



December 2023

This Factsheet does not bind the Court and is not exhaustive

# Use of force in the policing of demonstrations

The use of force in the policing of demonstrations may, in certain circumstances, raise issues under the [European Convention on Human Rights](#), in particular in terms of the right to life, the prohibition of torture and inhuman or degrading treatment, freedom of expression and freedom of reunion.

## Right to life (Article 2 of the European Convention on Human Rights)

### Sandru and Others v. Romania

8 December 2009

This case concerned the popular uprising in Timișoara of 1989, the first of a series of demonstrations that led to the overthrow of the Romanian communist regime. The first two applicants and the husband of the third applicant, who had taken part in the demonstrations, were seriously injured by gunshots. The brother of the fourth applicant was shot dead. All complained of the ineffectiveness of the investigation into the violent means used to quell the uprising, which had left numerous victims, and of the length of the criminal proceedings. They submitted in particular that the proceedings had not been conducted correctly since, given the positions held by the accused in the new post-1989 regime in Romania, the authorities had been reticent to investigate the case.

The Court held that there had been a **violation of Article 2** of the European Convention on Human Rights in its procedural aspect (the investigation), finding that the domestic authorities had not acted with the degree of diligence required. It firstly reiterated that the obligation to protect the right to life under Article 2 of the Convention 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. In the present case, while recognising the undoubted complexity of the case, the Court considered that the political and social implications could not justify the length of the investigation, as alleged by the Romanian Government. On the contrary, its importance for Romanian society ought to have prompted the domestic authorities to deal with the case speedily and without unnecessary delay, in order to prevent any appearance of tolerance of or collusion in unlawful acts

### Giuliani and Gaggio v. Italy

24 March 2011 (Grand Chamber)

This case concerned the fatal shooting of the applicants' son and brother by a member of the security forces during clashes at the G8 summit held in Genoa in July 2001. The applicants alleged in particular that their relative's death had been caused by excessive use of force, that there had been shortcomings in the domestic legislative framework, that the organisation of the operations to maintain and restore public order had been defective, and that there had been no effective investigation into his death.

The Court held that there had been **no violation of Article 2** (right to life) of the Convention with regard to the use of lethal force, finding that the use of force by the *carabiniere* concerned had been absolutely necessary within the meaning of the Convention. It noted in particular that the officer who had fired the shots had been confronted with a group of demonstrators conducting an unlawful and very violent attack on the vehicle in which he was stranded. In the Court's view, he had acted in the honest belief that his own life and physical integrity and those of his colleagues were in danger from the attack to which they were being subjected. Moreover, it was clear from the evidence at the Court's disposal that the *carabiniere* had given a warning while holding his weapon in a clearly visible manner, and that he had fired the shots only when the attack had not ceased. In those circumstances, the use of a potentially lethal means of defence such as the firing of shots had been justified. The Court also held that there had been **no violation of Article 2** with regard to the domestic legislative framework governing the use of lethal force or with regard to the weapons issued to the law-enforcement agencies at the G8 summit. It further held that there had been **no violation of Article 2** with regard to the organisation and planning of the policing operations at the G8 summit, finding that the Italian authorities had not failed in their obligation to do all that could reasonably be expected of them to provide the level of safeguards required during operations potentially involving the use of lethal force. Lastly, the Court held that there had been **no violation of Article 2** with regard to the alleged lack of an effective investigation into the death.

### **Ataykaya v. Turkey**

22 July 2014

This case concerned the death of the applicant's son, caused by a tear-gas grenade fired by the police during an illegal demonstration. The applicant alleged in particular that his son had died as a result of excessive use of force and that no effective investigation into his death had been carried out by the authorities. He also submitted that he did not have an effective remedy in domestic law that would allow him to sue the perpetrator of the fatal shot.

The Court held that there had been a **violation of Article 2** of the Convention in its substantive aspect (right to life) and procedural aspect (the investigation). It found, in particular, that there was nothing to indicate that the use of lethal force against the applicant's son had been absolutely necessary and proportionate, or that the police had taken the appropriate care to ensure that any risk to life was minimised. It also considered that no meaningful investigation had been carried out at domestic level to enable identification of the person who had fired the fatal shot. Further, as to **Article 46** (binding force and execution of judgments) of the Convention, the Court reiterated its findings in the *Abdullah Yaşa and Others* and *Izci* judgments (see below, under "Prohibition of inhuman or degrading treatment"), and emphasised the need to reinforce, without further delay, the safeguards surrounding the proper use of tear-gas grenades, so as to minimise the risks of death and injury stemming from their use. It emphasised that, so long as the Turkish system did not comply with the requirements of the European Convention, the inappropriate use of potentially fatal weapons during demonstrations was likely to give rise to violations similar to that in the present case. The Court also held that, in order to ensure effective implementation of its judgment, fresh investigative measures were to be taken under the supervision of the Council of Europe Committee of Ministers to identify and – if appropriate – punish those responsible for the death of the applicant's son.

### **Mocanu and Others v. Romania**

17 September 2014 (Grand Chamber)

See below, under "Prohibition of torture and inhuman or degrading treatment".

### Elvan v. Türkiye

7 February 2023

This case concerned the death of Berkin Elvan at the age of 15 following a wound sustained by a grenade launcher during the “Gezi events” in Istanbul. The applicants, his parents and his two sisters, complained in particular of the investigation into the circumstances of their relative’s death.

In this case the Court explained, in particular, that it would not attach any weight to the Turkish Government’s argument that the general situation during the Gezi events had been dangerous, or to the idea that Berkin Elvan had participated in any particular activity in that context, since it had been established that from 7 a.m. on the relevant day there had been no protest action or active demonstrator at the scene. The Court held that there had been a **violation** of the procedural limb of **Article 2** (right to life) of the Convention in the present case, finding that there had been a breach of the respondent State’s procedural obligation, under Article 2, to conduct an effective investigation into any part that Istanbul’s law-enforcement director and/or governor might have played in relation to the death of Berkin Elvan.

### Nika v. Albania

14 November 2023<sup>1</sup>

This case concerned the death of the applicants’ husband and father after he had been shot in the head in 2011 during a demonstration in front of the Albanian Prime Minister’s office. The protest had resulted in violent confrontations between demonstrators and the authorities. The applicants alleged in particular that the commander-in-chief of the National Guard, in charge of protecting the Prime Minister’s office, had ordered his men to open fire on the protestors. They submitted that the authorities’ use of force during the protest had been excessive and that the investigation into their relative’s death had been ineffective.

The Court found, overall, that the investigation in the case had not been effective as it had failed to establish the truth or lead to the identification and punishment of those responsible, in **violation** of the procedural limb of **Article 2** (right to life) of the Convention. The Court also found shortcomings in the then legal framework governing the use of firearms in the context of crowd-control operations and serious defects in the planning and control of the protest. It noted that the authorities had not shown that the use of lethal force by the National Guard officers that had resulted in the death of the applicant’s relative had been absolutely necessary. Indeed, the Albanian Government itself accepted that the use of force had been excessive. The Court therefore held that there had also been a **violation** of the substantive limb of **Article 2** of the Convention. Lastly, it held, under **Article 46** (binding force and execution) of the Convention, that the Albanian authorities should continue to try to elucidate the circumstances of the death of the applicants’ relative and to identify and punish those responsible.

### Stefan-Gabriel Mocanu and Others v. Romania

12 December 2023<sup>2</sup>

This case concerned allegations made by the victims or the heirs of victims of the repression of anti-government protests held in Bucharest in June 1990 as to the lack of an effective investigation. The applicants submitted in particular that the Romanian authorities’ investigation had been ineffective and had failed to identify those responsible for the events complained of and, as appropriate, to punish them.

The Court held that there had been a **violation** of the procedural aspect of **Articles 2** (right to life) and **3** (prohibition of inhuman or degrading treatment) of the Convention in the present case. It found, in particular, that even after its initial finding of a violation – in its *Mocanu and Others v. Romania* judgment of 17 September 2014 (see below, under “Prohibition of torture and inhuman or degrading treatment”,

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<sup>1</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

<sup>2</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

“Demonstrators”) – in connection with an investigation into events that were of importance to Romanian society, a number of shortcomings and deficiencies had been noted in the subsequent investigation, which had justified setting aside not only the prosecutor’s application to commence proceedings, but also several investigative measures, and had entailed a breach of the procedural requirements under Articles 2 and 3 of the Convention. Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, the Court urged the Romanian State to take all necessary measures to ensure that an investigation was conducted that was capable of promptly and expediently elucidating the circumstances – during the events of 13 to 15 June 1990 – surrounding the death of the father of two of the applicants and the ill-treatment to which the other applicants had allegedly been subjected.

## Prohibition of torture and inhuman or degrading treatment (Article 3)

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### Demonstrators

#### Oya Ataman v. Turkey

5 December 2006

In April 2000 the applicant, a lawyer and a member of the supervisory board of the Human Rights Association, organised a demonstration in Istanbul to protest against plans for “F-type” prisons (designed to provide living spaces for two to three persons instead of dormitories). The demonstration took the form of a march followed by a statement to the press. The applicant complained in particular of the use of pepper spray, a kind of tear gas, to disperse the group of demonstrators.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that there was no evidence to substantiate the applicant’s allegations of ill-treatment. It first noted that pepper spray was used in some Council of Europe member States to keep demonstrations under control or to disperse them in case they got out of hand. It was not among the toxic gases listed in the Annex to the CWC (1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction). However, the Court pointed out that the use of this gas could produce side-effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of tear ducts and eyes, spasms, thoracic pain, dermatitis or allergies. In the present case, the Court observed that the applicant had not submitted any medical reports to show the ill-effects she had suffered after being exposed to the gas. Since she had been released shortly after being arrested, she had not asked for a medical examination either.

#### Balcik and Others v. Turkey

29 November 2007

In August 2000, the seven applicants gathered in Istanbul together with 39 others to make a declaration to the press in which they protested against “F-type” prisons (designed to provide living spaces for two to three persons instead of dormitories). The demonstrators were informed by the police that their march was unlawful: no advance notice had been submitted to the authorities and it would disrupt public order. They were ordered to disperse. The group did not comply with those orders and attempted to continue its march. The applicants complained in particular about their arrest during the demonstration.

The Court noted, in particular, that five of the applicants had not submitted any medical reports or other evidence which could prove their allegations of ill-treatment and therefore **dismissed** their **complaints under Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Concerning, however, the two other applicants, it was undisputed between the parties that the injuries observed on them had been

caused by the use of force by the police during the incident. In their case, noting, in particular, that it could not be said that the security forces had been called upon to react without prior preparation, and that there was nothing in the case file to suggest that the demonstrators had presented a danger to public order, the Court found that the Turkish Government had failed to provide convincing or credible arguments which could explain or justify the degree of force used against the applicants, whose injuries had been corroborated by medical reports. Those injuries had therefore been the result of treatment for which the State bore responsibility, and there had, accordingly, been a **violation of Article 3** of the Convention concerning the two applicants.

### **Gazioğlu and Others v. Turkey**

17 May 2011

The four applicants in this case complained of ill-treatment by police officers who had arrested them in 2003 during a demonstration in protest against the Turkish Government's proposals to send soldiers to take part in the invasion of Iraq.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of two of the applicants. It noted in particular that the injuries sustained by them, namely in the face and on the head, had attained the minimum level of severity to fall within the scope of Article 3 of the Convention. Further, having regard to the Turkish Government's admission that those injuries had been caused by police officers, the burden rested on the Government to demonstrate that the use of force had been rendered strictly necessary by the applicants' behaviour and that the force used had not been excessive. It was, however, apparent that no serious attempts had been made by the prosecutor to establish the circumstances of the use of force or the cause of the applicants' injuries. Therefore, having regard to the fact that no other justification had been given by the Government for the use of force than the allegedly "rowdy behaviour" of some of the demonstrators and of the fact that the applicants had not committed any offences – as was confirmed by their acquittal by the criminal court – the Court considered that the use of force by the police officers, resulting in the two applicants' injuries, had been disproportionate.

See *also* the judgment delivered on the same date in the case of **Akgöl and Göl v. Turkey**, where the two applicants complained about the intervention of gendarmes in a demonstration in which they had participated as university students in 2002 to commemorate the killing of a fellow student. They were subsequently arrested and criminal proceedings were brought against them for taking part in an unlawful demonstration.

### **Ali Güneş v. Turkey**

10 April 2012

In June 2004, the applicant, a high-school teacher and a member of the Education and Science Workers' Union and of the Confederation of Public Workers' Unions, participated in a demonstration against the NATO summit in Istanbul. He submitted, in particular, that the police had beaten him up and had sprayed him with harmful gases after arresting him during the demonstration, despite the fact that he and all the people who had accompanied him were unarmed and behaved peacefully. He also complained that the Turkish authorities had failed to adequately examine his allegations against the police.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in its substantive aspect, finding that the applicant had been subjected to inhuman and degrading treatment. It found that the Turkish authorities had been unable to justify the use of tear gas against the applicant after he had already been apprehended by the police and that the unwarranted spraying of the gas into his face had to have caused the applicant intense physical and mental suffering. The Court observed, in particular, that it had already examined the issue of the use of tear gas for law-enforcement and noted the effects it could produce. Agreeing with the European Committee for the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment (CPT), which had expressed concerns over the use of tear gas in law-enforcement activities and called for clear directives in national law on that subject, the Court stressed, in particular, that there could be no justification for the use of tear gas against an individual who had already been taken under the control of the law-enforcement authorities, as in the applicant's case. In this case, the Court also held that there had been a **violation of Article 3** of the Convention in its procedural aspect, finding that the authorities had failed to carry out an effective investigation into the applicant's allegations.

### **Abdullah Yaşa and Others v. Turkey**

16 July 2013

In March 2006 numerous unlawful demonstrations took place in Diyarbakır, following the deaths of fourteen members of the PKK (the Kurdistan Workers' Party) during armed clashes. The demonstrations were violent and eleven demonstrators lost their lives. The applicant, who was 13 at the time, was injured in the head by a tear-gas grenade. He complained in particular that the police had used unjustified force.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in its substantive aspect. It found that it was not established that the use of force to which the applicant had been subjected had been an appropriate response to the situation from the standpoint of the requirements of Article 3 of the Convention or that it had been proportionate to the aim sought to be achieved, namely the dispersal of a non-peaceful gathering. The seriousness of the applicant's head injuries was not consistent with the use by the police of a degree of force made strictly necessary by his conduct. The Court noted in particular that it was clear from the video footage and all the evidence in the file that the demonstration had not been peaceful in the present case. Accordingly, no particular issue arose under Article 3 on account of the use of tear gas as such to disperse the gathering. However, what was in issue was not simply the fact that tear gas had been used but the fact that a tear-gas grenade had been fired directly at the demonstrators. The firing of tear-gas grenades using a launcher entailed a risk of causing serious injury or even death if the launcher was used improperly. Consequently, given the dangerous nature of the equipment used, the Court considered that its case-law concerning the use of potentially lethal force should apply in this case. As well as being authorised under national law, policing operations – including the firing of tear gas grenades – had to be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness, abuse of force and avoidable accidents. Further, under **Article 46** (binding force and execution of judgments) of the Convention, the Court observed that at the time of the events Turkish law had not contained any specific provisions regulating the use of tear-gas grenades during demonstrations and that no guidelines concerning their use had been available to the law-enforcement agencies. The Court therefore held that the safeguards surrounding the proper use of tear-gas grenades needed to be strengthened in order to minimise the risk of death and injury resulting from their use.

### **İzci v. Turkey**

23 July 2013

This case concerned the applicant's allegations that she was beaten, subjected to teargas, sworn at and insulted by police officers in March 2005 when she took part in demonstrations in Beyazıt Square in Istanbul to celebrate Women's Day. The applicant submitted in particular that as the crowd began to disperse of its own accord, police officers attacked the demonstrators with truncheons, hitting her in the face and body and continuing to beat and kick her when she fell to the ground. She added that such attacks by police were tolerated and went unpunished in Turkey. Also, she argued that the actions of the police prevented her from enjoying her right to freedom of expression and assembly.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention both in its substantive and procedural aspect, on account of the excessive use of violence against the applicant and her being sprayed

with tear gas, coupled with the failure of the Turkish authorities to find and punish those responsible. The Court noted in particular that, as in many previous cases against Turkey, the police officers had failed to show a certain degree of tolerance and restraint before attempting to disperse a crowd which had neither been violent nor presented a danger to public order, and that the use of disproportionate force against the demonstrators had resulted in the injuring of the applicant. Moreover, the failure of the authorities to find and punish the police officers responsible raised serious doubts as to the State's compliance with its obligation under the Convention to carry out effective investigations into allegations of ill-treatment. In this case the Court also held that there had been a **violation of Article 11** (freedom of assembly) of the Convention, finding that the use of excessive violence by the police officers towards the applicant, whose behaviour had not required such heavy-handed intervention, had been disproportionate to the aim pursued – namely that of preventing disorder and crime as well as maintaining public order – and had had a dissuasive effect on people's willingness to demonstrate. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, noting that it had already found in over 40 of its judgments against Turkey that the heavy-handed intervention of law enforcement officials in demonstrations had amounted to a violation of Article 3 and/or Article 11 of the Convention, and that a great number of applications against Turkey concerning the right to freedom of assembly and/or excessive use of force by law enforcement officials during demonstrations were pending, the Court requested the Turkish authorities to adopt general measures in order to prevent further similar violations in the future.

#### **Mocanu and Others v. Romania**

17 September 2014 (Grand Chamber)

This case concerned in particular the investigation which followed the violent crackdown on anti-government demonstrations in Bucharest in June 1990. During the crackdown, the first applicant's husband was killed by gunfire and the second applicant was arrested and ill-treated by the police. Both applicants submitted that Romania had failed in its obligations to conduct an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the armed repression.

The Court held that there had been a **violation of Article 2** of the Convention in its procedural aspect (investigation) in respect of the first applicant and a **violation** of the procedural aspect **of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention in respect of the second applicant, finding that the authorities responsible for the investigation had not taken all the measures which could have led to the identification and punishment of those responsible for the violent events and that the applicants had not had the benefit of an effective investigation for the purposes of the Convention. The Court accepted in particular that, in exceptional circumstances, the psychological consequences of ill treatment inflicted by State agents could undermine victims' capacity to complain about treatment inflicted on them and could constitute a significant impediment to their right to redress. In the present case, the Court noted that the second applicant, like the majority of the victims, had found the courage to lodge a complaint only several years after the events, when the investigation which had already been opened of the authorities' own motion seemed to be making progress. It therefore considered that, in the exceptional circumstances of this case, the applicant's vulnerability and his feeling of powerlessness amounted to a plausible and acceptable explanation for the fact that he had not lodged a complaint until 2001, more than ten years after the events.

#### **Cestaro v. Italy**

7 April 2015

The twenty-seventh G8 summit took place in Genoa in July 2001. A number of NGOs organised an alternative anti-globalisation summit in the city at the same time. The case concerned events which occurred at the end of the G8 summit, in a school made available by the municipal authorities to be used as a night shelter by "authorised"

demonstrators. An anti-riot police unit entered the building around midnight to carry out a search. When the police arrived, the applicant, then aged 62 and who was inside the school, was sitting with his back to the wall with his arms raised. He was struck several times, causing multiple fractures. The applicant complained that he was the victim of violence and ill-treatment, which in his submission amounted to torture, when the police raided the school.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention on account of ill-treatment sustained by the applicant and of inadequate criminal legislation concerning the punishment of acts of torture which was not an effective deterrent to prevent the repetition of such acts. Having regard to all the circumstances presented, it found, in particular, that the ill-treatment sustained by the applicant when the police stormed the school amounted to “torture”. The Court also noted that the failure to identify the actual perpetrators of the ill-treatment could partly be explained by the objective difficulty of the public prosecutor’s office in establishing definite identifications but also by a lack of police cooperation. Moreover, under **Article 46** (binding force and execution of judgments) of the Convention, after emphasising the structural nature of the problem, the Court pointed out that, as regards the remedial measures to be taken, the State’s positive obligations under Article 3 of the Convention might include the duty to introduce a properly adapted legal framework, including, in particular, effective criminal-law provisions.

See also: **Bartesaghi Gallo and Others v. Italy**, judgment of 22 June 2017; **Blair and Others v. Italy** and **Azzolina and Others v. Italy**, judgments of 26 October 2017.

### **Süleyman Çelebi and Others v. Turkey**

24 May 2016

The applicants were a number of individuals and a trade union who took part in a rally held in Istanbul on 1 May 2008 to celebrate May Day that was dispersed by the police using violence. The individual applicants alleged in particular that the police officers had used disproportionate force in order to disperse the gathering. They said that they had been hospitalised owing to the after-effects of the tear gas they had inhaled and the blows they had received, and claimed that the members of the security forces had gone unpunished.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, both in its substantive and procedural aspect, in the case of the third and fifth applicants. It noted in particular that the injuries observed by doctors to these two applicants, who had not engaged in violence, were to be considered attributable to the aggressive police operation to break up the demonstration. As such treatment was not justified simply in order to disperse a demonstration, it constituted inhuman and degrading treatment. The Court also observed that the police officers involved had not been prosecuted. Nor had the persons who had issued the orders been the subject of a judicial investigation. Only a criminal investigation concerning the police officers and also the Governor and Head of the Security Directorate, who had given the orders, would have been able to shed light on the content and scope of the orders received by the police officers.

### **Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey**

5 July 2016

In November 2005 the Eğitim-Sen union called on its members to stage a demonstration in the centre of Ankara to claim a right to free and good-quality education. The case concerned in particular the allegations of six of its members regarding ill-treatment by the security forces. According to them, the police subjected them to high-pressure water and teargas and drove at them with an armoured vehicle. The applicants also complained that the authorities had not opened a criminal investigation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the six applicants who were union



members, noting in particular that the use of force that they had complained of had resulted in injuries which had unquestionably caused them suffering of such a nature that it constituted inhuman and degrading treatment. Moreover, even assuming that the demonstrators' conduct could have justified the use of force, the Court took the view that it had not been established that the dispersion of the rally in question could have justified the severity of the blows inflicted to the body, head or face of the participants concerned. Thus the explanations of the Turkish government did not persuade the Court that the force used by the security forces had constituted an appropriate response to the situation having regard to the conduct adopted by the demonstrators during the incident in question. The Court also found a **violation of Article 3** of the Convention under its procedural head, taking the view in particular that neither the complaints to the Prosecutor-General at the Court of Cassation, nor the complaint filed with the Public Prosecutor, had led to an effective investigation.

### **Kilici v. Turkey**

27 November 2018

In March 2009 about 200 members of various trade unions gathered in Istanbul and moved towards a district where the 5<sup>th</sup> World Water Forum was being held in order to express, through a statement to the press, their disagreement with the commercialisation and privatisation of water. The applicant, a member of one of the trade unions, was wounded following the firing of rubber bullets by police when dispersing the demonstrators. He complained in particular of a disproportionate and unjustified use of force by the police officers and of the lack of an effective investigation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that it had not been established that the use of force against the applicant had been appropriate to the situation or proportionate to the aim pursued, namely to control the dispersion of a demonstration, and that the investigative acts had not been thorough or effective. With regard in particular to the rubber bullets, the Court took the view that the scant legislative provisions which set guidelines for the police in the use of force did not suffice by themselves to render the firing of rubber bullets a police action that was lawful and appropriate in the absence of specific rules governing this type of weapon. In the Court's view, such a situation did not afford the level of protection from bodily harm that was required in contemporary democratic societies in Europe.

### **Zakharov and Varzhabetyan v. Russia**<sup>3</sup>

13 October 2020

This case concerned allegations of police brutality against participants of a political rally in May 2012 at Bolotnaya Square. Both applicants, who had participated in the rally, submitted that they had been ill-treated during its dispersal and complained that the ensuing investigation into their complaints had been ineffective. They further argued that their participation in the rally had been peaceful and that the use of force against them had therefore been unlawful and unjustified.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under its substantive and procedural heads. It noted, in particular, that it had established beyond reasonable doubt that on 6 May 2012 the police had used force against both applicants during the dispersal of the assembly at Bolotnaya Square, and that they had sustained injuries as a result. At no stage, in addition, had the applicants' peaceful conduct during the assembly been called into question. The use of force against them had therefore not been strictly necessary by their own conduct, and thus had diminished their dignity. Nor had it been indispensable in the context of quelling mass disorders. The Court further found that the Russian authorities had failed to carry out an effective investigation capable of establishing whether the use of force by the police had been indispensable and

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<sup>3</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights.

proportionate. In the present case, the Court also held that there had been a **violation of Article 11** (freedom of assembly) of the Convention. In this regard, it noted in particular that no explanation had been submitted as to why force had been applied in respect of the applicants, who had not been arrested and had not engaged in any acts of violence. In light of its finding that the force used in respect of the applicants had been unnecessary and excessive, the Court also found that the impugned interference had not been necessary in a democratic society. Moreover, it could have had a chilling effect and discouraged the applicants and others from taking part in similar public gatherings.

**Shmorgunov and Others v. Ukraine, Lutsenko and Verbytskyy v. Ukraine, Kadura and Smaliy v. Ukraine, Dubovtsev and Others v. Ukraine and Vorontsov and Others v. Ukraine**

21 January 2021

These cases concerned events around the Maidan protests in Kyiv and other cities in Ukraine, between November 2013 and February 2014, including dispersal of the protestors, their detention, the kidnapping of activists and their ill-treatment, and the related proceedings. All of the applicants had been present at or had played a role in the Maidan protests. They alleged, among other things, police brutality, a denial of their right to protest, unjustified detention, and even in one case death.

The Court found, in particular, a **violation of Article 2** (right to life) and **multiple violations of Article 3** (prohibition of inhuman or degrading treatment), **of Article 5 §§ 1 and 3** (right to liberty and security) **and of Article 11** (freedom of assembly) of the Convention. It noted, in particular, that the authorities had used ill-treatment deliberately, and that the State had been responsible for the murder of one protester. It also observed that many of the detention orders had been arbitrary. It further considered that the authorities had deliberately tried to disrupt initially peaceful protests, using excessive violence and unlawful detention to achieve that. Overall, the Court found that the abuses found appeared to have been a strategy on the part of the authorities. The investigations into the events had also in many instances been ineffective.

**Lopez Martinez v. Spain**

9 March 2021 (Committee judgment)

This case concerned the investigation carried out by the Spanish authorities following the forcible evacuation by the police of several individuals, including the applicant, who were in a cafeteria on the outskirts of the Congress headquarters in Madrid and who had taken part in a demonstration under the slogan "Surround the Congress".

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. In the light of the material in its possession, it found that, in the particular circumstances of the case, the investigation conducted by the domestic courts had not been sufficiently thorough and effective to meet the requirements of the procedural aspect of Article 3.

**Mikeladze and Others v. Georgia**

16 November 2021

The applicants, four Georgian nationals, had been arrested at a gathering by the local Muslim community against the conversion of an ancient mosque into a library. They had been released the next day. The police alleged that they had resisted their lawful orders, and denied making any derogatory comments, while the applicants brought complaints of ill-treatment against the police officers. The case concerned mainly the applicants' complaints that, during their arrests and detention, they had been physically and verbally assaulted by the police, who had used discriminatory language, and that the criminal investigation into their complaints had been ineffective.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment), **taken alone and in conjunction with Article 14** (prohibition of discrimination) of the Convention in respect of all applicants, and a **violation** of the substantive aspect **of Article 3** in respect of the first applicant. It held, however, that there had been no violation of Article 14 taken in conjunction with the substantive aspect

of Article 3 in respect of the first applicant, and no violation of the substantive aspect of Article 3 either taken alone or in conjunction with Article 14 in respect of the three other applicants. The Court found, in particular, that the Georgian Government had not satisfactorily explained the source of the first applicant's injuries and, therefore, had not shown that the use of force against him had been lawful and strictly necessary and that his injuries had been caused otherwise than by ill-treatment by the police. As regards the remaining applicants and their allegations of physical ill-treatment, it observed, in particular, that no medical evidence demonstrating presence of injuries had been submitted.

## Non-demonstrators

### Lazaridou v. Greece

28 June 2018

This case concerned physical injuries sustained by the applicant in May 2010, on the day of a demonstration organised against the austerity measures imposed by the Greek Government. The applicant, who had not taken part in the demonstration, was in a building where two associations had their headquarters. Injured in the arm by shards of glass, she blamed her injuries on the police officers of a special unit, saying that she had been behind a glass door that had been broken by the police officers when they had entered her building. The applicant submitted in particular that she had been deliberately injured by police officers, who had subsequently taken no interest in her condition and had prevented her from immediately seeking treatment. She also complained about the investigations into the events in question.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in its procedural or substantive aspect. It noted in particular that at the end of the criminal proceedings the police officers in question had been acquitted by the Greek courts, which had examined the evidence and had taken all the steps available under criminal procedure to clarify the circumstances of the incident. It also observed that there was nothing in the proceedings to suggest that the domestic courts had not presented the requisite independence and impartiality. The Court further held that there was insufficient evidence in the present case to conclude, beyond reasonable doubt, that the applicant had suffered the alleged treatment at the hands of the police officers in question. It reiterated in particular that allegations of ill-treatment had to be supported by appropriate evidence. There was no sufficient evidence in the applicant's case. Lastly, she had never been detained or held in police custody or under the control of the police. Her situation had therefore been entirely different from that of an individual finding him or herself at the hands of the police.

## Journalists covering demonstrations

### Najafli v. Azerbaijan

2 October 2012

In October 2005, the applicant, a journalist, was sent to cover an unauthorised demonstration, organised by opposition parties, in Baku. During the dispersal of the demonstration by the police, the applicant and his colleagues were beaten up and received various injuries. He submitted in particular that he had been beaten up by police and that the authorities had failed to carry out an effective investigation, letting those police officers responsible go unpunished.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the treatment of the applicant by the police, given in particular his injuries, which proved that he had experienced serious physical and mental suffering. It noted, *inter alia*, that the applicant had not used violence against the police or posed a threat to them. Nor had the authorities given any other reasons justifying the use of force, which had therefore been unnecessary,

excessive and unacceptable. The Court also held that there had been a **violation of Article 3** of the Convention concerning the investigation into the applicant's claim of ill-treatment, finding that it had been ineffective and had lacked independence. It noted in particular that no relevant procedural steps had been taken until the applicant had been questioned, more than three months after the incident, and that the identification of those responsible for the applicant's beating had been delegated to the same authority whose agents had allegedly committed the offence. Even if another police department had been in charge of this major part of the investigation, the agents had been colleagues, employed by the same public authority.

See also: [Rizvanov v. Azerbaijan](#), judgment of 17 April 2012.

## Right to a fair trial within a reasonable time (Article 6)

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### [Mocanu and Others v. Romania](#)

17 September 2014 (Grand Chamber)

The third applicant in the case, the Association "21 December 1989", complained of the length of the criminal proceedings which followed the violent crackdown on anti-government demonstrations in Bucharest in June 1990. It had joined these proceedings as a civil party in order to claim reparation for the damage caused by the ransacking of its headquarters, the destruction of its property and the assault on its members.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) of the Convention in respect of the third applicant, finding that the length of the impugned proceedings – almost 19 years – had been excessive and had failed to meet the "reasonable time" requirement.

## Freedom of expression (Article 10)

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### [Najafli v. Azerbaijan](#)

2 October 2012

In October 2005, the applicant, a journalist, was sent to cover an unauthorised demonstration, organised by opposition parties, in Baku. During the dispersal of the demonstration by the police, the applicant and his colleagues were beaten up and received various injuries. He alleged in particular that the police officers' intention had been to prevent him from covering the demonstration.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention in the case of the applicant. It noted in particular that the role of the press in imparting information and ideas on matters of public interest undoubtedly included reporting on opposition gatherings and demonstrations which was essential for the development of any democratic society. The applicant had, however, been prevented from reporting through physical ill-treatment and an excessive use of force. The Court could not accept that the police officers had been unable to determine that the applicant was a journalist, as he was wearing a badge and had explicitly stated his occupation. Moreover, the Court pointed out that the physical ill-treatment by State agents of journalists performing their professional duties had seriously hampered the exercise of their right to receive and impart information. Irrespective of whether there had been any actual intention to interfere with the applicant's journalistic activity, he had been subjected to unnecessary and excessive use of force, in breach of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, despite having made clear efforts to identify himself as a journalist at work. Accordingly, there had been an interference with the applicant's rights under Article 10, which had not been "necessary in a democratic society", as the Government had not shown convincingly that this interference had been lawful or pursued a legitimate end.

### **Pentikäinen v. Finland**

20 October 2015 (Grand Chamber)

This case concerned the apprehension of the applicant, a media photographer, during a demonstration and his subsequent detention and conviction for disobeying the police. The applicant complained that his right to freedom of expression had been violated by his apprehension, detention and conviction, as he had been prevented from doing his job as a journalist.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's apprehension and conviction of disobeying the police while covering a demonstration, without a sanction, had been proportionate. It noted in particular that the Finnish authorities had based their decisions on relevant and sufficient reasons and had struck a fair balance between the competing interests at stake. They had not deliberately prevented or hindered the media from covering the demonstration. The applicant had not been prevented from carrying out his work as a journalist either during or after the demonstration. In particular, he had not been apprehended for his work as a journalist as such but for refusing to obey police orders to leave the scene of the demonstration. His equipment had not been confiscated and he had not been sanctioned.

## Freedom of assembly (Article 11)

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### **Oya Ataman v. Turkey**

5 December 2006

In April 2000 the applicant, a lawyer and a member of the supervisory board of the Human Rights Association, organised a demonstration in Istanbul to protest against plans for "F-type" prisons. The demonstration took the form of a march followed by a statement to the press. The applicant complained in particular of an infringement of her right to freedom of expression and of assembly, in that the demonstration and the reading of the press statement, scheduled for the end of the event, had been prohibited by the police.

The Court held that there had been a **violation of Article 11** (freedom of assembly) of the Convention, finding that the forceful intervention of the police had been disproportionate and had not been necessary for the prevention of disorder. It noted in particular that the group of demonstrators – some fifty persons who had wished to draw public attention to a topical issue – had not represented any danger to public order, apart from possibly disrupting traffic. Further, observing that the rally had begun at around midday and had ended within half an hour with the police intervention, the Court was struck by the authorities' impatience in seeking to end the demonstration, which had been organised under the auspices of the Human Rights Association. In the Court's view, where demonstrators did not engage in acts of violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention was not to be deprived of all substance.

See also: **Balçık and Others v. Turkey**, judgment of 29 November 2007.

### **Éva Molnár v. Hungary**

7 October 2008

Following the April 2002 legislative elections in Hungary, the applicant took part in a demonstration on 4 July 2002 demanding a recount of the votes. She joined the demonstration at around 7 p.m. By that time, the police had already closed in the area off to traffic. However, at around 9 p.m., when the traffic situation had become unmanageable, the police broke up the demonstration without using force. The applicant complained that the demonstration was dispersed simply because the police had not been given prior notification.

The Court held that there had been **no violation of Article 11** (freedom of assembly) of the Convention, finding that the interference with the applicant's freedom of assembly had not been unreasonable. In particular, the Court was satisfied that the dispersal of the demonstration had pursued the legitimate aim of preventing disorder and protecting the rights of others. It also observed that the impugned events had originated in an illegal demonstration blocking a main bridge in central Budapest, and that the applicant had participated in the subsequent demonstration at Kossuth Square, the declared objective of which was to support those who had illegally demonstrated on the bridge. The Court further emphasised that the demonstrators gathered at Kossuth Square at about 1 p.m. and that the applicant joined them at about 7 p.m. whereas the police did not break up the demonstration until about 9 p.m. It considered that, in these circumstances, the applicant had had sufficient time to show solidarity with her co-demonstrators. In the present case, the Court was satisfied that the police had shown the necessary tolerance towards the demonstration, although they had had no prior knowledge of the event, which inevitably disrupted the circulation of the traffic and caused a certain disturbance to public order. Considering that, the dispersal of the impugned demonstration had not been a disproportionate measure.

### **İzci v. Turkey**

23 July 2013

See above, under "Prohibition of torture and inhuman or degrading treatment".

### **Süleyman Çelebi and Others v. Turkey**

24 May 2016

The applicants were a number of individuals and a trade union who took part in a rally held in Istanbul on 1 May 2008 to celebrate May Day that was dispersed by the police using violence. They complained in particular that they had been prevented by the intervention of the security forces from exercising their right to demonstrate.

The Court held that there had been a **violation of Article 11** (freedom of assembly) of the Convention, finding in particular that there had been no pressing social need capable of justifying the complete lack of tolerance which the authorities had shown towards the demonstrators by interfering – in violent fashion – with the exercise of their freedom of peaceful assembly. In view of the brutality of the police intervention in the present case, particularly regarding the use of tear gas, the lack of any judicial scrutiny of its proportionality and necessity was apt to dissuade trade-union members and other members of the public from taking part in lawful demonstrations. Moreover, under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted that the persistent use of excessive force to disperse peaceful demonstrations and the systematic use of tear-gas grenades, which were potentially lethal weapons, was liable to make members of the public fearful of participating in demonstrations and thus discourage them from exercising their rights under Article 11 of the Convention. In the face of an increase in similar applications, the Court reiterated the need for effective judicial scrutiny of the security forces' actions in dealing with demonstrations. In order to be viewed as effective, such scrutiny must be capable of leading, as applicable, to proceedings being brought against the persons (such as senior officials) who had issued the orders.

See also: **Disk and Kesk v. Turkey**, judgment of 27 November 2012; **Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey**, judgment of 5 July 2016.

### **Laguna Guzman v. Spain**

6 October 2020

The applicant in this case, who had taken part in a demonstration against budgetary cuts and high unemployment rates, in Valladolid, in February 2014, complained that she had been left permanently injured after the police forcefully dispersed a spontaneous gathering that had taken place after the official demonstration. She alleged that the police's use of force against her and other protesters had been grossly disproportionate.

The Court held that there had been a **violation of Article 11** (freedom of assembly) of the Convention in respect of the applicant, finding that the use of force deployed by the police had not been justified and had amounted to a disproportionate interference with the applicant's rights. It noted in particular that the spontaneous protest had been peaceful up until its dispersal and considered that the authorities had not provided relevant and sufficient reasons justifying the dispersal of the demonstration. Moreover, the applicant herself had never been arrested or prosecuted for any violent actions during the protests.

**Shmorgunov and Others v. Ukraine, Lutsenko and Verbytsky v. Ukraine, Kadura and Smaliy v. Ukraine, Dubovtsev and Others v. Ukraine and Vorontsov and Others v. Ukraine**

21 January 2021

See above, under "Prohibition of torture and inhuman or degrading treatment".

## Further reading

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See in particular:

- **Guide on Article 11 of the European Convention on Human Rights – Freedom of assembly and association**, prepared under the authority of the Jurisconsult
  - **Mass protests - Guide on the case-law of the European Court on Human Rights**, prepared under the authority of the Jurisconsult
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