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PROTESTS AT EDUCATIONAL INSTITUTIONS

The vast majority of protests take place on streets or squares. Increasingly, however, students are protesting at universities or colleges, whether on campus or inside the buildings. Are such protests allowed? If so, what limitations are in place? We explain below.

1. FUNDAMENTAL PRINCIPLES OF THE RIGHT TO PROTEST

Protesting is a human right enshrined in various human rights treaties that establish the right to freedom of assembly. They include the International Covenant on Civil and Political Rights (ICCPR, Article 21) and the European Convention on Human Rights (ECHR, Article 11). Additionally, it is enshrined in the Constitution of the Netherlands (Article 9).

The right to protest protects many different forms of protests. As long as they are peaceful, these rights cover not only protest marches, but also blockades, sit-ins, occupations and flashmobs for example.

These different types of protest share three defining characteristics – they are (1) an expression of opinion (2) by two or more individuals (3) in the public space.

The right to protest protects all forms of peaceful collective expression in the public space. This applies to organized and spontaneous protests, and irrespective of whether a notification has been done.

PEACEFULNESS

According to international law, only “**peaceful**” assemblies are protected. This does not mean, however that protests are not allowed to be disturbing, cause nuisance or inconvenience, or even be disruptive. The content of the protest is not relevant.

This means that students are free to express criticism of university policy.

A protest is considered peaceful as long as there is **no violence against persons or property**. The term “peaceful” should be interpreted very broadly: minimal damage that can be quickly rectified does not mean that a protest is no longer peaceful. In a recent judgment in a case against the Netherlands, the European Court of Human Rights reiterated what the term peaceful entails.¹ A crucial factor in this context is the **intentions** of the protesters; a protest may be regarded as peaceful if the intentions of the protesters are peaceful – even if there is a credible risk that the protest will lead to disorder. Similarly, **violent behaviour by an individual or small group** does not deprive the protest as a whole of its protection, and the protest’s organizers (or other participants) **cannot be held responsible** for the behaviour of individual participants in the protest.

Violation of a law or regulation does not in itself determine whether a protest is peaceful, and **blockades and other disruptive actions** may also fall within the scope of the right to freedom of peaceful assembly. Likewise, the Court pointed out that we *should always assume* that protesters have peaceful intentions (**presumption of peacefulness**).

RIGHT TO PROTEST NOT LIMITLESS

Even a peaceful protest, however, may, under certain strict conditions, be dispersed. **The right to freedom of peaceful assembly is not without limits.** Protesters must refrain from incitement of hatred, discrimination or violence. Likewise, when the expression of the opinion becomes secondary and the main goal seems to be to intimidate, disrupt or impose an opinion on others, the protest may no longer enjoy the protection of the right to freedom of peaceful assembly.

¹ European Court of Human Rights (ECHR), *Laurijsen and Others v. The Netherlands*, application 56896/17, 21 November 2023, par. 47 and following, <https://hudoc.echr.coe.int/eng?i=001-228986>

Any restriction on the right to protest – including restrictions regarding a particular time and location of the protest – is subject to strict criteria.² Mayors may only curtail a protest (and then only in the least invasive way possible) when this is strictly necessary to protect one of the following legitimate aims: to safeguard national or public security; to prevent disorder or crime; or to protect health or the rights and freedoms of others. In other words, any intervention in a protest (including, in the most extreme cases, dispersal) must at all times be **necessary and proportional**.

No two demonstrations are identical, and any decisions about whether restrictions are necessary must be assessed for each protest individually.

SUMMARIZING

The first question to be answered in all cases is whether a particular protest falls within the scope of the right to protest. Peacefulness is one of the most important criteria in this context. If the protest is peaceful, any and all interventions must serve one of the above-named legitimate aims. And, *each intervention* must fulfil the necessity and proportionality test.

2. NON-PUBLIC PLACES: UNIVERSITY, COLLEGE OR CAMPUS

A defining characteristic of any protest is that it takes place in public. Many protests take place outdoors, on streets or squares. The right to peaceful assembly however also encompasses the right of protesters to choose the time, location and form of their protest.³ Protesters also have the right to be *within sight and sound* of the target of their protest.⁴ This means that protesting is, in principle, also permitted at publicly accessible areas in government buildings, universities, or enterprises.⁵

A mayor does not have the authority to ban a protest in advance when planned for a non-public space (as defined by the Dutch Public Assemblies Act, WOM), such as a university site. Mayors can at most – and only when strictly necessary – order protesters to terminate their protest immediately and to disperse.⁶

Of great importance in this context is academic freedom, which must be enjoyed not only by all those other students potentially affected by the protest, but certainly also by those students expressing themselves on a particular topic through the medium of protest.

Freedom of expression and the right to protest are of immeasurable importance: they form an outlet for discontent and peaceful dissent.

Amnesty therefore stresses the importance of taking students seriously, and to engage in discussions with them. Presume their intentions are peaceful, and provide them with as much space as possible for their voices to be heard.

SPECIFIC FORMS OF PROTEST SUCH AS BLOCKADES, OCCUPATIONS AND SIT-INS

Protests at universities and colleges can take many forms. As mentioned above, each protest must be assessed based on the specific circumstances of the protest. Thus, a protest by a limited number of people outdoors on a campus or indoors in the main hall of a university building, for example, should be approached differently than a protest by large groups of students occupying a lecture hall or boardroom, or noisily disturbing lectures.

The fact that protesters have the right to choose the location of their protest does not mean they have the automatic right to access private property or publicly accessible spaces owned by others. The European Court of Human Rights has on multiple occasions stated that even though physical conduct purposely obstructing activities of others is **not at the core** of

2 Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, November 2022, sect. 3.3 and text box 'Beperkingen moeten noodzakelijk en proportioneel zijn', <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

3 Amnesty International, *Demonstratierecht onder druk*, p. 39.

4 Amnesty International, *Demonstratierecht onder druk*, p. 23. See also ECHR, *Lashmankin and Others v. Russia*, application 57818/09, 7 February 2017, sect. 405, <https://hudoc.echr.coe.int/eng?i=001-170857>

5 Amnesty International, *Demonstratierecht onder druk*, p. 39. See also ECHR, *Appleby and Others v. United Kingdom*, application 44306/98, 6 May 2003, sect. 47, <https://hudoc.echr.coe.int/eng?i=001-61080>

6 Public Assemblies Act (Wet openbare manifestaties, Wom), Article 8.

the freedom of peaceful assembly, this does not automatically mean that they are not protected by this right. The form a protest takes is not determining whether the protest falls within the scope (and protection) of Article 11 of the ECHR (as opposed to whether the protest is peaceful – see above).⁷

INTERVENTION

The fact that a blockade or occupation is protected by the right to protest does not mean that it cannot be terminated at a certain point. It is crucial in this regard that any intervention must be both **necessary and proportional**. Failure to follow in-house regulations does not, in itself, form grounds for curtailing the right to protest. Protesters should, for example, be allowed **sufficient time to express their views**. The carrying out of **arrests and criminal proceedings** is often disproportionate; protesters should be given the opportunity to continue the protest outside first.

ID checks of protesters also constitute an infringement of the right to protest. As well as infringing the protesters' right to privacy, police checks and registrations of protester IDs may also have a *chilling effect*, discouraging people from protesting. Organizers of, and participants in, peaceful protests must not be subjected to ID checks unless there is a reasonable suspicion of a sufficiently serious criminal offence.

There exist some indications in case law which seem to suggest that the *purpose* of a sit-in or blockade may be relevant for determining whether restrictions are necessary and proportional.⁸ In cases where it appears that a direct link between the actual protest and its purported aim is absent, the European Court appears to be more inclined to accept restrictions as proportionate. In other words, terminating the occupation of a university rector's office is less likely to be deemed proportional if the aim of the protesters' action was the resignation of the chancellor, rather than if the focus of the protest was university policy more generally.

It is also important that **university security staff** is aware of the scope of the right to protest. Their interventions, like those of the police, must be necessary and proportional. In addition, the exclusive right to use of force rests with the state, in this case with the police; only the police may, in extremis and exclusively when strictly necessary and proportional, use force against protesters who are no longer acting in a peaceful manner. Private security guards do not have the authority to use force.

Some level of nuisance or inconvenience is inherent to any protest and should be tolerated; students and staff may well be confronted with these consequences of a protest in which they play no part.⁹

3. CONCLUSION

Protesters have considerable leeway in choosing where to protest. For this reason demonstrations at universities must be facilitated as much as possible. This does not mean that authorities should act the same regardless of the form of protest: generally speaking, a sit-in in a university boardroom may be subject to restrictions sooner than a protest in the central hall or outdoors on campus. In any case, whatever the form of protest, as long as it is peaceful, any restriction must be strictly necessary and proportionate. And this applies especially to the most impactful restriction: dispersal.

Amnesty calls upon educational institutions to grant students and staff who want to speak out through protest the opportunity to do so, and to regard protest, as long as it is peaceful, as part of the academic debate.

⁷ ECHR, *Kudrevičius and others v. Lithuania*, application 37553/05, 15 October 2015, sect. 97, <https://hudoc.echr.coe.int/eng?i=001-158200>; see also ECHR, *Tuskia and others v. Georgia*, application 14237/07, 11 October 2018, sect. 72, <https://hudoc.echr.coe.int/eng?i=001-186667>

⁸ See point 2 in note by Roorda in ECHR, *Tuskia and Others v. Georgia*, ECHR 2019, 24, n.b., B. Roorda.

⁹ Observant, 'Limit Reached': Pro-Palestinian Protesters Disrupt Education, 9 April 2024,

<https://www.observantonline.nl/Home/Artikelen/id/61647/grens-bereikt-pro-palestijnse-betogers-verstoren-onderwijs>