



Doc. 13258
26 June 2013

Popular protest and challenges to freedom of assembly, media and speech

Report¹

Committee on Political Affairs and Democracy

Rapporteur: Mr Arcadio DÍAZ TEJERA, Spain, Socialist Group

Summary

The right of individuals to demonstrate against their democratically elected governments is as legitimate as is the right of such governments not to change their policies in the face of protests. Demonstrations often occur in an unregulated manner, its participants co-ordinating with one another through social media.

On 31 May 2013, a peaceful demonstration organised by opponents to a plan to build a shopping mall in Gezi Park in Istanbul led to a heavy-handed police intervention and triggered an unprecedented popular protest movement in Turkey.

The report deplores excessive use of force to disperse demonstrators and reiterates its call on the authorities to ensure that police action, where necessary, remains proportionate, and urges the Council of Europe member States, where appropriate, to take the necessary measures to bring their legislation into line with Council of Europe standards and the case law of the European Court of Human Rights, including as regards freedom of expression, of the media and of assembly.

1. Reference to committee: Urgent debate, Reference 3975 of 24 June 2013.

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A. Draft resolution²

1. Popular protest has erupted in many European (and non-European) countries recently. Demonstrations often occur in an unregulated manner, its participants co-ordinating with one another through social media. The right of individuals to demonstrate against their democratically elected governments is as legitimate as is the right of such governments not to change their policies in the face of protests.
2. Such demonstrations have taken place in many cities and countries in Europe in the last year. In all cases, the protests started peacefully, even if in some cases small minorities did engage in violent activity. The response by the public authorities and the action taken by law-enforcement bodies were at times disproportionate.
3. Recently, on 31 May 2013, a peaceful demonstration organised by opponents to an urban renovation project in Istanbul led to a heavy-handed police intervention and triggered an unprecedented popular protest movement in Turkey. In dozens of Turkish towns, hundreds of thousands of people expressed their disagreement with the attitude of public authorities and took part in demonstrations. In many places, these demonstrations resulted in violent clashes with the security forces, involving the systematic use of tear gas (pepper spray), water cannons and, in some cases, the firing of rubber bullets. The Assembly deplores the death of four people, including a police officer, and the injuries to almost 8 000 people.
4. The Parliamentary Assembly supports the statement of the Secretary General of the Council of Europe of 25 June 2013 including the need to respect the decisions of the European Court of Human Rights on the use of force against protesters.
5. The Assembly points out that freedom of assembly and association, including unorganised and non-authorised protest, is an essential right in a democracy, safeguarded by Article 11 of the European Convention on Human Rights (ETS No. 5) and constantly upheld by the European Court of Human Rights in its case law. Any restriction of this right must be provided for by law and be necessary in a democratic society. It is for the authorities to guarantee the exercise of the right of freedom of expression and demonstration.
6. Therefore, in instances of popular protest, the role of law-enforcement bodies is to protect the rights of demonstrators, their freedom of association and expression, while protecting others, as well as public and private property. In so doing, they must apply clearly established standards and guidelines, upon instructions from an accountable hierarchy.
7. The Assembly deplores recent cases of excessive use of force to disperse demonstrators and reiterates its call on the authorities to ensure that police action, where necessary, remains proportionate. Referring to the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the case law of the European Court of Human Rights, it underlines the serious health consequences of the use of tear gas.
8. The Assembly recalls that citizens are entitled to objective and full information and it is for the authorities to guarantee conditions conducive to the effective exercise of media freedom and freedom of expression, in accordance with the case law of the European Court of Human Rights. In particular, it underlines the need to clarify the issues of ownership and independence of the media.
9. Consequently, the Assembly urges the Council of Europe member States, where appropriate, to take the necessary measures to bring their legislation into line with Council of Europe standards and the case law of the European Court of Human Rights, including as regards freedom of expression, of the media and of assembly, and invites them to:
 - 9.1. guarantee freedom of assembly and demonstration in accordance with the case law of the European Court of Human Rights and ensure that this freedom can be exercised in practice;
 - 9.2. duly investigate the use of excessive or disproportionate force by members of the law-enforcement forces and impose sanctions on those responsible;
 - 9.3. reinforce human rights training for members of the security forces, and also for judges and prosecutors, in partnership with the Council of Europe;
 - 9.4. draw up clear instructions concerning the use of tear gas (pepper spray) and prohibit its use in confined spaces;

2. Draft resolution adopted by the committee on 26 June 2013.

- 9.5. ensure media freedom, put an end to harassment and arrests of journalists and the searches of media premises and refrain from imposing sanctions on media outlets covering popular protests, in line also with [Resolution 1920 \(2013\)](#) on the state of media freedom in Europe;
 - 9.6. reform the Criminal Code and the Code of Criminal Procedure, as well as anti-terrorism legislation and the Administrative Code, whenever the relevant legislation is not in line with Council of Europe standards and the case law of the European Court of Human Rights;
 - 9.7. examine means of consulting the population or involving it in the management of public affairs, both at local and national levels, drawing on relevant European standards and good practices, in line also with [Resolution 1746 \(2010\)](#) on democracy in Europe: crisis and perspectives.
10. Finally, the Assembly invites the Secretary General of the Council of Europe to consider drawing up guidelines in respect of human rights in the policing of demonstrations.

B. Explanatory memorandum by Mr Díaz Tejera, rapporteur

1. Introduction

1. On 24 June 2013 the Parliamentary Assembly agreed to the proposal submitted by the United European Left group to hold a debate under urgent procedure on “Popular protest and challenges to freedom of assembly, media and speech”. On the same day, the Committee on Political Affairs and Democracy appointed me rapporteur.

2. Recent events

2. Popular protest has erupted in many European (and non-European) countries recently. Demonstrations take place mostly in a non-organised way, independently from political parties and civil society organisations, its participants co-ordinating with one another through social media. I believe that the right of citizens to demonstrate against their democratically elected governments is as legitimate as the right of such governments not to change their policies in face of protests.

3. Demonstrations which took place in London, Madrid, Paris and Stockholm, in Greece, Italy, Portugal, Brazil, Russia and Turkey, among other places, are recent examples. In all cases, the protests started peacefully, even if in some cases small minorities did engage in violent activity. The response by public authorities and action taken by police forces were at times disproportionate.

4. Recently, on 31 May 2013, a peaceful demonstration organised by opponents to an urban renovation project in Istanbul led to a heavy-handed police intervention and triggered an unprecedented popular protest movement in Turkey. In dozens of Turkish towns, hundreds of thousands of people expressed their disagreement with the attitude of the public authorities and took part in demonstrations. In many places, these demonstrations resulted in violent clashes with the law-enforcement forces, involving systematic use of tear gas (pepper spray) and water cannons and in some cases the firing of rubber bullets. The four dead, including a police officer, and the almost 8 000 injured (59 of whom seriously) are to be deplored.

5. The images of the repression of the demonstrations – and of their grave consequences – have had an impact on Turkish and international public opinion. Among international reactions, we can refer to the statements by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, on 5 June 2013, calling for the immediate cessation of the use of force against peaceful demonstrators,³ that of the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, on 16 June 2013, calling for further dialogue,⁴ that of Ms Josette Durrieu, rapporteur of the Monitoring Committee on the post-monitoring dialogue with Turkey,⁵ appealing for calm; that of the United Nations High Commissioner for Human Rights, Ms Navi Pillay, urging the Turkish Government and civil society to rely on the decision to suspend further action on the Gezi Park development and to act in a way that will defuse tensions,⁶ the statements of the Secretary General of the United Nations, Mr Ban Ki Moon, during this period, or even the Resolution of the European Parliament of 13 June 2013 on the situation in Turkey⁷ which caused an uproar among the highest Turkish authorities. At this very moment, the Secretary General of the Council of Europe is paying an official visit to Turkey.

6. In the face of these recent cases of excessive use of force to disperse demonstrators, we should call on the authorities to ensure that police action, where necessary, remains proportionate. It should be noted that the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the case law of the European Court of Human Rights underline the serious health consequences of the use of tear gas.

3. www.coe.int/t/commissioner/News/archive/default_en.asp.

4. www.coe.int/en/web/secretary-general/home/-/asset.

5. www.assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=8811.

6. www.hurriyetdailynews.com/un-human-rights-commissioner-urges-turkey-to-defuse-tensions-.aspx?pageID=238&nID=49027&NewsCatID=351.

7. www.europarl.europa.eu/document/activities/cont/201306/20130620ATT68116/20130620ATT68116EN.pdf.

3. Protests and social media

7. Most regions of the world, including Council of Europe member States, have witnessed the rapid rise of social networking with the help of smartphone technologies. As vehicles for organising and expressing dissent, the Internet and social media such as Twitter and Facebook have already proven significant tools in many protests, causes, uprisings and conflicts.

8. Social media played a key part in Turkey's recent protests, not least because much of the Turkish media downplayed the protests, particularly in the early stages. As a result of the lack of mainstream media coverage, social media played a key role in keeping people informed, with Twitter hashtags "#OccupyGezi" and "#DirenGeziParki" ("Resist Gezi Park").

9. In general, it is becoming too frequent to hear political leaders attacking the use of the Internet and social networks, accused of being vehicles for misinformation and incitement to protests against democratic institutions, and therefore of endangering the public and social order.

10. We must strongly reject this view. We cannot forget, for example, the key role played by the social media in the historic movements of the Arab Spring. Clearly, there is a danger of manipulation on the web, as there is in the traditional media. However, that is no justification for referring to the main forum for free dialogue among citizens as a threat to our democracies.

4. Freedom of assembly, of expression and of the media

11. Articles 10 and 11 of the European Convention on Human Rights (ETS No. 5), which guarantee, respectively, the freedom of expression and the freedom of assembly (and association), have a common feature in that they are qualified rights and they share a two-paragraph structure, in which paragraph 1 states the right and paragraph 2 sets out the circumstances in which interference with it may be justifiable.

12. In so far as the freedom of assembly is concerned, this includes public or private meetings, marches, processions, demonstrations and sit-ins. The purpose may be political, religious or spiritual, social or another; no limit has been imposed on purpose, but any assembly must be peaceful. Incidental violence will not mean an assembly forfeits protection unless it had a disruptive purpose. In such circumstances, the State has a "positive obligation", in other words, a duty to protect those exercising their right of peaceful assembly from violence by counter-demonstrators. In one case, for example, the police had formed a cordon to keep rival demonstrators apart but failed to prevent physical attacks and damage to property. The European Court of Human Rights found they had not done enough to enable a lawful demonstration to proceed peacefully (*United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*).

13. Under paragraph 2 of Article 11, restrictions or bans on assemblies must be i) prescribed by law ii) for a permitted purpose and iii) necessary in a democratic society, proportionate and non-discriminatory. The permitted purposes are: national security or public safety, the prevention of disorder or crime; the protection of health or morals, and the protection of the rights and freedoms of others.

14. Authorities have substantial discretion in assessing whether a proposed assembly poses any risk of endangering public safety, etc., which could justify interference, but the presumption must be that a peaceful assembly is allowed. It is not a breach to require prior notification or authorisation, but refusing permission is an interference, which requires justification by the strict standards of paragraph 2. There can be a breach even if the assemblies went ahead in defiance of the refusal.

15. The authorities need to be careful that restrictions are non-discriminatory. The fact that organisers are an unpopular group of individuals is not a sufficient reason to prevent their assembly. The authorities in such situations should demonstrate "pluralism, tolerance and broadmindedness". The same principles would apply to minority ethnic or political groups, or to other minorities like lesbian, gay, bisexual and transgender persons (LGBT) wishing to hold marches and demonstrations.

16. As regards freedom of expression and more specifically freedom of the media, I refer the reader to [Resolution 1920 \(2013\)](#) on the state of media freedom in Europe, adopted by our Assembly in January 2013, as well as to the report prepared by Mr Mats Johansson for the Committee on Culture, Science, Education and Media ([Doc. 13078](#)).

17. It seems self-evident to assert that the possibility for the media to cover mass demonstrations by the people is a fundamental aspect of the freedom of the media: this is not merely one of the inherent components of the right to media freedom, it is also the media's duty to inform us about these events, which are part of the life of our democracies, and indeed are the signs that we are still living in a democracy. And yet, we have to acknowledge that this obvious aspect of the media's role can be forgotten.

18. A democratic State has not only the duty to refrain from any unlawful interference but also the obligation to take the necessary steps to ensure that the media's right to freedom to inform – particularly in the case of mass movements – and everybody's right to freedom of access to information – especially in the case of public protests and challenges to authority – are guaranteed in practice and can be exercised without fear or hindrance.

5. Conclusions

19. Freedom of association, assembly and demonstration, including non-organised and non-authorised protest, is an essential right in a democracy, safeguarded by Article 11 of the European Convention on Human Rights and constantly upheld by the European Court of Human Rights in its case law. Any restriction of this right must be provided for by law and necessary in a democratic society. It is for the authorities to guarantee the exercise of the right of expression and demonstration.

20. Therefore the role of law-enforcement forces in the case of popular protest should be that of ensuring and protecting the rights of demonstrators, their freedom of association and their freedom of expression, while protecting other people and public and private property. In the course of action, it may sometimes not be evident for a police officer to strike the right balance and therefore it is vital to have very clear guidelines and instructions, as well as an accountable hierarchy.

21. Citizens are entitled to objective and full information and it is for the authorities to guarantee conditions conducive to the effective exercise of media freedom and freedom of expression, in accordance with the case law of the European Court of Human Rights. In particular, there is a need to clarify the issues of ownership and independence of the media.

22. Consequently, the Assembly should urge the authorities of Council of Europe member States, where appropriate, to take the necessary measures to bring their legislation into line with Council of Europe standards and the case law of the European Court of Human Rights, including as regards freedom of expression, of the media and of assembly. *Inter alia*, they should:

- guarantee freedom of assembly and demonstration in accordance with the case law of the European Court of Human Rights and ensure that this freedom can be exercised in practice;
- investigate the use of excessive or disproportionate force by members of the law-enforcement forces and impose sanctions on those responsible; reinforce human rights training for members of the security forces, and also for judges and prosecutors, in partnership with the Council of Europe;
- draw up clear instructions concerning the use of tear gas (pepper spray) and prohibit its use in confined spaces;
- ensure media freedom, put an end to the harassment and the arrests of journalists and the searches of media premises and refrain from imposing sanctions on media outlets covering popular protests, in line also with [Resolution 1920 \(2013\)](#);
- reform the Criminal Code and the Code of Criminal Procedure, as well as anti-terrorism legislation and the Administrative Code, whenever the relevant legislation is not in line with Council of Europe standards and the case law of the European Court of Human Rights;
- examine means of consulting the population or involving it in the management of public affairs, both at national and local levels, drawing on relevant European standards and good practices, in line also with [Resolution 1746 \(2010\)](#) on democracy in Europe: crisis and perspectives.

23. Finally, the Assembly should invite the Secretary General of the Council of Europe to consider the elaboration of guidelines on respect of human rights in the policing of demonstrations.

24. Let me conclude that we must not forget that sovereignty belongs to the people and that governments and elected representatives are there only to serve them. The authority conferred upon them by the majority of the electorate never gives them the right to muffle, or worse to silence, those who disagree with them, who are dissatisfied or who demand change. In contrast, this authority makes them accountable and should prompt them to listen carefully.

25. Even though it is for the democratically elected representatives to take decisions which run counter to the expectations of the crowds if that is in the general interest, they cannot ignore the will of the people. The latter cannot be reduced to mere voting but must be given the opportunity to be expressed in other ways every day, specifically through the right to freedom of expression, assembly and peaceful demonstration.