EUROPEAN LAW & GOVERNANCE UNIVERSITY
An International University by
EPLO European Public Law Organization

ELGU Students & Alumni Policy Briefs

Disruptive Protest in the ECtHR's Jurisprudence against the Backdrop of Democratic Backsliding

Andie Brady

Abstract

Protest, and increasingly disruptive protest, is on the rise across Europe and beyond and has been met with an intolerant and often repressive domestic response. In the context of political polarisation and democratic backsliding, the treatment of protest is both symptomatic of and a barrier to the erosion of democratic values and the rule of law. Therefore, this short article seeks to examine the potentially problematic relationships between the European Court of Human Rights' jurisprudence regarding disruption as a form of political expression, domestic treatment of protest across Europe, and the wider role of protest in safeguarding democracy.

Key words: protest, disruption, European Convention on Human Rights, democratic backsliding, European Court of Human Rights

Introduction

Protest has been a defining feature of the democratic landscape in the last decade. Across the political spectrum, from climate change activists and the anti-racism movement to gatherings against overtourism and farmers protesting rising costs and harsher environmental regulations, demonstrations are increasingly visible in the news.[1] However, this uptick in protest as a tool of political expression and engagement has been met with a corresponding Europe-wide wave of repression.[2]

[1] J. Henley, Why are farmers protesting across the EU and what can the bloc do about it?, *The Guardian* (London, 2 February 2024) ; R. Teeling, The destinations fighting back against overtourism – and how they're doing it (*Time Out: Worldwide*, 21 July 2026) <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.timeout.com/news/the-destinations-fighting-back-against-overtourism-072126&ved=2ahUKEwj546G47_eWAxXxUkEAHaj0CTsQFnoECCUQAQ&usg=AOvVaw3wHrDGiYQsDODO4AvQMO6g> accessed 16 September 2026; George Floyd: Huge protests against racism held across US (*BBC*, 7 June 2020) <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bbc.co.uk/news/world-us-canada-52951093&ved=2ahUKEwjwvIbD7_eWAxUiQEEAHZv7JQUQFnoECCUQAQ&usg=AOvVaw0BGxoP8Bxsv2HnOrmQd-We> accessed 16 September 2026; D. Goh/N. Gordon, Introducing Carnegie's Revamped Climate Protest Tracker (*Carnegie Endowment for International Peace*, 7 May 2025) <https://carnegieendowment.org/emissary/2025/05/climate-protest-tracker-data-trends> accessed 17 September 2026.

[2] Amnesty International, *Under Protected and Over Restricted': the State of the Right to Protest in 21 European Countries* (Report, Amnesty International 2024), 20.

Protesters are not only subject to increasingly hostile rhetoric from state officials, but they are also increasingly exposed to harsh policing and legislative reform.[3] In particular, disruptive forms of protest are especially vulnerable to political and legal marginalisation, with methods such as roadblocks and occupation being conflated with acts of violence and domestic terrorism.[4] With an ever-more hostile domestic arena, the European Court of Human Rights (ECtHR) has an important role to play as a final theatre for protesters to seek remedies for the steady infringement of their rights. However, the Court's jurisprudence as regards disruptive protest renders it far from an ideal venue for activists to seek shelter.

Additionally, in light of this new era of democratic threats, protest is especially vulnerable and necessary to protect. Democratic backsliding, as coined by Bermeo in 2016, refers to "[…]*the state-led debilitation or elimination of the political institutions sustaining an existing democracy*".[5] Across the world, electoral integrity and the freedom of expression are being systematically undermined.[6] In this context, protest and assembly has a particularly important role to play in defending democracy against state abuse; in functioning both as a litmus test for democratic health in terms of the ability of people to gather publicly and express political opinion, and also as a tool to strengthen democratic values by placing issues on the agenda and mobilising change.[7] In the face of institutional failure and collapse, protest and assembly essentially become democracy's last line of defence. As a result the response of states to protest – whether that be repression or negotiation – is a powerful indicator of the

[3] Ibid, page 22; F. du Teilleul, Silencing Dissent: The Crackdown on Peaceful Protest in Europe (Liberties, 10 April 2025) <https://www.liberties.eu/en/stories/rule-of-law-2025-protests/45384> accessed 16 September 2026.

[4] M. Forst, State repression of environmental protest and civil disobedience: a major threat to human rights and democracy (Position Paper by Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, 2024), page 9.

[5] N. Bermeo, On Democratic Backsliding (2016) in 27(1) Journal of Democracy < https://www.ucg.ac.me/skladiste/blog_608364/objava_206975/fajlovi/On%20Democratic%20Backsliding.pdf > accessed 10 October 2026.

[6] M. Mantas/R. Y. Shapiro, Democratic Backsliding: Causes, Consequences, and Solutions? (Political Science Quarterly) < https://academic.oup.com/psq/pages/democratic-backsliding-causes-consequences-and-solutions#1> accessed 8 October 2026.

[7] J.W. Duyvendak Trust in the street: why demonstrating is good for democracy (University of Amsterdam, 17 October 2025) < https://www.uva.nl/en/shared-content/faculteiten/en/faculteit-der-maatschappij-en-gedragswetenschappen/news/2025/10/trust-in-the-street.html?cb> accessed 11 October 2026; V. Williamson/K.D. Tenpas, Can democracy exist without protest? (Brookings, 5 June 2025) < https://www.brookings.edu/articles/can-democracy-exist-without-protest/> accessed 12 October 2026.

trajectory of democratic backslide.[8] This lends the previously discussed repression of the rights to assembly and expression across Europe a considerable significance in the political landscape. Through this lens, the Court's hesitancy to protect disruptive protest constitutes a missed opportunity to strengthen a link in the chain of European democracy at a time of emerging crisis.

Main Body

Firstly, it is necessary to outline the normative position of this paper towards disruption as a legitimate method of political expression. As has been pointed out by Professor Aidan McGarry, "*Disruption is not incidental to protest, it is often its defining feature*"; an element of disruption is indispensable in order to generate pressure sufficient to trigger meaningful societal change. Indeed, it has long been an essential characteristic of movements for change.[9] This is not to say that states are expected to tolerate an unbearable level of inconvenience. Of course, there are limitations; however, state responses to disruptive protest must be constrained by the boundaries of proportionality if the freedom of assembly is to have any meaning at all.[10]

Crucially, the ECHR itself supports this interpretation of disruption's role in the civic space. Fundamentally, Article 11 protects not lawful protest, but peaceful protest, a characteristic independent of an assembly's legality. The Court has repeatedly underscored that the enforcement of the rules governing assemblies cannot become an end in and of itself. This is an observation which appears to positively emphasise the importance of looking beyond the mere (un)lawfulness or disruptive nature of an assembly in assessing infringements to the rights of those involved.[11] In Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, the Court underscored that freedom of assembly and the expression of opinions and beliefs through assembly are some of the "[…]

[8] S. Gultasli, Interview with Dr. T. Carothers, Director of the Democracy, Conflict, and Governance Program and Harvey V. Fineberg Chair for Democracy Studies at the Carnegie Endowment for International Peace (3 April 2026) < https://www.populismstudies.org/dr-carothers-when-institutions-fail-protest-becomes-the-last-line-of-democratic-defense/ > accessed 14 October 2026.

[9] Written Evidence Submitted by A. McGarry (SSP0009), Human Rights Joint Committee, UK Parliament (March 2026)<https://committees.parliament.uk/writtenevidence/166188/html/> accessed 15 September 2026.

[10] D. Mead, 'Bad' Disruption: Rule Changes that Threaten the Right to Protest (*Amnesty International*, 8 October 2024) < https://www.amnesty.org.uk/latest/bad-disruption-rule-changes-threaten-right-protest-david-mead/> accessed 16 September 2026.

[11] *Bumbeș v. Romania* App no. 18079/15 (ECtHR, 3 August 2022), para 94; *Novikova and Others v. Russia* Apps no. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13 (ECtHR, 12 September 2016), para 163; *Oya Ataman v. Turkey* App no. 74552/01 (ECtHR, 5 March 2007), para 42.

paramount values of a democratic society" and found that "*Sweeping measures […] to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles […]do a disservice to democracy and often even endanger it*."[12]

However, simultaneously, the Court has struggled with cases of disruption in its jurisprudence. For example, in Geert Drieman and Others v.Norway, a case concerning the use of rubber dinghies by activists to interfere with whaling off the Norwegian coast, the ECtHR highlighted the fact that the intention of the applicants was not merely to express disapproval of the conduct of the whalers, but rather to physically halt the activity altogether. Consequently, the Court found that the conduct could not enjoy the same level of privileged protection as " […] *political speech or debate on questions of public interests or the peaceful demonstration of opinions on such matters*" and that the claim was manifestly ill-founded.[13]The disruptive nature of the protest placed it decisively beyond the scope of the ECHR's protection.

While Article 11(2) mandates that restrictions on assemblies may be necessary, *inter alia*, to protect the rights and freedoms of others, this example forms part of a wider pattern in which the Court overstates the economic or private interests being affected by a protest.[14] This is highly relevant as mass actions are regularly aimed at private property, to which a right is also protected under the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.[15] A seminal case in this regard is that of Appleby and Others v. the United Kingdom, where the Court ultimately found that property rights prevailed over the rights to freedom of expression and assembly as the applicants in the case had other avenues of effectively communicating their message.[16] As pointed out by Judge Maruste in his Partially Dissenting Opinion, the failure of the Court to consider the traditional level of precedence attached to the right to freedom of expression resulted here in a flawed ECtHR approach to property in the context of protest.[17] The implicit normative equation of the democracy-enriching value of expression and assembly with the right

[12] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* Apps no. 29221/95 and 29225/95 (ECtHR, 2 October 2001), para 97.
[13] G*eert Drieman and Others v. Norway* App no. 33678/96 (ECtHR Third Section Admissibility Decision, 4 May 2000.
[14] European Convention on Human Rights, Article 2.
[15] ECHR, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art 1.
[16] *Appleby and Others v. the United Kingdom* App no. 44306/98 (ECtHR, 6 May 2003), para 41,47-49.
[17] Ibid, Partly Dissenting Opinion of Judge Maruste.

to property is counterintuitive and has been argued to create a god of the right to property within the ECHR framework.[18]

More concerningly, recent developments in the jurisprudence of the Court have drawn connections between disruption and non-peaceful behaviour.

This is especially clear in the case of Kudrevičius and Others v. Lithuania, which concerned a blockade of three major roads by demonstrating farmers in protest of government agricultural policy. The applicants were subjected to criminal proceedings, and each received a sixty-day custodial sentence. Although their sentences were suspended for a year, the applicants could not leave their places of residence without the permission of the authorities during that time.[19] Although the Court acknowledged the non-violent nature of the demonstration, it emphasised that the consequent interruption of traffic could not be considered a side-effect of the assembly but was rather the result of an intentional action by the farmers. Such behaviour, the Court argued, cannot be interpreted as falling within the core of Article 11.[20] It underscored the fact that, as the level of disruption generated exceeded that which is inevitable in such circumstances and therefore surpassed what the state is expected to tolerate, Lithuania enjoyed a wide margin of appreciation in restricting the conduct in question. As a result, despite the fact that the applicants had neither carried out nor encouraged others to engage in acts of violence, their conduct was nevertheless considered reprehensible, and accordingly the criminal proceedings brought against them were justified.[21]

Moreover, the Court simultaneously characterised the demonstration as pursuing the goal of highlighting problems in the agricultural sector by forcing the government into further negotiations and as pursuing disruption in and of

[18] D. Mead, Strasbourg Succumbs to the Temptation to Make a God of the Right of Property: Peaceful Protest on Private Land & (and) the Ramifications of Appleby v. UK (2003) in 8 Journal of Civil Liberties, 105.

[19] *Kudrevičius and Others v. Lithuania* App no. 37553/05 (ECtHR, 15 October 2015), para 20-22, 47, and 124.

[20] Ibid, para 97.

[21] *Kudrevičius and Others v. Lithuania*, para 150, 155-157, and 173-174.
See also *Kotov and Others v. Russia* Apps no 6142/18 and 13 others (ECtHR, 11 January 2023) para 139, and 144-147; this case affirmed the undue emphasis placed on disruption in the case of assemblies that take place on and block roads. The judgement concerned a demonstration on a road to a contested quarry which did not block a single vehicle from entering the quarry nor disrupted operations in the quarry itself. Ironically in this context of minimal disturbance the Court emphasised the importance of tolerance towards peaceful assembly to prevent Article 11 from being "[…] deprived of all substance".

itself.[22] Such a depiction is selective. After all, the farmers were not motivated by disruption for the sake of causing chaos but rather used it as a means of communicating their political intention and message. This conflation of the method of the protest with the intention of the protesters is questionable, particularly given that disruption is a hallmark of effective protest action.

Additionally, the ECtHR refers in its reasoning to the European Court of Justice (ECJ) case Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria as an example of relevant European Union law and practice.[23] This is particularly relevant given the previous discussion regarding the imbalance in value ascribed by the Court in Strasbourg to private interests in cases of protest. The ECJ, as a court of the European Union, considers the free movement of goods to be of fundamental importance. This meant that in Schmidberger it balanced the free movement of goods against the freedom of expression and assembly.[24] However, by drawing on this reasoning the ECtHR disregards the important contextual differences between itself and the ECJ; namely, that the ECHR contains no such provision granting a right to the free movement of goods or trade. The result is a continuation of the Court's jurisprudence in which economic freedoms are counterintuitively balanced against ECHR rights, despite having limited basis in the Convention itself.

This utilisation of the reprehensible act doctrine against protest deemed overly disruptive is particularly alarming, particularly in the aforementioned context of Europe-wide repression of protest and democratic backslide.

While an act being considered reprehensible does not automatically cast it outside of the scope of Article 11's protection, it grants the state a much wider margin of appreciation in responding to and sanctioning such conduct, subject to the Court's supervision.[25] Additionally, in considering the proportionality of state responses to what is considered reprehensible disruptiveness under Article 11(2), the Court draws a connection between the method of the protest and its object. As the

[22] *Kudrevičius and Others v. Lithuania,* para 97, 170, and 173.
[23] Ibid, para 73-76.
[24] G. Gonzales, EC Fundamental Freedoms v. Human Rights in the Case C-112/00 Eugen Schmidberger v. Austria [2003] ECR I-5659 (2004) 31(3) Legal Issues of Economic Integration, 220-221; Case C-112/00 *Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich* [2003] ECR I-05659, para 77-81.

[25] European Court of Human Rights, *Guide on Article 11 of the European Convention on Human Rights: Freedom of Assembly and Association*, 11/59 and 18/59.

actions of the Lithuanian farmers in Kudrevičius in disrupting the traffic had not been aimed directly at the subject of their disapproval, namely the government, the Court was less inclined to treat their claim favourably.[26] This was reinforced in the 2025 Bodson et al. v. Belgium judgement, another case concerning a road blockade. Such an approach not only risks cementing a hierarchical ranking of protest according to a constructed legitimacy rather than peacefulness, it also signals a problematic engagement with the inherently political nature of the actions at question.[27] Why is disruption aimed at a road less permissible than the same aimed at, for instance, a factory? Furthermore, such judicial treatment is at direct odds with a long and successful history of indirect civil disobedience, wherein the law breached by protesters is intended to communicate their disapproval of another, including the civil rights and women's suffrage movements.[28]

There is also the potential for a chilling effect arising from the widening category of reprehensible conduct that should not be overlooked against the aforementioned background of European democratic backsliding. Framed solely in terms of violence – to either people or property – in Ezelin v. France, the emerging case law of Kudrevičius and others as well as Bodson et al. signals a more conservative judicial approach to disruption whereby intentionally disruptive roadblocks are equated with violence.[29] As the label of reprehensibility generates the legitimacy of otherwise highly dubious state responses to disruptive protest such as criminalisation, its expansion leaves disorderly assemblies and protesters in a legislative limbo regarding what level of disruption is "tolerable". Furthermore, in introducing this value-based judgement on the method of protest, the Court goes beyond the

[26] *Kudrevičius and Others v. Lithuania,* para 171.
[27] *Bodson et al. v. Belgium,* App no. 35834/22 and 15 others (ECtHR, 16 January 2025), para 102; A. Dejean de la Bâtie, Bodson et al. v. Belgium: A Blow to Organised Activism (*Strasbourg Observers,* 14 March 2025) <https://strasbourgobservers.com/2025/03/14/bodson-et-al-v-belgium-a-blow-to-organised-activism/> accessed 14 October 2026.
[28] Delmas, Candice, and K. Brownlee, Civil Disobedience, Introduction, The Stanford Encyclopedia of Philosophy (Fall edn, 2024) <https://plato.stanford.edu/entries/civil-disobedience/#FeaCivDis> 1.1, accessed 15 October 2026; D.D. Smith, The Legitimacy of Civil Disobedience as a Legal Concept (1968) 36(4) Fordham Law Review, 716; W. J. Kendall, Martin Luther King, Jr., Civil Disobedience and the Duty to Obey the Law: Where Do We Go From Here? (2019) in 3(1) The Journal of Social Encounters, 80-84; Tactics and Techniques of the National Woman's Party Suffrage Campaign (*Library of Congress*) <https://www.loc.gov/collections/women-of-protest/articles-and-essays/tactics-and-techniques-of-the-national-womans-party-suffrage-campaign/> accessed 13 October 2026.
[29] *Ezelin v. France*, App no. 11800/85 (ECtHR, 26 April 1991), para 41 and 53; *Kudrevičius and Others v. Lithuania*, para 173-174; *Bodson et al. v. Belgium*, para 104.

wording of the Convention itself.[30] The problematic malleability of the reprehensibility label has been criticised, *inter alia*, by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, who has encouraged the Court to return to a more restrictive interpretation.[31]

Conclusion(s)

To engage more meaningfully with protest in this increasingly repressive political climate, the Court should indeed narrow its conception of reprehensibility to the traditional framework of violence. However, I would argue that there is also a need for a reformulation of the Court's treatment of method and intention when dealing with disruptive assemblies. Disruption is a common, useful, and effective tool for enacting social pressure; characterising it as the primary objective of protesters is an unfair analysis. More importantly, in this age of global democratic backslide, it risks stripping such assemblies of their inherently political nature.

Ultimately, one must question the Court's portrayal of the protected rights at the heart of Article 11. Does it solely entail non-disruptive methods of political expression, or does it champion the political expression itself as a fundamental building block of the public forum central to democratic legitimacy? In the context of an increasingly intolerant domestic legislative approach to protest and as democracy comes under growing pressure, these questions have never been so important.

---

[30] M. Mishra, "Legitimate" Protest in European Human Rights Law: A Critical Reconstruction (2022) 12(2) Cambridge Law Review, 35 and 36.

[31] Joint Third Party Intervention by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Human Rights Centre of Ghent University, *Mahammad Majidli v. Azerbaijan (no. 3) and three other applications* Application nos. 56317/11, 67932/11, 27472/12 and 59661/12 (3 November 2015), para 15; see also E. Rutter and J. Rayée, "Do you hear the people sing?": Kudrevičius v. Lithuania and the Problematic Expansion of Principles that Mute Assemblies (*Strasbourg Observers,* 2 December 2015) < https://strasbourgobservers.com/2015/12/02/do-you-hear-the-people-sing-kudrevicius-v-lithuania-and-the-problematic-expansion-of-principles-that-mute-assemblies/> accessed 15 September 2026.