

Analysis ‘Directive for protests at universities’ in light of the right to protest in the Netherlands

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Contents

1.	Introduction.....	3
2.	Executive Summary	3
3.	Directives for Protests at Universities	5
4.	General remarks on the Directive	6
	4.1 Standard restrictions do not relate well to the right to protest	6
	4.2 Private property and university democracy	7
	4.3 'Chilling effect'.....	8
	4.4 Consequences of non-compliance with the directive	9
	4.5 Civil disobedience	9
	4.6 Criminality and liability	11
5.	Specific Issues with the Directive.....	12
	5.1 Notification of protest and presence of organizers (without face covering and approachable).....	12
	5.2 Prohibition on occupying buildings and staying overnight	12
	5.3 Ensuring no criminal acts or intimidating behaviour, anonymous expressions, or other forms of disorderliness	13
	5.4 Demonstrations should not hinder the continuation of education, research, and business activities	15
	5.5 Ban on face-covering clothing	17
	5.6 Identification with student or staff pass and/or ID card to enforcement personnel (and following their instructions)	19
	5.7 In case of disorderliness, the institution can demand participants to leave the premises, after this a report on trespassing or unlawful entry will be filed and the local triumvirate decides on proceeding with eviction.....	20
6.	Conclusion.....	21

1. Introduction

On May 14 2024, the Universities of the Netherlands (*Universiteiten van Nederland*) and the Association of Universities of Applied Sciences (*Vereniging Hogescholen*) published the Directive for protests at research universities and universities of applied sciences ("**Directive**").¹ The Directive contains principles that apply during demonstrations at all locations of research universities and universities of applied sciences (hereafter: "universities" or "educational institutions") in the Netherlands.

Prior to the publication of the Directive, demonstrations on university campuses were unregulated, and there were many questions about what was permitted and what was not. Therefore, by establishing this Directive, educational institutions acknowledge and confirm that demonstrations are allowed to take place at these institutions. This is a positive step. However, there are also reservations about the Directive in terms of how it relates to the right to protest at educational institutions according to Dutch and international law.² This PILP analysis addresses these issues. First, some general remarks on the Directive are made followed by an analysis of the specific principles.

2. Executive Summary

Educational institutions can establish rules of conduct for their private grounds and premises. At the same time, they must also respect the right to protest and cannot, by default, restrict this right. There exists a tension between the right to protest on the one hand, and the right to property of educational institutions on the other. Since students and staff are able to influence their educational institution's policies due to the democratic principle upheld by universities, these institutions will have to facilitate the right to protest in a more extensive manner than other owners of private property.

The right to protest is a fundamental right, which is enshrined in the Dutch Constitution and in various international human rights treaties. The right to protest is of great importance to the rule of law, and therefore the government should actively facilitate demonstrations. The right to protest can only be restricted if this is necessary and proportionate, and in case this serves one of the purposes listed in the law or treaties. Therefore, in each case there should be a careful and contextual assessment based on the aforementioned criteria to decide whether restrictions are necessary and proportionate. General standard restrictions, such as in the Directive, do not align well with this careful assessment for each demonstration enshrined in the right to protest.

The Directive on protesting at educational institutions can also have a '*chilling effect*' on future demonstrations, hence conflicting with the right to protest.

The consequences of not complying with the Directive are unclear. If one of the possible consequences would be the termination of a demonstration, it should be noted that only the

¹ Universiteiten van Nederland en Vereniging Hogescholen, 'Directive for protests at research universities and universities of applied sciences', 14 May 2024. Available at <https://www.universiteitenvannederland.nl/en/current/news/directive-for-protests-at-research-universities-and-universities-of-applied-sciences>.

² The right to protest is protected inter alia by Article 9 of the Dutch Constitution in which the freedom of assembly is enshrined. Freedom of expression is strongly linked to the right to protest.

mayor is responsible for restricting and ending demonstrations under Dutch law. The mayor will usually become involved with a demonstration at an educational institution after a report of trespassing or unlawful entry of a dwelling. The mayor cannot end a demonstration solely based on violations of the Directive: a restriction or a possible prohibition of a demonstration must always also be necessary, proportionate and in accordance with human rights.

Civil disobedience falls under the protection of the right to protest, and some disruption of everyday life as well as harm (even damage) must be tolerated by the institutions. If a demonstration causes inconvenience to (the rights of) others, restricting or ending the demonstration will likely be justified sooner. That certain behaviour counts as civil disobedience and/or is protected under the right to protest, however, does not mean that demonstrators will never be criminally prosecuted or held liable. Participation in civil disobedience actions may therefore have legal consequences for demonstrators.

Demonstrators are not formally obliged to give advance notice of a demonstration on the premises of educational institutions, even though this is stated in the Directive. Failure to report in advance cannot constitute grounds for terminating or restricting a demonstration. At the same time, reporting a demonstration in advance to the government and possibly the educational institution can also be advantageous to demonstrator. For example, if they expect a counter-demonstration or a hostile crowd, or if they want the demonstration to be properly facilitated.

According to case law by the European Court of Human Rights, the prolonged occupation of a building – although contrary to national law – can still fall under the protection of the right to protest, as long as this is done in a peaceful manner. Demonstrative encampments are also entitled to treaty protection under certain circumstances. A general ban on occupying buildings or staying overnight in tents, as formulated in the Directive, therefore conflicts with the right to protest.

The Directive provides that organisers must see to it that ‘intimidating behaviour, anonymous statements and other forms of disorderliness’ do not occur. However, organisers of a protest cannot be held responsible for the behaviour of participants. Furthermore, even though universities may (rightly) reject certain types of behaviour in regular situations, this cannot, in itself, be said to apply in a similar manner and in general during demonstrations. Demonstrations are meant to generate attention, and often concern topics that are contentious and on which opinions differ. Offensive voices from civil society are protected – this is part of a resilient democratic constitutional state. Furthermore, the concept of ‘disorderly conduct’ must be interpreted narrowly, namely as punishable behaviour by the protesters themselves. It is also unclear when, according to the Directive, this principle would not be respected and what the consequences thereof would be.

Some disruption to teaching, research and business activities must be tolerated. The educational institutions cannot prohibit this in advance in a general manner. However, (the degree of) nuisance and disruption may be factored into the assessment of the necessity and proportionality of a restriction or termination of a demonstration by the government. In that case, restrictions will more likely be justified.

A university may include, in its normal rules of conduct, that face-covering clothing is prohibited, but a general ban of that kind during demonstrations seems contrary to the rationale behind the Public Manifestations Act, the human rights treaties and the Act partially banning face-covering clothing. Demonstrators should be able to express their opinions anonymously. A requirement for

identification would therefore require a clear justification; mere participation in a demonstration is insufficient for this purpose. However, based on the right to property of universities and colleges and the idea of a university democracy, it could be argued that these type of demonstrations should really involve students and employees of that particular educational institution. At the same time, the conclusion that only students and employees are allowed to protest at the educational institution sites would be very far-reaching and conflicting with the general right to protest.

None of the behaviours listed in the principles qualify as 'non-peaceful', which means that they fall under the protection of the right to protest. Non-compliance with one or more of these principles therefore does not in itself lead to the conclusion that a demonstration may legitimately be terminated or restricted. Before proceeding with such actions, a context-dependent necessity and proportionality test must take place.

In conclusion, educational institutions are allowed to establish rules and frameworks for demonstrations on their premises. These rules can also be useful for both the university management board and for demonstrators because they offer some clarification on what the limits of the right to protest are at educational institutions. However, it should be clear that the principles in the Directive cannot contain general prohibitions on certain behaviour during demonstrations. It is not up to universities to issue or enforce such prohibitions and, moreover, there always remains an important role for the principles of necessity and proportionality. Ultimately it is the government, and not the university, that is authorized to prohibit or restrict demonstrations.

3. Directives for Protests at Universities

The introduction of the Directive states that universities have their own house rules and codes of conduct, but that 'at least the following principles apply everywhere for protesting at research university and university of applied sciences sites'.

The principles are (summarized):

- The aim is a peaceful protest; institutions try to remain in dialogue with staff/students 'to ensure the protest can take place safely'.
- Protests must be notified in advance to the institution 'so that safe conduct can be ensured and arrangements can be made on how the protest is to take place'. Organizers must be recognizable and present without face coverings during the protest and 'accessible to the institute's representative (...) and be available to discuss the conduct of the protest'.
- Occupying a building is not allowed, and staying overnight in the buildings and on the premises of the institution without permission is also not allowed. Staying overnight in a tent is not allowed: 'The buildings and sites do not have an overnight function, and security cannot be guaranteed'.
- Organizers ensure that no criminal acts are committed (violence, threats, discrimination, vandalism, breach of the peace). This also applies to intimidating behaviour, anonymous expressions, or other forms of disorderliness, which the universities 'also reject in other situations.'

- 'Teaching, research and business activities must be allowed to continue, even during protests. Protests in locations and areas that may obviously pose a danger to people, animals and the environment (e.g. laboratories) will not be tolerated.'
- 'It is against the law to wear face-covering clothing (e.g. full-face helmets, balaclavas, masks, face veils). People wearing face-covering clothing will be asked to leave the site or remove the face-covering clothing.'
- Participants must always be able to identify themselves with a student or staff pass and/or ID card 'when asked to do so by staff in charge of enforcing the institute's house rules. Protestors who refuse to follow instructions from these employees may be asked to leave the building and sites immediately.'
- 'When a protest does not comply with the above principles, research universities and universities of applied sciences will deploy de-escalation.' The institution coordinates with the local triumvirate on the steps to be taken.
- 'If there is disorderly conduct (access to a building is blocked, the building is not open to the public, closing times are not followed or the provision of education is made impossible), a representative of the research university or university of applied sciences may order participants in a protest to leave the premises and/or site. This message will then be repeated several times, in Dutch and/or English. If the participants in the protest do not comply, a report will be filed for housebreaking or local trespassing (Sections 138 and 139 of the Penal Code). The local triumvirate (municipal authority, police, public prosecution service) will in this case decide whether to act by having the protestors cleared out.'
- The public prosecutor can proceed with prosecution.
- Educational institutions always report offences.

4. General remarks on the Directive

4.1 Standard restrictions do not relate well to the right to protest

The right to protest is enshrined in Article 9 of the Dutch Constitution, Article 11 of the European Convention on Human Rights ("ECHR"), and Article 21 of the International Covenant on Civil and Political Rights ("ICCPR"). According to the ECHR, everyone has the right to 'freedom of peaceful assembly and to freedom of association'. A peaceful assembly means that the organizers and participants do not have violent intentions. The right to protest protects all assemblies except '*where the organisers and participants have such [violent] intentions, incite violence, or otherwise reject the foundations of a democratic society*'.³ The right to protest is closely linked to freedom of expression.

The right to protest is a fundamental right but can be subject to restrictions. According to the Dutch Constitution, the law may impose rules to protect health, in the interest of traffic, and to combat or prevent disorders.⁴ This is further detailed in the Public Manifestations Act ("**Wom**"), which states that restrictions can be imposed by the mayor when it comes to demonstrations in a public place.⁵ According to the ECHR, the right to protest may only be subject to restrictions

³ ECtHR 11 October 2018, no. 14237/07 (*Tuskia and Others v Georgia*), §69.

⁴ Art. 9 paragraph 2 Dutch Constitution.

⁵ Art. 5 Wom.

which 'are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others'.⁶ The ICCPR formulates a similar test: restrictions must be 'imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others'.⁷ Generally these tests are interpreted as the necessity and proportionality test and it is recognized that restrictions and bans on demonstrations must serve one of the aforementioned goals.

Restrictions on the right to protest can only be justified if they are necessary and proportionate to a legal aim. This must be assessed for each protest individually. General restrictive rules, such as the Directive, therefore do not align well with the assessments that should be made based on the Dutch Constitution, the ECHR, and the ICCPR. Whether a restriction or a complete termination of a demonstration is necessary and proportionate to serve specific goals such as public order or public safety is highly context-dependent. For example, the Directive makes no distinction between the various locations of the universities. Whether demonstrations take place indoors or outdoors, whether education is being provided or work is being done; almost the same rules apply according to the Directive. Demonstrating in a lecture hall, for example, has a different impact on the rights of others than demonstrating on a lawn outside. The Directive also does not take into account the size of a demonstration. What restrictions are necessary and proportionate will also depend on how big or small a demonstration is. For instance, an encampment of ten tents can be more easily allowed than one of two hundred.

In short, standard restrictions, such as formulated in the Directive, do not align well with the right to protest. Each protest requires its own assessment, and only necessary and proportionate restrictions can be justified.

4.2 Private property and university democracy

The nature of the location is important in assessing whether a restriction on the right to protest is necessary and proportionate. When students protest on or near an educational institution, they are not doing so in a public place but on private property. Here, there is a tension between the right to protest and the right to property of the university.

In the Directive the universities acknowledge the right to protest on their premises. The European Court of Human Rights ("ECHR") and the Dutch courts also recognize that the right to protest applies there and apply the ECHR framework and the resulting necessity and proportionality test to restrictions imposed on demonstrations at the university.⁸ On the other hand, universities may formulate codes of conduct that apply on their private property and can remove people who do not adhere to them. The question is how far educational institutions can go in setting codes of conduct that restrict demonstrations, or, in other words, how far the right to protest extends at universities.

⁶ Art. 11 paragraph 2 ECHR.

⁷ Art. 21 ICCPR.

⁸ See for example [ECtHR 11 oktober 2018](#), no. 14237/07 (*Tuskia and Others v Georgia*) and [Court of Appeal Amsterdam 4 april 2022](#), ECLI:NL:GHAMS:2022:2261.

Relevant here is the role of university democracy and the input of students and staff in it. Under the Higher Education and Research Act, universities are required to establish a participation arrangement for the benefit of students.⁹ Students and staff are elected (by other students and staff) for participation councils. These councils have various powers to provide input into university policy, such as advisory and consent rights. This legal requirement shows that students and staff have the right to a voice in the policies of the educational institutions. Sometimes the consent of these councils is even mandatory for making decisions, such as on the main lines of the budget.¹⁰ The Universities of the Netherlands (co-author of the Directive) states that the idea behind this is that if students have to invest more in their studies, they should also have more influence on the spending of public education funds.¹¹ A university democracy thus exists. Within this structure, the right to protest logically also has a place. Due to this unique structure, it can be argued that the right to protest at universities extends further than the right to protest on other private properties.

There should, therefore, be a horizontal effect of the right to protest between educational institutions and students and staff. This means that educational institutions must respect the right to protest more than other private property owners (they themselves must not make unjustified infringements), furthermore, they also have to protect and facilitate it.

Educational institutions may establish codes of conduct for their private properties¹², but they must also respect the right to protest and cannot arbitrarily or routinely restrict it. A requirement of a rule such as that of having complete silence around examination areas does not apply in the same way to a group of students listening to very loud music as to a group of students demonstrating.

Starting point is also that a protest must be able to take place *'within sight and sound'* of the target audience of the protest. A demonstration directed against the university on university grounds, is protected more under the right to protest than a demonstration against the university in, for example, a daycare centre.

4.3 'Chilling effect'

The Directive on protesting at educational institutions can have a *'chilling effect'* on future demonstrations. The ECtHR said in a case where demonstrations were prohibited, but still took place:

*'The assemblies were held without a presumption of legality, such a presumption constituting a vital aspect of effective and unhindered exercise of freedom of assembly and freedom of expression.'*¹³

The *chilling effect* thus arises not only from the response to demonstrations and the treatment of demonstrators but also from prior restrictions and prohibitions. This deterrent effect of such restrictions, as those in the Directive, is therefore at odds with the right to protest.

⁹ Art. 9.30 paragraph 3 Higher Education and Research Act.

¹⁰ Universiteiten van Nederland, 'Hoe werkt medezeggenschap aan de universiteit', <https://www.universiteitenvannederland.nl/hoe-werkt-medezeggenschap-aan-de-universiteit> (last visited: 27/05/2024).

¹¹ Ibid.

¹² Art. 7.57h Higher Education and Research Act.

¹³ ECtHR 3 may 2007, no. 1543/06 (*Baczkowski and others v Poland*), §67.

4.4 Consequences of non-compliance with the directive

It is unclear what the consequences are of not complying with the Directive. Universities state that in such a case they will deploy 'de-escalation'. It would be good if educational institutions at least clarify what de-escalation entails. Should this mean that demonstrations will be ended if one or more of the principles are not met, then the following consideration of the UN Human Rights Committee is relevant:

*'If the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21. Collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent.'*¹⁴

The mere failure to comply with rules around the right to protest does not in itself justify the termination or restriction of the protest. Additionally, the Wom states that the mayor has the authority to impose restrictions on or prohibit demonstrations. Ending a demonstration will generally be done under the authority of the mayor supported by the police and the public prosecutor, after educational institutions have, for example, reported trespassing. It is questionable whether and to what extent the mayor can take the Directive into account in such a decision. The Directive is not a law, so the restrictions on the right to protest from the Directive are not prescribed by law, as required by the Constitution and the ECHR.

The mayor must always make an independent assessment of the restricting or prohibiting of demonstrations. The property rights of educational institutions play a role in this assessment. The mayor cannot base the termination of a demonstration solely on violating the Directive; it must always be necessary and proportionate and in accordance with human rights.

4.5 Civil disobedience

Civil disobedience is a form of demonstration in which protesters deliberately break the rules. On the concept of civil disobedience, the court in summary proceedings in the Shell/Greenpeace case considered the following:

'Although there is no well-defined definition of this term, it is generally used for situations involving non-violent protest against an existing situation, where one has a political-social goal, and not self-interest, in mind. Often it is also stated that it must involve a mode of action that takes place in public and in which the consequences of possible criminal action, as well as the possible liability for damages, are accepted.

*The court in summary proceedings is of the opinion that the requirements that are usually set in order to be able to speak of civil disobedience largely fit within the above-mentioned requirement of proportionality.'*¹⁵

Thus, we can speak of civil disobedience when violation of the law or unlawful action takes place in the context of a demonstration. That civil disobedience is protected by the right to protest, follows among others from a decision of the ECtHR in a recent case against the Netherlands:

¹⁴ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 september 2020, CCPR/C/GC/37, para. 16.

¹⁵ District Court Amsterdam 5 oktober 2012, [ECLI:NL:RBMS:2012:BX9310](#), r.o. 5.11. This is a non-official translation of official court documents. No rights can be derived from this translation.

'The Court also reiterates that the question of whether a gathering falls within the autonomous concept of 'peaceful assembly' in paragraph 1 of Article 11 and the scope of protection afforded by that provision is independent of whether that gathering was conducted in accordance with a procedure provided for by the domestic law (see Navalnyy, cited above, § 99), such as a duty of prior notification'.¹⁶ (emphasis added by PILP)

Demonstrations that do *not* meet the legal requirements are still covered by the right to protest. The same, of course, applies to demonstrations at educational institutions that do not comply with the principles, not being legal provisions, laid down in the Directive.

A good example is the Shell/Greenpeace case, in which Shell sought an injunction against future civil disobedient protests by Greenpeace that would interfere with its business operations. Based on this case, activities that may be criminal and/or unlawful may fall under the protection of the right to protest. Before imposing a ban or restrictions, a balance must be struck between the right to protest and the rights of the company, in this case Shell. The court in summary proceedings considers as follows:

As a matter of principle, organisations like Greenpeace are free to take action and express their opinions to the public. The mere fact that such action causes nuisance for the company against which the action is directed, in this case Shell, does not make such action unlawful.

The actions that have given rise for Shell to claim an injunction against actions for future involve activities that may be criminally prohibited (disabling petrol pumps: potentially punishable as property damage) or if they are not criminal, that can be said to be potentially unlawful. (...) Given these standards the right to protest is not unlimited. Greenpeace's interest in being able to express its opinion freely and also in an intrusive way should be weighed against the legitimate (business) interests of Shell.

Now that the possibility has to be taken into account that Shell will have to take a certain loss of turnover for its own account and cannot recover it from Greenpeace Nederland c.s., actions cannot be completely prohibited in advance on the sole ground that they are harmful to Shell.

A weighing up of the aforementioned interests can generally only be made on the basis of the concrete facts and circumstances.¹⁷ (emphasis added by PILP)

According to the judge, Greenpeace must abide by the principle of subsidiarity: In this case this implies that actions causing harm to Shell may be taken only after it is tried to achieve the intended result with less far-reaching actions.¹⁸ The actions must also be proportionate. However, this does not mean that the actions cannot cause harm to Shell:

Such actions - to be effective - must also be able to cause harm to Shell. However, it can at least be required that no substantial harm is caused, for example because an action lasts longer than is necessary to achieve its intended purpose.¹⁹ (emphasis added by PILP)

¹⁶ ECtHR 21 November 2023, nos. 56896/17, 56910/17, 56914/17, 56917/17 en 57307/17 ([Laurijssen and Others v The Netherlands](#)), §55.

¹⁷ District Court Amsterdam 5 October 2012, [ECLI:NL:RBMS:2012:BX9310](#), r.o. 5.5.-5.6. This is a non-official translation of official court documents. No rights can be derived from this translation.

¹⁸ District Court Amsterdam 5 October 2012, [ECLI:NL:RBMS:2012:BX9310](#), r.o. 5.8. This is a non-official translation of official court documents. No rights can be derived from this translation.

¹⁹ District Court Amsterdam 5 October 2012, [ECLI:NL:RBMS:2012:BX9310](#), r.o. 5.9. This is a non-official translation of official court documents. No rights can be derived from this translation.

The claimed prohibition of actions that disrupt or hinder undisturbed business operations was dismissed, because the court in summary proceedings ruled that this went too far; Greenpeace would then not be able to carry out any action that could affect Shell's business operations.²⁰

Another relevant case concerns a group of (former) students of the UvA, who occupied a building of the UvA (the Spinhuis). It concerns a building that is being redeveloped and the faculty that used it had already been relocated. The UvA sought the eviction of the students from the building at the court in summary proceedings. The court ruled that as owner, the UvA can dispose of the Spinhuis and does not need tolerate squatters. However, this may be different insofar as the occupation of the Spinhuis can be regarded as an act of civil disobedience.²¹ The court repeats the criteria for civil disobedience as named in the Shell/Greenpeace case and finds that the occupation meets them:

'The squatters thereby protest against certain aspects of the policy pursued by the UvA in particular concerning the *common room*, and they deploy activities in the Spinhuis in the general interest, such as lectures, debate evenings and movie nights. This takes place in public. This means that the UvA has to tolerate such an action within certain limits, at least as long as it does not have an compelling interest in using the Spider House.'²²

These considerations are relevant to some of the specific principles in the Directive, but also in general. Indeed, it means that companies and educational institutions should tolerate demonstrations even if they cause harm or do not meet legal requirements. Should universities believe that demonstrations can be terminated just because they do not meet one or more of the principles in the Directive, then this is incorrect and can constitute an unlawful restriction of the right to protest. A situation-specific assessment is still required in that case. And it is the mayor who is in charge of that.

4.6 Criminality and liability

The universities indicate that they will file a report of unlawful entry and trespassing when protesters do not leave the premises or grounds after being ordered to do so. They also indicate that they will always report criminal offences and that it is then up to the public prosecutor to possibly proceed with prosecution.

Although civil disobedience and some disorder is protected by the right to protest, this does not change the fact that these can also involve criminal offences and/or unlawful acts. Demonstrators can be prosecuted and/or held liable. The context in which the criminal or unlawful acts take place - the demonstration - may have a limiting influence on the determination of punishment by the court, but does not remove the criminality or unlawfulness of certain actions. Participation in civil disobedience actions can therefore have (legal) consequences for demonstrators.²³ It is helpful to seek legal advice when in doubt.

²⁰ District Court Amsterdam 5 October 2012, [ECLI:NL:RBMS:2012:BX9310](#), r.o. 5.16. This is a non-official translation of official court documents. No rights can be derived from this translation.

²¹ District Court Amsterdam 10 November 2014, [ECLI:NL:RBAMS:2014:7423](#), r.o. 4.2. This is a non-official translation of official court documents. No rights can be derived from this translation.

²² District Court Amsterdam 10 November 2014, [ECLI:NL:RBAMS:2014:7423](#), r.o. 4.2. This is a non-official translation of official court documents. No rights can be derived from this translation.

²³ Consider a risk of possible impact on the Certificate of Conduct (VOG) required for certain professions, see for example <https://www.platform-investico.nl/onderzoeken/eigenlijk-geen-straf-maar-wel-een-strafblad> (in Dutch).

5. Specific Issues with the Directive

5.1 Notification of protest and presence of organizers (without face covering and approachable)

According to the first principle of the Directive, demonstrations must be notified in advance to the educational institution to make arrangements for a safe progression of the protest and the manner in which it can take place. However, deciding not to notify the protest in advance cannot itself be a reason to restrict or terminate the demonstration. The UN Human Rights Committee states:

*'A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers. (...) Any notification requirements for pre-planned assemblies must be provided for in domestic law.'*²⁴

The National Ombudsman and the ECtHR uphold the same principle: even if demonstrators do not notify their action, the demonstration must be fully facilitated, and the lack of notification is insufficient reason to restrict a demonstration.²⁵

The Wom requires prior notification to the mayor for demonstrations in public places.²⁶ However, demonstrations at educational institutions are not demonstrations in a public place, and prior notification is not formally necessary according to the law. There is also no legal basis for mandating the prior notification of demonstrations to the educational institution itself. It is therefore not formally necessary to notify protest actions at universities in advance.

Furthermore, the Wom does not grant the mayor the authority to impose prior restrictions on demonstrations that take place in 'other than public places'. According to the Wom, the mayor can give participants of a demonstration in a place other than a public place an order to immediately end and disperse the demonstration if the protection of health or the prevention or control of disorderliness demands it.²⁷

In short, demonstrators are not obliged to give notice of a demonstration on the premises of educational institutions in advance, even if it is stated in the Directive. The failure to notify in advance cannot be a ground for ending or restricting a demonstration. At the same time, notifying the mayor in advance may also be in the demonstrators' interest, for example, if they expect a counter-demonstration or hostile audience.

5.2 Prohibition on occupying buildings and staying overnight

According to the case law of the ECtHR, the prolonged occupation of a building – although against national law – can fall under the protection of the right to protest as long as it is done

²⁴ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 72.

²⁵ National Ombudsman, 'Demonstreren, een schurend grondrecht?', 14 maart 2018, p. 19. Accessible at <https://www.nationaleombudsman.nl/publicaties/onderzoeken/2018015-demonstreren-een-schurend-grondrecht> (only in Dutch). See also ECtHR 21 November 2023, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17 (*Laurijssen and Others v The Netherlands*), §55.

²⁶ Art. 4 paragraph 1 Wom.

²⁷ Art. 8 paragraph 1 Wom.

peacefully.²⁸ The Amsterdam Court of Appeal also previously tested the termination of the occupation of the P.C. Hoofthuis against the necessity and proportionality requirements. These rulings confirm that an occupation itself falls under the right to protest and that its termination is only justified if it is necessary and proportionate. A general prohibition on occupying university buildings is therefore contrary to the right to protest.

Regarding overnight stays in tents, it is not always clear whether encampments fall under the right to protest. Berend Roorda, Associate Professor at the Faculty of Law of the University of Groningen and specialized in the right to protest, discusses this subject in his dissertation. Roorda explains that according to the ECtHR demonstrative encampments can enjoy treaty protection under certain circumstances, but that it is unclear under which circumstances.²⁹

Dutch courts also take no consistent stance on this. Previously it was ruled that mayors must tolerate demonstrative encampments, but it was later added that encampments can lose their characterization as a demonstration as time passes.³⁰ In 2015, the Council of State recognized that in principle, an encampment aimed at expressing a political or social view is a manifestation within the meaning of the Wom.³¹ The Council of State ruled in that case that the mayor had not properly motivated that the preventive prohibition of the encampment was necessary and that less restrictive measures could not suffice (subsidiarity requirement).³²

A general prohibition on staying overnight in tents as part of the demonstration, as formulated in the Directive, therefore conflicts with the right to protest.

5.3 Ensuring no criminal acts or intimidating behaviour, anonymous expressions, or other forms of disorderliness

This principle asks organizers to 'ensure that no criminal offences are committed' (violence, threats, discrimination, vandalism and breach of the peace). This also applies to 'intimidating behaviour, anonymous statements and other forms of disorderliness'. This principle is problematic on several points.

First, responsibility for the behaviour of the participants in the protest is placed on the organizers. In this regard, the case law of the ECtHR is relevant. Previously, the ECtHR ruled that an individual does not lose their right to protest if others in the protest commit violence:

'An individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (...) The possibility of persons with violent intentions, not members of the organising association, joining a demonstration cannot as such take away that right (...) Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as

²⁸ *Cisse v France* involved a two-month occupation of a church (ECtHR 9 April 2002, no. 51346/99, §§ 39-40). In *Tuskia and Others v Georgia* (ECtHR 11 October 2018, no. 14237/07, §74-75), the case involved the occupation of the office of the rector of a university. *Annenkov and Others v Russia* involved the occupation of private land and buildings (ECtHR 25 July 2017, no 31475/10, §123).

²⁹ B. Roorda, *Het recht om te demonstreren* (diss. Groningen): Boom Juridisch 2016, p. 242 (only available in Dutch).

³⁰ B. Roorda, *Het recht om te demonstreren* (diss. Groningen): Boom Juridisch 2016, p. 252 (only available in Dutch).

³¹ Council of State 23 maart 2015, [ECLI:NL:RVS:2015:899](#), r.o. 3.1. This is a non-official translation of official court documents. No rights can be derived from this translation.

³² Council of State 23 maart 2015, [ECLI:NL:RVS:2015:899](#), r.o. 3.2. This is a non-official translation of official court documents. No rights can be derived from this translation.

*such fall outside the scope of Article 11§1, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision.*³³

In 2023 the ECtHR again ruled, in a case against the Netherlands, that *'individuals are not to be held responsible for the acts of violence by other participants'*.³⁴ A broad attribution of responsibility to organizers for participants' behaviour, as stated in the Directive, cannot be reconciled with this jurisprudence.

Secondly, it is unclear whether the task of ensuring that no criminal acts are committed can be placed on the organizers of a demonstration. Previously, a Dutch court ruled that a provision at a demonstration that required the organizers to send people away if the number of participants exceeds 200 was wrongly imposed because:

'Notifying a person that they must leave a certain (public) place falls within the (command) authority of bodies or persons vested with public authority and not within the authority of private organizations.'³⁵

Because demonstrations must be facilitated, it was up to the mayor to ensure that there were sufficient public authority personnel present to safeguard the set maximum number of participants.³⁶ From this, it can also be inferred that ensuring no criminal acts are committed cannot be placed on the organizers of a demonstration.

Thirdly, the second part of this principle raises concerns. The Directive states that the organizers should also ensure that 'intimidating behaviour, anonymous statements and other forms of disorderliness' do not occur. The Directive notes that such behaviours are also rejected by universities in other situations. With this, the Directive does not consider the specific context of a demonstration. The fact that universities (rightly) reject certain behaviours in other situations is not in itself an argument to reject these behaviours in general during demonstrations. The right to protest is a broad and fundamental right, and protesters should expect that more is tolerated, especially in terms of statements. Demonstrations are intended to attract attention and often concern topics on which opinions differ. Offensive voices from society are protected – that is part of a resilient democratic state. Prohibiting demonstrations because people might feel intimidated, or imposing conditions beforehand that prohibit these expressions, directly contradicts this fundamental right.

Fourthly, it is unclear which behaviours the Directive refers to. When is an expression, for example, anonymous? Is this the case when it is voiced by a protester wearing face-covering clothing or someone who does not want to identify themselves? In that case, reference can be made to the subsequent discussions of the principles on face-covering clothing and identification (sections 5.5 and 5.6). Generally, rejecting expressions because they are made anonymously is not in line with what the UN Human Rights Committee has said about the anonymity of protesters in the

³³ ECtHR 25 July 2017, no. 31475/10 (*Annenkov and Others v Russia*), §124.

³⁴ ECtHR 21 November 2023, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17 (*Laurijssen and Others v The Netherlands*), §58.

³⁵ District Court Limburg 5 September 2023, [ECLI:NL:RBLIM:2023:5240](#), r.o. 11. This is a non-official translation of official court documents. No rights can be derived from this translation.

³⁶ District Court Limburg 5 September 2023, [ECLI:NL:RBLIM:2023:5240](#), r.o. 11

context of face-covering clothing: *'The anonymity of participants should be allowed unless their conduct presents reasonable grounds for arrest'*.³⁷

Additionally, 'other forms of disorderliness' seems to be a very broad concept. The concept should, however, not be interpreted broadly. Roorda and Brouwer derive from the legislative history that 'disorderliness' should be understood as criminal behaviour (except 'expression offenses'³⁸) committed by the protesters themselves.³⁹ 'Disorderliness' also include other criminal behaviour than riots, disturbances, vandalism, and/or the use of violence.⁴⁰ It must be assessed whether the combination of (expected) undesirable behaviours is so severe that the threshold of disorderliness is exceeded.

In the assessment of whether the threshold of disorderliness is exceeded, the context, including the place where the demonstration is held and the level of order and calm generally expected in that place, may play a role.⁴¹ The context itself – without an assessment of the protesters' behaviour – cannot result in that a real risk of disorderliness exists. However, it may be that the same behaviour of protesters at one location does meet and at another location does not meet the threshold of disorderliness. Brouwer and Roorda give the example of a minor criminal offense – spontaneously demonstrating behind the security fences of the American embassy in The Hague – where the specific location makes it justified to end the protest.⁴²

In short, it must be assessed whether the combination of (expected) undesirable behaviours in conjunction with the context, including the location, is so severe that the threshold of disorderliness is exceeded. Only then is it necessary to impose a restriction.

Finally, it is unclear when this principle is not being adhered to. Organizers are asked to monitor the behaviour of participants. What happens when one of the participants engages in one of the mentioned behaviours? How is it verified whether organizers are monitoring the behaviour of participants? Do they have to actively address people on certain behaviours, or does it involve prior instructions? This principle imposes a very general and broad restriction on the right to protest, where it is unclear what exactly is expected of protesters and organizers. To judge whether a restriction on the right to protest is necessary and proportionate, it must be at least clear what the restriction entails. This is not the case with this principle.

5.4 Demonstrations should not hinder the continuation of education, research, and business activities

According to the Directive, education, research, and business activities must continue even during protests. This principle does not align with the right to protest. Peaceful occupations or

³⁷ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 60.

³⁸ Such as insulting and libel.

³⁹ See points 8-10 of the annotation by B. Roorda & J.G. Brouwer under Rb. Den Haag 6 oktober 2016, ECLI:NL:RBDHA:2016:11985, AB 2017/25; B. Roorda, 'Wanordelijkheden als argument om demonstraties en vergaderingen te verbieden', *Ars Aequi* september 2017, 699-705, p. 700-702 (only available in Dutch).

⁴⁰ ABRvS 21 september 2016, ECLI:NL:RVS:2016:2521, r.o. 7.2; see also Rb. Den Haag 23 januari 2014, ECLI:NL:RBDHA:2014:1708, r.o. 19-21.

⁴¹ *Kamerstukken II* 1985/86, 19 427, nr. 3, blz. 17.

⁴² See points 8-10 of the annotation by B. Roorda & J.G. Brouwer under Rb. Den Haag 6 oktober 2016, ECLI:NL:RBDHA:2016:11985, AB 2017/25.

civil disobedience are also protected under the right to protest, and some disruption of daily life must be tolerated. The ECtHR explains that:

*'Physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention. Such a state of affairs might have implications when considering whether the interference was "necessary in a democratic society" within the meaning of the second paragraph of Article 11.'*⁴³

Purposefully and seriously disrupting the activities of others does not fall within the core of the right to protest, but it also does not automatically render a demonstration non-peaceful. Such behaviour can have implications for the assessment of whether restrictions are necessary. The Dutch Supreme Court summarizes the ECtHR's stance as follows:

The general principle in the case law of the ECtHR is that every demonstration can involve some degree of "disruption to ordinary life." Such a disruption is not in itself sufficient to justify a restriction on the right to peaceful assembly.⁴⁴

A Dutch District Court also states, in line with European law:

The mere fact that ordinary life, including traffic, is disrupted to some extent is not, in itself, a justification for taking measures.⁴⁵

The UN Human Rights Committee also recognizes that disruption can occur:

*'Their [peaceful assemblies] scale or nature can cause disruption, for example, of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.'*⁴⁶

The Amsterdam Court of Appeal previously ruled that the termination of the occupation of the P.C. Hoofthuis was necessary because the rights of others were affected. The Court stated:

By the actions of the defendant and his fellow demonstrators, the UvA was prevented from providing education in the university building, and students were prevented from attending classes. Staff members could not go to their work. Against this background, the court considers the restriction of the defendant's and his co-defendants' right to protest in the university building and the further prohibition of staying in the building not disproportionate and justified in light of the protection of the rights of others. The court takes into account that the freedom to protest, as mentioned, is not an absolute right and its limits are found, among others, in the rights of others. The defendant and his fellow demonstrators were repeatedly asked and ordered to leave the building, which they refused to do without giving any reason. This created an urgent societal need to limit the further exercise of the right to protest of (among others) the defendant and his presence in the university building.⁴⁷ (emphasis by PILP)

So while some disruption must be tolerated to avoid taking away the effect of a demonstration, limiting or ending protests that are significantly disruptive to others may more readily meet the

⁴³ ECtHR 25 July 2017, no. 31475/10 (*Annenkov and Others v Russia*), §127.

⁴⁴ Dutch Supreme Court 19 December 2023, [ECLI:NL:HR:2023:1742](#), r.o. 2.3.6. This is a non-official translation of official court documents. No rights can be derived from this translation.

⁴⁵ District Court Limburg 5 September 2023, [ECLI:NL:RBLIM:2023:5240](#), r.o. 6. This is a non-official translation of official court documents. No rights can be derived from this translation.

⁴⁶ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 7.

⁴⁷ District Court Amsterdam 4 April 2022, [ECLI:NL:GHAMS:2022:2261](#).

necessity criterion. In the abovementioned case, the Court ruled that the inability to provide education and access workplaces constituted a restriction of others' (students' and employees') rights that could justify limiting the right to protest. Such a restriction must still meet the requirements of proportionality and necessity.

In summary, some disruption of education, research, and business activities must be tolerated. Educational institutions cannot generally prohibit this in advance. However, the degree of disruption can be a factor in assessing the necessity and proportionality of a restriction or termination of a demonstration by the authorities.

5.5 Ban on face-covering clothing

The Directive stipulates that 'It is against the law to wear face-covering clothing (e.g. full-face helmets, balaclavas, masks, face veils). People wearing face-covering clothing will be asked to leave the site or remove the face-covering clothing'. This principle does not align with the right to protest and does not match the intention of the legislator.

According to the Act partially banning face-covering clothing, it is prohibited to wear clothing that covers the face entirely or to such an extent that only the eyes are visible, or makes recognition impossible, in public transportation and in buildings and associated grounds of educational institutions, government institutions, and healthcare institutions.⁴⁸ Although it is legally prohibited to wear face-covering clothing in educational institutions, a general ban on such clothing during demonstrations was explicitly not chosen.

This issue was addressed during the discussion of the Wom bill in 1988. The then Minister of the Interior said:

Mr. Schutte asked for a response to the use of masks and other disguises during demonstrations. In judging the use of masks, one must consider their significance in light of the nature and purpose of the demonstration. There are cases conceivable where a disguise may be part of the expression for which the demonstration is held. Another conceivable situation involves a demonstration by foreigners protesting against the situation in their own country. In such a demonstration, there may be a real fear that the government of that country will seek to harm the participants or their relations. To avoid that danger, it may be reasonable for participants to cover their faces during the demonstration. A third case involves the use of masks to prevent recognition in the investigation of criminal offences or maintenance of public order by the police or judicial authorities. By mentioning these cases, I intend to clarify that a simple answer to the question posed is not possible. In some cases, the use of a mask or disguise may fall under the protection of the right to protest because the disguise or mask forms an element of the expression or is necessary for the exercise of the right to protest. In other situations, that use falls outside the right to protest.⁴⁹ (emphasis by PILP)

This quote is also referenced in 2019 in a report of a written consultation of the permanent committee for Interior and Kingdom Relations.⁵⁰ This report was drafted in response to a motion during the Senate's consideration of the Act partially banning face-covering clothing. The motion requested the government to investigate the desirability of generally prohibiting face-covering clothing, such as masks, balaclavas, full-face helmets, and similar, during manifestations and

⁴⁸ Art. 1 paragraph 1 [Act partially banning face-covering clothing](#).

⁴⁹ *Handelingen I/1988*, p. 2236. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁵⁰ *Kamerstukken I/2019-20*, 34349, nr. O, p. 5.

demonstrations, unless there is a specific reason to allow this.⁵¹ The then Minister of the Interior conducted research on the subject in response to the motion and explains that:

A general legal ban on face-covering clothing is described by most responding municipalities as unnecessary, too far-reaching, or even undesirable. They can manage well with the current legal instruments. Many municipalities point out that local customization is involved and that a ban on face-covering clothing is certainly not necessary for every demonstration. Only in a (very) limited number of cases is there a reason to include such a ban in the regulations to better address (impending) disorders. Furthermore, there are demonstrations where people wish to make their voices heard without revealing their identity, for example, because they fear (far-reaching) personal consequences. Think of sex workers demonstrating for better working conditions or foreign political activists who critically express themselves on foreign regimes at diplomatic missions. There are also demonstrations where the chosen attire of the demonstrators can be part of the collective expression. For example, demonstrations by peaceful animal activists, who sometimes dress up as animals and are therefore not recognizable as individuals.⁵² (emphasis by PILP)

The minister further explains in the report:

'The basic principle of the constitutional system and the WvM is that restrictions on the freedom of protest may only be imposed under certain conditions, and a general ban on face-covering clothing at all demonstrations does not fit this principle. In those specific cases where there is reason for it, such a ban can of course be imposed, with a (case-specific) further justification.'⁵³

Thus, while it is legally prohibited to wear face-covering clothing in educational institutions in general, a general ban during demonstrations was explicitly not chosen. Moreover, according to the ECtHR, violent intentions or behaviour cannot be inferred merely from wearing balaclavas and other disguises.⁵⁴ In principle, anonymous demonstrating with face coverings also falls under the right to peaceful assembly. It is not, in itself, an indication of a non-peaceful demonstration.

The UN Human Rights Committee also states that wearing face-covering clothing can fall under the right to peaceful assembly:

*'The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, or taking other steps to participate anonymously, may form part of the expressive element of a peaceful assembly or serve to counter reprisals or to protect privacy, including in the context of new surveillance technologies. The anonymity of participants should be allowed unless their conduct presents reasonable grounds for arrest or there are other similarly compelling reasons, such as the fact that the face covering forms part of a symbol that is, exceptionally, restricted for the reasons referred to above (see para. 51). The use of disguises should not in itself be deemed to signify violent intent.'*⁵⁵

⁵¹ *Kamerstukken I* 2018-19, 34349, nr. G, p.1. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁵² *Kamerstukken I* 2018-19, 34349, nr. L, p. 2. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁵³ *Kamerstukken I* 2019-20, 34349, nr. O, p. 4. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁵⁴ ECtHR 21 November 2023, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17 (*Laurijssen and Others v The Netherlands*), §56.

⁵⁵ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 60.

Therefore, while the university is free to include a ban on face-covering clothing in its regular codes of conduct, a general ban during demonstrations seems contrary to the intent behind the Wom, human rights treaties, and the Act partially banning face-covering clothing.

5.6 Identification with student or staff pass and/or ID card to enforcement personnel (and following their instructions)

As mentioned above, the UN Human Rights Committee's position is that the anonymity of participants in demonstrations must be respected '*unless their conduct presents reasonable grounds for arrest*.'⁵⁶ The Committee further states:

*'The mere fact that a particular assembly takes place in public does not mean that participants' privacy cannot be violated. The right to privacy may be infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd. The same applies to the monitoring of social media to glean information about participation in peaceful assemblies. Independent and transparent scrutiny and oversight must be exercised over the decision to collect the personal information and data of those engaged.'*⁵⁷

Requiring demonstrators to identify themselves can lead to a '*chilling effect*' on participation in demonstrations. This was noted by the Dutch Judicial Association during the extension of the Compulsory Identification Act:

*'The knowledge that citizens may be required to provide identification on a wider scale could discourage them from attending certain events or places, possibly compromising the freedom of assembly, protest or expression.'*⁵⁸

The government responded as follows:

*'The government does not consider the occurrence of such an effect very likely. By including the restriction that the demand to show proof of identity must be made in the context of a reasonable performance of duties, it is already immediately clear that impeding participation in regular social activities cannot be part of it. Of course, introduction of the power to ask for proof of identity must not lead to the unlawful restriction of other fundamental rights. Also from the explanation of the commitments on the implementation of the bill (in particular, that there will not be proceeded to registering monitoring activities or carrying out independent identity checks) can be inferred that this risk is unlikely to occur.'*⁵⁹

This issue is also touched upon in the aforementioned report on the Act partially banning face-covering clothing:

'In public places, the police may order the removal of face-covering clothing for the purpose of identification on the basis of the Compulsory Identification Act. In those instances, there must be a

⁵⁶ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 60.

⁵⁷ UN Human Rights Committee, 'General comment No. 37(2020) on the right of peaceful assembly (article 21)', 17 September 2020, CCPR/C/GC/37, para. 62.

⁵⁸ *Kamerstukken II* 2003-04, 29218, nr. 3, p. 4. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁵⁹ *Kamerstukken II* 2003-04, 29218, nr. 3, p. 4-5. This is a non-official translation of official government documents. No rights can be derived from this translation.

reason for this, for example at events such as football matches and demonstrations, in case of riots or the threat of impending riots.⁶⁰

How does this principle relate to the right to protest? On the one hand, a full identification requirement is a far-reaching measure that can generate a big '*chilling effect*'. Students and employees may fear consequences from their educational institution or employer if they take part in a demonstration. They should retain the ability to be able to demonstrate anonymously. Therefore, there should be a clear reason for obliging identification, mere participation in a demonstration is insufficient for this.

On the other hand, from the right to property of universities and the idea of a university democracy, the point can also be made that the demonstrations really be by students and staff of that educational institution. In any case, it seems reasonable to conclude that educational institutions should tolerate more from their own students and staff in this area. This does raise the question of whether people who are not (or no longer) students or employees of an educational institution (or of this particular educational institution) by definition are not allowed to demonstrate on university premises against the policy of the university. This conclusion would be too far-reaching, after all, others must also be able to demonstrate '*within sight and sound*' of the subject being demonstrated against.

5.7 In case of disorderliness, the institution can demand participants to leave the premises, after this a report on trespassing or unlawful entry will be filed and the local triumvirate decides on proceeding with eviction

The Directive's premise is that in the event of 'disorderliness' demonstrators will be ordered to leave the premises and that a report of trespassing or unlawful entry will be filed. The local triumvirate will then decide whether to proceed with eviction. Under 'disorderliness', the Directive includes: blocking the entry to a building, building not accessible to the public, not following closing times, or making teaching impossible.

It was discussed in section 5.3 that 'disorderliness' should be understood as criminal behaviour (other than 'expression offences') committed by protesters themselves.⁶¹ The context, including the nature of the location, may factor into this. It must be assessed whether the combination of (expected) undesirable behaviours is so serious that the threshold of disorderliness is exceeded.

The ECtHR has also ruled that in the case of violence, whether the violence is initiated by the police or by the protesters should be factored in.⁶²

Most of the conduct classified as 'disorderliness' in this principle does not seem to reach the threshold of disorderliness that can be a ground for restriction according to the ECtHR and the Dutch Court and therefore do not align with the right to protest. For the analysis of these behaviours, see sections 4.3, 5.2 and 5.4. Universities must tolerate some disruption during demonstrations. They will not be able to quickly ask demonstrators, who for the most part consist

⁶⁰ *Kamerstukken I/2019-20*, 34349, nr. O, p. 6. This is a non-official translation of official government documents. No rights can be derived from this translation.

⁶¹ See points 8-10 of the annotation by B. Roorda & J.G. Brouwer under Rb. Den Haag 6 oktober 2016, ECLI:NL:RBDHA:2016:11985, AB 2017/25; B. Roorda, 'Wanordelijkheid als argument om demonstraties en vergaderingen te verbieden', *Ars Aequi* september 2017, 699-705, p. 700-702.

⁶² ECtHR 21 November 2023, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17 (*Laurijssen and Others v The Netherlands*), §49.

of their own students and employees and are participants in de university democracy, to leave the premises.

Further reference is made to section 4.4, which addresses the part of the principle that deals with filing a report and involving the local triumvirate.

6. Conclusion

Concludingly, educational institutions can establish rules and frameworks for demonstrations on their premises. These rules can also be useful. It is good that universities stipulate that the right to demonstrate applies on university premises. However, the principles in the Directive are in conflict with the right to protest. Each demonstration should be judged on its own merits and any restriction or termination of a protest must be necessary and proportionate to be justified in the light of the right to protest and freedom of expression.

Moreover, it is questionable whether universities may impose such restrictions. It is the mayor who has the authority to make decisions on restricting or ending a protest. In doing so, the mayor will also consider the property rights of the educational institutions.