Thematic factsheet [1]
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MEDIA COVERAGE OF PROTESTS AND DEMONSTRATIONS

Protests and demonstrations and the way in which the authorities handled them are matters of legitimate public interest. The media has a crucial role in providing information on the authorities' handling of public demonstrations and the containment of disorder. According to the relevant case-law of the European Court of Human Rights, the "watch-dog" role of the media representatives is of particular importance in such contexts, since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny. Article 5 § 1 of the Convention requires that for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national law; it must also be necessary in the circumstances. The protection afforded by the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism.

Forcible removal of journalists from press gallery of Parliament during disturbance in the chamber

Selmani and Others v. the Former Yugoslav Republic of Macedonia - 67259/14
Judgment 9.2.2017

The applicants were journalists covering a parliamentary debate when a commotion provoked by a group of MPs broke out, triggering the intervention of security staff. When the applicants refused to comply with an order to vacate the gallery, they were forcibly removed. The Constitutional Court found that the security staff had considered that the journalists needed to be moved for their own protection. In the Convention proceedings, the applicants complained about their forcible removal from the Parliament gallery.

[1] This document presents a non-exhaustive selection of the European Court of Human Rights' case-law and of other CoE instruments regarding media coverage of protests and demonstrations. This information is not a legal assessment of the alerts and should not be treated or used as such.

The central issue was whether the interference complained of was necessary in a democratic society. According to the Court, the media play a crucial role in providing information on the authorities' handling of public demonstrations and the containment of disorder. Any attempt to remove journalists from the scene of demonstrations has to be subject to strict scrutiny. That principle applies even more so when journalists exercised their right to impart information to the public about the behavior of elected representatives in Parliament and about the manner in which authorities handled disorder that occurred during parliamentary sessions.

During the disturbance in the chamber, the applicants were passive bystanders who were simply doing their work and observing the events. They did not pose any threat to public safety, order in the chamber or otherwise. Their removal entailed adverse effects that instantaneously prevented them from obtaining first-hand and direct knowledge based on their personal experience of the events unfolding in Parliament. Those were important elements in the exercise of the applicants' journalistic functions, of which the public should not have been deprived.

Conclusion: violation of Article 10 of the Convention

Photographer's apprehension and conviction for disobeying the police while covering a demonstration

Pentikäinen v. Finland
20 October 2015

The case concerned the apprehension of a media photographer during a demonstration and his subsequent detention and conviction for disobeying the police. The Court found that the Finnish authorities had based their decisions on relevant and sufficient reasons and had struck a fair balance between the competing interests at stake. They had not deliberately prevented or hindered the media from covering the demonstration. Mr Pentikäinen had not been prevented from carrying out his work as a journalist either during or after the demonstration. In particular, he had not been apprehended for his work as a journalist as such but for refusing to obey police orders to leave the scene of the demonstration. His equipment had not been confiscated and he had not been sanctioned.

Conclusion: no violation of Article 10 (freedom of expression)

Administrative arrest of a journalist at an anti-globalism march

Butkevich v. Russia - 5865/07
Judgment 13.2.2018

The applicant, a journalist, was arrested by two police officers at an anti-globalism march in St Petersburg, where he was taking photographs. He was subsequently prosecuted for disobeying police orders and brought before a court in an expedited procedure under the Code of Administrative Offences. He was convicted and sentenced to three days' detention, reduced to two days on appeal.

The European Court of Human Rights Court observed that neither the domestic authorities nor the respondent Government provided any justification for the administrative arrest, namely that there were "exceptional circumstances" and/or that it was "necessary for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed". It was incumbent on the domestic authorities to ascertain that the deprivation of liberty was "reasonably considered

necessary" in the circumstances of the case "to prevent [a person from] committing an offence or fleeing after having done so". At the same time, the authorities should have borne in mind that the measure had been applied in the context of an administrative offence and, possibly, in the context of the exercise of a fundamental right or freedom, such as freedom of expression or freedom of peaceful assembly. Article 5 § 1 of the Convention requires that for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national law; it must also be necessary in the circumstances. Detention pursuant to Article 5 § 1 (c) must embody a proportionality requirement, which implies a reasoned decision balancing relevant arguments for and against release. For these reasons, the Court was not satisfied that the applicant's administrative arrest complied with Russian law so as also to be "lawful" within the meaning of Article 5 § 1 (c) of the Convention.

Conclusion: violation of Article 5 § 1 of the Convention

Ill-treatment by police of journalist attempting to report on covering an unauthorised demonstration and inadequate investigation

Najafli v. Azerbaijan
2 October 2012

The case concerned a journalist who had been beaten by the police while covering an unauthorised demonstration in Baku. A criminal investigation was opened into how the applicant sustained his injuries but was suspended on the grounds that the officers responsible for his injuries could not be identified.

The Court noted that the role of the press in imparting information and ideas on matters of public interest undoubtedly included reporting on opposition gatherings and demonstrations which was essential for the development of any democratic society. It found in particular that the physical ill-treatment by State agents of journalists carrying out their professional duties had seriously hampered the exercise of their right to receive and impart information. Irrespective of whether there had been any actual intention to interfere with Mr Najafli's journalistic activity, he had been subjected to unnecessary and excessive use of force, despite having made clear efforts to identify himself as a journalist at work. The investigation of the applicant's claim of ill-treatment had fallen short of the requirements of Article 3 of the Convention.

Conclusion: **Violations of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights concerning Mr Najafli's ill-treatment; **of Article 3** concerning the investigation into his claim of ill-treatment; and **of Article 10 (freedom of expression).**

Journalist's inability to gain access to Davos during the World Economic Forum owing to a general police ban following fear of unauthorized demonstration and disturbances

Gsell v. Switzerland (12675/05)
8 October 2009

The applicant, who had been asked to write an article on the events and their effects on local restaurants and hotels, was refused access to the annual meeting of the World Economic Forum (WEF) in Davos by the police, who had put in place numerous security measures after being informed that an unauthorised demonstration and disturbances were planned.

The Court noted that the ban imposed on the applicant had not had any explicit legal basis. It acknowledged that it had been extremely difficult for the authorities to weigh up the situation and make a precise assessment of the risks inherent in the WEF and the anti-globalisation demonstrations in terms of public order and safety. Nevertheless, the Court was not satisfied that the scale of the demonstrations which actually took place had been unforeseeable for the competent authorities, in view of previous events around the globe and in the context of the WEF. Furthermore, the authorities had made no distinction between potentially violent individuals and peaceful demonstrators. The applicant had therefore been the victim of a general ban imposed by the cantonal police on all persons wishing to travel to Davos. In view of the specific circumstances of the case, the competent authorities had not been entitled to make use of the general police clause. The authorities' refusal to allow the applicant into Davos had therefore not been prescribed by law.

Conclusion: violation of Article 10 (freedom of expression)

II. European regulations and standards

A. Council of Europe

Recommendation Rec (2001) 10 of the Committee of Ministers to member states on the European Code of Police Ethics, adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies

> "37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.
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> ...
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> 43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.
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> ...
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> 54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee."

Venice Commission Guidelines On Freedom Of Peaceful Assembly (2nd Edition) Prepared by the OSCE/ODIHR Panel on Freedom of Assembly and by the Venice Commission Adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

> "168. If dispersal is deemed necessary, the assembly organiser and participants should be clearly and audibly informed prior to any intervention by law enforcement personnel. Participants should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further. Third parties (such as monitors, journalists, and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.
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> 169. Photography and video recording (by both law enforcement personnel and participants) should not be restricted, but data retention may breach the right to private life: During public assemblies the photographing or video recording of participants by the law enforcement personnel is permissible. However, while monitoring individuals in a public place for identification purposes

does not necessarily give rise to an interference with their right to private life, the recording of such data and the systematic processing or permanent nature of the record kept may give rise to violations of privacy. Moreover, photographing or videoing assemblies for the purpose of gathering intelligence can discourage individuals from enjoying freedom, and should therefore not be done routinely. Photographing or video recording the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny. Law enforcement agencies should develop and publish a policy relating to their use of overt filming/photography at public assemblies.

170. Post-event debriefing of law enforcement officials (particularly after non-routine events) should become standard practice: Debriefing might usefully address a number of specific issues including human rights issues, health and safety considerations, media safety, community impact considerations, operational planning and risk assessment, communications, command issues and decision-making, tactics, resources and equipment, and future training needs. Event organisers should be invited to participate in debriefing sessions held by law enforcement officials after the assembly. (..)

199. The right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression). In this regard, the safeguards guaranteed to the media are particularly important. However, freedom to monitor public assemblies should not only be guaranteed to all media professionals but also to others in civil society, such as human rights activists, who might be regarded as performing the role of 'social watchdogs' and whose aim is to contribute to informed public debate. (…)

Media

206. The media performs a pre-eminent role in a State governed by the rule of law. The role of the media, as a 'public watchdog', is to impart information and ideas on matters of public interest – information which the public also has a right to receive.

207. Media professionals therefore have an important role to play in providing independent coverage of public assemblies. The OSCE Representative on Freedom of the Media noted that 'uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.'

208. Furthermore, '[a]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public.' Media reports and footage thus provide an important element of public accountability both for organisers of events and law enforcement officials. As such, the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.

209. There have, however, been numerous instances where journalists have been restricted from reporting at public assemblies, and occasions on which journalists have been detained and/or had their equipment damaged. As a result, the OSCE issued a special report on handling the media during political demonstrations and the following excerpt highlights its recommendations."

Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies

"6. The European Court of Human Rights has held that the role played by journalists in a democratic society confers upon them certain increased protections under Article 10 of the Convention. The exercise of media freedom, including in relation to matters of serious public concern, also involves duties and responsibilities. The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism."

B. European Union

Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, Foreign AFFAIRS Council meeting Brussels, 12 May 2014, Annex I

"A. Examples of actions that may violate or undermine the enjoyment of the right to freedom of opinion and expression

Legislative restrictions: Any restriction on freedom of expression must be provided by law, may only be imposed for the grounds set out in international human rights law, and must conform to the strict tests of necessity and proportionality.

Inconsistent and abusive application of legislation can be used to censor criticism and debate concerning public issues and to foster a climate of fear and self-censorship among media actors and the public at large. Arbitrary regulations and accreditation requirements for journalists, denial of journalistic access, punitive legal barriers to the establishment or operation of media outlets and regulations that allow for the total or partial, ex-ante or post-facto censorship and banning of certain media are examples of legislative restrictions on the right to freedom of expression. Restrictions also take the form of laws imposing prohibitive taxes or levies, as well as other forms of economic sanctions and market restrictions.

National security: the protection of national security can be misused to the detriment of freedom of expression. States must take care to ensure that anti-terrorism laws, treason laws or similar provisions relating to national security (state secrets laws, sedition laws, etc.) are crafted and applied in a manner that is in conformity with their obligations under international human rights law."

C. Organisation for Security and Co-operation in Europe (OSCE)

OSCE Guidebook on Democratic Policing (2nd ed., 2008)

"Maintaining Public Order and Safeguarding Democratic Freedoms

65. Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. "In the event of unlawful but non-violent assemblies, law enforcement officials must avoid the use of force or, where this is not possible, limit its use to the minimum"

66. In dispersing violent assemblies, firearms may be used only when less dangerous means prove ineffective and when there is an imminent threat of death or of serious injury. "Firing indiscriminately into a violent crowd is never a legitimate or acceptable method of dispersing it."

OSCE Representative on Freedom of the Media, Special Report: Handling of the media during political demonstrations, Observations and Recommendations. (OSCE, Vienna, June 2007)

"Both law-enforcers and journalists have special responsibilities at a public demonstration. Law-enforcers are responsible for ensuring that citizens can exercise their right to peaceful assembly, for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means. [...]

Responsibilities of the authorities and law enforcement agencies

Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police. This flows from the role of law-enforcers as the guarantor of public order, including the right to free flow of information, and their responsibility for ensuring the right to freedom of assembly.

There are of course practical considerations. The police have to distinguish between journalists and demonstrators at a time when the emotions of large crowds are running high. Therefore, there needs to be a mechanism whereby the police can quickly assess who should have access.

Summary of Recommendations

1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.

2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behavior vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behavior will not be tolerated.

3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events.

4. Willful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting are a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.

...

6. Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists."