The Registrar
European Court of Human Rights
Council of Europe
6705 Strasbourg CEDEC
France

By post and by fax: +33 (0)3 88 41 27 30

CEDH-LF14.8bP3
AG/nfr

20 March 2024

Dear Registrar,

Re: Written comments of REDRESS and Omega Research Foundation
***Theron v France* App. No. 16147/23**

We refer to your letter dated 28 February 2024 granting us permission to make joint written comments to the Court pursuant to Rule 44 § 3 of the Rules of Court.

We now enclose the written comments of REDRESS and Omega Research Foundation.

The address for correspondence in relation to this matter is:

REDRESS
Unit G01
65 Glasshill Street
London, SE1 0QE
United Kingdom
Tel: +44 (0)20 7793 1777
Email: alejandra@redress.org

Yours sincerely,

Natalie Lucas, Legal Officer
REDRESS

Matthew McEvoy, Research Associate
Omega Research Foundation

THERON V FRANCE APP. NO. 16147/23
Written comments of REDRESS and Omega Research Foundation

1. These written comments seek to assist the Court in considering issues concerning the use of less-lethal weapons in the context of protests, in particular, the necessity and proportionality of explosive hand grenades that disperse multiple kinetic impact projectiles in mass gathering and protest contexts.

2. The comments will examine: (A) the indiscriminate nature of explosive grenades that disperse kinetic impact projectiles, when used as a tool of crowd control in the context of protests; and (B) the international legal framework on the absolute prohibition of torture and other ill-treatment in the context of use of force in protests and mass gatherings, and the circumstances in which the use of explosive grenades that disperse kinetic impact projectiles could constitute cruel, inhuman or degrading treatment or torture.

(A) THE INDISCRIMINATE NATURE OF EXPLOSIVE GRENADES THAT DISPERSE KINETIC IMPACT PROJECTILES IN CROWD CONTROL SITUATIONS

3. As noted in the application to intervene, the technical features of the type of munition under consideration are relevant to the Court's determination of whether its use could amount to a violation under Article 3 of the Convention. The particular injuries associated with this form of munition and risks of its use in mass protest situations are set out for the Court's consideration below taking account of international standards and the interveners' specialist expertise and knowledge.

i. Relevant technical features of explosive stun grenades

4. The French SAPL DBD/95 Dispositif Balistique de Désencerclement ("**DBD/95**") (also referred to by the manufacturer as Dispositif Manuel de Protection DMP),[1] is an explosive hand grenade, made up of a fuze assembly screwed into a central pyrotechnic charge tube.[2] As a hand thrown explosive, this type of stun grenade produces a very loud bang. On detonation it also disperses multiple rubber fragmentation kinetic impact projectiles.[3] According to the manufacturer's promotional materials, the DBD/95 is intended for use "when it is no longer possible to maintain order", allowing "anti-riot units to destabilize troublemakers and gain the few seconds required to decide whether to break-out or make arrests."[4] The key technical features of this form of explosive hand grenade are relevant to understanding the risks associated with its use in crowd control or dispersal operations by law enforcement.

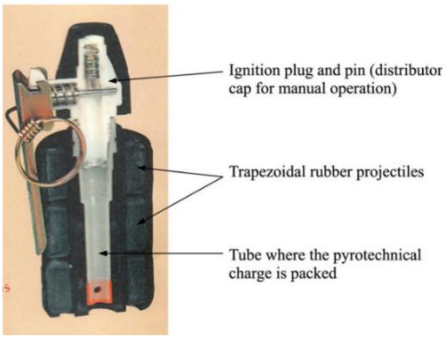
5. The central pyrotechnic charge tube is surrounded by 18 trapezoidal rectangular hard rubber segments, each weighing 9.3 grams. On detonation, these rubber segments become high speed projectiles.[5] When the safety pin is pulled out and the fly-off lever is released, there is a short fuze delay.[6] Upon explosion, the DBD/95 produces a reported maximum sound level of

[1] Known officially as "grenade à main de désencerclement (GMD)" and "Dispositif Balistique de Dispersion (DBD)".
[2] See Figure 1 below.
[3] *See* Collective Awareness To UXO, "DBD-95 Hand Grenade", available at: https://cat-uxo.com/explosive-hazards/grenades/dbd-95-hand-grenade
[4] SAPL Catalog No 2, p.20, available at: https://sapl.fr/fichiers/bibliotheque//1663049701-catalogue_etatique_2022.pdf.
[5] See Figure 2 below.
[6] The delay can be 1.5 or 2.5 seconds depending on the fuze fitted.

160 decibels,[7] and simultaneously projects 18 rubber fragments randomly reaching a radius of up to 30 meters.[8]

Figure 1: *Undetonated DBD/95 with safety pin and fly off lever still intact*

Figure 2: *Diagram of cross-section of DBD/95 grenade showing rubber projectiles, ignition plug and pin*



6. The rubber projectiles are expelled at high speed (approximately 125m/s) with a kinetic energy of 80 joules to a radius of up to 30 meters.[9] While the manufacturer states an "effectiveness radius" of 15 meters, "training documentation" reportedly suggests its projectiles can travel up to 30 meters or more depending on where the grenade is used.[10] Remains of grenades like the DBD/95 found by assembly monitors and observers after their operational use illustrate the variation in how they behave on detonation. This includes parts of the fuze or the central plastic tube fragmenting or groups of rubber segments being expelled together or remaining un-expelled. This variation in operational functionality increases the risk of injury to bystanders and persons in crowds. It also highlights the unpredictability of this form of weapon when detonated and its inability to precisely target specific persons in a mass gathering or protest context. [11]

7. The designed or expected effect of this type of grenade is to stun, surprise, frighten and disorientate persons within its target area. Additionally, the impact of the rubber projectiles is intended to cause blunt trauma (through non-penetrating injury) to persons within the detonation radius.[12] Both the UN Office of the High Commissioner for Human Rights (the "**UN OHCHR")** and the UN Office on Drugs and Crime (the "**UNODC")** have warned that weapons that disperse multiple kinetic impact projectiles simultaneously should never be used.[13] Instead, there is a high risk of injury to those within the detonation radius from the impact of the projectiles.[14]

---

[7] SAPL Catalog No2, p20, available at https://sapl.fr/fichiers/bibliotheque//1663049701-catalogue_etatique_2022.pdf

[8] Alongside the projection of 18 rubber fragments, there is a risk that the igniter cap/fuze can also be projected.

[9] SAPL Catalog No2, p20; and Décision du Défenseur des droits n°2019 -165, Paris, le 17 juillet 2019, https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19097

[10] Décision du Défenseur des droits n°2019 -165, Paris, le 17 juillet 2019.

[11] Desarmons Les; Suite au 1er mai 2016 à Paris: Autopsie de la grenade de désencerclement, Mai 3, 2016, available at, https://desarmons.net/2016/05/03/3273-2/.

[12] *See* Amnesty International, Omega Research Foundation, "My Eye Exploded: The Global Abuse of Kinetic Impact Projectiles", available at https://www.amnesty.org/en/documents/act30/6384/2023/en/, 14 March 2023, section 3.4.

[13] UN OHCHR, "Guidance on Less-Lethal Weapons in Law Enforcement", HR/PUB/20/1, para 7.5.6 ("**UN Guidance on Less-Lethal Weapons in Law Enforcement**"); UNODC, UN OHCHR, "Resource book on the use of force and firearms in law enforcement", Criminal Justice Handbook Series, HR/PUB/17/6, pp. 94-95 (**UN Resource Book on use of Force and Firearms in Law Enforcement**").

[14] UN Resource book on the use of force and firearms in law enforcement, p. 94.

8. Results of the technical evaluation and performance of such munitions are not readily available in the public domain. The manufacturer of the particular munition under consideration in the instant case states that "this product, fully made in France, is the only one [of the munitions that belong to this category] to have been the subject of a thorough study carried out by the laboratory of the French Ministry of the Interior (CREL) attesting to its non-lethality."[15] However, no report has been published and no information on the testing regime undertaken, nor the results, including the risk of injury, are publicly available.

ii. Particular risks associated with the use of stun grenades that disperse multiple kinetic impact projectiles as a tool of crowd control

9. Stun grenades were not developed for the intention of crowd control or dispersal. Instead, they were originally intended as training aids for the simulation of explosions. They were then adopted by military special forces units, and later, by law enforcement special weapons and tactics (SWAT) teams, for the purpose of room clearance or in hostage situations. More recently, law enforcement agencies in some countries have adopted stun grenades for use in the context of protests. According to the OSCE Office for Democratic Institutions and Human Rights, stun grenades "are inherently indiscriminate, affecting all in the vicinity."[16]

10. As in the case of the DBD/95, some types of stun grenades have been modified to also disperse multiple kinetic impact projectiles alongside simulating an explosion. A distinction should be made between munitions containing a single kinetic impact projectile, which may be sufficiently accurate to target a single individual in a crowd, and multiple kinetic impact projectiles which are inherently less precise.[17] The possibility of precise targeting using a munition with multiple kinetic impact projectiles is less likely and there is an increase of the risk of severe injury to bystanders.[18] The UN OHCHR and UNODC have emphasised the increased risk posed where these types of weapons are used to disperse assemblies, noting: "[w]eapons that fire multiple projectiles at the same time, or that otherwise cannot be targeted at a specific individual, should never be used due to the risk of injury to bystanders".[19]

11. A further distinction can be made between multiple kinetic impact projectiles launched from a barrelled weapon (such as a shotgun) and multiple kinetic impact projectiles launched from an explosive device (such as a stun grenade). The former tend to disperse the projectiles in a specific direction of the line of fire, with the inaccuracy and risk of indiscriminate effects increasing in parallel with the distance travelled by the projectiles. In contrast stun grenades with multiple kinetic impact projectiles disperse the projectiles randomly, rather than in any particular direction. As a result anybody within the radius of the explosion could potentially be injured; with the law enforcement officer detonating the stun grenade having very limited ability to direct the dispersal. The Court should have regard to this particular feature of stun grenades capable of launching multiple kinetic impact projectiles as it increases the risk of its use even beyond that of barrelled weapons with multiple kinetic impact projectile capabilities which are already high-risk. In the context of protests and mass gatherings, the UN OHCHR and

[15] SAPL Catalog No2, p. 20 https://sapl.fr/fichiers/bibliotheque//1663049701-catalogue_etatique_2022.pdf. Note: "CREL" refers to the Centre de Recherches et d'Expertise de la Logistique.
[16] OSCE Office for Democratic Institutions and Human Rights, "Handbook on Monitoring Freedom of Peaceful Assembly", p. 93.
[17] UN Guidance on Less-Lethal Weapons in Law Enforcement, paras 7.5.6 and 7.5.4.
[18] *Ibid.*
[19] UN Resource Book on use of Force and Firearms in Law Enforcement, pp. 94-95.

UNODC have recognised that such risk of indiscriminate injury cannot reach the necessity or proportionality thresholds justifying its use in such contexts[20] (as explained in Section B below).

iii. Injuries caused by stun grenades and similar munitions that disperse kinetic impact projectiles

12. The reporting of injuries caused by less-lethal weapons frequently lacks the specificity required to identify the munition used. This, combined with the under-reporting of injuries sustained during assemblies and the difficulties documenting what are often chaotic events, prevents the collection of quantitative data concerning injuries caused by stun grenades that disperse kinetic impact projectiles. However, the specific traumatic effects of this weapon have reportedly been outlined in the training manual for users specifying the injuries most often observed as bruising, skin erosions and superficial bleeding wounds as well as eye damage if hit by the projectile.[21] The Defenseur des Droits, in decision n°2019 -165, states that technical testing of the DBD/95, by Le Service de l'achat, de l'innovation et de la logistique du ministère de l'Intérieur, carried out between 31 May and 1 June 2016 found that the rubber projectiles were likely to cause serious injuries, including depressed skull fractures and other fractures.[22]

13. There are a number of cases predating the current proceedings which identify trends in the types of injuries that such munitions can cause, alerting law enforcement to the serious risks in using these types of weapons in an operational setting. Various examples of serious injuries sustained as a result of this weapon or others with very similar characteristics[23] when used to police protests and mass gathering have been reported, including:

- In May 2007, Maud Carretta was walking past a demonstration when a stun grenade that disperses kinetic impact projectiles exploded near her. She was struck in her left eye by a rubber projectile resulting in numerous fractures to her eye socket. Despite undergoing emergency surgery, doctors could not save her eye, which had to be enucleated. Her hearing was damaged and she also lost her sense of smell.[24]
- In 2012, a medical study reported two further instances of young women sustaining injuries when they were struck by projectiles which they attributed to the explosion of stun grenades that disperse kinetic impact projectiles. One woman was struck by two projectiles, in the face and on the thigh, while riding her bicycle near a demonstration. She sustained a large seeping wound near her jaw which required emergency suture and which was expected to leave significant scars. Another woman underwent emergency surgery after sustaining a "bruised wound about 6 cm in diameter" on her left leg.[25]

---

[20] UN Resource Book on use of Force and Firearms in Law Enforcement, p. 94.

[21] Décision du Défenseur des droits n°2019 -165, Paris, le 17 juillet 2019, available at https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19097.

[22] *Ibid.*

[23] In France, the DBD/95 belongs to a category of munitions called "grenade à main de désencerclement - GMD". Publicly available information on the use of these munitions, such as media reports and official data on usage, does not typically specify which one was used, instead using the generic term "grenade à main de désencerclement".

[24] S. Pueyo, "Etudiante éborgnée à Grenoble : quatre policiers jugés 11 ans après les faits," *Le* Parisien, 7 October 2018, available at https://www.leparisien.fr/faits-divers/etudiante-eborgnee-a-grenoble-quatre-policiers-juges-11-ans-apres-les-faits-07-10-2018-7913322.php; Scolan, Virginie & Herry, C & Carreta, M & Stahl, C & Barret, Luc & Romanet, J.P. & Paysant, Francois, "Risks of non-lethal weapon use: Case studies of three French victims of stinger grenades", Forensic Science International, Volume 223, Issues 1-3 (10.1016/j.forsciint.2012.08.028).

[25] Scolan, Virginie & Herry, C & Carreta, M & Stahl, C & Barret, Luc & Romanet, J.P. & Paysant, Francois, "Risks of non-lethal weapon use: Case studies of three French victims of stinger grenades", Forensic Science International, Volume 223, Issues 1-3 (10.1016/j.forsciint.2012.08.028).

- In May 2016, a stun grenade that disperses kinetic impact projectiles exploded at the feet of Romain Dussaux while he tried to record an arrest during a demonstration in Paris. His injuries included a fractured and depressed skull, a subdural haematoma and a meningeal haemorrhage. He underwent surgery and spent over a week in a coma.[26] In a 2019 decision concerning this case, the Ombudsperson (Defenseur des Droits) recommended that the Minister of the Interior "undertake a thorough review of the appropriateness of providing law enforcement operations with this weapon, which is likely to cause serious physical harm to those affected and expose police officers to significant risks."[27]

14. Stun grenades that disperse kinetic impact projectiles are also used in several other countries. While bursting grenades such as the DBD/95 are used in France, rubber ball grenades containing multiple spherical projectiles are used in countries such as the United States and Brazil. Both types of grenades function similarly in that they are explosive, make a loud bang, and disperse hardened rubber projectiles outwards in a circular pattern.

15. The warnings issued by some manufacturers of these types of munitions illustrate the risks associated with throwing such munitions directly at, or close to, people. The 'RP-32 Rubber Pellet Grenade', manufactured by US company NonLethal Technologies, disperses 125 8mm spherical projectiles and emits a bright flash and loud bang (173 decibels at 1.5 metres) upon detonation. Promotional materials for the munition include the warning: "[d]evice should not be thrown directly at personnel."[28] Similarly, the Multi-Impact Grenade GM-100, manufactured by Brazilian company Condor Non-Lethal Technologies, "was designed to produce a noisy blast effect and disperse approximately 130 rubber balls in a 15 meters radius." The company emphasises that the munition should be used as a last resort in places of detention, "when tear gas grenades and non-lethal impact munitions have not resolved the disorder." Promotional materials include the warning: "[m]ay cause injuries at close distance", instructing users to "[t]hrow at 10 meters distance from subjects".[29]

16. Police forces in several United States cities used explosive grenades dispersing multiple kinetic impact projectiles during racial justice protests in 2020, resulting in numerous serious injuries. For instance, Marqus Martinez reportedly sustained a broken jaw, concussion and severe facial wounds when he was hit in the face by an explosive grenade dispersing multiple kinetic impact projectiles.[30] Beck West suffered severe hearing loss and facial injuries when a munition detonated close to her shoulder, embedding spherical rubber projectiles in her backpack consistent with those dispersed by certain explosive grenades.[31] A US Navy medical reference notes that rubber projectiles dispersed by explosive 'Sting Ball' grenades commonly penetrate

[26] Liberation, "Le Defenseur des droits met Beauvau face aux degats des grenades de desencerclement", 25 July 2019 available at https://www.liberation.fr/france/2019/07/25/le-defenseur-des-droits-met-beauvau-face-aux-degats-des-grenades-de-desencerclement_1742085/.
[27] Defenseur ses Droits, "Decision du Defenseur des droits no. 2019-165", 17 July 2019 available at https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19097.
[28] NonLethal Technologies, "RP32 Data Sheet" available at http://www.nonlethaltechnologies.com/pdf/DS/RP-32.pdf.
[29] Condor Non-Lethal Technologies, "GM-100" available at https://www.condornaoletal.com.br/gm-100/?lang=en.
[30] NBC News, "A year later, protesters injured by police are still trying to heal," 19 November 2021 available at https://www.nbcnews.com/specials/protesters-injured-by-police-george-floyd-still-trying-to-heal/
[31] Physicians for Human Rights, "Shot in the Head" (2020) available at https://storymaps.arcgis.com/stories/29cbf2e87b914dbaabdec2f3d350839e

the skin when close to the site of detonation, as well as stating that eye injuries "can be very serious and vision-threatening".[32]

(B) THE INTERNATIONAL LEGAL FRAMEWORK ON THE ABSOLUTE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN THE CONTEXT OF USE OF FORCE IN PROTESTS AND MASS GATHERINGS

i. Application of Article 3 in contexts of protests and mass gatherings and principles on use of force by law enforcement officials

17. Enshrining one of the most "fundamental values of democratic societies", Article 3 is a non-derogable absolute right which remains applicable even in situations of protest and mass gatherings. The Court, itself, has stressed that "Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15(2) even in the event of a public emergency threatening the life of the nation".[33]

18. While the use of force by police or law enforcement authorities is not necessarily prohibited in dealing with protests and quelling mass unrest, such force "may be used only if it is indispensable, and it must not be excessive".[34] In the case of *Muradova v Azerbaijan*, the Court attached: "special importance […] to the fact that the injury was sustained while the applicant was within the area in which law enforcement were conducting an operation during which they resorted to the use of force for the purpose of quelling mass unrest".[35]

19. The Court has further affirmed on multiple occasions that any "recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3".[36] Accordingly, use of unnecessary physical force in a protest or mass gathering context is capable of violating Article 3.

20. This position reflects the relevant international principles regulating use of force by police or law enforcement during mass gatherings and protests. Human Rights Council Resolution 38/11 "urges states to avoid using force during peaceful protests, to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force".[37] It further affirms that "nothing can ever justify the indiscriminate use of lethal force against a crowd, which is unlawful under international human rights law."[38] States, as a matter of priority, are called upon to ensure their domestic legislation and procedures are consistent with international obligations "such as necessity and proportionality, bearing in mind that lethal

---

[32] Operational Medicine 2001 (CAPT Michael John Hughey), "Health Care in Military Settings", 1 January 2001 MC, USNR, NAVMED P-5139 available at http://www.operationalmedicine.org/Safety/Weapons/StingBallGrenade.htm

[33] *Gäfgen v. Germany* (Application No. 22978/05), para 87; *see also Selmouni v France* (Application No. 25809/94), para 95.

[34] *Zakharov and Varzhabetyan v Russia* (Application Nos. 35880/14 and 75926/17), para 62; *see also*, *Muradova v Azerbaijan* (Application No. 22684/05), para 109.

[35] *Muradova v Azerbaijan* (Application No. 22684/05), para 109.

[36] *Muradova v Azerbaijan* (Application No. 22684/05), para 109; *see also Navalnyy and Gunko v Russia* (Application No. 75186/12), para 41; *Zakharov and Varzhabetyan v Russia* (Application Nos. 35880/14 and 75926/17), para 62; *Pekaslan v Turkey* (Application Nos. 4572/06 and 5684/06), para 57; *Izci v. Turkey* (Application No. 42606/05), para 55.

[37] UN General Assembly, "Resolution adopted by the Human Rights Council on 6 July 2018 on the Promotion and Protection of Human Rights in the Context of Peaceful protests", 16 July 2018, A/HRC/RES/38/11, para 10 ("**Human Rights Council resolution 38/11**").

[38] Human Rights Council resolution 38/11, para 12.

force may only be used as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering."[39]

21. General Comment 37 of the UN Human Rights Committee on the right of peaceful assembly outlines the duties and powers of law enforcement agencies and further expands upon this in the context of mass gatherings, assemblies and protests. In particular, law enforcement "may not use greater force than is proportionate to the legitimate objective of either dispersing an assembly, preventing a crime or effecting or assisting in the lawful arrest of offenders or suspected offenders."[40] Similarly, where a decision to disperse a crowd is taken, only the minimum force necessary may be used and such a decision should be exceptional in any case. Insofar as is possible, "any force used should be directed against a specific individual or group engaged in or threatening violence. Force that is likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting".[41]

22. Regard should also be had for Article 3 of the UN Code of Conduct for Law Enforcement Officials (the "**UN Code of Conduct**") which further emphasises that law enforcement officials may only use force when "strictly necessary" and "to the extent required for the performance of their duty". In the accompanying commentary, it is made clear that "in no case should this provision be interpreted to authorise the use of force which is disproportionate to the legitimate objective to be achieved."[42] Similarly, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that the "development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimise the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled."[43] This applies to the development and deployment of weapons such as the type of stun grenade capable of dispersing kinetic impact projectiles under consideration in the instant case.

23. Therefore, in determining whether a stun grenade dispersing kinetic impact projectiles is an "excessive use of force", it is necessary for the Court to consider:[44] (i) if the injuries it is capable of causing reach the minimum level of severity so as to fall within the scope of Article 3; and (ii) whether recourse to its use can ever be proportionate to the aim of maintaining public order in a mass gathering or protest given the particular nature of the context and the inherent characteristics of such weapons.

ii. Injuries sustained by use of stun grenades reach the minimum level of severity constituting a violation of Article 3

24. Section A outlines the particular risks associated with stun grenades which expel kinetic impact projectiles and refers to several case examples of serious injuries sustained as a result of their use. To fall within the scope of Article 3, a minimum level of severity must be reached. The Court has held that the assessment of this minimum is relative dependent on all the

---

[39] Human Rights Council resolution 38/11, para 11.

[40] UN Human Rights Committee, "General Comment No. 37 on Article 21 (Right of Peaceful Assembly)" 17 September 2020, CCPR/C/GC/37, para 79 ("**General Comment 37**"); *see also* UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990 (the "**UN Basic Principles**"), Principles 3 and 5(b).

[41] General Comment 37, para 86.

[42] UN General Assembly "Code of Conduct for Law Enforcement Officials", General Assembly Res. 34/169 of 17 December 1979 ("**UN Code of Conduct**").

[43] UN Basic Principles, Principles 3 and 5(b).

[44] *See Ilhan v. Turkey* (Application No. 2227/93); *see also*, UN Committee Against Torture, General Comment No. 2 on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/GC/2.

circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim.[45]

25. The Court has assessed a number of cases involving the use of tear gas (including tear gas fired via grenade directly at demonstrators)[46] as reaching the minimum level of severity resulting in a violation of Article 3.[47] Ill-treatment reaching this minimum level of severity "usually involves actual bodily injury or intense physical or mental suffering" and "even in the absence of these, where treatment humiliates or debases an individual showing a lack of respect for or diminishing his or her human dignity" it may fall within the scope of the Article 3 prohibition.[48] Parallels can be drawn with the current type of munition under consideration given its potential to inflict serious injury and its indiscriminate nature.

26. Even as a weapon of last resort, the risk of the types of injuries from the use of stun grenades that disperse kinetic impact projectiles reach the minimum level of severity which, if sustained, would constitute a violation of Article 3. The risk that such stun grenades pose means that even if relatively minor injuries are sustained, the requisite level of severity is still met due to the risk of greater injury which the victim is exposed to. For example, in *Kilici v Turkey*, the Court held that even relatively minor injuries (redness and bruising on the back) caused by rubber bullets (i.e. kinetic impact projectiles) attained the requisite level of severity. This was due to the fact that the applicant was exposed to a greater risk of injury due to the nature of the weapon.[49]

27. The inability to precisely target the dispersal of the kinetic impact projectiles further increases the risk. It also limits law enforcement in being able to deploy the weapon with sufficient accuracy to minimise injury as is required under international standards.[50] In a thematic study on the global trade in weapons, equipment and devices used by law enforcement that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on torture identified "[a]mmunition and launchers containing multiple (as opposed to single) projectiles" as unsafe, including ammunition containing multiple non-metallic kinetic impact projectiles (such as the types of stun grenade under consideration) in a list of items she considered as being inherently cruel, inhuman or degrading.[51] These types of weapons were included in the preliminary list of items identified by the Special Rapporteur which should be considered prohibited because of their nature.[52]

iii. The technical specifications and nature of this form of hand grenade mean its use should always be considered excessive in protest and mass gathering situations

[45] *Ivan Vasilev v Bulgaria* (Application No. 48130/99), para 62; *Mursic v Croatia* (Application No. 7334/13), para 97; *Bouyid v Belgium* (Application No. 23380/09), para 86.
[46] *See Abdullah Yasa and Others v Turkey* (Application No. 44827/08).
[47] *See for example*, *Abdullah Yasa and Others v Turkey* (Application No. 44827/08); *Izci v. Turkey* (Application No. 42606/05); *Ali Gunes v Turkey* (Application No. 9829/07)
[48] *Mursic v Croatia* (Application No. 7334/13), para 98; *Bouyid v Belgium* (Application No. 23380/09), para 87.
[49] *Kilici v Turkey* (Application No. 32738/11), para 32.
[50] Human Rights Council resolution 38/11, para 10; General Comment 37, para 86; see also UN OHCHR, "Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests", A/HRC/55/60, paras 78-79 (the "**Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests**").
[51] UN Special Rapporteur on Torture, "Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment", 24 August 2023, UN Doc. A/78/324, para 53.
[52] UN Special Rapporteur on Torture, "Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment", 24 August 2023, UN Doc. A/78/324, Annex I.

28. The particular nature and technical aspects of this form of explosive hand grenade are explained in detail in Section A(i). The specific legal standards outlined above, regulating the use of force, and which ought to guide the Court's analysis, mean that stun grenades that disperse kinetic impact projectiles should never be deemed necessary or proportionate in protest and mass gathering contexts, largely due to their indiscriminate nature and risk of causing severe injury.

29. The specifications of a weapon in the Court's assessment of its risk, and concomitant use in protest situations, has been considered in *Abdallah Yasa and Others v Turkey*. In that case, the Court considered not only the use of tear gas but the launching of tear-gas via a grenade directly at demonstrators. The Court noted that "firing a grenade by means of a launcher generates the risk of causing serious injury […], or indeed of killing someone, if the grenade is launched improperly."[53] Consequently, the Court considered its case-law on potentially lethal force applied *mutatis mutandis* noting that the launching of tear-gas grenades "should not only be authorised but should also be sufficiently delimited by domestic law, under a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents".[54]

30. UN Guidance on Less-Lethal Weapons in Law Enforcement (the "**UN Guidance**") has laid out the specific risks of using kinetic impact projectiles, noting, "multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with principles of necessity and proportionality".[55] The UN Guidance further sets out specific risks of "[t]argeting the face or head [that] may result in skull fracture and brain injury, damage to the eyes, including permanent blindness or even death".[56] To meet international standards, the Guidance states that "impact projectiles should be capable of striking an individual to within a 10-centimetre diameter of the targeted point when fired from the designated range".[57] The Guidance notes that "less-lethal weapons that can be individually aimed" shall target individuals engaged in acts of violence. Weapons such as chemical irritants should be dispersed at a distance if they can target a group of violent individuals or disperse the entire assembly as a whole. In all cases, due consideration on the impact of bystanders and non-violent participants should be taken into account.[58]

31. The UN Guidance does not provide for the use of stun grenades during mass gatherings, instead stating that they "are designed to give a warning or to help facilitate a safe arrest, especially in the course of high-risk operations."[59] Stun grenades were not included in Section 7 of the Guidance on specific less-lethal weapons "most commonly used in contemporary law enforcement", due to the consensus among the expert group responsible for drafting the Guidance, of which Omega was a part, that such devices should not be considered less-lethal weapons, but rather restricted specialist devices. Nonetheless, the Guidance emphasises that care must be taken when using stun grenades even in high-risk operations. The Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests reiterates that law enforcement should "make all reasonable efforts to limit the use and risks of less-lethal weapons with wide-area effects […]"; and "ensure that kinetic impact projectiles, including rubber bullets, if authorised in very exceptional circumstances are never

[53] *Abdullah Yasa and Others v Turkey*, (Application No. 44827/08), para 42.
[54] *Abdullah Yasa and Others v Turkey*, (Application No. 44827/08), para 43.
[55] UN Guidance on Less-Lethal Weapons in Law Enforcement, para 7.5.6.
[56] UN Guidance on Less-Lethal Weapons in Law Enforcement, para 7.5.3.
[57] UN Guidance on Less-Lethal Weapons in Law Enforcement, para 7.5.4.
[58] UN Guidance on Less-Lethal Weapons in Law Enforcement, para 6.3.4
[59] UN Guidance on Less-Lethal Weapons in Law Enforcement, para 6.1.4.

fired indiscriminately into a crowd, nor especially targeted at the head or torso of an individual [and] the risk of bystanders is taken into account."[60]

32. As explained in Section A above, the specifications of stun grenades capable of deploying multiple kinetic impact projectiles means that, by their very nature, they are indiscriminate and incapable of precisely targeting individuals or groups, even in exceptional circumstances where force would otherwise be mandated. In *Izci v Turkey*, the Court found that "recourse to physical force which has not been made strictly necessary by a person's own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. In this respect, the Court reiterated that the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals."[61] It stressed that "Article 3 of the Convention does not allow for a balancing exercise to be performed between the physical integrity of an individual and the aim of maintaining public order."[62]

33. The stun grenade at issue in the instant case, and weapons of a similar nature, fall short of international standards on permissible uses of force and acceptable risk to demonstrators and bystanders in protest and mass gathering contexts. The indiscriminate nature of these types of weapons and the risks of severe bodily injury which accompany their deployment means that there are no situations of mass gathering or protest where these weapons could be used proportionally and without violating Article 3 of the Convention.

Conclusion

34. As outlined in these written comments, the weapon at issue in the instant case is indiscriminate due to its technical specifications and multiple kinetic impact projectiles. Further, the risk of injury to both intended and unintended targets or bystanders would reach the minimum level of severity constituting a breach of Article 3. The specific context of mass gatherings and protest, where large numbers of people are often concentrated in relatively contained spaces further increases the risk posed by this type of stun grenade.

35. The circumstances where a use of force would be justified in a protest or mass gathering context are limited and do not allow for use of weapons which, by their very nature are indiscriminate and pose a significant risk of causing serious injuries. Where such force is mandated, it should be proportionate to the legitimate aims of maintaining public order or lawful dispersal of the crowd. The use of stun grenades launching multiple kinetic impact projectiles do not meet international standards and constitute a violation of the prohibition contained in Article 3 due to the inherent and serious risk they pose to both targets and bystanders in a protest or mass gathering situation.

Natalie Lucas, Legal Officer

REDRESS

Matthew McEvoy, Research Associate

Omega Research Foundation

[60] Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, para 79.
[61] *Izci v Turkey* (Application No. 42606/05), para 55.
[62] *Izci v Turkey* (Application No. 42606/05), para 56.