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| Codebook |
| Draft 1 |
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# Codebook

Issues

* Should variables be coded that have little to do with the holding, especially when the holding is differentiated on the legal side?
  + E.g. a holding on the legal framework: codes on the planning and conduct?
  + Pro: sometimes hard to differentiate what facts belong to which
  + Con: fact not really related to holding
  + i.e. how to handle that issues relate to different facts?
  + Alternative: Have a more complex outcome variable that includes such options as “any general violation only”, “any framework violation only”, “any operations and framework violation only”, “any killing, framework, and operations violation only”.
* Way too many questions
* Should I add a question about resisting arrest, a thing commonly brought up by the respondent State, even though it plays no role in the Court’s assessment?

## 1. Basic Case Information

### Q1. What is the case name?

Text.

### Q2. What is the year of the decision?

Numerical.

### Q3. What is the number of the holding?

Numerical.

Comment: Consult the holding section of the decisions, normally labelled with “For These Reasons, the Court”, and jot down the number of the holding that is being coded.

### Q4. What are the names of the respondent governments?

Text.

### Q5. Is this a Grand Chamber decision?

Codes:

0 = No

1 = Yes

### Q6. Was the case referred to the Grand Chamber?

*Code if Q5 = “no”: The decision is not a Grand Chamber decision itself.*

## The Court’s Specific Holding

### Q7. What is the Court’s holding?

Codes

0 = No violation

1 = Violation

98 = Other

### Q8. How is the holding differentiated from other substantive Article 2 holdings of the case?

Codes

0 = Not differentiated (e.g. a general Article 2 holding)

1 = Based on the applicant(s)

2 = Based on the legal issue(s)

3 = Both

99 = Uncertain

Comment: Determination is made based on what is discussed on the merits. May only be coded 1, 2 or 3 when there is more than one holding on the substantive obligations under Article 2.Hence, 0 also holds if other applicants have been struck out of the list or other applicants or claims have been dismissed on the admissibility stage.

### Q9. What legal obligations were part of the holding and what did the Court decide?

Variables: h\_force, h\_operation, h\_law

Codes:

0 = Not related

1 = Related but no violation of this obligation

2 = Related and violation of this obligation

99 = Uncertain

Comment: If a general substantive violation is found, the text of the decision should be consulted to make this determination. …

## Court’s approach to the assessment

### Q10. Does the standard of scrutiny applied by the Court differ from the typical standard?

Codes:

0 = No

1 = Lower

2 = Higher

99 = Uncertain

Comment: Codes whether the Court explicitly invokes that it is using a lower or higher standard of scrutiny than typical for Article 2 for any part of its assessment by, for instance, providing the government with more leeway.

### Q11. Was there an active armed conflict in the area?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q12. Was this a unique situation requiring a tailormade response?

Codes:

0 = No

1 = Yes

99 = Uncertain

Comment: As determined by the Court.

### Q13. Has the Court previously made a determination on the same facts?

Codes:

0 = No

1 = Yes, with regards to some issues (e.g. framework)

2 = Yes, with regards to most or all issues

### Q13.5. Are the facts in dispute between the two parties to the case?

Codes:

0 = No

1 = The accounts conflict in some parts

2 = The accounts diverge widely or fundamentally

99 = Uncertain

Comment: Difference between 1 and 2 largely lies in whether all or most of the facts relevant to the Court’s assessment are in dispute (beyond the fact that the applicants were killed) (2) or whether only some of the facts relevant to the assessment are in dispute (1). Although the court will often explicitly find 2, for 1 the whole text of the application may need to be considered.

### Q14. Has the Court found beforehand that the investigation was incapable to establishing the true circumstances surrounding the killing?

Codes:

0 = No

1 = Yes

99 = Uncertain

[more about invetigations? sth about drawing inferences from the failure to submit the entire file?]

[Unprepared/react, precipitate action, in their control]

## Permitted Exceptions to Article 2

### Q15. Under which legitimate aim is the use of force considered by the Court?

Variables: aim\_2a, aim\_2b, aim\_2c

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q16. Has the Court found that the use of force might have also been motivated by other aims?

Codes:

0 = No

1 = Yes

99 = Uncertain

Comment: These aims do not need to have a malicious, punitive or otherwise malfeasant character. Any aim that is not directly covered by the permitted exceptions falls under this

### Q17. Was the use of force considered compatible with an aim?

Variables: aim\_2a\_dec, aim\_2b\_dec, aim\_2c\_dec

Codes:

0 = No

1 = Yes

98 = Other

99 = Uncertain

### Q18. Was there a perceived threat to life?

Codes:

0 = No

1 = To third parties (civilians, bystanders, hostages, etc.)

2 = To the officers

3 = To both

98 = Other

99 = Uncertain

### Q19. Was this perception of a threat based on a belief by the State agents that later turned out to be mistaken?

Codes:

0 = No, the belief was not mistaken

1 = Yes, and the Court accepted this belief as valid

2 = Yes, and the Court did not accept this belief

98 = Other

99 = Uncertain

### Q20. Who was the use of force aimed at?

Codes:

0 = The threat

1 = A third party

98 = Other

99 = Uncertain

### Q21. Was the threat posed by the applicant or the victim(s) on whose behalf they bring the claim?

Codes:

0 = No

1 = Yes, the applicant was part of a larger group posing a threat

2 = Yes, the applicant constituted the threat

99 = Uncertain

Comments: Under Article 2, next-of-kin of dead victims may bring claims on behalf of the victim as indirect victims

### Q22. Who was the threat?

Codes:

0 = Individuals

1 = Unorganized group (e.g. protesters)

2 = Organized group (e.g. terrorists, insurgents)

98 = Other

99 = Uncertain

### Q23. How were those perceived as threat armed?

Codes:

0 = Not armed with potentially lethal weapons

1 = Armed with potentially lethal, non-ranged weapons (e.g. knives)

2 = Armed with firearms

3 = Armed with combat or other heavy weapons (e.g. bombs, grenades, machine guns)

98 = Other

99 = Uncertain

### Q24. What was the nature of the perceived threat?

Codes:

0 = Verbal threat of use of force

1 = Brandishing weapons

2 = Attempting to assault without weapons

3 = Using weapons (e.g. shooting)

4 = Hostage situation

98 = Other

99 = Uncertain

What’s the nature of the threat: brandishing a weapon/gun, shots fired, some statement in the direction (e.g. hostage situations), attacked the officer in some other way (drove car, assaulted their car), vague threat (Isayeva, Esmukhambetov)

### Q25. If attempting an arrest, what is the nature of the offense the fugitive is suspected of?

Codes:

0 = Not suspected of having committed an offense

1 = Suspected of having committed a nonviolent offense

2 = Suspected of having committed a violent offense

98 = Other

99 = Uncertain

### Q26. Is the unrest or protest in question characterized as a riot or as insurrection?

Codes:

0 = Neither

1 = Riot

2 = Insurrection

3 = Both

99 = Uncertain

### Q27. What is the nature of the group’s behavior?

Codes:

0 = Peaceful and compliant

1 = Resistance against authority or government (e.g. defying orders)

2 = Property damage and sporadic acts of light violence

3 = Widespread violence against police or bystanders

4 = Armed, organized resistance

Comment: The group refers to the group considered whether its behavior raises an Article 2(2)(c) claim.

## State Agent Use of Lethal Force

### Q28. Who were the involved State agents?

Codes:

0 = Regular police or security forces (e.g. patrol officers, prison staff)

1 = Special security forces (e.g. SWAT, gendarmeries (if specifically trained or equipped))

2 = Military forces

98 = Other

99 = Uncertain

### Q29. What kind of lethal force did the State agents use?

Codes:

0 = Prima-facie non-lethal force nevertheless leading to death (e.g. arrest techniques)

1 = Typically less than lethal force that could potentially be lethal (e.g. batons, strangleholds, rubber bullets)

2 = Targeted, precise and limited lethal force (e.g. non-automatic guns)

3 = Use of imprecise and less-limitable lethal force (e.g. machine guns, grenades)

4 = Use of heavy lethal weapons that could likely lead to collateral damage (e.g. bombs, RPGs)

98 = Other

99 = Uncertain

Comment: The most severe force actually used by the State agents is coded (e.g. when they mostly use pistols but then also a grenade, code 3). How targeted/indiscriminate the use of force is does not matter for 0 and 1.

### Q.29.1 Could the State agents reasonably foresee the effects of the use of force?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q30. How was the use of force classified by the Court?

Codes:

0 = Absolutely necessary or strictly proportionate

1 = Disproportionate or not absolutely necessary

2 = Grossly disproportionate

3 = Indiscriminate

98 = Other

99 = Uncertain

Comment: If the Court uses synonyms, pick closest category

### Q31. How many did die as a result of the use of force?

Codes:

0 = None

1 = 1-3 people

2 = 4-10 people

3 = 10-50 people

4 = 50+ people

### Q32. Was any harm inflicted to third parties?

Codes:

0 = No

1 = Yes

98 = Other

99 = Uncertain

Comment: Third parties are all those at whom the response was not aimed.

### Q33. Did the State agents use or considered using alternative, less lethal means?

Codes:

0 = No

1 = Considered less lethal means but deemed them inadequate

2 = Tried using less lethal means

98 = Other

99 = Uncertain

### Q34. Did the State agents provide a warning before using lethal force?

Codes:

0 = No

1 = Verbal warning

2 = Warning shot

3 = Both

98 = Other

99 = Uncertain

## Planning and Conduct of the Operation

### Q35. Was the operation spontaneous or could the authorities prepare the operation?

Codes:

0 = Spontaneous with little to no planning possible (e.g. precipitate action required)

1 = Authorities had adequate time and resources to prepare and plan the operation

98 = Other

99 = Uncertain

### Q36. Was the hazard or situation predictable by the authorities?

Codes:

0 = Not predictable

1 = Some elements could have been predicted

2 = Predictable

98 = Other

99 = Uncertain

### Q37. Have actions by State agents contributed to the escalation of the situation?

Codes:

0 = No

1 = Yes

98 = Other

99 = Uncertain

Comment: This pertains to the situation over the course of time prior to the use of force in question, not the actual use of force.

### Q38. How much control did State agents have of the situation where violations occurred?

0 = Authorities had complete control or almost complete control

1 = Authorities had partial control (e.g. cordoned-off area, siege)

2 = Authorities had little to no control of the situation

99 = Uncertain

### Q39. Have the involved officers been provided with specific and clear instructions on the use of force?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q40. Was a clear chain of command and decision-making apparatus maintained?

Codes:

0 = No chain of command or decision-making system present in the situation

1 = Unorganized or unclear chain of command or decision-making system, or only partially maintained

2 = Clear chain of command and decision-making apparatus maintained at all times

98 = Other

99 = Uncertain

### Q41. Did the State agents clearly identify themselves as such?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q42. Did the authorities foresee and plan for probable occurrences in the course of the operation?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q43. Did the authorities consider the use of alternative strategies that use less lethal or non-lethal force?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q44. In a siege-like situation, did the authorities negotiate with the perpetrators?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q45. Did the authorities offer the perpetrators the opportunity to surrender?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q46. Did the authorities justify the use of special forces or heavy weapons?

Codes:

0 = No

1 = Yes

99 = Uncertain

Comment: Where both came into play, “no” if either was not justified and “yes” if both were justified.

### Q47. Was the presence of emergency medical services at the site arranged?

*If Qx is “Yes”: authorities could prepare the operation (see above)*

Codes:

0 = No

1 = Yes

99 = Uncertain

[QUESTIONS about identification of suspects/civilians (armed conflict cases, Bubbins)]

### Q48. In an armed conflict, was the presence of civilians and the likely effect on them considered in the planning?/ did the authorities distinguish between civilians and suspects/combatants?

Codes:

0 = No

1 = Yes

99 = Uncertain

Comment: Aside from the holding of a lack of “requisite care” for civilians (which is a phrase to conclude the Court’s pleadings), the Court is unlikely to directly use such phrasing.

[MORE QUESTIONS ABOUT ARMED CONFLICTS: evacuation)

## Legal and Administrative Framework

### Q49. Does the framework incorporate the absolute necessity standard?

Codes:

0 = No

1 = Not in the text but in practice

2 = Yes, in practice

99 = Uncertain

### Q50. Does the framework offer clear guidelines and criteria for the use of force?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q51. Is the framework sufficiently detailed?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q52. Must the assessment be based on a consideration of all circumstances?

Codes:

0 = No

1 = Yes

99 = Uncertain

### Q53. Were the State agents sufficiently trained?

Codes:

0 = No

1 = Yes

99 = Uncertain

[sth about unwarranted consequences, precautions? (Tagayeva)]