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## **Urgent need to prevent human rights violations during peaceful protests**

### **Report<sup>1</sup>**

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Ermira MEHMETI DEVAJA, "The former Yugoslav Republic of Macedonia", Socialist Group

### *Summary*

The Committee on Legal Affairs and Human Rights notes that peaceful protests, whether authorised or not, play a vital role in a democratic society and should not be sacrificed on the altar of security and anti-terrorism measures. It also expresses concern at the recent degradation of the right to freedom of assembly in certain member States of the Council of Europe due to the frequent use of excessive force against peaceful demonstrators and to the legal restrictions placed on freedom of assembly.

The report stresses that the European Convention on Human Rights, as interpreted by the Court, has established clear positive and negative obligations for State Parties. Member States are called upon to review existing legislation with a view to bringing it into conformity with the Convention and other international human rights instruments regarding the right to freedom of peaceful assembly, and to regulate the use of tear gas and other "less lethal" weapons more strictly. It also proposes that member States adopt and implement a human rights-based approach to policing protests, in particular through training police in the use of non-violent, dialogue-oriented crowd control methods, and effectively investigate and adequately sanction all instances of ill-treatment committed by law-enforcement officials.

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1. Reference to committee: Doc. 13565, Reference 4073 of 3 October 2014.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly stresses the value of peaceful protests as a manifestation of the civic space and a vehicle for the voices of ordinary people. The massive peaceful gatherings in Paris and elsewhere after the January 2015 terrorist attacks show how peaceful protests unite people in the face of adversity. Protests are often a last resort for citizens to make themselves heard; restricting this right and using violence against peaceful protesters erode democracy.
2. The Assembly reaffirms that “freedom of assembly and association, including unorganised and non-authorised protest, is an essential right in a democracy, safeguarded by Article 11 of the European Convention on Human Rights (ETS No. 5, “the Convention”) and constantly upheld by the European Court of Human Rights in its case law” ([Resolution 1947 \(2013\)](#) on popular protest and challenges to freedom of assembly, media and speech).
3. According to the Convention, any restriction on the right to peaceful assembly should be prescribed by the law and necessary in a democratic society in pursuit of the legitimate purposes laid down in Article 11.2.
4. The Assembly encourages member States to make use of the existing international instruments developed to protect and promote freedom of assembly, and also to regulate the use of force by law-enforcement agencies, including the Guidelines on Freedom of Peaceful Assembly drafted jointly by the European Commission for Democracy through Law (“Venice Commission”) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), drawing on examples from national legislation and the case law of the European Court of Human Rights to illustrate the various legislative options.
5. The Assembly notes that, in certain member States of the Council of Europe, there have been serious impediments to a full realisation of the freedom of assembly. In particular, it is worried about the frequent use of excessive force against peaceful demonstrators, including the systematic and inappropriate use of tear gas and other “less lethal” weapons.
6. The Assembly also notes with concern the recent legal restrictions placed on the right to freedom of assembly in different member States: in France, with the adoption in November 2015 of a decree declaring a three-month state of emergency with a total ban on all assemblies, including peaceful ones; in Turkey, with the adoption in March 2015 of the Security Bill which extends the powers of the police to use firearms; in Spain, with the adoption in March 2015 of the law on citizen’s security, which institutes heavy fines against organisers of spontaneous protests; and in the Russian Federation, with an amendment to the law on public gatherings which permits the detention of any person participating in an unauthorised public assembly. The Assembly is also worried about the lack of legislation on freedom of assembly in certain countries (for instance in Ukraine, where there is a lack of legislation with respect to a procedure for holding demonstrations).
7. In light of the above, the Assembly calls on the member States to:
  - 7.1. safeguard the right to freedom of peaceful assembly enshrined in Article 11 of the European Convention on Human Rights as well as other human rights, including in the context of “spontaneous”, non-notified demonstrations;
  - 7.2. review existing legislation with a view to bringing it into conformity with international human rights instruments regarding the right to freedom of peaceful assembly, by making use of the expertise of the Venice Commission, if need be;
  - 7.3. regulate the use of tear gas and other “less lethal” weapons more strictly in order to include more adequate and effective safeguards to minimise the risk of death and injury resulting from their use and abuse and from avoidable accidents;
  - 7.4. fully implement the judgments of the European Court of Human Rights related to freedom of assembly;
  - 7.5. adopt and implement a human rights-based approach to policing protests, in particular by organising human rights training for members of law-enforcement forces;
  - 7.6. refrain from banning any protests, except for the legitimate reasons enumerated in Article 11.2 of the Convention;

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2. Draft resolution adopted by the committee on 7 March 2016.

- 7.7. refrain from placing persons in administrative detention in order to prevent them from participating in peaceful protests;
- 7.8. improve the identification system for law-enforcement officials, especially riot police, in order to render them accountable for their actions;
- 7.9. effectively investigate and adequately sanction all instances of ill-treatment committed by law-enforcement officials in order to combat and eradicate impunity, including the responsibility of the officials in charge of the command, control and supervision of the police operation in question;
- 7.10. ensure that information concerning legislation and regulations guiding the police's actions regarding peaceful protests is accessible to the public;
- 7.11. fully respect the right to freedom of expression of journalists covering the protests, and protect medical staff providing assistance to protesters.

## B. Explanatory memorandum by Ms Ermira Mehmeti, rapporteur

### 1. Introduction

#### 1.1. Procedure to date

1. The motion for a resolution entitled “Urgent need to prevent human rights violations during peaceful protests”<sup>3</sup> was referred to the Committee on Legal Affairs and Human Rights for report by the Parliamentary Assembly on 3 October 2014.
2. At its meeting on 30 October 2014, the committee appointed Mr Antti Kaikkonen (Finland, ALDE) as rapporteur on the subject. At its meeting on 20 May 2015, the committee considered an introductory memorandum presented by the Chair, in the rapporteur’s absence. The secretariat was asked to circulate the rapporteur’s speech read out on his behalf by the Chair, in order to allow committee members to submit written observations. No such observations were received. Following Mr Kaikkonen’s departure from the Assembly, I was appointed rapporteur on 22 June 2015.
3. On 23 June 2015, a hearing on this subject took place in Strasbourg with the participation of two experts:
  - Dr Michael Boyle, Chief Executive of the Northern Ireland Police Fund, Belfast, Northern Ireland, United Kingdom;
  - Mr John Dalhuisen, Director for Europe and Central Asia, Amnesty International.

#### 1.2. Issues at stake

4. At the outset, I would like to emphasise that two recent reports by the committee are closely linked to the issues at stake in this report: “Strengthening the protection and role of human rights defenders in Council of Europe member States”<sup>4</sup> and “How to prevent inappropriate restrictions on NGO activities in Europe”.<sup>5</sup> This report will build on the findings and recommendations of those two reports to avoid any duplication.
5. I would like to stress that the right to freedom of peaceful assembly lies at the heart of any democratic society and is an essential means of public expression. This right is firmly anchored in international human rights law, namely in Article 11 of the European Convention on Human Rights (ETS No. 5, “the Convention”), Article 20 of the Universal Declaration of Human Rights<sup>6</sup> and Article 21 of the International Covenant on Civil and Political Rights.<sup>7</sup> The Committee of Ministers<sup>8</sup> and the Assembly have also clearly stressed the importance of ensuring the protection of human rights during peaceful protests.
6. Yet, recent events across Europe show that several member States continue to impose undue restrictions on this right and numerous violations of various human rights occurred during peaceful protests. The perpetrators of those violations often appear to enjoy immunity. In his latest report on the “[State of democracy, human rights and the rule of law in Europe: A shared responsibility for democratic security in Europe](#)”, the Secretary General of the Council of Europe expressed concern at the use of excessive force to disperse demonstrations and arrest protesters.<sup>9</sup>
7. Such abuses by law-enforcement officials are particularly deplorable given that it is their duty to protect public order, which includes upholding human rights and the rule of law. In any democratic society, law-enforcement officers have a duty to restrict the use of force to the minimum extent necessary, facilitate peaceful protests and protect protesters while maintaining public order. Any abuse by law-enforcement agencies is therefore “a serious threat to the rule of law”.<sup>10</sup>

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3. [Doc. 13565](#), tabled by Mr Pieter Omtzigt and other members of the Assembly.

4. [Doc. 13943](#) (rapporteur: Ms Mailis Reps Estonia, ALDE).

5. [Doc. 13940](#) (rapporteur: Mr Yves Cruchten, Luxembourg, SOC).

6. Adopted by the United Nations General Assembly Resolution 217A.

7. [999 U.N.T.S. 171](#).

8. The Committee of Ministers holds a thematic debate on “Freedom of assembly and association: current challenges and the response from the Council of Europe”.

9. 19 May 2015, p. 11.

10. Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, Human Rights Comment, Police abuse – a serious threat to the rule of law, 25 February 2014.

## 2. Defining peaceful protests

8. For the purposes of the present report, the notion of “peaceful protests” will be understood as encompassing a range of peaceful gatherings of any number of people for a common purpose, whether planned or spontaneous. This appears appropriate in light of the Guidelines on Freedom of Peaceful Assembly prepared by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (“OSCE/ODIHR Guidelines”), together with the European Commission for Democracy through Law (Venice Commission), which state that “an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose”. The European Court of Human Rights (“the Court”) has also interpreted the term “peaceful assemblies” widely. In order to define more precisely the focus of this report, I will first look at the notion of “peaceful”, then turn to the distinction between lawful and unlawful protests, and finally discuss the different stages at which human rights violations occur in connection with peaceful protests (before, during and after the protest).

### 2.1. Drawing the line between peaceful and violent protests

9. The first question relates to the notion of “peaceful”. It is often difficult to draw a clear line between “peaceful” and “violent” protests, given that demonstrations may for example start peacefully and subsequently turn violent. Demonstrations whose organisers have violent intentions are excluded from the protection afforded by Article 11 of the Convention.<sup>11</sup> For instance, in the case *Cisse v. France*, the Court asserted that:

*“In practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants intended to use violence. In the instant case, neither the occupants of the church nor the applicant had at any stage been accused of violent conduct. In any event, the legality or otherwise of the assembly under domestic law was under no circumstances to be used as a criterion for determining whether it was peaceful.”*<sup>12</sup>

10. The Court has further clarified that “the possibility of extremists with violent intentions, not members of the organising association, joining the demonstration cannot as such take away [the right under Article 11]”.<sup>13</sup> Recent years have been marked by mass protests across Europe, which were disrupted by episodes of violence often by a small number of violent participants or by agents provocateurs acting on behalf of the authorities to discredit the protests. Those episodes were then used by the authorities to qualify the events in their entirety as non-peaceful and even as mass riots; on this basis, they refused to protect them and dispersed them. Similarly, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour”.<sup>14</sup>

11. An assembly should be presumed peaceful and member States need to find a balance between guaranteeing public order and their duties as regards the right to freedom of assembly. The Court recalled that “it goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility”.<sup>15</sup> Some member States (for example Armenia and Romania) have incorporated such a presumption in their Constitutions or in laws governing peaceful assemblies.<sup>16</sup>

### 2.2. Lawful and unlawful protests

12. As noted by the Court in the above-mentioned case *Cisse v. France*, the lawfulness of a protest has no incidence on the assessment whether the protest was to be considered peaceful or not. The Court has also affirmed, *inter alia* in *Oya Ataman v. Turkey*,<sup>17</sup> that police officers must not use disproportionate force even during unlawful demonstrations. In other words, while the proportionality assessment will vary according to the peaceful or violent nature of a protest, the force used in policing crowds must always be strictly necessary and proportionate to the given circumstances, in lawful or unlawful protests.

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11. *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Applications Nos. 29221/95 and 29225/95, judgment of 2 October 2001, paragraph 77.

12. *Cisse v. France*, Application No. 51346/99, judgment of 9 April 2002, paragraph 37.

13. *Primov and Others v. Russia*, Application No. 17391/06, judgment of 12 June 2014, paragraph 155.

14. *Ziliberg v. Moldova*, Application No. 61821/00, decision on admissibility, 4 May 2004, p. 10.

15. *Oya Ataman v. Turkey*, Application No. 74552/01, judgment of 5 December 2006, paragraph 38.

16. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, *A/HRC/20/27*, paragraph 26.

17. *Ibid.*, paragraphs 38 to 44.

13. Regarding administrative formalities, a notification requirement seems more in line with the right to freedom of assembly than an authorisation procedure, as spontaneous assemblies must also be tolerated in a functioning democratic society. The Venice Commission emphasised that “[e]stablishing a regime of prior notification of peaceful assemblies does not necessarily extend to an infringement of the right” but “the regime of prior notification must not be such as to frustrate the intention of the organisers to hold a peaceful demonstration, and thus indirectly restrict their rights”.<sup>18</sup> The non-respect of the procedure of prior notification or the non-respect of a ban on protests does not give carte blanche to law-enforcement officials to use excessive force to disperse protests. Law-enforcement officials across Europe have used the argument of unlawfulness of the protests to disperse them violently. In *Bukta v. Hungary*, the Court held that the requirement to give prior notice of an assembly is not itself necessarily a breach of Article 11. However, in situations where it would have been impossible to comply with the notice requirement, to disperse an assembly for the sole reason that such notice was not given amounted to a disproportionate restriction of the right to assembly not warranted in a democratic society.<sup>19</sup>

14. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (the Special Rapporteur), together with the University of Ghent, filed a third party intervention before the European Court of Human Rights regarding the case *Mahammad Majidli v. Azerbaijan* (No. 3) and three other applications.<sup>20</sup> This amicus curiae filed in November 2015 invited the Court to clarify the significance of the notions of “unauthorized or unlawful assemblies”, which are, in the authors’ opinion, increasingly being used by governments to limit the freedom of assembly.

### 2.3. Human rights violations before peaceful protests

15. Human rights abuses can occur at various stages of protests. Even before the actual start of a demonstration, State authorities may abuse their powers by banning protests, in potential violation of Articles 10 (right to freedom of expression) and 11 of the Convention.<sup>21</sup> For instance, in Serbia, in 2013, the authorities banned the march for gay rights for public safety issues.<sup>22</sup> In its Guidelines on Freedom of Peaceful Assembly, the OSCE/ODIHR considers that:

*“As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so.”*

16. Aside from the issue of banning protests, the arrest, detention and possible prosecution of protesters or persons intending to take part in a demonstration might also be used by the authorities to limit freedom of assembly. For instance, in Armenia, since the mid-1990s, the authorities have used administrative detention as a tool of repression, locking up protesters and activists at times of political tension, for instance during the 2003 presidential election.<sup>23</sup> In *Schwabe and M.G. v. Germany*, although the Court acknowledged the considerable challenge the authorities were facing in order to guarantee the security of the participants at the G8 summit and maintain public order, it concluded that the six-day detention of the applicants was not a proportionate measure. According to the Court, there could have been other effective but less intrusive measures available to the authorities to achieve their aims, such as seizing the banners they had found in the applicants’ possession.<sup>24</sup>

17. In Azerbaijan, the authorities seem to have used this intimidation tactic by arresting or threatening citizens before they protest in order to prevent peaceful protests. In 2013, according to Human Rights Watch, “three political activists were arrested two days before the protest on questionable accusations of planning violence at the protest”.<sup>25</sup>

18. At its 64th plenary session (21-22 October 2005), the Venice Commission adopted an opinion interpreting the OSCE/ODIHR guidelines on drafting laws on freedom of assembly with regard to the regulation of public meetings, including the requirement of advance notice of demonstrations in public places. See paragraphs 29-30: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)040-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)040-e).

19. *Bukta v. Hungary*, Application No. 25691/04, judgment of 17 July 2007.

20. United Nations Special Rapporteur on the rights to freedom of assembly and freedom of association and the Human Rights Center of the Ghent University, *Amicus curiae*, 11 November 2015. A decision of the Court is expected in 2016.

21. See, for example, section 5.2 of this report.

22. Euronews, Gay rights activists in Serbia protest government ban on gay march, 28 September 2013.

23. Human Rights Watch, *An imitation of law: The Use of Administrative Detention in the 2003 Armenian Presidential Election*, 23 May 2003.

24. *Schwabe and M.G. v. Germany*, Applications Nos. 8080/08 and 8577/08, judgment of 1 December 2011.

25. Human Rights Watch, *Azerbaijan: Unnecessary Police Force at Peaceful Protests*, 12 March 2013.



#### **2.4. Human rights violations after peaceful protests**

18. State authorities have also used the initiation of criminal proceedings against peaceful protesters and their arrest to restrict the right to freedom of assembly. This type of reprisal is often aimed at intimidating protesters and discouraging participation in future protests.

19. One of the main issues related to human rights violations after peaceful protests is the lack of accountability of the law-enforcement forces regarding their acts of violence. In many countries, there seems to be a culture of impunity for acts committed by the police during peaceful protests. In [Sandru and Others v. Romania](#),<sup>26</sup> which concerns the lack of effective investigation following the violent repression of the December 1989 anti-communist demonstrations in Timișoara, the Court stated that the State's obligation "to protect the right to life under Article 2 required by implication that there should be some form of effective official investigation when the use of lethal force against an individual had placed the latter's life in danger". Despite acknowledging the complexity of the case, and its political and social implications, the Court concluded that the domestic authorities should have dealt with the case speedily and without unnecessary delay, in order to prevent any appearance of tolerance of or collusion in unlawful acts.

20. These issues are undoubtedly of great importance, given their direct impact on individuals' enjoyment of their human rights enshrined in the Convention, and merit further examination. However, due to the limited scope of the report, and in keeping with the motion at its origin, I will focus on the issue of excessive use of force by law-enforcement authorities and some other human rights violations during peaceful protests.

### **3. Recent examples of alleged human rights violations during peaceful protests in selected Council of Europe member States**

21. This section aims at providing a fair impression of the magnitude of the problem by giving some recent examples where the use of force by police resulted in protesters being injured or even killed.

#### **3.1. Armenia**

22. In Armenia, a culture of impunity creates the pre-conditions for regular use of violence by the police during peaceful protests. In March 2008, after the presidential election, 10 people were killed and over 130 people were injured during large-scale demonstrations against the elections results. The then Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, noted after his visit that:

*"The lack of results of the investigation into these cases has been a source of grave concern. None of the perpetrators have been identified to date. Furthermore, it appears that command responsibility of senior officials within the police and the security services, who were in charge at the time of the events, was not seriously considered."*<sup>27</sup>

23. In June 2015, the police used force against peaceful demonstrators opposed to a proposed 17% increase in electricity prices; the demonstrations continued to protest against the police use of force.<sup>28</sup> Media reports supported by individual statements show that 13 journalists and camera operators covering the police dispersal of those protests were subjected to gratuitous violence at the hands of police and other security officials; and 11 journalists were detained by police. Several journalists stated that they were attacked or detained despite identifying themselves as media workers and showing their press accreditation.<sup>29</sup> In September 2015, police also forcibly dispersed a second protest over electricity costs. A member of an independent political group, Smbat Habokian, was severely beaten by a group of five men after a protest in Yerevan.<sup>30</sup>

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26. [Sandru and Others v. Romania](#), Application No. 22465/03, judgment of 8 December 2009.

27. CommDH(2011)12, 9 May 2011, [Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011](#), paragraph 38.

28. The co-rapporteurs, Mr Axel Fischer (Germany, EPP/CD) and Sir Alan Meale (United Kingdom, SOC) expressed their concern at allegations of the excessive use of force and the purposeful targeting of journalists by the police when breaking up the protests on 22 June 2015. See Council of Europe, Parliamentary Assembly, ["Co-rapporteurs urge restraint from all sides in Yerevan protests"](#), 25 June 2015. The Commissioner for Human Rights expressed the same concerns in a statement after the protests. See Council of Europe, ["Statement of the Human Rights Commissioner on protests in Armenia: media should be able to work in a safe and free environment"](#), 23 June 2015.

29. Statement by the OSCE Representative on Freedom of the Media: ["Safety of journalists must be ensured at all times, OSCE Representative says, following attacks on journalists in Armenia"](#), 23 June 2015; and Reporters without Borders, ["Targeted Violence Against Journalists by Police Dispersing Protests"](#), 24 June 2015.

30. Human Rights Watch, ["Armenia: Activist brutally beaten"](#), 22 September 2015.



### 3.2. Azerbaijan

24. Four judgments of the European Court of Human Rights against Azerbaijan concerning the excessive use of force by the police against the applicants during demonstrations by the opposition are under enhanced supervision of the Committee of Ministers.<sup>31</sup> In three of the cases, the Court held that there was a substantive violation of Article 3 due to excessive use of force by the police (in the *Muradova* case, the applicant lost her sight in one eye; in the *Najafli* and *Tahirova* cases, the Court noted that the applicants' traumas required medical treatment and the ill-treatment, as well as its consequences, also caused them considerable mental suffering, diminishing their human dignity). In the four cases, the Court also held that there was a lack of effective investigation following the claims introduced by the applicants.

25. After a visit to Azerbaijan in May 2013, the Commissioner for Human Rights expressed his concern regarding the dispersion of peaceful protests with excessive force and the "harshening of the fines and the use of administrative detention against those who organise or participate in 'unauthorised' public gatherings". He also noted that the local authorities had "not authorised a single rally in Baku city centre in recent years" and therefore urged the authorities not to impose any disproportionate sanctions.<sup>32</sup> More recently, in January 2016, the authorities used excessive force during protests which were mostly peaceful. Protests started on January 2016 to protest against the price hikes due to the sharp devaluation of the national currency.<sup>33</sup>

### 3.3. Greece

26. Nearly a dozen judgments of the Court regarding the excessive use of lethal force and ill-treatment by law-enforcement officials and the subsequent failure of the Greek authorities to conduct effective investigations into such abuses are currently pending before the Committee of Ministers.<sup>34</sup> Amnesty International has repeatedly denounced the unjustified and disproportionate use of force by the Greek police, maintaining that it was also coupled with a culture of impunity.<sup>35</sup>

27. In June 2014, during a peaceful demonstration by cleaning staff in the centre of Athens, the protesters – most of them women – were allegedly kicked and struck with shields.<sup>36</sup> On 6 December 2014, thousands of people demonstrated in several Greek cities in memory of a teenager killed by a policeman in 2008 and in solidarity with a prisoner on hunger strike, Mr Nikos Romanos. The protest degenerated, confrontations took place between groups of protesters, and law-enforcement officers used tear gas and water cannons. More than 200 demonstrators were reportedly arrested in Athens.<sup>37</sup>

### 3.4. Russian Federation

28. On 6 May 2012, tens of thousands of people demonstrated in Moscow against the election results and Vladimir Putin's return to presidency for a third term. The presence of a small group of violent protesters resulted in the violent dispersal of the protests and the arrests of hundreds of protesters. Those events are known as the Bolotnaya events. A recent judgment of the Court found that the Russian authorities had not complied with the minimum requirements in their duty to communicate with the leaders of the rally, which had been an essential part of their obligation to ensure the peaceful conduct of the assembly and that the arrest, detention and administrative conviction of Mr Frumkin had been grossly disproportionate to the aims pursued.<sup>38</sup>

31. *Muradova v. Azerbaijan*, Application No. 22684/05, judgment of 2 April 2009; *Rizvanov v. Azerbaijan*, Application No. 31805/06, judgment of 17 April 2012; *Najafli v. Azerbaijan*, Application No. 2594/07, judgment of 2 October 2012; and *Tahirova v. Azerbaijan*, Application No. 47137/07, judgment of 3 October 2013, [www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=muradova&StateCode=&SectionCode=](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=muradova&StateCode=&SectionCode=).

32. CommDH(2013)14, Report by Nils Muižnieks – Commissioner for Human Rights of the Council of Europe – Following his visit to Azerbaijan from 22 to 24 May 2013.

33. Amnesty International, *Azerbaijan: detained political activists and peaceful protesters must be released*, 25 January 2016.

34. For a list of the 11 cases see: decisions adopted at the 1157th meeting (DH), 4-6 December 2012, CM/Del/Dec(2012)1157 of 10 December 2012.

35. See, among many others, Amnesty International, "Greece: Police violence in Greece: Not just 'isolated incidents'", document EUR 25/005/2012, 3 July 2012; and Amnesty International, France, *Des policiers au-dessus des lois*, document EUR 21/003/2009, April 2009 (in French).

36. Amnesty International, "Grèce. Des agents d'entretien qui manifestaient ont été frappés et meurtris par des policiers, tandis que l'impunité persiste", 13 June 2014 (in French).

37. See, for example, *Le Monde*, "Violences à Athènes après une manifestation en mémoire d'un adolescent tué par la police", 7 December 2014 (in French).

38. *Frumkin v. Russia*, Application No. 74568/12, judgment of 5 January 2016 (not final).

29. The Duma also passed, on 20 May 2014, an amendment to the law on public gatherings, which permits the detention of any person participating in an unauthorised public assembly and criminalises anyone found to have violated the law more than twice within 180 days.<sup>39</sup> A peaceful activist, Idlar Dadin, was sentenced in December 2015 to three years in prison for breaking that law.<sup>40</sup> In 2015, “more than 640 people were detained and accused of participation in unauthorized gatherings ... for peacefully protesting outside the court building where the verdicts of Bolotnaya case defendants were being heard”.<sup>41</sup>

### 3.5. Spain

30. During the anti-austerity demonstrations in 2013, law-enforcement officials made disproportionate use of force, including rubber bullets. After a visit to Spain in June 2013, the Commissioner for Human Rights, Mr Nils Muižnieks, expressed his concern that “the frequent lack of identification of law-enforcement officials, especially during demonstrations, has impeded the prosecution and sanctioning of perpetrators of abuse”. He also urged the Spanish Government “to end its long-standing practice, based on a law of 1870, of granting pardons to members of law-enforcement agencies involved in serious human rights violations, including torture”.<sup>42</sup>

31. In March 2015, the Spanish Parliament passed a new law on citizen’s security – also called the “gag law” or “ley mordaza” by its opponents – which entered into force on 1 July 2015. This new law criminalises some legitimate forms of protest, contains limitations on the locations of demonstrations (near Congress, the Senate and regional assemblies), includes a ban on “spontaneous assemblies” in certain places and fines the organisers of such protests.<sup>43</sup> Journalists and members of the public now risk penalties of up to €30 000 for filming law-enforcement officers or using such images. The new provisions therefore prevent the public from documenting and reporting abuses by the police. Before the law was passed, the United Nations special rapporteurs expressed concern about the law, which has an obvious negative impact on the right to freedom of assembly.<sup>44</sup> This law was sent to the Spanish Constitutional Court for an opinion in May 2015<sup>45</sup> and the Venice Commission was asked for an opinion as well.<sup>46</sup>

### 3.6. Turkey

32. Some 46 judgments of the Court on freedom of assembly are currently pending execution before the Committee of Ministers.<sup>47</sup> Moreover, 117 cases concerning the lack of effective investigations in respect of the actions of the Turkish security forces are also pending but they do not all relate to the actions of the Turkish security forces during peaceful protests.<sup>48</sup>

33. In the *Oya Ataman* group of cases, the Court observed under Article 46 of the Convention that the problems at the origin of the violations of the applicants’ right to freedom of peaceful assembly and ill-treatment of the applicants on account of excessive force used to disperse peaceful demonstrations were systemic, and that, therefore, Turkey had to adopt general measures to prevent similar violations in the future. Those measures should include among others clearer rules on the use of tear gas (or pepper spray) and tear gas grenades, adequate training of law-enforcement officers and their control and supervision during demonstrations.<sup>49</sup>

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39. Human Rights Watch, “[Russia: New Attack on Freedom of Assembly](#)”, 1 April 2014.

40. Amnesty International, “[Russia: Peaceful activist sentenced under repressive new law must be released](#)”, 7 December 2015.

41. Amnesty International, “[Russia: Bolotnaya protest anniversary marked by new repression](#)”, 5 May 2014.

42. CommDH(2013)18, 9 October 2015, Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Spain from 3 to 7 June 2013, p. 3.

43. Amnesty International, “[Spain: Two-pronged assault targets rights and freedoms of Spanish citizens, migrants and refugees](#)”, 26 March 2015; and *El País*, “[Five things Spain’s ‘gag law’ will stop you doing from today](#)”, 1 July 2015.

44. Office of the United Nations High Commissioner for Human Rights – Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association; David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Ben Emmerson, Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism; François Crépeau, Special Rapporteur on the human rights of migrants; and Michel Forst, Special Rapporteur on the situation of human rights defenders, “[Two legal reform projects undermine the rights of assembly and expression in Spain](#)”, UN experts, 23 February 2015.

45. *El Diario*, *El Constitucional admite el recurso de la oposición contra la “ley mordaza”* (in Spanish), 12 June 2015.

46. *AS/Mon* (2015) CB 9, 5 October 2015.

47. For a list of all cases see: decisions adopted at the 1222nd meeting (DH), 11-12 March 2015, [CM/Del/Dec\(2015\)1222/20 of 13 March 2015](#).

48. 1243rd meeting (December 2015), [Bati group of cases against Turkey](#).

34. Recent events in Turkey illustrate the systemic nature of the problem and the urgency to remedy this situation. Law-enforcement officials used disproportionate force against demonstrators in what has commonly become referred to as the “Gezi incidents”. At the end of May 2013, several hundred people gathered in Istanbul to protest against the destruction of Gezi Park, one of the last green spaces in central Istanbul, as part of the envisaged remodelling of the Taksim area. The police broke up this small demonstration using tear gas, beating protesters and burning their tents. Such a response to what had been a peaceful gathering of citizens gave rise to large demonstrations with hundreds of thousands of participants throughout Turkey.

35. In a report entitled “Gezi Park Protests: brutal denial of the right to peaceful assembly in Turkey”, Amnesty International documented acts of violence by the police against the people gathered in Taksim Square, including journalists reporting on the protests, doctors treating the injured and lawyers defending protesters’ rights.<sup>50</sup> As an example, Ali İsmail Korkmaz, a 19-year-old Gezi protester in Eskişehir, was allegedly beaten to death by at least two police officers in civilian clothes while he was protesting against the destruction of the park. In January 2015, a local court sentenced one of the two police officers involved in the crime to 10 years and 10 months in prison on charges of causing death as a result of injury.<sup>51</sup>

36. Amnesty International’s report noted that, according to the Ministry of the Interior, 4 900 protesters were detained on 23 June 2013. Moreover, the Turkish Medical Association reported that, on 10 July 2013, more than 8 000 people were injured at the scene of demonstrations and, by the end of August, five people had died during the course of the protests.<sup>52</sup>

37. The Commissioner for Human Rights condemned the following human rights violations which appeared to be particularly recurrent during the Gezi events: excessive use of tear gas, improper use of tear gas canisters as projectiles, use of tear gas in confined spaces, use of tear gas mixed with water on demonstrators, excessive use of force during and after apprehensions, use of water cannons, insufficient provision for escape routes, concealment by police officers of their ranks and identification numbers, and police violence against journalists.<sup>53</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published, in 2015, a report on its 2013 visit to Turkey and paid particular attention to the situation of persons deprived of their liberty following the Gezi protests. It recommended in particular that:

*“a firm message be delivered to all law-enforcement officials throughout Turkey who are involved in crowd control operations, reminding them that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be punished accordingly.”<sup>54</sup>*

38. The list of peaceful protests being brutally dispersed in Turkey seems to be constantly growing. Just to give two examples of the most recent use of violence to disperse protests:

- 28 November 2015: Police fired water cannons and tear gas to disperse around 2 000 people marching in Istanbul’s Taksim Square the Saturday after a prominent Kurdish lawyer was shot dead in south-east Turkey;<sup>55</sup>
- December 2015/January 2016: The peaceful protests regarding the curfew situation in the south-east of the country are usually dispersed with violence. “Protests and vigils taking place daily outside the curfew areas are routinely dispersed by police using tear gas and water cannons, and protesters are detained”.<sup>56</sup>

49. For more information on that case and the supervision of its implementation by the Committee of Ministers, see [Doc. 13864](#), Appendix 1, paragraphs 58-60.

50. Amnesty International, “Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey”, 2 October 2013.

51. *Today’s Zaman* (Turkey), “Two police officers get 10 years for killing Gezi protester Korkmaz” (21 January 2015).

52. Amnesty International, “Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey”, 2 October 2013.

53. CommDH(2013)24, Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Turkey from 1 to 5 July 2013.

54. CPT, [Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 9 to 21 June 2013](#), CPT/Inf(2015)6, paragraph 18.

55. *Reuters*, “Turkish police fire water cannon, tear gas at Istanbul march”, 28 November 2015.

56. Amnesty International, [“Indefinite 24-HOUR curfew, over 200 000 in danger”](#), 11 January 2016.

39. Finally, it is important to take note of the security bill, which was adopted by the Turkish Parliament in March 2015, and which further increased the powers of the police.<sup>57</sup> The Commissioner for Human Rights highlighted that even though the reform of the police was a long-due imperative, the proposed bill seemed “to increase the powers of the police to use firearms, to use force during demonstrations” without reinforcing the necessary independent control over its actions.<sup>58</sup>

### 3.7. Ukraine

40. Two cases on freedom of assembly are pending execution before the Committee of Ministers. In one of those cases (*Vyerentsov v. Ukraine*), the Court found a violation of Articles 11 and 7 (of the principle of no punishment without law) on account of the applicant’s conviction for having organised a peaceful demonstration in October 2010, and discovered a lacuna in the Ukrainian legislation with respect to a procedure for holding demonstrations.<sup>59</sup> The Commissioner for Human Rights also expressed his concern regarding the lack of a legislative framework governing peaceful assembly.<sup>60</sup> During a more recent visit in 2015, he also recommended that “the law on the police should be further revised to include all necessary safeguards concerning the use of firearms in line with international standards”.<sup>61</sup> According to the information given by the Ukrainian authorities to the Committee of Ministers, a draft law “On Guarantees of the Right to Freedom of Peaceful Assembly” was submitted to parliament on 7 December 2015.<sup>62</sup>

41. The announcement of the Ukrainian Government at the time that it would halt preparations for an Association Agreement with the European Union had prompted large-scale demonstrations in Kyiv starting on 21 November 2013. The events in Maidan Square in Kyiv between November 2013 and February 2014 led to nearly one hundred deaths and hundreds of people being injured. This protest has been named “Euromaidan” and remains sadly notorious due to the violent methods used for the dispersal of the crowds as reported by journalists, victims and other demonstrators. According to an Amnesty International report, one hundred people were demonstrating peacefully on 30 November 2013, when large numbers of riot police – also called *berkut* (a special division within the Ministry of Internal Affairs of Ukraine) – ordered them to disperse. The police officers then started beating those who chose to remain, as well as persons fleeing the scene.<sup>63</sup>

42. After an ad hoc visit in Correctional Colonies Nos. 25 and 100 in the Kharkiv area in September 2014, the CPT highlighted in its preliminary observations cases of beatings and other forms of physical ill-treatment of Maidan protesters by law-enforcement officials. The CPT identified a persistent problem, namely that the *berkut* and Interior Ministry troops had worn balaclavas, helmets or masks during their intervention and that it had been impossible to identify the individual perpetrators of abuses because of the absence of any identification number on their helmets or uniforms.<sup>64</sup>

### 3.8. Other examples

43. In Bosnia and Herzegovina, there were allegations of excessive use of force by police against protesters, bystanders and journalists in Tuzla and Sarajevo in February 2014. The protests were against layoffs, unpaid salaries, and unduly high severance pay for high-ranking company officials following the privatisation of several large companies in the town.<sup>65</sup>

44. In the Czech Republic, in December 2014, demonstrators against the eviction of a squat were dispersed, allegedly with truncheons, pepper spray and kicks with unnecessary and excessive force.<sup>66</sup>

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57. Amnesty International, “Turkey: Draconian reforms give police wide-ranging powers to repress dissent”, 27 March 2015.

58. Commissioner for Human Rights, [Statement on facebook page](#), 6 February 2015.

59. For more information on that case and the supervision of its implementation by the Committee of Ministers, *supra* note 29, paragraphs 15-16.

60. CommDH(2014)7 of 4 March 2014, [Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 4 to 10 February 2014](#), paragraphs 1 and 44.

61. CommDH(2015)23 of 3 November 2015, [Report by Nils Muižnieks following his visit to Ukraine from 29 June to 3 July 2015](#), p. 4.

62. 1243rd meeting, 8-9 December 2015, [Item H46-24](#).

63. Amnesty International, “Ukraine: “Euromaydan”: Human rights violations during protests in Ukraine”, 23 December 2013, p. 8.

64. Document CPT/Inf(2015)5, paragraphs 6 and 7.

65. Human Rights Watch, “Bosnia and Herzegovina: Investigate Police Violence Against Protesters”, 21 February 2014.

66. Amnesty International, “Czech Republic: Allegations of excessive use of force by the police must be investigated”, 17 December 2014.



45. In France, “several demonstrations against same-sex marriage staged in Paris between 24 March and 27 May 2013 (‘Manif pour tous’), involving more than 2 million people, triggering the intervention of law-enforcement forces including the use of tear gas (pepper spray) on peaceful demonstrators. Four persons were injured and several hundred were arrested”.<sup>67</sup> Following the terrorist attacks in January 2015, France witnessed the largest public gatherings of its history to protest against violence and for freedom of expression. Those peaceful protests showed the added value of protests in showing solidarity and unity. Following the Paris terrorist attacks of 13 November 2015, the reaction of the French authorities was quite different and a state of emergency was declared, which prohibits any assembly for three months.<sup>68</sup> The state of emergency has already been invoked to disperse a peaceful protest related to the climate change conference in Paris (COP21); law-enforcement officers used tear gas and pepper spray and arrested 174 people.<sup>69</sup> The constitutionalisation of the state of emergency currently debated in the French Parliament could possibly undermine freedom of assembly by a simple administrative decision.

46. A case concerning freedom of assembly in the Republic of Moldova is pending execution before the Committee of Ministers. In the case *Promo Lex and others v. Moldova*, the Court found a violation of the applicants’ (two NGOs and a Moldovan national) right to peaceful assembly on account of the failure by the police to secure the protection of demonstrators from a violent attack during a demonstration in January 2009 (Article 11) and lack of an effective remedy in this respect (Article 13).<sup>70</sup>

#### 4. International and European legal standards regarding human rights protection during peaceful protests

47. The international law which governs the use of force by the law-enforcement authorities is composed of binding regional human rights law instruments such as, within the Council of Europe area, the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), and international instruments such as the International Covenant on Civil and Political Rights and the United Nations Convention against Torture.<sup>71</sup>

48. Relevant soft law instruments include the Code of Conduct for Law Enforcement Officials,<sup>72</sup> which provides some guidance for law-enforcement agencies that possess police powers on how to respect and protect human dignity and uphold human rights. Another important piece of soft law was adopted in 1990: the [United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials](#) (UN Basic Principles). The creation of a mandate of a United Nations Special Rapporteur on the rights of freedom of peaceful assembly and of association contributes to the further development and dissemination of relevant principles, good practices and lessons learnt.<sup>73</sup>

49. In the framework of the Council of Europe, both the Committee of Ministers and the Parliamentary Assembly have repeatedly underscored the paramount importance of guiding the police forces and ensuring the protection of human rights in the context of demonstrations. On 19 September 2001, the Committee of Ministers adopted the European Code of Police Ethics,<sup>74</sup> which applies to traditional public police forces, police services, and to other publicly authorised and/or controlled bodies. This Code recommends, *inter alia*, that “[l]egislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public”.<sup>75</sup> On this issue of access to information, the law-enforcement authorities of the member States should also comply with the Council of Europe Convention on Access to Official Documents (CETS No. 205) (2009).<sup>76</sup> Prompted by relevant judgments of the European Court of Human Rights, the Assembly has reflected on freedom of assembly and

67. [Resolution 1947 \(2013\)](#), paragraph 3.1.

68. Decree No. 2015-1475 of 14 November 2015, applying Law No. 55-385 of 3 April 1955 on the State of Emergency.

69. *New York Times*, [France Uses Sweeping Powers to Curb Climate Protests, but Clashes Erupt](#), 29 November 2015.

70. *Promo Lex and Others v. the Republic of Moldova*, Application No. 42757/09, judgment of 24 February 2015.

71. [1465 U.N.T.S. 85](#).

72. Adopted by the United Nations General Assembly, Resolution 34/169, 17 December 1979.

73. As a result of a joint project of the United Nations Special Rapporteur on the rights of peaceful assembly and of association and the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, the United Nations Human Rights Council will discuss, during its March 2016 session, practical recommendations for the proper management of assemblies based on best practices and lessons learned. For more information, <http://freeassembly.net/peacefulprotests/>.

74. The [European Code of Police Ethics](#) appears in the appendix to the Committee of Ministers Recommendation Rec(2001)10, adopted on 19 September 2001.

75. *Ibid.*, paragraph 4.

76. Article 8 of its explanatory report indicates that the police are a public body obliged to comply with the public’s right to access information.

adopted [Resolution 1947 \(2013\)](#) on popular protest and challenges to freedom of assembly, media and speech. It urged member States to guarantee freedom of assembly and demonstration in accordance with the case law of the Court, to duly investigate the use of excessive or disproportionate force by members of law-enforcement forces, to reinforce human rights training for members of the security forces, and to draw up clear instructions concerning the use of tear gas and prohibit its use in confined spaces.

50. The OSCE/ODHIR, together with the Venice Commission, developed the above-mentioned Guidelines on Freedom of Peaceful Assembly, which offer a practical toolkit for legislators and practitioners responsible for implementing laws by drawing on good-practice examples from national legislations and the case-law of the European Court of Human Rights to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly.<sup>77</sup> Those guidelines have been cited by the Court, most recently in the case of *Vyerentsov v. Ukraine*.<sup>78</sup>

## 5. Specific human rights violated during peaceful protests

51. In accordance with Article 11 of the Convention, freedom of association and assembly may be restricted in certain circumstances if those restrictions are prescribed by law and if they pursue a legitimate aim in a democratic society such as national security or public safety, the prevention of disorder and crime, the protection of health or morals, or the protection of the rights and freedoms of others. Those notions are often used and abused to ban protests, to use violence to disperse protests and to arrest protesters.

52. Human rights violations during peaceful protests do not however only concern the right to freedom of assembly. They may also concern the following rights.

### 5.1. Right to life and right to be free from torture, inhuman or degrading treatment

53. Police violence against protesters may entail violations of Article 2 of the Convention, which protects the right not to be arbitrarily deprived of life, and therefore strictly limits the use of lethal or potentially lethal force to instances where it is absolutely necessary.

54. Even where the force used by law-enforcement authorities when policing protests is not lethal, it may entail violations of another non-derogable right enshrined in Article 3 of the Convention, namely the prohibition of torture, inhuman or degrading treatment or punishment. Violations of this provision might occur when law-enforcement forces use “less lethal” weapons such as tear gas, water cannons or rubber bullets. For instance, in a recent case, *Cestaro v. Italy*, the Court considered that the treatment by the police of a peaceful protester amounted to torture.<sup>79</sup>

55. The European Code of Police Ethics contains guidelines for police interventions, which also raise issues relating to the right to life, and to the prohibition of inflicting, instigating and tolerating acts of torture.<sup>80</sup>

### 5.2. Non-discrimination

56. Restrictions on the exercise of freedom of assembly should also be non-discriminatory. The fact that the organisers of a demonstration are an unpopular group of individuals is not a sufficient reason to ban their assembly. So, where an evangelical church was refused permission to hold a service in a park because it might have caused discontent among the followers of the majority religion in the area, there was a breach of Article 14 of the Convention, in addition to the violation of the freedom of religion. The role of the authorities in such situations had to be informed by “pluralism, tolerance and broadmindedness”.<sup>81</sup>

57. The same principles would apply to minority ethnic or political groups, or to other minorities like lesbians, gays, bisexuals, transsexuals and intersex people (LGBTI) wishing to hold marches and demonstrations. Violations of the right to freedom of assembly on grounds of sexual orientation are regularly reported. For example, since 2011, the Committee of Ministers has been supervising the implementation of the judgment *Alekseyev v. the Russian Federation*, a case concerning the violation of the applicant’s freedom

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77. OSCE/ODHIR, Guidelines on Freedom of Assembly, 2010.

78. *Vyerentsov v. Ukraine*, Application No. 20372/11, judgment of 11 July 2013, paragraphs 42-43.

79. *Cestaro v. Italy*, Application No. 6884/11, judgment of 7 April 2015, paragraphs 178, 182, 186 and 190. Mr Cestaro was among peaceful protesters housed in a school during the G-8 summit in Genoa in 2001. The police stormed the school and Mr Cestaro was subjected to repeated kicks and beatings with a baton, which is considered a potentially lethal weapon. As a result, Mr Cestaro suffered multiple fractures and a permanent impediment in his right arm and right leg.

80. European Code of Police Ethics, Part V, paragraphs 35 and 36.

81. Council of Europe, [Toolkit on the European Convention on Human Rights](#).



of assembly, the lack of an effective remedy in this respect and discrimination on the grounds of sexual orientation due to the repeated bans over a period of three years (between 2006 and 2008) on the holding of gay marches and pickets imposed by the Moscow authorities.<sup>82</sup> Violations of the freedom of assembly on grounds of sexual orientation occur regularly prior to the peaceful protests through bans of the marches, pickets or protests.<sup>83</sup> In some other cases, the violations occurred during the protests, for example when the State failed to provide adequate protection to peaceful participants in a gay march in Georgia (see paragraph 64 below). In May 2015, in Turkey, police arbitrarily used force against peaceful demonstrators of a Pride march and targeted them with water cannons, tear gas and pepper-ball projectiles.<sup>84</sup>

58. The Venice Commission stresses regularly that “freedom of peaceful assembly is to be enjoyed equally by everyone”. It noted that discrimination between nationals and non-nationals should be abandoned by the Sarajevo Canton in Bosnia and Herzegovina and that in Serbia, illegal migrants, stateless persons, asylum seekers and people with disabilities “must have the right to exercise their freedom of assembly”.<sup>85</sup>

### 5.3. Right to private life

59. Police operations during peaceful protests may also entail restrictions on demonstrators’ right to respect for their private life, as enshrined in Article 8 of the Convention, *inter alia* in relation to the release of images by the police to the media, or the taking and retention of personal data, fingerprints or DNA samples by the police during stop and search operations. Moreover, according to the European Code of Police Ethics, “the collection, storage, and use of personal data by the police shall be ... limited to the extent necessary for the performance of lawful, legitimate and specific purposes”.<sup>86</sup> Defenders of privacy rights demand that the “[u]se of surveillance techniques for the indiscriminate and untargeted surveillance of protesters and the organisers of protests, both in physical space and digital technologies, should be prohibited”.<sup>87</sup>

### 5.4. Right to freedom of expression

60. Violations of Article 10 of the Convention can also occur when the police specifically targets journalists during protests and prevents them from reporting on an ongoing demonstration. For instance, on 29 March 2014, after a demonstration in Madrid, seven photo-journalists were allegedly assaulted, beaten and injured by the police as they tried to cover an arrest. The OSCE Representative on Freedom of the Media, Ms Dunja Mijatović, expressed deep concern about the violence and intimidation by police against journalists covering these demonstrations.<sup>88</sup>

61. More recently, in January 2016, a journalist from the news agency JINHA, Beritan Canözer, was arrested while covering a protest against curfews imposed in neighbourhoods of the Sur district in Diyarbakır province (Turkey)<sup>89</sup> and a reporter for the Turkish newspaper *Evrinsel* was arrested while covering women’s protests in Izmir.<sup>90</sup> The use of social media related to peaceful protests has also been under attack.

82. *Alekseyev v. the Russian Federation*, Applications Nos. 4916/07, 25924/08 and 14599/09, judgment of 21 October 2010.

83. See also another case pending execution under the supervision of the Committee of Ministers, *Genderdoc-M v. Republic of Moldova*, Application No. 9106/06, judgment of 12 September 2012.

84. Amnesty International, *Amnesty: Pride march ban is a new low*, 30 June 2015.

85. CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and the OSCE/ODIHR, paragraph 5; and CDL-AD(2010)031, Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and the OSCE/ODIHR, paragraph 24.

86. European Code of Police Ethics, paragraph 42. A similar position is taken by the OSCE/ODHIR Guidelines, paragraph 169.

87. Article 19, an NGO dedicated to freedom of expression, initiated an information and consultation platform on the right to protest, which aims at elaborating some comprehensive guidelines for protecting human rights in the context of protest: <https://right-to-protest.org/debate-protest-rights/principle-14-state-duties-regarding-the-use-of-surveillance-on-protesters/>. See also recommendations in Assembly Recommendation 2067 (2015) and Resolution 2045 (2015) on mass surveillance, Doc. 13734.

88. OSCE, “Attacks against journalists in Spain are unacceptable, says OSCE media freedom representative”, 1 April 2014.

89. *Today’s Zaman*, “JINHA reporter arrested for ‘aiding terrorist organisation’”, 20 December 2016.

90. [www.coe.int/en/web/media-freedom/all-alerts?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&sojdashboard\\_WAR\\_coesojportlet\\_alertPK=13942537&sojdashboard\\_WAR\\_coesojportlet\\_jspPage=%2Fhtml%2Fdashboard%2Fview\\_alert.jsp](http://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertPK=13942537&sojdashboard_WAR_coesojportlet_jspPage=%2Fhtml%2Fdashboard%2Fview_alert.jsp).

### 5.5. States' duties regarding peaceful assemblies

62. Regarding the right to peaceful assembly, States have both a negative and a positive duty. The Court noted, in the case of *Oya Ataman v. Turkey*, that States Parties must not only “safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right”. It also affirmed that “it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings”.<sup>91</sup>

63. Policing protests not only entails a negative obligation for the law-enforcement agencies to refrain from resorting to the use of force but also a positive obligation to protect protesters from violence at the hands of counter-demonstrators or agents provocateurs, as the European Court of Human Rights has established in the case of *Plattform “Ärzte für das Leben” v. Austria*. The Court defined this positive obligation as the obligation “to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully” whilst noting that the law-enforcement agencies “have a wide discretion in the choice of the means to be used”.<sup>92</sup> The Court has since consistently recognised this positive duty.<sup>93</sup> In another case, in which the police had formed a cordon to keep rival demonstrators apart but failed to prevent physical assaults and damage to property, it found that they had not done enough to enable a lawful demonstration to proceed peacefully.<sup>94</sup>

64. States regularly fail to carry out this positive obligation when the peaceful protests concern the rights of people belonging to a minority. The Court recently delivered a judgment in which it stated that the Georgian authorities had failed to protect a 2012 march for the rights of LGBT persons in Tbilisi from violent attacks of counter-demonstrators. The Court considered in particular that the authorities knew or ought to have known of the risks surrounding the demonstration. They had therefore been under an obligation – but had failed – to provide adequate protection so that it could be held peacefully.<sup>95</sup>

65. In this respect, an example of good practice highlighted by the United Nations Special Rapporteur is the “establishment in Estonia of a Police Rapid Response Unit (riot police) which aims at protecting peaceful demonstrators against attacks by provocateurs and counter-demonstrators and is trained in how to separate the main provocateurs from peaceful demonstrators”.<sup>96</sup> Such a measure could indeed be an essential element of a human rights approach to policing protests.

## 6. A human rights-based approach to policing protests

66. Policing of protests should at all times be guided by human rights principles and comply with international human rights standards (see section 5 above).<sup>97</sup>

### 6.1. Quasi prohibition on the use of firearms

67. Principle 9 contained in the United Nations Basic Principles clearly prohibits the “use of firearms by law-enforcement authorities against persons except when strictly unavoidable to protect human life”. The UN Basic Principles make a distinction between peaceful and unlawful assemblies and violent assemblies. Regarding the dispersal of violent assemblies, the prohibition on firearms is partially lifted and “law-

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91. *Oya Ataman v. Turkey*, Application No. 74552/01, judgment of 5 March 2007, paragraph 42. See also *Balcik v. Turkey*, Application No. 25/02, judgment of 29 November 2007, paragraph 52; and *Ashughyan v. Armenia*, Application No. 33268/03, judgment of 17 July 2008, paragraph 90.

92. *Plattform “Ärzte für das Leben” v. Austria*, Application No. 10126/82, judgment of 21 June 1988, paragraphs 32 and 34.

93. See, in particular, *Oya Ataman v. Turkey*, Application No. 74552/01, judgment of 5 December 2006, paragraph 35; *Djavit An v. Turkey*, Application No. 20652/92, judgment of 20 February 2002, paragraphs 56-57; *Piermont v. France*, Applications Nos. 15773/89 and 15774/89, judgment of 27 April 1995, paragraphs 76-77.

94. *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, Application No. 44073/98, judgment of 20 October 2005.

95. *Identoba and Others v. Georgia*, Application No. 73235/12, judgment of 12 May 2015.

96. United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, [2012 report](#), document A/HRCR/20/27, paragraph 33.

97. An additional resource from the Council of Europe is available to member States to develop such an approach to policing. See Jim Murdoch and Ralph Roche, [“The European Convention on Human Rights and Policing. A handbook for police officers and other law enforcement officials”](#) (Council of Europe Publishing, December 2013). A resource from UNODC (United Nations Office on Drugs and Crime): [Handbook on police accountability, oversight and integrity](#) (published in July 2011).

enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary". The Code of Conduct for Law Enforcement Officials also states that the use of firearms should only be used as a last resort and be such as to minimise damage and injury.<sup>98</sup>

## 6.2. Proportionate and necessary use of force

68. Principle 13 of the UN Basic Principles concerns the dispersal of assemblies that are unlawful but peaceful; in which case, "law-enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary". Pursuant to Article 3 of the Code of Conduct for Law Enforcement Officials, "law-enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". Law-enforcement forces should be given weapons and tools which allow a graduated response to situations requiring the use of force.

69. A system for monitoring the use of force, which must include a requirement for law-enforcement officials to report any use of it, should be in place. Documentation about the use of force should be made available to the public.

## 6.3. Use of "less lethal" weapons

70. While it is commendable that States appear to strive to avoid the use of lethal force,<sup>99</sup> there have been numerous reports of severe injuries or even deaths caused by the use of incapacitating weapons considered as non-lethal, such as batons, water cannons, pepper spray, handguns, tasers, rubber bullets, stun guns and shock grenades. Any weapon can become lethal if used in a certain manner.

71. Some member States appear to be widening the range of such equipment and the scope of their use against protesters. While law-enforcement authorities need to be provided with a range of less lethal tactical options to allow for a differentiated use of force and firearms, including non-lethal incapacitating weapons,<sup>100</sup> the "development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons and the use of such weapons should be carefully controlled" (Principle 3).

72. A recent report from the NGO Access Info Europe highlighted the lack of transparency about the use of various types of equipment during policing of protests. The worrying result of the research carried out for this report was that "not one of the 42 countries surveyed provided full information" regarding *inter alia* "the law governing use of equipment during protests, the training on its use [and] the quantities and nature of equipment held".<sup>101</sup>

73. The CPT has also qualified the use of electrical discharge weapons in its standards:

*"The CPT considers that the use of electric discharge weapons should be subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. These principles entail, inter alia, that public officials to whom such weapons are issued must receive adequate training in their use. As regards more specifically EDW capable of discharging projectiles, the criteria governing their use should be directly inspired by those applicable to firearms."*<sup>102</sup>

## 6.4. Use of tear gas

74. I note with concern the multiple negative effects of certain weapons considered as non-lethal but which can cause serious injuries and even deaths when used in a certain way. Particular concern has been voiced about the use of tear gas to disperse crowds, not least because it does not discriminate between demonstrators and passers-by, or healthy people and people with certain medical conditions, as the Special

98. United Nations, [Code of Conduct for Law Enforcement Officials](#), 17 December 1979.

99. This observation seems however subject to one important recent exception, relating to violent clashes in Kyiv in February 2014, when law-enforcement officials reportedly fired at protesters with the intention to kill. The Office of the United Nations High Commissioner for Human Rights noted, in its April 2014 [Report on the human rights situation in Ukraine](#), that between 18 and 20 February 2014, some 90 people were killed, mostly from sniper shots allegedly fired from rooftops (paragraph 57).

100. Basic principles, Principle 2.

101. Access Info Europe, [The Transparency of the Policing of Protests: Using the right of access to information to assess the transparency of police activities during protests](#), April 2015, p. 3. The aim of the research was to get, by means of access to information requests, a comprehensive picture of the legal framework and use of different types of equipment – including batons, shields, tear gas and rubber bullets.

102. CPT, [CPT standards](#), CPT/Inf/E(2002)1 – Rev. 2015.

Rapporteur observed in his 2012 report.<sup>103</sup> Used incorrectly, tear gas canisters can become lethal weapons or seriously harm protesters. For instance, during the events at Gezi Park, many police officers fired tear gas canisters directly at protesters, targeting their faces.

75. Tear gas, first used in the First World War, is increasingly becoming the weapon of choice for security forces across Europe. While tear gas and pepper spray, under international law, are banned as a “method of warfare”, there are no restrictions on their domestic use as a “riot control agent”. Like the regulation of many other dangerous and toxic products, the trade in tear gas must be clearly and systematically regulated and all trade should be publicly disclosed. The use of tear gas is widespread in member States despite the known health dangers of its use.<sup>104</sup> Even though tear gas is not in principle a lethal weapon, when used inappropriately, at close range or directly at protesters, it can cause serious injuries and even deaths.

76. The use of tear gas has often been criticised by the Court. For example, in the recent case *Ataykaya v. Turkey*, it has found that “Turkish law lacked any specific provisions governing the use of tear gas grenades during demonstrations and did not lay down any instructions for their use” and concluded that “Turkey must reinforce without further delay, guarantees of the proper use of tear-gas grenades, in order to minimize the risks of death and injury stemming from their use”.<sup>105</sup> In an earlier case against Turkey, the Court affirmed that gas canisters shot with rifles have the potential to injure or even kill, and thus should be distinguished from other uses of tear gas. According to the Court, the danger posed by such material justifies the application of its case law on the use of potentially lethal force, in connection with Article 2 of the Convention on the right to life, and should therefore be strictly regulated in national law, within the framework of a system of adequate and effective safeguards against arbitrary use, abuse and avoidable accidents. The Court stated in particular that it assumed that the gas canister had been shot directly and horizontally on the applicant, and not in an arc as it should have been, given the injury he had sustained and the fact that the Turkish Government had not sufficiently investigated the incident to prove the contrary.<sup>106</sup>

77. Most cases from the Court related to the use of tear gas concern Turkey, as the Turkish law-enforcement authorities have used tear gas for policing protests on an unprecedented scale leading to injuries and deaths. The Tear Gas Must be Banned Initiative (Biber Gazı Yasaklansın İnsiyatifi)<sup>107</sup> produced a report mentioning 8 deaths and 450 injuries due to tear gas in 2014. This report was however disputed by the police.<sup>108</sup> The Turkish medical association has noted that around 130 000 tear gas canisters were used during the Gezi Park protests and that 8 000 injuries were due to tear gas and other less lethal weapons.<sup>109</sup> A recent report noted that Turkey had a better recording of data on the use of tear gas than other Council of Europe member States due largely to local initiatives and the recording of its use by large organisations. According to that report, there is a lack of accurate figures and data on the use of tear gas for other countries.<sup>110</sup>

78. The CPT has also expressed concern over the use of tear gas, stating that:

*“Pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control.”<sup>111</sup>*

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103. United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, [2012 report](#), document A/HCR/20/27, paragraph 35.

104. Research on tear gas shows the following risks: asphyxiation, miscarriage, skin burn, breathing problems, eyes tearing, vomiting, etc. See: [http://teargasresearch.com/?page\\_id=14](http://teargasresearch.com/?page_id=14).

105. See also *Ataykaya v. Turkey*, Application No. 50275/08, judgment of 22 July 2014; *Ali Güneş v. Turkey*, Application No. 9829/07, judgment of 10 April 2012, and *Izci v. Turkey*, Application No. 42606/05, judgment of 23 July 2013. In the Ali Güneş case, the Court stressed that there can be no justification for the use of tear gas against an individual who has already been brought under control by the law-enforcement authorities. Ali Güneş, a high school teacher and member of the Trade Union of Education and Science Workers (Eğitim-Sen), was in an area where demonstrations were allowed to take place during the 2004 NATO summit in Istanbul. He complained about having been sprayed with tear gas by police officers, even after being arrested.

106. *Abdullah Yaşa and Others v. Turkey*, Application No. 44827/08, judgment of 16 July 2013, paragraph 43. The Court ruled that improper firing of tear gas by Turkish police directly at protesters, injuring a 13-year-old boy, had violated his right to life, and called for stronger safeguards to minimise the risk of death and injury resulting from its use.

107. [www.bibergaziyasaklansin.net/](http://www.bibergaziyasaklansin.net/).

108. *Today's Zaman*, [Police reject tear gas report, says no death, injuries linked with tear gas](#), 9 February 2015.

109. World Medical Association, [End excessive force in Turkey](#), 12 July 2013.

110. Bournemouth University's civic media hub and the Omega Research Foundation, [Use of Tear Gas on peaceful protesters by Council of Europe member States](#), 25 February 2016.



### 6.5. Containment of protesters

79. The OSCE/ODHIR Guidelines consider that “[s]trategies of crowd control that rely on containment (a tactic known in the UK as ‘kettling’) must only be used exceptionally”.<sup>112</sup> The Court took a similar position and judged that the containment of a group of people carried out by the police on public order grounds may likewise entail violations of Article 5 of the Convention as well as of Article 2 of Protocol No. 4 to the Convention (ETS No. 46) (setting out the right to freedom of movement). In *Austin and Others v. the United Kingdom*,<sup>113</sup> it found that despite the coercive nature of the containment within the cordon, its duration and the physical discomfort of the applicants, there had been no deprivation of liberty within the meaning of Article 5.1 of the Convention. In reaching this conclusion, the Court took into account the “type” and “manner of implementation” of the measure in question. Nevertheless, it clearly underlined that “measures of crowd control should not be used by the national authorities directly or indirectly to stifle or discourage protest”.<sup>114</sup>

### 6.6. Training and counselling

80. Even when rules and policies are in place to ensure a human rights approach to policing, they do not always translate on the ground. Human rights violations by law-enforcement forces during peaceful protests are often caused by a lack of skills and adequate training. The European Code of Police Ethics calls for regular and adequate training, including on human rights principles, of police personnel. It clearly states that “practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be included in police training at all levels”.<sup>115</sup>

81. Police officers need to know how and when to use the equipment which they are issued. This involves not only knowing how to operate the equipment but knowing its capabilities, its purpose and its limitations. In its *Resolution 1947 (2013)*, the Assembly invited member States to “reinforce human rights training for members of the security forces”.<sup>116</sup>

### 6.7. Assistance to the victims

82. Assistance and medical aid to those affected by the use of force during protests must be ensured at the earliest possible moment in order to minimise adverse effects on life and health. The Court stated, in the Grand Chamber case of *Giuliano and Gaggio v. Italy*, that “it is important that preventive security measures such, as for example, the presence of first-aid services at the site of demonstrations, be taken in order to guarantee the smooth conduct of any event”.<sup>117</sup> Medical staff should not face threats for providing first aid to protesters. The Turkish Medical Association was sued by the Turkish Ministry of Health for providing “emergency care to demonstrators injured during the Gezi Park protests”. An Ankara court dismissed the lawsuit in February 2015.<sup>118</sup>

### 6.8. Preventive security measures

83. The dialogue between law-enforcement officers and protesters is also important in order to inform the latter what security and public safety measures will be taken.<sup>119</sup> Precautionary measures, such as using stewards or amplification equipment to direct the demonstrators or warn them that force may be used, could be an effective way to ensure that the protests remain peaceful. At the same time, threatening measures such as the deployment of heavily armed police, police dogs, water cannons, etc. tend to escalate violence. The OSCE/ODHIR guidelines also encourage law-enforcement authorities to “be proactive in engaging with assembly organizers”.<sup>120</sup>

111. CPT, Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007, *CPT/Inf(2009)25*, 14 October 2009, paragraph 79.

112. OSCE/ODHIR Guidelines, paragraph 160.

113. *Austin and Others v. the United Kingdom*, Application No. 39692/09 and others, judgment of 15 March 2012. The Court, sitting as a Grand Chamber, clarified that “it cannot be excluded that the use of containment and crowd-control techniques could, in particular circumstances, give rise to an unjustified deprivation of liberty in breach of Article 5 paragraph 1” (paragraph 60).

114. *Ibid.*, paragraph 68.

115. *European Code of Police Ethics*, paragraphs 26-30.

116. *Resolution 1947 (2013)*, paragraph 9.3.

117. *Giuliano and Gaggio v. Italy*, Application No. 23458/02, Grand Chamber judgment of 24 March 2011, paragraph 251.

118. Physicians for Human Rights, “Judge dismisses case against Turkish medical association”, Press release, 20 February 2015.

119. Geneva Academy, *Facilitating peaceful protests – Academy briefing*, No. 5, January 2014.

84. The prevention measures need to be proportionate and necessary. In *Nurettin Aldemir and Others v. Turkey*, although the authorities had a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens, the Court considered that the swift and considerably forceful intervention to order to disperse the initially peaceful crowd caused tensions to rise and resulted in clashes. Therefore, the Court considered that the forceful intervention of the police officers was disproportionate and not necessary for the prevention of disorder, and was consequently in violation of Article 11.<sup>121</sup>

### 6.9. Accountability: fighting impunity

85. Impunity is one of the central permissive elements of bad policing.<sup>122</sup> In several of the cases referred to above, the Court concluded that there had been a procedural violation of Articles 2 or 3 due to the lack of an effective investigation at the domestic level, resulting in the impunity of some police officers (for example, due to the impossibility to determine their identity).<sup>123</sup> When the competent national authorities deploy police officers who are masked, these agents have to wear a distinguishing feature (for example a service number) which, while protecting their anonymity, allows their identification later if, for example, facts are disputed.<sup>124</sup> In the case *Ataykaya v. Turkey*, the Court further elaborated that the national authorities had deliberately created a situation of impunity, *inter alia* by making impossible the identification of the agents suspected of having fired tear gas grenades.<sup>125</sup> The Court has ruled in several cases against Turkey in respect of the failure to carry out an effective investigation into the applicant's allegations of ill-treatment or lack of an effective remedy in this respect (violations of Articles 3, 11 and 13 of the Convention).<sup>126</sup>

86. Principle 7 of the UN Basic Principles provides that arbitrary or abusive use of force and firearms by law-enforcement officials shall be punishable as a criminal offence under national law. In the case of *Cestaro v. Italy*, this was one of the points highlighted by the Court.<sup>127</sup>

87. A police complaints system should be put in place and criminal and disciplinary proceedings should be brought against law-enforcement officials responsible for misconduct or human rights violations. Five principles<sup>128</sup> were developed by the Court for the effective investigation of complaints against the police: independence,<sup>129</sup> adequacy,<sup>130</sup> promptness,<sup>131</sup> public scrutiny<sup>132</sup> and victim involvement.<sup>133</sup>

## 7. Conclusion

88. I would like to stress again that peaceful protests, whether authorised or not, play a vital role in a democratic society and should not be sacrificed on the altar of security and anti-terrorism measures. Member States should refrain from using bans and preventive arrests of potential protesters to limit this right to freedom of assembly. The fact that a peaceful protest is unauthorised should not serve as an excuse to the law-enforcement authorities to use excessive force to disperse that protest. Law-enforcement agencies should use force only when strictly necessary and to the minimum extent required under the circumstances.

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120. OSCE/ODHIR Guidelines, paragraph 149.

121. *Nurettin Aldemir and Others v. Turkey*, Applications Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, judgment of 18 December 2007.

122. See, for example, *Le Soir* (Belgium), «“Les violences policières restent impunies”, selon la Ligue des Droits de l'Homme», 12 March 2014 (in French).

123. *Krastanov v. Bulgaria*, Application No. 50222/99, judgment of 30 September 2004, paragraphs 59-60, and *Rashid v. Bulgaria*, Application No. 47905/99, judgment of 18 January 2007, paragraphs 63-65 (available in French only).

124. *Hristovi v. Bulgaria*, Application No. 42697/05, judgment of 11 October 2011, paragraph 92, and *Özalp Ulusoy c. Turkey*, Application No. 9049/06, judgment of 4 June 2013, paragraph 54 (available in French only).

125. *Ataykaya v. Turkey*, Application No. 50275/08, judgment of 22 July 2014.

126. *Oya Ataman v. Turkey* group of cases.

127. *Cestaro v. Italy*, Application No. 6884/11, judgment of 7 April 2015, paragraph 246.

128. CommDH(2009)4, 12 March 2009, Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police, paragraph 30.

129. See, for example, *Ramsahai v. The Netherlands*, Applications Nos. 52391/99, judgment of 15 May 2007; *Bati v. Turkey*, Applications Nos. 33097/96 and 57834/00, judgment of 3 June 2004.

130. See, for example, *Nachova v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, judgment of 6 July 2005; *Aksoy v. Turkey* (100/1995/606/694), judgment of 18 December 1996.

131. See, for example, *Isayeva v. Russia*, Applications Nos. 5794/00, 57948/00 and 57949/00, judgment of 24 February 2005; *Aydin v. Turkey* (57/1996/676/866), judgment of 25 September 1997.

132. See, for example, *Ognyanova v. Bulgaria*, Application No. 46317/99, judgment of 23 February 2006; *Chitayev v. Russia*, Application No. 59334/00, judgment of 18 January 2007.

133. See, for example, *McKerr v. United Kingdom*, Application No. 28883/95, judgment of 4 May 2001.



89. As demonstrated above, it is clear that there is much room for improvement in order to create an enabling environment for peaceful protests in all member States and to foster a human rights-based approach to policing protests. No new international instrument is needed to prevent human rights violations during peaceful protests as the right to peaceful assembly is firmly anchored in existing international law. Moreover, numerous tools, guidelines and handbooks exist to support the development of an effective human rights-based approach to policing peaceful protests. All member States need to ensure that their legislation is consistent with those international standards. As we have seen above, recent legislation in France, the Russian Federation, Spain and Turkey is particularly worrying. The lack of legislation on the procedure to be followed for holding demonstrations is also problematic, as in Ukraine. Most importantly, the actual practice of the law-enforcement forces of the member States needs to be consistent with the relevant international and regional human rights standards. As recent events in for instance Armenia, Azerbaijan, France, Greece, Turkey, the Russian Federation, Spain or Ukraine have shown, those standards are frequently not implemented by law-enforcement authorities across member States.

90. The Convention, as interpreted by the Court, has established clear limits to the right to freedom of peaceful assembly, but also clear positive and negative obligations for State Parties. In this context, I would like to underscore once again the importance of the recommendations already included in [Assembly Resolution 1947 \(2013\)](#). In this resolution, the Assembly urged member States to guarantee freedom of assembly in accordance with the case law of the Court, to duly investigate the use of excessive or disproportionate force by members of law-enforcement forces, to reinforce human rights training for members of the security forces, and to draw up clear instructions concerning the use of tear gas and prohibit its use in confined spaces.

91. One important aspect, which also needs to be considered by member States, is the issue of transparency by law-enforcement authorities regarding their actions during protests. Citizens have the right to know the law governing the use of equipment during protests, the training on its use, and how their police forces operate and which means they may use during peaceful protests.

92. In light of the recent degradation of the right to freedom of assembly in certain member States, the Assembly should continue to monitor the situation in member States and keep abreast of recent developments. Nobody should face threats or violence for the peaceful exercise of his or her right to freedom of assembly, which is closely linked to the exercise of the right to freedom of association and the right to freedom of expression. Journalists and human rights defenders covering demonstrations shall therefore be properly protected too, and not risk being sanctioned for doing their job.

93. The principal findings and resulting recommendations addressed to member States are summed up in the draft resolution contained in this report.