

Access for Rights Briefing The Right to Protest

The so called “Arab Spring” in North Africa and the Middle East has been one of the most striking demonstrations of the importance of protecting the right to freedom of assembly in order to safeguard democracy. Mass protests in Tunisia and Egypt played a major part in the removal of long-standing dictators, and the use of large-scale peaceful gatherings as a sign of discontent has since spread across the Mediterranean in the context of the economic crisis from 2008 onwards. This briefing considers the issue of freedom of assembly as it relates to protest and demonstrations.

Legal framework

First and foremost it must be considered that freedom of assembly, which includes the right to protest, is protected by the European Convention on Human Rights (ECHR). Article 11(1) states that:

Everyone has the right to freedom of peaceful assembly and freedom of association with others.

Article 11(1) should be read alongside Article 10(1). Taken together they protect not only the right to assemble, but also the right to express oneself at that assembly or elsewhere. Article 10(1) states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Both these rights are, however, qualified by ECHR Articles 10(2) and 11(2). These two articles can be summed up as stating that the rights to freedom of assembly and expression can be restricted by the state in order to ensure the following:

- Interests of national security or public safety
- Prevention of disorder or crime
- Protection of health or morals
- Protections of the rights and freedoms of others

This means that the right to protest, while established in law, is in practice often vulnerable to being overruled by other concerns.

Methods used to inhibit peaceful protest

The methods used to inhibit peaceful protest can be placed into three categories:

1. *Pre-protest: methods used before a protest takes place*

Preventative arrests, demanding that protestors obtain authorisation and refusal of entry to a country where a demonstration is taking place would all fall into this category. Infiltration and intimidation by the authorities can also be used to inhibit the freedom of association of groups planning for or participating in protests, and can continue for months or even years at a time. This may impinge not only upon their right to assemble and associate with others at demonstration, but also upon their right to associate as a group outside of a protest situation. Issues of privacy also come into consideration in such situations.

2. *In-protest: methods used at the time of a protest*

During protests water cannons, kettling, batons, tear gas/pepper spray, rubber bullets, horses and mass arrests can be employed to inhibit the actions of demonstrators.

3. *Post-protest: methods used in the days or even weeks afterwards*

1. **Pre-protest**

1.1 *Border checks*

Denying individuals the right to cross a particular border is employed most notably at international summits, where decisions are frequently taken which affect millions of people in dozens of countries. Such summits frequently attract people wishing to take part in demonstrations from across the continent and even the globe. Before the G8 summit in Genoa, Italy in 2001, the Schengen agreement (which allows free movement across the borders of signatory states) was suspended and 2,093 individuals were denied access to Italian territory.¹ The agreement was also suspended by the Italian government for the duration of the G8 summit in July 2009;² in 2007, the German government did the same for the duration of the G8 summit in Heiligendamm;³ Denmark reintroduced border controls during the COP15 conference in 2009,⁴ while the Portuguese government were explicit regarding their reasons for suspending free movement during a NATO summit in Lisbon in November 2010:

The “exceptional measure” aims to help guarantee “internal security and the maintenance of public order.”⁵

The problem with such decisions is that governments are able to adopt very broad definitions of what constitutes ‘internal security’ and ‘public order’, especially if they are not clearly defined in law.

1.2 *Preventative arrests*

Vague references to concepts such as internal security and public order can also be used as the basis for preventative arrests, a tactic used on a large scale in Copenhagen in 2009 (at the United Nations COP15 Conference), where 968 protestors were held under newly-passed laws allowing preventative arrest,⁶ and in Brussels in 2010, where almost 250 people were preventatively arrested.⁷ In the UK, 114 people were arrested in April 2009 following a meeting held to plan a protest; only 26 were subsequently charged and tried. In the two trials that were held, one collapsed due to the use of evidence obtained by a police spy. Convictions handed down in the other case are currently being reviewed.⁸

Preventative arrests frequently involve lengthy periods of detention and may involve a plea bargain. Often this will involve an appearance before a judge in which the protestor(s) is given the option of either paying a small fine and being released, or refusing to accept the charges made and

1 Statewatch News Online, ‘2,093 people refused entry to Italy to attend Genoa protests’, July 2001, <http://www.statewatch.org/news/2001/jul/genoa6.htm>

2 ‘G8: The Schengen Treaty is to be suspended from 29 June to 15 July’, 10th June 2009, http://www.g8italia2009.it/G8/Home/News/G8-G8_Layout_locale-1199882116809_1199897991313.htm

3 Julio Godoy, ‘Dissent Within, Confrontation Without’, *Inter Press Service*, 5th June 2007, <http://ipsnews.net/news.asp?idnews=38047>

4 European Council, ‘Report on reintroduction of border checks by Denmark at internal Schengen borders’ (EU doc. no. 6927/10), 26th February 2010, <http://www.statewatch.org/news/2010/mar/denmark-eu-border-controls-6927-10.pdf>

5 ‘Border controls to be re-imposed for Lisbon NATO summit’, *The Portugal News Online*, 6th November 2010, <http://www.theportugalnews.com/cgi-bin/article.pl?id=1086-17>

6 ‘Amnesty blasts Denmark’s COP15 policing’, 27th May 2010, <http://www.cphpost.dk/news/international/89-international/49071-amnesty-blasts-denmarks-cop15-policing.html>

7 ‘Policing of ‘noborder camp’ in Brussels violates basic civil rights’, Statewatch News Online, October 2010, <http://www.statewatch.org/news/2010/oct/01brussels-noborder.htm>

8 ‘CPS begins a review of the 20 convictions’, Ratcliffe on Trial, <http://ratcliffeontrial.org/>

undergoing a trial.⁹ This allows the police to prevent individuals from attending a demonstration without proof of wrongdoing; the tactic may also serve as a deterrent, discouraging them from attending future protests.

1.3 Authorisation

The requirement for the organisers of protests to obtain authorisation from local government or the police is another factor that can limit the individual exercise of Articles 6 and 11. In the UK, the Serious Organised Crime and Police Act 2005 makes it illegal to organise a protest in the area around the Houses of Parliament without having first acquired a permit from the police. Any protest that involves a march requires the organisers to notify the police at least six days in advance, which will then lead to negotiations over the route and timing of the march.¹⁰ These may be so restrictive as to render a protest ultimately pointless.

In Italy, the prefecture of Rome decided in March 2009 to allow marches and sit-down protests in only twelve designated areas. To protest in these areas, protestors would have to seek permission in advance. The denial of rights that such administrative regulations potentially allow is made clear by an example from Rome: following a strike at La Sapienza University in March 2009, about 500 students attempted to march to an authorised trade union demonstration. They were beaten back by riot police who held them at the university, on the grounds that their attempted march was unauthorised by the local authorities.¹¹

2. In-protest

2.1 Use of force

The types of force that can be used by police officers differ from country to country – for example, while the use of batons is common throughout Europe, not all countries' police forces will employ water cannons, tear gas, or horses to quell demonstrations. In Barcelona for example, vastly disproportionate force was employed by police to break up entirely peaceful demonstrations in 2011.¹²

An even more extreme example comes from the United States. In 2009, police officers deployed a 'sonic cannon' – a device that emits unbearably loud, high-pitched noises – against protestors opposed to the G20 summit in Pittsburgh.¹³ Previously such devices had only been employed by the US military. The legitimacy of the use of such technology against protestors is highly questionable and represents only one instance of the increasing convergence between the tactics of military and police forces.

2.2 Kettling/containment

Most in-protest tactics seek to disperse protestors away from a particular area. Tactics of containment, on the other hand, seek to keep people in one particular place for an indefinite length of time; this tactic is popularly known in Britain as 'kettling'. The first use of kettling by a police force in Europe was apparently in Hamburg, Germany in June 1986, when '[t]he method itself was not deemed illegal, only the manner in which it was used.'¹⁴ The tactic has been the cause of much debate in Britain, with the civil liberties organisation Liberty suing the Metropolitan Police for their

9 Kees Hudig, 'The growing use of 'preventative' arrests', p.3, <http://www.statewatch.org/analyses/no-123-preventative-arrests.pdf>

10 'Right to protest', Directgov, http://www.direct.gov.uk/en/GovernmentCitizensandRights/YourRightsandResponsibilities/DG_176761

11 'Update: Protocol on demonstrations sets authorised routes in Rome', March 2009,

<http://www.statewatch.org/news/2009/mar/07italy-demos.htm>

12 Rebeca Carranco, 'La carga policial desata la indignación en Barcelona', *El País*, 27 May 2011,

http://politica.elpais.com/politica/2011/05/27/actualidad/1306489864_137130.html

13 Matthew Weaver, 'G20 protestors blasted by sonic cannon', *The Guardian*, 25th September 2009,

<http://www.guardian.co.uk/world/blog/2009/sep/25/sonic-cannon-g20-pittsburgh>

14 Kees Hudig, 'The growing use of 'preventative arrests', p.3

use of the tactic on a crowd containing a large number of children. During a protest against reforms to the education system, thousands of people were held

For up to nine hours in cold conditions, without food, and were denied medical help despite some of them suffering injuries, including at least two fractures.¹⁵

An instance of kettling in London in 2009 was the subject of a court judgement, in which it was ruled that the way in which the police contained protestors was illegal. The legality of the tactic itself remains intact. However, the judgement has provided an opportunity for the thousands of individuals affected to sue the police, should they wish to do so.¹⁶

3. Post-protest

3.1 Arrests

Arrest during or after protests may be justified if a protestor has broken the law, for example by assaulting someone. However, protesting is a right, not an offence, and much concern has been raised in recent years over arrests on specious grounds both in- and post-protest.

It is not only the grounds for arrest that cause concern but also the way in which arrests are being carried out. During the G8 summit in Genoa in 2001, police laid identical allegations against hundreds of protestors without the supposedly unlawful actions being outlined in detail.¹⁷ Such tactics fail to discriminate between those who have done nothing wrong and those who the police allege have broken the law.

3.2 Intimidation

Post-protest action by the police can also discourage individuals from exercising their rights as protected by Articles 10 and 11 of the ECHR. In Spain, police have brought charges of 'resistance' or violent acts against individuals who have tried to complain of ill-treatment by officers during protests.¹⁸ These instances demonstrate direct attempts by police forces to stop individual officers being held accountable for their actions.

In December 2010 a student in Bristol, England, was arrested three weeks after he attended a protest and accused by the police of affray.¹⁹ He was subsequently released without charge and maintains that he was only arrested because he was known to the police and that they wished to try and dissuade him from participating in political action. In 2009 two people from the city of Brighton had their car pulled over by the police due to their number plate having been previously noted by officers engaged in surveillance of a peaceful protest against an arms company. These kinds of post-protest police activity are directly related to the work that some police officers undertake in-protest. In Britain, there has been a significant increase in the use of 'Forward Intelligence Teams' (FIT), whose job is to video and photograph those attending demonstrations. The images and other information gathered are then placed on the police's national database. When photography and

15 Mark Townsend, 'Metropolitan Police face legal action for kettling children during tuition fees protest', *The Guardian*, 26th December 2010, <http://www.guardian.co.uk/uk/2010/dec/26/metropolitan-police-lawsuit-student-protest>

16 Vikram Dodd, 'Thousands may sue over police kettling at G20 protests', *The Guardian*, 14th April 2011, <http://www.guardian.co.uk/uk/2011/apr/14/sue-police-kettling-g20-protests>

17 Yasha Maccanico, 'Italy: Making sense of the Genoa G8 trials and aftermath', p.7, <http://www.statewatch.org/analyses/no-77-genoa-aftermath.pdf>; Lorenzo Guadagnucci, 'Arresti Abusivi e Poliziotti Muti', http://www.altreconomia.it/site/fr_contenuto_detail.php?intId=1592

18 Coordinara Para la Prevencion de la Tortura, 'La tortura en el Estado español', June 2010, p.8, p.21, p.103, http://www.prevenciontortura.org/wp-content/uploads/2010/01/INFORME_CPD_2009.pdf

19 Affray is defined in English law by the Public Order Act 1986 as the use or threat of unlawful violence towards another which would cause someone present at the scene to fear for their personal safety; see <http://www.legislation.gov.uk/ukpga/1986/64/section/3>

video are combined with other information, detailed individual profiles can be created of people who may have done nothing other than be present at protests or meetings.²⁰

The EU Dimension

There is often a significant transnational dimension to policing tactics within EU member states. Policy-makers across Europe have increasingly conflated protestors with terrorists. It has been alleged that the European Union's definition of terrorism is 'so vague and broad that even... protestors fit it.'²¹ At the EU level, there are now numerous legal instruments simplifying the exchange of information between the police, security and judicial authorities of different member states, which is in part a response to the fact that many protestors now cross borders in order to attend demonstrations. There have also been proposals to create a centralised EU database to record the activities and movements of 'violent troublemakers,'²² as well as a proposal to undertake intensive surveillance of 'radicals', a term which covers the political perspectives of 'extreme right/left, Islamist, nationalist, anti-globalisation, etc.'²³ Individuals belonging to any such political groups in the United Kingdom are classified as 'domestic extremists', and may find themselves the subject of attention of the National Public Order Intelligence Unit (NPOIU) or the National Extremism Tactical Coordination Unit (NETCU).²⁴

The treatment of protestors as akin to terrorists and as such presenting serious threats to the peace is leading to an increased reliance by police forces on military hardware and tactics, as noted earlier. The use of sonic cannon by US authorities is extreme, and in Europe no such methods have been employed to date. However, one only has to attend or see footage of a major demonstration to see the influence on police forces of military equipment, uniforms and tactics.

One European development has been the creation of a transnational, quasi-military group, the European Gendarmerie Force (EGF). The EGF was formed by the governments of France, Spain, Italy, the Netherlands and Portugal (with Poland and Lithuania as partners and Turkey as an observer). Although the force is not formally tied to the EU, its purpose is 'to support the EU's ambition to obtain capacities in the field of non-military crisis management', part of which involves training gendarmerie forces in EU member states.²⁵ It has also been suggested that the EGF could be deployed within Europe in the future, if there is sufficient political will.²⁶

Positive responses

It may seem that the odds are stacked against those wishing to exercise their rights to assembly, association and expression. However, the criminalisation of protest and protestors is not inevitable.

Innovative responses to situations in which the police willingly and aggressively employ batons and shields have also been developed. In 2000 the *Tute Bianche* (White Overalls) movement frequently donned inflatable outfits to act as protection from police violence. The 'Book Bloc' is another self-defence tactic that has emerged from students protests in Europe. This involves the construction of

20 Matthew Moore, 'Police store photos of peaceful protestors on criminal database', *The Telegraph*, 7th March 2009, <http://www.telegraph.co.uk/news/uknews/law-and-order/4951364/Police-store-photos-of-peaceful-protestors-on-criminal-database.html>

21 'The growing use of 'preventative arrests', p.2, <http://www.statewatch.org/analyses/no-123-preventative-arrests.pdf>; the EU's definition of terrorism can be found in Council Framework Decision of 13 June 2002 on combating terrorism (EU doc. no. 2002/475/JHA)

22 Tony Bunyan, 'Protests in the EU: "Troublemakers" and "travelling violent offenders" [undefined] to be recorded on database and targeted', <http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf>

23 <http://www.statewatch.org/analyses/no-98-eu-surveillance-of-radicals.pdf>

24 Association of Chief Police Officers, 'The National Public Order Intelligence Unit (NPOIU)', <http://www.acpo.police.uk/NationalPolicing/NCDENationalCoordinatorDomesticExtremism/TheNationalPublicOrderIntelligenceUnitNPOIU.aspx>; National Extremism Tactical Coordination Unit, <http://www.netcu.org.uk/default.jsp>

25 EUROCCP, 'European Gendarmerie Force', <http://www.eurocop-police.org/policies/police%20ethics/06-03-08%20%20FACT%20SHEET%20European%20Gendarmerie%20Force.pdf>

26 Michiel de Weger, 'The Potential of the European Gendarmerie Force', p.58, http://www.clingendael.nl/publications/2009/20090400_cscp_gendarmerie_weger.pdf

giant foam, plastic or cardboard shields that are painted to resemble classic books; they are wielded by protestors to defend themselves from baton blows.

The widespread use by British police of many of the tactics listed above has led to the formation of a broad-based coalition consisting of politicians, trade unionists, students and others. Asserting that the 'best way to defend our right to protest is by protesting', the group will be doing exactly that.²⁷ However, they have also organised conferences, initiated petitions and promoted practical support for individuals subject to arrest and charges.

The law is also frequently used by protestors as a way to assert their rights. As noted earlier, police tactics during the G20 in London were later ruled illegal after protestors brought forward cases. A Welsh councillor successfully sued the police after he was knocked unconscious during a demonstration,²⁸ and a UK court ruled in 2010 that,

Police surveillance of a public political meeting had not been proved to be lawful and that the police had failed to provide any evidence that they were pursuing a 'legitimate aim'.²⁹

However, it should be noted that police surveillance has largely continued unabated since this point. While legal action has proved to be a successful way of challenging police practices, such cases deal with the legality of one particular use of tactics, rather than the tactic as a whole. Nevertheless, they are an important part of taking positive action to ensure that the rights to freedom of assembly and freedom of association are upheld.

Questions

Challenging attempts by the police and other state authorities to inhibit the exercise of individual rights requires information, and there are a number of useful questions that can be asked through freedom of information requests. For example:

Pre-protest

- Is it necessary to obtain authorisation from the police or government in order to hold a march and/or a static protest? How many applications for permits have there been in the last year, and how many applications have been refused, and in the case of refusals, what have been the grounds for the decision?

In-protest

- What are police forces equipped with in order to deal with situations of disorder? (For example: batons, shields, water cannons, etc.) What legislation governs the use of this equipment and in how many instances have such means been employed against protestors? How many water cannons/guns/horses etc. do the police possess?
- What guidance are police issued with informing them about uses of force, and what training do they undergo?

Post-protest

- How many court cases have there been in the last year that are based on the misbehaviour of police officers during protests? How many convictions and acquittals have there been in these cases?

27 Defend the Right to Protest, <http://defendtherighttoprotest.org/>

28 David Deans, 'Police payout for Caerphilly councillor', *South Wales Argus*, 26th May 2011, http://www.southwalesargus.co.uk/news/gwentnews/9050911.Police_payout_for_Caerphilly_councillor/

29 IRR News Team, 'Court rules against unauthorised police surveillance', 29th July 2010, <http://www.irr.org.uk/2010/july/ha000034.html>

- Has the police force or government compiled any evaluation reports on the policing of protests?