 75186/12, judgment of 10 November 2020, §§ 43-48; *Zakharov and Varzhabetyan v. Russia,* Applications Nos. 35880/14 and 75926/17, judgment of 13 October 2020, §§ 70-74; *Roth v. Germany,* Applications Nos. 6780/18 and 30776/18, judgment of 22 October 2020, §§ 67 and 72; *Shmorgunov and Others v. Ukraine,* Applications Nos. 15367/15 and others, 21 January 2021; *Mafalani v. Croatia,* Application No. 32325/13, judgment of 9 July 2015, § 120; *Gutsanovi v. Bulgaria,* Application No. 34529/10, judgment of 15 October 2013, §§ 132 and 137.

38. *Tali v. Estonia,* Application No. 66393/10, judgment of 13 February 2014, § 78; *Abdullah Yaşa v; Turkey,* Application No. 44827/08, judgment of 16 July 2013, §§ 48-49 and 61; *Anzhelo Georgiev and Others v. Bulgaria,* Application No. 51284/09, judgment of 30 September 2014, §§ 75-76.

39. *R.R. and R.D. v. Slovakia,* Application No. 20649/18, judgment of 1 September 2020, § 178; *Bouyid v. Belgium,* § 118; *Muradova v. Azerbaijan,* Application No. 22684/05, judgment of 2 April 2009, § 113, and *R.R. and R.D. v. Slovakia,* § 186; *Giuliani and Gaggio v. Italy*, §§ 301 and 309; *Hentschel and Stark v. Germany,* Application No. 47274/15, judgment of 9 November 2017, § 91; *Myumyun v. Bulgaria,* Application No. 67258/13, judgment of 3 November 2015, §§ 66-69; *Cestaro v. Italy,* Application No. 6884/11, judgment of 7 April 2015, §§ 242-243; *Razzakov v. Russia,* Application No. 57519/09, judgment of 5 February 2015, § 50; *Nikolova and Velichkova v. Bulgaria,* Application No. 7888/03, judgment of 20 December 2007, §§ 52-56.

obligation to investigate the suspected discriminatory motives in the contested conduct. These principles apply in particular with regard to racially motivated violence, but also to violence resulting from any other ground of discrimination (religious, gender-based, sexual orientation, etc.).[40]

40. The Court has also examined the implications of the use of force by law enforcement officers for the exercise of other Convention rights such as the right to freedom of expression (Article 10) and the right to freedom of peaceful assembly (Article 11). For instance, the unnecessary and excessive use of force against a journalist who was covering a demonstration was found to breach Article 10, irrespective of whether there had been any actual intention to interfere with his journalistic activity. Police applying force against peaceful participants during the dispersal of an assembly was considered to be a disproportionate interference with Article 11.[41]

41. In my opinion, the above-mentioned provisions of the Convention, as interpreted by the Court, provide strong legal standards that should be upheld and implemented in actual practice. This can admittedly be difficult to do, given the operational choices the police face on the ground and the unpredictability of human conduct, particularly when confronted with violence and different security threats.

3.1.2. The European Convention for the Prevention of Torture

42. In its preamble, the European Convention for the Prevention of Torture refers to Article 3 of the Convention. This is a framework treaty with narrow scope since it applies only to situations of detention. Article 1 reads that the CPT is to carry out visits to "examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment". The CPT has already recognised its limited mandate, for example, when referring to the 2013 "Gezi Park protests" in Turkey. It stated that it would refrain from examining the proportionality of the force applied in the context of crowd control. When the CPT visited the Republic of Moldova in connection with the "7 April" protests, it scrutinised the use of force by the police officers only because numerous protesters had been arrested.[42] Thus, the European Convention for the Prevention of Torture applies to the use of force and police brutality only in situations connected to or followed by deprivation of liberty.

43. The CPT has developed many guiding principles relevant to law enforcement work. These refer to specific police powers while arresting, interviewing, and taking persons into custody. Its standards also refer to special restraining measures and the use of non-lethal weapons by police or prison guards in the same contexts.

44. The limited scope of the European Convention for the Prevention of Torture does not allow the CPT to look into situations not connected to deprivation of liberty, such as using force to handle mass disorders. However, the States Parties to the European Convention for the Prevention of Torture can choose to extend the application of the CPT standards outside this narrow context.

45. For example, the CPT refers to the so-called "trinity of rights" aimed at preventing risks of ill-treatment of persons detained by the police. Educating the police to respect these rights, "or even a change of culture within the criminal justice system as a whole", was considered by the CPT as the key factor in promoting a zero-tolerance policy against torture. In this sense, the CPT also underlined the importance of an inter-institutional approach to encourage this policy. Independent inspections of police establishments, including prosecutorial and judicial scrutiny, are also necessary. Complaint mechanisms, effective criminal investigations and disciplinary proceedings provide different redress against police misconduct while ensuring accountability and preventing impunity.[43] Some of these standards could be applicable outside the limited custodial context.

---

40. *Stoica v. Romania,* Application No. 42722/02, judgment of 4 March 2008; *Nachova and Others v. Bulgaria,* Nos. 43577/98 and 43579/98, judgment of 6 July 2005, §§ 160-161; *Aghdhomelashvili and Japaridze v. Georgia,* Application No. 7224/11, judgment of 8 October 2020.

41. *Najafli v. Azerbaijan,* Application No. 2594/07, judgment of 2 October 2012, §§ 64-70; *Zakharov and Varzhabetyan v. Russia*, §§ 87-91; *Laguna Guzman v. Spain,* Application No. 41462/17, judgment of 6 October 2020, §§ 40-56.

42. CPT, Turkey: Visit 2013 (June) CPT/Inf (2015) 6 | Section: 9/32; Moldova: Visit 2009 CPT/Inf (2009) 37 | Section: 4/14, § 18.

43. CPT, Developments concerning CPT standards in respect of police custody (Extract from the 12th General Report of the CPT); Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches. (Extract from the 28th General Report of the CPT).

46. Another relevant set of CPT standards refers to the use of special tools and non-lethal weapons, such as electrical discharge weapons. According to the CPT, such weapons should be subject to the principles of necessity, subsidiarity, proportionality, prior warning and precaution. Officials with the right to use these weapons should receive adequate training, and the criteria governing their use should be directly inspired by those applicable to firearms.[44] These standards could also be extended to regulate the use of weapons and special tools in the context of crowd control measures.

3.1.3. Parliamentary Assembly

47. The Assembly has addressed police brutalities and massive breaches of human rights by law enforcement. However, it has so far examined only specific incidents, without observing the situation from a systemic perspective.

48. Referring to the "March First" events in Armenia, the Assembly stated that "an independent, transparent, and credible inquiry into the events […] and the circumstances that led to them, including the alleged excessive use of force by the police, should be carried out immediately".[45]

49. Responding to the "7 April" events in the Republic of Moldova, the Assembly urged the Moldovan authorities to "further reform the police; create effective remedies against excessive force and violence by members of the police; set up training for police officers, so as to ensure that they always act in full compliance with the law and in conformity with the standards of the European Code of Police Ethics".[46] Later, it repeated that Moldovan authorities should "take action to bring police practice in line with Article 3 of [the Convention] and to establish an independent administrative body competent to deal with complaints against police and law enforcement personnel".[47]

50. The Assembly also reacted to the "Euromaidan" events in Ukraine. It insisted that "the excessive and disproportionate use of force by the police, and other alleged violations of human rights need to be fully and impartially investigated, addressed and remedied and the perpetrators brought to justice". It welcomed the establishment of "an independent advisory panel to investigate the violent incidents during the Euromaidan protests".[48]

51. Following the outburst of police violence after the presidential elections in 2020 in Belarus, the Assembly stressed that "combating impunity for the perpetrators of serious human rights violations is of the utmost importance, out of principle and also to deter others from perpetrating human rights violations". It was considered irrelevant that Belarus is not a party to binding anti-torture treaties, as torture and inhuman or degrading treatment are also crimes in Belarusian law. Moreover, the Assembly called on member States to "support the ongoing efforts at international level to call to account the perpetrators of serious human rights violations committed in Belarus …, including by exercising the universal jurisdiction provided for in their criminal legislation".[49]

52. The Assembly adopted similar recommendations referring to other examples of using excessive force in Azerbaijan[50] and Turkey[51]. It observed that obligations to carry out effective investigations into such incidents and fight impunity are key responsibilities of States.

53. The Assembly has supported throughout the years the work of the CPT, as shown recently by Resolution 2264 (2019) and Recommendation 2146 (2019) "Improving follow-up to CPT recommendations: enhanced role of the Parliamentary Assembly and of national parliaments", and Resolution 2160 (2017) and Recommendation 2100 (2017) "25 years of the CPT: achievements and areas for improvement".

---

44. CPT, Combating impunity (Extract from the 14th General Report of the CPT); Complaints mechanisms (Extract from the 27th General Report of the CPT); Electrical discharge weapons. (Extract from the 20th General Report of the CPT).
45. Resolution 1609 (2008), § 12.1.
46. Resolution 1666 (2009), § 8.5.
47. Resolution 1692 (2009), § 3.
48. Resolution 1974 (2014).
49. Resolution 2372 (2021).
50. Resolution 2185 (2017); Resolution 2184 (2017).
51. Resolution 2121 (2016).

3.1.4. Committee of Ministers

54. The most relevant instrument adopted by the Committee of Ministers is the European Code of Police Ethics[52]. This document sets out guiding principles for policing in a democratic society applicable to virtually all situations and police activities. The Code is a valuable tool to regulate policing. With regard to the use of force, it states that "the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective" (paragraph 37). Police actions must be guided by the principle of non-discrimination (paragraph 40), and bear in mind everyone's fundamental rights, including freedom of assembly (paragraph 43). Unfortunately, the Code is only a recommendation and requires updating to reflect current realities, as it was adopted more than twenty years ago.

55. Another non-binding instrument is the Committee of Ministers' Guidelines on eradicating impunity for serious human rights violations.[53] The guidelines refer to the police using force but only in the context of deprivation of liberty: "States must ensure that officials carrying out arrests or interrogations or using force can be identified in any subsequent criminal or disciplinary investigations or proceedings" (IV.4, under persons deprived of liberty). However, according to the guidelines, their scope covers all "serious human rights violations", including the general prohibition of torture and inhuman or degrading treatment or punishment. Moreover, the Guidelines specify that "nothing … prevents [member States] from establishing or maintaining stronger or broader measures to fight impunity".

3.1.5. European Commission against Racism and Intolerance (ECRI)

56. ECRI adopted General Policy Recommendation No. 11 on combating racism and racial discrimination in policing. It addresses racism and racial discrimination in the fight against all crimes, including terrorism. It focuses particularly on racial profiling, racial discrimination, and racially motivated abusive behaviour of police; the role of police in combating racist offences and monitoring racist incidents; relations between police and members of minority groups, etc.[54]

3.1.6. The Council of Europe Commissioner for Human Rights

57. The Commissioner commented on inappropriate policing of peaceful demonstrations on several occasions. According to her comments, "many instances of disproportionate use of force against peaceful demonstrators continue to be reported across Europe, including beating of demonstrators and using techniques of crowd containment which can put their safety at risk". The Commissioner mentioned that "in many countries, police increasingly use less-lethal weapons, such as batons, tear gas, hand-held sting grenades, electroshock weapons, water cannons and rubber bullets, to control or disperse crowds of demonstrators." "The use of such weapons does not contribute to de-escalating tensions, which should be a major objective of policing of demonstrations.", she noted.[55]

3.2. Relevant standards of the United Nations

58. The core UN legal instruments are the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Prohibiting torture, cruel, inhuman, or degrading treatment or punishment and discrimination, Articles 7 and 26 of the ICCPR are almost identical to the corresponding provisions of the European Convention on Human Rights. Article 1 of the UNCAT is the most universally accepted and comprehensive definition of torture. Article 16 (1) of the UNCAT establishes the obligation to prevent other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture. Both treaties therefore prohibit excessive force in absolute terms, but neither has been construed to ban legitimate and proportionate use of force. The UN treaty bodies explained this principle in their general recommendations and decisions on individual complaints. However, none of these recommendations or decisions is binding.

52. Committee of Ministers, Recommendation Rec(2001)10.
53. Committee of Ministers, Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011).
54. ECRI, General Policy Recommendation N°11 on combating racism and racial discrimination in policing CRI(2007)39.
55. "Shrinking space for freedom of peaceful assembly", Human Rights Comment.

3.2.1. General Assembly of the United Nations and other UN policy-making bodies

59. The General Assembly of the United Nations Code of Conduct for Law Enforcement Officials[56] is the most important legal instrument regulating the use of force. It lays the foundation for the principles of legality, necessity, and proportionality applicable in this area. Article 3 reads that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". The commentary to this article clarifies that even if national law allows using force, it should always be proportionate to "the legitimate objective to be achieved". Most importantly, the Code refers to the use of force in all contexts, irrespective of whether a person is deprived of liberty.

60. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the Basic Principles)[57] is another relevant non-binding instrument adopted by the UN Crime Congress. This document is an invaluable tool for guiding and evaluating police work. It has been widely accepted as an authoritative statement of law. The Basic Principles are frequently used as a reference by international courts, including the European Court of Human Rights, and other international institutions or human rights organisations. Its provisions refer to all law enforcement personnel and all contexts of policing.

3.2.2. UN Human Rights Treaty Bodies

61. The Human Rights Committee (CCPR) reiterated that "Article 7 [of ICCPR] allows of no limitation" and that "no justification or extenuating circumstances may be invoked to excuse a violation of [this] article for any reasons". It underlined that the application of Article 7 is broad because the ICCPR "does not contain any definition of the concepts covered by [this] article". Accordingly, the CCPR did not draw up "a list of prohibited acts or establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied". This statement authorises an extensive application of Article 7 ICCPR to the use of force by law enforcement officers in every context relevant to policing.[58]

62. The Committee Against Torture (CAT) also sees the concept of the use of force as equally applicable to the custodial and non-custodial context of policing. Though it has not defined the excessive use of force, the CAT emphasised that the obligation to prevent torture is wide-ranging. Accordingly, the use of force must be adequately regulated, but its excessive use should be banned absolutely, irrespective of whether the person was deprived of liberty or not.[59]

63. For example, the CAT regularly extends the absolute prohibition of torture to include the excessive use force during protests.[60] The CAT examined the overuse of certain types of weapons in policing, including firearms, and recommended that States ensure compliance with the principles of necessity, subsidiarity, proportionality, prior warning, and precaution.[61] It expressed concerns about the over-militarisation of police, public security services, prisons, and the proliferation of new security agencies.[62] Therefore, the CAT extended its recommendations on regulating the use of force beyond the custodial context of policing.

64. Other UN treaty bodies refer to the issue of discrimination in the context of using force. For example, the Committee on the Elimination of Racial Discrimination (CERD) emphasises the need for training of law enforcement officers.[63] It proposed to update law enforcement policies to prevent and fight discrimination in the context of the current realities. The increased use by law enforcement agencies of metadata, artificial intelligence, facial recognition, and other new technologies risks aggravating racism, racial discrimination, xenophobia. Algorithmic profiling systems should fully comply with international human rights law. The CERD

56. UNGA, Code of Conduct for Law Enforcement Officials (Resolution 34/169) (1979).
57. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
58. CCPR, General Comment No. 20. Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) U.N. Doc. HRI\GEN\1\Rev.1 (1992).
59. World Organisation Against Torture (OMCT) "Thematic Briefing Report. Extra-custodial use of force amounting to torture and other ill-treatment" (2021).
60. Ukraine, 2014, CAT/C/UKR/CO/6, Burundi, 2014, CAT/C/BDI/CO/2, Spain, 2015, CAT/C/ESP/CO/6, China, 2015, CAT/C/CHN/CO/5, Armenia, 2016, CAT/C/ARM/CO/4, Peru, 2018, CAT/C/PER/CO/7, Benin, 2019, CAT/C/BEN/CO/3.
61. Israel, 2016, CAT/C/ISR/CO/5; UK, 2019, CAT/C/GBR/CO/6.
62. Honduras, 2016, CAT/C/HND/CO/2; Guatemala, 2018, CAT/C/GTM/CO/7; and Mexico, 2019, CAT/C/MEX/CO/7.
63. CERD, General Recommendation No. 13 on training of law enforcement officials in the protection of human rights (1993).

stressed the importance of transparency in designing and applying algorithmic profiling systems when deployed for law enforcement purposes.[64] These measures are relevant for policing of mass events and planning crowd control measures.

4. Implementation of the international standards

65. My report covers specific situations of excessive use of force, namely while suppressing peaceful protests, handling crowds of migrants and counter-protesters, restoring order in the aftermath of conflicts or in times of an emergency. It would appear that in many of these situations, relevant international standards have been systematically disregarded.

66. At the hearing before our committee, experts confirmed that excessive use of force has become a systemic problem. They observed that many States had invested heavily in the militarisation of law enforcement agencies, which increased the likelihood of violent conflicts between the police and the public. In addition, not all law enforcement agencies have implemented proper data collection and analysis tools, and the databases that do exist are unavailable to the public. Police officers do not always wear uniforms, body cameras or distinctive signs allowing the public to identify and keep records of their activities. There is a widespread policy to ban filming of police operations and to prevent sharing private records via social networks. Simple reliance on voluntary compliance with human rights standards is insufficient. Police lack accountability, and in the end, the problem grows in Europe, the experts said.

67. This statement worries me. The member States of the Council of Europe share the most advanced human rights protection system. Despite the European Convention on Human Rights, the European Convention for the Prevention of Torture, and other important Council of Europe treaties, law enforcement officers in some member States continue to disobey the binding standards and systemically apply excessive force. How can this be explained?

68. Some experts explained that law enforcement officers lacked training and misunderstood international legal instruments. Human rights treaties were seen as too general and deemed unclear for an ordinary police officer. It was difficult for an untrained law enforcement officer to assess proportionality and to take rapid decisions on the spot while violence was ongoing. It was even more challenging to evaluate the degree of necessity of the force in the context of life-threatening situations.

69. In addition to lack of training or professionalism, many other factors contribute to non-compliance with international legal instruments. For example, I have observed a culture of tolerance for the use of excessive force among law enforcement officers. In many cases, excessive force was considered justified by direct or implicit orders from the police hierarchy or the government. In some instances, the use of force was a political decision rather than a choice based on the situation on the ground.

70. Excessive force has been applied with impunity. No effective investigations have been carried out, and the responsible persons have not been identified, let alone punished. The authorities have not inquired about the causes of police misbehaviour or possible measures to prevent it. On the contrary, instead of devoting their attention to training and prevention of excessive use of force, the authorities have heavily invested in increasing the capabilities of the police to use coercive methods. As a result, an overall sense of impunity has developed, leading to the repetition of unlawful police behaviour and excessive use of force.

71. Almost all relevant international standards are seen as non-mandatory. The provisions of the binding treaties have been drafted in broad terms, which often require further interpretation. The legal instruments explaining and interpreting the treaties are either non-binding or binding *only inter partes*. For example, the European Convention for the Prevention of Torture is a binding instrument, but the CPT's recommendations are not.[65] The judgments of the European Court of Human Rights are binding, but only for the respondent State(s), and their *"res interpretata*" effects have not yet been fully recognised.[66] In the UN human rights system, States generally do not recognise the binding effects of the treaty bodies' decisions and recommendations, such as the CAT or the CCPR.[67]

64. CERD, General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials. (CERD/C/GC/36) (2020).
65. Explanatory Report to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126, 1987), para 25.
66. CDDH, "Report on the longer-term future of the system of the European Convention on Human Rights" (2015), § 37.

72. Finally, the various international standards are uncodified and, therefore, difficult to comply with in practice. They originate from various legal sources, recommendations, and judgments of international courts, which can be difficult to read. For a police officer working in the field, the rules of conduct should be brief and clear. Their training should be based on a comprehensible summary of applicable national law, which must be in conformity with relevant international standards.

5. What are the possible solutions?

73. National law is key to delineate the principles of using force lawfully and in a proportionate way, provided it is compatible with international standards and properly enforced. I believe that the problem lies in the insufficient implementation in practice of these standards.

74. In the following paragraphs, I will propose some practical proposals to overcome the problem of poor implementation: reforms at the institutional and regulatory levels, including at the Council of Europe, and the necessity to collect, share and take inspiration from other States' good practices. Some specific and innovative solutions, as recommended by our experts, could also be considered.

5.1. Institutional reforms

75. Each country has its own constitutional and administrative systems, and it remains entirely at the discretion of States where to place law enforcement agencies. However, the international legal instruments require the effective investigation and, as appropriate, sanction for every occurrence of excessive force. Furthermore, the positive obligations under the European Convention on Human Rights and other relevant international legal instruments require that member States prevent such occurrences, including removing any political influence over the operative decisions of police.

76. Thus, I propose reforms to guarantee the institutional and functional independence of the police and other law enforcement agencies whilst maintaining their accountability vis-à-vis parliament. Police should establish their own system of control and chain of command insulated from political pressure to use force unnecessarily. Independent mechanisms should be established within or outside police institutions to launch efficient, thorough, and expedient investigations into the causes of excessive use of force and ensure the accountability of those involved. States should increase their efforts to fight impunity, improve their judicial and prosecutorial systems and impose adequate and dissuasive criminal and disciplinary sanctions for the crimes and misdemeanours associated with police brutalities and excessive use of force. To overcome the culture of impunity prevailing in some police forces, strong protections for whistle-blowers should be implemented, in line with the Assembly's earlier resolutions.[68] Finally, States should provide compensatory remedies for the victims of excessive force.

5.2. Regulatory reforms

77. In my view, two types of regulatory reforms are needed. Firstly, the current legal instruments, national or international, should be strengthened and implemented more efficiently. This could be done by the process sometimes called "hardening of soft law",[69] which includes updating certain international legal instruments and reviewing domestic legislation. Secondly, regulatory reforms can be achieved by restating relevant international standards and issuing new specific legal instruments delineating key principles.

78. In the context of the use of force by law enforcement bodies, as I mentioned above, not all member States treat relevant Council of Europe instruments as binding. According to the principle *pacta sunt servanda*[70], the European Convention on Human Rights and the European Convention for the Prevention of Torture are the only indisputably binding sources of law. Other Council of Europe sources of law, such as recommendations, guidelines, resolutions of the Assembly and the Committee of Ministers, have various effects on the domestic legal order. Still, the recognition of their effects has been left to the discretion of member States[71].

---

67. Report, Doc. 10957, "Secret detentions and illegal transfers of detainees involving Council of Europe member States" (Rapporteur Mr Dick Marty, Switzerland, ALDE) (2006) § 272; (name redacted) Legislative Attorney and The Congressional Research Service (CRS), U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques (Prepared for Members and Committees of Congress) (2010) CRS "Report for Congress", 28-21.
68. For example, Resolution 1729 (2010) "Protection of "whistle-blowers".
69. D. Shelton, *Soft Law Routledge Handbook of International Law*, (Routledge Handbooks Online, 2008).
70. Article 26 of the Vienna Convention on the Law of Treaties.

79. Nothing prevents States from implementing these non-binding international legal instruments at national level. Member States can use the Assembly's resolutions and the Committee of Ministers' recommendations as models for their domestic legislation.

80. On the other hand, the Committee of Ministers could review and update its existing non-binding legal instruments and underline their application to situations where the police force is using force in the non-custodial context. I refer to the Committee of Ministers' European Code of Police Ethics and the Guidelines on eradicating impunity for serious human rights violations. I also believe that a special recommendation of the Committee of Ministers on the use of force in policing is needed. The Court, the Assembly, the Commissioner, the CPT, and ECRI all contributed to establishing the principles applicable to the use of force by the police, as did the relevant UN bodies. It would in fact be useful to have a compilation of all relevant standards, prepared under the auspices of the Committee of Ministers. The logical next step after the adoption of a specific and up-to-date recommendation would be to consider a new Council of Europe Convention on the prevention of excessive police violence, codifying the highest standards and best practices in this field, with a strong follow-up mechanism.[72]

5.3. Good practices in policing

81. Compiling good practices in policing is another solution to prevent excessive use of force. Such practices illustrate how law enforcement officers can comply with the legal instruments and be the source of inspiration for national regulations. However, due to the diversity of legal systems, what is considered good practice in a specific State may not be applicable in another State. Therefore, good practices should be collected and analysed by experts under the auspices of the Committee of Ministers. The aim is to draft guidelines for the implementation of the future Committee of Ministers' recommendation on the use of force in policing.

82. On 20-21 October 2020, the Council of Europe and IPCAT organised a conference entitled "The role of the police in a democratic society: European Code of Police Ethics, almost 20 years old". Its objectives were to increase knowledge, to stimulate co-operation between member States. It recognised the challenges which police confront in the context of evolving societies and technological progress. The conference enabled an exchange of views on the key topics that help improve policing, such as qualifications, recruitment and retention of police personnel, accountability, external and internal control, research, inter-institutional and international co-operation with other States and the Council of Europe or human rights organisations. Good practices were discussed on each of these topics. At the end of this conference, the Council of Europe proposed to set up its permanent high-level network of the police forces of the all member States.[73]

83. The different United States police forces make continuous efforts to define and regulate the use of force. Eleven leading law enforcement and labour organisations gathered to elaborate guidance to law enforcement officers on de-escalation techniques, use of less-lethal force and deadly force. Their National Consensus Discussion Paper on Use of Force reflects the common understanding between these organisations on what is the best for law enforcement officers. It serves as a template for law enforcement to compare, contrast, and enhance their existing policies. The National Institute of Justice of the United States Department of Justice pays particular attention to this document.[74]

84. The United Kingdom continues to confront many challenges in handling riots and mass protests. Some of them followed the allegations that the police regularly used excessive force, sometimes with lethal consequences. This determined the authorities to conduct studies and develop policies in finding the causes of such police misbehaviour. The UK Home Office, for example, publishes the statistics and overviews of the use of force incidents and regularly reviews the reporting mechanisms.[75]

---

71. European Commission for Democracy through Law (Venice Commission), Implementation of international human rights treaties in domestic law and the role of courts, § 21.

72. The experts heard by the committee supported the idea of a new binding treaty on policing and use of force by law enforcement officers.

73. Council of Europe, Conference of the High Representatives of the Ministers of the Interior. "The police role in a democratic society: European code of police ethics, nearly 20 years Human Rights and Rule of Law", (Strasbourg, 2020); IPCAN, Conference on "The police role in a democratic society: European code of police ethics, nearly 20 years", 20 and 21 October 2020.

74. International Association of Chiefs of Police, *Police use of Force in America* (2001); International Association of Chiefs of Police, *National Consensus Discussion Paper on Use of Force and Consensus Policy* (2020); National Institute of Justice, Overview of Police Use of Force (March 2020).

75. UK Home Office, "Police use of force statistics, England and Wales: April 2019 to March 2020" (2020); A. Dymond, "Use of Force Reporting Practices: Findings from a survey of UK Police Forces".

85. GODIAC, a project funded by the European Union and co-ordinated by the Swedish National Police Board, identified good practices in policing political manifestations. The project learned from ten field studies and proposed recommendations in knowledge, education, communication, dialogue, facilitation, differentiation, strategy and tactics, command, control, planning and organising policing, etc. Its methodology to evaluate police actions is a valuable tool to assess the proportionality and necessity of force applied in a particular situation.[76]

86. As suggested by experts, States should improve the protection of whistle-blowers in law enforcement agencies, which often function as closed institutions with strong auto-protective reflexes. The benefit of whistle-blowing in any democratic institution was underlined by the Assembly's Resolution 2300 (2019) and Recommendation 2162 (2019) "Improving the protection of whistle-blowers all over Europe".

87. Other suggestions by our experts include the establishment of analytical sections in the police force, increasing the transparency of law enforcement agencies and the publicity of the decision-making process on the use of force, improving professional training of police officers, and placing law enforcement agencies under increased parliamentary oversight. All these and other suggestions could be examined during the drafting of the future Committee of Ministers' recommendation on the use of force in policing.

6. Conclusions

88. The Black Lives Matter movement proved that the excessive use of force by police was not a simple isolated incident but a systemic pattern. Similar police brutalities happened in Europe, catalysing riots, protests, and wide-spread violence. It is even more worrying that, in some situations, the police caused such mass disorders under pressure from the government to disperse peaceful protests. This situation can no longer be tolerated and needs an urgent response.

89. Many factors contribute to such systemic use of excessive force. Societies have evolved and become more complex and unpredictable. States have invested heavily in the militarisation of the police, thus increasing their coercive capabilities. Police officers have not been properly trained to handle large-scale events and protect human rights in the current realities. Even if international legal instruments prohibit the use of excessive force, police sometimes regard them as non-binding. National law that is in conformity with international standards must be systematically enforced in order to ensure that the principle of proportional use of force and the absolute prohibition of torture, inhuman, or degrading treatment are respected in actual practice.

90. Therefore, I recommend two solutions to fight and prevent excessive use of force by law enforcement officers. The Committee of Ministers to adopt a new recommendation specifically on the use of force in policing and review its earlier recommendations on police ethics and the fight against impunity in line with the current set of international standards in this area. The Committee of Ministers should also sponsor a process of collecting good policing practices and adopting guidelines for the implementation of the said recommendation. The logical next step would be to consider launching the drafting process for a new Council of Europe Convention on the prevention of excessive police violence, codifying the highest standards and best practices in this field, with a strong follow-up mechanism.

91. Member States should use the relevant international legal instruments on policing and use of force, including the existing and future Committee of Ministers recommendations and guidelines as models to improve their domestic legislation and practices.

76. Rikspolisstyrelsen, "Recommendations for policing political manifestations in Europe". GODIAC – "Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe" (Swedish National Police Board, 2013).