



CDDH(2022)R96 Addendum 1
11/07/2022

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMENTS ADOPTED BY THE CDDH ON RECOMMENDATIONS
OF THE PARLIAMENTARY ASSEMBLY**

Recommendations [2230\(2022\)](#) “Fighting and preventing excessive and unjustified use of force by law enforcement officers” and [2231\(2022\)](#) “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”

Recommendation 2230(2022) Provisional version

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

1. Referring to its [Resolution 2435 \(2022\)](#) “Fighting and preventing excessive and unjustified use of force by the law enforcement officers”, the Parliamentary Assembly, recommends the Committee of Ministers to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CDDH COMMENTS

1. The Steering Committee for Human Rights (CDDH) notes with interest Parliamentary Assembly [Recommendation 2230\(2022\)](#) “Fighting and preventing excessive and unjustified use of force by law enforcement officers”.
2. The CDDH agrees with the assessment of the Parliamentary Assembly, as set out in accompanying [Resolution 2435\(2022\)](#), that the binding standards of the European Convention on Human Rights (the Convention), as interpreted in the caselaw of the European Court of Human Rights (the Court), combined with non-binding standards, including recommendations of the Committee of Ministers, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the Parliamentary Assembly, provide an extensive framework for understanding the human rights obligations applicable to the use of force by law enforcement officers in Council of Europe member States.
3. The CDDH nevertheless recognises that despite the existence of these standards, the work of Council of Europe bodies, including the Court, the CPT, the Commissioner for Human Rights, and the Parliamentary Assembly, shows that law enforcement officers do not always respect them in practice. The CDDH notes that the variety of texts and the possibility that the instruments mentioned in paragraph 1.2 of the recommendation are no longer fully up to date may be an impediment to their accessibility and implementation by the relevant national authorities.
4. On this basis, the CDDH recognises the potential added value of reviewing and, if appropriate, updating the existing relevant non-binding instruments of the Committee of Ministers, as proposed in paragraph 1.2 of Recommendation 2230(2022). In this context, it recalls that it had been responsible for drafting the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations, and would be willing to contribute to a review of this instrument in particular, bearing in mind the already expected deliverables and the limited resources available to it. The CDDH would add that any further work on non-binding instruments should be accompanied by renewed attention to their implementation, as proposed in paragraph 1.4 of the recommendation.

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Recommendation 2231(2022) | Provisional version

The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes

1. The Parliamentary Assembly refers to its [Resolution 2436\(2022\)](#), stressing the need to ensure accountability for war crimes, crimes against humanity and possible genocide as well as the crime of aggression in connection with the Russian war of aggression against Ukraine.
2. The Assembly invites the Committee of Ministers to:
 - 2.1 strengthen the competent services of the Council of Europe in order to enable them to provide technical assistance and advice to Ukraine and those member States exercising their universal jurisdiction with investigating and documenting gross human rights violations, including those amounting to war crimes, crimes against humanity and possible genocide, on the scale required;

2.2 invite the expert bodies of the Council of Europe, notably the Consultative Council of European Judges and the Consultative Council of European Prosecutors, the European Commission for the Efficiency of Justice and the European Commission for Democracy through Law (Venice Commission), and other monitoring and standard-setting mechanisms of the Council of Europe concerned, to produce expert recommendations and guidelines relating to these issues within the ambit of their competence;

2.3 encourage all member States to participate in setting up an *ad hoc* international criminal tribunal to prosecute the crime of aggression allegedly committed by the political leaders and military commanders of the Russian Federation against Ukraine, by way of a multilateral treaty between like-minded States;

2.4 examine ways and means for the Council of Europe as a whole to play an active role in setting-up and operating such a tribunal, including by providing logistical or other technical assistance.

CDDH COMMENTS

1. The CDDH notes with interest Parliamentary Assembly [Recommendation 2231\(2022\)](#), “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”. It shares the Parliamentary Assembly’s abhorrence of the brutality with which the Russian Federation has prosecuted its war of aggression against Ukraine, as expressed in accompanying [Resolution 2436\(2022\)](#). It recalls the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations, the preamble to which states that “those responsible for acts amounting to serious human rights violations must be held to account for their actions”, and recalls “the need for states to co-operate at the international level in order to put an end to impunity”.

2. The CDDH recalls that the Russian Federation remains bound by the European Convention on Human Rights in relation to any events occurring before 16 September 2022. It recalls the caselaw of the European Court of Human Rights (the Court) concerning High Contracting Parties’ human rights obligations during armed conflict outside their territorial jurisdiction. It notes the possibility that inter-State applications may be brought against the Russian Federation under article 33 of the European Convention on Human Rights (the Convention) in relation to human rights violations resulting from the ongoing war of aggression. It also recalls that in some States, application of the principle of universal jurisdiction allows national authorities to investigate and prosecute offences under international criminal law, including human rights violations that amount to crimes against humanity, occurring outside their own territorial jurisdiction.

3. Recalling also the role of the Council of Europe as the continent’s preeminent guardian of human rights, the CDDH supports the proposal in paragraph 2.1 of Recommendation 2231(2022) to provide technical assistance and advice to Ukraine and other relevant member States on investigating and documenting allegations of egregious human rights violations by forces under the responsibility of the Russian Federation.

4. As regards paragraph 2.2 of the recommendation, and recalling its previous work drafting the aforementioned Guidelines of the Committee of Ministers, the CDDH would be ready to contribute to the elaboration or revision of non-binding instruments that might clarify the standards applicable to ensuring accountability for serious human rights violations, including those resulting from armed conflict.