

# **General Principles Governing Freedom Of Assembly And Public Events**

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This summary of practice is based on research in 10 countries: England, Scotland, Republic of Ireland, France, Italy, Israel, Palestine, USA, Canada and South Africa. The research focused on the ways and means in which freedom of assembly and the right to demonstrate are facilitated in practice.

At the most general level we are interested in the relationship between law and practice, between legal and constitutional guarantees for civil rights and how these are played out on the streets. Constitutional rights and legal frameworks deal in idealised situations rather than the messy and varied issues that arise from daily life. In practice there is always a need for a balance to be maintained between law enforcement and keeping the peace. Sometimes the letter of the law must be allowed to be broken in order to maintain a wider peace. Sometimes the law must be changed if the situation that the law applies to changes.

There are a number of limited issues that recur when dealing with the practice of demonstrating. There is a narrow repertoire of problems that need to be addressed and despite the varieties of local context there is also a narrow range of practical solutions that can be imposed whilst still working within a human rights framework.

In the section that follows we draw out some of these practical solutions. We do not hold these practices up as necessarily the answers to the disputes over the right to parade here but rather use them to illustrate that there are a variety of ways forward.

Each of the countries we have surveyed has faced some degree of difficulty over public demonstrations. Each has addressed the problem to a greater or lesser extent. The variety of approaches illustrates that every problem has more than one solution.

## **1. Constitutional Guarantees**

- A number of countries, including Canada, Ireland, Italy, South Africa and the USA, have a constitutional guarantee of freedom of assembly.
- In most, this freedom is qualified, by extending that right to peaceful assembly or to assembly without arms.
- Furthermore freedom of assembly is but one of a number of such constitutional freedoms, which are of a similar or equal status. Freedom of assembly is thus always limited and balanced by other freedoms.
- As a constitutional right, freedom of assembly applies equally to all members of and all sections of society. It is not conditional or subject to approval of either the majority community or minorities within the society.

- Constitutional rights are, or can be, limited by concerns for public order, public safety, public health (Italy) and morality (Ireland, Italy) and ‘other reasonable limits’ (Canada).
- Such unspecified or unfocused restrictions may be or can be clarified by the courts. In Italy and the USA the courts have overturned laws which they consider unduly restricts constitutional guarantees. In Canada and South Africa the constitutional limits have yet to be addressed by the judiciary.

## **2. Legal Frameworks**

- Three of the countries (France, Israel and the United Kingdom) that we studied provided no constitutional right to demonstrate, although in each country such rights had been established through practice.
- In France and the United Kingdom the right to demonstrate is guaranteed through the absence of formal restrictions. Under English common law one is allowed to do something unless it is prohibited.
- Israel has a somewhat intermediate position in so far as there is no constitutional right to freedom of assembly. However the Supreme Court has defined it as a ‘fundamental right’. As such the government has issued legally binding directives to define the framework of such rights.
- In France, Ireland, Italy and the United Kingdom laws defining or limiting the rights of assembly were introduced during periods of political disturbances during the 1930s, when there were widespread and recurrent clashes between political opponents of the left and right. In each country these regulations still provide the basis for legal constraint.
- In South Africa a new legal framework defining the structure of management of demonstrations was introduced as a result of a commission of inquiry into public violence following serious violence at political demonstrations during the period of political transition.
- In each country laws have been enacted to define or to limit the constitutional rights with respect to concerns for public disorder. In all cases public order is cited as a legitimate reason for banning or restricting a public demonstration.
- Constraints can also be legally imposed for such factors as support for unconstitutional demands (France has banned campaigns for the legalisation of cannabis) and in support of illegal organisations (Ireland).

## **3. Tradition**

- Traditional rights to demonstrate, at particular times of the year or over specific routes, are rarely invoked. In most cases a pragmatic and flexible approach is adopted. Routes are varied according to circumstances and change over the years.
- In Canada and USA there is a concept of ‘grandfathering’ by which established or important events have a right to a specific route or a specific date or both.
- In New York and Toronto there are a limited number of ‘grandfathered’ parades each year, although the number can increase. Many parades are organised by

distinct ethnic communities; in neither city does any single community have more than one 'grandfathered' parade a year.

- The New York St Patrick's Day parade is the longest established parade. Under the 'grandfathering' system only the Ancient Order of Hibernians are permitted to organise a parade on Fifth Avenue on 17 March, nevertheless the route has changed on a number of occasions.
- 'Grandfathering' does not necessarily imply a longstanding practice, the Khalsa parade, organised by the Sikh community and the West Indian Caribana carnival parade in Toronto are both of recent origin but are now considered to have the same rights as long established 'grandfathered' events.
- In London and Paris there are established routes for large demonstrations, but these are not claimed by particular groups, nor are there specific rights to use them. In Paris there are also favoured areas for left-wing demonstrations and others for right-wing demonstrations, but such traditions are flexible.
- Tradition therefore exists as a limited concept in some other countries, but it does not transcend other concerns for public order or disruption to daily routines.

#### **4. Equal Rights**

- Whether it is guaranteed by the constitution or by the law it is widely accepted that the right to demonstrate should be given or permitted to all members of a society equally.
- Nevertheless in some countries specific communities or political groups may feel that they are discriminated against over the right to hold demonstrations. In a number of countries the gay community have had to fight for their right to demonstrate in recent years, although their Gay Pride parades have become established events in many cities.
- In Israel despite an active assertion of a general right to demonstrate as a fundamental right, this is not applied equally to both Jewish and Arab citizens of the state. Arab Israelis believe that their civil rights to political expression and commemoration are not upheld with equal force, as are those of Jewish Israelis.
- In France and the United Kingdom the political parties of the extreme right feel that their rights to demonstrate are not safeguarded by the state in the same way as the rights of other political parties.
- There is also an issue when tradition is invoked to give one particular community rights to demonstrate that are not offered to other communities. In many cases this is overcome by giving each community access to traditional events.
- Where rights are not extended to all sections of the community equally there is clearly an issue for the state or for the courts to address. Similarly when one political group or community seeks to prevent another one from exercising its civil rights the issue should be dealt with promptly rather than quietly ignored.

#### **5. Requirements for Notification**

- In all countries surveyed, except the Republic of Ireland, there is a requirement to notify an authority of plans to organise a demonstration, parade or march.

- In Canada, England, France, Israel, Italy and the USA notification must be given to the local police.
- In Scotland and South Africa notification is given to the elected municipal authorities that have the responsibility of liaising with the police.
- The required period of notification varies from three days in Italy, to twenty-one days in Canada. In practice even the three days notification period is not strictly adhered to in Italy, while in Canada the police prefer to be given even longer notice wherever possible.
- In all countries surveyed exceptions are allowed when it is not possible to give even the minimum notification period.
- In most jurisdictions notification is notice of intent, rather than a request for permission to demonstrate. In Israel organisers must receive formal permission. The authorities require information on the time, place and scale of the demonstration. They also want to know the reason for the event and the name and address of those taking responsibility for the organisation.
- Notification usually leads to a process of negotiation over the time and route that it is proposed for the demonstration. There is no generally accepted right that one can demonstrate wherever and whenever one wants. Some form of compromise is normally reached between the organisers and the authorities.
- In France, Israel and Italy any decision to prohibit or restrict a demonstration should be notified in advance of the event. In France and Italy this is to allow time for negotiations, in Israel it is to allow for an appeal to the courts.
- In France the police and the organisers sign formal documents that indicate the agreed terms of the event. This imposes a responsibility on the organisers to comply with the agreement and on the police to protect a legal demonstration.
- If no prior notification is given of a demonstration then the event is deemed illegal. The police can disperse those gathering while the organisers of illegal demonstrations can be subject to prosecution. In practice the police often facilitate illegal demonstrations in the interests of public order.

## 6. Constraints

- The most common reason for constraining or banning public demonstrations is concern for public order. However public order is a poorly defined concept. It is generally accepted that public order means an absence of violence, but it is not clear how far it also refers neither to an absence of disruption of daily life nor to what constitutes the norm of public order.
- Usually the police have considerable flexibility to determine the limits of public order and make a judgement on what might constitute a threat to it. However in Israel the police are required to have more concrete evidence of active planning for violence before they can ban an event as a threat to public order.
- Often the threat of a counter-demonstration or of some form of protest is sufficient to invoke concerns for public order and prohibit the original event. In Italy the courts have decided that in such a situation the original demonstration should be permitted and the counter-event should be banned or constrained.
- In France demonstrations can be banned if they support or advocate illegal activities. A proposed pro-cannabis demonstration was banned recently.

- In Italy demonstrations can be banned if there are concerns for public health or morality, in Ireland demonstrations can be restricted on the grounds of concern for morality. There is no indication that these concerns have ever been invoked.
- In most cases the authorities are also concerned about disruption that may be caused to daily routines. In Canada, France and the USA there is a concern to minimise the disruption to traffic and free movement of other users of urban areas. In Canada and the USA the disruption to commercial life and business is also a key factor in the timing or location of a demonstration.
- In contrast in Israel the courts have determined that demonstrations are an important feature of democratic life and therefore demonstrators have as much right to use the streets as did pedestrians and vehicles.
- In a number of countries demonstrations are, or can be, banned from sensitive locations. Parliament buildings, government buildings and courts frequently have restricted access. In New York demonstrations are also banned from passing the United Nations building.
- In Israel demonstrations are usually banned if they are likely to provoke religious hostility. Jewish demonstrations have been banned from some strongly Palestinian areas, and Jews are not allowed onto the Temple Mount in Jerusalem. Palestinian demonstrations are generally restricted within Israel.
- In France demonstrations against visiting heads of state or important foreign visitors are often banned, heavily constrained or subject to intensive security.

## **7. Time, Place and Manner**

- In USA any restrictions imposed on the right to demonstrate are readily challenged through the courts. Nevertheless the police are able to invoke their right to restrict the time, place and manner of a demonstration without limiting basic civil rights. While people have the right to demonstrate this will not always be facilitated in the time, place or manner of their own choosing.
- While this is not explicitly formulated elsewhere, in most if not all jurisdictions the authorities reserve the right to limit the time, place and manner of a demonstration.
- Sometimes time, place and manner restrictions are imposed because of concerns for public order or avoid too much disruption to daily life. Sometimes changes are imposed to avoid undue restrictions on the civil rights of others. Sometimes restrictions are imposed for the convenience of the police or other authorities.
- In New York the police have imposed a limit on the number of parades that they will permit on Fifth Avenue each year. As the main thoroughfare it is a popular route but demonstrations disrupt city life and make undue demands on the police.
- In Boston the police restrict the number of outdoor public events held on any one day. Restrictions are also imposed on the number of events held on weekdays or in areas where they will cause too much disruption. New events are therefore likely to be assigned the downtown commercial area on a Sunday in winter.
- In Toronto the police will restrict the route of any demonstration if it is likely to disrupt trade and favour Sundays for public assemblies.

- In London large demonstrations in the West End are encouraged to use 'traditional' easily policed routes and are not readily allowed on weekdays because of the disruption they can cause to traffic.
- In all these cases the right to demonstrate is upheld, but the context of the demonstration is determined by the authorities rather than by the organisers.

## **8. Opposition**

- All public demonstrations make statements about the issues a group supports or opposes and demonstrations are, or should be able to be, provocative. They are therefore likely to provoke opposition or reaction from outsiders.
- While demonstrations should be allowed to be provocative, there are limits to acceptable provocation; demonstrations should not be allowed to provoke fear or encourage violence. In many countries sensitivity is paid to ethnic or racial differences when considering the likely provocation a demonstration might cause.
- Although demonstrations may well provoke hostile opposition, it is generally accepted that such opposition should not be permitted to stop a legal event.
- In USA the police accept that a 'hostile audience' should be allowed to protest within 'sight and sound' of the target of their hostility, but should not be allowed to prevent the other demonstration from taking place.
- In Israel the police are expected to protect legal demonstrations from hostile audiences even if the demonstration is being deliberately offensive. Police have protected demonstrators who mocked or satirised religious symbols.
- In France and Italy counter-demonstrations are usually permitted relatively near to the demonstration that they are opposing, but are not allowed to interfere with it. In France the police have a responsibility to protect legal demonstrations to follow their agreed route.
- However, in spite of these assertions of upholding the right of legal demonstrations in practice counter-demonstrators are sometimes able to stop them or force them to be re-routed. It is not unusual for far right or neo-Nazi demonstrations to be confronted and stopped in France, the UK and the USA by left-wing opponents.

## **9. Provocation and Fear**

- It is widely accepted that demonstrations can be restricted, re-routed or banned if there is concern that there is a deliberate attempt to provoke violence, to provoke fear or if there is a reasonable fear of a violent reaction.
- In all countries town or city centres are usually regarded as neutral zones and all sections of the community have a right to demonstrate in such areas. Provocative demonstrations would usually be tolerated in such areas.
- There are exceptions however. In France provocative demonstrations against a foreign state are often prohibited or restricted, many of these are planned for the centre of Paris. In Italy demonstrations that are considered seditious or against the state can be banned.

- Residential neighbourhoods are more sensitive areas for demonstrations and there would be more concern about the nature of any such public assemblies.
- Although the US Supreme Court eventually ruled that a neo-Nazi group should have been allowed to demonstrate in the heart of Skokie, a largely Jewish suburb of Chicago, other countries would be less tolerant
- In South Africa the police were wary of any ANC demonstrations that aimed to go near to Inkhata areas or vice versa.
- In Israel Jewish demonstrations are not usually allowed to pass through specifically Palestinian areas and in general caution is given to sanctioning demonstrations by outsiders in strongly Orthodox areas.

## **10. Appealing Constraints**

- All countries accept that an external authority have power to ban or to impose constraints on a demonstration. Constraints or changes to original plans are usually arrived at through negotiation with the organisers, however an agreed compromise is not always possible. In most countries some means of appeal against restrictions is possible.
- In Israel the Supreme Court has been willing to hear an appeal against police restrictions on a demonstration at very short notice. On a number of occasions bans or restrictions have been overturned. The court actions have also led to clear directives being set out by the government to define the rights and limits that should structure police decision making.
- The South African Regulation of Gatherings Act also allows for the possibility of appeal against restrictions on demonstrations. This has not been taken up to date.
- In France, Italy and the USA appeals must go through the normal court system and can take a considerable time. In the USA the Supreme Court has regularly overturned legal and bureaucratic constraints on the rights to demonstrate but cases often take several years to go through the complete judicial process.
- Until the appeal process has been completed the original constraints on the demonstration remain in force.
- An appeal may consolidate, establish or extend the right of demonstrator but because of the long time-scale involved may have little impact on the ability to hold the demonstration in the manner desired.

## **11. Policing**

- The police are responsible both for maintaining public order and for facilitating the right of public assembly. They also have a duty to minimise disruption caused by demonstrations.
- Policing demonstrations often involves balancing concerns for law enforcement with those of public order. As a result illegal demonstrations sometimes have to be facilitated in order to minimise the risk of more serious disorder.
- In an ideal situation the involvement of police at demonstrations should be kept to a minimum level. In many cases the police do little more than control the traffic and maintain a discrete visible presence.

- Ideal policing also involves working in conjunction with the organisers of a demonstration. Good lines of communication are an essential factor. In New York officers from the community relations department act as intermediaries between demonstrators and the front line police. In France the organisers of a demonstration are expected to be at its head where they can be easily contacted.
- In New York the police have lawyers present to ensure that their officers comply with the letter of the law and that the rights of demonstrators are not ignored.
- Given their responsibilities for public order the police must always be ready to deal with potential trouble. In all countries there are either special riot police units or specific riot training is given to all officers. Usually riot police are kept in reserve, at a distance or out of sight until or unless they are required.
- A limited repertoire of weapons is used for riot control. The standard equipment includes helmets, shields and batons. Tear gas is available in some countries.
- At times live ammunition is, or has been, used against demonstrators or protesters. In Israel live ammunition is used against Palestinian demonstrators but never against Jewish Israelis. In South Africa live ammunition was used under the apartheid regime, and was available in Italy until the early 1980s.
- The Israeli security forces also use rubber or plastic bullets. They have never been considered as an option in Italy. In France they were tried but were considered too dangerous.
- In situations of serious political or social conflict the police are often regarded as partial and are identified by demonstrators as an opponent. Police presence at demonstrations can provoke rather than restrain rioting and other violence.
- Violent clashes between demonstrators and police occurred frequently in Italy in the late 1940s and early 1950s and again during the 1970s; in South Africa in the late 1980s and early 1990s and clashes continue between the Israeli security forces and Palestinians.
- In Italy the reform and demilitarisation of the police in 1981 was a factor in reducing the political violence. Similarly in South Africa reform of the police force was an essential part of the transition from apartheid to democracy.

## **12. Civil Control – Stewards and Monitors**

- The police are responsible for public order, but much of the responsibility for the practical policing of demonstrations falls on the organisers. In all countries the organisers of parades are expected to provide adequate stewards. This is never usually set out in any formal manner and the number of stewards that are needed will largely depend on the scale of the event.
- Stewards are expected to be both identified and identifiable. Usually this involves little more than a coloured armband or top. In some situations stewards will be expected to have walkie-talkies or other forms of mobile communication.
- Stewards rarely receive any formal training except through a culminative process of attending demonstrations. They should be aware of their responsibilities and of any agreements over the route, style or form of the demonstration.
- Stewards are usually responsible for controlling order within the body of demonstrators and any reactions to protesters. They are not responsible for the behaviour of people outside the body of the demonstration.



- In Italy the organisers and the stewards are responsible for all individuals and groups that turn up to participate in a demonstration. However, in France the organisers can define the limits to the body of the demonstration and insist that police take responsibility for specific groups who often join in at the end with the aim of causing trouble.
- In South Africa a system of independent monitors was established at a time when there was increasing violence at political demonstrations. The monitors were volunteers and drawn from activists in the voluntary sector, the churches and other sectors of civil society. The monitors acted as intermediaries between the police and rival ANC and Inkhata groups.
- Monitors are a neutral and unarmed body who aim to defuse tensions disturbances at demonstrations. Monitors may liaise with both the organisers of demonstrations and with the police. They can be used to ensure that the police are less frequently involved in dealing with minor disturbances that could spiral into more serious trouble.
- In New York the NYPD community relations division often mediates between the officers policing the demonstration and the organisers of events. While they are serving officers they have no operational responsibilities at the demonstration. They are distinguished by wearing a different uniform from the operational officers. They work from the office of the Chief of Police and have direct communication to senior level if they feel that the policing is being handled badly.

### **13. Alcohol**

- The consumption of alcohol is a prominent feature of many public celebrations. Some degree of licence is given to public drinking at demonstrations on public holidays and carnival or carnival-like events. However, there is always a fragile balance between acceptable use and over-consumption and abuse.
- In both Boston and New York excessive public drinking on St Patrick's Day had become a serious problem by the 1980s. Drunkenness led to extensive violence and attacks on police officers.
- In the late 1980s new regimes were introduced to prohibit on street drinking and police were empowered to confiscate alcohol in the vicinity of the parades. The police feel that within a few years the nature of the parades had changed and had become more family orientated and publicly acceptable events.
- In Toronto similar problems were associated with the West Indian Caribana festival. While less severe restrictions were imposed, the police were able to constrain the sale and consumption of alcohol to specific areas of the celebrations.
- There is also an issue of the consumption of illegal drugs at some events like the Toronto Carabana festival and the Notting Hill Carnival. In both cities police have said that they are conscious of the potential for charges of racial harassment in such situations and accept that some degree of license must be given.