

BOFAXE

God Save the King – From “Annoying” Protestors? PART I

On Freedom of Assembly in the United Kingdom and the State’s Increasing Detachment From International Human Rights Law

For peaceful protesters, the United Kingdom (‘UK’) has turned into difficult terrain over the last years. In the recent past, this has become increasingly obvious, especially by the way the police handled anti-monarchy demonstrations. Last September, after the death of Queen Elizabeth II and the following proclamation of King Charles III, UK citizens had been arrested over (apparent) trivialities such as shouting “Who elected him?”, or were threatened with arrest over holding a blank piece of paper – the obvious parallel to Russia made headlines. On the day of Charles’ coronation this May, the London Metropolitan Police caused a stir by detaining organizers of Republic, Britain’s largest anti-monarchy group, on the morning of the event without even providing a reason for the arrests.

These are not just unfortunate isolated cases (for further examples see [here](#) and [here](#)), but the outcome of legislation in form of the Police, Crime, Sentencing and Courts Act 2022 (‘Police Act’) and the Public Order Act 2023 (‘Public Order Act’) that has been deliberately designed to make it easier for law enforcement to crack down on environmental and human rights as well as anti-monarchy activists. This legislation has therefore been criticized as “deeply authoritarian” by NGOs while Volker Türk, the UN High Commissioner for Human Rights, called on the UK government to reverse the legislation “as soon as feasible”.

This post will, after shortly providing an overview of the most important provisions of the legislation, evaluate the two laws under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), before finally putting it into the context of the UK’s increasing detachment from its human rights obligations.

How the Police Act and the Public Order Act Broadened the Police’s Powers

In 2022 the Police Act gave the police the power to impose several (*inter alia* noise-based) restrictions on protests and to apply these rules also to one-person protests. Furthermore, the Act redefined the term “serious disruption” so broadly that it can be applied to almost any situation, and introduced the new and extensive criminal offence of “intentionally or recklessly causing public nuisance”.

While the widespread “kill the Bill” protests among the country against the Police Act could still prevent the amendment of some other planned restrictions, Parliament picked up again on the formerly discarded measures only a few months later and finally made them part of the Public Order Act. Herewith, even more far-reaching restrictions on the right to protest were enacted. The police was not only given the power to stop and search protesters without any suspicion but also new criminal offences such as “locking on” (referring to protest tactics where demonstrators physically attach themselves to things like buildings), “tunneling”, “obstruction of major transport works” or the “interference in key national infrastructure” have been added and can now be punished by imprisonment or an unlimited (!) fine. Furthermore, the Act introduced “serious disruption prevention orders” which can ban so-called “aggravated activists” (including experienced campaigners and organisers without whom coherent protests do not happen) from attending protests at all.

Potential Violations of International Human Rights Law

The right to protest plays “a key role as an enabling right in opening up spaces and opportunities for genuine and effective engagement by civil society actors and individuals in decision-making processes” (Clément Nyaletsossi Voule, United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association). In other words: the freedom of assembly is essential for a functioning democracy, as it enables public intellectual debates and the battle of opinions. Consequently, it is protected under various human rights regimes, especially Art. 21 ICCPR and Art. 11 ECHR. With regard to the Police Act, the Public Order Act and their heavy-handed enforcement through UK police it has to be asserted that the high threshold to lawfully limit the right to protest against the backdrop of human rights law, which has been laid out by the Human Rights Committee in its General Comment No. 37 in 2020, is hardly met. We argue that the Acts are too imprecise in their language while also being too broad when it comes to delegating new powers to the police and creating new offences.

When evaluating the legality of limitations on the freedom of assembly, it is crucial to first and foremost be aware that due to its extraordinary importance all restrictions on this right must undergo strict scrutiny (GC No. 37, para. 52).

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Thinking of the very nature of the freedom of assembly, one must also keep in mind that it is of the most value as a minority right, protecting the collective expression of criticism towards those in power. Demonstrations are therefore the most vulnerable when they are critical of the government and express views that the majority of society does not conform with. Against this backdrop, the Human Rights Committee stated that demonstrations must not be restricted simply because they “may provoke adverse or even violent reactions from some members of the public” (GC No. 37, para. 27). In the case of *Fáber v. Hungary*, the ECtHR even held that the “freedom to take part in a peaceful assembly is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act” (para. 47). Hence, the new criminal offence of causing “public nuisance” and its, in some cases, incredibly broad interpretation by the police can hardly be compatible with the freedom of assembly, because demonstrations could effectively be prohibited as soon as the police finds one person who feels offended by the protesters’ actions or the content of their expressions. Providing the police with such a “carte blanche to target protesters”, appears incompatible with the fundamental and far-reaching liberties granted in Art. 21 ICCPR and Art. 11 ECHR. But not only content wise the Acts are astonishingly broad – they also suffer from linguistic indeterminacy which is problematic since legislation restricting freedom of assembly has to be “sufficiently precise” (GC No. 37, para. 39) to enable protesters to adapt their behaviour accordingly. The Police Act and the Public Order Act, however, are so vague that even among police officers there seems to be confusion over their own competences – making a lawful application even more unlikely.

However, also Public Order Act’s more specific parts, such as the criminalization of “locking on”, are not less problematic. In fact, it is the right of protesters to cause a certain degree of disruption and peaceful assemblies that block traffic “may be dispersed (...) only if the disruption is ‘serious and sustained’” (GC No. 37, para. 85). Additionally, clause 1(2) of the Public Order Act stipulates that a “reasonable excuse” would be needed for the defendant, which places the burden of proof on the defendant and therewith reverses the central principle of the presumption of innocence, which can be found in Art. 6 of the ECHR. Yet, the UK invariably criminalizes each action of locking on and thereby purposefully weakens environmental protection activists who regularly used this protest form to make their demonstrations more effective.

Finally, providing police with the power of suspicionless stop and search is quite alarming from a human rights perspective. As established by the Human Rights Committee, stop and search competences may only be “exercised based on reasonable suspicion of the commission or threat of a serious offence” (para. 83) – the mere fact that an individual participates in a peaceful protest does not suffice. By not requiring any sort of reason for a search the Public Order Act not only violates the ICCPR but also opens the floodgates to racial discrimination. The same is true for the criminalization of trespass, which particularly threatens the way of life of Gypsy, Roma and Traveller communities (GRT) – even though the Council of Europe already found that GRT communities are facing “troublingly persistent” levels of discrimination in the UK.

As a member state of the ICCPR and the ECHR the UK has the obligation to establish a legal framework “within which the right to protest can be exercised effectively” (GC No. 37, para. 24). With its new laws, the UK unfortunately does the contrary. It put in place a framework which provides law enforcement with the power to render effective demonstrations virtually impossible. It is thus not surprising that critics see the Police Act and the Public Order Act as “something out of a police state”.

The UK’s Growing Struggle With International Human Rights Law

Unfortunately one has to note that the “unnecessary and disproportionate” regulations of the Police Act and the Public Order Act are only the latest culmination point in the UK’s struggle with its obligations under international human rights law. Especially after its widely criticized and legally problematic deal on offshore migration processing with Rwanda and a following interim measure by the ECtHR which halted planned deportation flights, the UK government finds itself in a looming conflict with the ECtHR – leading to high-ranking Tory politicians flouting the ideas of either simply disregarding interim measures by the Court or leaving the ECHR completely. But the UK’s discordance with human rights law goes way beyond that. According to Human Rights Watch in 2022 one could monitor “the most significant assault on human rights protections in the UK in decades”, as the government not only weakened the right to protest and the right to asylum but also passed laws that encouraged voter disenfranchisement and limited judicial oversight of government actions.

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Conclusion

As the right to protest is a “tool (...) to recognize and realize a wide range of other rights” (GC No. 37, para. 2) the extensive restrictions on this very right in the UK are particularly concerning and hardly compatible with international human rights law. The UK government should therefore reconsider its approach towards international law to not only regain its credibility when fighting for human rights abroad (e.g., when addressing abuses in Myanmar, Hong Kong, China or Russia) but also to ensure effective democratic participation of its own citizens at home.