

## AMNESTY INTERNATIONAL GERMAN SECTION

13. September 2023

# PROTECT THE PROTEST: FREEDOM OF THE RIGHT TO PEACEFUL ASSEMBLY UNDER PRESSURE IN GERMANY

## Repressive Legislation

In Germany, the right to freedom of assembly is prominently enshrined in the constitution and the Federal Constitutional Court has repeatedly emphasized its importance. However, detailed regulations on the exercise of the freedom of assembly are codified in the federal assembly law and in state assembly laws, which show a tendency towards a more repressive regime on assemblies. Since 2006, legislation on assemblies is adopted at the state level (German Länder). Out of the sixteen states, eight have passed their own assembly laws, out of which Amnesty International has criticized three for being overly repressive.

Recently, the federal states North Rhine-Westphalia<sup>1</sup> and Hessen<sup>2</sup> adopted repressive laws of assembly in 2021 and 2022. They introduce more administrative requirements for registering and implementing assemblies and foresee more control and surveillance powers<sup>3</sup> as well as criminal sanctions. It is particularly problematic that prohibitions in both state laws are extremely far-reaching and vague and at the same time violations thereof are directly punishable by law. For example, the law in North Rhine-Westphalia provides for criminal sanctions for the disruption of other protests, even if this “disruption” is merely of communicative nature in form of a counter-protest or a peaceful blockade.<sup>4</sup> The law also criminalizes purely preparatory actions such as blockade trainings<sup>5</sup> and contains a ban on all types of masking or protective equipment<sup>6</sup>. Also, the law includes a nationally unprecedented ban of assemblies on all highways.<sup>7</sup> As a result of the over-regulation by these laws, the right to freedom of assembly is disproportionately restricted. It also risks having a chilling effect on those who wish to exercise their right to freedom of speech and assembly. Constitutional complaints are pending against both assembly laws.<sup>8</sup>

The first assembly law at state level was passed in Bavaria in 2008<sup>9</sup>. It disproportionately restricted the right to protest by imposing excessively burdensome obligations and procedural rules on protestors and allowing for extensive surveillance of protests by the police. The law was declared unconstitutional in large parts by the Federal Constitutional Court in 2009<sup>10</sup> and was subsequently amended accordingly. Some critical provisions for the exercise of the freedom of peaceful assembly in Bavaria remain, however, including a provision in the Bavarian Police Tasks Act, which allows for preventive deprivation of liberty on administrative grounds<sup>11</sup>. This circumvents fair trial rights

<sup>1</sup> [https://recht.nrw.de/lmi/owa/br\\_bes\\_text?anw\\_nr=2&bes\\_id=47651&aufgehoben=N](https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&bes_id=47651&aufgehoben=N), accessed on August 25, 2023 at 5:35 PM.

<sup>2</sup> <https://starweb.hessen.de/cache/DRS/20/1/09471.pdf>, accessed on August 25, 2023, at 5:35 PM.

<sup>3</sup> See for example § 16 VersG NRW, which allows for comprehensive video surveillance of protests by the police.

<sup>4</sup> §§ 7, 27 para. 4, 28 para. 1 no. 3 VersG NRW.

<sup>5</sup> §§ 7 para. 2 no. 2, 27 para. 4, 28 para. 1 no. 3 VersG NRW.

<sup>6</sup> §§ 17, 27 para. 7, 28 para. 6, 7 VersG NRW.

<sup>7</sup> § 13 para. 1 sentence 3 VersG NRW.

<sup>8</sup> <https://freiheitsrechte.org/themen/demokratie/vb-versammlungsrecht-nrw>, accessed on August 25, 2023, at 5:37 PM;

<https://www.faz.net/aktuell/rhein-main/region-und-hessen/versammlungsfreiheit-linke-klagt-gegen-gesetz-in-hessen-19007447.html>, accessed on August 25, 2023, at 5:39 PM.

<sup>9</sup> <https://www.gesetze-bayern.de/Content/Document/BayVersG08>true>, accessed on August 8, 2023, at 10:33 AM;

<https://www.bayern.landtag.de/aktuelles/aus-dem-plenum/landtag-beschliesst-verschaerfung-des-versammlungsgesetzes/>, accessed on August 25, 2023, at 5:35 PM.

<sup>10</sup> Federal Constitutional Court Germany (Bundesverfassungsgericht), Decision of February 17, 2009 – BvR 2492/08.

<sup>11</sup> Article 17 BayPAG (Bavarian Police Tasks Act); <https://voelkerrechtsblog.org/de/preventive-detention-under-the-convention/>, accessed on August 8, 2023, at 10:42 AM.

and is a serious human rights violation. In 2022 and 2023 it was often administered against peaceful (climate) protesters.<sup>12</sup>

## Excessive Use of Force

Several incidents of excessive use of force in the context of assemblies have been reported over the last years. The research project "Violence in office. Excessive use of force by the police and its reappraisal" ("Gewalt im Amt. Übermäßige polizeiliche Gewaltanwendung und ihre Aufarbeitung", 2023) shows that in half of all incidents of police violence classified as unlawful by those affected, these incidents occurred in the context of demonstrations and political actions.<sup>13</sup>

One example is the use of pain inflicting techniques as a means to dissolve a protest, mostly street blockades by climate activists. Often, these police actions do not comply with the principles of necessity and proportionality as there are less harmful means available to the police. This is especially the case if they are used against peaceful protesters who can simply be carried away. In individual cases, the use of pain inflicting techniques can additionally amount to a degrading or inhuman treatment and thus violate the prohibition of torture.<sup>14</sup>

When the police cleared the protest camp of climate activists in Lützerath, the site of a coal mine expansion, in January 2023, protest observers reported police violence and restrictions of the right to freedom of speech, freedom of assembly and freedom of press.<sup>15</sup>

Another concern is the containment of participants of an assembly in a certain area without permission to leave (also known as "kettling"). One example thereof is a containment that took place in Leipzig in 2023.<sup>16</sup> It is estimated that up to 1000 persons were kettled for about 11 hours, among them minors. According to witness reports, adequate food and medical care as well as access to sanitary facilities was not provided adequately. Under human rights law kettling is lawful only under very limited circumstances and should only take place for the shortest time possible.

There have also been reports of excessive use of force by the police against demonstrators and media representatives during the days of the G20 summit in Hamburg in 2017. More than 150 investigations against police officers were initiated. However, almost all of them were dropped.<sup>17</sup> This leads to direct chilling effects on the freedom of peaceful assembly as people experiencing police violence without the officers being held accountable for their actions afterwards, are often deterred from participating in further protests. It also illustrates several general shortcomings in Germany with regard to police accountability. Firstly, identification badges are not mandatory for police officers in all states and at the federal level.<sup>18</sup> Identification badges would be a first step to combat impunity.<sup>19</sup> Secondly, investigations into allegations of ill-treatment by police are hampered by the lack of effective, independent investigation mechanisms. None of the existing mechanisms at the state level fully meets all human rights and rule of law standards.<sup>20</sup>

---

<sup>12</sup> <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-klimaschuetzerinnen-praeventivgewahrsam-verstoss-menschenrechte>, accessed on September 6, 2023, at 10:50 AM, <https://www.lto.de/recht/hintergruende/h/klima-aktivisten-gewaltandrohung-schmerzen-polizei-letzte-generation-berlin-strassenblockade-kleber/>, accessed on August 8, 2023, at 10:46 AM; <https://rsw.beck.de/aktuell/daily/meldung/detail/gff-klage-gegen-polizeiliche-schmerzgriffe-bei-aufloesung-von-klima-sitzblockade>, accessed on August 8, 2023, at 10:46 AM.

<sup>13</sup> <https://kviapol.uni-frankfurt.de/images/pdf/Zusammenfassung%20Gewalt%20im%20Amt.pdf>, p. 3, no. 2.1, accessed on August 8, 2023, at 10:59 AM.

<sup>14</sup> See <https://verfassungsblog.de/schmerzgriffe-als-technik-in-der-polizeilichen-praxis/>, accessed on August 8, 2023, at 11:01 AM.

<sup>15</sup> [https://www.grundrechtKomitee.de/fileadmin/user\\_upload/Entscheidung\\_fuer\\_Gewalt\\_Bericht\\_Demobeobachtung\\_Luetzerath\\_2023.pdf](https://www.grundrechtKomitee.de/fileadmin/user_upload/Entscheidung_fuer_Gewalt_Bericht_Demobeobachtung_Luetzerath_2023.pdf), cf.: [https://twitter.com/amnesty\\_de/status/1635920986791870464](https://twitter.com/amnesty_de/status/1635920986791870464), accessed on August 8, 2023, at 11:02 AM;

<https://twitter.com/paulaszimmer/status/1610583665448214530> accessed on August 8, 2023, at 11:02 AM;

<https://www.amnesty.de/informieren/aktuell/deutschland-luetzerath-amnesty-erinnert-an-pflicht-zur-einhaltung-des-1-5-grad-ziels>, accessed on August 8, 2023, at 11:03 AM.

<sup>16</sup> <https://amnesty-polizei.de/stellungnahme-zum-sogenannten-polizeikessel-in-leipzig/>, accessed on August 8, 2023, at 11:04 AM.

<sup>17</sup> <https://amnesty-polizei.de/stellungnahme-zum-g20-gipfel-in-hamburg/>, accessed on August 8, 2023, at 11:05 AM.

<sup>18</sup> <https://www.amnesty.de/sites/default/files/2021-06/Amnesty-Forderungspapier-Polizei-Rassismus-Juni-2021.pdf>, p. 5, accessed on August 9, 2023, at 05:22 PM.

<sup>19</sup> [https://www.amnesty.de/sites/default/files/2019-03/Amnesty-Positionspapier-Kennzeichnungspflicht-fuer-Polizist\\_innen-November-2018.pdf](https://www.amnesty.de/sites/default/files/2019-03/Amnesty-Positionspapier-Kennzeichnungspflicht-fuer-Polizist_innen-November-2018.pdf), accessed on August 9, 2023, at 05:22 PM.

<sup>20</sup> <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-positionspapier-zu-unabhaengigen>, accessed on August 25, 2023, at 5:40 PM.

## Protest Treated as a Threat

In Germany, protest is sometimes portrayed by state officials primarily as a threat to public order and security.<sup>21</sup> This reference demonizes and criminalizes protest instead of empowering people to exercise their right to freedom of assembly and fulfilling the states duty to protect. For example, only 50 protestors were allowed at the location of the G7 summit in Bavaria in 2022. Also, several cities have tried to inhibit climate protests via blanket, preventive assembly bans. There is also a risk of discrimination and marginalization. For instance, the authorities of Berlin banned all protests in the capital in solidarity with Palestinians' rights around the Nakba Day in 2022 and 2023, justifying the bans on – among others – stereotypical, racist grounds.<sup>22</sup>

Especially climate activists are subject to repression. For example, since October 2022, the Bavarian police have placed several dozen climate activists in preventive detention for up to 30 days.<sup>23</sup> Before, activists had repeatedly blocked streets causing tailbacks. The preventive detentions were ordered under the Bavarian Police Tasks Act, which allows the police to request detention without concrete suspicion of a crime or initiating a criminal proceeding. This preventive deprivation of liberty on administrative grounds circumvents fair trial rights and is a serious human rights violation. When targeting individuals to keep them from participating in protests, these measures could constitute arbitrary detention as they are incompatible with the rights to freedom of expression and freedom of peaceful assembly. Also, they have a chilling effect on those who wish to exercise their legitimate human rights.

Besides, members of the activist group “Letzte Generation” have been accused of forming a criminal organization according to § 129 of the German Penal Code.<sup>24</sup> The provision has been criticized for being overly broad and thus susceptible to misuse. This criminal charge is accompanied by far-reaching powers of investigation. Among other measures, phone calls with journalist have been intercepted by the police, threatening the freedom of press. Even though investigations were at an early stage, the Bavarian police publicly prejudged the activist group for committing the offence, violating the presumption of innocence and the rule of law.<sup>25</sup> These state actions must be seen in the context of public statements by high-ranking politicians and media outlets that equate climate activists with “terrorist groups” such as the Taliban<sup>26</sup>.

During street blockades, climate activists and journalists also risk being attacked verbally and physically by other people, especially drivers of motorized individual transport. Here, the German state is responsible to protect the physical integrity as well as the freedom of assembly and freedom of press of the activists and media representatives. Statements by politicians relativizing this sort of violence against climate activists<sup>27</sup> are not only incompatible with the state's duty to protect protests but also fuel the negative discourse around protests.

Furthermore, the right to freedom of assembly can be disproportionately restricted if the prosecution of protesters is not based on individual accusations of them having used violent means themselves but only due to their affiliation

<sup>21</sup> <https://www.sueddeutsche.de/politik/robert-habeck-kirchentag-letzte-generation-klimaschutz-heizungsgesetz-1.5914800?reduced=true>, accessed on August 3, 2023, at 08:02 AM; <https://www.tagesspiegel.de/politik/letzte-generation-schadet-uns-grunen-politiker-al-wazir-halt-klebeaktionen-fur-kontraproduktiv-und-elitar-10002826.html>, accessed on August 3, 2023, at 08:02 AM; [https://www.ndr.de/der\\_ndr/presse/mitteilungen/Zweite-Buergermeisterin-Katharina-Fegebank-im-NDR-Sommerinterview-Klima-Aktivisten-handeln-kriminell-,pressemeldunghh1866.html](https://www.ndr.de/der_ndr/presse/mitteilungen/Zweite-Buergermeisterin-Katharina-Fegebank-im-NDR-Sommerinterview-Klima-Aktivisten-handeln-kriminell-,pressemeldunghh1866.html), accessed on August 3, 2023, at 08:04 AM; <https://www.zeit.de/politik/deutschland/2023-04/letzte-generation-marco-buschmann-strassenproteste-extremisten-vergleich>, accessed on August 3, 2023, at 01:45 PM; <https://www.spiegel.de/politik/deutschland/fdp-parteitag-christian-lindner-wirft-aktivisten-mit-klebeaktionen-physische-gewalt-vor-a-a33edefb-9df3-4db3-80e7-e215add7be3c>, accessed on August 3, 2023, at 01:55 PM; <https://www.stern.de/politik/deutschland/letzte-generation--politiker-streiten-ueber-einschaetzung-als-kriminelle-vereinigung-33500992.html>, accessed on August 3, 2023, at 01:56 PM.

<sup>22</sup> <https://www.amnesty.org/en/documents/eur23/7180/2023/en/>, accessed on September 13, 2023, at 12:19 PM. See also: Administrative Court (Verwaltungsgericht Berlin) - VG 1 L 217/23; Higher Administrative Court Berlin-Brandenburg (Oberverwaltungsgericht Berlin-Brandenburg) – OVG 1 S 45/23; <https://www.hrw.org/de/news/2022/05/25/berlin-verbietet-demonstrationen-zum-nakba-tag>, accessed on August 8, 2023, at 11:07 AM.

<sup>23</sup> <https://www.amnesty.de/allgemein/pressemittteilung/deutschland-klimaschuetzerinnen-praeventivgewahrsam-verstoss-menschenrechte>, accessed on September 6, 2023, at 10:50 AM; <https://www.amnesty.org/en/documents/eur23/6481/2023/en/>, accessed on August 8, 2023, at 11:07 AM; <https://amnesty-polizei.de/klimaaktivisten-in-praeventivgewahrsam/>, accessed on August 8, 2023, at 11:12 AM.

<sup>24</sup> [https://twitter.com/amnesty\\_de/status/1661719332466900992?s=20](https://twitter.com/amnesty_de/status/1661719332466900992?s=20), accessed on August 8, 2023, at 11:14 AM.

<sup>25</sup> Among others: <https://www.tagesschau.de/investigativ/ndr/letzte-generation-website-behoerden-bayern-100.html>, accessed on August 8, 2023, at 11:15 AM.

<sup>26</sup> <https://www.rnd.de/politik/letzte-generation-mit-oel-attacke-auf-denkmal-spd-politiker-vergleicht-aktivisten-mit-taliban-WAVFWSZY7RF6HCKLDKWOPQROEU.html>, accessed on August 8, 2023, at 11:16 AM; <https://www.spiegel.de/politik/deutschland/letzte-generation-radikalisierte-kritik-gegen-klimaaktivisten-a-b3629110-c7fe-4740-bfef-7d5000390b3b>, accessed on August 8, 2023, at 11:17 AM.

<sup>27</sup> <https://www.tagesspiegel.de/berlin/selbstjustiz-gegen-letzte-generation-rechtsbrecher-konnten-sich-von-berlins-innensenatorin-ermutigt-fuehlen-9691499.html>, accessed on August 8, 2023, at 11:17 AM.

with a group, which is linked to violent events. For example, after the protests around the G20 summit in Hamburg in 2017, some protestors were convicted for walking in a crowd together with people that had used violence.<sup>28</sup>

In the context of Covid-19 'lockdown measures', German authorities often framed assemblies generally as a danger to public health. Instead of balancing the right to freedom of assembly against public health concerns on a case-by-case basis, assemblies were categorically forbidden or general restrictions were imposed on the organizers and participants.<sup>29</sup> In April 2020, the German Constitutional Court clarified, however, that bans cannot be based on blanket reasons and that the authorities have to carry out a case-by-case assessment.<sup>30</sup>

---

<sup>28</sup> <https://amnesty-polizei.de/rondenbarg-verfahren-beginnen/>, accessed on August 8, 2023, at 11:18 AM.

<sup>29</sup> [https://www.brot-fuer-die-welt.de/fileadmin/mediapool/downloads/fachpublikationen/analyse/Analyse\\_Covid19\\_Menschenrechte.pdf](https://www.brot-fuer-die-welt.de/fileadmin/mediapool/downloads/fachpublikationen/analyse/Analyse_Covid19_Menschenrechte.pdf), accessed on August 8, 2023, at 11:08 AM; <https://www.amnesty.de/informieren/amnesty-report/amnesty-report-2020-globale-analyse>, accessed on August 8, 2023, at 11:08 AM; <https://freiheitsrechte.org/corona-und-zivilgesellschaft/#fazit-demonstration>, accessed on August 8, 2023, at 11:09 AM.

<sup>30</sup> Federal Constitutional Court Germany (Bundesverfassungsgericht), Decision of 15. April 2020 – 1 BvR 828/20.