

Analysis ‘Consequences of participating in a demonstration for residence permits of international students and staff’

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1. Introduction

The right to protest is a fundamental right.¹ Students and staff of research universities and universities of applied sciences also have this right on the premises of educational institutions, regardless of their residence status.² Recently, Stichting PILP (“**PILP**”) has received many questions from students and staff about whether participating in demonstrations at educational institutions can affect the residence permits of international students and staff at these institutions. In almost all cases, participating in a demonstration will not negatively affect the registration, employment contract, or residence status of demonstrators, but there are situations conceivable in which there could be consequences. These consequences could involve deregistration, dismissal, and/or the loss of a residence permit/residence right.

This analysis focuses on the residence permits of international students and staff from countries outside the European Union (“**EU**”). EU citizens have the right to reside in the Netherlands based on Union citizenship. That right may be revoked for reasons of public order, public safety, and public health.³ Furthermore, EU citizens must meet various conditions to stay in the Netherlands for longer than three months.⁴ A further discussion of these conditions falls outside the scope of this analysis. Thus, ‘international students and staff’ in this analysis refers to citizens of countries outside the EU.

In this analysis, PILP explores two of the most far-reaching possible consequences of participating in a demonstration for the residence permits of international students and staff. First, this analysis discusses deregistration and dismissal by the educational institution and the effect this may have on residence permits of students and staff, respectively. Next, it discusses the consequences of a criminal conviction for residence permits of international students and staff.

The information in this analysis is a preliminary exploration of possible consequences of participating in demonstrations on residence permits. No rights or claims can be derived from this analysis. In case these issues arise in your personal situation, always consult a migration, criminal, or labour law lawyer for advice.

2. Executive summary

Students and staff, regardless of their residence status, have the right to protest at their educational institutions. Mere participation in a demonstration is no ground for revoking a residence permit. However, in extreme cases, behaviour during a demonstration *can* have consequences for the residence permits of international students and staff. This analysis discusses two different routes to the most severe consequence: the revocation of a residence permit. Revocation may occur either through the ‘non-criminal’ or the ‘criminal’ route.

The non-criminal route can ultimately lead to deregistration of a student or dismissal of an employee. Students and staff are dependent on their enrolment at an educational institution and their employment contract with an employer (the education institution) respectively for their residence permits. Therefore, deregistration or dismissal can have (negative) consequences for their residence permits.

Students can be deregistered by an educational institution when the student violates house rules and order measures and causes serious nuisance. However, this constitutes an extreme measure that educational institutions may only use in exceptional cases. It is unclear what constitutes ‘serious nuisance’. At the time of

¹ The right to protest protected inter alia by Article 9 of the Dutch Constitution in which the freedom of assembly is enshrined. Article 11 of the European Convention on Human Rights (“**ECHR**”) and Article 21 of the International Covenant on Civil and Political Rights (“**ICCPR**”) also protect the freedom of assembly. Freedom of expression is strongly linked to the right to protest.

² For an extensive discussion of the right to protest on the premises of educational institutions, see PILP’s analysis ‘Analysis ‘Directive for protests at universities’ in light of the right to protest in the Netherlands’. Available at: <https://pilp.nu/en/legal-analysis-demonstration-at-universities-and-colleges/>.

³ Art. 8.7 jo. 8.8 Aliens Decree 2000 (“**Vb**”).

⁴ Art. 8.11&8.12 Vb.

writing, PILP is not aware of any cases of educational institutions deregistering students because of participating in a demonstration. Before deregistration, the educational institution will first talk to the student and issue a warning or suspension. As mentioned, deregistration is an exceptional measure.

Employees can be dismissed by their employer, the educational institution. Depending on the type of residence permit, the employee has a certain period of time to find a new job before the residence permit is revoked. Again, dismissal is not a common measure and is the exception rather than the rule. Milder measures such as conversations and (official) warnings will precede dismissal.

A residence permit can also be revoked or an application for its extension can be rejected if someone is convicted for a criminal offense. This applies to both students and staff, and depends on the type of offense and how long the person in question has already (legally) resided in the Netherlands. A violation of the Public Manifestations Act (“**Wom**”) cannot in itself lead to the revocation of the residence permit. Therefore, mere participation in a demonstration does not constitute a criminal offense. For a criminal conviction to follow, more must have happened.

The protection of the right to protest and civil disobedience can have a mitigating effect on the criminality of actions and on the sentence after a conviction. In various cases, Dutch judges have concluded that certain actions do not constitute a criminal offense or do not lead to punishment due to the protection of the right to protest, especially when there is no violence involved. However, this is not always the case; when a criminal offense is committed during a demonstration, a conviction can follow, and the judge can impose a sentence.

In conclusion, participation in a demonstration should not affect the residence permit of international students and staff of educational institutions. The right to protest is a fundamental right that everyone can exercise. In exceptional cases, however, behaviour during a demonstration *can* impact the residence status of a student or staff member. If such a situation occurs, it is wise to seek personal advice from a lawyer.

3. Residence permits for students and deregistration

International students (from outside the EU) often depend on their enrolment at an educational institution for their residence permits. This chapter focuses on residence permits for students at research universities and universities of applied sciences. This type of residence permit is handled through the educational institution where the student is studying. The educational institution, also known as 'the referent'⁵, checks whether the student meets the conditions for a residence permit (such as having sufficient means) and declares this to the Immigration and Naturalization Service (“**IND**”). The IND grants the residence permit to the student.⁶ The educational institution acts as an intermediary between the student and the IND and also informs the IND when, in its opinion, the student no longer meets the conditions for the residence permit.

Residence permits can, in principle, be revoked if the conditions under which the permit was granted or a requirement attached to the permit is no longer met.⁷ A residence permit is always granted for a specific purpose, such as asylum, work, family, or study. The temporary residence permit for study can be revoked for two specific

⁵ An educational institution must meet several requirements before it can be recognized as a referent by the IND, see art. 2a-2h Aliens Act 2000 (“**Vw**”) & art. 1.20 Vb.

⁶ As explained by the Council of State in 8 October 2020, [ECLI:NL:RVS:2020:2398](#), par. 2.2 and in the explanatory note of art. 3.41 Vb.

⁷ Art. 18 paragraph 1 sub f jo. Art. 19 Vw.

reasons. Firstly, if the holder no longer studies at an educational institution recognized as a referent.⁸ Secondly, if the holder of the residence permit makes insufficient study progress.⁹

One of the conditions for a study-related residence permit is that the holder is enrolled or will be enrolled at an educational institution (that is recognized as a referent).¹⁰ The residence permit of the international student is linked to their enrolment at an educational institution. Therefore, deregistration from the educational institution will have consequences for the residence permit.

The educational institution can proceed with deregistration of the student, but this does not happen often. As regards more practical reasons, deregistration can occur for example when tuition fees are not paid¹¹ or due to a negative study advice at the end of the first academic year.¹² In the context of demonstrations at educational institutions, deregistration due to violation of house rules and order measures is mainly relevant. Such violations can lead to termination of enrolment for one year or, if serious nuisance is caused within the buildings and premises of the institution and the nuisance is not stopped after a warning, to permanent deregistration.¹³

What constitutes 'serious nuisance' is unclear. This concept is not further defined in case law or legislative history. It is clear that it must involve nuisance impacting the physical environment of the educational institution. This may also include actions in the digital environment if the nuisance is felt in the physical environment of the educational institution.¹⁴ The removal or deregistration of the student must be aimed at protecting that physical environment.¹⁵ In assessing this, judges consider the student's infringement on a safe working and learning climate.¹⁶

The authority to deregister students on this ground (after causing serious nuisance) can only be used in exceptional cases, when it is necessary to remove the student for a longer period of time.¹⁷ The deregistration of the student must be proportionate to the severity of the violation. It is also up to the educational institution's board to justify that the deregistration is proportionate.¹⁸ Furthermore, the institution's board must offer the student a real opportunity to show a different behaviour.¹⁹ Thus, the educational institution cannot proceed with deregistration of the student without further ado. It is an exceptional measure that must be used proportionally, and the student must be given an opportunity to adjust their behaviour.

Case law confirms that terminating a student's enrolment is an extreme measure.²⁰ Temporary removal or permanent deregistration 'is not punitive in nature (...) aimed at inflicting suffering' but is an order measure to

⁸ Art. 3.91b paragraph 1 sub a Vb. This refers to the situation where the educational institution is no longer recognized as a referent or the specific program loses accreditation (Explanatory Memorandum to Art. 3.87a Vb, *Stb.* 2010, 307). The foreign national who has acted in good faith is given three months to find another institution/course and continue the studies (Art. 3.91a Vb). The District Court of The Hague further determined that the mere fact that the university no longer acts as referent is insufficient to revoke the residence permit. The underlying case involved a student with insufficient study progress after which the university notified the IND that it would no longer act as referent. However, the student was not deregistered by the university and did meet the study progress requirement during the objection procedure. The District Court ruled that these circumstances as well as the principle of proportionality and Article 8 ECHR were insufficiently considered in the decision (Court of The Hague 26 April 2022, [ECLI:NL:RBDHA:2022:3952](#)).

⁹ Art. 3.91b paragraph 1 sub b Vb. For the same reasons, the request to extend the residence permit may be rejected, see Art. 3.87a Vb.

¹⁰ Art. 3.41 Vb. The European Study Directive (Directive 2016/801/EU), on which these regulations are based, also stipulates that member states may withdraw or refuse to grant a residence permit if the person in question no longer meets certain requirements (Art. 21 paragraph 1 sub a Study Directive). One of these requirements for students is that the student must demonstrate that they have been "accepted by a higher education institution to follow a course of study" (Art. 11(1)(a) in conjunction with Art. 21(1)(a) Study Directive). Thus, a student's residence permit depends on their enrolment at an educational institution.

¹¹ Art. 7.42 paragraph 2 Higher Education and Research Act ("WHW").

¹² Art. 7.8b paragraph 5 WHW.

¹³ Art. 7.57h WHW.

¹⁴ Council of State 18 October 2023, [ECLI:NL:RVS:2023:3842](#), paragraph 7.4.

¹⁵ *Ibid.*

¹⁶ Council of State 31 May 2023, [ECLI:NL:RVS:2023:2088](#), paragraph 2.

¹⁷ *Kamerstukken II* 2008-09, 31821, nr. 3, p. 63.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Appeals Tribunal for Higher Education 10 August 2021, 2021/067 and 2021/067.1, paragraph 2.6. Available at: <https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/>.

'ensure the smooth operation' of educational institutions.²¹ The goal is to establish a favourable educational climate.²² Therefore, deregistering a student is not a punishment for the student but must serve the educational climate and smooth operation of the educational institution. This means that deregistration cannot occur as a punishment for the violation of a rule by the student: the deregistration must be necessary to maintain good order at the educational institution. It is up to the educational institution to demonstrate this necessity.

A criminal conviction is not required for deregistration by the educational institution.²³ Also, a different standard of proof than in criminal proceedings is applicable, and the institution's board may 'consider all available information regardless of the form in which it was provided'.²⁴ Thus, logically, the rules for deregistration are less stringent than those for criminal conviction.

At the time of writing, PILP is not aware of any cases of deregistration of students by educational institutions in the context of demonstrations or similar situations. Cases of deregistration that ended up in court often involved issues such as repeated intimidation and threats to fellow students or staff. For example, in one particular case, a student was deregistered after multiple warnings about a pattern of inappropriate and unacceptable behaviour towards other students.²⁵ Another case involved a student who posed as fellow students on dating sites and made appointments with men who then came to the homes of the fellow students.²⁶ In light of this, the student was also issued a restraining order in relation to a fellow student.²⁷ These are exceptional situations.

A recent example of sanctions following participation in demonstrations are the sanctions imposed by the Amsterdam University College ("AUC") on six students due to their alleged involvement in student protests about Palestine on campus. These involved formal warnings and social-political suspensions.²⁸ PILP assisted these students in their objections to the sanctions. The students argued that the decisions were insufficiently motivated and that the sanctions were disproportionate. In response to the objections, AUC withdrew the sanctions.²⁹

The conclusion from the above is that deregistration *can* lead to the loss of the residence permit if the student is deregistered by the educational institution. However, deregistration is only deployed by educational institutions in exceptional situations: it is an exceptional measure for special situations. Moreover, the deregistration must be proportionate to the severity of the student's behaviour. Therefore, it is unlikely that a student will be deregistered by the educational institution merely because of participating in a demonstration on the educational institution's premises. This is, however, possible. In that case, deregistration can lead to the loss of the residence permit as the purpose of the residence permit is no longer fulfilled.

4. Residence permits for staff and dismissal

International staff of educational institutions also have the right to protest at their educational institution, regardless of their residence status. Especially in light of the democracy at educational institutions and the

²¹ Appeals Tribunal for Higher Education 26 June 2019, 2019/156, paragraph 2.5.1. Available at: <https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/>. This is a non-official translation of official court documents. No rights can be derived from this translation.

²² Ibid.

²³ Council of State 31 May 2023, [ECLI:NL:RVS:2023:2088](https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/), paragraph 7.1.

²⁴ Ibid. This is a non-official translation of official court documents. No rights can be derived from this translation.

²⁵ Council of State 18 October 2023, [ECLI:NL:RVS:2023:3842](https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/).

²⁶ Council of State 31 May 2023, [ECLI:NL:RVS:2023:2088](https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/).

²⁷ Ibid.

²⁸ The social policy suspension by AUC included inter alia not allowing the student to work for AUC as a student assistant and to study abroad, and to complete a writing assignment as a punishment.

²⁹ Read more about this case at <https://pilp.nu/en/sanctions-protesting-students-withdrawn/>.

particular importance of discussion and debate at educational institutions, employees of these institutions have a right to protest.³⁰

Because residence permits of international staff (from outside the EU) can, similarly to those of international students, be dependent on employment contracts, participation in a demonstration may impact the residence permits of international staff. In the worst case, participation in a demonstration can lead to dismissal. Dismissal will likely have consequences for the residence permits of international staff.

Employees at educational institutions can reside in the Netherlands based on various residence permits, such as the residence permit for highly skilled migrants³¹, scientific researchers, the European Blue Card, the work permit³², and the combined residence and work permit. The impact of dismissal and the period of time someone has to find a new job before the residence permit is revoked, varies per type of residence permit and can also depend on the duration of residence prior to dismissal.

For example, the European Blue Card can be revoked if the holder no longer has a valid employment contract (or another binding written job offer).³³ The European Blue Card is only revoked due to unemployment if the holder is either (a) unemployed for more than three months and has held the European Blue Card for less than two years or (b) unemployed for more than six months and has held the European Blue Card for at least two years.³⁴

In the case of dismissal of a person with a residence permit as a highly skilled migrant or scientific researcher, the holder has three months to find a new job before the residence permit is revoked.³⁵ The IND must consider all circumstances and facts when revoking the residence permit, including the right to family life as protected by Article 8 of the ECHR. Therefore, it is possible that the holder of one of the various residence permits with the purpose of employment who is dismissed and does not find a new job, can still stay based on other grounds/another residence purpose (such as family life). This is context-dependent and differs for each individual situation.

Furthermore, educational institutions are, as employers, bound by rules regarding dismissal. They cannot proceed with dismissal merely because their employees exercise their fundamental rights by participating in a demonstration. Reasons for dismissal can include culpable behaviour of the employee or a disrupted employment relationship.³⁶ PILP is not aware of any cases of dismissal due to participation in a demonstration. However, under certain circumstances, acting contrary to an institution's code of conduct can be qualified as culpable behaviour of an employee.³⁷ Additionally, involvement of a manager in an internal protest against the actions of senior management could lead to such a disrupted employment relationship that a dismissal is considered justified.³⁸ Thus, there are situations conceivable in which actions during a demonstration can lead to grounds for dismissal. However, this will be the exception rather than the rule. Employers will often first engage in a conversation with an employee and/or issue an official warning.

A circumstance that may play a role here is a potential criminal conviction. Chapter 6 of this analysis discusses the general consequences of a criminal conviction on a residence permit. In the employment context, it is also

³⁰ Read more about the democracy at education institutions and the right to protest on the premises of education institutions in PILP's analysis 'Analysis 'Directive for protests at universities' in light of the right to protest in the Netherlands'. Available at: <https://pilp.nu/en/legal-analysis-demonstration-at-universities-and-colleges/>.

³¹ This includes a guest lecturer at an educational institution with a guest agreement with that institution, see art. 2.1 paragraph 1 sub d Decree implementing the Aliens Employment Act 2022.

³² The work permit is not a residence permit but a work permit. Thus, loss of this will not automatically lead to residency problems because the employee has a separate residence permit. For this reason, the work permit will not be discussed further in this analysis.

³³ Art. 3.91c paragraph 1 jo. art. 3.89b paragraph 1 sub a jo. art. 3.30b paragraph 1 sub a Vb.

³⁴ Art. 3.91c paragraph 1 jo. art. 3.89b paragraph 2 Vb.

³⁵ Art. 19 jo. art. 18 paragraph 1 sub f Vw.

³⁶ Art. 7:669 paragraph 3 sub e & g BW.

³⁷ As, for example, in District Court of Amsterdam February 20, 2020, [ECLI:NL:RBAMS:2020:1163](https://ecli.nl/NL:RBAMS:2020:1163). An employee posts messages on Facebook that violate Greenpeace's Code of Conduct. The employee is also unwilling to comply with the Code of Conduct. Under such circumstances, Greenpeace cannot reasonably be required to continue the employment of the employee.

³⁸ District Court Noord-Holland 3 October 2023, [ECLI:NL:RBNHO:2023:10837](https://ecli.nl/NL:RBNHO:2023:10837).

relevant that a criminal conviction can lead to the loss of the Certificate of Conduct (“**VOG**”). If possessing a VOG is a requirement for the function of the holder of a residence permit with the purpose of employment, the loss of the VOG can lead to job loss and with that to the loss of the residence permit.

In conclusion, in exceptional cases, actions during a demonstration can lead to the dismissal of an employee. Dismissal can have consequences for the residence permit of an international employee and, in the worst case, lead to loss of residence status.

5. Conviction for criminal offences

5.1 Revocation and rejection of a residence permit after conviction

Participation in a demonstration is not a criminal offense. Most participants in demonstrations will not face criminal prosecution and conviction. However, in some cases, criminal offenses are committed during demonstrations. If this leads to a conviction, even when it involves offenses that occurred during demonstrations outside the educational institution's grounds, this can impact a residence permit. In such cases, a residence permit may be invoked due to posing a threat to public order or national security.³⁹ Below, it is briefly explained in which situations a criminal conviction may lead to the revocation of the residence permit. Thereafter, the maximum penalties for several criminal offenses that could occur during demonstrations are discussed. Finally, the potential mitigating effect of the protection of the right to protest and civil disobedience on both a conviction and a sentence is discussed below.

A criminal conviction can lead to the revocation or rejection of the extension of a residence permit due to threatening public order or national security in two situations. The first situation concerns a person with a residence duration of less than three years and a crime punishable with a maximum prison sentence of two years or more. In such a case (for the revocation of the residence permit) the person must be sentenced to a prison sentence, juvenile detention, community service, mandatory treatment, placement in a facility for persistent offenders, placement in a juvenile facility, or a measure concerning the behaviour of the juvenile.⁴⁰ It can also involve a community service sentence imposed by penal order (*strafbeschikking*) or the foreign equivalent of such a sentence or measure.⁴¹ When the total duration of the unconditionally executable portions⁴² of those sentences and measures is at least equal to one day, the extension of a residence permit can be rejected, and the permit itself can also be revoked.⁴³

The second situation concerns a person that is sentenced to one of the previously mentioned sentences or measures for a crime for which a prison sentence of three years or more can be imposed.⁴⁴ In such a case, the threshold of the total duration of the unconditional executable portions of those sentences and measures (which has to be reached before the residence permit can be revoked) is determined by two factors: the person's residence duration together with the number of years of imprisonment that can be imposed for the crime.⁴⁵ When this involves a crime with a prison sentence of six years or less, the following table applies:

³⁹ Art. 18 paragraph 1 sub e & art. 19 Vb.

⁴⁰ Art. 3.86 paragraph 1 sub a Vb.

⁴¹ Ibid.

⁴² Unconditionally enforceable sentences refers to sentences that must be carried out immediately, rather than for example suspended sentences, where the execution of the sentence is subject to various conditions such as not committing other offences for a certain period of time.

⁴³ Art. 3.86 paragraph 1 sub a, paragraph 2 & paragraph 3 Vb. Emphasis added.

⁴⁴ Art. 3.86 paragraph 1 sub b Vb. Emphasis added.

⁴⁵ Art. 3.86 paragraph 1 sub b, paragraph 2 & paragraph 3 Vb.

Residence duration	Total duration of sentence/measure
Less than 3 years:	1 day;
At least 3 years, but less than 4 years:	5 months;
At least 4 years, but less than 5 years:	7 months;
At least 5 years, but less than 6 years:	15 months;
At least 6 years, but less than 7 years:	18 months;
At least 7 years, but less than 8 years:	22 months;
At least 8 years, but less than 9 years:	27 months;
At least 9 years, but less than 10 years:	33 months;
At least 10 years, but less than 15 years:	40 months;
At least 15 years:	65 months.

Art. 3.86 paragraph 2 Vb.

An example: your residence duration is 4,5 years, and you are prosecuted for a crime punishable by a maximum of 5 years imprisonment. The total duration of the imposed sentence or measure must be at least 7 months before the IND can proceed to reject the extension of or revoke the residence permit.

The following table applies to crimes punishable by more than six years of imprisonment:

Residence duration	Total duration of sentence/measure
Less than 3 years:	1 day;
At least 3 years, but less than 4 years:	4 months and 2 weeks;
At least 4 years, but less than 5 years:	6 months;
At least 5 years, but less than 6 years:	12 months;
At least 6 years, but less than 7 years:	15 months;
At least 7 years, but less than 8 years:	18 months;
At least 8 years, but less than 9 years:	22 months and 2 weeks;
At least 9 years, but less than 10 years:	27 months;
At least 10 years, but less than 15 years:	30 months;
At least 15 years:	48 months.

Art. 3.86 paragraph 3 Vb.

An example: Your residence duration is 4,5 years, and you are prosecuted for a crime punishable by a maximum of 7 years imprisonment. The total duration of the imposed sentence or measure must be at least 6 months before the IND can proceed to reject the extension of or revoke the residence permit. This means that when the potential sentence is higher, the length of the total sentence imposed can be shorter before rejection or revocation of the residence permit is possible. When the residence duration is longer, the length of the total imposed sentence before revocation of rejection of a residence permit is possible also has to be longer.

The application for the extension of a residence permit can also be denied, or a residence permit can be revoked when someone has been imposed similar sentences or measures as described above for at least three crimes.⁴⁶ The following table applies for the threshold of the total duration of the unconditional imposed sentences or measures (for the three crimes combined):

Residence duration	Total duration of sentence/measure
Less than 3 years:	1 day;
At least 3 years, but less than 4 years:	4 months;
At least 4 years, but less than 5 years:	5 months;
At least 5 years, but less than 6 years:	6 months;
At least 6 years, but less than 7 years:	7 months;
At least 7 years, but less than 8 years:	8 months;
At least 8 years, but less than 9 years:	9 months;
At least 9 years, but less than 10 years:	10 months;
At least 10 years, but less than 15 years:	12 months;
At least 15 years:	14 months.

Art. 3.86 paragraph 5 Vb.

In all the aforementioned cases and tables, 'residence duration' is understood to mean: the duration of lawful residence immediately preceding the moment that the crime was committed or began.⁴⁷ Lawful residence refers to residence as (among others) a student, highly skilled migrant, holder of the European Blue Card, or as scientific researcher with a valid residence permit.⁴⁸

When calculating the total duration of a sentence or measure (as referred to in the aforementioned tables), several factors are to be considered. When a community service sentence is imposed, there are two options. If the judge sets a prison sentence in case the community service is not performed properly, the duration of that prison sentence counts as the total duration of the sentence. In all other cases, for every two hours of community service, one day of imprisonment is counted for the calculation of the total duration of the sentence.⁴⁹ For a measure concerning the behaviour of a juvenile, the duration of the substitute juvenile detention in case of non-

⁴⁶ Art. 3.86 paragraph 4 Vb.

⁴⁷ Art. 3.86 paragraph 6 Vb.

⁴⁸ Art. 3.86 paragraph 6 Vb jo. art. 3.4 paragraph 1 Vb.

⁴⁹ Art. 3.86 paragraph 7 sub a Vb.

compliance with the measure is considered.⁵⁰ When an unconditional prison sentence is imposed, the length of that sentence constitutes the total duration of the sentence (in the context of the residence permit).

Furthermore, the revocation or rejection of the extension of a residence permit also applies to breaches of public order committed or punished outside the Netherlands. This is only the case if these acts constitute a crime under Dutch law for which a prison sentence of two, three, or six years can be imposed, and when the penalty is comparable to the penalty that would have been imposed in the Netherlands if the act had been committed within this country.⁵¹

In certain situations, exceptions can be made from the above-discussed provisions.⁵² The IND must consider all circumstances of the case in its decision to revoke or deny the request for an extension of a residence permit. Moreover, revocation or denial is not carried out if this would lead to a violation of Article 8 of the ECHR.⁵³

Besides the above-described situations, the application for an extension of a temporary residence permit can be denied due to threatening public order if, in the opinion of the Minister of Justice and Security, an overriding interest necessitates this.⁵⁴ The application for a permanent residence permit can be denied for various reasons, including a conviction for a crime punishable by a prison sentence of three years or more or when mandatory treatment is imposed.⁵⁵ In this situation, the permanent residence permit can also be revoked.⁵⁶ For revocation under these circumstances, the total duration of the sentence or measure must at least equal the norms from the tables above.⁵⁷

An irrevocable court judgment is not necessary for the revocation or denial of an extension of a residence permit. A community service sentence imposed by an irrevocable criminal order can also be sufficient for this purpose (a community service can be imposed by criminal order up to a maximum of 180 hours).⁵⁸ The Public Prosecution Service (“**OM**”) imposes the sentence itself with a criminal order; no judge is involved.⁵⁹ However, it is possible to object to the criminal order within fourteen days. Objection is only possible if the person to whom the criminal order is issued has not yet complied with it.⁶⁰

5.2 Maximum penalties for various criminal offences

For the revocation or denial of the extension of a residence permit, the maximum penalty for a crime is relevant in two ways: for the total duration of the sentence or measures and for determining which of the above tables applies. Therefore, this chapter includes a list of maximum penalties for criminal offenses that may occur during demonstrations.

⁵⁰ Art. 3.86 paragraph 7 sub b Vb.

⁵¹ Art. 3.86 paragraph 8 Vb.

⁵² For example, the application is not rejected if the foreign national is a minor and has one parent with Dutch nationality who is domiciled in the Netherlands (paragraph 9). Similarly, the application is not rejected in the case of a ten-year period of residence unless a number of specific crimes are involved (see Article 22b, paragraph 1 of the Penal Code and the Opium Act) (paragraph 10). The application may also be rejected if there are serious reasons to suppose that the foreign national has been guilty of conduct as referred to in Article 1F of the Refugee Convention or if this is the case for the partner/parent of the foreign national (paragraph 11). In the case of a holder of an EU long-term residence permit, the seriousness of the offense or type of offense and the danger emanating from that person must be taken into account (paragraph 13). The application for renewal is also not rejected where the right of residence is derived from the Association Agreement with Turkey unless the conduct of the holder thereof constitutes an actual, real and serious threat to a fundamental interest of society (paragraph 15).

⁵³ Art. 3.86 paragraph 17 Vb.

⁵⁴ Art. 3.87 Vb.

⁵⁵ Art. 21 paragraph 1 sub c Vw.

⁵⁶ Art. 22 paragraph 2 sub c Vw.

⁵⁷ Art. 3.98 Vb.

⁵⁸ Art. 3.86 paragraphs 1&4 Vb & art. 257a paragraph 2 Code of Criminal Procedure.

⁵⁹ Art. 257e Code of Criminal Procedure.

⁶⁰ Art. 257e paragraph 1 Code of Criminal Procedure.

Firstly, it is important to note that a conviction under Article 11 of the Wom (for holding a gathering for which the required notification has not been made or for which a prohibition has been issued, or for violating conditions or restrictions imposed on a demonstration) does not constitute a crime.⁶¹ These actions are qualified as offenses, and for the revocation or denial of the extension of a residence permit based on a criminal conviction, a crime must be involved. A conviction for an offense under the Wom therefore does not affect a residence permit.⁶²

Common criminal offenses during demonstrations on the private grounds of an educational institution are trespassing and unlawful entry of a dwelling. Trespassing carries a maximum prison sentence of one year.⁶³ Under certain circumstances, this can increase to over two years.⁶⁴ The maximum prison sentence for unlawful entry of a dwelling is three months.⁶⁵ Under certain circumstances, this can increase to over one year.⁶⁶

The maximum penalty for destruction is a prison sentence of two years (five years if it involves animals).⁶⁷ For damaging a building where there is a danger to goods, the maximum penalty is six months imprisonment, increasing to one year if there is a danger to life and two years if it results in someone's death.⁶⁸ The maximum penalty for threatening is a prison sentence of three years.⁶⁹ This may increase if it involves written threats stating a specific condition (four years) or threats with a terrorist intent (six years).⁷⁰ When the situation involves threats against a police officer, the penalty can increase to four years.⁷¹

For public violence (against persons or goods), a maximum prison sentence of four and a half years can be imposed.⁷² This may increase if it involves intentional destruction of goods or if the violence results in physical injury (six years), if the violence results in serious bodily injury (nine years), or if the violence results in death (twelve years).⁷³

This list concerns maximum penalties. Which table from Chapter 6.1 applies, depends on these maximum penalties (as there are separate tables for crimes with a maximum penalty of more or less than 6 years). A maximum penalty does not always indicate the penalty that can actually be expected after a conviction, as it, logically, concerns the maximum possible penalty. This maximum is not always imposed by the judge or demanded by the OM. For a more situation-specific estimate, one can look at the guidelines of the OM for

⁶¹ Art. 11 Wom.

⁶² A conviction for an offense is put on the criminal record and thus may affect the VOG. As explained earlier, the loss of the VOG can affect the employment contract and in this way also the residence permit.

⁶³ Art. 138 paragraph 1 Penal Code.

⁶⁴ Art. 138 paragraphs 3&4 Penal Code.

⁶⁵ Art. 139 paragraph 1 Penal Code.

⁶⁶ Art. 139 paragraphs 3&4 Penal Code.

⁶⁷ Art. 350 Penal Code.

⁶⁸ Art. 171 Penal Code.

⁶⁹ Art. 285 paragraph 1 Penal Code.

⁷⁰ Art. 285 paragraphs 2&3 Penal Code.

⁷¹ Art. 285 paragraph 5 Penal Code.

⁷² Art. 141 paragraph 1 Penal Code.

⁷³ Art. 141 paragraph 2 Penal Code.

determining the sentence demand.⁷⁴ Similar guidelines exist for public violence⁷⁵, assault⁷⁶, and threats.⁷⁷ These guidelines provide more tools to assess the penalty that can be expected in a specific situation.

5.3 Civil disobedience, the right to protest, and punishments

The protection of the right to protest and civil disobedience can have a mitigating effect on the sentence imposed after conviction. However, this is not always the case. This chapter discusses several criminal cases in which the protection of the right to protest played a role.

The District Court Midden-Nederland ruled in 2022 that 'violence' should be interpreted restrictively in the context of the right to protest as:

(...) the use of or incitement to physical violence that results in or is intended to result in injuries or serious damage to property, where such injuries or consequences can reasonably be expected.⁷⁸

A demonstration does not lose its peaceful status easily. For example, the District Court Midden-Nederland ruled in the same case that glueing posters on windows and glass revolving doors did not constitute violence because the goods could be relatively easily restored, and the damage was therefore limited.⁷⁹ The action is thus still peaceful and falls under the protection of Article 11 of the ECHR.⁸⁰ Although there was no violence, these actions still led to a conviction for vandalism.⁸¹ In this case, no penalty was imposed, partly in light of the right to protest and to avoid a *chilling effect* on demonstrations.⁸²

In other cases, judges have concluded that certain actions do not constitute a criminal offense or do not lead to punishment due to the protection of the right to protest. For example, in 2023 the Court of Appeal of The Hague found that the defendant had set off fireworks during a demonstration, which is punishable under Article 429 of the Dutch Penal Code. The Court of Appeal considered that, in this case, setting of fireworks did not pose a threat to others and that this often occurs at demonstrations:

The defendant thereby exercised her right to freedom of expression as protected by Article 10 of the ECHR and the right to freedom of assembly or association protected by Article 11 of the ECHR, especially since the smoke bombs were deliberately chosen in the colours of the Kurdish flag.

(...)

⁷⁴ Instruction of framework for criminal procedure for adults (Stcrt. 2019, 14890). Available at:

<https://wetten.overheid.nl/BWBR0042068/2019-04-01>. These guidelines state, for example, that the prosecution's penalty demand for a "first offender" of local or housebreaking, if committed alone, is a fine of 150 euros in the case of a room intended for public service. For a private room, it is 225 euros. This can increase to a prison sentence of eighteen days for repeated offenses within two years (Guideline for Criminal Procedure for House and Local Trespass (Stcrt. 2015, 4243). Available at: <https://wetten.overheid.nl/BWBR0036302/2015-03-01>).
⁷⁵ Guideline for criminal procedure for public violence (Stcrt. 2019, 14876). Available at: <https://wetten.overheid.nl/BWBR0042057/2019-04-01>.

⁷⁶ Guideline for criminal procedure for assault (Stcrt. 2020, 62343). Available at: <https://www.om.nl/onderwerpen/beleidsregels/richtlijnen-voor-strafovordering-resultaten/richtlijn-voor-strafovordering-mishandeling-2020r008>.

⁷⁷ Guideline for criminal procedure for threatening (Stcrt. 2022, 8261). Available at: <https://www.om.nl/onderwerpen/beleidsregels/richtlijnen-voor-strafovordering-resultaten/richtlijn-voor-strafovordering-bedreiging-2022r002>.

⁷⁸ District Court Midden-Nederland 9 December 2022, ECLI:NL:RBMNE:2022:5240, paragraph 6.3. This is a non-official translation of official court documents. No rights can be derived from this translation.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² District Court Midden-Nederland 9 December 2022, ECLI:NL:RBMNE:2022:5240, paragraph 8.3.

In the court's opinion, enforcing the prohibition on possessing and setting off fireworks as a non-professional person in these circumstances is not proportionate, and this criminal provision should be disregarded based on the effect of Articles 10 and 11 of the ECHR.⁸³

The Court of Appeal concluded that the proven act did not constitute a criminal offense and acquitted the defendant of all charges.⁸⁴

In 2020, the Amsterdam Court of Appeal ruled that unlawful entry of a dwelling had occurred during a demonstration and that this was also punishable. However, no penalty was imposed because the demonstration had a peaceful and small-scale character and less drastic measures than arresting the suspects would have sufficed.⁸⁵ In 2022 in the same case, the Supreme Court rejected the argument that the defendant should be acquitted of all charges because prosecution would violate Articles 10 and 11 of the ECHR. The Supreme Court considered:

The principles formulated by the ECHR show that the right to peaceful assembly does not preclude a person participating in a peaceful demonstration from being subjected to the threat of a penalty or measure if that person commits a "reprehensible act" during the demonstration.⁸⁶

According to the Supreme Court, by not imposing a penalty, the Court of Appeal had sufficiently considered the need to avoid a *chilling effect* on demonstrators.⁸⁷

In another case involving unlawful entry of a dwelling, the court ruled that the facts were not punishable:

Given the peaceful nature of the demonstrations, the judge believes that the defendant can invoke the right to freedom of expression and the right to freedom of assembly and association. The fact that the demonstrations took place in a private space, namely a Zara store and an Albert Heijn store, does not change this.⁸⁸

The judge also ruled that given the peaceful nature of the protests, their short duration, and the fact that they were small-scale and hardly caused any inconvenience, let alone damage or other criminal offenses, there were insufficient grounds to justify prosecution.⁸⁹ The prosecution constituted an unjustified and disproportionate infringement on the right to freedom of protest.⁹⁰ The conclusion was acquittal of all charges.⁹¹

Thus, we see that the protection of the right to protest can lead to acquittal of all charges or to refraining from the imposition of a penalty. However, this is not always the case. For example, one of the demonstrators who glued themselves to the painting 'Girl with a Pearl Earring' was sentenced to one month of unconditional imprisonment and one month of conditional imprisonment. According to the judge, this protest was not peaceful and had caused a shock in society.⁹² In another case, the Court of Appeal of The Hague considered that, even though the defendant did not view the frustration of public authority as an end in itself but had sincerely acted in accordance with his views and ideals, the imposition of a fine was still justified.⁹³

⁸³ The Hague Court of Appeal 19 January 2023, [ECLI:NL:GHDHA:2023:44](#). This is a non-official translation of official court documents. No rights can be derived from this translation.

⁸⁴ Ibid.

⁸⁵ Amsterdam Court of Appeal 28 August 2020, [ECLI:NL:GHAMS:2020:2377](#). This is a non-official translation of official court documents. No rights can be derived from this translation.

⁸⁶ Supreme Court 8 February 2022, [ECLI:NL:HR:2022:126](#), paragraph 2.5.2. This is a non-official translation of official court documents. No rights can be derived from this translation.

⁸⁷ Ibid.

⁸⁸ District Court Noord-Holland 31 August 2022, [ECLI:NL:RBNHO:2022:7825](#), paragraph 5.3. This is a non-official translation of official court documents. No rights can be derived from this translation.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² District Court The Hague 4 November 2022, [ECLI:NL:RBDHA:2022:14575](#).

⁹³ The Hague Court of Appeal 11 July 2017, [ECLI:NL:GHDHA:2017:2030](#). This is a non-official translation of official court documents. No rights can be derived from this translation.

Judges often consider the right to protest and civil disobedience in the context of a conviction and sentencing. This may lead to acquittal of all charges, non-imposition of a penalty after conviction⁹⁴, or the imposition of a lower penalty. However, this is not always the case; the right to protest does not provide a free pass to commit criminal offenses. When a criminal offense is committed during a demonstration, a conviction *can* follow, and a judge *can* impose a penalty. A criminal conviction can, however, only follow after the actual commission of a criminal offense. Mere participation in a demonstration is not punishable in itself, and in most cases, no criminal offenses will be committed during demonstrations.

6. Conclusion

In conclusion, international students and staff, like everyone else, have a right to protest, including at educational institutions and regardless of their residence status. Participation in a demonstration cannot in itself lead to the revocation of a residence permit. In exceptional cases, however, actions during demonstrations can have consequences for residence permits. This analysis has discussed those situations.

Since international students and staff often depend on their enrolment at and their employment contract with an educational institution for their residence permit, deregistration and dismissal can lead to the loss of a residence permit. A criminal conviction in the context of a demonstration can also have negative consequences for the residence permits of international students and staff.

All these cases involve potential far-reaching consequences. Deregistration, dismissal, and criminal conviction require facts and grounds that can support such severe sanctions. Moreover, judges often take the protection of the right to protest into consideration and avoid creating a *chilling effect*.⁹⁵ Losing a residence permit after participating in a demonstration will therefore be the exception rather than the rule.

⁹⁴ A criminal conviction in which no penalty is imposed may, as mentioned earlier, still have consequences for the residence permit with the purpose of employment if the conviction leads to the loss of the VOG.

⁹⁵ This analysis is a general description of the potential impact of participating in demonstrations on the residence permits of international students and employees. Please contact a criminal, migration or labour lawyer for personal advice.