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**AS/Jur (2015) PV 05 (hearing on peaceful protests only)**

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**Committee on Legal Affairs and Human Rights**

**Declassified Minutes of the hearing on “Urgent need to prevent human rights violations during peaceful protests”**

**held in Strasbourg  
on 22-25 June 2015**

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

*Rapporteur: Ms Ermira Mehmeti Devaja, "The former Yugoslav Republic of Macedonia", SOC*

[AS/Jur (2015) 14]

Hearing with the participation of:

Dr Michael Boyle, Chief Executive, The Northern Ireland Police Fund, Belfast, Northern Ireland, United Kingdom

Mr John Dalhuisen, Director for Europe and Central Asia, Amnesty International

The **rapporteur** welcomed the speakers and recalled that she had only been appointed rapporteur on this topic at the Committee's meeting on 22 June.

**Dr Boyle** elaborated on the place of human rights in policing. He regretted that many in the police were still seeing human rights as a threat to their work, rather than understand that their key role was to respect and protect human rights. While a lot had already been achieved in increasing police officers' knowledge on human rights, more needed to be done in terms of how this knowledge could be translated into day-to-day policing practice. The fundamental principle that needed to be established was that the core purpose of policing was to uphold human rights. This was vital for achieving other operative goals. As an example of how far Ireland had gotten by training police on how to meet human rights standards, he referred to a recent protest with some violent participants. Instead of closing its cordon, the police had engaged in what he called "normal policing" by opening their ranks and allowing those persons to leave the area.

Dr Boyle stressed the importance for police to have a range of tactical options at their disposal to de-escalate situations. The more such options they had, the more likely they were to achieve their objective of maintaining public order. Implementing an operation ought to start on the premise that the police want to attain their aims by using no or minimum force. He mentioned two recent police operations, with similar objectives, in the context of peaceful sit-down protests that blocked traffic. On one occasion, the police beat the protesters until they dispersed. In the other instance, they engaged in dialogue, and then tried to remove them, using the least force possible: by carrying them away. Since the police did not succeed with this tactic, they retreated and restricted themselves to taking photos of the protesters. Apparently, they had concluded that the gravity of the threat posed by the crowd would not legitimise removing them violently. Dr Boyle noted that police had to ask themselves if their actions could mean that they might have to use more violence against more people. They needed to take into consideration that policing was not a single day event; the authorities would (continue to) need the support and trust of the people. Given that policing had an impact on crowd dynamics, the best way to keep a protest peaceful was to engage in dialogue with the demonstrators

and to adopt a differentiated, information-led approach to the use of force. Police needed to understand how their actions affected a protest. By way of example, Dr Boyle mentioned that wearing baseball hats instead of helmets could change the presentation police in terms of their readiness to use force.

He reiterated that the prime task of the police was to facilitate protests. Further objectives were to maintain public order and safety. Doing so in full respect of human rights was both required and possible, with adequate training and capacity building. It was likewise crucial, however, to ensure accountability in cases of non-compliance. Exemplarily, he noted that a set of guidelines developed for the use of pepper spray required the police to be familiar with the effects and possible adverse consequences of its use (e.g. it must never be used in a public order situation, given the risk of cross-contamination; and police officers must be able to deliver medical support to those against the spray was used). The guidelines stipulated, in the first paragraph, that the individual officer using pepper spray was responsible for doing so, i.e. he or she needed to be able to personally justify its use. Otherwise they might be breaching national law or even Articles 2 or 3 of the European Convention on Human Rights. Summing up his intervention, Dr Boyle underscored the need of police training up to a capability of delivering policing in full compliance with human rights, as well as the importance of ensuring accountability. This was vital for everyone, including the police itself.

**Mr Dalhuisen** considered the Committee's work on this topic to be very timely. Amnesty International had been raising the issue, particularly in respect of Russia, Turkey, Greece and Azerbaijan. There was no doubt that a more unified standard of using weapons and tactics during protests would be helpful. In already relatively rights-compliant countries, where law enforcement was regarded to be a matter of rights enforcement, the situation was less problematic. In the majority of cases Amnesty International was assessing, the problem was to do not with an excessive, but with the arbitrary use of force. Mr Dalhuisen acknowledged that police officers often had to operate under strict instructions by local authorities or governments which did not want the assembly in question to go ahead. This was the context in which police violence was most likely to arise. Hence, one ought to look at the nexus of the legislation on freedom of assembly and its implementation, for example in relation to the permission of protests, notification requirements, or the prohibition of spontaneous protests. Such restrictions were major obstacles to effective policing, and so was the absence of preparation and agreements between the organisers of a protest, local authorities, and the police. Meetings prior to an actual protest were crucial, since, in the absence of effective negotiations of security arrangements, police tended to seek to disperse the entire protest rather than to stop any isolated violent outbreak. Such situations were prone to causing police violence, notably indiscriminate use of force against an entire body of protesters. Mr Dalhuisen further agreed that the last central factor for human rights violations during peaceful protests was impunity of police forces. Ultimately, the single greatest trigger of change was the conviction of offending officers. A negative example in this connection was that of Turkey: although hundreds of protesters were injured during the Gezi park demonstrations, there had been convictions only in relation to fatal incidents. Impunity was the central permissive element of bad policing; what was needed were professional standards and their effective enforcement.

A discussion ensued with the participation of the **Rapporteur** (who underscored the importance of public confidence in the police and the latter's awareness of their responsibilities and accountability; and invited the experts to share their views on whether or not there was a need for a new legal instrument on the use of force, and in particular non-lethal or less-lethal weapons, against protesters), **Mr McNamara** (who, referring to the example of Northern Ireland, wondered how important policing boards to oversee the police force were in achieving greater public trust in the police), **Ms Taktakishvili** (who stressed the duty of the police to facilitate protests, *inter alia* by protecting protesters from violent counter-demonstrators; a serious violation of this duty had occurred in Georgia in 2013, when the police stood by and watched how an LGBT rally was attacked by 3.000 counter-protesters, leaving 30 persons injured; she wondered what could be done in such situations), and **Mr Dişli** (who wondered whether there existed an official definition of a "peaceful protest"; mentioned the problem of "agents provocateurs", asking how those could be separated from peaceful protesters; and asked why no mention had been made of police violence in the United States).

In response to the questions asked, **Mr Dalhuisen** stressed that a general framework on the use of force when policing protests was already set out, especially in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The critical issues were of an operational nature, and it was difficult to elaborate strict rules on when the use of certain weapons was adequate. Yet, some generic guidelines would be helpful with respect to less-lethal forms of intervention. Given that tear gas was very dangerous (as the Gezi park incident had shown), it may be possible to find agreement on certain minimum standards for its use. The same might be true for tasers. He agreed that ensuring some civil society oversight of police actions was significant, yet startlingly absent in some member States. He reiterated that the obligation to protect protesters from violent counter-protesters was straight-forward. He deplored that there had been many instances where LGBT marches had been banned, on the ground of an alleged impossibility to ensure their safety. There was often a lack of political will to facilitate equality rallies. Cooperation and upstream

negotiations, led in a constructive way, were crucial to create a safe space for LGBT marches. Reacting to **Mr Dişli**, he stressed that the case law of the Strasbourg Court defined what protests were 'peaceful' and that only such protests were protected under the Convention. Sometimes, dispersion of an entire protest might be indicated. A large number of protests included very peaceful, moderately peaceful, moderately violent and very violent people. The two basic priorities of the police needed be attached to, first, facilitating the right to protest of those who were peaceful, and, second, the use of only those means that were necessary and appropriate to separate the violent elements from the peaceful protesters. Lastly, it was reasonable to assume that, in a number of cases, those provocateurs who were at the heart of violence had links to the authorities, one example of this being Ukraine.

**Dr Boyle** pointed out that he did not see a need for a new international legal instrument, as laying down rules on all technicalities could divert the police's attention away from acting in accordance with existing fundamental principles. He recognised that oversight boards had some merits. Another positive example from Northern Ireland had been the setting up of an independent Parades Commission, removing decisions as regards the restriction of assemblies from the police. The Parades Commission took their decisions as regards any restrictions to be imposed on a protest with reference to the Convention, i.e. based on a necessity and proportionality test. In 95 percent of the approximately 4.000 demonstrations Northern Ireland saw every year, there was no interference with the right to freedom of assembly. This freed up the police from charges of bias and allowed them to focus on their objectives, by policing to deliver the decision of an independent Commission. He further admitted that, prior to the establishment of the Parades Commission, the police in Northern Ireland would too often seek to stop demonstrations, on the basis of the likelihood of public disorder. In light of the Court's case law, it was now clear that there as a positive obligation for the police to be seen to facilitate demonstrations. Dr Boyle agreed with Mr Dalhuisen that there was a need for dialogue. In situations such as those described by Ms Taktakishvili, the police was able to facilitate both protests, even if they did not have sympathy with the views of one of the groups. Responding to a follow-up question by **Ms Taktakishvili** (who wondered what to do if the organisers of the counter-manifestation announced that their aim as to not allow the other demonstration to take place), **Dr Boyle** said that police were aware that Article 17 of the Convention proscribed this behaviour. Lastly, he agreed that police too often saw the existence of one or few violent protesters as a *carte blanche* to engage in more forceful policing. The guiding question needed to be: 'How can we confront the violent protesters by using minimum force?' He stressed the need to accommodate those who were peaceful, which required engaging with protesters. In their negotiations prior to a protest, the police confronted the organisers with the question of their own reaction to violence in their ranks. Police could help by training stewards and communicating with them to discuss whether they would deal with any violent persons, or whether they would want the police to do so. While this was undoubtedly difficult, it was the nature of policing.

The **Chairperson** thanked the experts for their respective contributions.