



"Antiglobalization demonstration against the IMF summit,
Prague, Czech Republic, 26 September, 2000."
by Mat Jacob/Tendance Floue

THE EUROPEAN UNION

PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#). It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

Introduction

This introductory overview of freedom of assembly in the European Union seeks to highlight issues that have arisen in European jurisdictions which correspond with the challenges facing the Euro-Mediterranean countries examined in later chapters of this report. It is not possible here to analyse in detail the legal framework in each of the 28 member states of the European Union (EU), and no attempt is made to provide a comprehensive account of the laws (or their interpretation) in each EU country (though a more detailed analysis of the legal regulation of freedom of assembly in Spain and the United Kingdom follows this general overview).

By selecting recent examples from different European countries (of both good and bad practices), this chapter illustrates the variety of legal measures that have been employed either to protect or limit freedom of assembly. It is worth recalling that many states in Europe themselves faced the challenge of political transition now confronting several Mediterranean countries. Protests and demonstrations also played a critical and enabling role in these European transitions. Perhaps more significantly, though, the protection and facilitation of the right to peaceful assembly in Europe has been vital to the emergence over time of a more pluralistic and inclusive public sphere. While some protests inevitably dominate news headlines more than others,¹ it is the degree to which a country's legal framework facilitates low-level demonstrations on a day-to-day basis that provides a crucial measure of the health of its democracy. Too often, however, even within the EU, the right to peaceful assembly is regarded as a threat to political stability rather than its very lifeblood – an inconvenience to be controlled and managed, rather than a fundamental freedom to be protected and facilitated.²

In many ways the practices that serve to chill or otherwise undermine the effective enjoyment of the right to assemble are remarkably similar across Western, Central and Eastern Europe and the wider Euro-Mediterranean region.

1. General Legal Framework

All EU Member States have ratified the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). The European Union itself is in the final stages of acceding to the ECHR. These treaty obligations (as outlined in Chapter 1) serve as the primary benchmark against which to assess the level of protection afforded to the right to peacefully assemble.

1 Recent examples include demonstrations in Paris (between 24 March and 27 May 2013) concerning the legalization of same-sex marriage; protests in Stockholm (from 20-24 May 2013) relating to immigration policies and the fatal shooting by police of a Portuguese man; and the anti-corruption protests in Bulgaria which began in February 2013. More generally, throughout Europe (and beyond) there have been Occupy and Blockupy related mobilizations; May Day and other anti-austerity protests; far-right and radical-left demonstrations (and counter-demonstrations); and rallies relating to international summits.

2 See, for example, Explanatory Memorandum, PACE Doc.13258, *Popular protest and challenges to freedom of assembly, media and speech*, prepared by the Rapporteur (Mr Arcadio Diaz Tejera, Spain), at para.3. Available at: http://assembly.coe.int/ASP/Doc/XrefDocDetails_E.asp?FileID=19955.

In most Member States of the European Union, freedom of peaceful assembly is a constitutionally protected right. Such constitutional provisions often emphasize that only *peaceful* assembly is protected (by qualifying the exercise of the right as “unarmed” or “without weapons”). In order to limit the scope for governmental interference, some constitutions also expressly prohibit prior authorisation³ – or even prior notification⁴ – for *indoor* assemblies. Indeed, in some constitutions, prior authorization has also been expressly prohibited for *open-air* assemblies (though this still leaves open the possibility of enacting a notification scheme for such events).⁵ In other jurisdictions, the constitution mandates notification only for assemblies in particular locations (such as places of transit).⁶

In addition, while many constitutional texts still refer to the right of assembly only of “citizens”, this has had to be interpreted to extend to all people, in light of international human rights obligations.⁷ An amendment to the Italian constitution was recently proposed that would change the wording of Article 17 from “citizens” to “everyone” “... has the right to assemble peaceably and unarmed.”⁸

Furthermore, a number of constitutional provisions explicitly mandate Parliamentary bodies to legislate for the procedures, rules and limitations applicable to certain kinds of assembly (again, primarily open-air assemblies).⁹ Indeed, almost all EU Member States have enacted specific laws to govern the regulation of assemblies. Of the 28 EU Member States, only Ireland has no such law (despite the fact that the Constitution makes express provision for the possible passage of a legislative scheme). Moreover, the absence of a specific law in Ireland does not mean that the Irish authorities are powerless to regulate assemblies.¹⁰

Well-drafted legislation can offer enhanced protection for those seeking to peacefully assemble by limiting official discretion, establishing crucial safeguards (for example, protection for spontaneous demonstrations or expedited appeal mechanisms), and providing clarity regarding any procedures to be followed. Of-course, many well-drafted laws are undermined by the way in which they are implemented, and many European countries still retain poorly-drafted provisions which run counter to international human rights standards (for example, by imposing onerous bureaucratic responsibilities on assembly organisers, placing

3 Eg. Article 26 of the Belgian Constitution; Similarly, Article 43(3) of the Bulgarian Constitution.

4 Eg. Article 8 of the German Basic Law.

5 Eg. Article 79 of the Constitutional Act of Denmark (1953; Article 45(1) of the Portuguese Constitution; Article 28(2) of the Slovakian Constitution; Article 21(1) of the Spanish Constitution.

6 Eg. Article 21(2) of the Spanish Constitution: “*In the cases of meetings in places of public transit and of manifestations prior notification shall be given to the authorities*”.

7 In this regard, the UN Human Rights Committee, in General Comment 15 (“The Position of Aliens under the Covenant”) has stated that non-nationals must also “*receive the benefit of the right of peaceful assembly*”. Available at: <http://www1.umn.edu/humanrts/gencomm/hrcom15.htm>.

8 See, <http://www.camera.it/leg17/126?tab=2&leg=17&idDocumento=560&sede=&tipo>.

9 Eg. Article 12 of the Austrian Constitution; Article 43(2) of the Bulgarian Constitution; Article 9(2) of the Netherlands Constitution; Article 57 of the Polish Constitution; Article 28(2) of the Slovakian Constitution. See also Article 40(6)(ii) of the Irish Constitution (cited below).

10 See, for example, section 21 of the *Criminal Justice (Public Order) Act 1994*. Available at: <http://www.irishstatutebook.ie/1994/en/act/pub/0002/sec0021.html#sec21>.

blanket prohibitions on assemblies in certain locations, providing for excessive sanctions, or conferring far-reaching discretionary powers on state or municipal officials).

It is worth noting the recent judgment of the European Court of Human Rights in *Vyerentsov v Ukraine* (2013).¹¹ The applicant had been charged with holding a meeting “without permission of the City Council”. While Article 39 of the Ukrainian Constitution itself provided that the right to assemble was conditional on citizens “*notifying the executive authorities ... beforehand*”, there was no law on assemblies nor notification procedure in Ukraine. The Strasbourg Court held that the absence of any law meant that the regulation of assemblies in Ukraine lacked the requisite degree of “foreseeability” so as to be “prescribed by law”. The Court emphasized that this legislative lacuna created a “structural problem” requiring the urgent implementation of specific reforms to protect “*such a fundamental right as freedom of peaceful assembly*.”¹² **The court’s judgment is of particular relevance for countries undergoing political transition.**¹³

It is also noteworthy that reforms of assembly laws in EU countries have not necessarily been progressive or human rights compliant. For example, in a 2011 judgment, the Croatian Constitutional Court declared unconstitutional a number of amendments to the *Public Assembly Act* that were enacted in 2005.¹⁴ In 2012, Polish NGOs¹⁵ and both the OSCE Panel of Experts and the UN Special Rapporteur on the Rights to Freedom of Assembly and of Association expressed concern about proposed amendments to the *Assemblies Act* in Poland.¹⁶ Subsequent amendments to the law have been challenged before the Constitutional Tribunal by the Ombudsman, Solidarity trade union and the Law and Justice Party. At the time of writing, however, this judgement remains pending.

Such examples underscore the responsibility of Parliamentarians to ensure that laws regulating freedom of assembly serve to facilitate, rather than undermine, the essence of the right. The drafting of amendments to assembly laws should involve public consultation and the participation of civil society organisations. Any revisions adopted must be informed by international human rights standards.

11 App. no. 20372/11, judgment of 13 April 2013. While Ukraine is not an EU Member State, it is a member of the Council of Europe and has ratified the ECHR.

12 At para.95 relating to Ukraine’s obligations under Article 46 ECHR. See similarly *İzci v. Turkey* (App no. 42606/05, judgment of 23 July 2013) in relation to the “systemic” nature of Turkey’s failure to investigate the use of force by law enforcement officials during demonstrations.

13 At para.55. See also, UN Human Rights Comm. “*Concluding observations on the seventh periodic report of Ukraine*”, adopted by the Committee at its 108th session (8–26 July 2013), at para.21.

14 Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007). See further under “Restrictions” below.

15 See the *Newsletter* of the Polish Helsinki Foundation for Human Rights (30/2012) 18-25 July 2012.

16 See also, OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.45, para.113, available at: <http://www.osce.org/odihhr/97055>.

Laws regulating assemblies exist alongside other potentially relevant legal provisions (contained, for example, in Penal Codes and Codes of Administrative Offences, Road Traffic laws, general public order laws, laws enacted to address extremism and/or terrorism, laws relating to the conduct of elections, noise regulations, and laws governing police powers).

Legislation relating specifically to freedom of assembly tends to elaborate (at a minimum):

- ▶ **Definitions of different categories of assembly**, primarily for the purposes of determining:
 - ▶ what types of event need be notified to, or authorized by, the authorities;
 - ▶ what types of event the relevant authorities are empowered to restrict (which may, but need not necessarily, be coextensive with those required to be notified).¹⁷
- ▶ **The notification/authorization procedure and related timeframe(s)** (see further “Procedures” below);
- ▶ **The grounds for imposing restrictions and/or bans** (see further “Restrictions” below); and,
- ▶ **The sanctions that can be imposed for breaches of the law** (see further “Sanctions” below).

It is important for the statutory definitions to distinguish assemblies from other forms of expressive activity and from other non-expressive gatherings. Categorizing a gathering as an “assembly” might subject it to certain requirements (such as prior notification) but also offers enhanced constitutional protection. Not categorizing an event as an “assembly” means that its organizers are not burdened with any responsibilities attached to “assemblies”,¹⁸ but unless the event also somehow engages other human rights (such as freedom of expression) it might not be constitutionally protected.¹⁹ **National legislation should therefore define assemblies so as to draw as clear a boundary as is possible between those gatherings which require no regulation whatsoever (but which yet deserve constitutional protection), and those whose facilitation might be enhanced by subjecting them to some form of minimal regulatory scheme.**

¹⁷ See, for example, *Parades Commission has “no role” in majority of union flag protests*, BBC News, 26 February 2013. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-21581901>

¹⁸ For example, the European Court of Human Rights, in the case of *Tatár and Fáber v. Hungary* (App. nos. 26005/08 and 26160/08, judgment of 12 June 2012), held that the Hungarian government was wrong in its view that two individuals who hung dirty laundry around the outside of the Hungarian Parliament building in a symbolic protest action were taking part in an “assembly” which ought to have been notified. The court reasoned (at para.38) that “*the mere fact that an expression occurs in the public space does not necessarily turn such an event into an assembly*”, and found a violation the applicants’ right to freedom of expression (Article 10 ECHR).

¹⁹ For example, the German Federal Constitutional Court held that the Berlin “Love Parade” was neither an assembly nor expressive activity: freedom of assembly “*does not cover popular celebrations and entertainment events*” or a “*mass public party solely aimed at having fun*”. See, BVerfG, 1 BvQ 28/01 vom 12.7.2001. Summary (in English) available at: http://www.bverfg.de/entscheidungen/qk20010712_1bvq002801en.html.

2. Restrictions

The evidential basis for imposing restrictions on assemblies

The European Court of Human Rights has stressed that the reasons for restricting freedom of assembly must be “*relevant and sufficient*”.²⁰ In this light, “a *hypothetical* risk of public disorder” is not a legitimate basis for restricting peaceful assemblies.²¹ As illustrated below, a number of constitutional courts in Europe have similarly emphasized that purely precautionary – or indeed blanket – restrictions on assemblies cannot be justified unless there is compelling evidence relating to the particular assembly organizer and/or participants.

The grounds for imposing restrictions on an assembly

The grounds for restriction set out in the legislation in EU countries generally mirror the “legitimate aims” contained in Article 11(2) ECHR (national security or public safety, the prevention of disorder or crime, and the protection of health, morals, or the rights and freedoms of others). In some EU countries however, legislation introduces additional grounds for imposing restrictions, or gives undue prominence to certain countervailing interests (such as the free flow of traffic, the undisturbed working of State institutions, or the integrity of electoral processes).

The following examples highlight some of the most typical – and problematic – arguments used to justify restrictions imposed on assemblies:

► **Restrictions to prevent the possible disruption of traffic.** Traffic disruption has often been cited in EU countries as a basis for restricting assemblies. In this regard, for example, the Austrian Constitutional Court emphasized that a spontaneously organized assembly had had a minimal impact on motorists who waited only a short time, and pedestrians were able to cross to the opposite side of the street.²² Similarly, a decision of the Constitutional Court of the Czech Republic held that the authorities, who argued that an assembly would significantly impair the flow of traffic, had failed to substantiate this claim.²³ The Spanish Constitutional Court has emphasized that “in a democratic society urban space is not only a field of movement, but also a space for participation”.²⁴

► **Restrictions to protect the undisturbed operation of Parliament or other State institutions.** Such provisions are notoriously prone to abuse, in part, because the notion of “hindering” is left undefined, but more fundamentally, because parliamentarians or other officials

20 Eg. *Makhmudov v. Russia* (App. no. 35082/04, judgment of 26 July 2007) at para.65.

21 *Disk and Kesk v Turkey* (App. No. 38676/08, judgment of 27 November 2012), concurring opinion of Judge Sajó.

22 See, App. no. 19528, B877/10, 06.10.2011, available at: http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00.

23 Constitutional Court of the Czech Republic, 1 As 30/2009 – 70, judgment of 15 April 2009, also emphasizing that the burden of proof lies upon the relevant authority.

24 Spanish Constitutional Court, judgment STC 193/2011, of 12 December, 2011.

will often be the intended audience of an assembly. Assemblies in the vicinity of such buildings *should* therefore ordinarily be facilitated within “sight and sound” of these institutions. The Croatian Constitutional Court, to cite just one example, has issued such a judgment.²⁵

► **Blanket legislative prohibitions on assemblies at particular times and/or places** (such as in the vicinity of the Presidential palace, military bases, hospitals, schools, prisons, transport hubs, memorials or court houses etc).²⁶ While in certain cases there *may* be legitimate reasons to restrict a particular assembly, the blanket prohibition in law precludes any assessment of the individual facts of each case. Courts, however, have sometimes upheld these restrictions where there is a demonstrable public interest (such as national security) at stake.²⁷

► **Restrictions during election periods.** The Spanish Constitutional Court has held that restrictions during election periods, putatively for the purpose of protecting the integrity of the electoral process, can only be justified in relation to assemblies which seek, as their main purpose, to attract votes. The Court noted that to hold otherwise would have resulted in the “*absurd*” conclusion that all demonstrations – indeed the expression of any message that might indirectly or subliminally influence the choice of voters – should be banned during election campaigns.²⁸

► **Restrictions based on the content of an assembly, or public opposition to it.** The Austrian Constitutional Court has noted that “*mere disapproval*” of an assembly or “*complaints and concerns from passersby*” are not, of themselves, a suitable basis for intervening in freedom of assembly since this would harm the interests of pluralism and “*create a gateway for the dictatorship of the majority over the minority*”.²⁹ More recently, see also the Lithuanian Supreme Administrative Court’s overturning of the Vilnius municipality’s prohibition of the Baltic Pride parade in July 2013.³⁰ Interestingly too, the Constitutional Court of the Czech Republic held that just because a person might belong to an “*extremist*” group, or have manifested “*extremist*” views in the past, that was not of itself a reason to restrict an

25 See, Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007), and see para.30.1.

26 Eg. Article 5 and Article 7(2) of the Bulgarian Law on Gatherings, Meetings and Manifestations, 1990 (amended 1998); Article 6 of the Slovenian Act on Public Assembly, 2002. See further the UK chapter for discussion of restrictions on assemblies in Parliament Square.

27 Eg. The Croatian Constitutional Court accepted that the enhanced security protection of the presidents or heads of foreign states or governments fell within the aims of “national security” (construed narrowly) and “preventing and combatting terrorism”, thereby justifying this restriction. Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007), see para.31.

28 Judgments of the Spanish Constitutional Court: STC 170/2008, of December 15, 2008 and STC 38/2009, of February 9, 2009.

29 App. no. 19528, B877/10, 06.10.2011 (unofficial translation). Available at: http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00.

30 “The Court ruled that restrictions on marches “For equality” are not necessary in a democratic society.” Press statement of the court (25 July 2013) available at: <http://www.lvai.lt/en/news/the-court-ruled-zeya.html>.

assembly which he/she had organized.³¹ The Court argued that it “cannot be a priori excluded that they intend to use their rights within legal limits.”³²

► **Restrictions relating to Occupations, and Assemblies on Privately Owned Property.**

Given the increasing privatization of public space in many European cities, and also that many groups seek to protest against the practices of businesses or corporations, the issue of protest on privately owned property has gained increased prominence. Most courts in Europe that have had to address this question have generally held that freedom of peaceful assembly does not protect indefinite occupations of either public or privately-owned property. However, two issues arise – the *duration* of the assembly and the use of *privately owned land*. Four examples serve to give a flavour of how the authorities in Europe have responded to such issues:

The duration of an assembly

It is widely accepted that assemblies are, by definition, “temporary” – thus the right to freedom of peaceful assembly does not protect *permanent* encampments.³³ Permanent encampments aside, courts have strongly suggested that, even if disruptive, efforts should still be made to facilitate peaceful assemblies for a reasonable period of time. To give just one example, the European Court of Justice held that allowing a demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours was *not* a disproportionate restriction on the free movement of goods.³⁴

Assemblies on privately owned property

- In a case involving the Occupy London encampment on land surrounding St. Paul’s Cathedral in London (owned principally by the City of London Corporation), the judge held that “*the defendants have no arguable right to occupy, control or take possession of highway land from the City as highway authority.*” Moreover, “*to impose on the highway a substantial encampment of tents is ... inimical to the statutory scheme.*”³⁵
- In March 2003, a peaceful protest in Frankfurt airport was terminated by the airport authorities. The protesters sought to challenge the airport regulations on demonstrations, but the Federal Constitutional Court emphasized that “freedom of assembly does not ...

31 Constitutional Court of the Czech Republic 8 As 51/2007-67, judgment of 5 November 2007, overturning the ban on an assembly organized by someone with alleged links to far-right organizations.

32 *Ibid.*, citing the decision of the German Constitutional Court on 18 August 2000, 1 BVQ 23/00, www.bverfg.de.

33 See, judgment of the Hungarian Constitutional Court, Decision 75/2008, (V.29.) AB. Available at: <http://www.mkab.hu/>. See also, judgment of the Spanish Constitutional Court (concerning repeated daily demonstrations), STC 284/2005 of 7 November 2005 (LC 6).

34 *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (European Court of Justice, Case C-112/00, ECR I-5659, 2003).

35 See, *City of London v Samede & Others* [2012] EWHC 34 (QB) (18 January 2012) at paras.121-123; see also *The Mayor and Burgesses of the London Borough of Islington v Owen Kensley Jones, Arthur Melliush, Persons Unknown* [2012] EWHC 1537 (QB).

provide them with a right of access to any location. In particular, it does not grant citizens a right of access to locations which are not generally accessible to the public or which according to the external circumstances are available to the general public only for specific purposes.”³⁶

- By way of contrast, the Amsterdam District Court in the case of *Shell Netherlands v Greenpeace*³⁷ permitted protests to be held on privately owned property (garage forecourts) even where these disrupted the commercial activity of the company (by blocking access to the petrol pumps). The Court noted that “[a] company such as Shell, which performs or wishes to perform activities that are controversial in society ... can and must expect that action will be taken to try to persuade it to change its views.” The court imposed limitations on the duration of the protest actions and other conditions, and held that Greenpeace would be liable to pay a significant financial penalty should future protest actions breach these conditions.

Preventive interventions including “kettling”, border controls and “emergency laws”

Concerns relating to the evidential basis of restrictions are especially acute when the authorities take preventive measures. Here, the risk of sweeping and speculative interventions is heightened. Preventive actions by the police have been the subject of litigation in many EU countries.³⁸ The following examples are merely illustrative:

- **“Kettling” and containment:** “Kettling” is a term used to describe the containment of protesters (and potentially also others in the vicinity), without arrest, by way of encircling them with a police cordon. In a heavily criticized judgment of the European Court of Human Rights in *Austin v UK* (2012), the police “kettling” of a crowd (and a number of bystanders) was held not to constitute a deprivation of liberty under Article 5 of ECHR³⁹. Nonetheless, such measures could only be permissible where violence is taking place or is reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective. In a subsequent UK case – *Mengesha v Commissioner of the Police of the Metropolis* (2013)⁴⁰ – the UK High Court held that “kettling” is not permitted as a means

36 BVerfG, 1 BvR 699/06 of 22.2.2011, para.39. Available at: http://www.bverfg.de/en/decisions/rs20110222_1bvr069906en.html.

37 Case number: 525686/KG ZA 12-1250. For a summary (in English) see, *Dutch court rejects Shell protest ban* (5 October 2012), available at: <http://www.bbc.co.uk/news/world-europe-19853007>.

38 Eg. *Schwabe & MG v Germany* (App. nos. 8080/08 and 8577/08, judgment of 1 December 2011). The European Court of Human Rights held that detaining protesters in advance of the G8 summit in Heiligendamm in June 2007, violated their right to freedom of assembly. See also the policing strategy to prevent protests against the “Royal wedding” in *Hicks, “M”, Pearce and Middleton v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1947.rtf>. There have also been examples of “preventive arrests” being used in Belgium and the Netherlands. See, Kees Hudig (Statewatch) *The growing use of preventative arrests*, at p.2. Available at: <http://www.statewatch.org/analyses/no-121-preventative-arrests.pdf>.

39 *Austin and others v. the United Kingdom* (App. nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012)

40 [2013] EWHC 1695 (Admin) at para.12.

of obtaining the identification of those contained. Similar practices have also been reported in France, for example.⁴¹

► **Restrictions imposed at border controls** have sometimes been strengthened specifically in order to prevent protesters from another country attending a demonstration. For example, in advance of a notified demonstration in Bayonne in France (supporting the rights of imprisoned Basque prisoners), the prefect announced the reintroduction of controls at the Franco-Spanish border for 24 hours on 11 March 2000 (relying on Article 2(1) of the 1990 Convention implementing the Schengen Agreement). Thirty-four buses and cars carrying people wishing to travel to the event (which otherwise took place peacefully) were stopped at the border by the police.⁴² Such measures have commonly been relied upon before and during international summit meetings.⁴³

► **Restrictions imposed under emergency laws.** Emergency measures have also been used in the context of international summit meetings. In Genoa, Italy, for example, the Government issued a Special Law No. 149 of 8 June 2000 authorizing (amongst other things) the prefect of Genoa to use armed forces to safeguard public order and security during the G8 summit.⁴⁴ There have also been worrying reports of reliance on draconian exceptional measures to regulate controversial assemblies in other European countries. In the Netherlands for instance, mayors have the right to declare a “local state of emergency” through the General Local Regulation in the case of a threat of a disturbance to the public order. This is often used when far-right organisations plan a demonstration in a town and anti-fascists move to counter it. All demonstrations are then banned in a part of the town.⁴⁵

3. Procedures

As noted above, some forms of assembly can proceed without any form of prior regulation, while others must either be notified to the authorities⁴⁶ or obtain express authorization in advance.⁴⁷ Often, stationary assemblies with less than a specified number of participants are not required to be notified at all,⁴⁸ and assemblies which will not affect traffic in any way may have a shorter

41 See, *Does France respects the right of freedom of peaceful assembly for all citizens in Paris in 2011*, available at: <https://echrnews.wordpress.com/tag/discrimination/>

42 *Gurekin and Others v France* (App. no. 9266/04, decision of 6 June 2006 – inadmissible).

43 See, for example, <http://www.statewatch.org/news/2013/feb/freedom-of-assembly-briefing.pdf> documenting similar measures before and during the G8 summits in Germany (2007) and Italy (2009), during the COP15 Conference in Denmark in 2009, and during the NATO summit in Portugal in November 2010.

44 See, *Bigliuzzi and Others v Italy* (App. No. 29631/06, decision of 16 December 2008 – inadmissible). The creation of red, yellow and white zones in Genoa in July 2001– with no assemblies permitted in either the red or yellow zones – was found not to be a disproportionate interference with the applicants’ right to assemble, or with their right to freedom of movement under Article 2 of Protocol 4, primarily because the court regarded the authorities’ fear of violence as being well-founded.

45 See, Kees Hudig (Statewatch) *The growing use of preventative arrests*, at p.2. Available at: <http://www.statewatch.org/analyses/no-121-preventative-arrests.pdf>.

46 A notification system presumes that the assembly *can* proceed unless the authorities impose restrictions on specified legitimate grounds.

47 An authorization system presumes that the assembly *cannot* proceed unless express permission is obtained.

48 In Poland, for example, notification is required for all assemblies of 15 or more people (s.7 Law on Assemblies 1990); In Malta, a “demonstration” is defined under s.2 of the Public Meetings Ordinance, 1931 as “any assembly or gathering of more than 20 persons ...”.

notification timeframe. Sometimes a lengthier notice requirement exists for processions and moving assemblies than for stationary gatherings.

Laws in some European countries also exempt particular categories of assembly from the notification (or authorization) process altogether eg. sports competitions, funeral ceremonies, or traditional, cultural or religious events.

The length of notification required varies greatly across the European Union. For example, it is 6 hours for public “meetings” in Finland (and 5 days for public “events”), 48 hours in Bulgaria and in Germany, 3 days in Poland, Hungary and Latvia, and 7 days in Estonia.⁴⁹ Laws should (and many already do) make express provision for spontaneous assemblies – those for which timely notification is not possible because they are in response to an event which could not reasonably have been anticipated.⁵⁰

Some laws also impose requirements relating to the **organisation of assemblies** (such as that there be an organizing committee of three or more persons), but such requirements have been criticized by the UN Special Rapporteur of the rights to Freedom of Peaceful Assembly and Association.⁵¹ Other laws also require a degree of advance co-ordination with the authorities in certain circumstances.⁵² Indeed, despite the fact that Ireland has no notification or authorization requirement for any form of assembly (as mentioned above), the police in practice encourage assembly organizers to liaise with them in advance.⁵³

Any such **liaison mechanism** should never be used as a way to compel the organiser to “agree” to restrictive conditions.⁵⁴ It is noteworthy that there has been a shift within some European police services⁵⁵ towards proactive engagement with protesters (or, in some cases, the strategic negotiation of protest events). Where such initiatives seek to facilitate peaceful assembly, and where engagement with the authorities is entirely voluntary, they can potentially assist in the facilitation of peaceful protest. Nonetheless, such practices may also be problematic if they are used by police as a means of gathering intelligence on protest groups, if the engagement of protesters is not voluntary, or if restrictions are imposed primarily as a result of the refusal of an assembly organiser to engage with the authorities.

49 See, Neil Jarman and Michael Hamilton, “Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly”, 1(2) *Journal of Human Rights Practice* 208-235, at 218 (2009).

50 Eg. Section 6(2)(b) and Section 7(2)(b) of the Public Processions (Northern Ireland) Act 1998; For an alternative (though potentially more restrictive) formulation, see for example, section 14 of the Assembly Act, 1999 in Finland. See further, *Bukta v Hungary* (App. no. 25691/04, judgment of 17 July 2007).

51 UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 2nd Annual Report (A/HRC/23/39) at paras.51-57. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/39.

52 Eg. Article 10(3) of the Lithuanian Law On Meetings, Processions and Pickets, 1997 (as amended)

53 See Irish Council for Civil Liberties, *Know Your Rights: Criminal Justice & Garda Powers* (2010) at p.25. Available at: <http://www.iccl.ie/know-your-rights---criminal-justice.html>.

54 See, OSCE-ODIHR – Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (2nd ed., 2010) at para.103.

55 For example, the Police Liaison officers in England and Wales. See chapter on the United Kingdom.

Often, **simultaneous assemblies** are regulated by way of a “first come, first served” principle,⁵⁶ which should apply *only* if the location in question is not capable of accommodating both events simultaneously. A provision which demands that the organiser of the second notified assembly *automatically* changes the proposed time and/or venue (without first considering the possibility of mutual accommodation) constitutes a disproportionate interference. Where two or more simultaneous assemblies have been notified, often a flexible solution is sought through negotiation.⁵⁷ Indeed, on occasion such negotiation (between an assembly organiser and the authorities) might be ordered to take place by the courts.

Across Europe, **judicial review** is commonly available as a means of challenging administrative and police decisions. However, in order to constitute an “effective remedy” (under Article 13 ECHR), an expedited procedure should be available whereby the review of any ban or restriction can be completed prior to the planned date of the assembly.⁵⁸ Such appeal possibilities should also be available following negotiations between an assembly organiser and the authorities, where any *de facto* restrictions are not actually “agreed” by all parties involved.⁵⁹

4. Protection

Monitoring freedom of peaceful assembly

In many European countries, human rights defenders and national NGOs perform a vital task by monitoring the State’s performance of its obligation to protect the right to freedom of peaceful assembly. So too can Ombudsman offices or National Human Rights Institutions. International NGOs and regional organizations can also play an important role in monitoring and highlighting abuses where these occur. Of particular relevance for this report is an information request, submitted by *Access Info Europe*, to the authorities in 41 countries seeking details of the use of public order equipment (including rubber bullets, batons and water cannons), evaluation reports on the policing of protests, and information regarding police training.⁶⁰

56 Eg. Article 10(1) of the *Assembly Act* in Finland, 1999.

57 See eg., OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.45, para.112, available at: <http://www.osce.org/odihr/97055>.

58 Eg. *Baczowski v. Poland* (App.no. 1543/06, Judgment of 3 May 2007). See further, A/HRC/23/29/Add.2, Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association: Observations on communications transmitted to Governments and replies received, at p.45.

59 See, OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.38, para.90, available at: <http://www.osce.org/odihr/97055>.

60 See, <http://www.access-info.org/en/human-rights/378-policing-protests>.

Constitutional review

The law in some countries expressly enshrines the principle that the authorities have a positive obligation to protect and facilitate the right to freedom of peaceful assembly.⁶¹ Nonetheless, as the preceding text clearly demonstrates, it has all too frequently fallen to Constitutional Courts in European countries to clarify the scope of the right and to curb some of the most egregious interferences with it. In doing so, their judgments, informed by the jurisprudence of the European Court of Human Rights, have often emphasized the high level of protection that the respective State must provide to those seeking to enjoy their constitutional freedom. **Independent constitutional review (with a right of individual petition) can thus be of critical importance to the full realization of a constitutional right to freedom of peaceful assembly.**

Regulation of the use of force by law enforcement officers

In some European countries, laws have been enacted to govern the use of firearms and other coercive measures by police. Such laws rarely prescribe in any detail the requirements regarding specific weapons or tactics. Nor do they tend to place any significant constraints on their use beyond established principles of necessity and proportionality.⁶²

In Poland, the Constitutional Tribunal held that the regulation of the use of force by government-issued regulations was unconstitutional, and that such matters must instead be regulated by statute.⁶³ In June 2013, a new law on the use of direct coercive measures and firearms was passed,⁶⁴ however it imposes few constraints on the use of force and allows for a wide range of weapons– including tear gas, chemical incapacitating agents, water cannon, and truncheons to be deployed for the prevention of disorder or public safety.

Similar recommendations were made by a special Commission of Inquiry established in Hungary in the aftermath of violent clashes between police and protesters in 2006.⁶⁵

61 Eg. Section 4 of the Finland Assembly Act, 1999 for example, reads: “*Duty of protection and promotion: The public authorities shall promote the exercise of the freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities in the arrangement of public meetings.*” Available at: <http://legislationline.org/topics/country/32/topic/15>.

62 Eg. Article 23 of the Lithuanian Law on Police Activities, 2000: Coercive measures may only be used “*after all possible measures of persuasion or other measures have been used with no effect.*” Available at: <http://legislationline.org/topics/country/17/topic/15>.

63 See, 20/3/A/2010, Judgment of 10 March 2010, Ref. No. U 5/07. Available at: http://www.trybunal.gov.pl/eng/summaries/documents/U_05_07_EN.pdf.

64 See, http://emn.gov.pl/porta1/ese/719/10671/New_rules_of_using_coercive_measures_and_firearms_against_foreigners.html.

65 *Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September – October 2006: Summary of Conclusions and Recommendations* (Budapest: 2 February, 2007). Available at: http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf.

5. Sanctions

Any penalties imposed for violations occurring in the context of assemblies must themselves be proportionate. This is perhaps especially important in relation to criminal proceedings. As the Austrian Constitutional Court has highlighted (following the prosecution of protesters taking part in a spontaneous demonstration in Vienna), the severity of criminal law sanctions is not only in the amount of the penalty but also in their negative long-term consequences – including their implications for the careers and professional practice of those convicted.⁶⁶

One particular issue in European countries– the **wearing of masks in public assemblies** – has given rise to the enactment of a wide range of legislatively-backed sanctions, such that it is now relatively common for laws either to prohibit participants in assemblies from concealing their identity,⁶⁷ or to give law enforcement officers powers to order the removal of disguises (whereupon refusal to do so constitutes an offence).⁶⁸ Such provisions, however, often fail to take sufficient account of the potential for masks to be worn for symbolic and expressive purposes. Consequently, any such requirements should be narrowly construed so as only to require the removal of masks if there is clear evidence that a particular individual is likely to engage in imminent violence.

In Poland – following the introduction of a prohibition on demonstration participants from disguising themselves (in the *Assemblies and Road Traffic Amendment Act 2004*) – the Polish Constitutional Tribunal held that “*the limitation of the freedom of assembly consisting in restricting the possibility to participate in assemblies in an anonymous manner is unnecessary, given that the Police Act 1990 provides the police with adequate possibilities to intervene in the course of an assembly where there exists a threat to its peaceful nature, including the possibility to determine the identity of persons participating in the assembly.*”⁶⁹

The same judgment of the Polish Constitutional Tribunal also usefully addressed another “sanctions” related issue – one that has given rise to human rights concerns in several European countries – namely, the **liability of the assembly organiser for the acts of assembly participants**. A provision in the Polish law rendered the organiser liable if they failed to prevent other participants from causing damage during the course of an assembly or “directly following its dissolution.” The Constitutional Tribunal held that such strict liability would only serve to discourage people from organising assemblies by imposing on them duties that are impossible to fulfil. As such, this provision was held to violate the right to freedom of assembly as protected by Article 57 of the Constitution of Poland.

66 Unofficial translation – Austrian Constitutional Court, app. no. 19528, B877/10, 06.10.2011. Available at http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00.

67 For example, section 6(3) of the Bulgarian *Law on Gatherings, Meetings and Manifestations*, or section 9 of the *Austrian Assembly Act*, 1953.

68 Art. R. 645-14 of the French Penal Code (available at: <http://www.legifrance.gouv.fr/>).

69 Polish Constitutional Tribunal, judgment of 10th November 2004, Kp 1/04, Summary (in English) available at: http://www.trybunal.gov.pl/eng/summaries/documents/Kp_1_04_GB.pdf.