Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2435 (2022)[1]

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

Parliamentary Assembly

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 only present in a number of isolated incidents but is part of a pattern, including in Europe. In some situations, police officers themselves caused mass disorder by infiltrating agents provocateurs into 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 during 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 that 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, the Convention), 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

1. *Assembly debate* on 27 April 2022 (14th sitting) (see Doc. 15498, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Oleksandr Merezhko). *Text adopted by the Assembly* on 27 April 2022 (14th sitting).
See also Recommendation 2230 (2022).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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 following the drafting of up-to-date recommendations by the Committee of Ministers.

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 models to improve their domestic legislation and practices to ensure better compliance with the absolute prohibition of torture and ill-treatment. Another series of measures, such as institutional and regulatory reforms, should be implemented and training and changes in practice proposed.

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, 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 brutality 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 publicising 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 signs enabling identification;

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 that 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 take all individual and general measures necessary to remedy the root causes of the problems and prevent further violations.