

PROTEST IN A TIME OF PANDEMIC



European Center for
Not-for-Profit Law

A brief overview by Neil Jarman, Independent Consultant, with Simona Ognenovska, Monitoring and Research Advisor, ECNL Stichting on the right to peaceful assembly during a time of pandemic in Europe.

Across the world governmental responses to the Covid-19 coronavirus pandemic have included introducing wide-ranging, necessary and temporary restrictions on people's fundamental human rights, including restrictions on the right to peaceful assembly. The restrictions have been imposed through a variety of legal mechanisms, but it is important that both the limitations and their implementation remain proportionate as the context of the pandemic changes, and they are lifted as soon as possible as part of a transition to more normal daily routines.

People have generally accepted restrictions on their rights, but this does not mean they have completely abandoned acts of protest and assembly. Assembling in public may temporarily be limited, but nevertheless people have developed innovative forms of collective expression, both in public and online. This proves that such rights are indeed fundamental to human society and that we can assemble even while practicing physical distancing.

How Covid-19 restrictions to the freedom of assembly are provided for by legislation

Restricting the right to assemble due to concern over public health is permitted under both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) although there have been very few cases where public health has been cited in cases before the European Court of Human Rights to date. International human rights standards emphasise the importance of considering each case on its merits and generally consider **any form of blanket ban on assemblies as disproportionate**. In this novel situation the initial responses have often been to accept the limitations, but critical voices are being raised both in relation to the broad scope in the legal frameworks and their implementation.

Broad and vague wording

All the European countries that have imposed lockdowns or restrictions on movement related to countering the Covid-19 virus, have also imposed restrictions on people's right to assemble. In most cases the focus of the restrictions is on any form of gathering. However, certain provisions mention forms such as public and/or private spaces (e.g. Portugal, Malta), indoor and/or outdoor gatherings (e.g. Austria) as subject of restriction.

The often broad and vague language used has in turn left some uncertainty as to what level and form of activity is permitted and what is being restricted.

Across Europe different countries have imposed [different limits](#) on the **number of people** that may gather in public. Some new laws, for example, include **broad generalisations** ('a large number' in Cyprus); or **vague wording** ('where the level of proposed attendance at the event could reasonably be considered to pose a risk of infection with Covid-19 to persons attending the event' in Ireland) and which are therefore open to interpretation both by the police and also by the public.

Diverse approaches in restricting number of people that can assemble

Other countries have been more specific, but the restrictions they have imposed are varied. For example, the law restricts **two or more people** for gathering in Bosnia and Herzegovina and Serbia; **more than two** in Bulgaria and the UK; and **three or more** in the Netherlands for example. In contrast to such limited opportunities to assemble, in Armenia **up to twenty people** are still permitted to gather in public, and Russia and Sweden permit gatherings of **up to fifty people**. While Denmark has imposed a limit on **more than ten** people gathering, notably the new law and the restrictions do not apply to gatherings for a political or other purpose, including demonstrations or political meetings. There does not appear to be any specific rationale for the numbers of people being permitted to gather, but a smaller number is clearly more manageable for law enforcement bodies to control.

Prevalence of temporary durations of restrictions

In Hungary the restrictions on movement and gathering have been imposed **indefinitely**, but in most countries the various new laws have been introduced on a **temporary** basis. However, the **time frames vary** from two weeks (Portugal), one month (Georgia, Kazakhstan) and two months (France, Netherlands). In all cases the restrictions may be renewed until the situation is deemed to be under control. And while the introduction of the restrictions may be accepted as necessary by the public, they will also expect them to be lifted as soon as reasonable.

In addition to the diversity of legal restrictions, a growing number of countries have also chosen to [derogate](#) from the ICCPR and or the ECHR (including Albania, Armenia, Georgia, Estonia, Latvia, North Macedonia, Moldova, Serbia and Romania). The [COE Toolkit for member states](#) emphasises the possibility for derogations as an important feature of the system, that allows for continued application of the ECHR and its supervisory machinery in crisis. Yet, the most heavily affected countries Italy and Spain, as well as those where the pandemic served as power grab such as Hungary and Poland have not derogated.

New and high level of sanctions

Many countries have created new criminal offences with varying levels of potential punishment: in Italy non-compliance with the restrictions risks a €200 fine or 3 months' detention; in Greece a €1,000 fine; Slovakia a €10,000 fine; while in Albania the authorities can impose a fine of €40,000. However, these powers and the proportionality of the punishments have yet to be tested before the courts.

Assemblies Continue

Protests moved online

Where physical protests have been suspended or cancelled virtual protests proceed online. In the UK for example, Extinction Rebellion has [cancelled public protests](#) planned for London in May 2020 in contrast some environmental activists, such as those from [Fridays for Future](#), have moved their assemblies **online**. In Hungary, the [first online protest](#) ever attended by nearly 40.000 viewers was held on social media including people from different backgrounds such as economists, NGOs and legal experts to oppose the Hungarian “corona law”. After half an hour the protest was shut down. Also, in Poland people held [virtual protests](#) by posting selfies with the #ProtestAtHome hashtag. Under the #Leavenoonebehind, a refugee solidarity group Seebruecke from Germany has been [organising online protests](#), included music, speeches and individual photos and videos during a two-hour livestream with around 6,000 viewers.

New forms of offline and online gatherings

In some places people have developed **new online and offline forms to gather together**, to express a common sentiment; either as a form of solidarity or as a means to protest. In [Italy](#) and [Germany](#) this included people playing music or singing on their balconies; in Spain and the UK this has involved regular [expressions of support](#) for healthcare workers by clapping from balconies or in front of their homes. In early April [protests](#) were held in Germany in solidarity with migrants and activists were painting their footprints in front of various state institutions. Similarly, Extinction Rebellion in a symbolic act [filled with shoes](#) the square of the House of Representatives in The Hague, Netherlands.

Also, protests were held **to demand changes and seek to hold governments to account**. In [Croatia](#) and [Kosovo](#) people protested a general public dissatisfaction with their political leaders during the crisis by banging pots and pans on their balconies. In Spain a far-right party Vox organized an [online demonstration](#) against the Government on YouTube with presence of reportedly 400.000 people. In other countries claims for government financial support for those struggling from the lockdown, are made online. Such is the case of Albania, where Roma and Egyptians [protested on social media](#) by using video messages and next week an [online protest](#) on YouTube is scheduled by the opposition in Russia.

Even with restrictions, physical protests find their way

Despite the restrictions, **physical protests have continued** in some countries, although the numbers appear [to have declined](#) since the virus began spreading. Reported activities in March included [protests in Ukraine](#) against a potential political deal with Russia; in Russia [against proposed](#) changes to the constitution; and in France [by the gilets jaunes](#). Many of these were protests associated with ongoing campaigns, but others have focus on the emerging context of the lockdowns. In early April doctors held [protests](#) across Greece demanding the government to improve their response to the pandemic, with similar activities taking place in [Romania](#). In Poland [protesters gathered](#) on the streets ahead of a possible adoption of a draconian law that seeks to limit abortion and sex education.

Standing up Against Restrictions to Assemblies

In some countries **the legality of the new restrictions has been challenged**. In Germany the Constitutional Court [ruled that the blanket restriction](#) on assemblies was disproportionate and determined that the relevant local authorities should seek to find ways to facilitate the protests while also minimising risks to health. In Kosovo, the Constitutional court [ruled that the](#) Government decision to restrict citizen freedom of movement and prohibition of gatherings during the Corona virus, violates the Kosovo Constitution, which the Government [failed to respect](#) and imposed stricter restrictions. In Serbia a [challenge](#) to the emergency measures has been brought to the Constitutional Court by the Belgrade Center for Human Rights, concerning the delegated competence to the Ministry of the Interior with consent of the Ministry of Health to undertake measures that derogate some of the human and minority rights.

Members of the public and human rights groups have already **voiced concerns**: for example, in Albania dozens of rights groups published an [open letter](#) condemning the heavy prison sentences on anyone disobeying quarantine orders or breaking curfews. Furthermore, Amnesty International has published [numerous cases](#) of people across Europe being injured during protests (France, Austria and Spain)

Concerns have also been raised about the **increase in police powers** in several countries. In France, the Paris Observatory of Public Freedoms [reported](#) that the lack of precision in the legal framework around the role of police creates a risk of arbitrary decisions and disproportionate use of force. In Spain, cases have been documented where police have used force and insulted people moving around in public, and in the UK Netpol has [called for restrictions](#) on police powers and a strict time-limit on the Coronavirus Bill.

Over the coming months the ECNL will continue to monitor and analyse the use of legal restrictions on the right to peaceful assembly as part of state responses to the Covid-19 pandemic, how such laws are used and applied by law enforcement and justice agencies and the nature and form of assemblies that continue to be held in public, private and online spaces.



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