



THE EUROPEAN UNION

PRESENTATION

This review is part of a larger two-part study on **freedom of assembly in the Euro-Mediterranean region**.

Following an overview of the international standards relating to the freedom of assembly, [Part I](#) examines the legal frameworks in 11 countries of the Mediterranean and in the European Union and their compliance with international human rights standards. Part II examines the implementation of laws and the exercise of the freedom of assembly and demonstration in practice.

In order to assess the compliance of national legislations with international standards relating to the exercise of freedom of assembly, objective indicators were used as a reference throughout this study. A gender-sensitive approach was incorporated to determine whether women enjoy freedom of assembly to the same extent as men or face more restrictions.

This study was conducted in consultation with members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 human rights organizations in 30 countries. It thus reflects the active involvement of EMHRN's working group members on freedom of association and assembly, as well as other civil society organizations and experts.

The study is meant to provide human rights defenders, civil society organizations, international organizations, and state institutions with an analysis that allows them to compare national laws and policies with those of other countries and assess their conformity with international conventions, with a view to advocating for reforms and guaranteeing freedom of assembly across Euro-Mediterranean area.

The chapters are also available separately: [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#) and Western Sahara, [Palestine](#), [Syria](#), [Tunisia](#), [Turkey](#), and [the EU](#).

Introduction

All 47 member states of the Council of Europe have signed up to the European Convention on Human Rights and are subject to the jurisdiction of the European Court of Human Rights. Articles 10 and 11 of the European Convention on Human Rights protect the freedom of expression, assembly and association.

The rights provided for in Article 10 and 11 require member states not only to tolerate, but also to actively facilitate social participation and protest. As detailed in Part 1 of this Report,¹ the European Convention considers the right of freedom of peaceful assembly as fundamental. Member states are required to put in place adequate mechanisms and procedures to ensure such freedom can be enjoyed in practice and is not subject to undue bureaucratic regulation. Indeed, people should be able to enjoy this right, as far as possible, without interference. Anything not specifically forbidden by the law should be presumed to be permissible. Preference must always be given to the least intrusive means of imposing restrictions.

Member states must not only allow dissenting voices to be heard, but they must give such voices the legal and physical space in which they can be heard. "If the freedom of expression is the grievance system of democracies, the right to protest and peaceful assembly is democracy's megaphone. It is the tool of the poor and the marginalised, those who do not have access to the levers of power and influence and those who need to take to the streets to make their voices heard."²

Protest is a healthy, democratic exercise, crucial to good governance and accountability. It is a social good which democratic states should protect and promote. Despite this, in recent years, many European member states have viewed protest as, at best, an inconvenience to be controlled or discouraged and at worst a threat to be suppressed.

This chapter seeks to review whether in practice the European countries protect and promote freedom of assembly or whether the reality on the ground reveals a number of shortfalls. Given the necessary space restraints of this report, this chapter does not seek to provide a detailed overview of each member states' recent record on the protection and promotion of the freedom of assembly but instead seeks to identify common trends across Europe and to propose recommendations.

Since the economic crisis started in 2008, Europe has witnessed a significant increase in street protests, sit-ins, demonstrations and occupations. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reported that the UK sees an average of ten to fifteen demonstrations per day.³ France has an average of ten per day and Athens, four and a half demonstrations a day between May 2010 and March 2014. 20,210 demonstrations were held across Greece within the same four years.⁴ According to data provided by the Spanish government, there were more than 14700 demonstrations held in their country during 2012. According to the Delegate's Office in Madrid, that city alone saw 3419 demonstrations during 2012 and 4354 in 2013.⁵

In response to austerity measures, people have been taking to the streets to protest. Many have sought to express their objections to the massive cuts being made to public services by the governments of member states. They have often not only demanded a change in government but also a different way of governing. Although the protests across Europe have been organised by a wide range of often vastly different political

1 EMHRN, *Regional Study: The right to freedom of assembly in the Euro-Mediterranean region Part I: Legislation Review*, 2013. See Europe chapter: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_THE-EUROPEAN-UNION1.pdf

2 See *Take Back the Streets: Repression and criminalization of protest around the world*, 2013: https://www.aclu.org/files/assets/global_protest_suppression_report_inclo.pdf

3 In London, there are around 4000 protests per year, see the *Report of the UN Special Rapporteur on freedom of peaceful assembly in the UK*, A/HRC/23/39/Add.1, 29 May 2013: http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session23/a-hrc-23-39-add1_en.pdf

4 See *Waging Non Violence*, 30 April 2014: <http://wagingnonviolence.org/experiments/recession-responsible-20000-demonstrations-greece-4-years/>

5 See Amnesty International, *Spain: The Right to Protest under Threat*, 2014: http://www.amnesty.org.uk/sites/default/files/spain-the_right_to_protest_under_threat_0.pdf; There may of course be significant country differences in recording practices (in terms of what is actually counted as a public 'assembly' or 'demonstration'). As such, these figures should not of themselves be viewed as directly comparable. Nor do they necessarily reflect the relative level of protest activity (and even less, the strength of civil society) in each country.

movements, they have also arguably shared a common thread - that those protesting no longer trust the corporate and political elite that they consider to be ruling their countries.

This recent period of increased political activism follows a time, from 9/11 onwards, when many member states have restricted the ability of people to lawfully dissent and organise assemblies to express criticism and opposition to decisions and actions taken by their governments. The aftermath of 9/11 saw many member states introduce broad anti-terrorist laws, including tools of surveillance, arrest, search and detention, which as time has passed, have been increasingly redirected towards peaceful political activity and domestic dissent.

The response by European authorities to increased social activism has been mixed but, overall, the region has seen a worrying tendency of state bodies to transform individuals exercising a fundamental democratic right - the right to protest - into a perceived threat that requires a forceful response. The interferences by member states in the right to protest have, at times, been direct: mass arrests, unlawful detentions and the illegal use of force. At other times they have been less direct: the criminalisation of protest movements, denials of permits, the imposition of administrative hurdles and the persecution and prosecution of protestors.

1. Social Media and Innovative Forms of Protest

The emergence of social media has resulted in a fundamental change to the ability of individuals and groups to organise assemblies. It has also resulted in a fundamental change in the reporting of assemblies and the states' response to them. Never before has it been so easy for individuals and groups to communicate with a large number of other individuals and groups. Almost instantaneously, activists can be mobilised as feeds from the protests inform sympathisers about what is happening. On Twitter, individuals can follow an occupation in the UK while communicating with protestors in Hungary. Making these links across state borders enables those engaging in protests not only to gain support from others but also to share advice on how best to avoid state repression.

Those engaging in, or observing, the freedom of assembly can now live-stream, to blogs and niche websites, exactly what is happening at any given demonstration. Mainstream news networks are no longer able to effectively control the narrative. This pressure has also resulted in mainstream networks increasingly, over recent years, reporting unedited protest coverage.

Social media has also made it easier for the authorities to monitor political activists and attempt to disrupt their activities. Human rights lawyer John Cooper QC commented, about the UK, that "people involved in public protest should use social media to their strengths, like getting their message across. But they should not use them for things like discussing tactics. [If they were to do that...] they might as well be having a tactical meeting with their opponents sitting in and listening."⁶ Political activists have been responding to these concerns. For example, former members of the UK Occupy movement, which set up a protest camp outside St Paul's Cathedral in London from October 2011 until February 2012, held a "cryptoparty", with the aim of arming those who want to carry out protests online with the necessary skills to maintain their anonymity.

An example of mass mobilisation facilitated through by social media in Europe is the 15M movement in Spain. The 15M movement emerged following a demonstration organised on 15 May 2011 which called for more participatory democracy and a movement away from the traditional bi-party system. It was started by a group who organised themselves via online social networks and who decided to camp out in Puerta del Sol Square in Madrid. This initial camp was very successful and the movement spread across Spain, giving rise to a series of rallies, protests and encampments in different squares, in as many as fifty-eight towns in the country.

The movement also spread across national borders. In late May 2011, multiple call-outs appeared in social media (especially Facebook) urging people to protest peacefully on 25 May 2011 or to occupy

⁶ See *The Independent*, 1 October 2012: <http://www.independent.co.uk/news/uk/crime/activists-warned-to-watch-what-they-say-as-social-media-monitoring-becomes-next-big-thing-in-law-enforcement-8191977.html>



public spaces like the 15M movement. In Greece for example, on 25 May 2011, in solidarity with the 15M movement, people protested in central squares in over 38 different cities. In Athens, after a rally had taken place, a group of protestors decided to remain in Syntagma Square overnight. This initial occupation turned into a long-term encampment that played a leading role in the collective mobilisations throughout the country. Occupy London also confirmed that its call for a mass march and occupation of land in central London was in solidarity with the 15M movement as well as with Occupy Wall Street.

In Bulgaria, in February 2013 more than one hundred thousand people took to the streets of Sofia calling for the end of poverty, unemployment, corruption and electricity price rises. The centre-right government of Boiko Borisov resigned and a government of the Bulgarian socialists came to power. On 14 June 2013, the new Parliament appointed Delyan Peevski as head of the State Agency for National Security. This appointment was not acceptable to those who had successfully brought down the former government, so hours after the decision was announced, thousands of people, called together via social media, demanded his resignation. Within a month, his appointment had been reversed.

The opportunities provided by social media have also encouraged and facilitated the increasingly creative approach to protests by political movements across Europe. No longer is it assumed that street demonstrations are necessarily the most effective method. For example, in Madrid in April 2012, the protest group Toma el Metro organised a simultaneous pulling of the emergency brakes on thirteen trains located on nine different lines of the city's underground. This was a protest against the 40% increase in the price of public transportation tickets over the last three years.

Also in Spain, in November 2012, the social movement Platform for those Affected by the Mortgage Crisis (PAM) which brings together people having difficulty paying their mortgages, or in the process of foreclosure, with those who support their cause, began a series of protest actions aimed directly at the politicians and majority party members. These actions, known as *escraches* (doorstep demonstrations) took place outside the offices of the Popular Party or near the homes of its politicians and called on the individuals being targeted to represent the interest of people in mortgage difficulties.

In December 2012, UK Uncut organised the simultaneous occupations of forty Starbucks coffee shops across the UK, converting them into creches for young children. They were protesting about the aggressive accounting measures that allowed Starbucks to pay minimal corporation tax in UK while the government complained that lack of public funds meant they had no option but to implement huge cuts to public services which were having a disproportionately negative impact on women. In response to the announcement about the action, Starbucks said they would overpay the tax they owed in the UK by £20 million for the next two years.

2. The Facilitation of Minorities' Right to Freedom of Assembly: The Case of Same-Sex Pride Parades

Pride parades have been a controversial issue in some central European countries and we include it here as an example of how minority rights interact with the right of assembly. Some European authorities in response to potential violent opposition to those advocating for lesbian, gay, bisexual, transgender and queer rights, have failed to protect and safeguard a minority's right of assembly.

In Poland, in 2005, the authorities prohibited a gay pride parade in Warsaw because of a missing traffic organisation plan. This decision triggered several critical court decisions by the Polish Constitutional Court and the European Court of Human Rights. Similarly in Hungary, the authorities banned the Budapest Pride in 2011 and 2012. The decision to ban the parade in 2011, because of the impossibility to reroute traffic, was struck down by the Hungarian Metropolitan Court, which reaffirmed the importance of the freedom of expression and the right of peaceful assembly. Despite this ruling, the police decided to ban the 2012 parade for the same reasons as before. The police said they had used their discretion to balance conflicting liberties, and decided that permitting the participants freedom of assembly would disproportionately restrict nonparticipant's freedom of movement. Again, this decision was successfully challenged in the

courts and the march went ahead. But the disregard by the Hungarian authorities of the 2011 Court decision is disturbing and suggests the tendency to restricting the right to peaceful assembly, rather than seek to safeguard it against violent opposition.⁷

In Serbia, the Belgrade Pride Parade was banned in 2011, 2012, and 2013 and de facto banned by a last minute change of location in 2009. While the parade took place in 2010, it was heavily protected by the police but escalated into violence. The Minister of Interior has therefore argued that the parade constitutes a high security risk and that even the most severe police escort would not be able to protect the participants. In 2013, in response to the ban, organisations spontaneously held a midnight march which was eventually protected by the police who rushed to the scene.⁸ A challenge to the bans in 2009, 2011, 2012 and 2013 has also been communicated to the government of Serbia by the European Court of Human Rights.⁹ It is a very welcome development that the 2014 Belgrade Pride was facilitated and protected by a strong police presence on 28 September 2014.

3. Restrictions Imposed on Assemblies in Practice

Some European governments have responded to this increased activism by introducing legislative changes limiting the right to assembly and/or using existing legislation, passed for other purposes, to restrict the right to protest.

In Greece, in 2013, decree number 120 amended decree number 141 of 1991 by introducing restrictions on the right to the freedom of public assembly. The amended decree reads that “in towns with a population of more than 100,000 inhabitants, taking up the whole roadway and the complete halt to vehicle movement by meetings which are particularly small in number compared to the importance of the precise route assuring the needs of motor traffic as well as the needs of the town’s social and economic life, are not permitted.”

In 2013, the Spanish government started a procedure to amend its Criminal Code and the Organic Law on the Protection of Public Safety. Both texts would have a direct impact on the exercise of the freedom of expression and assembly. The reform of the Criminal Code introduces several modifications concerning “crimes against public order”, and in particular considers aggravating circumstances if the crime is committed during a demonstration or rally, with penalties that could result in up to six years in prison. Similarly, the offences of “interrupting telecommunications or public transport in a way which alters their normal functioning” would no longer require damage to be caused.¹⁰ The new draft Organic Law on the Protection of Public Safety, which was sent to Congress in July, would impose if adopted heavy administrative penalties, divided into three types of breaches, for participating in spontaneous protests and for different types of behaviours during non-violent protests, such as insulting or disrespecting law enforcement officers as well as using of images of police. The bill considers as “very serious breaches”, punishable by a fine of up to €600.000, all meetings or demonstrations which have not been notified and which take place in or near what is considered “establishments that provide basic services to the community.” This includes nuclear power plants as well as ports, airports and other transport infrastructure. It also proposes that interrupting public events, as well as planning or participating in spontaneous protests in front of national and regional parliaments that cause important disruption to public order, should be treated as “serious breaches”, subject to fines up to €30.000.¹¹

7 See *Take Back the Streets: Repression and criminalization of protest around the world*, 2013, op. cit.

8 See Prof Dr Anne Peters and Dr Isabelle Ley, *Comparative Study: Freedom of Peaceful Assembly in Europe*, 2014: http://www.venice.coe.int/files/Assemblies_Report_12March2014.pdf

9 *Đorđević and others v Serbia* (Application no. 5591/10), communicated on 25 June 2014.

10 See Draft Law, Congress of the Deputies, 4 October 2013: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-66-1.PDF#page=1

11 See Draft Law, Congress of the Deputies, 25 July 2014: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-105-1.PDF#page=1

These proposals directly violate the Spanish authorities' obligation to protect and promote freedom of assembly. Public protests, by their very nature, often entail disruption to traffic and the ordinary use of public space. The law should not criminalise such disturbances when they occur in the context of a legitimate exercise of the rights to peaceful assembly and freedom of expression and have not involved acts of violence, damage to property or disproportionate harm to the human rights of others.

Some member states have responded to the increased activism with the introduction of blanket bans in certain areas of particular cities. In March 2014, the Greek government prohibited meetings in the centre of Athens, from 8 am to 7 pm, pushing them to the outskirts of the city.¹² In Hungary, "operational zones" imposed by the police are used to forbid demonstrations in unwanted areas such as the vicinity of the President's home.¹³ The Police Reform and Social Responsibility Act 2011, in the UK, imposes tight restrictions on peaceful protests in Parliament Square. It makes it a crime to engage in "prohibited activity" in the Square when a police or local authority officer directs someone not to do so. Directions to cease doing a prohibited activity, or not to start to do one, can last up to ninety days. The prohibited activities include operating amplified noise equipment without authorisation, erecting a tent or using any sleeping equipment to sleep overnight in the area.¹⁴ In Spain, in 2012, the Ministry of Interior issued a circular to all police stations instructing them not to allow gatherings less than three hundred metres from the dwellings of public officials and politicians.¹⁵

In the UK, anti-terrorist legislation has been used to curb the freedom of assembly. A search power created by Parliament to combat terrorism was applied to demonstrators protesting against an arms fair in London's Dockland. Section 44 of the Terrorism Act 2000 gave the police the power to search members of the public even where there was no cause to suspect that the individuals being searched were connected with terrorism or engaged in illegal acts.

In 2003, Kevin Gillan, a protestor, and Pennie Quinton, a journalist, attended a protest against the exhibition and conference, Defence Systems Equipment International, in London. They were searched by police under section 44. Both individuals challenged their searches as having nothing to do with terrorism and the European Court of Human Rights found in their favour.¹⁶ The stop and search powers included in the Terrorism Act have since been repealed and replaced by section 47A Terrorism Act 2000.¹⁷

This attempt to criminalise the activities of those engaged in demonstrations is not restricted to the UK. In Spain, for example, Plataforma En Pie (Stand Up Platform) called in September 2012 for a massive demonstration to be held in Madrid, in front of the Congress, under the slogan "Surround the Congress". Its purpose was to directly address the Congress' Deputies about perceived injustices. The 25 September ("25S") Coordinating Body published its call on social media sites and made clear that it intended the demonstration to be peaceful. Despite its peaceful nature, the police responded with force resulting in sixty people being injured and thirty-five individuals arrested.

When appearing before the Congress of Deputies' International Committee on 26 September 2012, the Director General of Police justified the police's action by the existence of movements and organisations that resort to violence, "as in the case of 25S", and argued that "a crime was committed against Parliament". The judge, however, was not convinced. He concluded he was unable to establish any infringements of the Criminal Code.¹⁸ He noted that the call to demonstrate had not made reference to any form of violent action, that there had been no disruption to the normal activities of the Chamber, and that in contrast with what the police report said, there was no prior intention by those engaged in the protest to violently enter Congress.¹⁹

12 See *Reuters*, 31 March 2014: <http://uk.reuters.com/article/2014/03/31/uk-greece-ecofin-protests-idUKBREA2U0XV20140331>

13 See Prof Dr Anne Peters and Dr Isabelle Ley, *Comparative Study: Freedom of Peaceful Assembly in Europe*, op. cit.

14 See *Protest around parliament*: <https://www.liberty-human-rights.org.uk/human-rights/free-speech-and-protest/protest/protest-around-parliament>

15 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

16 *Gillan and Quinton v. the United Kingdom*, no 4158/05, ECHR 2010: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#%22itemid%22:\[%22001-96585%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#%22itemid%22:[%22001-96585%22]})

17 See *Take Back the Streets: Repression and criminalization of protest around the world*, op. cit.

18 See *Take Back the Streets: Repression and criminalization of protest around the world*, op. cit.

19 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

The monitoring of, and collection of data about, protestors is also arguably part of this pattern of criminalising protestors. The anonymity of those engaging in demonstrations is being denied in many member states. The UK operates a “domestic extremists” database which includes many peaceful demonstrators. Belgium, Denmark, France and Hungary prohibit the concealment of faces in order to allow for easy identification of participants. Spain is proposing to introduce a similar ban. All such measures interfere with an individual’s right to free assembly and expression, especially since covering one’s face may be a form of symbolic expression, or indeed, may be motivated by legitimate concerns about individual safety.

On 6 March 2014, the UK’s Home Secretary Theresa May announced a public inquiry into the work of an undercover police unit called the Special Demonstration Squad (SDS) which was set up in the UK in 1968. Its aim was to infiltrate and survey political groups and obtain “accurate intelligence” about their members. The “radical” groups infiltrated by the SDS included anti-Vietnam protests, the campaign against apartheid in South Africa, the women-only peace camp at Greenham Common, Youth Against Racism, and campaigns which called for reform of the police. Sexual relationships between undercover officers and activists appear to have been used to glean intelligence. There is evidence to suggest that the information collected by the Police was shared with private companies, who used the information in their recruitment decisions.²⁰

The affair of the “five Roanne activists” is considered illustrative of the harassment to which activists can be subjected in France. The five Roanne union members were arrested for having tagged a wall during a demonstration to support retirement rights on 23 September 2010. They were later released but received a summons for a DNA test. They refused to submit to this test and were arrested again as a result. The Court of Roanne acquitted them in December 2013 but this decision was appealed by the Prosecutor. As a “successive offence” the refusal to submit to the DNA test was a sufficient reason to be sentenced. More recently, during anti same-sex marriage demonstrations in June 2013, a demonstrator was arrested and summoned to appear in court for refusing to have a DNA sample taken. He was sentenced to pay a fine of one thousand euros. The gathering of genetic information of detained protesters even when they are not charged, or are later condoned, is a common practice that is worryingly increasing in France.²¹

In a letter addressed to the Minister of Justice, several associations²² called for a modification of the national database based on the precedent set by the European Court of Human Rights on 18 April 2013²³, whereby the Court recalled that data must be pertinent and non-excessive in relation to the purpose for which it is recorded. Despite this, the current expansion of genetic filing practices entails a risk of stigmatising persons who committed no criminal offense by putting them in the same category as sexual delinquents.

4. The Excessive Use of Force and Detention in Policing Assemblies

There have, unfortunately, been many instances during last few years in which law enforcement officials have used excessive force or have otherwise ill-treated protesters, particularly when dispersing assemblies and protests. This has been the case even when the majority of those gathered have been peacefully exercising their right to assemble.

Demonstrations in France have been the scenes of increasingly violent confrontations between protestors and the police. On 22 February 2014, seventy people were hospitalised at a demonstration in Nantes. The assembly was protesting against the project to build an airport in the near-by location of Notre-Dame-des-Landes. Two of the individuals taken to the hospital were blinded by a “flaskball” while they were marching. In June 2013, a demonstration against same-sex marriage in Paris resulted

20 Rob Evans and Paul Lewis, *Undercover: The True Story of Britain’s Secret Police*, 2013.

21 See *Le Monde*, 19 June 2013: http://www.lemonde.fr/societe/article/2013/06/19/un-opposant-au-mariage-homosexuel-condamne-a-deux-mois-ferme_3433017_3224.html

22 Human Rights League, the French Judges’ Union, the French Lawyers’ Union, Creis Terminal and the Cecil.

23 European Court of Human Rights “*M. K. c France*” affair, 18 April 2013, n° 19522/09: [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-118597#{%22itemid%22:\[%22001-118597%22\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-118597#{%22itemid%22:[%22001-118597%22]})



in the intervention of law enforcements forces using tear gas on demonstrators. Four people were injured and several hundred arrested.

Amongst the material at the disposal of the riot squads in France is the “usual” arsenal of tear gas, clubs and stun grenades or flashbangs. However, a more recent generation of “non-lethal” or “less than lethal” incapacitating weapons have also been introduced. These include electroshock weapons, “flasball” and rubber bullet single shot launchers. Designed not to seriously wound or kill the target, these “non-lethal” weapons supposedly provide authorities with an intermediate solution between physical intervention and firearms. They aim to enable the police to remain at a safe distance from a violent mob or to neutralise a dangerous person. However, in practice, regular incidents²⁴ reveal they are a source of danger and can cause serious injuries to demonstrators.²⁵ Despite this, no modification of the French penal code has taken place since their introduction and no regulatory supervision is required to use them.

Several grave incidents have pushed the French Ombudsman to recommend that the use of these weapons be prohibited or more strictly controlled for the policing of demonstrations²⁶. Some examples include the cases of Virginie Barriel, a student, who was violently arrested in April 2005 in Lyon by three plainclothes policemen during a marching musical demonstration through the city, and a Taser electroshock weapon was used against her. In light of the circumstances, the proportionality of this act is disputable. In July 2009 in Montreuil, five persons including Joachim Gatti, a 34-year-old filmmaker, were shot at with flashball guns during a protest demonstration against the evacuation of squatters. Gatti was seriously wounded and lost sight in his right eye. In December 2013 in Grenoble, Quentin Charron, a professional 31-year-old fireman was seriously wounded by a flashball gun during a gathering of firemen and lost use of his eye. In February 2014 in Nantes, Quentin Torselli, a 29-year-old carpenter, and Damien T., a 25-year-old mason, were blinded after being shot at with flashball guns during an environmentalist demonstration against the construction of a new airport.

In Barcelona on 27 May 2011, police officers used batons and rubber bullets against demonstrators who peacefully occupied the Plaça Catalunya square. Those demonstrating did not appear to pose any apparent threat to law enforcement officials or the public. Indeed, the police deployed their personnel, without prior notification, against the 15M demonstrators, arguing the square needed to be temporarily evacuated “in the interests of sanitation”. The protestors sat down, trying to block the police vehicles and the municipal cleaning service from entering the area. But the police forced their way in with baton charges and smoke canisters. One hundred individuals were injured, twenty seven of whom were policeman; the rest were members of public.²⁷

Video footage, pictures, press reports and witness testimonies also point to the repeated use of an excessive use of force by the Greek police during the demonstrations organised against the austerity measures in May and June 2011 in Athens. On 11 May 2011, unofficial sources report that thirty protestors sought hospital treatment, including two who were seriously injured. Police sources report that fifteen of their officers were injured. Pictures published in the media and video footage corroborate the testimonies of many who were injured while attending these demonstrations, that riot police officers were aiming at

24 It is noteworthy that the European Court of Human Rights recently found a violation of Article 3 ECHR in the (non-protest) case of *Georgiev and Others v Bulgaria* (Application no. 51284/09, judgment of 30 September 2014), regarding the use of electroshock weapons. The Court noted (at para.73) that it was particularly unsatisfactory that the prosecuting authorities concluded, relying only on the statements of the police officers involved in the operation, that the applicants had disobeyed the police officers’ orders in a manner which required the use of physical force: “To make such an assumption runs contrary to the principle under Article 3 that, when the police confront an individual, recourse by them to physical force which had not been made strictly necessary by the individual’s own conduct is in principle an infringement of his or her rights.”

25 This is unsurprising when you consider the capabilities of this equipment. The *Brugger and Thomet* GL 06 40 x 46 single shot launcher, for example, is able to fire rubber bullets at individuals while “Taser” electroshock weapons deliver electrical shocks of several tens of thousands of volts.

26 Report dated 28 May 2013 on the use of non-lethal weapons by the French police and gendarmerie (Taser X26® electroshock gun, Flash-Ball superpro®, and 40 x 46 Brügger & Thomet GL-06 single-shot launcher).

27 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

individuals' heads and using the handle of their batons to hit them, and on occasions beat and kicked people lying on the ground who were posing no threat.²⁸

More recently, in June 2014, Greek cleaning workers reported that they had been beaten up and bruised by riot police after they tried to protest peacefully against mass redundancies in central Athens. The protestors, mostly women aged forty five to sixty had lost their jobs at the Ministry of Finance as a result of the austerity measures implemented by the Greek government.²⁹

As previously mentioned, in January 2012, several demonstrations took place in Bucharest, Romania, triggered by austerity measures and a reform proposal aiming at partially privatising the health care system, but then widened to include general discontent against government policies. Although the demonstrations were generally peaceful, some violent incidents were reported. There are several documented incidents of police officers using excessive force against peaceful demonstrators who were not offering any resistance. The Bucharest based human rights organisation, APADOR - Helsinki Committee, has documented several cases of abuses against individuals carried out by the police and concludes that some of the law enforcement officers' actions were arbitrary and disproportionate to the given situations.³⁰

In addition to the increased use of excessive force, some European countries have also seen a **rise in the use of kettling and arrest seemingly to detain individuals intending to, or taking part, in assemblies**. Typically, individuals are arrested and detained for a short period of time and then released without charge. These arrests not only prevent individuals from taking part in demonstrations but such practices have also a chilling effect on those who wish to engage in demonstrations in the region.

In 2009, in Germany, the public prosecution service announced that 955 of the 1,474 preliminary investigations initiated by police in relation to individuals who had taken part in demonstrations against the G8 summit held the year before, had been dropped for lack of evidence. Legal teams present at the protests described the high number of arrests and low conviction rate as a scandal that showed many arrests were unwarranted and violated the right to demonstrate.³¹

In the UK, a number of individuals who were arrested in 2012, prior to the royal wedding between Kate Middleton and Prince William, unsuccessfully challenged their "pre-emptive" arrests in the High Court in London. Fifteen protestors were arrested at various locations in the city, while going to attend a "Not the Royal Wedding" street party. The individuals were taken into custody and held until the royal couple had been officially married. They were then released without charge. The court did not consider such actions unlawful.³²

During the COP15 demonstration in Copenhagen in 2009, the Danish police preventively detained 1.900 persons. Many of those held subsequently filed court cases on the legality of their detentions. The High Court found in favour of the majority of the plaintiffs, whom it said had been subjected to illegal detention. It also held that the conditions during some of the interventions had been demeaning and in conflict with human rights, including freedom of expression, freedom of assembly, personal freedom and protection against demeaning treatment. In response, the Danish Institute of Human

28 See Amnesty International, 16 June 2011: <http://www.amnesty.org/en/for-media/press-releases/greece-urged-not-use-excessive-force-during-protests-2011-06-16>

29 See Amnesty International, 13 June 2014: <http://www.amnesty.org/en/news/protesting-cleaners-beaten-and-bruised-police-greece-impunity-persists-2014-06-13>

30 See Amnesty International, *Policing Demonstrations in the European Union*, 2012: <http://www.amnesty.org.uk/sites/default/files/eu-police.pdf>

31 See Statewatch Analysis, *Policing Protests in Switzerland, Germany and Italy*, 2008: <http://www.statewatch.org/analyses/no-68-eu-policing-protests.pdf>

32 See *Hicks & Others v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) and subsequently [2014] EWCA Civ 3; See *Guardian*, 18 July 2012: <http://www.theguardian.com/uk/2012/jul/18/royal-wedding-protesters-lose-case>

Rights has called for the Police Act regulations to be revised to limit the scope and duration of any preventative detention.³³

In France, the controversial practice of kettling was used by the police on 26 January 2011, in relation to a protest against a meeting at the Automobile Club of Paris. No dispersal order was issued, instead, seventy peaceful demonstrators were kettled by military riot police. They were then arrested, searched, detained in a police bus and transported to a police station before being released without charge. According to the police department, the peaceful demonstrators were arrested to “verify their identity”. But, according to the law, such arrest may only be authorised if the citizen refuses to disclose his identity upon request and according to witnesses and videos of the events, the demonstrators were not even asked for their identity before being arrested. Once arrested it is also reported that individuals were not advised of their rights to a phone call or to have the prosecutor informed of their detention.³⁴

Similarly on 26 May 2011, a demonstration was organised in the Place de la Rotonde to protest against the G8 meeting in Deauville and no dispersal order was issued. Instead the demonstrators were kettled by riot police and plain clothed police officers. Ninety five demonstrators were arrested, searched, detained in a police bus and transported to police stations before being released without charge. Again, it is reported that these individuals were not advised of their rights and did not receive the mandatory police report following release, which states the reasons for detention.³⁵

5. Accountability of Law Enforcement Forces

These examples of acts of violence and repression are compounded by the lack of accountability on the part of law enforcement agencies in cases of alleged abuses. Investigations into complaints against police officers and other authorities are not always thorough, impartial or effective. Sometimes, no investigation is initiated at all. Many European justice systems appear unwilling or unable to undertake the serious investigations necessary to hold powerful state actors accountable for their actions.

In Spain, 390 complaints were lodged about the excessive use of force in relation to the evacuation of the Placa Catalunya. The *Sindic de Greuges* (the Ombudsman in Catalunya) called upon the Autonomous Catalan Government to carry out an internal investigation into the disproportionate use of force and, where appropriate, to punish those responsible. Amnesty International also approached the Councillor of the Interior of the Autonomous Catalan Government, calling on him to conduct an investigation into the events. Amnesty received a response from the Councillor in which he recognised that there may have been problems with the way the police operation was implemented, and announced that he was going to order a detailed investigation in order to examine what happened and to avoid the repetition of mistakes.³⁶ Although the findings of the investigation conducted by the Catalan government were never made public, the *Sindic de Greuges* issued a resolution including general recommendations on the use of excessive force.³⁷

In April 2013, the 15M Legal Committee submitted a document to the Ministry of the Interior accompanied by photographs and video footage showing that police officers were not wearing their identity badges as required while policing demonstrations, and requesting that disciplinary proceedings be opened about this matter. In May 2013, the State Secretary for Security replied, with a brief letter, stating that disciplinary proceedings could not be opened because it was not possible to identify the officers concerned.³⁸

In Greece, following the anti-austerity demonstrations during May 2011, in Athens, several individuals filed complaints about the police’s use of force against them. For example, Yiannis Kafkas sustained near fatal head injuries after he was beaten by riot police. Yiannis said he was hit with one of the fire extinguishers that some of the riot police carried with them. He remained in hospital for twenty days, after emergency surgery, ten of which were in intensive care. In February 2012, nine months after a criminal investigation into the case was initiated, the police inquiry was completed and the findings submitted to the Prosecutor.

33 See *Human Rights in Denmark, Status 2013*: <http://www.humanrights.dk/publications/status-2013-human-rights-denmark>

34 See *European Court of Human Rights News*, 10 June 2011: <http://echrnews.wordpress.com/2011/10/06/freedompeacefulassembly/>

35 *Ibid.*

36 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

37 See http://www.sindic.cat/resolucions/Root/html/R_0314811.htm

38 See Amnesty International, *Spain: The Right to Protest under Threat*, op.cit

However, at the time of writing, as far as the researchers are aware, no further progress has been made with this case.³⁹

In France, to date, no police officer who has shot and wounded a demonstrator has been held criminally responsible for the charges pressed against him. In the case of Pierre Douillard, wounded in Nantes in 2007, the policeman in question, whose identity had been clearly established, was acquitted because he was obeying orders. In Montreuil, in the Joachim Gatti case, the National Committee on Security Ethics expressed concern over the “carelessness” and “serious professional negligence” and requested disciplinary sanctions.⁴⁰ After years of proceedings, 3 policemen will finally be referred to penal court for “deliberate and organized violence”, and the trial should take place by the end of 2014. This is an encouraging, however too isolated case of penal proceeding against police officers for excessive use of force against protesters.

In response to the lack of proper criminal accountability, some victims of excessive force by the police in France have now decided to seek civil accountability instead. Clement Alexandre, wounded by a “flasball” gun during the annual music festival in Paris in 2009 abandoned penal legal proceedings and decided to directly accuse the Chief of Police before an administrative court in October 2012. The proceedings established a firm link between his wound and the “flasball”.⁴¹

The ten year anniversary of the 2001 G8 summit in Italy saw Amnesty International release a statement condemning the impunity of those who committed human rights violations during the demonstrations in Genoa, calling it “an intolerable stain on Italy’s...record”. Amnesty wrote that there is a sizeable body of evidence which shows that protesters were ill-treated by law enforcement officers both during the street demonstrations and at the Armando Diaz school and the Bolzaneto temporary detention facility.⁴²

Amnesty provides examples of people being struck with batons, punched, kicked and hit with pieces of furniture and, as a result of these abuses, ending up with life-threatening conditions. However, as the crime of torture is not foreseen in Italian domestic legislation, officers who might have been charged with this offence have not been prosecuted. Moreover, the prosecution of other criminal offences with which officers were charged, were time-barred (due to prescription of these crimes, considering the very long proceedings), and none of those convicted were suspended from duty pending appeal.

Scores of other law enforcement officers believed to have participated in assaults could not be identified because their faces were hidden by masks, scarves or riot helmets and they wore no numbers or name tags. Amnesty concluded that “Italian authorities had failed to establish effective mechanisms to prevent police ill-treatment or to adopt concrete measures to ensure effective investigation, and where appropriate, prosecution, of all law enforcement agents involved in torture, ill-treatment, excessive or arbitrary use of force and other human rights violations” and called on this impunity to stop.

39 See Amnesty International, *Policing Demonstrations in the European Union*, op.cit

40 See *Le Figaro*, 10 March 2010: <http://www.lefigaro.fr/actualite-france/2010/03/10/01016-20100310ARTFIG00586-l-usage-du-flash-ball-doit-rester-exceptionnel.php>

41 See <http://faceauxarmesdelapolice.wordpress.com/>

42 See Amnesty International, *Italy: Impunity for Violations Committed on the Occasion of the 2001 Genoa G8 Summit an Intolerable Stain on Italy’s Human Rights Record*, 2011: <https://www.amnesty.org/fr/library/info/EUR30/013/2011/en>

Recommendations

The EMHRN calls on the governments of the European Union member States to take immediate action to:

1. Review domestic legislation to ensure any administrative or legal regulations that could restrict protest are demonstrably necessary and proportionate; carefully monitor the implementation of these laws and policies to ensure they are not being implemented in a discriminatory or unnecessarily restrictive manner;
2. Ensure that the authorities are always open to dialogue with the assembly organizers (both prior to and during gatherings) and where such dialogue occurs, that it is voluntary and its purpose is to better facilitate the right of peaceful assembly;
3. Put an end to arbitrary arrests during peaceful demonstrations and to the judicial and administrative harassment of citizens demanding their right to demonstrate peacefully;
4. Explicitly recognise that individuals who are exercising their right of peaceful assembly continue to receive protection, even when others within a crowd commit acts of violence.
5. Take all necessary measures to prevent the use of excessive force and other human rights violations by law enforcement officials during demonstrations, including the introduction of proper regulation regarding the use of “less lethal” weapons; train law enforcement authorities in the use of force and anti-riot weapons accordingly;
6. Ensure that prompt, thorough, impartial and effective investigations are carried out into allegations of the use of excessive force and other human rights violations by law enforcement officials, and that disciplinary and criminal proceedings are initiated where appropriate, those responsible are punished and victims are able to obtain redress and receive guarantees of non-repetition; to this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces where it does not exist;
7. Scrutinise, amend and initiate training programmes on the lawful use of force during demonstrations, including on respect for human rights.