

European Court of Human Rights judgments on the right to freedom of expression

Bulletin XXI: PROTEST AND FREEDOM OF EXPRESSION

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The right to protest and peaceful assembly is closely linked to the right to freedom of expression. The exercise of the right to protest invariably includes the exercise of the right to freedom of expression (even a silent assembly is a form of ‘expression’). The right to protest and peaceful assembly is protected under Article 11 of the European Convention of Human Rights and the right to freedom of expression is protected under Article 10.

Like the right to freedom of expression, the right to peaceful assembly is not an unlimited right. It may be restricted, but only insofar as is truly necessary to protect public order. The Court has stated that, like freedom of expression, the right to peaceful assembly is a fundamental democratic right and any interference with it should not take away its core substance.

The Court has developed the following general principles:

- notification, and even authorisation, procedures for a public event are permitted as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures guarantee the smooth conduct of the public event (including a demonstration or protest);
- it is inevitable that the right to peaceful assembly causes some disruption to ordinary life, including disruption of traffic, and public authorities must show tolerance of this;
- some regulation may be imposed on protestors. However, even when protestors do not abide by the rules that does not necessarily justify an infringement of the right. Regulations should not represent a hidden obstacle to the right to protest;
- in special circumstances when an immediate response might be justified, for example to protest against a political event in the form of a spontaneous demonstration, it may not be possible to obtain prior authorisation. In such cases, and when there is no other illegal conduct by the protestors, the dispersal of a spontaneous demonstration may violate the right to protest.

The following judgments illustrate how these principles are applied in practice.

- ***Berladir and Others v. Russia***, (Application no. 34202/06), 10 July 2012: dispersal of demonstration did not violate right to freedom of assembly when local authorities had offered an alternative venue and protestors had not engaged with local procedures

The applicants had participated in an unauthorised demonstration. The organisers had applied for permission, but the local authorities had required that the demonstration should be held in an alternative location. The organisers ignored the local authority's response and decided to proceed with their event on the scheduled date in the planned location. The demonstration was dispersed almost immediately and the participants had not had the opportunity to express their views. Some of the protestors were taken to a police station, remained there for some hours and were found guilty of participating in an unlawful or non-endorsed assembly.

The Court held that there had been no violation of the right to protest or the right to freedom of expression. It held that reasonable notification or authorisation procedures for a public event do not normally violate Article 11 as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of a public gathering. The Court noted that when the authorities proposed an alternative venue, the organisers withdrew their application and simply went ahead with the demonstration at the original location. The Court noted in particular that the authorities did not ban the demonstration, but gave a swift reply proposing an alternative venue. The decision of the organisers to go ahead was not justified by any particular urgency or compelling circumstances, and the organisers knowingly placed themselves in an unlawful situation.

- ***Sergey Kuznetsov v. Russia***, (Application no. 10877/04), 23 October 2008: a merely formal breach of the requirement to notify a demonstration did not justify convicting demonstrators of a criminal offence

This concerned a small group which had protested in front of a regional court to attract public attention to violations of the right of access to a court. The group distributed leaflets about the president of the regional court, who had allegedly been involved in corruption scandals, and collected signatures calling for his dismissal. The authorities had been notified of the protest eight days before and police were present to maintain public order and traffic safety. A few days after the protest, a deputy president of the regional court started proceedings against the applicant on the basis that he had misled the municipality as to the purpose of the picket and had used the event to defame the court president. The applicant was found guilty and fined EUR 35.

The Court held that the conviction violated the right to freedom of assembly and protest. It considered that while Russian law required ten days notification to be given, and the applicant had applied eight days before the protest, the two-day difference had not impaired the authorities' ability to make necessary preparations. Given the small scale of the protest, the town administration had not considered it to be a problem. The two day difference had been noted only after the deputy president of the court started proceedings. The Court concluded that a merely formal breach of the notification time-limit was not a sufficient reason for finding the applicant guilty. The Court also

noted that the domestic courts had found that the protest had blocked a passage. However, there had been no complaints by anyone about this, and any hindrance had been very brief. Finally, with regard to the content of the leaflet, the Court held that the materials distributed by the applicant and the ideas he had advocated had not been shown to contain any defamatory statements, incitement to violence or rejection of democratic principles. However unpleasant the call for dismissal of the president of the regional court could have been to him and however insulting he may have considered the article alleging corruption in the regional court, it was not a relevant or sufficient ground for convicting the applicant. Finally, the Court stressed that the purpose of the protest had been to attract public attention to the alleged dysfunctioning of the judicial system in the region. This serious matter was undeniably part of a political debate on a matter of general and public concern, which should not be restricted lightly.

- ***Samüt Karabulut v. Turkey***, (Application no. 16999/04), 27 January 2009: dispersal of unlawful protest could not be justified as a “necessary” restriction on the right to protest

The applicant took part with 30-35 other people in a peaceful demonstration against Israeli operations in Palestine. The organisers had not given the authorities prior notification of the demonstration as they were required to do by law and were asked repeatedly by the police to disperse. Although most of the demonstrators complied with the police's request almost immediately, the applicant intervened verbally when he saw a fellow demonstrator being arrested. He was then arrested, punched and kicked hit on the head and back with a truncheon.

The European Court of Human Rights held that the police action had violated the right to protest. It held that although the demonstration was unlawful, this did not per se justify an infringement of freedom of assembly. It emphasised that laws and regulations should not be used as a hidden obstacle to the right to protest. The government had not shown that the demonstrators represented a danger to public order or public safety and, in the absence of violence on their part, the authorities were expected to show a degree of tolerance. The demonstrators had in fact dispersed fairly quickly after being prompted by the police and the applicant had been forced to leave without being given enough time to manifest his views.

- ***Oya Ataman v. Turkey***, (Application no. 74552/01), 5 December 2006: dispersal of unlawful protest could not be justified as a “necessary” restriction on the right to protest

This concerned a group of protestors who organised a protest march. They had not given advance notification of the protest and were asked by the police to disperse. The demonstrators refused to obey and continued marching towards the police, who dispersed the group using a kind of tear gas known as “pepper spray”. The police arrested thirty-nine demonstrators, including the applicant, and took them to a police station. The rally had not lasted more than thirty minutes.

The European Court of Human Rights held that the police action violated the right to protest. It noted that the demonstrators – some fifty persons in total – had not represented any danger to public order, apart from possibly disrupting traffic. The demonstrators did not engage in acts of violence. The Court emphasised that it is very important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. The forceful intervention of the police had been disproportionate and had not been necessary for the prevention of disorder. While it recognised

that the demonstration was technically unlawful, because notification had not been given, this in itself did not justify an infringement of the right to protest.

- ***Bukta and Others v. Hungary***, (Application no. 25691/04), 17 July 2007: dispersal of spontaneous protest violated right to freedom of assembly

This concerned a demonstration by 150 people against the attendance of a reception to celebrate Romania's national day by the Hungarian prime minister. The visit had been announced a day prior to the reception, and the demonstrators had therefore not been able to give advance notice of a demonstration. Police at the reception forced the demonstrators to disperse.

The European Court of Human Rights held that the dispersal violated the right to protest. It emphasised that the only reason given for the dispersal had been the failure of the protestors to give prior notice. Given that the prime minister's visit had been announced only the day before, they had not had any other choice. The Court emphasised that in special circumstances such as these where an immediate response – in the form of a demonstration – to a political event might be justified and where there was no evidence to suggest a danger to public order, a decision to disband the ensuing, peaceful assembly solely because of the failure to comply with the notice requirement, without any illegal conduct by the participants, was disproportionate.

- ***Galstyan v. Armenia***, (Application no. 26986/03), 15 November 2007: conviction for obstructing traffic and making loud noise violated the right to protest

In April 2003, while on his way home from a demonstration by some 30,000 people, mostly women, the applicant was arrested for "obstructing traffic and behaving in an anti-social way at a demonstration". He argued that he and most of the other men present had not participated in the demonstration; but were there to support and protect the women and prevent trouble from breaking out. At the police station the applicant was charged with "minor hooliganism". He signed the relevant police record certifying that he had been made aware of his rights to legal representation and added "I do not wish to have a lawyer". He was sentenced to three days' administrative detention for "obstruction of street traffic" and "making a loud noise".

The Court held that the conviction violated the right to freedom of expression. The Court reiterated that freedom to take part in a peaceful assembly was of such importance that a person could not be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which had not been prohibited, so long as he or she had not committed a reprehensible act. The Court noted that the applicant had been convicted for "obstruction of street traffic" and "making a loud noise", despite the fact that the street where the demonstration took place had been packed with people and traffic had been suspended prior to the demonstration. The Court therefore found that it followed that the offence of "obstructing street traffic" of which the applicant was found guilty consisted merely of his physical presence at a demonstration in a street where the flow of traffic had already been suspended. As to the "loud noise" he had made, there was no suggestion that it involved any obscenity or incitement to violence and it was hard to imagine a huge political demonstration of people expressing their opinions not generating a certain amount of noise.

Prepared by Peter Noorlander, Director of Media Legal Defence Initiative, London in cooperation with HRA



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Podgorica

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