



Degree Program in International Relations

Course of Security Law and Constitutional Protection

Environmental Activism in Europe: Comparative
Perspectives on the Protection of Fundamental Rights and
Emerging Frameworks of Securitization

Prof. Elena Griglio

SUPERVISOR

Prof. Michele Governatori

CO-SUPERVISOR

Martina Gori - 656672

CANDIDATE

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*“Even in the vast and mysterious reaches of the sea
we are brought back to the fundamental truth that nothing lives to itself.”*

— Rachel Carson, Silent Spring (1962)

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Introduction

Object and Scope of the Research

Over the last century, environmental issues have experienced a major transformation, evolving from a marginal and often neglected concern to a critical topic in global political discourse. This subject, which was previously the exclusive interest of a few intellectuals, has gradually become relevant to a large segment of the population. Public awareness regarding environmental issues has been increasing in recent years, driven principally by the evident and indisputable deterioration of the natural world. An evolving recognition of the interconnected problems of extreme weather events, biodiversity loss, and rising global temperatures has prompted individuals and communities to demand government intervention.¹ Consequently, what began in many countries as local conservation associations and preservationist enclaves has matured into a plural, transnational movement that presses systemic questions about economic models, intergenerational justice and the legitimacy of certain state practices in environmental governance. The principal groups representing this social evolution have been youth-led climate movements such as Fridays for Future and Extinction Rebellion. These groups, which are primarily based on direct action and occasionally involve acts of civil disobedience, have attracted global attention. Alongside litigation, lobbying and conventional street marches, these movements have adopted nonviolent disruptive action, sit-ins, occupations and infrastructure blockades as instruments for making claims that established political channels have, by their own assessment, failed to answer.² The emergence of these groups and their protest modalities have produced a marked reaction from states and institutions. Where once public authorities responded to environmental activism primarily with policy negotiation or administrative restraint, a range of contemporary legal instruments, criminal law interventions, preventive injunctions and specialist public-order statutes, have played an increasingly important role in official responses to climate dissent.³ This phenomenon can be understood as part of a broader trajectory in which, across most Western countries, governments have increasingly adopted repressive legislative measures, characterised by significant restrictions on individual rights, procedural exceptions, and expansions of police powers, raising the possibility that policies ostensibly designed to protect democratic values

¹ United Nations Environment Programme (UNEP), *Global Environment Outlook 6* (2019) <https://www.unep.org/resources/global-environment-outlook-6>.

² Oscar Berglund and Daniel Schmidt, *Extinction Rebellion and Climate Change Activism* (Springer International Publishing 2020) 2.

³ Rossella Selmini and Anna Di Ronco, *The Criminalization of Dissent and Protest* (2023) 52 *Crime and Justice* 214.

may, paradoxically, undermine the very principles on which democracy itself is founded.⁴ However, those methods differ from one nation to another. In Germany, organized civil disobedience has been interpreted under rules pertaining to criminal association or public endangerment, mainly by applying existing criminal statutes.⁵ In contrast, the UK and Italy have created new laws that specifically target certain forms of protest, such as “lock-on” protests, roadblocks and infrastructure disruption.⁶ In light of these numerous provisions, activists have been exposed to increased legal scrutiny, with measures that are susceptible to broad interpretation.

The aim of this thesis is to investigate these most recent developments in the regulation of environmental protest, paying particular attention to the emergence of legal mechanisms that appear specifically designed to curtail the scope of dissent. It places these national measures within the broader framework of international and regional protections for fundamental rights, particularly the freedoms of expression and assembly. Crucially, this research does not proceed from a desire to undermine or question the legitimate prerogatives of states to preserve public order and safety. Rather, it seeks to highlight a concern increasingly raised by legal scholars, human rights observers, and supranational institutions, such as the United Nations, that recent legal responses to certain forms of environmental protest may risk becoming disproportionate, with possible consequences for the protection of specific fundamental rights.⁷ By critically examining this trend, the current study hopes to contribute to the larger scholarly and policy dialogue on how states can reconcile security demands with the parallel obligation to protect fundamental rights, as well as to ensure that any restrictions are lawful, necessary and proportionate.

Chapter I offers a philosophical and historical basis, following the evolution of environmental movements and the laws safeguarding the rights to expression and assembly. The research begins by looking at the fundamental ideas behind these rights, as delineated in the Universal Declaration of Human Rights and the European Convention on Human Rights. At the same time, it offers a key comprehension of the constraints on these freedoms, including the state's authority to ensure public order, economic interests and security. The chapter highlights the tension between legitimate protest

⁴ Maria Caterina Amorosi, *Dalla forza del dissenso alla forza contro il dissenso. Spunti di riflessione su alcuni tornanti involutivi nella nostra democrazia* (Fascicolo 2, 2024) *Costituzionalismo.it* 23, <https://www.costituzionalismo.it/dalla-forza-del-dissenso-alla-forza-contro-il-dissenso-spunti-di-riflessione-su-alcuni-tornanti-involutivi-nella-nostra-democrazia/> accessed 14 September 2025.

⁵ Alexander Heinze and Julia Steinmetz, *Vom „Verbrecherverein“ zum Zusammenschluss mit kriminellem Zweck* (2023) *Kritische Justiz* (KJ) 56(3) 295–312.

⁶ Sandra Laville, *European Nations Must End Repression of Peaceful Climate Protest, Says UN Expert* (The Guardian, 28 February 2024) <https://www.theguardian.com/environment/2024/feb/28/european-nations-must-end-repression-of-peaceful-climate-protest-says-un-expert> accessed 9 August 2025.

⁷ Loes van Dijk, *UN Special Rapporteur Exposes State Repression of Environmental Protest* (Climate Court, 5 March 2024) <https://www.climate-court.com/post/un-special-rapporteur-exposes-state-repression-of-environmental-protest>.

and actions categorized as “eco-terrorism,” drawing a line between nonviolent activism and destructive actions intended to cause property harm. Furthermore, civil disobedience is discussed as a strategic, symbolic form of protest that appeals to broader ideas of justice while challenging preexisting legal rules. Additionally, it describes the beginnings of environmental movements and their impact on national and international legal frameworks, from the early conservationist and preservationist endeavours to the emergence of reform environmentalism and ecologism. The goal is to demonstrate how social movements, particularly those related to climate change, have shaped and continue to shape national and international agendas, underlining their significant impact.

Chapter II examines how national and international courts have historically interpreted and implemented the freedoms of assembly and expression in relation to public order and security. Its aim is to provide a detailed analysis of how regulations have developed and adapted to new problems and social needs. The chapter examines numerous case laws from Italy, the United Kingdom and Germany, which have been selected based on these countries' particularly resolute responses to the phenomenon of transnational climate activism today. Furthermore, an analysis of the multi-layered system of human rights protection in Europe is provided, with landmark cases at the supranational level also being examined to determine how these courts interpret the scope and limits of these rights. Common themes throughout Europe are highlighted in the chapter, including the principle of proportionality, judicial oversight, and the recognition that even disruptive protests can be lawful so long as they do not result in physical harm. Overall, it highlights how the legal system is changing and how states have historically tried to strike a balance between conflicting rights and interests.

Chapter III explores the recent evolution of European states' responses to the new wave of climate activism, focusing on Italy, the United Kingdom and Germany as case studies. It has been demonstrated that, while earlier environmental campaigns frequently relied on NGOs and institutional dialogue, the early twenty-first century has witnessed a shift towards disruptive yet non-violent tactics such as road blockades, symbolic vandalism and civil disobedience. Consequently, many countries have reacted strongly; among the most relevant protagonists of this change are Italy, the UK and Germany. In Italy, recent measures such as the Decreto Sicurezza 2025 and the so-called "eco-vandals' law" have introduced new restrictions on certain forms of protest, raising debates among legal scholars and judges about their clarity and the extent. In the United Kingdom, the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023 have created sweeping new offences and preventive powers, directly aimed at groups like Extinction Rebellion and Just Stop Oil. Critics have consistently warned that the vague definitions and broad police discretion risk chilling lawful protest. Germany, by contrast, has avoided adopting new legislation and has relied on existing

criminal provisions, most controversially §129 of the Criminal Code, which has been used to treat the Letzte Generation network as a potential “criminal organization”, a move that has opened the door to raids, surveillance and preventive detention. At the European level, institutions such as the European Court of Human Rights have emphasized that even disruptive protest must be protected so long as it is peaceful and have warned states against resorting too quickly to repression. Even while this thesis recognizes some shortcomings of the environmental movement, such as a reluctance in certain quarters to engage in institutional dialogue, it highlights how the consequences of these specific laws can lead to treating protest or civil disobedience less as a form of democratic participation and more as a threat to public order.

The objective of this work is to transcend the oversimplified perspective of climate protesters as either criminals or heroes. Instead, it seeks to provide a more nuanced examination of the actual tensions between public administration and civil liberties in the context of environmental action. This raises broader questions about how democratic societies address dissent during ecological crises. If the law is used primarily to stop protests, it could undermine public trust in environmental policy legitimacy. Conversely, permitting disruption without restraint can challenge the very foundation of democratic procedures. The true challenge lies in identifying an equilibrium that safeguards public interests while also upholding the liberties that facilitate democratic discourse. The following chapters explore this challenge in detail, examining how courts and legislatures across Europe navigate the balance between order, rights and ecological responsibility.

Methodological Approach

This study adopts a comparative legal approach and a case law study in order to examine how different European legal systems respond to environmental activism, with particular attention to the balance between fundamental freedoms, most notably freedom of expression and the right to peaceful assembly, and collective interests such as public order and institutional stability. The analysis traces how judicial reasoning and legislative measures have developed over time and considers how states have recently reacted to the rise of new transnational activism, both through legislative action and through judicial interpretation. The thesis opens with a legal delineation of the rights to freedom of expression and assembly, outlining the legal bases that guarantee these rights; at the same time, it balances this by examining the need to maintain public order and protect collective interests within a state. Moreover, it provides an account of how the climate has evolved and the legal objectives it has achieved over the past century. In the second chapter, the selection of legal cases is governed by the

objective of examining how various European legal systems have addressed environmental activism in the context of increasing public mobilization and evolving approaches to protest regulation. The cases were chosen to reflect both the diversity of legal traditions, civil law, common law, and supranational mechanisms, and the legal issues that are often encountered when attempting to achieve equilibrium between civil liberties and the safeguarding of public order and institutional stability. Italy, the United Kingdom, and Germany were selected as national case studies because each represents a distinct legal tradition, civil law in Italy and Germany, common law in the United Kingdom, and all three have, in recent years, introduced new legal measures or applied existing ones more strictly to regulate or restrict environmental protests, specifically the one involving transnational movements. The analysis is structured into national blocks, with the aim of preserving internal coherence and to avoid an excessively fragmented approach. These developments prompted a closer examination of earlier landmark rulings in each jurisdiction, particularly those defining the scope and limits of the right to protest. Analysing these foundational cases provides insight into how courts have historically approached the balance between civil liberties and public order and establishes the basis for understanding more recent reforms to be examined in the Third Chapter. National jurisprudence has been considered alongside supranational rulings from the European Court of Human Rights and the Court of Justice of the European Union. These courts have been instrumental in clarifying the limits of state authority in regulating assemblies and in articulating positive obligations to protect protest, thereby influencing domestic approaches. Their decisions give a wider framework for assessing national measures, showing how European legal standards may reinforce, modify, or constrain domestic law. Their impact on determining the legal boundaries of protest and guaranteeing democratic participation has grown steadily over the last two decades. By integrating both national and supranational perspectives, this methodology allows for a comprehensive examination of convergences and divergences in judicial reasoning. The comparative approach identifies patterns in how environmental protest is regulated across systems, situates recent legislative changes within a broader legal trajectory, and highlights how landmark cases may anticipate or contrast with new legislative developments. Within the methodological framework, the study also seeks to assess, through the comparative examination of past and present developments, whether the evidence points to a substantive shift towards stricter regulation and repression of freedom of expression and assembly in the countries under consideration, or whether these developments should instead be understood as part of the continuing process of balancing. However, given the highly contemporary nature of the subject matter, relatively few cases have progressed through all stages of the judicial process. Consequently, the analysis has been constrained by the availability of final judgments. For instance,

in Italy, the Decreto Sicurezza approved in June 2025, has not yet produced significant case law connecting its provisions. The same situation also applies to supranational level: there are many cases before the European Court of Human Rights and the Court of Justice of the European Union but remain pending and have not yet been decided. Despite the limited availability of recent cases, the study aims to offer a comprehensive overview of the most relevant case law at the European level.

Chapter I. Environmental Activism: Historical Developments and Legal Frameworks

Environmental activism is now a complex and multifaceted movement shaped by decades of social, political, and legal change. To understand the current situation in which climate activists act as the public conscience while facing intensifying state control, it is important to examine the historical and legal frameworks that have enabled and constrained activism over time. The evolution of the rights to freedom of expression and assembly, which are fundamental to democratic societies, is examined in this chapter. The rise of environmental advocacy is also discussed, along with the tensions between individual liberties and collective interests. The chapter starts with discussing freedom of expression and assembly and continues by explaining the principles that govern a state's responsibility to maintain security and public order. These rights, enshrined in constitutional texts and reinforced through international treaties, form the bedrock of political participation and dissent. Yet, they have never existed in a vacuum. Governments have always sought to balance these freedoms against the need to preserve public order, protect economic stability, and safeguard national interests. As such, the boundaries of these rights have been continually negotiated through courts, legislation, and social movements, often reflecting broader struggles over power and justice. Environmental activism, as a distinctive form of protest, occupies a unique position within this legal landscape. Its emergence in the late twentieth century was marked by growing awareness of ecological crises and the recognition that traditional political channels often failed to address urgent environmental concerns. This led activists to adopt diverse strategies, from peaceful demonstrations to civil disobedience, challenging existing legal norms and provoking debates about the limits of lawful dissent. The chapter also considers the complex legal questions raised by these tactics, especially when peaceful protest crosses into acts deemed unlawful under public order or property laws. It examines how international human rights instruments, and regional conventions have responded to protect environmental defenders, while also acknowledging the difficulties courts may face in balancing rights with state interests.

Finally, the chapter places environmental activism within broader global trends, highlighting how the movement has transcended national borders to become a transnational phenomenon. It discusses how international conferences and agreements have been shaped by activists' pressure, underscoring the interplay between grassroots mobilization and formal legal frameworks. Through this examination, the chapter aims to provide a deeper understanding of the historical roots and legal

contours of environmental activism, setting the stage for a deeper analysis of its contemporary challenges and implications.

1.1 The Legal Balance Between Fundamental Rights and Collective Interests.

1.1.1 Legal Foundations of Freedom of Expression and Assembly.

While analysing a phenomenon such as contemporary climate activism, it is fundamental to consider the historical and legal developments that have defined the freedoms of assembly and expression within democratic societies. However, before delving into the subject, it is essential to clarify what is meant by freedom of expression and freedom of assembly, since these two concepts carry distinct legal meanings and implications. Freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights, has been described by the European Court of Human Rights as “one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man”.⁸ It encompasses not only the right to hold and express opinions, but also the right to receive and impart information and ideas without interference by public authorities.⁹ Crucially, this protection extends as well as to expression that “offends, shocks or disturbs the State or any sector of the population”, since such tolerance is a cornerstone of pluralism.¹⁰ In the context of public protest, freedom of expression safeguards the communication of political dissent and the symbolic or verbal articulation of grievances in a manner that ensures their visibility in the public sphere. By contrast, freedom of assembly, as understood in European human rights law, is often mentioned alongside freedom of association in constitutional and treaty provisions, but the two are not identical. Assembly protects the act of people gathering together at a specific time and place for a defined purpose, most often to protest, demonstrate, or otherwise make their views known.¹¹ It does not presuppose any enduring or formal bond among participants. Association, on the other hand, refers to the formation of more permanent and structured groupings in which individuals voluntarily come together over time to pursue shared goals.¹² These may include trade unions, political parties, student unions, residents’ associations, charities, sports clubs, and cultural or religious organizations. The legal questions that arise under each right also diverge. Disputes concerning the right to association often involve issues such as the right to join, leave, or refuse

⁸ *Handyside v United Kingdom App no 5493/72* (ECtHR, 7 December 1976) § 49.

⁹ Emily Howie, *Protecting the Human Right to Freedom of Expression in International Law* (2018) 20 *International Journal of Speech-Language Pathology* 12-14.

¹⁰ *Handyside v United Kingdom* (n 8) § 49.

¹¹ Maria Cahill, Dwight Newman and Seán Ó Conaill, *Global Perspectives on Freedom of Association* (2025) 12(1-2) *European Journal of Comparative Law and Governance* 7.

¹² *Ibid* 9.

membership or the scope of state oversight and funding.¹³ Such matters rarely feature in cases concerning peaceful assembly, which more commonly address the conditions under which gatherings may take place and the obligations of the state to facilitate and protect them. Although the two rights can overlap, members of an association may, for example, convene a rally or public meeting, the nature of the cooperative activity protected by each remains different.

The capacity to gather and to speak collectively, now regarded as central to democratic life, has been the product of long historical development, forged through political struggle, social transformation and shifting ideas about individual and civic rights. Public deliberation and communal decision-making have deep roots: in ancient Greece and Rome, collective meetings were integral to political life, albeit limited to those recognized as citizens.¹⁴ However, the modern articulation of these liberties is closely associated with Enlightenment philosophy, which emphasized emancipation from arbitrary constraints and the primacy of reason as a guide for social and political order.¹⁵ Montesquieu stands among the era's influential theorists: in "The Spirit of the Laws" (1748) he examined the character of liberty and drew a distinction between political and philosophical freedom, warning that systems might appear free by institutional form while leaving individuals unfree in practice.¹⁶ For Montesquieu, genuine liberty required both an enabling constitutional framework and the tangible experience of freedom by citizens.¹⁷ Legal guarantees followed these intellectual shifts: the Pennsylvania Declaration of Rights (1776) offered one of the earliest written recognitions of a people's right to assemble "for the common good" and to instruct their representatives.¹⁸ In the same period, in France, the 1789 Declaration of the Rights of Man and of the Citizen articulated broad freedoms of opinion and expression and confined the legitimate bounds of action to what did not harm others; although it did not enumerate assembly in the same terms, its principles framed later French developments.¹⁹ Yet, the revolutionary promise in France was soon curtailed: Napoleon's 1810 criminal code required prior authorization for gatherings of more than twenty persons, and full restoration of assembly rights did not occur until the early twentieth century, with 1907 marking a return to more robust protections.²⁰ The recognition of the right of assembly and expression gained on renewed urgency across Europe after World War II, as states sought institutional safeguards against

¹³ Ibid 7.

¹⁴ Robin Handley, Public Order, *Petitioning and Freedom of Assembly* (1986) 7 *Journal of Legal History* 123.

¹⁵ Ibid 125.

¹⁶ Sharon R Krause, *Two Concepts of Liberty in Montesquieu* (2005) 34(2) *Perspectives on Political Science* 88-92.

¹⁷ Ibid.

¹⁸ Bernard Schwartz (ed), *The Bill of Rights: A Documentary History*, vol 2 (Chelsea House Publishers 1971), i, 266-
Article XVI.

¹⁹ Handley (n 14) 123.

²⁰ Ibid.

a relapse into authoritarianism.²¹ One of the most significant instrument was the ratification of the Universal Declaration of Human Rights in 1948, which provided a standard, worldwide vocabulary for fundamental liberties and sparked the development of several regional and international instruments to transform those principles into legal laws.²² Specifically, Article 19 affirms that every person is entitled to form and hold their own opinions without interference and to communicate those opinions freely, including the right to seek, receive, and share information and ideas through any medium and across all borders.²³ Article 20 guarantees that all individuals may gather and associate peacefully with others, while also protecting them from being forced into membership in any group or organization against their will.²⁴

Furthermore, within this post-war architecture, the European Convention on Human Rights (ECHR), which opened for signature in 1950 and went into force in 1953 under the Council of Europe, marked a watershed moment: it was one of the first binding treaties to enshrine civil and political freedoms at the supranational level and to establish a judicial body, the European Court of Human Rights (ECtHR), charged with their enforcement.²⁵ Unlike later agreements, such as the United Nations human rights covenants, the ECHR was principally concerned with preserving individual liberties from governmental abuse, with enforcement delegated to the newly founded European Court of Human Rights (ECtHR) in Strasbourg.²⁶ The Court would not only adjudicate infractions, but also interpret the Convention as a "living document," allowing its principles to evolve in response to societal changes.²⁷ Specifically, Articles 10 and 11 of the European Convention on Human Rights enshrine two core democratic freedoms: Article 10 secures freedom of expression, while Article 11 protects the right to peaceful assembly and association. Under Article 10, individuals enjoy the right to communicate ideas and to access information without interference by public authorities; courts have interpreted that right to cover not only words but also actions, gestures and other expressive conduct.²⁸ The European Court has placed particular emphasis on shielding political expression from censorship or repression, even when it offends or disturbs. At the same time, the Court recognises

²¹ Michael Hamilton, Neil Jarman and Dominic Bryan, *Parades, Protests and Policing: A Human Rights Framework* (Northern Ireland Human Rights Commission, 2001) 2.

²² United Nations, *Universal Declaration of Human Rights* (adopted 10 December 1948, UNGA Res 217 A(III)) UN Doc A/810

²³ UDHR art 19.

²⁴ UDHR art 20.

²⁵ Christoph Grabenwarter, *The European Convention on Human Rights: Inherent Constitutional Tendencies and the Role of the European Court of Human Rights* (2014) ELTE LJ 101.

²⁶ Hamilton, Jarman and Bryan (n 21) 3-4.

²⁷ Kanstantsin Dzehtsiarou and Conor O'Mahony, *Evolutionary interpretation of rights provisions: A comparison of the European Court of Human Rights and the US Supreme Court* (2012) 44 Colum Hum Rts L Rev 309.

²⁸ Council of Europe, *The European Convention on Human Rights* (Directorate of Information, Strasbourg 1952) art 10.

that states may lawfully limit this freedom when such limitations are clearly grounded in law and justified by pressing needs, for example to prevent disorder or to defend national security, and when they satisfy strict tests of necessity and proportionality.²⁹ Article 11 protects the right to peaceful assembly and association, acknowledging these freedoms as essential to democratic participation; it covers collective activities such as marches, demonstrations and protests, which the European Court of Human Rights treats as core forms of political expression.³⁰ Like Article 10, Article 11 permits restrictions, but only where they are prescribed by law, pursue a legitimate aim and are necessary and proportionate, for example to protect public safety or prevent disorder. Crucially, the state may also incur positive obligations under Article 11, obliging authorities to take reasonable steps, including providing police protection, to enable peaceful gatherings to proceed safely, even where there is a real risk of counterdemonstrations.³¹ This protection embraces a wide spectrum of protest activity, safeguarding not only conventional speech but also expression that may unsettle, provoke, or offend segments of the public, an acknowledgement that such dissent is indispensable to pluralism and the robust exchange of ideas within a democratic society.³² It extends to political discourse, artistic creation, investigative journalism, and forthright criticism of governments, politicians, and public officials, with the Court affording its highest level of protection to express touching upon matters of public interest. In this context, sharp, exaggerated, or even provocative language may fall within the scope of protection when it serves as part of political debate or legitimate critique, particularly when directed at those in positions of power.³³ The press, in particular, is accorded a preeminent status as a guardian of public accountability, benefiting from strong protections for disseminating contentious opinions, shielding confidential sources, and reporting on issues central to the functioning of democratic governance and the administration of justice.³⁴ However, the regulation of freedom of assembly and expression is primarily the responsibility of Member States, exercised through their national legal systems and courts, while the European Union provides the fundamental framework and safeguards to ensure these rights are upheld across its member countries.³⁵ The Charter's protections for freedom of expression and assembly apply horizontally, allowing these rights to be

²⁹ Hamilton, Jarman and Bryan (n 21) 26.

³⁰ Council of Europe, *The European Convention on Human Rights* (n 1) art 11.

³¹ William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 461.

³² Guide on Article 11 of the Convention – *Freedom of assembly and association* (European Court of Human Rights, last update 28 February 2025) para 209.

³³ Macovei Monica, *A Guide to the Implementation of Article 10 of the European Convention on Human Rights* (Human Rights Handbooks No 2, Council of Europe 2004) 16.

³⁴ *Ibid* 11-13.

³⁵ Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (6th edn, OUP 2011) 360.

enforced between private parties, which expands their legal reach beyond state actions. Consequently, the capacity of Articles 10 and 11 of the European Convention on Human Rights to place meaningful limits on police discretion in the management of protests ultimately rests on the stance adopted by domestic courts. Much depends on how far they are prepared to invoke the margin of appreciation doctrine, which affords states a measured space to balance individual freedoms against the imperatives of public order, and on their willingness to give full effect to the foundational principles of human rights law, with regard to political expression.³⁶ In parallel, another fundamental convention adopted to protect individual rights was the International Covenant on Civil and Political Rights, concluded in 1966.³⁷ Article 21 of the ICCPR affirms the right to peaceful assembly, declaring that it should be recognised without restriction save for those imposed by law and demonstrably necessary in a democratic society.³⁸ Such restrictions are permissible only in specific and narrowly defined situations, for example, to safeguard national security, public safety, public order, public health, morals, or the rights and freedoms of others.³⁹ The provision further demands that any limitation meet rigorous standards of necessity and proportionality, ensuring that constraints are convincingly justified, tightly drawn, and never so broad as to undermine the substance of the right itself.

Moreover, it is essential to recognize that alongside the development and strengthening of environmental regulatory frameworks, there has been a corresponding evolution in the legal protection afforded to those who advocate on behalf of the environment. Among the most significant advances in this area is the broad interpretation adopted by the Aarhus Convention Compliance Committee under Article 3(8) of the Convention.⁴⁰ This interpretation encompasses not only individuals participating in environmental protests but also those engaging in acts of civil disobedience, provided that such actions further the Convention's objectives of sustainable development and the right to a healthy environment. Article 3(8) of the Aarhus Convention explicitly prohibits any penalization, persecution, or harassment of individuals exercising rights consistent with the Convention's provisions.⁴¹ Although this safeguard has historically been underused, recent jurisprudence from the Aarhus Convention Compliance Committee, particularly decisions involving

³⁶ Helen Fenwick, & Gavin Phillipson, *The Human Rights Act, public protest and judicial activism*, Eleven International Publishing (2008).

³⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

³⁸ ICCPR art 21.

³⁹ Hamilton, Jarman and Bryan (n 21) 9.

⁴⁰ *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 art 3(8).

⁴¹ Aarhus Convention art 3(8).

Spain, the United Kingdom, and Belarus, has clarified the criteria for determining violations.⁴² These criteria include: the exercise of rights in alignment with the Convention’s aims, the occurrence of harmful acts such as arrest, intimidation, defamation, or strategic litigation intended to silence activists, a demonstrable causal link between these acts and the exercise of protected rights, with the burden of proof shifted to the State to show the absence of such a connection and the absence of effective remedies, whether individual or systemic, to address the harm suffered.⁴³ Furthermore, the recently established Rapid Response Mechanism serves as a complementary enforcement tool, designed to provide immediate protection to environmental defenders facing harassment or persecution. Overseen by a Special Rapporteur appointed in 2022, the mechanism facilitates prompt interventions, including public statements and targeted “protection measures” directed at public authorities, without the prerequisite of exhausting domestic legal remedies.⁴⁴ However, the mechanism’s remit excludes judicial bodies, thereby limiting its influence over ongoing legal proceedings and complicating responses to civil disobedience that intersect with formal court processes.

1.1.2. Public Order and Economic Development as Limits on Fundamental Rights.

However, the right of assembly and expression does not exist in isolation; it inevitably intersects with a range of other interests that constitutional states are bound to protect. These include the preservation of public order, the imperative to maintain safety and prevent disorder or violence, as well as the safeguarding of national security in moments of emergency or in the face of internal and external threats.⁴⁵ A primary reason for limiting these rights is to protect public health, as was clearly evident during pandemics when restrictions on gatherings were necessary to prevent the spread of infection, while also ensuring the protection of others’ rights such as privacy.⁴⁶ Frameworks such as the Siracusa Principles make clear that restrictions must be lawful, proportionate, of limited duration, and subject to review, and should never be arbitrary or discriminatory.⁴⁷ Moreover, the principle of

⁴² Teresa Weber, *Are Climate Activists Protected by the Aarhus Convention? A Note on Article 3(8) Aarhus Convention and the New Rapid Response Mechanism for Environmental Defenders* (2023) 32(1) *Review of European, Comparative & International Environmental Law* 67-74.

⁴³ *Ibid* 75.

⁴⁴ *Ibid*.

⁴⁵ Christoph Schreuer, *Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights* (1982) 9 *Yale J World Pub Ord* 114.

⁴⁶ Stephanie L Wood, *The Right to Protest During a Pandemic: Using Public Health Ethics to Bridge the Divide Between Public Health Goals and Human Rights* (2023) 20 *Journal of Bioethical Inquiry* 169-175.

⁴⁷ Diego S Silva and Maxwell J Smith, *Limiting Rights and Freedoms in the Context of Ebola and Other Public Health Emergencies: How the Principle of Reciprocity Can Enrich the Application of the Siracusa Principles* (2015) 17 *Health and Human Rights* 52.

reciprocity underscores that when individuals or communities bear the burden of such measures, the state, and, in some cases, the broader international community, has a corresponding duty to provide adequate support and compensation, thereby ensuring that the pursuit of public health does not come at the expense of fundamental rights or human dignity.⁴⁸

Economic stability and development likewise form part of this balancing exercise, prompting limitations designed to avoid obstruction of essential services or the paralysis of vital economic activities, alongside the need to ensure the uninterrupted functioning of critical infrastructure. Consequently, public administrations bear the complex responsibility of reconciling these diverse objectives with the fundamental commitment to enable and protect the exercise of assembly and expression rights. Specifically, the balance between economic freedoms and the right to protest depends on whether the protest serves a legitimate purpose, causes only limited harm, and occurs where no viable alternative means of expression exist, with such interference being more readily justified when the state takes steps to reduce any resulting harm.⁴⁹ However, when such protests disrupt cross-border economic activity or target actions in other countries, they are more likely to be restricted.⁵⁰ In this matter, it is relevant to analyse that, along with the recognition of rights of expression and assembly, also a right to economic development has been theorized. The Right-to-Development principle, established in the 1986 UN Declaration and reinforced by the 1993 Vienna consensus, recognizes the right of all individuals and peoples to participate in and benefit from economic, social, cultural, and political development, as emphasized in international climate discussions.⁵¹ The Paris Agreement itself emphasizes the importance of climate activities respecting and taking into account the right to development, especially for developing nations worried about the possible detrimental impact of climate policies on growth prospects.⁵² Furthermore, studies indicate that regime crises accompanied by mass civil protests cause significant and long-term declines in economic output, possibly due to increased political uncertainty and diminished business confidence, whereas crises without protests have no such negative effects.⁵³

⁴⁸ Ibid 53.

⁴⁹ Lucas Lixinski, *Limiting Freedom of Assembly Based on Harm to Third Parties: The Balancing of Economic Freedoms and Fundamental Rights in the European Union*, in András Sajó (ed), *Free to Protest: Constituent Power and Street Demonstration* (Eleven Publishing 2008) 12.

⁵⁰ Ibid.

⁵¹ Dorothee Charlier, Aude Pommeret and Francesco Ricci, *A Rationale for the Right-to-Development Climate Policy Stance?* (2024) 125 *Journal of Environmental Economics and Management* 102981.

⁵² Reuben Makomere and Kennedy Liti Mbeva, *Squaring the Circle: Development Prospects within the Paris Agreement* (2018) 12(1) *Carbon & Climate Law Review* 31.

⁵³ Samer Matta, Micheal Bleaney and Simon Appleton, *The Economic Impact of Political Instability and Mass Civil Protest* (2022) 34(1) *Economics & Politics* 267.

Additionally, it is critical to examine how the exercise of fundamental freedom may be restricted and the legitimate aims for restriction include the protection of national security, public safety and public order. The rationale behind safety and public order as grounds for limiting assembly is rooted in the idea of preserving the normal coexistence of individuals within the state.⁵⁴ Public order remains an undefined yet essential concept, relating to both the interests of individual citizens and broader social goods, including public property and safety, viewed as a fundamental condition for the existence and development of both the state and its population, is considered part of the common good.⁵⁵ In exceptional legal circumstances, such as states of emergency or martial law, the right to peaceful assembly may be subjected to far-reaching restrictions. Under the European Convention on Human Rights, Article 15 permits such derogations only “in time of war or other public emergency threatening the life of the nation” and only to the extent “strictly required by the exigencies of the situation.”⁵⁶ This framework recognises that certain threats cannot be managed through ordinary constitutional means, but also insists that any suspension of rights must meet a rigorous proportionality standard, measures must be necessary, limited in scope, and aimed at restoring the regular functioning of democratic institutions. Jurisprudence from the European Court of Human Rights, however, reveals a pattern of significant deference to national authorities in assessing whether an emergency exists, often shifting the focus to proportionality rather than closely scrutinising the factual basis of the emergency itself.⁵⁷ For example, in *Lawless v. Ireland*, the European Court of Human Rights accepted the Irish Government’s argument that the activities of the IRA constituted a “public emergency threatening the life of the nation,” justifying the internment of suspected members without trial.⁵⁸ It is also fundamental to notice how the European Court and Commission have consistently granted a “margin of appreciation” to national authorities when evaluating the necessity of restricting rights, particularly in the context of public demonstrations or protests. This margin allows national authorities the discretion to determine the most reasonable and appropriate measures to ensure that lawful protests or manifestations can occur peacefully, taking into account the specific context and challenges of each situation.⁵⁹ The Court has been generally reluctant

⁵⁴ Mirosław Karpiuk, *Restricting the Enjoyment of the Freedom of Assembly for Reasons of Safety and Public Order*, (2024) 71(1) *Annales Universitatis Mariae Curie-Skłodowska. Sectio G. Ius* 7.

⁵⁵ *Ibid.*

⁵⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 15.

⁵⁷ Alan Greene, *Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights* (2011) 12 *German Law Journal* 1764.

⁵⁸ *Lawless v Ireland (No 3) App no 332/57* (ECtHR, 1 July 1961) Series A no 3.

⁵⁹ Anne Peters and Isabelle Ley, *Comparative Study: Freedom of Peaceful Assembly in Europe*, Study requested by European Commission for Democracy through Law – Venice Commission (Max Planck Institute for Comparative Public and International Law, 2014).

to overrule domestic decisions, as it recognizes that national authorities, especially those familiar with the local circumstances, are better placed to assess the balance between protecting public order and ensuring the exercise of rights.⁶⁰ Thus, it has shown a tendency to respect the choices made by domestic governments and law enforcement regarding the handling of protests, unless those decisions clearly violate fundamental rights under the Convention. However, this margin of appreciation is not without limits, and the ECtHR frequently intervenes when fundamental rights are manifestly violated or when national frameworks fail to adequately safeguard freedom of assembly. The Court emphasizes that authorities must exhibit a certain degree of tolerance toward peaceful protests, even when such events cause disruption, to ensure that the right to assembly retains substantive meaning.⁶¹ In conclusion, while the right to assembly remains a cornerstone of democratic participation, it is not absolute: it may be regulated to prevent undue harm to others, including the protection of public order, health, and the rights of minorities.

1.1.3 Direct Action, Civil Disobedience or Eco-terrorism?

As this research sits at the intersection of competing legal and political claims, it is essential to clearly distinguish between direct action, civil disobedience, and eco-terrorism. This distinction is important because some protest tactics are protected by the right to freedom of assembly and expression, while others may violate state regulatory obligations and be considered illegal. Therefore, it is important to explain the differences by looking at the most important features, goals, and legal problems of each group, and examples will show how similar actions can be seen differently depending on intent, method, and result.

Direct action is a form of protest in which people take immediate and visible action to challenge a law, policy, or institution instead of relying on intermediaries, such as the government or courts.⁶² These demonstrations can take many forms, such as withdrawing cooperation, going on strike, boycotting, or physically obstructing activities, such as occupying land, chaining oneself to a tree, or blocking infrastructure. The focal point is that the problem or those responsible are confronted directly, often in a symbolic or dramatic way, to draw public attention and provoke debate. Although direct action is usually nonviolent, it relies on large numbers of people and public participation to be effective. Direct action can also be constructive; it can lead to alternative systems, community projects, or symbolic demonstrations of self-sufficiency; thus, direct action demonstrates the ability

⁶⁰ Hamilton, Jarman, and Bryan (n 21).

⁶¹ Peters and Ley (n 59) 69.

⁶² April Carter, *Direct Action and Democracy Today* (Polity 2005) 3–4.

to create both immediate disruption and long-term social change.⁶³ In the context of Extinction Rebellion, direct action refers to interventions that directly stop or disrupt the sources of climate change, or challenge powerful actors. For XR, this includes protesting against fast fashion in shopping centers, targeting financial investments in fossil fuels, disrupting city centers to put pressure on the government and economy, and even deliberately getting arrested *en masse* to overwhelm the state.⁶⁴ Such actions are politically justifiable when they directly target those responsible for climate change rather than indirectly inconveniencing the general public, as seen in criticisms of less focused disruptions, such as blocking commuter trains. XR's direct action is essentially non-violent, disruptive intervention that targets the causes of climate change and the institutions seen as responsible for maintaining them and it differs from anarchist notions of direct action, which often reject non-violence and proceed as if the state does not exist.⁶⁵

Moreover, it is also fundamental to recognize that environmental activism may often involve intentional acts of civil disobedience, with protest tactics that push beyond the traditional legal limits of freedom of expression. Modern environmental direct-action tactics trace their origins to Thoreau's emphasis "*On Civil Disobedience*" on individual conscience, evolving over time into organized, quasi-corporate collective campaigns that challenge governmental tolerance of fringe protest.⁶⁶ Moreover, civil disobedience is a concept that intersects with several different fields of enquiry, including philosophy, sociology, politics and law.⁶⁷ In this context, Jürgen Habermas's reflections on civil disobedience offer a critical philosophical framework that illuminates the moral and democratic significance of such protest. Habermas conceptualizes civil disobedience not merely as an unlawful act but as a necessary "litmus test" for the health and legitimacy of a democratic constitutional state.⁶⁸ He emphasizes that in a mature democracy, citizens are expected to obey laws not out of fear or coercion, but through a reasoned, voluntary recognition of justice and legitimacy; when legal provisions deviate from foundational moral principles, such as human rights and equality, civil disobedience emerges as a justified, symbolic, and non-violent form of political communication aimed at appealing to the broader society's sense of justice.⁶⁹ Habermas understands civil disobedience as a justified form of principled dissent against unjust laws that acts as a vital corrective

⁶³ Ibid 5.

⁶⁴ Berglund and Schmidt (n 2) 16.

⁶⁵ Ibid 18.

⁶⁶ Henry David Thoreau, *Civil Disobedience in Civil Disobedience in Focus* (Routledge 2002) 28–48.

⁶⁷ David S Miller, Juan D Rivera and John C Yelin, *Civil Liberties: The Line Dividing Environmental Protest and Ecoterrorists* (2008) 2(1) *Journal for the Study of Radicalism* 109.

⁶⁸ Jürgen Habermas, *Civil Disobedience: Litmus Test for the Democratic Constitutional State* (1985) 30 *Berkeley Journal of Sociology* 95-97.

⁶⁹ Ibid 98.

within an evolving constitutional order, while maintaining a fundamental respect for the rule of law and a willingness to accept legal consequences, thereby reinforcing democratic legitimacy.⁷⁰ This deep understanding helps explain why environmental civil disobedience, though often operating at the legal margins, holds a vital place within democratic political culture as a catalyst for social and legal reform. Although civil disobedience has been widely recognized as an important concept within democratic theory, it highlights the difficulties that contemporary legal systems encounter when trying to integrate such actions. Courts and legal institutions often struggle to determine how to respond to these deliberate acts, which frequently challenge or fall beyond conventional legal norms. The protest methods commonly employed are the unauthorized occupation of polluting industrial or governmental sites, the intentional dismantling or damage of property associated with environmental harm, and various forms of digital activism, including the disruption of online infrastructure through tactics such as mass email campaigns or server saturation.⁷¹ These non-violent but intentionally disruptive protests seek to highlight urgent environmental issues, though they often cross legal boundaries by involving acts considered criminal under public order or property laws.⁷² This distinction complicates the legal defense of such actions: while protestors may invoke the right to free expression or assembly, their conduct often remains precarious and could fall outside the scope of what courts deem protected speech. Conversely, activists are increasingly resorting to the necessity defense, asserting that their actions, which may be considered unlawful by some, are warranted by the existential threat posed by climate collapse.⁷³ Nevertheless, this defense is not consistently recognized by courts, resulting in a legal landscape in which ecological civil disobedience is both politically significant and legally precarious.⁷⁴ Despite the gradual expansion and growing recognition of the rights to freedom of expression and assembly over time, their practical application remains an ongoing process marked by significant challenges. In particular, adopting more disruptive forms of protest, such as civil disobedience, continues to test the boundaries of legal frameworks and may expose activists to legal consequences.

However, when delving into this topic, it is critical to understand that the line between environmental activism and what is commonly referred to as "eco-terrorism" has been increasingly blurred and debated in recent decades. According to the Fisher and Nasrin, a climate activist is an individual engaged in civic actions aimed at addressing climate change by both promoting personal

⁷⁰ Ibid.

⁷¹ Marie Jadoul, *Criminal Defenses in Environmental Civil Disobedience Cases: Necessity Defense versus Freedom of Expression* (2022) 84(1) *Annales de Droit de Louvain*.

⁷² Ibid.

⁷³ John Alan Cohan, *Civil Disobedience and the Necessity Defense* (2007) 6 *Pierce Law Review* 111.

⁷⁴ Ibid 112.

behavioral changes to reduce emissions and applying pressure on political and economic institutions to implement systemic reforms.⁷⁵ This activism encompasses a broad spectrum of strategies, ranging from litigation and lobbying to public protests and direct actions that challenge established power structures. On the opposite, according to Donald Liddick, eco-terrorism is the use or threat of violence, usually involving property destruction, by radical environmental or animal rights activists to coerce or intimidate in pursuit of their political or social objectives.⁷⁶ He emphasizes that the vast majority of these actions, comprising sabotage, vandalism and theft, do not meet the strict definition of terrorism, which typically involves intent to harm people.⁷⁷ Only a small minority of actions, those inflicting or intending human harm, align with conventional understandings of terrorism. In this context emerges the term “ecotage”, or ecological sabotage, which refers to deliberate property damage carried out by environmental activists aiming to disrupt activities they view as harmful to the environment.⁷⁸ Unlike terrorism, ecotage is characterized by a firm ethical commitment to avoid harm to people or animals and it typically takes the form of direct action that targets specific objects linked to environmental degradation, rather than indiscriminately threatening individuals.⁷⁹ This distinction underscores the impact of language in shaping public perception and consequently, the legal responses.

Eco-terrorism has largely emerged in the United States, with some activity in the United Kingdom and other industrialized nations, reflecting a long history of radical environmental activism.⁸⁰ Early environmental organizations in the 1960s and 1970s, such as Eco-Raiders, Black Mesa Defense, Friends of the Earth, and Greenpeace, sometimes engaged in direct intervention to protect ecosystems, laying the groundwork for more confrontational approaches.⁸¹ A notable case is the Sea Shepherd Conservation Society, founded in 1977 by Paul Watson, which became known for using sabotage to stop whaling and seal hunting, emphasizing non-lethal methods; over three decades, the group sank ten whaling ships without causing any human fatalities.⁸² Furthermore, the Animal Liberation Front, formed in the UK in 1976, focused on liberating animals through property

⁷⁵ Dana Fisher and Sohana Nasrin, *Climate Activism and Its Effects* (2020) 12 Wiley Interdisciplinary Reviews: Climate Change 683 <https://doi.org/10.1002/wcc.683>, 2-3.

⁷⁶ Donald R Liddick, *Eco-terrorism: Radical Environmental and Animal Liberation Movements* (Bloomsbury Publishing USA 2006) 7.

⁷⁷ Ibid 8.

⁷⁸ Donatella Della Porta and Marco Diani, *Social Movements: An Introduction* (Blackwell 1999) 176–78.

⁷⁹ David Thomas Sumner and Lisa M Weidman, *Eco-terrorism or Eco-tage: An Argument for the Proper Frame* (2013) 20 *Interdisciplinary Studies in Literature and Environment* 855.

⁸⁰ Izak Krzysztof, *Is There a Decline in Ecoterrorism?* (2022) 14(26) *Przegląd Bezpieczeństwa Wewnętrznego* 394.

⁸¹ Ibid.

⁸² Avelie Stuart, Emma F. Thomas, Ngairé Donaghue and Adam Russell, “*We may be pirates, but we are not protesters*”: *Identity in the Sea Shepherd Conservation Society* (2013) 34(5) *Political Psychology* 753-756.

destruction and sabotage of laboratories, fur farms, and industrial facilities.⁸³ Their actions included arson, vandalism, animal releases, and threats, causing millions of dollars in financial damage, yet they reject the label of “terrorist,” framing themselves as defenders of animal welfare. Another important example is Earth First! founded in 1980 and inspired by Edward Abbey’s *The Monkey Wrench Gang*.⁸⁴ Its members carried out monkeywrenching, sabotage, and the destruction of machinery to stop logging, mining, and development. Eventually, the group split into factions, with some focusing on direct ecological action and others on social justice education and advocacy.⁸⁵

The term “ecoterrorism” emerged in the United States during the late 20th century, largely shaped by property rights advocates and industry groups involved in disputes over environmental regulation and land use.⁸⁶ Ron Arnold, leader of the Center for the Defense of Free Enterprise, helped organize the Wise Use movement in 1988, which sought to expand commercial access to protected lands and undermine environmental organizations by targeting their support and membership.⁸⁷ The term gained political momentum when Senator James McClure used it in congressional testimony to link radical environmental groups like Earth First! to dangerous sabotage tactics, despite limited evidence of serious harm and this contributed to the passage of legislation criminalizing the placement of hazardous devices on federal land, with severe penalties even for minor offenses.⁸⁸ Over time, the association between environmental activism and terrorism intensified, with some legal scholars advocating for harsher prosecution of environmental sabotage under laws designed for organized crime, equating such acts with other forms of ideological violence. In the political realm, the term “ecoterrorism” gained prominence in the United States after the September 11, 2001 terrorist attacks, when the FBI shifted its focus toward domestic threats.⁸⁹ In 2002, Dale Watson, Executive Assistant Director of the FBI’s Counterterrorism/Counterintelligence Division, described “special interest extremism,” embodied by groups such as the Animal Liberation Front (ALF) and the Earth Liberation Front (ELF), as a serious terrorist threat.⁹⁰ The FBI reported that the majority of domestic terrorism

⁸³ Rachel Monaghan, *Not Quite Terrorism: Animal Rights Extremism in the United Kingdom* (2013) 36(11) *Studies in Conflict & Terrorism* 5.

⁸⁴ “Monkeywrenching” refers to the direct, often illegal actions taken to stop environmental destruction. It was inspired by Edward Abbey’s 1975 novel *The Monkey Wrench Gang*, in which a group of characters sabotages machinery, pulls survey stakes, and disrupts development projects to protect wilderness areas. See Martha F Lee, *Violence and the Environment: The Case of “Earth First!”* (1995) 7 *Terrorism and Political Violence*, 111.

⁸⁵ Martha F Lee, *Violence and the Environment: The Case of “Earth First!”* (1995) 7 *Terrorism and Political Violence* 114.

⁸⁶ Rebecca K Smith, *Ecoterrorism: A Critical Analysis of the Vilification of Radical Environmental Activists as Terrorists* (2008) 38 *Environmental Law* 537.

⁸⁷ Sivan Hirsch-Hoefler and Cas Mudde, “*Ecoterrorism*”: *Terrorist Threat or Political Ploy?* (2014) 37 *Studies in Conflict & Terrorism* 587.

⁸⁸ Smith (n 86) 546.

⁸⁹ Hirsch-Hoefler and Mudde (n 87) 588.

⁹⁰ *Ibid* 586.

incidents between 1993 and 2001 were attributed to these two groups, and by 2004, the Bureau considered the investigation of “eco-terrorism matters” its top domestic terrorism priority. This emphasis surprised many, as post-9/11 public discourse was dominated by concerns over jihadist terrorism; before 9/11, neither ALF nor ELF appeared in U.S. government reports profiling terrorists, nor were they listed by the European Union or the United Kingdom as terrorist organizations.⁹¹

Today, the term “eco-terrorism” has become firmly entrenched within U.S. intelligence and legislative circles, facing only limited political opposition; despite strong resistance from environmental and animal rights groups, the label is commonly employed in mainstream U.S. media.⁹² This widespread use results from coordinated efforts by a broad coalition of economic and political actors, including lobbyists and representatives of industries targeted by radical environmental and animal rights movements (REAR), such as agribusiness and pharmaceuticals. Consequently, the term “eco-terrorism” has been broadly applied not only to militant groups but also to moderate organizations like PETA, reflecting its adoption in both legislation and public campaigns against REAR activism.⁹³ In contrast, the term has not gained traction outside the United States. In Western Europe, equivalent terminology is rarely used in public discourse, even in countries with active REAR movements. For instance, the Dutch General Intelligence and Security Service (AIVD) shifted from labeling activism as “animal rights activism” to “animal rights extremism,” deliberately aligning with British rather than American usage by avoiding the term “terrorism.”⁹⁴ Similarly, Germany’s Federal Office for the Protection of the Constitution (BfV) does not focus on “ecoextremism” in its reports; when “eco-terrorism” appears in European debates, it is typically in reference to U.S. discussions, underscoring the term’s limited international acceptance.⁹⁵

The distinction between activism and eco-terrorism is often shaped by language, ideology, and political framing. The unclear and contradictory definitions of eco-terrorism have resulted in incorrect official reactions, which frequently label environmental campaigners as terrorists.⁹⁶ Despite the United Nations’ efforts to craft a precise counter-terrorism framework that upholds civil liberties, emphasizing the need for narrowly tailored definitions and enforcement rules, no binding

⁹¹ Ibid 587.

⁹² Ibid 588.

⁹³ Kevin R Grubbs, *Saving Lives or Spreading Fear: The Terroristic Nature of Eco-Extremism* (2009) 16 *Animal Law* 355.

⁹⁴ Algemene Inlichtingen en Veiligheidsdienst (AIVD), *Disengagement en deradicalisering van jihadisten in Nederland* (The Hague, AIVD 2010) 4.

⁹⁵ Markus Lederer, Verena Lasso Mena, Jens Marquardt, Timo Alexander Richter and Dorothea Elena Schoppek, *Radical climate movements—is the hype about “eco-terrorism” analogy, warning or propaganda?* (2024) 6 *Frontiers in Political Science* 1421523, 6.

⁹⁶ DeMond Shondell Miller, Jason David Rivera and Joel C Yelin, *Civil Liberties: The Line Dividing Environmental Protest and Ecoterrorists* (2008) 2(1) *Journal for the Study of Radicalism* 109-123.

international policy has yet emerged.⁹⁷ Actions labeled as eco-terrorism in the United States may be considered moderate activism in other contexts, highlighting the influence of social and legal norms. Understanding these movements requires examining their ideological motivations, organizational structures, and historical context. The spectrum of radical ecological thought ranges from ethical sabotage to extreme, violent ideologies, underscoring the challenge democratic societies face in balancing security concerns with the protection of legitimate protest.

1.2 The Evolution and Legal Influence of Environmental Activism.

1.2.1. The Origins of the Climate Movement and Its Early Impact on Environmental Legal Frameworks.

Contrary to common misconceptions, climate activism and sustained civic engagement have achieved concrete results, influencing national policies and supranational programs and demonstrating their capacity to drive meaningful political and institutional change.⁹⁸ Their durable relevance has been attributed to continuous activism and to the fact that they go beyond formal organizations, encompassing larger coalitions involving business leaders, scientists, civil activists, and religious.⁹⁹ Understanding contemporary climate protests requires examining their evolution over recent decades, including how their goals have developed and shaped relevant legal frameworks. The environmental movement has been described as “the most comprehensive and influential movement of our time”, and some argue that it may emerge as the defining social movement of the twentieth century.¹⁰⁰ Overall, environmental movements have proven remarkably resilient, surviving the wave of new social movements in Western democracies from the 1960s through the 1980s.¹⁰¹ Historically, environmental activism is often understood as evolving through stages of conservationism, environmentalism, and ecologism.¹⁰² While this typology is a simplification and not universally applicable, it offers a useful structure for examining the evolution of environmental thought and activism. In many countries, including the United States, hunting played a formative role in early conservation efforts; for instance, the game reserves of European aristocracy were precursors to state

⁹⁷ Mohammed Salman Mahmood and Ahmad Masum, *A Quest for Defining Terrorism in International Law: The Emerging Consensus* (2014) 10 *Journal of International Studies* 78-80.

⁹⁸ Erik W Johnson and Jon Agnone, *Policy and Legislative Outcomes of Environmental Movements* in *The Routledge Handbook of Environmental Movements* (Routledge, 2022) 468.

⁹⁹ *Ibid.*

¹⁰⁰ Manuel Castells, *The Power of Identity* (Blackwell 1997) 72.

¹⁰¹ Christopher Rootes, *Environmental Movements* in David A Snow, Sarah A Soule and Hanspeter Kriesi (eds), *The Blackwell Companion to Social Movements* (Blackwell 2004) 608.

¹⁰² Dieter Rucht, *Environmental Movement Organisations in West Germany and France: Structure and Interorganisational Relations* in Bert Klandermans (ed), *Organizing for Change: Social Movement Organisations in Europe and the United States*, International Social Movement Research, vol 2 (JAI 1989) 61.

and national parks, and hunters, concerned about declining wildlife populations, became active proponents of habitat preservation.¹⁰³ Preservationism, by contrast, emphasized a spiritual relationship between humanity and nature, rooted in Romantic ideals in Europe and exemplified in the United States by the writings of Thoreau and the celebration of wilderness as a counterpoint to industrial urban life.¹⁰⁴ Initially, conservationists and preservationists shared common ground, but conflicts emerged when resource exploitation of conserved lands was proposed. An important turning point in the early 20th century was the controversy over the damming of the Hetch Hetchy Valley, which inspired preservationist groups like the Sierra Club to push for more robust national park safeguards.¹⁰⁵ While preservationist succeeded in safeguarding wildlife and large wilderness areas, it remained a limited discourse, generally avoiding calls for far-reaching social change and favouring pragmatic, conventional political strategies supported by hierarchical organizational structures.¹⁰⁶ Reform environmentalism developed in the nineteenth and early twentieth centuries through campaigns for clean water, effective waste disposal, clean air, and improved public health in industrialized societies. Recognizing the interdependence of human health and ecological integrity, this approach operated largely apart from conservation and preservation movements. However, it was only in the latter half of the twentieth century, aided by advances in ecological science, that reform environmentalism emerged as the dominant strand of environmental discourse.¹⁰⁷ Legislative responses, such as the United Kingdom's Clean Air Act of 1956 following the lethal London smog of 1952, illustrate early reformist interventions.¹⁰⁸ Furthermore, the major goals achieved by these early environmental movements, can be found in the creation of national forests and parks to the establishment of permanent public lands and the legal recognition of wilderness through acts like the 1964 Wilderness Act, protecting millions of acres from development and emphasizing nature's intrinsic value.¹⁰⁹ They also paved the way for landmark antipollution legislation, such as the Clean Air and Clean Water Acts, which set ambitious national standards prioritizing public health and ecological integrity over purely economic concerns.¹¹⁰ In the United States, environmental reform was revitalized in the 1960s, notably by the publication of Rachel Carson's *Silent Spring* in 1962, and

¹⁰³ Rootes (n 101) 615.

¹⁰⁴ Angela Mertig, *From conservationists to environmentalists: the American environmental movement in Cultural Dynamics of Climate Change and the Environment in Northern America*, vol 3 (2015) 58.

¹⁰⁵ Specifically, the U.S. approved damming Hetch Hetchy Valley in Yosemite, flooding a pristine landscape and erasing entire habitats along with the species that depended on them. See Rootes (n 101) 612.

¹⁰⁶ Mertig (n 104) 59.

¹⁰⁷ Rootes (n 101) 612.

¹⁰⁸ Clean Air Act 1956 (UK) 4 & 5 Eliz 2 c 52.

¹⁰⁹ Jedediah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy* (2009) 119 Yale Law Journal 1169.

¹¹⁰ *Ibid* 1160.

enjoyed bipartisan momentum during the Kennedy, Johnson, and especially Nixon administrations.¹¹¹ While reform environmentalism advanced steadily, it was characterized by limited political mobilization and lacked a critical analysis of the social roots of environmental problems. Rooted in natural science frameworks, it relied heavily on oligarchic organizations, often supported by philanthropic foundations, and prioritized technical solutions over radical political transformation.¹¹² Consequently, Ecologism arose in the late twentieth century as the third major stage of the American environmental movement, following reform environmentalism. Its growth was not an abrupt break but rather a cumulative response to increasing dissatisfaction with the perceived limitations of mainstream environmentalism.¹¹³

In Western Europe, the environmental movement evolved from early intellectual and moral conceptions of nature as a utilitarian or spiritual resource through growing awareness and mobilization against industrial pollution and urban degradation, to the rise of organized networks, scientific institutions, and activist associations promoting nature conservation, animal welfare, and sustainable practices.¹¹⁴ Ecologism represented a turning point: it moved beyond regulation and resource management to a systemic critique of industrial society, mass consumption, and growth-driven economics. It called for profound structural change, alternative production systems, and, where necessary, the complete abandonment of environmentally destructive practices. Based on the notion that non-human life has moral value in and of itself, it defined environmental protection as a demand for justice, extending moral concern beyond species, borders and even to future generations.¹¹⁵ Rather than just warning of ecological constraints, it attempted to redirect Enlightenment ideals toward an environmentally sustainable future by combining rational analysis with an ethic of care and "love of the living world."¹¹⁶ Nowadays ecologism survives mainly in the radical direct-action fringe and as ideas incorporated into the policies of NGOs, green parties and governments.

1.2.2. From Early Environmental Mobilizations to Contemporary Transnational Activism.

¹¹¹ Rachel Carson, *Silent Spring* (Houghton Mifflin 1962).

¹¹² Rootes (n 101) 613.

¹¹³ Mertig (n 104) 67.

¹¹⁴ Sylvie Ollitrault, *Environmental movements in Western Europe: From globalization and institutionalization to a new model of radicalization in the twenty-first century?* in Donatella della Porta and Marco Diani (eds), *The Routledge Handbook of Environmental Movements* (Routledge 2022) 19.

¹¹⁵ Brian Baxter, *Ecologism: An Introduction* (Edinburgh University Press 2019) 89.

¹¹⁶ *Ibid* 8.

As mentioned previously, the late 1960s and 1970s were watershed moments, with the rise of anti-nuclear and anti-capitalist mobilizations and the formation of Green political parties, though their influence varies across Europe due to different institutional structures and electoral systems.¹¹⁷ The early 1970s saw a surge in grassroots activism, culminating in the establishment of the EPA and the enactment of significant federal legislation; this development was precipitated by widespread public concern over the degradation of water bodies, fuel shortages, and the presence of noxious industrial smog.¹¹⁸ Simultaneously, critiques of capitalism's environmental impact spread throughout Western Europe and Australia, fuelled by student and peace movements, while activism against nuclear power and toxic waste spawned the environmental justice movement in the United States, emphasizing the unequal burden of pollution on marginalized communities.¹¹⁹ That period witnessed the emergence of the deep ecology movement, which posits the notion that all living beings are components of a cohesive natural system, thereby avoiding anthropocentric thought.¹²⁰ Deep ecologists prioritize direct action over institutional politics, forming small, often leader-driven groups such as Earth First! in the United States.¹²¹ Another branch of this movement was environmental justice, which emerged in the 1980s. The argument was posited that environmental harm is derived from profound social inequalities, particularly racial and economic disparities.¹²² Globally, the movement gained traction in the Global South, where the prevailing perception of poverty as a driver of environmental degradation became increasingly entrenched.¹²³ However it is fundamental to notice how, since the 1972 Stockholm Conference, environmental NGOs have risen in power, becoming institutionalized through collaboration with national governments and the European Union, and frequently offering specialist information and advocacy to environmental policymaking.¹²⁴ Environmental movements have earned institutional acceptance, with Green parties emerging and influencing parliamentary politics, particularly in Northern and Western Europe, and countries such as Britain, the United States, Australia, and Canada developing policy systems that allowed for significant participation by organized citizen groups.¹²⁵ In other places, particularly after the fall of the Soviet Union,

¹¹⁷ Ollitrault (n 114) 24.

¹¹⁸ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement in Law and Social Movements* (2017) 90.

¹¹⁹ Rootes (n 101) 612.

¹²⁰ Bill Devall, *Deep Ecology and Radical Environmentalism in American Environmentalism* (Taylor & Francis, 2014) 51–62.

¹²¹ *Ibid.*

¹²² Usha Natarajan, *Environmental Justice in the Global South in The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press, 2021) 39.

¹²³ *Ibid.*

¹²⁴ Ollitrault (n 114) 24.

¹²⁵ Johnson & Agnone (n 98) 466.

environmental activism became intertwined with broader democratic reform efforts, with movements in former Soviet countries, China, Latin America, and Indigenous communities using environmental issues to advocate for political space, representation, and participatory governance.¹²⁶ Environmental movements in Europe, however, took particular advantage of the developments in the political terrain with the process of European integration. As Europe developed a multi-level system of governance, environmental NGOs were able to use this new political context in full and engage directly with the supranational institutions and the European Commission in particular, often bypassing national governments.¹²⁷ European Environmental Bureau, Friends of the Earth, and others set up professional networks have gained substantial access to policy processes, particularly in implementation through participatory and multi-level governance structures, as seen in EU directives like the Water Framework Directive.¹²⁸

Environmental NGOs adapted strategically to work with EU structures to engage on consultations, to adopt new plans, as well as influence regulatory measures. These organizations even worked in instances when proposals were compromised because of negotiations with economic actors and state agencies. Environmental activists were positioned in a specific way to aid the EU's receptivity to becoming receptive to ecological issues and were able to peruse buying into the professionalization of their advocacy while being mindful of the transnational networks that amplified their impact.¹²⁹ Environmental movements in Europe have been able to influence not only policy but also the language used to discuss various issues, legitimizing environmental concerns and changing the discourse within which policy debates happen. They participated in planning, consultations, and local decision-making, but their proposals were often diluted through compromises with economic actors, such as agriculture, forestry, tourism, and industry, and with state agencies that prioritize development or other non-environmental goals.¹³⁰ Simultaneously, the EU has internalized demands, like climate-justice constituency, and helped incorporate calls for participatory democracy into the agenda of the European Green Deal, although selectively and on its own institutional basis.¹³¹ Citizens' panels and consultations were created, but they often work with narrow mandates; unclear

¹²⁶ Ibid.

¹²⁷ Gary Marks and Doug McAdam, *Social Movements and the Changing Structure of Political Opportunity in the European Union* (1996) 19(2) *West European Politics* 249.

¹²⁸ Jens Newig and Oliver Fritsch, *Environmental Governance: Participatory, Multi-Level—and Effective?* (2009) 19 *Environmental Policy and Governance* 200-201.

¹²⁹ Ibid 250-255.

¹³⁰ Ibid 210-211.

¹³¹ Louisa Parks, *How the climate movement shaped the EU: protest cycles and democratic spaces in the European Green Deal* (2025) 47(2) *Journal of European Integration* 312.

principles about how recommendations will actually be used; and the needed safeguards, which originated from the movement, to deal with power asymmetries and genuine inclusion.¹³²

Since the mid-1990s, there has been a shift towards transnational activism due to deeper global economic integration. These movements have built dense networks connecting both ordinary citizens and political elites, while adopting new organizational forms such as spokes councils, horizontal working groups, and campaign coalitions, often replacing older bureaucratic structures.¹³³ Transnational social–movement organizations expanded rapidly, from fewer than one hundred in the 1950s to more than 1,000 by the early 2000s, with human rights groups rising from 41 in 1973 to 247 in 2000, environmental organizations from 17 to 126, and peace groups from 21 to 98.¹³⁴ The large-scale protests at the turn of the century, exemplified by the 1999 Seattle demonstrations against the WTO and the global mobilizations against the Iraq War, marked a qualitative shift in transnational contention and the emergence of new, more visible forms of international protest.¹³⁵ Initially, they engaged with UN conferences to promote ecological sustainability, but they quickly recognized the limitations of interstate politics. Disillusionment with corporate influence, state intransigence, and the failures of summits such as those in Copenhagen and Durban prompted activists to establish alternative spaces, such as the 2010 Cochabamba People’s Assembly.¹³⁶ Furthermore, transnational climate activism experienced rapid growth during 2007 to 2009 as global justice activists linked their networks and connections with climate and environment groups, and framed climate change as more than an environmental concern, but as a systemic issue linked to neoliberal economic globalization.¹³⁷ This fusion of movements allowed for the opportunity to share ideas, tactics, personnel and create coalitions around the global justice activist framework of climate activism, such as Climate Justice Now! and Climate Justice Action, to organize around UNFCCC meetings.¹³⁸ This assembly promoted radical ideas, including the legal rights of the Earth and the implementation led by civil society. These autonomous initiatives emphasized holistic critiques of capitalism, prioritized movement building over government leadership, and fostered solidarity between actors in the Global South and North, directly challenging the legitimacy of the dominant global order. By doing so, environmental activists

¹³² Ibid 313.

¹³³ Sidney Tarrow, *The New Transnational Activism* (Cambridge University Press 2005) 2.

¹³⁴ Ibid 44.

¹³⁵ Ibid 45.

¹³⁶ Jackie Smith and Brittany Duncan, *Transnational Activism and Global Transformation: Post-National Politics and Activism for Climate Justice and Food Sovereignty* (Paper presented at the American Sociological Association Annual Meeting, Denver, August 2012) 15-17.

¹³⁷ Jennifer Hadden, *Explaining Variation in Transnational Climate Change Activism: The Role of Inter-Movement Spillover* (2014) 14(2) *Global Environmental Politics* 7.

¹³⁸ Ibid.

reinforced the counterhegemonic and antisystem potential of transnational networks, paving the way for renewed climate mobilization in the 2010s.¹³⁹

One of the most salient event is the 2015 United Nations Climate Change Conference, which temporarily reinvigorated global mobilization around the negotiation table, despite the fact that many environmental activists were profoundly disillusioned by the outcomes of the summit.¹⁴⁰ The outcomes of this conference have been the subject of considerable dissatisfaction on the part of the environmental movement, and have resulted in the complex network of associations that is observable in the present day. Fridays For Future's unprecedented mobilization of young people and its generational, science-centered framing, combined with Extinction Rebellion's disruptive civil-disobedience repertoire and insistence on democratic innovations such as citizens' assemblies, shifted policy agendas and concentrated pressure on national governments and EU institutions to acknowledge and address climate risk.¹⁴¹ Fridays For Future and Extinction Rebellion accelerated a long-term reconfiguration of the European legal landscape by amplifying agenda-setting power, expanding participatory channels inside multilevel governance, and reframing legal and normative commitments around precaution, intergenerational justice and the public necessity of climate mitigation, while leaving intact significant barriers to rapid statutory reform.¹⁴² Nevertheless, their efforts to influence environmental governance have had shortcomings. For instance, Extinction Rebellion's focus on disruptive tactics has reduced public and institutional receptivity, limiting its impact on policy and its reduced participation in established global governance systems has prevented it from having a direct impact on international climate policy.¹⁴³

From the first national campaigns in the 1970s to today's mass climate protests, there is a clear thread running through environmental activism: pressure from outside institutions combined with work within them, constant reframing of problems to keep them politically urgent, and alliances that cross social and political lines. In recent years, these approaches have crossed boundaries and taken on new forms, ranging from EU governance forums to UN climate meetings.¹⁴⁴ Global networks have grown, deep ecology and environmental justice have contributed to new moral and strategic dimensions, and science has emerged as a key weapon in campaigning. As a result, a movement has

¹³⁹ Smith and Duncan, (n 136) 10-11.

¹⁴⁰ Joost De Moor, Michiel De Vydt, Katrin Uba and Mattias Wahlström, *New Kids on the Block: Taking Stock of the Recent Cycle of Climate Activism* (2021) 20(5) *Social Movement Studies* 619.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Wahyu Rozzaqi Ginanjar and Amhad Zakie Mubarrok, *Civil Society and Global Governance: The Indirect Participation of Extinction Rebellion in Global Governance on Climate Change* (2020) 1(1) *Journal of Contemporary Governance and Public Policy* 51.

¹⁴⁴ Johnson & Agnone (n 98) 460-466.

emerged that affects laws not only through official channels, but also by altering public discourse. Fridays for Future and Extinction Rebellion continues this historical heritage by modernizing its strategies for a connected society in which moral urgency, public legitimacy, and constant visibility are as important as a place at the bargaining table.

Chapter II. National and Supranational Jurisprudence on Climate Activism, Assembly and Public Order.

The aim of this chapter is to examine how courts and lawmakers at both national and European levels oversee clashes between climate activism and public-order concerns. It traces how judges and legislators in selected countries, Italy, the United Kingdom and Germany, interpret core freedoms, especially freedom of expression and the right to peaceful assembly, especially when they decided to use direct action or civil disobedience form of protest. The countries chosen are the same that will be addressed in Chapter 3, which have introduced new laws or applied existing ones more harshly to counter this evolving transnational activism. Comparing past approaches to these concerns offers an opportunity to contrast historical practice with the modern cases that will be examined in later in this thesis. Additionally, the comparative analysis examines the case-law of the European Court of Human Rights and the Court of Justice of the European Union and how their reactions have influenced domestic approaches, placing national developments within the larger supranational framework. It considers whether the supranational jurisprudence legitimates stricter restrictions or, on the other hand, strengthens protections for protestors, as well as the reasoning of judges behind some significant rulings. This chapter aims to reveal the legal principles and reasoning that determine when and how democratic governments can restrict protests while safeguarding fundamental rights. It uses legislative examples and comparative case law to illustrate these principles. Ultimately, the chapter aims to demonstrate how, one of the most relevant purpose of courts, whether in domestic or international contexts and in common-law or civil-law systems, is to ensure proportionality between the rights to assembly and freedom of expression and the goal of maintaining public order and security.

2.1 Comparative Analysis of National Cases on Freedom of Assembly, Expression and Public Order.

2.1.1 The Italian Legal Framework on freedom of assembly and the Case of the No TAV Movement.

In the Italian legal system, the right to peaceful assembly is primarily safeguarded by Article 17 of the Constitution, which explicitly recognizes the right of citizens to assemble peacefully and unarmed, even in public places, affirming that no prior authorization is required except for meetings in public

spaces that may threaten public order.¹⁴⁵ This right is intrinsically connected to Article 21, which guarantees the freedom of expression, protecting the right to disseminate thoughts, opinions, and political dissent, often essential elements of protest activity.¹⁴⁶ Furthermore, Article 2 provides a general foundation for the inviolable rights of the individual, while Article 3 promotes substantive equality, elements that together can be invoked to support the legitimacy of protest as a form of democratic participation.¹⁴⁷¹⁴⁸ While the Italian Constitution robustly protects the rights to peaceful assembly and freedom of expression as essential components of democratic participation, these rights are balanced by legal provisions that regulate protest activities to prevent disruptions and safeguard public order, reflecting the tension between individual liberties and collective security within Italy's legal framework.¹⁴⁹ Many of the criminal offenses applicable to environmental protests in Italy, such as interruption of public service (*Art. 340 c.p.*), resistance to public officials (*Art. 337 c.p.*), and unauthorized demonstration (*Art. 18 T.U.L.P.S.*) are closely related to the protection of public order, a foundational concept in Italian legal theory.¹⁵⁰¹⁵¹ Public order includes not only physical safety but also the continued operation of public institutions, services, making it an important legal consideration in the prosecution of protest-related offenses.¹⁵² Italian jurisprudence continually weighs the constitutional rights to free expression and assembly against the need to maintain institutional stability and service continuity, frequently favouring the latter when protests cause real interruption. Over the last few decades, Italy's approach to protest policing has undergone a considerable transformation, reflecting broader changes in its political, legal and institutional frameworks.

One of the most significant issues with the Italian approach to protest policing has been evident since the beginning of his republican history. In the aftermath of World War II, the 1948 Italian Constitution established the foundations for a democratic legal regime and in a deliberate deviation from the fascist government, the Constitution made no explicit reference to “*ordine pubblico*” as a distinct legal constraint.¹⁵³ This exclusion can be interpreted as indicative of the Constituent

¹⁴⁵ Costituzione della Repubblica Italiana, 27 dicembre 1947, Gazzetta Ufficiale n. 298 art 17.

¹⁴⁶ Ibid art. 21.

¹⁴⁷ Ibid art. 2.

¹⁴⁸ Ibid art. 3.

¹⁴⁹ Raffaele Bifulco *Introduzione ai diritti e ai doveri costituzionali* in M Benvenuti and R Bifulco (eds), *Trattato di diritto costituzionale*, vol 3 (Giappichelli 2022) 3.1.2. – 3.3.3.

¹⁵⁰ Testo Unico delle Leggi di Pubblica Sicurezza R.D. 18 giugno 1931, n. 773, Gazzetta Ufficiale n. 158 del 7 luglio 1931, art 18.

¹⁵¹ Codice Penale R.D. 19 ottobre 1930, n. 1398, Gazzetta Ufficiale n. 294 del 21 dicembre 1930, art 340-337.

¹⁵² Bifulco (n 149) 3.3.3.3.

¹⁵³ Omar Caramaschi, *Dall'ordine pubblico alla sicurezza: una prospettiva di teoria costituzionale* (2023) 13 *Democrazia e Sicurezza – Democracy and Security Review* 83, 83–105.

Assembly's circumspect approach to the adoption of vacuuming, order-based restrictions on civil liberties. Conversely, the Constitution acknowledged constraints exclusively under explicitly stipulated circumstances, encompassing public safety, health, and security, as delineated in Articles 13 (personal liberty), 14 (the inviolability of domicile), 16 (freedom of movement), and 17 (freedom of assembly).¹⁵⁴ Despite this formal liberalization, protest was still largely viewed as a threat rather than a democratic right and public order legislation inherited from the fascist period remained in force, granting police sweeping powers, including the discretionary use of firearms and enabling the criminalization of protest activities.¹⁵⁵ Law enforcement agencies were empowered to suppress dissent swiftly, often through arrests and intimidation, with little legal recourse for protestors.¹⁵⁶ This era saw public order used not just as a legal category, but as a tool for maintaining political stability through repression. Still, it's fundamental to recognize the important role of the Italian Courts, specifically of the Italian Constitutional Court, which tried to balance civil right with the necessity of public order.

The significance of the Italian courts' role in balancing the rights of assembly and free expression in the postwar era is underscored by the fact that the very first judgment of the Constitutional Court, Decision No. 1/1956, addressed specifically their protection. In 1956, the Constitutional Court was asked to rule on the constitutionality of Article 113 of the Consolidated Law on Public Security, which was raised by thirty judges during criminal proceedings.¹⁵⁷ The contested provision required prior authorization from the public security authority for the display of posters, the distribution of printed materials and the use of loudspeakers in public spaces, rendering any breach a criminal offence. The petitioners argued that this rule conflicted with Article 21 of the Constitution, which guarantees the right to freedom of expression and forbids censorship of the press.¹⁵⁸ Presided over by Enrico De Nicola, the Court firstly affirmed its exclusive competence to annul even pre-Constitutional laws that conflict with constitutional norms, rejecting the State's claim that such conflicts amounted merely to abrogation.¹⁵⁹ Secondly, the Court found Article 21 to be fully prescriptive and incompatible with an administrative regime granting unfettered discretion to public security authorities and it held that the appeal to the public prosecutor provided by a 1947 decree failed to define clear limits on administrative intervention and thus did not cure the underlying

¹⁵⁴ Maria Caterina Amorosi, *L'ordine pubblico e le tutele costituzionali* (2019) 66.

¹⁵⁵ Herbert Reiter, *Policing Protest: The Control of Mass Demonstrations in Western Democracies* (Vol 6, University of Minnesota Press 1998) 143.

¹⁵⁶ *Ibid.*

¹⁵⁷ Corte Costituzionale della Repubblica Italiana, Sentenza n. 1/1956 (1956).

¹⁵⁸ *Ibid* massima 7.

¹⁵⁹ *Ibid* massima 4.

illegitimacy. Consequently, the Court declared Article 113 unconstitutional in its entirety except for its fifth paragraph, which concerned designated posting sites and did not infringe on free expression.¹⁶⁰ This ruling was the Court's first declaration of unconstitutionality, establishing judicial review to safeguard fundamental rights and affirm the supremacy of the Constitution. Despite its strong defence of individual rights to expression and assembly, the Constitutional Court also treated public security as a complementary guarantee, not merely physical protection. In the subsequently Decision No. 2/1956, the Court expanded the notion of public security to encompass the full enjoyment of all rights and freedoms enshrined in the Constitution.¹⁶¹ It acknowledged that “security” should not be understood solely as physical safety but rather as the condition in which citizens can peacefully exercise, to the fullest extent possible, the fundamental freedoms robustly guaranteed by the Constitution.¹⁶² Security exists when individuals are free to pursue their lawful activities without threats to their physical or moral integrity, thus embodying the “ordered civic life” that is the hallmark of a free, rule-of-law state. In this sense, public security serves as the indispensable framework within which constitutional liberties, speech, assembly, movement, and more, can flourish without fear or coercion.¹⁶³ Nevertheless, the Court insisted that this broadened concept of security must not blur or override other constitutional values, each restriction must be supported by specific reasons and preserve the Constitution’s balance between individual freedoms and collective interests.

Another very relevant landmark case has been the Constitutional Court decision 19/1962, which expanded the concept of public order to include the protection of constitutional values essential for peaceful social coexistence, as well as physical safety.¹⁶⁴ The referring judge questioned whether the provision, particularly in its reference to “tendentious news”, violated the freedoms of association (Articles 18 and 49) and, most crucially, the freedom of expression guaranteed under Article 21 of the Italian Constitution.¹⁶⁵ It recognized that individual rights, including freedom of expression, are not absolute and must be balanced against other constitutional goods, such as public order, which the Court described as “a collective good and a shared asset of the community, which must be preserved as a necessary condition for the stability of the legal framework that governs social coexistence and for the respect of democratic legality”.¹⁶⁶ The ruling upheld the constitutionality of penalizing the dissemination of “tendentious news” that distorts reality and threatens public order, distinguishing

¹⁶⁰ Ibid massima 9-10.

¹⁶¹ Corte Costituzionale della Repubblica Italiana, Sentenza n. 2/1956 (14 giugno 1956).

¹⁶² Ibid para 5.

¹⁶³ Ibid para 5.

¹⁶⁴ Corte Costituzionale della Repubblica Italiana, Sentenza n. 19/1962 (1962).

¹⁶⁵ Ibid para 5.

¹⁶⁶ Ibid para 4.

this from protected political opinion or advocacy. Referring to its own earlier jurisprudence, the Court defined public order not in authoritarian terms, but as the legal and institutional framework enabling peaceful and lawful social coexistence in a democratic regime governed by the rule of law.¹⁶⁷ This decision established that the legislator can criminalize speech that objectively risks disturbing public order, even without intent to cause harm, showing the importance of judicial assessment of such cases based on context and proportionality.¹⁶⁸ It redefined public order not as authoritarian control but as the legal framework enabling democratic stability and lawful political change. Finally, it legitimized certain public order restrictions inherited from earlier legal codes by integrating them within a democratic and pluralistic constitutional framework.¹⁶⁹ The court later used this reasoning in Decision No. 168 of 1971, upholding Article 650 of the Criminal Code by defining 'public order' as 'constitutional public order'; the judges said that public order is a precondition for the effective enjoyment of fundamental rights, which can only be taken as far as peaceful coexistence in society allows.¹⁷⁰ Furthermore, it is relevant to underline how historically the Italian Constitutional Court has largely endorsed the "clear and present danger" doctrine, according to which freedom of expression should be restricted only when speech poses a concrete and immediate risk to public order, rather than a hypothetical or generalized threat.¹⁷¹ Nevertheless, in practice, the application of this doctrine has sometimes diverged, with certain offences, such as seditious assemblies, vilification of political or religious institutions, and subversive propaganda, being treated as inherently dangerous.¹⁷² This broader interpretation effectively allows for restrictions on expression even in the absence of clear evidence of an actual or immediate threat, thus raising concerns about the balancing of public order with fundamental freedoms.¹⁷³

Following an overview of the legislative evolution in balancing public order and security with the right to free expression and assembly, it is critical to examine what is undoubtedly the most significant instance in Italian environmental protest history: the *No TAV movement*. The movement originated in opposition to the construction of Turin-Lyon high-speed railway (*Treno Alta Velocità*)

¹⁶⁷ Notably "Corte Costituzionale della Repubblica Italiana, Sentenza n. 2/1956 (14 giugno 1956)".

¹⁶⁸ Corte Costituzionale, Sentenza n. 19/1962 (1962).

¹⁶⁹ Ibid para 5.

¹⁷⁰ Constitutional Court of the Italian Republic, Judgment No. 168 of 16 June 1971.

¹⁷¹ The "*clear and present danger*" doctrine was developed in the early 20th century by the United States Supreme Court. As noted by A. Cerri, *Ordine pubblico*, II, *Diritto costituzionale*, 7, 9, the Italian Constitutional Court has referred to this doctrine in several of its rulings: see e.g. judgments no. 71 of 1978; no. 87 of 1966; no. 65 of 1970.

¹⁷² Maria Caterina Amorosi, *Dalla forza del dissenso alla forza contro il dissenso. Spunti di riflessione su alcuni tornanti involutivi nella nostra democrazia* (Fascicolo 2, 2024) *Costituzionalismo.it* 18.

<https://www.costituzionalismo.it/dalla-forza-del-dissenso-alla-forza-contro-il-dissenso-spunti-di-riflessione-su-alcuni-tornanti-involutivi-nella-nostra-democrazia/> accessed 14 September 2025.

¹⁷³ Ibid 19.

and the project entailed the excavation of mountains with hazardous chemicals, and its completion necessitated the installation of a tightly guarded construction site.¹⁷⁴ While the prosecution of the No TAV movement accelerated in 2010, legal proceedings against activists began as early as 2005: by the end of 2016, nearly 1,500 people had been examined in connection with the movement, with a peak of 327 in 2011 and 183 between July 2015 and June 2016, an average of more than one person probed every two days.¹⁷⁵ Dozens of preventative measures were enforced, and numerous charges were filed, ranging from violations of restricted zones to inflated allegations of terrorism. However, contrary to perceptions of disorganized or spontaneous dissent, the No TAV protest represents a well-established and long-standing mobilization, spanning several decades and experimenting with various forms of civic engagement.¹⁷⁶ The movement dates back to 1991, shortly after the TAV project was announced in 1989. The roots of local resistance may be traced back to the 1980s, a decade marked by an economic growth mindset and a slew of development projects, including an "ecological highway," a high-voltage power line, and, eventually, the TAV.¹⁷⁷ These projects were billed as the "rebirth of the valley," yet they were founded on the idea that land is a passive resource that can be exploited through industrial intervention.¹⁷⁸ While No TAV protesters in Val di Susa have been labeled "NIMBY" (a term denoting local opposition driven by narrow self-interest or "free-riderism"), their movement actually encompasses far broader environmental, health, cultural-heritage, and social-justice concerns, advances alternative infrastructure solutions, and is grounded in a strong regional identity and solidarity network.¹⁷⁹ Furthermore, when examining the policing of freedom of assembly and expression in regard to the No TAV campaign, it is critical to highlight the specific situations of Erri De Luca and Roberta Chirolì, both of whom faced legal action because of their support for the movement.¹⁸⁰ Roberta Chirolì, an anthropologist who conducts ethnographic research, was charged primarily because she used the collective "we" in her thesis, which the court saw as proof

¹⁷⁴ Xenia Chiamonte, *Governare il conflitto: La criminalizzazione del movimento No Tav* (Mimesis 2019) 10.

¹⁷⁵ *Ibid.* 9.

¹⁷⁶ Emiliano Armano, Gian Luca Pittavino and Raffaele Sciortino, *Occupy in Valsusa: The No Tav Movement* (2013) 24 Capitalism Nature Socialism 14.

¹⁷⁷ Livio Pepino and Marco Revelli, *Non solo un treno. La democrazia alla prova* (2012).

¹⁷⁸ Chiamonte (n 174) 9.

¹⁷⁹ Xenia Chiamonte and Alessandro Senaldi, *Criminalizzare i movimenti: I No Tav fra etichettamento e resistenza* (2015) 10 *Studi sulla questione criminale* 126.

¹⁸⁰ Global Freedom of Expression, *The Case of Roberta Chirolì, No TAV Movement* (2016) Case No. 1088/16

<https://globalfreedomofexpression.columbia.edu/cases/roberta-chirolì-case-no-tav-movement/> accessed 28 June 2025.

See also Roberta Chirolì, *Ora e sempre No TAV: Pratiche e identità del movimento valsusino contro l'alta velocità* (Mimesis 2017).

of active engagement in protest.¹⁸¹ Erri De Luca, a well-known writer and supporter of the No TAV campaign, was charged with incitement after publicly endorsing sabotage against the train project.¹⁸²

Even though there are multiple significant cases concerning the No TAV movement, this analysis will focus on two major legal proceedings involving No TAV activists: the 2013 maxi-trial and the terrorism-related charges, particularly considering the Italian Supreme Court ruling Cass. Pen. n. 28009/2014 (27 June 2014). The so-called Maxi Trial concerning the No Tav movement represents one of the most extensive and symbolically charged judicial proceedings in recent Italian history related to environmental and infrastructural dissent. Emerging in the aftermath of the violent clashes between demonstrators and law enforcement in the Susa Valley in 2011, the trial brought before the court over fifty individuals accused of a range of crimes, including aggravated violence and resistance to public officials.¹⁸³ While rooted in specific events, the protests against the construction of a high-speed rail tunnel near Chiomonte, the trial quickly assumed a broader dimension, becoming a key site in the judicial management of collective political dissent. Six months after the Chiomonte clashes of 27 June and 3 July 2011, the Turin Investigative Judge (GIP) issued a January 2012 order placing twenty-five No TAV activists in pre-trial detention and imposing home-detention on fifteen others for alleged aggravated violence and personal injury against public officials.¹⁸⁴¹⁸⁵ The ensuing “maxi-trial” consolidated 54 defendants into a single proceeding before the Turin Tribunal, charging them with aggravated violence and resistance to public officers, aggravated personal injury and property damage, unjustified disguise under Article 5 of Law 152/1975, and illegal possession of offensive.¹⁸⁶ Prosecutors framed the events as the result of premeditated collective action, emphasizing a unified criminal intent among the protesters, distinct from the peaceful majority of the movement.¹⁸⁷ The trial was held in the high-security courtroom (the so-called “*aula bunker*”) of the Vallette prison in Turin, a site historically associated with mafia and terrorist trials, rather than in an

¹⁸¹ Tribunal of Turin, Judgment No 1088/2016 (2016).

¹⁸² Stephanie Kirchgaessner, *Writer's acquittal in Turin-Lyon rail line case a victory for free speech*, *The Guardian*, 19 ottobre 2015) <https://www.theguardian.com/world/2015/oct/19/erri-de-luca-acquittal-turin-lyon-rail-line> accessed 12 June 2025.

¹⁸³ Chiaramonte (n 174) 10.

¹⁸⁴ On 3 July 2011, a major No TAV protest in Valle di Susa against the Turin-Lyon high-speed rail escalated into violent clashes with police, leaving over 200 protesters and dozens of officers injured, involving massive use of force, including tear gas, stones, and even a mechanical shovel, and later revelations showed thousands of CS gas canisters were deployed, causing harmful effects on both protesters and police. See Stefano Baudino, 'Maxi-processo No Tav: attivisti condannati a pagare decine di migliaia di euro' (L'Indipendente, 25 luglio 2025) <https://www.lindipendente.online/2025/07/25/maxi-processo-no-tav-attivisti-condannati-a-pagare-decine-di-migliaia-di-euro/> accessed on 12 July 2025.

¹⁸⁵ Chiaramonte (n 174) 10.

¹⁸⁶ Law No. 152 of May 22, 1975, Article 5. (1975). Official Gazette of the Italian Republic, No. 136, May 24, 1975.

¹⁸⁷ Chiaramonte (n 174) 78.

ordinary tribunal.¹⁸⁸ The legal reasoning relied on the concept of “moral co-responsibility” and presumed association with the group’s most extreme acts.¹⁸⁹ Ultimately, the Turin Tribunal rendered its first-instance verdict on 27 January 2015; due to the seriousness of the charges, the judge ruled out minimum sentences, with most ranging from three to four years and a few reaching higher.¹⁹⁰ While some defendants were acquitted, the court also imposed significant financial penalties: around €64,000 for June 27, over €130,000 for July 3, and additional compensation to public officials, bringing the total to nearly €2 million.¹⁹¹ On 17 November 2016, the Turin Court of Appeal substantially curtailed the scope of the first-instance “maxi-trial,” applying statutes of limitation to several counts, and thereby reducing the number of convicted defendants from fifty-three to thirty-eight and lowering the maximum custodial term to three years and nine months.¹⁹² The definitive turning point arrived on 27 April 2018, with Criminal Judgment No. 44850 of 2017, Section I, of the Italian Supreme Court of Cassation.¹⁹³ The Court annulled the appellate verdict for 26 defendants, sending the case back to the Turin Court of Appeal for a full retrial. For an additional seven defendants, the Court confirmed their guilt but struck down specific charges, ordering a recalculation of their sentences and one defendant was fully acquitted on the grounds of non-involvement in the events, while another had only civil damages against them overturned.¹⁹⁴ The retrial took place before the Turin Court of Appeal and concluded on January 21, 2021: in this case, 32 activists were once again found guilty but received significantly reduced prison sentences ranging from two years to two years and six months.¹⁹⁵ Several charges were dismissed due to the statute of limitations. While the defense presented evidence that law enforcement had used excessive force, including disproportionate use of tear gas and water cannons, the court rejected the claim that police provocation mitigated the activists’ responsibility.¹⁹⁶ Nevertheless, the court formally acknowledged the excessive response by law enforcement and the legal strategy continued to rely on the concept of collective moral responsibility, though the penalties were lighter than in previous rulings.¹⁹⁷ On February 3, 2023, the Supreme Court of Cassation delivered the final ruling in the long-running No

¹⁸⁸ This choice was justified by the court on logistical and security grounds, citing the considerable number of participants and past public disturbances during hearings. See Chiamonte (n 174) 100-144.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid 78.

¹⁹¹ Ibid 240-250.

¹⁹² Sarah Martinenghi, *No Tav, 38 condanne al maxi processo d’appello per gli scontri in Valle Susa del 2011*, *La Repubblica* 17 novembre 2016.

¹⁹³ Corte di Cassazione, Sezioni Unite Penali. (2017), Sentenza n. 44850 del 28 settembre 2017.

¹⁹⁴ Ibid.

¹⁹⁵ Federica Cravero e Ottavia Giustetti, *No Tav: pene dimezzate nel processo d’appello bis per gli scontri del 2011 in Val Susa*, *la Repubblica* (Torino, 21 gennaio 2021).

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

TAV maxi-trial.¹⁹⁸ The Court declared inadmissible the last appeal submitted by 19 of the defendants, confirming all 32 convictions from the 2021 appeal without providing detailed reasoning.¹⁹⁹ Consequently, the sentences, ranging from two to two and a half years, remained largely unchanged, with only minor reductions of at most one month.

Another fundamental case emerging from the No TAV movement involved allegations of terrorism following a May 2013 attack on a construction site. On May 14, 2013, a group of individuals threw explosive devices into the construction site, damaging a machine, a compressor.²⁰⁰ On 5 December 2013, the Turin Preliminary Investigative Judge (GIP) ordered pre-trial detention for four individuals, charging them with “offence of an attack committed for terrorist purposes” under Article 280 of the Italian Penal Code, and invoking Article 270-sexies c.p., a provision introduced in 2005 establishing a specific terrorism offence for conduct that, by its nature or context, may cause serious harm to a state or international organization and is committed with the intent to intimidate the population or coerce public authorities.²⁰¹ Thereafter, in his 5 December ordinance, the Turin GIP treated the brief May attack and coordinated “night-walks” at the site as part of a sustained, paramilitary criminal plan, asserting that blocking tunnel works and increasing security costs amounted to damage severe enough to meet the terrorism threshold.²⁰² Furthermore, at the January 2014 review hearing, the Tribunal of Turin upheld detention based on a “concrete risk of recidivism”, citing police profiles of “Rioting.”²⁰³ However, the Court of Cassation in May 2014 (Rg. 28009/14,) rejected the terrorism charge, ruling that Article 270-sexies requires intent to “destabilize” or “destroy” state structures, which was absent in this case since the damage was limited to machinery and increased security costs.²⁰⁴ Moreover the judges held that the assault on the TAV construction site in Chiomonte in May 2013, characterized by the nighttime throwing of Molotov cocktails and firecrackers, did not automatically constitute a “terrorist purpose” under Article 270-sexies of the Criminal Code.²⁰⁵ The Court clarified that it is not enough for an individual to intend to harm the State; the act must be concretely capable of causing serious damage to the nation, such as intimidating

¹⁹⁸ Tgr Piemonte, *Maxi processo No Tav, la Cassazione respinge i ricorsi: confermate le condanne* (2 febbraio 2023) <https://www.rainews.it/tgr/piemonte/articoli/2023/02/maxi-processo-no-tav-la-cassazione-respinge-i-ricorsi-confermate-le-condanne-d5b4e691-3b09-4ee2-a41f-a0a0a5299eee.html>.

¹⁹⁹ Ibid.

²⁰⁰ Chiamante (n 174) 100-144

²⁰¹ Daniele G Cappelluto, Marco Tempesta and Giulia Martini, *The Charter of Fundamental Rights of the European Union and the Italian Anti-Terrorism Legislation* in *The Application of the Charter of Fundamental Rights of the European Union in Civil and Administrative Jurisdiction: The Fight Against Terrorism* (2021) 133.

²⁰² Ibid.

²⁰³ ‘No Tav: la Cassazione sulla finalità di terrorismo (Cass. pen., 28009/2014)’, *Giurisprudenza Penale* (30 June 2014)

²⁰⁴ Corte di Cassazione, Sez VI Penale, Sentenza n 28009/2014 (27 June 2014).

²⁰⁵ Ibid.

the population or coercing the government into halting a public project.²⁰⁶ In this instance, the material damages were minimal and did not pose a real or current risk to the continuation of the high-speed rail line. Consequently, the Court overturned the terrorism charges, citing insufficient reasoning in the lower court's decision, and remanded the case for re-evaluation in accordance with the principles of concrete harm and proportionality.

In tracing the Italian legal response to the No TAV movement, one observes a persistent tension between the constitutional guarantees of free expression and assembly and the imperative of preserving public order. The jurisprudence of the Constitutional Court has progressively delineated “public order” not as an instrument of authoritarian control, but as the necessary framework enabling citizens to exercise their rights in safety and security. Yet, in practice, lower courts and prosecutorial strategy have frequently emphasized collective intent and moral co-responsibility, treating environmental dissent through the lens of criminal conspiracy. The maxi-trial in Turin exemplified this approach, consolidating diverse acts of protest into a singular criminal narrative and situating proceedings in a high-security venue more commonly reserved for mafia and terrorism cases. A similar pattern can be seen in the terrorism-related charges stemming from the May 2013 site attack, which highlighted the state's tendency to treat an environmental movement as virtually equivalent to the criminal organizations of the 1970s; moreover, the prosecution of scholars and public figures revealed a rather unbalanced approach to the No TAV issue. Ultimately, the No TAV phenomenon reveals both the adaptability of Italy's constitutional framework and the enduring challenges of reconciling robust protest rights with the state's duty to maintain institutional stability.

2.1.2 From Residual Liberty to Convention Rights in UK Protest Regulation.

The right of peaceful assembly in the United Kingdom is governed by both international and domestic legal frameworks, reflecting the country's obligations under various treaties and conventions. It is important to underline that the UK lacks a single written constitution at a domestic level, instead relying on a complex system of statutory law, common law and established conventions.²⁰⁷ As a consequence, it is impossible to determine a precise moment at which the right to assemble and protest was formally recognized in English law and judicial debates.²⁰⁸ Before the Human Rights Act (HRA) came into effect in England in October 2000, the UK's common law

²⁰⁶ Ibid.

²⁰⁷ Ondřej Salát, *The Right to Freedom of Assembly: A Comparative Study* (Bloomsbury Publishing 2015) 19.

²⁰⁸ Duncan Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* (Bloomsbury Publishing 2010) 4.

constitution was largely relying on the concept of residual liberty.²⁰⁹ This implied that people could do anything they wanted as long as they didn't violate the law, but there was no guarantee that one could stop others from interfering because others were just as free to act against them. As a result, there were no enforceable, affirmative rights shielding people from the conduct of others. Historically, individuals in the UK had limited protection of rights, relying on specific legal rules rather than broad constitutional rights, with remedies like habeas corpus safeguarding liberty but no formal positive rights system.²¹⁰ Peaceful protest was only permitted if no law explicitly prohibited it, reflecting tension between judicial protection of liberties under common law and Parliamentary sovereignty, which could override rights through legislation. Although the European Convention on Human Rights influenced judicial interpretation before becoming domestically binding in 1998, it did not provide enforceable rights against the government.²¹¹ Over time, courts applied “anxious scrutiny” to government actions limiting fundamental rights, enhancing protection for freedoms such as peaceful assembly, but these protections remained less robust than those of the European Court of Human Rights.

The Public Order Act 1986 emerged in response to widespread civil disturbances in cities such as London, Liverpool, and Bristol, and was shaped by key inquiries, including Lord Scarman's reports on the Red Lion Square Disorders (1974) and the Brixton Riots (1981).²¹² While the Act introduced significant statutory powers for police to manage public disorder, it did not codify the entire legal framework; certain powers, such as those addressing breaches of the peace, remain grounded in common law.²¹³ Section 9 of the Public Order Act 1986 abolished the common law offences of rout, unlawful assembly, and affray, replacing them with statutory offences categorized into riot, violent disorder, and affray.²¹⁴ These offences focus on violent or threatening conduct likely to alarm a hypothetical bystander, with riot requiring 12 or more participants, violent disorder involving three or more, and affray applicable to individuals but excluding words alone. It is also relevant to analyse how courts have clarified key terms, emphasizing ordinary meanings and that “immediate” violence does not require instant action, while allowing defenses such as reasonable belief that the behavior would not be seen or cause harm.²¹⁵ Furthermore, sections 12 and 14 of the Act give senior police officers the power to impose conditions on public processions and assemblies, including restrictions

²⁰⁹ Gina Clayton, *Reclaiming Public Ground: The Right to Peaceful Assembly* (2000) 63 MLR 255-256.

²¹⁰ Mead, (n 208) 28.

²¹¹ *Ibid* 29.

²¹² Nicholas Parpworth, *Constitutional and Administrative Law* (Oxford University Press 2018) 512.

²¹³ *Ibid* 513.

²¹⁴ Public Order Act 1986, c 64 (UK Public General Acts 1986).

²¹⁵ Parpworth (n 212) 518.

on time, location, and numbers, if they reasonably believe that the event may cause serious public disorder, disruption, or intimidation. Concurrently, the Public Order Act 1986 has remained an important instrument for regulating protest but over the years, its provisions have been both criticized and reinterpreted in light of human rights norms.²¹⁶ Although the 1986 Public Act continues to serve as the foundation for assembly law in England, a number of subsequent statutes have been enacted, primarily focusing on issues related to terrorism and anti-social behaviour. The Criminal Justice and Public Order Act 1994 (CJPOA) introduced the concept of trespassory assembly by adding sections 14A to 14C to the Public Order Act 1986.²¹⁷ Among more recent significant amendments is section 57 of the Anti-Social Behaviour Act 2003, which notably reduced the minimum number of participants required for the police to impose conditions on an assembly, from twenty down to two.²¹⁸ Notably, at the international level, the UK is a State Party to the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 21 of the ICCPR provides that the right of peaceful assembly must be recognized and may only be restricted by laws that are necessary in a democratic society to protect national security, public safety, public order, public health or morals, or the rights and freedoms of others.²¹⁹ However, the UK has never ratified the First Optional Protocol to the ICCPR, which would allow individuals to directly petition the Human Rights Committee with complaints of human rights violations.²²⁰

The Human Rights Act (HRA) 1998 introduces a new interpretative framework for courts in the UK, particularly regarding the relationship with Strasbourg case law under the European Convention on Human Rights (ECHR).²²¹ Section 2 of the HRA requires judges to take Strasbourg jurisprudence into account when relevant but does not bind them to follow it strictly; while courts should generally respect consistent Strasbourg decisions to maintain legal certainty, they may depart from them in exceptional circumstances, especially where domestic precedent conflicts with Strasbourg rulings.²²² Section 3 of the HRA is crucial as it guides courts to interpret legislation compatibly with Convention rights “so far as possible,” preserving parliamentary sovereignty by not allowing judges to overturn primary legislation outright.²²³ If a statute cannot be read compatibly, section 4 permits courts to issue a declaration of incompatibility, which does not invalidate the law

²¹⁶ Mead (n 208) 25–45.

²¹⁷ Parpworth (n 212) 533.

²¹⁸ Anti-Social Behaviour Act 2003, s 57 (UK).

²¹⁹ United Nations. International Covenant on Civil and Political Rights (1966).

²²⁰ Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302.

²²¹ UK Parliament, Human Rights Act 1998 (1998).

²²² Mead (n 208) 41.

²²³ *Ibid* 42–43.

but signals the issue to Parliament. However, this power has limits; courts should not depart from fundamental features of legislation or engage in judicial law-making that has significant practical or policy implications. Ultimately, the HRA seeks a balance between protecting human rights effectively and respecting parliamentary supremacy, with section 3 being the primary tool for rights protection and section 4 serving as a last resort.²²⁴ The effectiveness of the Human Rights Act in encouraging public authorities to internalize rights protection, beyond simply facing court challenges, remains a debated issue. For example, how well the right to peaceful protest has been embedded in public authority decision-making, including policing practices, remains to be fully assessed. Moreover, in accordance with Sections 6 and 7 of the Human Rights Act (HRA), public authorities, including but not limited to courts, government bodies, and the police, are obligated to ensure compliance with Convention rights.²²⁵ The liability of these authorities is contingent upon the categorization of their actions as either public or private.

The legislative framework outlined by the Public Order Act 1986, and subsequently supplemented by the Human Rights Act 1998, constitutes the formal framework within which the right to demonstrate is exercised in the United Kingdom. However, this legislative framework has proven, on several occasions, to be insufficient to resolve the tensions between public order requirements and fundamental freedoms, especially in the most conflictual or symbolically intense contexts.²²⁶ It is precisely in this interpretative space, often left ambiguous by the legislature, that case law has taken on a crucial role, intervening not only to fill regulatory gaps, but also to redefine the limits of state intervention against protest.²²⁷ Several decisions of the higher courts, in particular first the House of Lords and then the UK Supreme Court, have progressively oriented domestic law towards greater protection of peaceful dissent, introducing key concepts of proportionality, legitimacy of the non-transitory use of public space and need for preventive intervention.²²⁸ These pronouncements, which represent real turning points in British jurisprudence, show how the right to protest has been constructed, rather than on a codified basis, through judicial conflict between citizens and authorities.

One of the main landmark cases is *DPP v Jones and Lloyd* [1999] and can be considered as a landmark example in the examination of how English domestic law addresses the right to peaceful protest, especially in relation to the use of public highways. The decision by the House of Lords

²²⁴ Ibid 51.

²²⁵ Ibid 44.

²²⁶ David Feldman, *The Growing Complexity of a Human Right to Assemble and Protest Peacefully in the United Kingdom* (2023) 54 *Victoria University of Wellington Law Review* 179, 180.

²²⁷ Ibid 181.

²²⁸ Adam T. H. Smith, *Protecting Protest – A Constitutional Shift* (2007) 66(2) *Cambridge Law Journal* 253.

highlights the complexities and inherent tensions between individual rights to assembly and protest, and the traditional rights attached to property and public order. In *DPP v Jones*, the defendants were part of a group of more than twenty people gathered peacefully on a grass verge next to a perimeter fence at Stonehenge.²²⁹ This area was subject to an order under section 14A(1) of the Public Order Act 1986, which prohibited assemblies during certain times to protect the site. Most of the group moved away when requested by a police officer, but the defendants refused and were arrested, charged with an offence under section 14B(2) for participating in a trespassory assembly knowing it to be prohibited.²³⁰ Jones and Lloyd appealed their convictions to the Crown Court, which overturned them, finding they were peacefully and reasonably using the highway without causing disorder.²³¹ Subsequently, the prosecution appealed to the Divisional Court, which reinstated the convictions and thereafter, the defendants appealed directly to the House of Lords.²³² The core issue revolved around the extent to which peaceful assemblies could lawfully occupy a public highway without infringing on the primary right of others to pass and repass; while at first glance the judgment appears to affirm a right to peaceful protest on the highway, a closer and more nuanced reading reveals that this “right” is heavily qualified.²³³ In this case, the House of Lords did not recognize an absolute right for protesters to use the highway for assemblies but framed it instead as a qualified, limited right contingent on reasonableness and the absence of obstruction. The House of Lords was divided in their reasoning, particularly between the majority (Lord Irvine, Lord Hutton, and Lord Clyde) and the minority (Lord Slynn and Lord Hope) and the majority adopted a broader, more modern interpretation of the public’s common law rights relating to the highway.²³⁴ They emphasized that the historic nineteenth-century cases, *Harrison v Duke of Rutland* and *Hickman v Maisey*, should be understood as establishing a right not just to pass and repass but to engage in reasonable and usual activities on the highway, provided such activities do not amount to a public or private nuisance or unreasonably obstruct others’ passage.²³⁵ This interpretation acknowledges the highway as a space that can accommodate some degree of peaceful assembly and protest as part of everyday public life, including activities such as meeting, talking, charitable collections, or political leafleting. Conversely, the minority adhered to a narrower, more traditional interpretation of these cases: they viewed the public’s rights as limited strictly to passing and repassing, rejecting the idea that assemblies could be

²²⁹ *Director of Public Prosecutions v Jones and Another* [1999] UKHL 19 (UK House of Lords).

²³⁰ *Ibid.*

²³¹ Clayton (n 209) 252.

²³² Mead (208) 194.

²³³ *Ibid.*

²³⁴ *Ibid* 196.

²³⁵ *Ibid.*

considered reasonable or usual uses of the highway unless they were incidental to this primary function.²³⁶ Their approach lacked recognition of the functional role that peaceful assembly plays in a democratic society and treated peaceful assemblies similarly to activities such as squatting or commercial use, thereby severely limiting protest rights on public highways. Notably, the House of Lords' decision preceded the full influence of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR), which could have shaped their reasoning differently.²³⁷ While the majority acknowledged the need to interpret the common law in a way compatible with the Convention rights, they did not explicitly apply the ECHR framework. Lord Hutton was the only judge to give significant weight to human rights considerations, suggesting that the common law should recognize a right to peaceful assembly on the highway, provided it was reasonable and non-obstructive.²³⁸ However, this judgment have demonstrate a careful approach that balances the protecting of traditional property rights with the acknowledgement of assembly rights, but it did not go as far to recognize an expansive constitutional right to practice some form of protest in public space.

Another fundamental landmark case is *Heathrow Airport Ltd & Another v Joss Garman & Others*, underscoring the court's central role in adjudicating tensions between the fundamental freedoms of assembly and pressing public order and security concerns at a major international airport.²³⁹ The dispute arose when Heathrow Airport Ltd and the Secretary of State for Transport sought to restrain a "Camp for Climate Action," organized mainly by the direct-action group Plane Stupid, from establishing itself near airport grounds in mid-August 2007 with the avowed aim of impeding flights, roads, and rail links.²⁴⁰ The application was heard by Swift J in the High Court, Queen's Bench Division, during a three-day urgent hearing from 1 to 3 August 2007.²⁴¹ Before considering any merits, Heathrow Airport changed its claim to join Transport for London and London Underground since they were concerned with preventing interference with rail services to the airport, and then restricted the proceeding to the four main organizers as leading the Camp for Climate Action. The procedural vehicle adopted was a representative injunction under CPR 19.6, enabling Heathrow Airport to seek relief not only against the named defendants but also against any persons "acting in concert" with them in order to obstruct airport operations.²⁴² Heathrow Airport initially sought a

²³⁶ Ibid 197.

²³⁷ Ibid 194-203.

²³⁸ Clayton (n 209) 256.

²³⁹ *Heathrow Airport Ltd & Another v Joss Garman & Others* [2007] EWHC 1957 (QB) Climate Case Chart.

²⁴⁰ Ibid para 7-9.

²⁴¹ Ibid para 2.

²⁴² Ministry of Justice, *Civil Procedure Rules* Part 19: Default Judgment (CPR 19.6).

prohibitory order under the Protection from Harassment Act 1997, hoping to secure a summary power of arrest against anyone breaching its terms.²⁴³ Swift J held that the statutory threshold was unmet: the campaigners' prior occupations of an airport taxiway, blockades of airline offices, and occupations of power stations, while disruptive, did not give rise to the "alarm or distress" protected by the Act, nor could a corporate body be a "victim" for harassment purposes.²⁴⁴ The court turned to common-law trespass and nuisance and the airport's byelaws (Heathrow Airport-London Byelaws 1996) which prohibited the assembly that might disrupt the airport's functions.²⁴⁵ Applying the balance-of-convenience test, Swift J accepted Heathrow Airport's evidence that mass direct action would not only impose an intolerable burden on police and security resources already stretched by terrorism-related threats, but could also paralyze the movement of passengers and goods.²⁴⁶ He found that restraint was necessary to prevent irreversible harm to the public interest and that any interference with the protestors' rights of expression and assembly would be proportionate to the legitimate aim of preserving airport functionality. The final order, to be operated from 14 to 21 August 2007, barred all identified officers, activists, and supporters of Plane Stupid, and persons acting in concert with them, from entering any part of the airport perimeter without prior consent, from impeding access or egress, and from inciting others to do the same.²⁴⁷ Swift J also clarified that unnamed individuals within the defined class would be bound by the injunction but could be joined only with the court's permission, thereby safeguarding due-process rights under CPR 19.6(4)(b).²⁴⁸ In the drafting of this injunction, the court both affirmed the rule of law by calibrating relief narrowly to fit the actual threat, and reiterated that even strong assembly may be legitimately curtailed when protest actions threaten to interfere with essential public functions of an international airport. However, the judicial response should be read alongside the wider policing strategy that accompanied the Climate Camp. During the same period, it was reported that the police intended to rely on section 44 of the *Terrorism Act 2000*, a provision allowing stop and search without suspicion, as part of their operational framework.²⁴⁹ This use of counter-terrorism powers on peaceful environmental demonstrators was not a considered in the court's reasoning in this case, but these powers generated considerable public anxiety and concern.²⁵⁰

²⁴³ Police Act 1997 (c 40) <https://www.legislation.gov.uk/ukpga/1997/40/contents> accessed 18 July 2025.

²⁴⁴ *Heathrow Airport Ltd & Anor v Joss Garman & Ors* [2007] EWHC 1957 (QB) (n 238) paras 88-90.

²⁴⁵ The Airports (Groundhandling) (Amendment) Regulations 1996, SI 1996/2617.

²⁴⁶ *Heathrow Airport Ltd & Anor v Joss Garman & Ors* [2007] EWHC 1957 (QB) (n 238) paras 112-113.

²⁴⁷ *Ibid* para 16.

²⁴⁸ Ministry of Justice, Civil Procedure Rules Part 19, rule 19.6(4)(b).

²⁴⁹ John Vidal e Helen Pidd, *Police to use terror laws on Heathrow climate protesters*, *The Guardian* (11 agosto 2007)

<https://www.theguardian.com/uk/2007/aug/11/ukcrime.greenpolitics> accessed 14 settembre 2025.

²⁵⁰ *Ibid*.

In conclusion, it is essential to consider one of the most recent yet still relevant landmark cases: *DPP v Ziegler*, but it takes place before all the specific legislative changes that occurred in 2023, which will be discussed in Chapter 3. In *DPP v Ziegler*, the UK Supreme Court addressed the legality of physically obstructive protest actions in light of the rights to freedom of expression and peaceful assembly under the European Convention on Human Rights (ECHR).²⁵¹ The case arose from a protest in 2017 where several individuals, opposed to the arms trade, obstructed a road leading to the Defense and Security Equipment International arms fair by locking themselves together in a way that delayed access to the venue for approximately 90 minutes.²⁵² They were arrested and charged under section 137 of the Highways Act 1980 for willfully obstructing a highway.²⁵³ The district judge acquitted the protestors, concluding that their actions, while constituting an obstruction, were not unreasonable given the specific context, their peaceful intent, the political nature of their message, and their limited duration.²⁵⁴ He ruled that their rights under Articles 10 and 11 of the ECHR had not been outweighed by the obstruction caused. However, the Divisional Court later overturned this decision, reasoning that any significant obstruction to public access on a highway, particularly one preventing movement entirely for a period of time, was disproportionate and thus not protected under the ECHR.²⁵⁵ It emphasized the need to balance protest rights against the rights of others, and found that in this instance, the protest had unduly interfered with the public's lawful use of the highway. The Supreme Court ultimately reinstated the district judge's ruling. In a majority decision, the Court reaffirmed that even physically obstructive protest can fall within the ambit of lawful exercise of ECHR rights. Most of the judges found that the intentional, peaceful obstruction of a highway can amount to a lawful justification under section 137 of the Highways Act 1980, so long as it is a proportionate response to achieve their protest goals (e.g., length of time taken, specific highway aspect being targeted, and lack of disorder).²⁵⁶ Importantly, it emphasized that such assessments are fact-specific and must be made by the trial court, not re-evaluated unless the decision was clearly wrong in law. The Supreme Court stressed that under the ECHR, public authorities have an obligation to demonstrate a degree of tolerance, both contextual and fact-specific, to peaceful protests, understanding that a certain degree of disruption is inevitable and required to retain the essence of the right to freedom of assembly.²⁵⁷ The Court also engaged deeply with the question of the appropriate standard of appellate review in

²⁵¹ Director of Public Prosecutions (Respondent) v Ziegler and Others (Appellants) [2021] UKSC 23.

²⁵² Ibid paras 1-7.

²⁵³ UK Government, Highways Act 1980, s 137.

²⁵⁴ DPP v Ziegler (n 247) paras 18-22.

²⁵⁵ Ibid paras 27-28.

²⁵⁶ Ibid paras 70-72.

²⁵⁷ Ibid paras 68-114.

cases where proportionality under the ECHR is assessed.²⁵⁸ It rejected the Divisional Court's adoption of a broad "was the judge wrong?" standard derived from family law cases. Instead, it held the more restrictive test from *Edwards v Bairstow*: an appellate court may only overturn a trial court's judgment if it is perverse, irrational, or involves an error of law apparent on the face of the case.²⁵⁹ As analysed previously, in England, the right to assembly and freedom of expression are developing: over time, it has changed from being a residual right to a duty on the part of the State to respect and protect a positive right. However, while the progress remains positive, the rights of assembly and freedom of expression remain ongoing as will be described in greater detail in Chapter Three.

2.1.3 Assembly as a Constitutional Right in Germany from Brokdorf to Wunsiedel.

Germany is bound by a comprehensive, multi-layered legal framework that is rooted in international human rights obligations and domestic constitutional law. This framework safeguards the right to peaceful assembly, ensuring that this fundamental freedom is recognised, protected, and regulated in accordance with democratic principles, the rule of law and proportionality requirements. Germany's constitutional framework, specifically Article 8 of the Basic Law, guarantees all Germans the right to peacefully and unarmed assembly without prior authorization, though restrictions may apply to outdoor gatherings through legislation.²⁶⁰ Under the 1953 Federal Assembly Law, such assemblies must be registered 48 hours in advance and dispersal orders may only be issued as a last resort if there is an imminent threat to public order.²⁶¹ Even if in Germany the right to assemble is secured in the federal constitution, it is fundamental to underline that the regulation and practical application of assemblies are usually managed by the Länder. At regional level, Germany is a State Party to the 1950 European Convention on Human Rights; furthermore, Germany is a State Party to the 1966 International Covenant on Civil and Political Rights (ICCPR).²⁶² Germany is also a State Party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the State has violated their human rights as protected under the Covenant.²⁶³

²⁵⁸ *Ibid* para 102.

²⁵⁹ *Ibid* paras 130.

²⁶⁰ Christian Bumke and Andreas Voßkuhle, *German Constitutional Law: Introduction, Cases, and Principles* (OUP 2019) 367.

²⁶¹ Federal Act on Assemblies (Versammlungsgesetz or "VersG") of 24 July 1953, BGBl I 684, as promulgated 15 November 1978, BGBl I 1790, last amended by Art 2 of the Law of 8 December 2008, BGBl I 2366.

²⁶² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²⁶³ Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UNGA Res 2200A (XXI)

The concept of assembly (*Versammlung*) under German constitutional law, specifically Article 8 of the Basic Law (*Grundgesetz, GG*), has been the subject of intense legal debate. Article 8(1) guarantees every German citizen the right to assemble peacefully and without arms, without prior notice or permission; Article 8(2) allows restrictions on assemblies held “under the open sky”, but only by law or based on law.²⁶⁴ In fact, Article 8 itself distinguishes between two types of assemblies: those held “*unter freiem Himmel*” (under the open sky), typically in public spaces such as streets and parks, and those held in enclosed or fenced areas. While assemblies in open spaces are subject to legal restrictions, other assemblies in enclosed spaces may be treated differently. However, the sharp constitutional distinction has been blurred by systematic interpretation, which places the modalities of any assembly under Article 8 while allocating the content of assemblies, particularly the expression of opinions, under the right to freedom of opinion protected by Article 5.²⁶⁵ This legal framework indicates that the right to assemble is granted to individuals rather than a collective “people”. The protection covers not only verbal communication but also symbolic or silent forms of protest, such as marches or sit-ins and even unconventional or provocative forms of protest are included under this right, as long as the intent is political or expressive.²⁶⁶ However, not all gatherings are constitutionally protected. Events primarily organized for entertainment, such as festivals or parties, fall outside the protection of Article 8. A key example is the “Love Parade,” which the Constitutional Court found was focused on dancing and entertainment, not political expression. Even if organizers include minimal political messaging, such efforts are not sufficient to bring the event under constitutional protection. On the other hand, if an event like the “Fuck Parade” incorporates meaningful political advocacy, it may qualify for protection.²⁶⁷ Similarly, courts have extended constitutional protection to politically motivated concerts, such as those held by extremist groups, if they are used as vehicles for disseminating political views. The distinction between different types of modern gatherings also matters. “Smartmobs,” which use digital communication to organize spontaneous political protests, are protected under Article 8 if they serve a political purpose.²⁶⁸ German labor courts have even recognized smartmobs as a legitimate form of union protest; in contrast, “flashmobs,” typically

²⁶⁴ Basic Law for the Federal Republic of Germany [Grundgesetz], Arts 8(1)–8(2) (23 May 1949, last amended 2023).

²⁶⁵ Ibid art 5.

²⁶⁶ Peters and Ley (n 59) 125-128.

²⁶⁷ Decision of the Bundesverfassungsgericht of 12 July 2001, 1 BvQ 28/01, paras 19, 22. On this basis the Federal Administrative Court arrived at the conclusion that the “Fuck Parade”, whose organisers had prepared banners and leaflets arguing for the need for a less commercialised version of the Love Parade, qualified as an assembly within the meaning of Art. 8, see Federal Administrative Court [Bundesverwaltungsgericht (BVerwG)], Judgment of 22 August 2007, 6 C 22/06, *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* (2007), 1434, 1435. The Court held that in cases of doubt, an event that does not exclusively pursue entertainment purposes but also tries to shape public opinion shall benefit from the constitutional protection of assemblies.

²⁶⁸ Peters and Ley (n 59) 126.

organized for fun or social interaction without political goals, are not covered by the constitutional guarantee.²⁶⁹

Central to the debate is the scope of what constitutes an “assembly.” Legal scholars and courts differentiate among three main notions: a narrow, enlarged, and wide understanding of assembly.²⁷⁰ The narrow interpretation restricts the right to assemblies that involve collective formation and expression of opinion strictly on public or political matters; this view treats freedom of assembly largely as a political right and is supported by some historical interpretations of early German constitutions, although these historical sources do not definitively limit assembly rights to political issues.²⁷¹ The enlarged notion broadens this to include assemblies with collective expression or discussion of opinions on both public and private matters. This concept emphasizes the social value of communicative freedom, extending protection beyond purely political speech to broader social interaction and discourse.²⁷² The wide notion goes even further, dispensing with the requirement that the assembly’s goal be the expression of opinion. Instead, it protects any common activity among participants as long as there are some inner connections and a shared objective, regardless of whether it involves political or expressive content. This broad understanding highlights the importance of assembly as a means for individual personality development within a group context and under this view, the act of assembling is protected not just for its expressive value but as a form of personal and social identity formation.²⁷³ The German Federal Constitutional Court emphasizes that the central function of assemblies is to contribute to the formation of public opinion in a democratic society.²⁷⁴ At the same time, the German Federal Constitutional Court’s position has shifted over time and remains somewhat ambiguous. In landmark cases such as the Brokdorf decision (1985), the court appeared to accept a broad notion of assembly; however, in later rulings, including the *2001 Sitting Blockade III* decision, it defined an assembly as ‘a local gathering of several people for the purpose of common discussion or demonstration which aims at participating in the public formation of opinion’.²⁷⁵

Following the constitutional reform of 2006 the authority to regulate the right of assembly in Germany was transferred from the federal government to the individual federal states (Länder).²⁷⁶

²⁶⁹ Ibid.

²⁷⁰ Salát (n 207) 34.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid 35.

²⁷⁴ Federal Constitutional Court (Bundesverfassungsgericht), Sit-down Demonstrations III (2001) BVerfGE 104, 92.

²⁷⁵ BVerfGE 104, 92, 104 (2001).

²⁷⁶ Federal Ministry of the Interior, 'Right of Assembly' (BMI, 2025)

<https://www.bmi.bund.de/EN/topics/constitution/state-order/right-of-assembly/right-of-assembly-node.html>

This change has led to a fragmented legal landscape, which risks causing legal uncertainty and practical difficulties, especially during large demonstrations that require cooperation among police forces from different states.²⁷⁷ Most states have limited their new laws to organizing and procedural rules, in line with established court decisions. While the Federal Constitutional Court has placed clear limits on such reforms, the existence of different legal regimes across the Länder still raises concerns about consistency and clarity in protecting assembly rights.²⁷⁸

As previously discussed, one of the earliest and most significant case of federal Germany was the *BVerfGE 69, 315—Brokdorf decision*, which can be considered as a landmark decision in German constitutional jurisprudence on the freedom of assembly under Article 8 of the Basic Law (*Grundgesetz, GG*).²⁷⁹ It emerged from the context of mass political demonstrations, such as the Gorleben trek (1979), the Bonn peace demonstrations (1981), and the human chain in southern Germany (1983), and it was concerned with legal and constitutional limits to state intervention through bans and dispersals of assemblies.²⁸⁰ The central issue was whether and under what conditions authorities could impose restrictions, particularly on large demonstrations where some degree of disorder or risk was anticipated. The background of the case lies in the interplay between 15 of the Assemblies Act (*Versammlungsgesetz*), which permits bans and dispersals in cases of direct danger to public safety or order, and the constitutional protection of peaceful assembly as a core democratic right.²⁸¹ The Court explained that the constitutional right to freedom of assembly may only be limited by a statute if they are necessary to protect legal interests of equal constitutional value.²⁸² Any restriction must be based on the concept of proportionality and can only be justified by a "direct threat" to the safety or order of the public, and founded on identifiable elements rather than speculation.²⁸³ The imposition of bans or dispersals is only lawful as an ultima ratio, meaning that all less intrusive means, such as imposing conditions or cooperating with organizers, must first be exhausted. The judgment reinforced that merely disruptive or inconvenient aspects of demonstrations, such as interference with traffic or the general disturbance of daily life, are insufficient to justify interventions.²⁸⁴ The Court underscored that the state has not only a negative duty to refrain from

²⁷⁷ Peters and Ley (n 59) 126.

²⁷⁸ *Ibid* 122.

²⁷⁹ Brokdorf Decision of the First Senate (BVerfG, 14 May 1985) BVerfGE 69, 315, <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=656> accessed 19 June 2025.

²⁸⁰ *Ibid* III.1.

²⁸¹ Federal Ministry of Justice and Consumer Protection and juris GmbH, Assembly Act (*Versammlungsgesetz*) (BGBl. I 1978, 1789; last amended BGBl. I 2020, 2600)

²⁸² Brokdorf Decision, BVerfGE 69, 315 III.1.

²⁸³ *Ibid* II.2.b.

²⁸⁴ *Ibid* II.2.b.

restricting assembly but also a positive obligation to facilitate its peaceful exercise, including through early dialogue and confidence-building with organizers, and even by the adoption of “demonstration-friendly” policing strategies such as police-free zones.²⁸⁵ In relation to spontaneous or leaderless mass events, the Court acknowledged that a lack of central organization may affect the threshold for police action, but it also emphasized that such structural peculiarities should not in themselves justify bans or sanctions unless the state had fulfilled its procedural duties to facilitate the event.²⁸⁶ Furthermore, the ruling decisively addressed the situation in which violence emanates from a small minority of participants or from third parties. It held that this cannot, without more, justify banning or dispersing an entire demonstration, as this would allow violent individuals to nullify the fundamental rights of peaceful participants. Instead, the state must primarily act against violent individuals, and a general preventative ban can only be lawful where there is a high probability of violence, and where the authorities have attempted all reasonable, less intrusive means, including cooperation with peaceful demonstrators.²⁸⁷ This principle reflects a commitment to maximizing the exercise of fundamental rights and sets a high bar for restrictions, particularly in the context of political expression through public assembly. The Court's interpretation of Article 15 of the Meetings Act, within the framework afforded by Article 8 GG reaffirmed the position of peaceful assembly as having a central role in a democratic order, and the role of the state, not only to tolerate its exercise, but also to enable it.

By contrast, the previously mentioned 2001 Sitting Blockade III decision illustrates the counterbalance in the jurisprudence. The decision of the German Federal Constitutional Court (BVerfG) dated October 24, 2001, published in BVerfGE 104, 92 ff., addresses the constitutional boundaries of assembly rights under Article 8 of the Basic Law and their interplay with other fundamental rights, particularly freedom of opinion under Article 5 GG.²⁸⁸ The case arises from a series of criminal convictions related to acts of civil disobedience involving blockades at the Wackersdorf nuclear reprocessing plant construction site, where protesters sought to symbolically disrupt operations and raise public awareness about the dangers of nuclear energy.²⁸⁹ In this case, the Court examined the legal status of sit-in blockades, a form of protest where individuals obstruct access to a location to draw attention to a cause. The central issue was whether such actions, while non-violent, could be classified as "peaceful assemblies" under Article 8 GG or whether they

²⁸⁵ Ibid III.1.

²⁸⁶ Ibid III.2.

²⁸⁷ Ibid III.3.b.

²⁸⁸ Sitzblockaden III (BVerfG, 15 febbraio 2001) BVerfGE 104, 92 – 1 BvR 1481/00 f,

<https://www.servat.unibe.ch/dfr/bv104092.html> accessed 19 June 2025.

²⁸⁹ Ibid para 2.a.

constituted unlawful coercion under Section 240 of the German Penal Code (StGB).²⁹⁰ The Court reaffirmed its established jurisprudence that "violence" in the context of coercion under Section 240 StGB requires the exertion of physical force that imposes a bodily constraint on the victim and psychological pressure alone does not suffice.²⁹¹ Therefore, the mere act of blocking access, without physical force, does not meet the threshold for coercion as defined by criminal law. Regarding the constitutional protection of sit-in blockades, the Court emphasized that assemblies must be directed towards participation in public opinion formation to be protected under Article 8 GG.²⁹² The Court distinguished between assemblies aimed at public discourse and those that pursue private objectives or engage in self-help measures. In this case, the blockade was deemed a form of protest intended to influence public opinion, thereby qualifying for protection under Article 8. However, the Court also noted that such assemblies lose constitutional protection if they become violent and the determination of violence is based on the constitutional concept of "unpeacefulness" (*Unfriedlichkeit*), not the broader criminal law definition of violence.²⁹³ This decision underscores the Court's nuanced approach to balancing the right to assemble with the need to maintain public order and respect for the rights of others. It clarifies that while non-violent protests are constitutionally protected, they must not infringe upon the rights of others or disrupt public order to the extent that they lose their protected status.

A particularly significant and more recent decision concerning the scope of fundamental rights in semi-public spaces is the Fraport Case (BVerfGE 128, 226).²⁹⁴ In its judgment of 22 February 2011, the German Federal Constitutional Court addressed the constitutional obligations of a mixed-economy enterprise in the context of fundamental rights enforcement, particularly freedom of expression and freedom of assembly under Articles 5(1) and 8(1) of the Basic Law.²⁹⁵ The case arose after an individual was banned by Fraport AG, the operator of Frankfurt am Main Airport, from distributing political leaflets within the airport's publicly accessible terminals.²⁹⁶ The applicant had participated in peaceful political actions criticizing deportations conducted through the airport. Fraport AG, although formally organized as a private corporation, is majority-owned by public

²⁹⁰ Criminal Code (Strafgesetzbuch) § 240, version published 13 November 1998 (Federal Law Gazette I p 3322), last amended by Art 2 of the Act of 22 November 2021 (Federal Law Gazette I p 4906).

²⁹¹ Sitzblockaden III (BVerfG), II para 3.

²⁹² Ibid II para 3.

²⁹³ Ibid II para 2.b – II, para 4.

²⁹⁴ Bundesverfassungsgericht (First Senate), Judgment of 22 February 2011, 1 BvR 699/06 (Fraport) BVerfGE 128, 226 (ECLI:DE:BVerfG:2011:rs20110222.1bvr069906)

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/02/rs20110222_1bvr069906en.html
accessed 19 June 2025.

²⁹⁵ Ibid paras 21,59.

²⁹⁶ Ibid paras 1-4.

authorities, including the State of Hesse and the City of Frankfurt.²⁹⁷ The company issued permanent prohibition on the applicant's right to demonstrate or distribute leaflets, invoking its private property rights over the airport premises. The key constitutional issue was whether Fraport AG, as a private company with majority public ownership and operating a public transport infrastructure, was bound by the fundamental rights enshrined in the Basic Law when exercising its property rights.²⁹⁸ The lower civil courts had upheld the company's decision, reasoning that the constitutional rights in question did not directly bind private entities.²⁹⁹ The Federal Constitutional Court, however, overturned these decisions and held that Fraport AG, by virtue of being controlled by public authorities and performing a public function within the framework of a monopolistic public infrastructure, was directly subject to the fundamental rights obligations under Article 1(3) GG.³⁰⁰ The Court emphasized that fundamental rights are not merely defensive rights against the state but also serve as binding norms for state entities, even when acting in private legal forms.³⁰¹ In assessing the interference with the applicant's fundamental rights, the Court reaffirmed that peaceful assemblies and the free expression of political opinions in public spaces constitute essential elements of democratic society.³⁰² While recognizing that certain limitations may be imposed on assemblies within sensitive operational environments such as airports, these restrictions must conform to the principle of proportionality.³⁰³ The blanket prohibition imposed by Fraport AG lacked sufficient justification and failed to strike a fair balance between the operational interests of the airport and the fundamental rights at stake. Consequently, the Court held that the company's ban violated Articles 5(1) and 8(1) GG and ordered the case to be reconsidered by the civil courts considering the constitutional standards established in the judgment.³⁰⁴

Undoubtedly, when discussing the rights to freedom of assembly and expression in Germany, it is essential to examine the Wunsiedel decision of the German Federal Constitutional Court.³⁰⁵ Delivered on November 4, 2009, this case confronted the complex issue of whether targeted restrictions, specifically those intended to curb neo-Nazi demonstrations, can be reconciled with the protections guaranteed by Germany's Basic Law. At the heart of the case was Jürgen Rieger, a neo-

²⁹⁷ Ibid paras 6, 59.

²⁹⁸ Ibid paras 21-24, 47-60.

²⁹⁹ Ibid paras 11-13.

³⁰⁰ Ibid paras 47-60.

³⁰¹ Ibid paras 56-59.

³⁰² Ibid paras 33-36.

³⁰³ Ibid paras 41-46.

³⁰⁴ Ibid paras 49-60.

³⁰⁵ Bundesverfassungsgericht (First Senate) Order of 4 November 2009, 1 BvR 2150/08 (Wunsiedel) https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/11/rs20091104_1bvr215008en.html accessed 19 August 2025.

Nazi lawyer affiliated with the National Democratic Party of Germany, who had organized annual public demonstrations in honor of Rudolf Hess, Hitler's deputy, at his gravesite in Wunsiedel.³⁰⁶ These events, which took place from 2001 to 2004, drew thousands of far-right supporters and sparked legal controversy over whether the authorities could lawfully prohibit them.³⁰⁷ In response to the growing unease caused by such assemblies, the German legislature amended the Criminal Code in 2005 by adding 130(4), which criminalized public endorsement of the Nazi regime in a way that disturbs public peace and violates the dignity of its victims.³⁰⁸ Rieger challenged the ban on these assemblies, claiming a violation of his fundamental right to freedom of expression; although he died shortly before the Court rendered its decision, the judges proceeded, citing the broader importance of the case for constitutional jurisprudence.³⁰⁹ The Court acknowledged that 130(4) indeed restricts freedom of expression, as protected by Article 5 of the Basic Law but it also recognized that the provision does not meet the traditional criteria of a "general law" because it targets a specific ideological expression, namely, support for National Socialism.³¹⁰ Normally, only content-neutral laws can justify such restrictions. However, the Court made an exception given Germany's unique historical context and the atrocities of the Nazi regime, the Court held that §130(4) is constitutional despite its specificity.³¹¹ It reasoned that the Basic Law, as a direct response to the horrors of Nazism, embodies an imperative obligation to prevent the revival of such ideologies, even if that means limiting expression in narrowly defined cases.³¹² Still, the Court stopped short of endorsing a blanket ban on all far-right or National Socialist speech. It emphasized that even offensive or anti-constitutional opinions are, in principle, protected under the Basic Law.³¹³ Nevertheless, only when speech transforms into an act of aggression or threatens public peace in a way that touches on Germany's constitutional identity can the state intervene.³¹⁴ The Court upheld the proportionality of §130(4), stating that it served a legitimate interest, preventing the re-traumatization of victims and preserving public peace and was narrowly tailored to achieve that goal.³¹⁵ The ruling has been both praised and criticized. On one hand, it reflects a commitment to liberal democratic values by insisting on a high threshold for limiting expression. On the other hand, critics argue that the Court created an

³⁰⁶ Ibid paras 1-6.

³⁰⁷ Ibid paras 5-13.

³⁰⁸ Federal Ministry of Justice, Criminal Code (Strafgesetzbuch, StGB) – Section 130: Incitement to hatred.

³⁰⁹ Wunsiedel (Bundesverfassungsgericht, 4 November 2009) para 23-27, 43-44.

³¹⁰ Ibid 64-68, 86-110.

³¹¹ Ibid 45-50, 64-68, 86-110.

³¹² Ibid paras 45-47, 64-68.

³¹³ Ibid paras 49-50, 41.

³¹⁴ Mehrdad Payandeh, 'The Limits of Freedom of Expression in the Wunsiedel Decision of the German Federal Constitutional Court' (2010) 11 *German Law Journal* 929.

³¹⁵ Wunsiedel (Bundesverfassungsgericht, 4 November 2009) paras 86-110.

ambiguous, historically grounded exception that is doctrinally inconsistent and difficult to apply in practice.³¹⁶ By not offering clear standards for when neo-Nazi assemblies may be banned, the decision leaves lower courts with considerable uncertainty.

Germany's legal framework perfectly shows how the protection of freedoms of assembly and expression represents an ongoing effort to balance democratic rights with a recognition of the past. With its decisions in *Brokdorf*, *Fraport*, and *Wunsiedel*, the Federal Constitutional Court provided a strong basis for the protection of peaceful protest from interference, while signalling an ability to impose restrictions on protest if there were genuine concerns for maintaining public order. The cases analysed illustrate perfectly how Germany's cautious approach protects democratic freedoms, and at the same time ensures that respect for public safety and order.

2.2 Supranational Legal Frameworks and Their Influence on the Regulation of Freedom of Assembly in Europe.

Understanding the interpretation of the right to freedom of peaceful assembly by both the European Court of Human Rights (ECtHR) under Article 11 of the European Convention on Human Rights and the Court of Justice of the European Union (CJEU) through the Charter of Fundamental Rights is essential for examining democratic rights, protest movements, and the legal limits of state authority in Europe. As public demonstrations increasingly serve as a means to express dissent, demand accountability, and raise awareness on issues such as climate change, minority rights, and economic justice, the roles of these courts in defining the permissible scope of state regulation of assemblies are highly significant.³¹⁷ The European Court of Human Rights (ECtHR) has significantly influenced the legal framework governing protest rights by establishing clear criteria for when and how states may impose restrictions on assemblies.³¹⁸ At the same time, the Court of Justice of the European Union (CJEU), interpreting the Charter of Fundamental Rights of the European Union, has reinforced these protections by ensuring that both EU legislation and the actions of member states remain consistent with the principles of freedom of assembly and expression.

The development of the European Court of Human Rights' jurisprudence concerning Article 11 of the European Convention on Human Rights reveals evolving legal standards governing the right

³¹⁶ Payandeh (n 310) 935.

³¹⁷ ARTICLE 19, *Changing the Climate for Freedom of Expression and Freedom of Information* (December 2009) para 27, available at <https://www.article19.org/wp-content/uploads/2021/02/Changing-the-climate-for-freedom-of-expression-and-freedom-of-information.pdf>.

³¹⁸ Mead (n 208) 54.

to freedom of peaceful assembly.³¹⁹ Throughout its jurisprudence, the ECtHR has progressively deepened and clarified the protection afforded by Article 11 (freedom of peaceful assembly) of the European Convention on Human Rights. In its early years, the Court treated Article 11 as largely parallel to Article 10, focusing on whether a particular gathering fell within the Convention's narrow definition of "assembly" and on procedural fairness: for instance, in *Plattform "Ärzte für das Leben" v. Austria* (1988) it struck down a blanket ban on a pro-life demonstration, holding that states must apply clear, non-discriminatory rules and that mere administrative convenience does not justify prohibitions.³²⁰ By the turn of the millennium, the Court began to articulate positive obligations under Article 11, insisting that States not only refrain from unlawful interference but also take reasonable steps to facilitate peaceful assemblies.³²¹ More recently, the Court has emphasized that restrictions on assembly must satisfy the tripartite test of lawfulness, legitimate aim, and necessity in a democratic society, applying stringent scrutiny even in contexts of perceived public risk.³²² Across these stages, the Court's "living-instrument" approach has expanded Article 11 from a narrow right of non-interference into a robust guarantee requiring States to balance public order with the fundamental democratic value of assembly, protecting even spontaneous, single-person or environmental protests, so long as they remain peaceful.³²³ Strasbourg has also embraced a "culture of justification" by demanding that even peaceful but disruptive protest is entitled to prima facie protection and that national courts conduct an individualized necessity and proportionality review on a case-by-case basis.³²⁴ By contrast, domestic courts tend to work from an "offence-centric paradigm," where some statutory offences are treated as "intrinsically proportionate," and therefore the courts do not do an individualized proportionality review and instead defer to Parliament's legislative balance.³²⁵ It safeguards any gathering, static or processional, large or small, formal or spontaneous, as long as it is "peaceful," which the Court interprets flexibly to include sit-ins, pickets, marches and other symbolic acts.³²⁶ Assemblies lose protection only if their organizers or participants manifest clear violent intentions or engage in force against persons or property; even then, sanctions must be

³¹⁹ Council of Europe, European Convention on Human Rights (1950) art 11.

³²⁰ *Salát* (n 207) 147.

³²¹ *Ibid* 98.

³²² Janneke Gerards, *How to improve the necessity test of the European Court of Human Rights* (2013) 11 Intl J Constitutional L 466.

³²³ *Mead*, (n 208) 31.

³²⁴ Richard Martin, *Convicting Peaceful Protesters: Proportionality's Proper Place at Criminal Trial* (2024) 44 OJLS 346-350.

³²⁵ *Ibid* 355.

³²⁶ Council of Europe – Research Division, *The Right to Freedom of Peaceful Assembly under Article 11 of the European Convention on Human Rights* (Research Report, Strasbourg 2020) 4-8.

proportionate and primarily aimed at those responsible rather than at peaceful participants.³²⁷ Conversely, the Court demands a degree of tolerance toward non-violent but unauthorized protests, requiring states to justify dispersals or bans by showing, on recognizable, concrete facts, that public safety or order was directly endangered and that all less intrusive measures, such as negotiated conditions or containment, were exhausted.³²⁸

One of the most relevant landmark cases is “*Steel and Others v. the United Kingdom*”, adjudicated by the European Court of Human Rights (ECtHR) in a judgment delivered on 23 September 1998.³²⁹ It is centered on the treatment of five British nationals, Helen Steel, Rebecca Lush, Andrea Needham, David Polden, and Christopher Cole, who had all participated in non-violent protests and were subsequently arrested, detained, and in some cases imprisoned under various provisions of English law.³³⁰ The facts of the case involved multiple incidents of protest. Ms. Steel participated in a protest against grouse shooting in Yorkshire and was arrested for allegedly impeding a shooter and breaching the peace.³³¹ She was detained for 44 hours and later imprisoned for 28 days after refusing to be bound over to keep the peace. Ms. Lush protested against motorway construction and was arrested for standing under a mechanical digger's bucket and she too was bound over to keep the peace and, upon refusal, was imprisoned for 7 days.³³² The other three applicants protested peacefully outside a weapons sales conference and were arrested and detained for approximately seven hours but were later released when the case against them was dismissed.³³³ At the heart of the case was the application of the common law concept of “breach of the peace,” which, although not a criminal offense in itself under English law, permitted arrest and detention when it was feared that a breach was imminent or had occurred.³³⁴ This power to arrest was preserved under statutory law and augmented by the power of magistrates to bind over individuals to keep the peace under the Magistrates’ Courts Act 1980 and under the historic Justices of the Peace Act 1361.³³⁵ The applicants contended that the legal basis for their arrests and detentions was vague and unpredictable, that their rights to liberty (Article 5), fair trial (Article 6), freedom of expression (Article 10), freedom of assembly (Article 11), and effective remedy (Article 13) were infringed, and that they lacked a right to compensation (Article 5 § 5) where domestic law immunized magistrates from civil suit unless bad

³²⁷ Ibid para 9-12.

³²⁸ Ibid para 13-19.

³²⁹ *Steel and Others v UK* App no 24838/94 (ECtHR, 23 September 1998).

³³⁰ Ibid.

³³¹ Ibid paras 6-13.

³³² Ibid paras 14-19.

³³³ Ibid 20-24.

³³⁴ Ibid paras 25-26.

³³⁵ Magistrates’ Courts Act 1980, c 43; Justices of the Peace Act 1361, 34 Edw 3, c 1.

faith and excess of jurisdiction were proved.³³⁶ The ECtHR first addressed the scope and basis of the detentions. It found that breach of the peace, while not a criminal offense per se, could for Convention purposes be categorized as an "offense" under Article 5(1)(c), particularly when the deprivation of liberty was aimed at preventing a feared breach.³³⁷ It noted that English common law, as interpreted by a series of cases (e.g., *R v. Howell*, *Percy v. DPP*, *Nicol and Selvanayagam v. DPP*), had sufficiently clarified the scope and thresholds for what constituted a breach of the peace and the conditions under which arrest was lawful.³³⁸ Therefore, the initial detentions of Ms. Steel and Ms. Lush were found to be lawful and not arbitrary under the Convention, because the police reasonably feared the first two applicants' actions might incite violence.³³⁹ However, the arrests and detention of the third, fourth, and fifth applicants were considered to be unlawful under the Convention. The Court found no evidence that their peaceful leaflet distribution and banner-holding at a conference posed any realistic threat of disorder or violence that would justify arrest for breach of the peace.³⁴⁰ There was no national court ruling validating the legality of their arrest, and the prosecution had withdrawn the charges. Hence, the Court concluded there was no reasonable justification for the police's apprehension that a breach was imminent, and thus their detention violated Article 5 § 1.³⁴¹ Regarding Article 5 § 5, which provides for compensation in cases of unlawful detention, the Court held that as domestic law provided civil remedies for unlawful arrest, which the applicants had not pursued, the requirement of an "enforceable right to compensation" was met in principle, and therefore there was no violation.³⁴² On the claim under Article 6 § 3(a), which entitles a person charged with a criminal offense to be informed of the nature and cause of the accusation, the Court found that both Ms. Steel and Ms. Lush had been adequately informed of the charges in timely fashion and that the documents they were given sufficiently described the factual basis for the allegations, thus, no violation of Article 6 was found.³⁴³ The Court then turned to the critical issues of freedom of expression under Article 10. The Court found that the actions of all applicants, including physically obstructive but non-violent conduct by Ms. Steel and Ms. Lush, were expressions of opinion and therefore protected by Article 10.³⁴⁴ The arrests and subsequent detentions of Ms. Steel and Ms. Lush were found to be prescribed by law, pursued legitimate aims (prevention of disorder and protection of others' rights), and proportionate.

³³⁶ *Steel and Others* (n 329) paras 41-45.

³³⁷ *Ibid* paras 46-50.

³³⁸ *Ibid* paras 51-57.

³³⁹ *Ibid* paras 58-61.

³⁴⁰ *Ibid* paras 62-65.

³⁴¹ *Ibid* paras 77-78.

³⁴² *Ibid* paras 79.

³⁴³ *Ibid* paras 84-87.

³⁴⁴ *Ibid* paras 88-111.

In particular, the Court emphasized that the applicants' protests had created a risk of serious disruption or violence, justifying the police response. Their further detention for refusal to be bound over was held to pursue legitimate aims, including maintaining judicial authority, and was not disproportionate, especially given that the applicants had declined to accept the less restrictive alternative of recognizance.³⁴⁵ Conversely, the Court found that the arrests and detention of Ms. Needham, Mr. Polden, and Mr. Cole, whose protest was peaceful, caused no obstruction, and posed no realistic threat of disorder, were not prescribed by law and not necessary in a democratic society.³⁴⁶ Their Article 10 rights were therefore violated. The Court did not consider it necessary to examine separately the complaints under Article 11 (freedom of assembly), finding them absorbed by the Article 10 analysis.³⁴⁷ Nor did it engage substantively with the Article 13 complaint (lack of effective remedy), noting that the claim was not pursued in any meaningful way in argument before the Court. The Court awarded Ms. Needham, Mr. Polden, and Mr. Cole £500 each for non-pecuniary damages due to their wrongful detention and a total of £20,000 for legal costs, reduced by the amount already received under the Council of Europe's legal aid scheme.³⁴⁸

The European Court of Human Rights issued another crucial decision in 2006 with the case of *Oya Ataman v. Turkey*. In *Oya Ataman v. Turkey* (application no. 74552/01), the European Court of Human Rights was asked to determine whether the Turkish authorities' use of force to disperse a peaceful protest and the applicant's arrest had breached Articles 3 and 11 of the Convention.³⁴⁹ The applicant, a human-rights lawyer, had organised an unannounced demonstration of forty to fifty participants in Istanbul's Sultanahmet Square on 22 April 2000, to protest "F-type" prison plans. The demonstrators entered the square without having given the seventy-two-hour notification required by Law no. 2911 on assemblies, and police, invoking section 22 of the Act, warned them via loudspeaker that the gathering was unlawful and risked public-order disruption at a busy time of day.³⁵⁰ When the group refused to disperse, officers employed Oleoresin Capsicum ("pepper spray") to break up the assembly and arrested thirty-nine participants, including the applicant, who was released after an identity check and in light of her professional status.³⁵¹ The applicant alleged under Article 3 that exposure to pepper spray amounted to inhuman or degrading treatment, and under Article 11 that her rights to freedom of peaceful assembly and, implicitly, freedom of expression, had been arbitrarily

³⁴⁵ Ibid paras 102-109.

³⁴⁶ Ibid paras 110-111.

³⁴⁷ Ibid paras 112-113.

³⁴⁸ Ibid paras 120-126.

³⁴⁹ *Oya Ataman v Turkey* (Application No 74552/01) (ECtHR, 5 December 2006).

³⁵⁰ Ibid paras 4-12.

³⁵¹ Ibid para 21.

curtailed.³⁵² The Government produced an expert report establishing that pepper spray was not classified as a chemical weapon under the CWC and submitted that its use had complied with health standards and was lawful for riot control; they pointed out the absence of any medical evidence from the applicant documenting ill effects. The Court found that, in the absence of any substantiating medical evidence and given the brief exposure and release of the applicant within forty-five minutes, the minimum threshold of severity required to engage Article 3 had not been met.³⁵³ Turning to Article 11, the Court accepted that the ban and dispersal had a legal basis in section 22 of the Assemblies Act and pursued legitimate aims of preventing disorder and protecting the rights of bystanders to free movement.³⁵⁴ However, it emphasised that the mere illegality of an assembly (lack of notification) could not justify suppressing fundamental Convention rights, especially when participants remain peaceful. The Court recalled its well-established negative obligation not to interfere arbitrarily, alongside a positive duty to facilitate peaceful demonstrations through advance planning and proportional policing.³⁵⁵ It noted that a small group of forty to fifty demonstrators, protesting for no more than thirty minutes at midday, posed little more than a potential traffic disruption. By deploying pepper spray and effecting mass arrests without first exhausting less intrusive measures, such as negotiated conditions, containment or officer presence, the authorities had acted disproportionately. The Court held unanimously that these measures were not “necessary in a democratic society” and thus violated Article 11.³⁵⁶ As to just satisfaction under Article 41, the Court dismissed any claim for pecuniary damage but awarded the applicant €1,000 in respect of costs and expenses, to be paid within three months, plus three-point-above-ECB-marginal lending rate interest in case of default.³⁵⁷ This judgment underscores that even unnotified, peaceful assemblies must be met with a degree of tolerance and appropriate, proportionate policing, and that administrative or legislative notification requirements cannot be wielded as a pretext to suppress core democratic freedoms.

Building on the foundation established by the European Court of Human Rights, the development of the European Union has played a significant role in shaping the recognition and protection of fundamental rights, including the right to assembly. While the original focus of European integration, as reflected in early treaties such as the Treaty of Rome (1957), was predominantly economic, the protection of human rights gradually emerged as a central concern

³⁵² Ibid paras 21-30.

³⁵³ Ibid para 26.

³⁵⁴ Ibid paras 28-30.

³⁵⁵ Ibid paras 35-39.

³⁵⁶ Ibid paras 40-44.

³⁵⁷ Ibid paras 46-51.

within EU law during the 1970s.³⁵⁸ This shift was driven largely by the jurisprudence of the European Court of Justice (ECJ), which began to recognize fundamental rights as general principles of EU law, drawing upon the constitutional traditions common to the Member States.³⁵⁹ Through its case law, the ECJ progressively integrated human rights into the fabric of EU law, not only asserting their foundational role but also grounding them in external sources such as the European Convention on Human Rights (ECHR), which it explicitly acknowledged as an interpretive tool in the development of fundamental rights. This judicial evolution laid the groundwork for the formal codification of rights in the Charter of Fundamental Rights of the European Union. Proclaimed in 2000 and given full legal effect by the Treaty of Lisbon in 2009, the Charter consolidated and clarified the rights that had previously been developed through case law.³⁶⁰ Among these, Article 12 of the Charter explicitly guarantees the right to peaceful assembly and association, closely reflecting the wording and intent of Article 11 ECHR.³⁶¹ Under Article 6(1) of the Treaty on European Union (TEU), the Charter now holds the same legal value as the Treaties, thereby embedding rights such as freedom of assembly at the core of EU law.³⁶² Beyond the judicial framework, institutional mechanisms have also contributed to the promotion and protection of fundamental rights within the EU. The establishment of the European Union Agency for Fundamental Rights (FRA) in 2007 strengthened this framework by providing independent research, analysis, and policy advice.³⁶³ Although the FRA does not possess binding authority, its work plays an important role in shaping policy and informing legislative and administrative practices across the Union, particularly in areas related to the right of assembly and other civil liberties.³⁶⁴ Nonetheless, the right to assembly, like all rights under the Charter, is not absolute. Article 52(1) permits limitations on Charter rights, provided such restrictions are established by law, respect the essence of the right, and comply with the principles of necessity and proportionality in pursuit of legitimate objectives.³⁶⁵ This provision ensures a balance between individual freedoms and public interests, allowing for the right of assembly to be exercised meaningfully while also accommodating the practical realities of public order and safety.

One of the most significant landmark cases adjudicated by the Court of Justice of the European Union (CJEU) that sheds light on the delicate balance between fundamental rights and internal market

³⁵⁸ Craig and Búrca (n 35) 360.

³⁵⁹ Sionaidh Douglas-Scott, *The European Union and Human Rights after the Treaty of Lisbon* (2011) 11 Human Rights Law Review 646.

³⁶⁰ *Ibid.*

³⁶¹ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 arts 12.

³⁶² Consolidated version of the Treaty on European Union [2008] OJ C 115/13.

³⁶³ Craig and Búrca (n 35) 1165-1180.

³⁶⁴ *Ibid* 1160.

³⁶⁵ *Ibid.*

freedoms at the regional level is the *Schmidberger* case (Case C-112/00, 2003).³⁶⁶ The case concerned Eugen Schmidberger, the owner of a small German transport company, who suffered economic damages after a group of environmental protesters from the association *Transitforum Austria Tirol* blocked the Brenner motorway in Austria, a critical trans-European transport corridor, for approximately 30 hours, resulting in delayed delivery of goods under a just-in-time contract to a company in northern Italy.³⁶⁷ The protest, aimed at raising awareness about the environmental and public health implications of excessive traffic in the Alpine region, had received official authorization from Austrian authorities. Schmidberger brought a claim against the Republic of Austria, arguing that its decision to allow the protest violated EU law, specifically its obligation to guarantee the free movement of goods under Articles 30, 34, and 36 of the EC Treaty.³⁶⁸ The case reached the CJEU by way of a preliminary reference from the Austrian courts, which were asked to clarify whether permitting the blockade was compatible with EU law. The legal question posed to the CJEU was whether a Member State could lawfully permit an assembly that physically obstructs a major transit route, thereby impeding the free movement of goods, and whether such an allowance constituted a violation of EU internal market law.³⁶⁹ The Court engaged in a rigorous three-step legal analysis. Firstly, it affirmed that the obstruction did, in fact, amount to a restriction on the free movement of goods, a cornerstone of the internal market, as protected by Articles 30 and 34 of the Treaty.³⁷⁰ The blockage directly interfered with cross-border trade flows, and Member States are obligated to prevent such impediments unless a valid justification rooted in EU law exists.³⁷¹ Secondly, the Court turned to the question of justification, recognizing that the Austrian authorities' decision implicated not only the economic freedoms inherent to the internal market but also the exercise of fundamental rights, specifically, the demonstrators' rights to freedom of expression and freedom of assembly under Article 11 of the Charter of Fundamental Rights of the European Union.³⁷² While the internal market remains a foundational objective of the European project, it is not absolute and must coexist with other fundamental EU values including pluralism, respect for human rights, and tolerance.³⁷³ Consequently, the Court endorsed a balancing approach, noting that restrictions on market freedoms may be permissible when they are necessary and proportionate to the protection of other equally

³⁶⁶ *Schmidberger v Austria* (Case C-112/00) [2003] ECR I-5659.

³⁶⁷ *Ibid* paras 10-15.

³⁶⁸ European Commission, Guide to the Application of Articles 34–36 of the Treaty on the Functioning of the European Union (OJ C 100/03, 2021).

³⁶⁹ *Schmidberger v Austria* (n 366) paras 20-22.

³⁷⁰ *Ibid* para 50.

³⁷¹ *Ibid* paras 59-61.

³⁷² *Ibid* paras 76-79.

³⁷³ *Ibid* para 81.

significant rights and interests. The final stage of the Court's analysis applied the principle of proportionality, a general principle of EU law and a crucial tool in resolving conflicts between competing legal goods.³⁷⁴ The Court held that Austria's decision to authorize the demonstration was both suitable and necessary to achieve a legitimate aim, namely, the protection of fundamental rights, and did not go beyond what was required to achieve that aim.³⁷⁵ The environmental association had obtained prior authorization, the protest was peaceful and of limited duration, the authorities had implemented various mitigating measures (such as alternative routes and extensive public communication), and the demonstration had not been discriminatory in nature.³⁷⁶ Moreover, the symbolic and expressive purpose of the demonstration was judged to be tightly connected to the location and method chosen; imposing excessive restrictions would have undermined its communicative force, thereby disproportionately impairing the fundamental rights of the protesters.³⁷⁷ The judgment thus established an important precedent within the Union legal order, confirming that fundamental rights may serve as valid grounds to justify restrictions on internal market freedoms, provided that such restrictions meet the criteria of legitimacy, suitability, necessity, and proportionality.³⁷⁸ It affirmed that the free movement of goods, while a critical economic freedom, must be weighed against and sometimes yield to other non-economic constitutional values, particularly where rights under the CFR are invoked. The Schmidberger case has since become a seminal authority in the jurisprudence of horizontal and vertical conflicts between economic freedoms and civil liberties, shaping the Union's understanding of pluralism and the balance between market integration and fundamental rights.

The jurisprudence of the ECtHR and CJEU reflects a careful effort to balance the right to peaceful assembly with broader considerations of public order and economic integration. Through key decisions, both courts have clarified the conditions under which restrictions on assembly may be justified within democratic societies. This legal framework continues to shape how European states manage protests while upholding fundamental rights.

2.3 Comparative Perspective: Common Patterns and Divergent Models.

A comparison of how freedoms of expression and protest are regulated and judged in the domestic courts of Italy, the United Kingdom, and Germany reveals both similarities and differences.

³⁷⁴ Ibid paras 79-82.

³⁷⁵ Ibid paras 85-92.

³⁷⁶ Ibid para 89.

³⁷⁷ Ibid para 90.

³⁷⁸ Craig and Búrca (n 35) 1170-1190.

Each of the three countries analysed faces the same challenge: how to protect and enshrine fundamental rights, especially freedom of assembly and freedom of expression, while maintaining order and allowing democratic functions to proceed without interruption, despite the inevitable tensions that emerge. It is fundamental to notice that every country operates under different legal systems with a different form and a different history. However, all of them agree on one fundamental principle: protest limitations should be applied only, when necessary, proportionate to the threat, and based on obvious, tangible danger rather than speculative concerns. However, simply agreeing with the rules in theory does not guarantee that they are followed in practice. Deep-rooted disparities in legal traditions and enforcement cultures continue to impact how protests are handled on the ground in each country, and some similar themes have emerged. First, the courts in all three countries play an important role in ensuring freedom of assembly: they serve as a check on government power by ensuring that limitations are neither overly broad nor discriminatory. Second, proportionality has become a widely accepted standard, even if it goes by different names. Third, European institutions such as the European Court of Human Rights and the Court of Justice of the EU have contributed to the formation of a common understanding: peaceful protest, even when disruptive, should not be criminalized unless there is a genuine threat to public security. Landmark cases analysed, such as *Schmidberger v Austria*, have helped to reinforce that message.

Although these patterns tend to converge in many areas among the three nations, regulatory approaches to protests vary due to specific national characteristics and legal frameworks. For instance, in Italy, protests are often tolerated rather than facilitated, and public authorities constrain and manage dissent based on criminal laws, manifesting long-standing historic tensions between a right to protest and a state's legitimate means of institutional stability and security. The No TAV movement provides an example of how the Italian system deals with contentious protests and the difficulty in differentiating between lawful assembly and acts viewed as terrorism. By contrast, in Germany, the legal culture is generally slightly more sympathetic to protest, and authorities are generally required to facilitate and not inhibit protest unless there is a serious, urgent threat to public security. The United Kingdom's evolution in the consideration of these rights, from a residual status to their full enshrinement in the Human Rights Act, can be considered a fundamental step forward. Moreover, courts in the UK have demonstrated a consistent support for protest rights, as evidenced by notable decisions such as *DPP v Jones and Ziegler*. However, legislation, including the Public Order Act of 1986, frequently grants police a certain degree of discretion in the application of these laws. In conclusion, a comparative analysis of Italy, the United Kingdom, and Germany shows both shared commitments to democratic values and ongoing national differences in the regulation of

protests, especially regarding the environment. Furthermore, it is important to note that European human rights law operates according to a "justificatory paradigm."³⁷⁹ As mentioned before, it is based on state justification and highly fact-specific judicial review. In contrast, domestic law operates according to an "offense-centric paradigm," which relies on statutory definitions to determine whether a proportionality assessment is necessary. While the major landmark cases in each country and at the supranational level have been highlighted in this analysis, the next chapter will examine how these countries have evolved and the normative changes that have emerged in response to a new wave of climate protests.

³⁷⁹ Martin (n 324), 346-350.

Chapter III. Legal Responses to Environmental Demonstrations in Italy, United Kingdom and Germany

As examined in the first chapter, the environmental movement has a long and evolving history, shaped by various stages of activism and changing priorities. As a result, today's climate mobilization is both a continuation of previous efforts and a reaction to the constraints of international climate governance: from its inception in the 1970s to the large mobilizations of the 2000s, the movement has responded not just to scientific warnings but also to the perceived importance of international climate negotiations.³⁸⁰ Key summits, such as COP15 and COP21, were focal points for action, often portrayed as critical opportunities to influence global policy and change direction. For instance, the 15th Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Copenhagen in 2009, was widely anticipated as a critical moment for achieving a strong global climate agreement, but its failure to produce a strong agreement led to disappointment and a period of demobilization, particularly in Europe.³⁸¹ Activism persisted at a smaller scale through local initiatives like Climate Camps, divestment campaigns, and grassroots projects.³⁸² Despite scepticism, the 2015 Paris summit (COP21) reignited momentum, though many activists anticipated weak results and shifted focus toward building independent action beyond institutional negotiations.³⁸³ Following the Paris Agreement's unsuccessful attempt, climate activism did not decline; rather, it sparked a new surge of mobilization that began in late 2018. Most notably, two prominent movements, Fridays for Future (FFF) and Extinction Rebellion (XR), emerged and quickly gained global attention. Fridays for Future began when 15 year old Greta Thunberg initiated a solo school strike outside the Swedish parliament, an act that rapidly inspired a worldwide youth-led movement characterized by mass climate strikes.³⁸⁴ Around the same time, XR launched in the UK with a “Declaration of Rebellion,” adopting more confrontational tactics such as road blockades and nonviolent civil disobedience aimed at disrupting business and demanding urgent political action.³⁸⁵ Since the onset of the COVID-19 pandemic in 2019, the climate movement has undergone significant transformation, marked by

³⁸⁰ Joost De Moor, *The “Efficacy Dilemma” of Transnational Climate Activism: The Case of COP21* (2018) 27 Environmental Politics 1079.

³⁸¹ Lisanne Groen and Arne Niemann, *EU Actorness and Effectiveness under Political Pressure at the Copenhagen Climate Change Negotiations* (Mainz Papers on International and European Politics, 2011).

³⁸² De Moor et al (n 139) 619.

³⁸³ *Ibid.*

³⁸⁴ *Ibid* 620.

³⁸⁵ *Ibid* 619-622.

periods of demobilization followed by renewed waves of activism. Notably, this period has witnessed the emergence of numerous new climate groups across different national contexts, contributing to the development of a more fragmented yet increasingly transnational movement landscape. While sharing a common urgency around the climate crisis, these groups often adopt distinct strategies, tactics, and narratives shaped by their local political and social environments. A prominent example is the wave of activism that began between December 2021 and January 2022, which drew on the legacy of Extinction Rebellion and led to the formation of groups such as Just Stop Oil in the UK, Dernière Rénovation in France, Letzte Generation in Germany, and Ultima Generazione in Italy.³⁸⁶ Despite their national specificities, these initiatives are coordinated through the international A22 Network, established in April 2022, which seeks to mobilize activists across borders in defence of present and future generations.³⁸⁷ Given the slow progress in reducing greenhouse gas emissions, those climate groups have recently resorted to non-violent but disruptive actions. These tactics are considered radical in terms of methods, though not necessarily in goals, and their level of radicalness can vary based on the response they provoke. The primary tactical objective of non-violent but disruptive actions is to generate widespread media coverage, including stopping trains, disrupting traffic, or blocking oil terminals.³⁸⁸ For instance, in 2022, climate groups like Extinction Rebellion, Letzte Generation, and Ultima Generazione began vandalizing art and museums, but in most cases, the art pieces themselves were not damaged.³⁸⁹ These actions were often carefully choreographed over social media, designed to shock citizens, mobilize them, and compel governments to enact aggressive climate policies; remarkably, three groups, Italy and Vatican's Ultima Generazione (nine incidents), the U.K.'s Just Stop Oil (seven incidents), and Germany's Letzte Generation (six incidents), were responsible for 58 percent of all museum vandalism actions.³⁹⁰ Nonetheless, museums are not the only targets of these non-violent but disruptive techniques; activists use a wide range of tactics, including school strikers who stage unauthorised walkouts, leaving class en masse with self-made placards to dramatize the emergency, and Extinction Rebellion protesters who occupy and blockade public spaces (streets, bridges, and even government buildings), frequently sealing

³⁸⁶ Fabio de Nardis and Angelo Galiano, *Contentious interaction in Ultima Generazione (Last Generation). A preliminary analysis on radicalization and spin-off movements* (2024) 15 *Società Mutamento Politica* 199.

³⁸⁷ Marco Bitschnau, *Seeking attention, provoking reactance: Radical climate activism after Covid-19* (2024) 23(1) *European View* 80.

³⁸⁸ *Ibid.*

³⁸⁹ Lily Kinyon, Nives Dolšak and Aseem Prakash, *When, Where, and Which Climate Activists Have Vandalized Museums* (2023) 2(1) *npj Climate Action* 27.

³⁹⁰ *Ibid.*

themselves to objects or each other with superglue or lock-on devices.³⁹¹ They swarm traffic lanes in repeated short blockades, organise “die-ins” and funeral processions to symbolise species extinction, and use theatrical stunts, from spraying “fake blood” onto government targets to forming silent “Red Army” in red robes and face paint, to seize media attention.³⁹² They complement these high-commitment actions with creative tactics such as stencilling, graffiti, street art and large-scale performance interventions, all carried out under a strict code of peaceful civil disobedience designed to force institutions to respond.³⁹³ While these disruptive yet peaceful protests have definitely thrust climate issues into the mainstream, they have also caused a resolute governmental response. Over the past decade, governments, both liberal and illiberal, have increasingly responded to the rise of protest movements, including environmental activism, with legal and political repression. Rather than engaging with the demands of activists, many states have introduced broad and vague “gag laws” aimed at suppressing dissent, often justified under the guise of protecting public order or national security.³⁹⁴ These measures include prior authorization requirements, criminal liability, and heavy surveillance, all of which create a chilling effect on free speech and peaceful assembly.³⁹⁵ It uses a mix of hard (coercive) and soft (pull-oriented) tactics, including surveillance, legal changes, public relations, and exit programs, to prevent and disrupt extremist activism.³⁹⁶ Radical eco-justice movements (like the Animal Liberation Front and Earth Liberation Front), far-left anarchist groups, independence movements, like Catalan independence, and eco-justice groups as anti-fracking protests in the UK, No Tav and No Tap in Italy, NoDAPL in the US, have all been characterized as “extremists” or “domestic terrorists”.³⁹⁷ These groups have endured not only “soft repression” (labelling, stigmatization) but also “hard repression,” which includes invasive surveillance, heavy protest policing practices, pretrial detention, and severe charges, including terrorism.³⁹⁸ Beyond terrorism, activism has also been equated with serious organized crime, a more recent and far-reaching development. Ultimately, the criminalization of dissent often begins with stigmatization and public/media discourses that reframe protest as a “problem” to be managed, thus depoliticizing it and

³⁹¹ Sara Pickard, Benjamin Bowman and Dena Arya, *We Are Radical in Our Kindness: The Political Socialisation, Motivations, Demands and Protest Actions of Young Environmental Activists in Britain* (2020) 2(2) Youth and Globalization 251-260.

³⁹² *Ibid* 265.

³⁹³ *Ibid*.

³⁹⁴ Eleni Polymenopoulou, *Expressing Dissent: Gag Laws, Human Rights Activism and the Right to Protest* (2020) 32 Florida Journal of International Law 337, 1-4.

³⁹⁵ *Ibid*.

³⁹⁶ Benjamin J Richardson, *Climate Strikes to Extinction Rebellion: Environmental Activism Shaping Our Future* in BJ Richardson (ed), *From Student Strikes to the Extinction Rebellion* (Edward Elgar Publishing 2020) 1–9.

³⁹⁷ Selmini and Di Ronco (n 3) 197.

³⁹⁸ *Ibid*.

legitimizing punitive responses.³⁹⁹ An investigation of these tactics is thus recommended to better understand how governments respond to peaceful climate protests while maintaining public order and human freedoms. The implementation of expanded monitoring, tailored legislation, and integrated reporting procedures highlights the complexities of ensuring security while protecting the rights to freedom of expression and assembly.

3.1 Recent Developments Between Regulation and Repression in European Climate Protests.

3.1.1 Regulating Public Demonstrations under the Italian “Decreto Sicurezza”.

Before analysing the *Decreto Sicurezza* (Decree-Law 11 April 2025, No. 48, hereinafter “Decreto Sicurezza”), it is critical to first understand the environmental movements to which the law responds, as well as the strategic actions they have taken over time, particularly those that are likely to have prompted the government to adopt such legislation. It is critical to underline that the establishment of this new security order was not a one-time occurrence; rather, it is the product of multiple notable events and developments within the Italian environmental movement that have affected the current political and public response.⁴⁰⁰ This concept is based on the idea that, while Italy's environmental movement originated in the 1970s and 1980s, it has progressed greatly in recent decades. Traditional environmental NGOs (like Legambiente, WWF, Italia Nostra) have lost prominence, with grassroots groups, citizen committees, and social centres taking the lead, particularly in local campaigns against large, environmentally damaging infrastructure projects.⁴⁰¹ Territorial mobilizations expanded dramatically between 2004 and 2017, becoming more disruptive and frequently subjected to strong repression; in particular, the 2019 climate mobilization wave, initiated by Greta Thunberg, marked a turning point.⁴⁰² In Italy, this resulted in the formation of Fridays for Future Italia, a horizontal, inclusive network of activists that gained significant support, particularly during worldwide climate strikes; another significant actor, Extinction Rebellion Italia, began organizing civil disobedience actions in 2019.⁴⁰³ In 2021, a breakaway group, Ultima Generazione, initiated a persistent civil disobedience campaign, including road blockades and

³⁹⁹ Ibid 5.

⁴⁰⁰ Alessandra Algostino, *Il decreto “sicurezza e immigrazione” (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza* (2018) 2 *Costituzionalismo.it* 198.

⁴⁰¹ Lorenzo Zamponi, Alice Ferro and Giuseppe Cugnata, *Strikes, assemblies and blockades: the dynamics of repertoire change in grassroots climate action in Italy (2018–2023)* (2023) 18(3) *Italian Political Science* 257.

⁴⁰² Ibid.

⁴⁰³ Nardis and Galiano (n 386) 199-201.

symbolic vandalism with washable paint and eventually joined the international A22 network.⁴⁰⁴ The cycle of climate protest in Italy from 2018 to 2023 remains ongoing, yet distinct trends have emerged: based on data from the Protest Event Analysis (PEA), the cycle is marked by sustained mobilisation, averaging 12.5 events per month, even during the COVID-19 pandemic. Three phases can be identified: a peak of mass mobilisation from March 2019 to January 2020 driven by Fridays For Future; a lull during the pandemic (February 2020 to February 2021); and a renewed but more consistent post-pandemic phase from March 2021 onward.⁴⁰⁵ While the first phase saw massive turnouts, the later phase featured fewer peaks but steadier protest activity, especially during ritual moments like the global climate strikes in March and September. Demonstrative actions, like school strikes, marches, and sit-ins, dominated the repertoire, accounting for 80.4% of events and civil disobedience, such as road blockades, increased over time, rising from 5% in 2018–2019 to 37.8% in 2022–2023, especially after the emergence of Ultima Generazione in late 2021.⁴⁰⁶ Unlike earlier volatile spikes, Ultima Generazione brought more regular and sustained disobedient action, marking a shift towards more disruptive but nonviolent protest.⁴⁰⁷ Extinction Rebellion also contributed significantly to this trend. Traditional environmental organisations (like Legambiente and Greenpeace) and local committees (e.g. No TAV) played marginal roles, while student groups and social centres often supported Fridays For Future. Participation numbers also declined: in 2019, over half of the events drew more than 1,000 people; after the pandemic, large protests became rare, and small actions more common.⁴⁰⁸ Despite these tactical shifts and actor diversity, the central goal remains to pressure the state and institutions to act on climate change. State actors were consistently the main targets, followed by citizens, private companies like ENI, and political parties around election periods.⁴⁰⁹

This changing landscape of climate activism, characterized by increasingly disruptive but nonviolent tactics, serves as the backdrop for recent legislative responses, such as the Decreto Sicurezza 2025, highlighting the growing link between environmental dissent and public order policymaking. In fact, the so-called 'Security' Decree, No. 48 of 2025, should not be considered as an isolated episode, but rather as part of a wider pattern in which issues related to security have gained prominence within Italian political discourse. The presently passed legislation is clearly the latest step in a long line of public security discussions and initiatives that, despite changes in previous

⁴⁰⁴ Ibid.

⁴⁰⁵ Zamponi, Ferro and Cugnata (n 401) 258-260.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid 184.

administrations' political orientations, have taken a broadly constant approach.⁴¹⁰ In 2017, the first Decreto Sicurezza (law decree no. 14 on February 17, 2017) issued by an Italian center-left government focused mainly on tackling urban marginality.⁴¹¹ A zero-tolerance approach was introduced, based mostly on administrative ordinances and banishment orders: pursuant to this decree, people disturbing “urban security” by begging, rough sleeping, or camping in some areas of the city can be fined and banned from city spaces by the mayor for short periods (48 hours) or by the questore for long periods (up to 1 year or, in some instances, even longer).⁴¹² Mostly, these bans have been used against homeless and drunken people, hawkers, unlicensed car park attendants, and sex workers, many of whom are migrants but the news media reports that they have also been used against protesters.⁴¹³ The 2017 decree did not include specific provisions for protests, but, although it has been applied to demonstrators, it paved the way for the Decree-Law No. 113 of 2018 and furthermore reinforced by Decree-Law No. 53 of 14 June 2019. The Decree-Law No. 113 of 2018 is inserted without interruption with the previous provisions, combining security and immigration, continuing the path of criminalization of migrants and of dissent.⁴¹⁴ The most significant of these can be summarized as follows: the re-criminalization of roadblocks, the imposition of harsher penalties for the occupation of buildings, and the expansion of the so-called “urban DASPO”.⁴¹⁵ First and foremost, the offense of blocking roads or railways has been reintroduced: originally introduced in 1948 under Interior Minister Scelba and punishable by one to six years of imprisonment, with penalties doubled when the act was carried out by multiple individuals, it was decriminalized in 1999 and converted into an administrative fine.⁴¹⁶ The purpose behind the offense is clear: to suppress dissent; road or rail blockades are common instruments of protest during strikes or demonstration forms of action intrinsically linked to the exercise of constitutionally protected fundamental rights.⁴¹⁷ Moreover, another provision targets social movements by increasing penalties under Article 633 of the Penal Code (illegal occupation of land or buildings).⁴¹⁸ Penalties now range from one to three years of imprisonment, with further aggravating factors if the act is committed by more than five people, or by anyone visibly armed, punishable by two to four years of imprisonment and a fine; promoters and

⁴¹⁰ Roberto Cornelli, *Il DDL Sicurezza alla prova della ricerca criminologica: prime annotazioni critiche* (2024) 5 *Sistema Penale* 113-119.

⁴¹¹ Italy, Decree-Law No 14 of 20 February 2017 on urgent measures for urban security (Official Gazette No 42, 20 February 2017).

⁴¹² *Ibid.*

⁴¹³ Selmini and Di Ronco (n 3) 219.

⁴¹⁴ Algostino (n 400) 179.

⁴¹⁵ *Ibid.*

⁴¹⁶ Italy, Legislative Decree No 66 of 22 January 1948, art 1(1).

⁴¹⁷ Algostino (n 400) 172.

⁴¹⁸ Italy, Royal Decree No 1398 of 19 October 1930, art 633(1), Official Gazette No 251, 26 October 1930.

organizers face even harsher penalties if the occupation is carried out by multiple people. Subsequently, the legislation was further consolidated by the promulgation of Decree Law No. 53 of 14 June 2019, entitled 'Urgent Provisions on Public Order and Security', published in Official Gazette No. 138 on 14 June 2019.⁴¹⁹ While the 2019 decree primarily aimed to regulate migration through restrictive measures, it also included provisions directly related to public order. Specifically, Chapter I of the decree introduces changes aimed at strengthening penal responses to public demonstrations; for instance, article 6 amends the so-called Legge Reale, increasing the penalties for individuals concealing their identity during public demonstrations.⁴²⁰ The sanction is increased from one to two years' imprisonment to two to three years; additionally, Law No. 152/1975 is amended by the insertion of a new Article 5-bis, which introduces a penalty of one to four years' imprisonment for individuals who use instruments capable of endangering the safety of persons or property during public demonstrations.⁴²¹ Article 7 further strengthens the punitive framework by increasing sanctions for existing offences committed during public demonstrations; for example, the general aggravating circumstance under Article 339 of the Criminal Code now applies to acts committed during such events.⁴²² Article 340 is modified by introducing an aggravated form of the offence, with similar aggravating circumstances applied to the crimes of devastation and looting (Article 419) and property damage (Article 635).⁴²³

The legislative process that led to the adoption of Italy's 2025 Security Decree began in November 2023 with the introduction of the so-called Security Package in the Chamber of Deputies. After extensive parliamentary debate, lasting nearly 100 sessions, the proposal was approved by the Chamber on 16 September 2024.⁴²⁴ However, during the winter of 2024–2025, the legislative process experienced a significant slowdown, as the bill remained stalled in the Senate. In response to this impasse, the government chose to bypass the regular legislative procedure and proceed via emergency legislation and on 4 April 2025, the Council of Ministers approved Decree-Law No. 48/2025, invoking urgency as justification for its immediate implementation.⁴²⁵ The government subsequently tied a confidence vote to the bill's conversion into law in the Chamber of Deputies on 26 May 2025 and the process concluded with the Senate's approval on 4 June 2025, when the decree was formally

⁴¹⁹ Italy, Decree-Law No 53 of 14 June 2019 on urgent public order and security measures, Official Gazette No 138, 14 June 2019.

⁴²⁰ Stefano Zirulia, *Decreto sicurezza-bis: novità e profili critici* (2019) *Diritto penale contemporaneo* 2019.

⁴²¹ Italy, Decree-Law No 53 of 14 June 2019 on urgent public order and security measures, Official Gazette No 138, 14 June 2019.

⁴²² *Ibid* art. 7.

⁴²³ Italian Criminal Code (Codice Penale, Royal Decree No 1398 of 19 October 1930), art 340.

⁴²⁴ Af Vigneri, *Dal Ddl al Dl "Sicurezza": prove tecniche di autoritarismo punitivo* (2025) *Giustizia Insieme*.

⁴²⁵ *Ibid*.

enacted with 109 votes in favor out of 178.⁴²⁶ Among its provisions, the bill introduces several aggravating circumstances and new criminal offences that significantly broaden the scope of penal intervention and reflect an increasingly punitive approach to dissent and public order. For this research, the most relevant provisions are Article 1, which introduces Article 270-quinquies.3, and the amendment to Article 435 of the Italian Penal Code, which addresses offences relating to terrorism and public safety.⁴²⁷⁴²⁸ In particular, Article 270-quinquies.3 makes it illegal to intentionally purchase or possess materials that contain instructions on how to use or prepare lethal military equipment, firearms, hazardous chemicals or biological materials, or techniques for committing violent crimes or undermining vital public services with the goal of committing a terrorist offense.⁴²⁹ The penalty for this offense is from two to six years in jail; when such documents are distributed by any means, including electronically, with the intention of facilitating offenses under the same title, which have a minimum penalty of five years in prison, the change to Article 435 imposes a prison sentence ranging from six months to four years.⁴³⁰ Article 12, which alters Article 635, paragraph 3 of the Italian Penal Code regarding property damage during demonstrations, is another pertinent clause. According to the amendment, the offense carries a maximum punishment of 15,000 euros and a jail sentence ranging from one year and six months to five years if the damage is caused by violence against people or threat.⁴³¹ Additionally, Article 13 amends Article 10 of Decree-Law No. 14/2017 and Article 165 of the Penal Code to reinforce access restrictions and conditional-suspension provisions for offenses in transport sectors.⁴³² Removing paragraph 5 and extending arrest powers to damage during public demonstrations, it gives the questore the authority to restrict anyone reported or convicted, provisionally or ultimately, of crimes against persons or property inside designated transit zones for a period of five years. Additionally, it makes any conditional sentence suspension for crimes against people or property in transportation infrastructures dependent on a court-ordered ban on accessing specific places. Additionally, it is essential to examine Article 14, which amends Article 1-bis, paragraph 1 of Legislative Decree No. 66/1948.⁴³³ This amendment extends the ban on obstructing free movement to railways and substitutes a criminal penalty of up to one month in jail or a fine of

⁴²⁶ Redazione Giurisprudenza Penale, *Il Senato ha approvato definitivamente il ddl n. 1509 (conversione in legge del decreto-legge n. 48/2025, cd. "decreto sicurezza")* (Giurisprudenza Penale, 4 giugno 2025) accessed 11 July 2025.

⁴²⁷ Codice penale (Regio Decreto No 1398 of 19 October 1930) art 435 (Italy).

⁴²⁸ Decreto-legge 11 April 2025, n 48, 'Disposizioni urgenti in materia di sicurezza pubblica, di tutela del personale in servizio, nonché di vittime dell'usura e di ordinamento penitenziario' (Gazzetta Ufficiale n 85, 11 April 2025; entered into force 12 April 2025; converted by Legge 9 June 2025, n 80, G.U. n 131, 9 June 2025) art 1.

⁴²⁹ Italian Criminal Code (Codice Penale, Royal Decree No 1398 of 19 October 1930), art 270-quinquies.3.

⁴³⁰ Ibid.

⁴³¹ Italian Criminal Code, art 635(3).

⁴³² Ibid art 165.

⁴³³ Legislative Decree No 66 of 22 January 1948, art 1-bis(1).

up to €300 for the previous administrative fine of €1,000–4,000.⁴³⁴ It also stipulates that the penalty is raised to six months to two years in prison if the offense is committed by several people working together.⁴³⁵ Article 19 amends Articles 336, 337, and 339 of the Italian Penal Code to reinforce its restrictions on violence, threats, and resistance against public authorities.⁴³⁶ It adds to Article 336 a clause that increases the penalty by up to half when the offenses listed in the first or third paragraphs are committed against a member of the judicial or public security police.⁴³⁷ In a similar vein, Article 337 is expanded to stipulate that the penalty increases by up to half if an officer or police agent is resisted in the discharge of official responsibilities by using violence or threats.⁴³⁸ Lastly, Article 339 is enlarged to make clear that its first-paragraph restrictions also apply when threats or acts of violence are used to prevent the development or operation of transportation, energy, or telecommunications.⁴³⁹ Article 20 amends Article 583-quater of the Penal Code by replacing the first paragraph to state that a judicial or public security police officer who sustains bodily harm while performing their duties faces a maximum sentence of two to five years in prison, with the maximum sentence increasing to four to ten years for serious injuries and eight to sixteen years for grievous injuries.⁴⁴⁰⁴⁴¹ Article 24 amends Article 639 of the Penal Code by stating that the penalty is imprisonment from six months to one year and six months and a fine of €1,000 to €3,000 if the offense is committed against movable or immovable property used for public functions with the intent to harm the honor, prestige, or dignity of the institution to which the property belongs.⁴⁴² It also stipulates that recidivism for this particular offense has a penalty that rises from six months to three years in prison and a fine of up to €12,000 in fines.

The reaction to Italy's Security Decree has been diverse throughout the country, but it has received considerable criticism from constitutional scholars, members of the court, and international human rights organizations. Among the most prominent critics are United Nations human rights experts, who have expressed major concerns about how the decree was implemented, specifically, that it was passed through administrative procedures without proper parliamentary debate or public

⁴³⁴ Decreto-legge 11 April 2025, n 48, art 14.

⁴³⁵ Ibid.

⁴³⁶ Ibid art 19.

⁴³⁷ Italian Criminal Code art 336 (Italy).

⁴³⁸ Ibid art 337.

⁴³⁹ Ibid art 339.

⁴⁴⁰ Ibid art 583-quater.

⁴⁴¹ Decreto-legge 11 April 2025, n 48 art 20.

⁴⁴² Ibid art 24.

consultation.⁴⁴³ These UN experts, including Special Rapporteurs on the rights to peaceful assembly, freedom of expression, migration, and the protection of human rights defenders, warned that the decree's ambiguous language and broadly defined provisions on terrorism could lead to arbitrary enforcement; they encouraged the Italian government to respect the right to peaceful protest and avoid using disproportionate force.⁴⁴⁴ Moreover, also the *Associazione Nazionale Magistrati* expressed serious concerns about the Security Decree, highlighting potential areas of unconstitutionality, particularly in measures relating to public order and protest regulation.⁴⁴⁵ The ANM criticized the decree's use of ambiguous and expansive legal categories, particularly those related to terrorism and public safety, which risk eroding legal clarity and allowing authorities to enforce them arbitrarily. Furthermore, the magistrates' group noted the potential weakening of judicial control and Parliament's marginalization in the legislative process, calling for a comprehensive constitutional review and legislative re-evaluation.⁴⁴⁶ Lastly, the *Associazione Italiana dei Costituzionalisti* criticizes the Security Decree, citing worries about its implementation through an emergency legislative process that bypassed normal democratic procedures and could jeopardize fundamental rights.⁴⁴⁷ In response, the group proposes three measures to improve the protection of rights in the Italian legal system: restricting the scope of emergency decrees, increasing parliamentary monitoring, and strengthening constitutional review processes.⁴⁴⁸

This law has not only drawn international scrutiny for its security-oriented measures but has also been reviewed by the Constitutional Court, which issued an official report on its application. The *Relazione n. 33/2025* issued by the Italian Supreme Court of Cassation provides a detailed and critical analysis of various measures adopted by the 2025 Security Decree (D.L. 48/2025).⁴⁴⁹ Among the most important shortcomings identified is the notable anticipation of the criminal liability threshold introduced by Article 270-quinquies.3 and the amended Article 435, paragraph 2 of the Italian Penal Code, which, according to the *Consiglio Superiore della Magistratura*, risks criminalizing conduct that is merely preparatory or indicative of ideological orientation, contrary to the principle of material

⁴⁴³ United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Italy: UN experts concerned by administrative enactment of problematic security bill' (14 April 2025) <https://www.ohchr.org/en/press-releases/2025/04/italy-un-experts-concerned-administrative-enactment-problematic-security>.

⁴⁴⁴ Ibid.

⁴⁴⁵ Associazione Nazionale Magistrati, *Decreto sicurezza: l'ANM ravvisa possibili profili di incostituzionalità* (Sistema Penale, 17 April 2024).

⁴⁴⁶ Ibid.

⁴⁴⁷ Associazione Italiana dei Costituzionalisti, *A partire dal Decreto Sicurezza: tre proposte sulla garanzia dei diritti nel nostro ordinamento* (Associazione Italiana dei Costituzionalisti, 4 April 2025).

⁴⁴⁸ Ibid.

⁴⁴⁹ Italian Supreme Court of Cassation, Criminal Section – Office of the Massimario, Report No. 33/2025 on Legislative Developments: Urgent Provisions on Public Security, Protection of Public Service Personnel, Victims of Usury, and Prison System (23 June 2025).

offensiveness.⁴⁵⁰ Scholars have also defined these rules as potentially resulting in a "offense of suspicion" or a "offense of will," as they punish persons for holding or sharing informational material even when such acts do not directly jeopardize public safety. This legislative move, while intended to improve counter-terrorism efforts, may violate the Italian Constitution's values of legality, offensiveness, and proportionality. Furthermore, the Constitutional Court reviews Article 12 of the 2025 Security Decree, which alters Article 635 of the Penal Code to increase penalties for damage caused during public demonstrations, particularly when accompanied by violence or threats.⁴⁵¹ The Court expresses worry about repeated changes to the same article in recent years, citing a violation of the principle of legal certainty (Article 25 of the Constitution). This constant legislative layering causes confusion about the scope of the offense and its relationship with other crimes, particularly threats (Article 612) and private violence (Article 610), which have been incorporated into the aggravated form of damage. Such overlap potentially violates the non bis in idem principle and confuses judicial interpretation. The Court also criticizes the lack of clarity in defining the necessary link between the demonstration and the act of damage, warning that the provision may be applied inconsistently. Furthermore, it situates this amendment within a broader "securitarian" drift in criminal law, alongside other new offenses that risk penalizing preparatory or ideologically motivated conduct, raising issues under the principles of offensiveness and proportionality (Article 27). Moreover, Article 19 of the 2025 Security Decree which introduces a new special aggravating circumstance for the crimes of violence, threat, and resistance against public officials (Articles 336 and 337 of the Criminal Code), increasing the penalty by up to one half if the act targets law enforcement officers.⁴⁵² It also adds a further aggravating clause (Article 339, final paragraph) for violent or threatening conduct aimed at preventing the construction of strategic infrastructure, such as energy, transport, or telecommunications facilities. Although the legislative rationale emphasizes the need to protect police personnel and public order, serious constitutional concerns arise, particularly regarding Article 3 of the Constitution (equality before the law). The measure creates an unjustified disparity by granting heightened protection exclusively to certain public officials, despite identical conduct being directed toward other officials covered under the broad definition of Article 357 of the Criminal Code. Moreover, the new provision in Article 339 has been criticized for disproportionately targeting acts of dissent, especially those opposing large public works. Notably, the extension of delayed arrest under Article 13 to include offenses under Article 583-quater of the

⁴⁵⁰ Ibid § 4.1.

⁴⁵¹ Ibid § 7.

⁴⁵² Ibid § 10.

Criminal Code, when committed during public demonstrations, has been viewed as excessively broad and legally imprecise.⁴⁵³ The undifferentiated reference to both types of conduct covered by Article 583-quater risks authorizing delayed arrest even for incidental acts of violence against healthcare personnel, which are already governed by existing procedural rules (Article 382-bis c.p.p.). This creates unnecessary duplication and interpretive confusion, undermining legal clarity. Even more controversial is the new aggravating circumstance introduced under Article 24, which enhances penalties for acts of defacement or damage against public property when committed with the intent to offend the "honor," "prestige," or "decorum" of a public institution.⁴⁵⁴ This provision has been criticized for criminalizing acts of political protest based on their symbolic or expressive nature, thereby transforming a property crime into what amounts to an "opinion offense." Legal scholars have flagged the vagueness of key terms such as "decorum" and "honor," warning that their ambiguity invites arbitrary enforcement and judicial subjectivity. The aggravating factor hinges on the demonstrative purpose of the act, making it highly dependent on the perceived political or ideological motive behind the conduct, rather than its actual harm. Additional concerns arise from the penalty enhancement in cases of recidivism, which applies only when the repeated act is motivated by the same demonstrative intent. This introduces evidentiary burdens that may be difficult to satisfy and opens the door to selective application of harsher penalties based on ideological considerations. Moreover, the Constitutional Court critically examines the new penalization of road and railway blockades carried out by physically obstructing traffic with one's body.⁴⁵⁵ It highlights a significant tension between this criminal offense and fundamental constitutional freedoms, particularly the rights to freedom of expression (Art. 21), peaceful assembly (Art. 17), and the right to strike (Art. 40). The Court points out that the law, by imposing criminal sanctions on conduct often characterized by peaceful and non-violent civil disobedience, risks unjustly limiting forms of legitimate protest that are essential in a democratic society. The Court warns that punishing symbolic acts like sitting or standing to block traffic may exceed constitutional limits, since true criminal conduct must pose a real threat of harm. It criticizes the law's vague disruption threshold, which risks casting minor disturbances into the criminal realm rather than handling them administratively. Proving each protester intended to obstruct also poses evidentiary challenges, especially when they were simply exercising their right to dissent.

⁴⁵³ Ibid § 13.

⁴⁵⁴ Ibid § 12.

⁴⁵⁵ Ibid § 15.

It's important to remember that the Security Decree is not alone in targeting direct climate protest. Only months earlier, on 22 January 2024, Parliament enacted Law No 6/2024 (the “*eco-vandals*” law), formally titled “*Disposizioni in materia di eco-vandalismo*”, which introduced four new administrative penalties for harm to Italy’s cultural and landscape heritage.⁴⁵⁶ Under Article 1, anyone who destroys, disperses or renders such assets unusable faces fines of €20,000–€60,000, while defacement or soiling carries €10,000–€40,000.⁴⁵⁷ Article 2 amends Article 518-duodecies of the Penal Code, giving authorities the choice between administrative or criminal sanctions, and Article 3 heightens punishments under Articles 635 and 639 by doubling prison terms (up to five years) and fines (up to €10,000) when damage occurs during public demonstrations (Law No 6/2024).⁴⁵⁸ Given that the Security Decree only entered into force on 3 June 2025, no judgments under its provisions have yet been rendered. Nonetheless, reviewing recent Italian case law on environmental civil disobedience remains useful, as it illustrates how judges have approached comparable acts of protest and offers indications of how the new offences may be interpreted once they reach the courts. Over the past two years, Italian judges have often taken a cautious stance toward non-violent climate demonstrations, frequently opting for acquittals, dismissals, or a restrictive reading of criminal provisions despite the introduction of stricter legislative measures.⁴⁵⁹ According to recent data, in just the past three years more than 180 criminal proceedings have been initiated against climate activists.⁴⁶⁰ As of now, 72 trials have been scheduled, with a further 52 expected to begin in the coming months, while 58 have already concluded. Of these, 35 ended in acquittals, 11 in decisions not to proceed, and 12 with first-instance convictions, all subject to appeal. This pattern highlights the challenging role courts face in balancing the principles of legality and proportionality in a context marked by intense and polarized reactions on both sides, reflecting the particularly sensitive climate of the current period.

⁴⁵⁶ Legge 22 January 2024, n 6, *Disposizioni in materia di eco-vandalismo* (Gazzetta Ufficiale Serie Generale No 23, 22 January 2024).

⁴⁵⁷ Ibid art 1.

⁴⁵⁸ Ibid art 2-3.

⁴⁵⁹ Antonio Francesco Vigneri, *La criminalizzazione della disobbedienza pacifica sta fallendo nelle aule di tribunale* (2024) L'Indipendente <https://www.lindipendente.online/2024/05/21/la-criminalizzazione-della-disobbedienza-pacifica-sta-fallendo-nelle-aule-di-tribunale/>.

⁴⁶⁰ Isaia Invernizzi, *La giustizia italiana si sta adoperando molto contro Ultima Generazione* (10 July 2025).

3.1.2 United Kingdom “Police, Crime, Sentencing and Courts Act 2022” and “Public Order Act 2023”.

Examining the UK's environmental protest phenomenon is crucial to comprehending how nonviolent climate activism has grown in importance in the government's reaction. Youth-led, nonviolent movements have garnered a lot of public attention lately, which has led to a number of political and legal actions intended to control protests.⁴⁶¹ The UK climate activism landscape includes a varied network of movements that use a variety of techniques to fight government inaction on the climate problem, including nonviolent direct action, civil disobedience, legal challenges, and youth mobilization. This includes organizations like Just Stop Oil, Insulate Britain, and Reclaim the Power, as well as legal initiatives like Plan B Earth, student-led campaigns like Fridays for Future UK and UKSCN, and identity-conscious collectives like XR Youth, which all contribute to a diverse and increasingly sophisticated movement for environmental and climate justice.⁴⁶² One of the most relevant movement is Extinction Rebellion, which began in the United Kingdom in 2018 as a grassroots organization dedicated to nonviolent civil disobedience to address the climate issue.⁴⁶³ Their significance is highlighted by the fact that the vast majority, more than 85%, of participants in major London actions in 2019 were members of local XR organizations.⁴⁶⁴ In October 2018, at a massive protest in London's Parliament Square, Extinction Rebellion (XR) was formally launched with the Declaration of Rebellion.⁴⁶⁵ The strategic strategy of XR, which focused on mass participation in non-violent but purposefully obstructive direct actions, was founded on this premise. By occupying public spaces and causing widespread disruption, the goal was to put pressure on authorities to address three key demands: revealing the truth about the climate crisis, reaching net-zero emissions by 2025, and forming citizens' assemblies to direct the required social change.⁴⁶⁶ The International Rebellion, XR's first significant mobilization since its founding, took place in April 2019 and served as an example of its concept. Waterloo Bridge, Marble Arch, Oxford Circus, and Parliament Square were the four main sites of the eleven-day demonstration in downtown London;

⁴⁶¹ Pickard, Bowman and Arya (n 391) 261.

⁴⁶² Eric G Scheuch, Mark Ortiz, Ganga Shreedhar and Laura Thomas-Walters, *The Power of Protest in the Media: Examining Portrayals of Climate Activism in UK News* (2024) 11 Humanities and Social Sciences Communications 1 <https://doi.org/10.1057/s41599-024-02655-z> accessed 2 August 2025.

⁴⁶³ Peter Gardner, Tiago Carvalho and Manuel Valenstain, *Spreading Rebellion? The Rise of Extinction Rebellion Chapters across the World* (2022) 8 Environmental Sociology 424.

⁴⁶⁴ Clare Saunders, Brian Doherty and Graeme Hayes, *A New Climate Movement? Extinction Rebellion's Activists in Profile* (2020).

⁴⁶⁵ Matthew Taylor, *The evolution of Extinction Rebellion: climate emergency protest and the coronavirus pandemic* (*The Guardian*, 4 agosto 2020) <https://www.theguardian.com/environment/2020/aug/04/evolution-of-extinction-rebellion-climate-emergency-protest-coronavirus-pandemic> accessed 12 July 2025.

⁴⁶⁶ Graeme Hayes, Steven Cammiss, Brian Doherty and Clare Saunders, *Extinction Rebellion's Disobedient Environmental Citizenism* (2025) 34 Environmental Politics 817.

continuous nonviolent civil disobedience by thousands of activists effectively paralyzed areas of the city and attracted a lot of public and media attention.⁴⁶⁷ The police responded to the demonstration quickly and thoroughly. 1,148 people were taken into custody by the Metropolitan Police during the April operation; violating the restrictions imposed on a public gathering, the majority were arrested under Section 14(5) of the Public Order Act of 1986.⁴⁶⁸ Aggravating circumstances including sitting or sleeping on the road, sticking objects, or utilizing "lock-on" gadgets were mentioned in a lot of cases. There were 920 charges brought by October of that year. For nineteen weeks in a row, two courtrooms at the City of London Magistrates' Court were reserved every Friday in response to the influx of cases. During this time, the XR model has been referred to as "disobedient environmental citizenism," a strategy based on personal moral accountability and distinguished by a depoliticized approach to protest.⁴⁶⁹

The above instances demonstrate how the growing presence of climate movements in the UK has prompted state authorities to take an organized reaction aimed at maintaining public order. The growing prominence of nonviolent disruption, particularly through organizations like Extinction Rebellion and Just Stop Oil, has resulted in an increase in containment techniques and enforcement practices. As a result, environmental protest has emerged as a major influence in changing how institutions deal with dissent and handle the contradictions between civil disobedience and legal authority. For instance, a study published in December 2024, suggested that UK police currently arrest environmental and climate protesters at three times the average global rate.⁴⁷⁰ The protests led by Extinction Rebellion have had a significant impact on UK policy, prompting the government to revisit and repurpose older legislation, specifically the Criminal Justice and Public Order Act 1994.⁴⁷¹ As a result, the UK Parliament has passed two significant pieces of legislation, the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023, which seek to establish guidelines for police operations and protest-related activities, increase police stop and search authority, and establish new public order offenses.⁴⁷² The Police, Crime, Sentencing, and Courts Act 2022 introduced plenty of legislative changes that drastically impacted the legal framework controlling

⁴⁶⁷ George Monbiot, *Today, I aim to get arrested. It is the only real power climate protesters have*, The Guardian (16 October 2019) <https://www.theguardian.com/commentisfree/2019/oct/16/i-aim-to-get-arrested-climate-protesters> accessed 14 September 2025.

⁴⁶⁸ Hayes (n 466) 817.

⁴⁶⁹ Ibid.

⁴⁷⁰ Damien Gayle, *Britain leads the world in cracking down on climate activism, study finds*, The Guardian (London, 11 December 2024).

⁴⁷¹ Parpworth (n 212) 533.

⁴⁷² Ibid 534-535.

protest and public order in England and Wales.⁴⁷³ In particular, Part 3 of the Police, Crime, Sentencing, and Courts Act 2022 is primarily concerned with public order, including powers over public processions, assemblies, and rallies, as well as measures that the police can impose to govern them. One of the most important aspects of this section is the revision to the Public Order Act 1986, specifically Section 73, which allows senior police officials in England and Wales to put limits on public processions.⁴⁷⁴ These conditions can be used when the noise produced by participants is anticipated to cause major interruption to the activities of surrounding organizations or have a significant and relevant impact on individuals in the area. Serious disruption to community life is defined as significant delays in time-sensitive deliveries or protracted disruptions to important commodities and services such as food, water, energy, healthcare, education, and transportation. Similarly, substantial disruption to an organization's operation means that those associated with the organization may be unable to carry out their duties for a lengthy period. Before imposing restrictions, the police must assess the number of people who will be affected, as well as the duration and intensity of the impact, with rules potentially outlining what constitutes major disruption or considerable impact. In a comparable manner, Section 74 contains regulations for public meetings that are identical to those for processions: this clause further changes the Public Order Act of 1986, allowing conditions to be imposed on assemblies where noise may interrupt organizational activity or significantly harm others nearby.⁴⁷⁵ The definitions and thresholds for substantial disturbance and relevant impact are similar to those established for public processions. Section 75 amends the enforcement of conditions on public processions and assemblies by eliminating the requirement to prove that an individual knowingly failed to comply with the imposed conditions to be found guilty of an offence.⁴⁷⁶ This move effectively lowers the bar for prosecuting violations of conditions during public order events. Section 76 addresses the limitation of vehicular access to Parliament; it broadens the regulated areas around the Palace of Westminster by including streets like Canon Row, Parliament Street, Derby Gate, and Parliament Square.⁴⁷⁷ Furthermore, it broadens the definition of "relevant persons" who may be impeded by including members of both Houses of Parliament's staff. Section 77 gives the Secretary of State the authority to designate additional "controlled areas" by regulation, but only if one House of Parliament is or will be relocated outside the Palace of Westminster; this allows activities in these new areas to be prohibited in the same way that they are restricted in Parliament Square.⁴⁷⁸ Section

⁴⁷³ Police, Crime, Sentencing and Courts Act 2022, c 32.

⁴⁷⁴ *Ibid* s 73.

⁴⁷⁵ *Ibid* s 74.

⁴⁷⁶ *Ibid* s 75.

⁴⁷⁷ *Ibid* s 76.

⁴⁷⁸ *Ibid* s 77.

78 establishes a new statutory offense of intentionally or recklessly causing "public nuisance," which is defined as acts or omissions that cause or risk serious harm, such as death, injury, property damage, or significant disruption, or obstruct public rights; this offense carries penalties of up to ten years' imprisonment and replaces the previous common law offence of public nuisance.⁴⁷⁹ Section 79 establishes particular powers for one-person protests. Senior police officials have the authority to impose limitations on such rallies if the noise generated is likely to cause major disruption to neighboring organizations or have a significant impact on people nearby through intimidation, harassment, alarm, or distress.⁴⁸⁰ These conditions must be met to prevent such impacts. The statute specifies the responsibility of the senior officer based on whether the demonstration is active or planned and failure to comply with these criteria, even if the protester is aware of or should be aware of them, is an offense. Section 80 enhances the penalties for willfully obstructing a public highway, providing for up to 51 weeks in prison and/or fines, and makes it clear that this applies independent of any current temporary restrictions.⁴⁸¹ Furthermore, Section 2 doubles the maximum penalty for attacking emergency workers from 12 months to two years, providing officers with greater legal protection. Sections 83 and 84 extend police powers against illegal encampments by creating a new offence of trespassing on land in a vehicle and expanding trespasser removal and seizure authorities.⁴⁸² Finally, Sections 184–187 provide expanded powers for controlling terrorist offenders released on parole, such as arrest without a warrant, stop and search authority, premises search warrants, and evidence seizure and retention.

The Public Order Act 2023 was later enacted to enhance and, in some cases, strengthen existing provisions by instituting stricter measures for managing protests and other activities deemed potentially threatening to public order.⁴⁸³ Enacted on May 2, 2023, the act is a significant piece of legislation by the UK Parliament aimed at establishing new public order offences, broadening police stop and search powers, and setting out provisions related to police operations, protest-related activities overseen by the Secretary of State, and Serious Disruption Prevention Orders. Section 1 defines "locking on" as the act of attaching oneself or an object to another person, object, or the ground with the intent of causing or being capable of causing substantial disturbance to at least two individuals or an organization in a non-residential situation.⁴⁸⁴ On summary conviction, the penalty is imprisonment for up to six months (raised to 51 weeks with the full implementation of Section

⁴⁷⁹ Ibid s 78.

⁴⁸⁰ Ibid s 79.

⁴⁸¹ Ibid s 80.

⁴⁸² Ibid ss 83-84.

⁴⁸³ Public Order Act 2023, c 15, s 1(UK).

⁴⁸⁴ Ibid.

281(5) of the Criminal Justice Act 2003), a fine, or both.⁴⁸⁵ Section 2 discusses the offense of being outfitted for locking on: it makes it illegal to possess an object with the purpose to use it in committing a locking-on offence in a location other than a residence.⁴⁸⁶ Section 3 defines the offence of creating substantial disruption through tunnelling. It applies to anyone who build or assist in the construction of a tunnel that causes or has the potential to cause substantial disruption to two or more people or an organization outside of a house.⁴⁸⁷ As with other offenses, intent or carelessness is necessary, and there is a defense if the culprit has a justifiable cause, such as permission from someone with a meaningful interest in the land. The maximum punishments include imprisonment for up to the general sentence on summary conviction or up to three years on indictment, a fine, or both. Section 4 creates the offense of creating substantial disruption by being present in a tunnel; it applies to anyone who enters a "relevant tunnel", defined as one built for or in connection with a protest, after the section's start date.⁴⁸⁸ The penalties include imprisonment for up to three years on indictment. Section 5 defines the offence of being equipped for tunnelling, which criminalizes the possession of an object designed for use in committing either the tunnel or being present in a tunnel.⁴⁸⁹ On summary conviction, the penalties are up to six months (or 51 weeks) in prison, a fine, or both. Section 6 defines the offense of blocking or interfering with important transportation works: it makes it illegal to obstruct or interfere with people who are building or maintaining important transportation infrastructure.⁴⁹⁰ Furthermore, it is critical to note that the Act considerably strengthens police authority: Section 10 changes the Police and Criminal Evidence Act of 1984 to incorporate new protest-related offenses within its suspicion-based stop and search powers.⁴⁹¹ These include latching on, tunnelling, obstructing major transportation projects, interfering with critical infrastructure, willful obstruction causing significant disruption, and public annoyance. Section 11 authorizes police to conduct stops and searches without suspicion: for instance, a police inspector or higher-ranking officer may authorize this in a defined area for up to 24 hours if they have reasonable suspicion that certain public order violations are being committed or that prohibited objects are being transported.⁴⁹² Officers in uniform may search individuals, vehicles, or premises for such objects, which may be seized and disposed of in accordance with applicable legislation and the authorization must be considered necessary and proportionate. Subsequently, Section 14 creates the offense of impeding a

⁴⁸⁵ Criminal Justice Act 2003, c 44, s 281(5) (UK).

⁴⁸⁶ Public Order Act 2023, c 15, s 2(UK).

⁴⁸⁷ *Ibid* s 3(UK).

⁴⁸⁸ *Ibid* s 4.

⁴⁸⁹ *Ibid* s 5.

⁴⁹⁰ *Ibid* s 6.

⁴⁹¹ *Ibid* s 10.

⁴⁹² *Ibid* s 11.

stop and search under Section 11; intentional obstruction is punishable by up to 51 weeks in prison, a fine, or both on summary conviction.⁴⁹³ Sections 15 and 16 amend the delegation of police powers in response to protests, granting authority to the British Transport Police and the Ministry of Defence Police. These powers include the ability to impose conditions on public meetings and one-person protests, as well as to prevent trespassory assemblies under specific conditions.⁴⁹⁴ Sections 18 and 19 authorize the Secretary of State to commence civil proceedings if protest-related activities are suspected of causing or likely to cause substantial disruption to infrastructure, critical services, or public safety.⁴⁹⁵ These powers exclude trade disputes and give courts the authority to attach arrest warrants to injunctions, particularly in circumstances involving violence or substantial risk. Furthermore, it is critical to examine how Part 2 of the Act establishes Serious Disruption Prevention Orders (SDPOs), which can be issued in two ways.⁴⁹⁶ Section 20 allows a court to impose an SDPO on conviction if the offender, aged 18 or older, has committed a protest-related offence and has committed at least one other such offence or breached an injunction in the previous five years relating to a different protest or date.⁴⁹⁷ The court must consider if the injunction is necessary to avoid future offenses or disruptions; alternatively, under Section 21, designated police agencies may apply for an SDPO to a magistrates' court using the same conduct criteria and necessity assessment.⁴⁹⁸ Sections 22 through 26 govern the content and operation of SDPOs: orders may include both requirements and prohibitions, such as reporting obligations, geographic restrictions, affiliation limits, bans on protest participation, possession of specific products, or use of the internet to encourage criminal activity.⁴⁹⁹ SDPOs impose notification obligations, such as registering one's name and address with the police within three days of the order going into force and reporting any changes. Sections 30 and 31 authorize the Secretary of State to offer guidelines to police on the use of SDPOs, including identifying candidates for orders and assisting with prosecutions.⁵⁰⁰ Finally, Section 34 defines "severe disruption" within the context of the Act: it involves stopping or impeding persons or organizations from carrying out daily activities, such as travel and construction work, impeding the production or reception of time-sensitive items and interfering with access to critical goods and

⁴⁹³ Ibid s 14.

⁴⁹⁴ Ibid ss 15-16.

⁴⁹⁵ Ibid ss 18-19.

⁴⁹⁶ Ibid s 2.

⁴⁹⁷ Ibid s 20.

⁴⁹⁸ Ibid s 21.

⁴⁹⁹ Ibid ss 22-26.

⁵⁰⁰ Ibid ss 30-31.

services.⁵⁰¹ Food, water, money, fuel, communication systems, places of worship, educational institutions, transportation facilities, and health services are all examples of the latter.

The Public Order Act 2023 and the Police, Crime, Sentencing, and Courts Act 2022 have sparked widespread worldwide concern, including from United Nations human rights bodies, leading civil liberties organizations, and foreign media sources. The UN High Commissioner for Human Rights warned on April 27, 2023, that major parts of the UK's Public Order Bill, particularly its extended stop-and-search powers and ambiguous "severe disruption" offenses, risk undermining the rights to peaceful assembly and free expression.⁵⁰² He stated that these policies are inconsistent with the UK's international human rights commitments and urged the government to reverse them. Michel Forst, the United Nations Special Rapporteur on environmental defenders, condemned what he described as "draconian" new UK laws, namely, the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023, for criminalizing peaceful environmental protest through measures such as restricting courtroom evidence, imposing harsh bail conditions including electronic tagging, and utilizing civil injunctions, all of which have a chilling effect on fundamental freedoms.⁵⁰³ He urged the UK government to engage in constructive engagement to protect the rights of environmental defenders and ensure that legislative responses to protest stay compatible with international human rights commitments. Furthermore, the Joint Committee on Human Rights examined the Public Order Bill and expressed serious concerns about the addition of new protest offences (such as "locking-on" and infrastructure interference), expanded stop-and-search powers, and the establishment of Serious Disruption Prevention Orders.⁵⁰⁴ The Committee noted that ambiguous definitions of "severe disruption," combined with strong police and civil injunction powers, constituted disproportionate interference with the rights to peaceful assembly and free expression guaranteed by Articles 10 and 11 of the ECHR.⁵⁰⁵ It proposed targeted revisions to clarify key phrases, tighten proportionality protections, and ensure full compliance with the UK's human rights commitments in order to prevent a chilling impact on lawful protest.

It is also vital to study a significant judicial judgment, as it provides critical insight into how the courts are interpreting and applying the recently adopted statutory framework for environmental protest. One of the most relevant is the case of *R v Trowland and Decker* [2023] EWCA Crim 919,

⁵⁰¹ Ibid s 34.

⁵⁰² United Nations Office of the High Commissioner for Human Rights (OHCHR), *UN Human Rights Chief urges UK to reverse "deeply troubling" Public Order Bill* (2 April 2023) <https://www.ohchr.org/en/press-releases/2023/04/un-human-rights-chief-urges-uk-reverse-deeply-troubling-public-order-bill>.

⁵⁰³ Laville (n 6).

⁵⁰⁴ Joint Committee on Human Rights, *Legislative Scrutiny: Public Order Bill*, First Report of Session 2022–23, HL Paper 351/ HC 196 (17 June 2022).

⁵⁰⁵ Ibid.

which marks a significant moment in how courts are sentencing climate protestors under the Police, Crime, Sentencing and Courts Act 2022.⁵⁰⁶ On October 17, 2022, Morgan Trowland, a 40-year-old civil engineer with numerous prior protest convictions, and Marcus Decker, a 34-year-old climber affiliated with Just Stop Oil, scaled the Queen Elizabeth II bridge on the M25.⁵⁰⁷ The Dartford-Thurrock Crossing Act of 1988 clearly restricts pedestrian access to this bridge, London's only fixed vehicle crossing east of the city, which conducts critical commuter and freight traffic. Once atop the structure, the activists unfurled a "Just Stop Oil" banner and remained suspended in hammocks for 36 hours, forcing the bridge to close for forty hours and causing extreme disruption to at least 564,942 vehicles, who endured more than 60,547 hours of delay; the economic cost was estimated at £917,000.⁵⁰⁸ Twenty-two victim personal accounts and six business impact statements described missed funerals, delayed medical appointments, lost salaries, halted housing projects for vulnerable populations, and significant revenue losses of up to £25,000 for some businesses.⁵⁰⁹ During the protest, Mr Trowland even held media conferences from the bridge deck, indicating his intention to prolong the action until he obtained maximum attention; both men eventually dropped and surrendered to arrest via cherry picker on October 18. A seven-day trial headed by HHJ Collery KC at Basildon Crown Court ended on April 4, 2023, with convictions for knowingly or carelessly producing a public nuisance under Section 78(1) of the Police, Crime, Sentencing, and Courts Act 2022.⁵¹⁰ On April 21, 2023, the judge sentenced Mr. Trowland to three years in prison, down from a four-year starting point to reflect mitigation, and Mr. Decker to two years and seven months, down from three years and six.⁵¹¹ In imposing these conditions, HHJ Collery underlined the high level of guilt indicated by significant planning and evident purpose to cause "huge disruption" for publicity, characterizing Mr Trowland's attitude as "to hell with everyone else" and rejecting his apologies as "hollow." The judge judged previous convictions and bond status to be significant aggravating circumstances, and he stated that deterrence remained the most important element. On appeal, the men claimed that their sentences were manifestly excessive and disproportionate to their Articles 10 and 11 rights under the European Convention on Human Rights, that the judge had double-counted planning, and that the disparate sentencing for obstruction versus "serious harm" lacked a principled basis.⁵¹² The Crown argued that the penalties were warranted by the "extremely serious example"

⁵⁰⁶ *R v Trowland and Decker* [2023] EWCA Crim 919 (CA).

⁵⁰⁷ *Ibid* paras 5-11.

⁵⁰⁸ *Ibid* paras 12-13

⁵⁰⁹ *Ibid* paras 13-18.

⁵¹⁰ *Ibid* paras 19-30.

⁵¹¹ *Ibid*.

⁵¹² *Ibid* paras 31-40.

provided in the case, but agreed that without the necessity for deterrence, they could be regarded disproportionate. The Court of Appeal dismissed the appeals after hearing arguments from Lady Justice Carr, Mrs Justice Cutts, and Mrs Justice Thornton.⁵¹³ It ruled that Parliament's choice of a ten-year maximum term under section 78 demonstrated a clear intent to impose custodial sentences for nonviolent protest causing significant disruption, and that the trial judge properly balanced mitigation against the protesters' history and the gravity of their conduct.⁵¹⁴ The court dismissed any requirement for different responses to the offence's two limbs, serious injury and obstruction, and confirmed that deterrence and punishment were valid goals, particularly in light of increasingly organized, disruptive efforts by groups such as Just Stop Oil. It also determined that ECHR rights were "seriously reduced" because the demonstrators trespassed on forbidden property with the primary goal of causing disruption. Finally, the Court of Appeal determined that the sentences struck a fair balance between fundamental freedoms and the community's interests, given the protesters' extensive planning, prior convictions, the magnitude of economic and personal harm inflicted, and the pressing social need to deter similar behavior.⁵¹⁵

The decision in *R v Trowland and Decker* [2023] has been followed in the "M25 Conspiracy Case" (*R v Hallam and Others* [2025]) involved five defendants convicted of conspiracy to cause a public nuisance under section 1(1) of the Criminal Law Act 1977.⁵¹⁶ The charges arose from protests organized by Just Stop Oil related to climate change: between November 7 and 10, 2022, around 45 protesters were arrested for climbing or attempting to climb gantries on the M25 motorway.⁵¹⁷ According to Roger Hallam, one of the organizers, the plan aimed to create widespread gridlock across the motorway network and other main roads, causing significant disruption to pressure the government to respond to their demands; although the protests were non-violent, they were intended to cause considerable economic impact.⁵¹⁸ The defendants were tried at Southwark Crown Court over four weeks, with convictions delivered on July 11, 2024, and sentencing on July 18, 2024. Roger Hallam received a five-year prison sentence, while the other four defendants, Daniel Shaw, Lucia Whittaker de Abreu, Louise Lancaster, and Cressida Gethin, were each sentenced to four years.⁵¹⁹ At trial, the judge described the conspiracy as a carefully planned effort causing major disruption on the M25 for four days, affecting over 700,000 vehicles and resulting in substantial delays and costs. The

⁵¹³ *Ibid* para 91.

⁵¹⁴ *Ibid* paras 90-95.

⁵¹⁵ *Ibid* paras 95-110.

⁵¹⁶ Court of Appeal (Criminal Division), *R v Hallam and Others* [2025] EWCA Crim 199 (judgment, 7 March 2025).

⁵¹⁷ *Ibid* para 5.

⁵¹⁸ *Ibid* para 54.

⁵¹⁹ *Ibid* paras 67-79.

judge also highlighted aggravating factors, including the scale of disruption, safety risks, breach of a High Court injunction, prior convictions for similar protests, and ongoing legal proceedings against some defendants. The judge did not consider their non-violent status or conscientious motivation to be mitigating, viewing their actions as disproportionate and extreme; he also ruled that the protesters' rights to freedom of expression and assembly under the European Convention on Human Rights (ECHR) did not apply because they had broken the law and trespassed.⁵²⁰ On appeal, the Court of Appeal found that the trial judge had erred by failing to consider the defendants' conscientious motivation and the relevance of Articles 10 and 11 of the ECHR at sentencing. While acknowledging that motivation does not excuse criminal conduct, the court confirmed these rights remained engaged even when trespass and disruption occurred; the Court reduced the sentences accordingly: Hallam's sentence was lowered to four years, Shaw's to three years, Lancaster's to three years, Whittaker de Abreu's to two and a half years, and Gethin's to two and a half years, taking into account factors such as age and conduct.⁵²¹ The appellants have lodged an appeal before the Supreme Court, contending that the sentences imposed constitute a disproportionate infringement of their rights to freedom of expression and assembly under Articles 10 and 11 of the European Convention on Human Rights, with the case issued on 11 June 2025.⁵²²

Furthermore it is noteworthy to highlight the "HM Solicitor General v. Trudi Ann Warner (2024)" EWHC 918 (KB)" case, in which the High Court addressed allegations of contempt of court against Warner, a retired social worker and climate activist.⁵²³ On March 27, 2023, Warner stood outside the Inner London Crown Court holding a placard stating: "Jurors you have an absolute right to acquit a defendant according to your conscience."⁵²⁴ The Solicitor General alleged that Warner's actions constituted interference with the administration of justice, in that they attempted to influence the jury in a trial involving Insulate Britain activists. The prosecution was based on the principle of common law contempt, specifically the offence of "molestation of jurors," which prohibits actions that impede the ability of jurors to perform their duties without hindrance.⁵²⁵ In April 2024, the High Court ruled that Warner's conduct did not constitute contempt. The court determined that she had neither confronted nor impeded any jurors and was merely sharing information about jury equity, a principle dating back to Bushel's Case (1670), which affirms that jurors can acquit based on

⁵²⁰ Ibid paras 80-84.

⁵²¹ Ibid paras 84-94.

⁵²² *R v Hallam and Others* [2025] UKSC 96 (judgment approved for handing down 11 June 2025).

⁵²³ *HM Solicitor General v Trudi Ann Warner* [2024] EWHC 918 (KB), High Court of Justice, King's Bench Division, judgment of Saini J, 22 April 2024.

⁵²⁴ Ibid para 7.

⁵²⁵ Ibid para 26.

conscience.⁵²⁶ The court determined that Warner's actions were passive and did not compromise the integrity of the trial process.⁵²⁷ Consequently, the Solicitor General's application for contempt was dismissed, and the government later dropped its appeal, thus bringing to a conclusion an 18-month legal ordeal for Warner.⁵²⁸

3.1.3 Increasing Use of Section §129 to Restrict Protests in Germany.

In recent years, Germany has undergone a noticeable shift in how it approaches climate activism, with authorities and institutions tightening their responses and policy activities in response to environmental protests and movements. First is fundamental to understand in what consist of the environmental movement in Germany and how it evolved during the last 5 years. However, this was only the latest in a long history of climate activism, which had already been shaped by established environmental groups and NGOs since the 1970s and 1980s.⁵²⁹ These pre-existing structures created favorable conditions for a large-scale climate movement. As previously discussed, one of the major movements is the Fridays for Future movement, which arose from Greta Thunberg's 2018 school strike but quickly expanded due to earlier climate activism and supportive political developments in Germany, such as coal phase-out debates and the Hambach Forest conflict. Fridays for Future experienced rapid expansion from late 2018 to late 2019, marked by massive student strikes, growing alliances with other organizations, and internationally coordinated protests, but entered a phase of exhaustion before the pandemic, shifting toward institutional tactics like litigation.⁵³⁰ As Fridays for Future's momentum waned, more radical groups like Letzte Generation emerged, embracing centralized leadership and tightly bonded activist cells to maintain commitment and confront the increasing urgency of the climate crisis amid political gridlock. Between 2022 and 2023, Letzte Generation increased climate action with regular, disruptive tactics like highway blockades and symbolic acts like attaching themselves to roadways, with the goal of maintaining media attention and increasing public concern without devolving into violent extremism.⁵³¹ Despite being labelled "radical," Letzte Generation adhered to nonviolent principles and shared core demands with Fridays

⁵²⁶ Ibid paras 16-17.

⁵²⁷ Ibid paras 34-37.

⁵²⁸ Damien Gayle, 'Government drops appeal over climate activist who held sign outside UK court' (*The Guardian*, 15 August 2024) <https://www.theguardian.com/law/article/2024/aug/15/government-drops-appeal-over-climate-activist-who-held-sign-outside-uk-court> accessed 12 September 2025.

⁵²⁹ Vincent August, 'Dynamiken des Klimakonflikts: Eskalation, Gegeneskalation und De-Eskalation seit Fridays for Future und der Letzten Generation' (*Politische Vierteljahresschrift* 2024) 1–25.

⁵³⁰ Donatella Della Porta and Martin Portos, *Rich Kids of Europe? Social Basis and Strategic Choices in the Climate Activism of Fridays for Future* (2023) 53 *Italian Political Science Review/Rivista Italiana di Scienza Politica* 24.

⁵³¹ Daniel Bucker, "Just Run Over Them": *Experiences, Perceptions and Evaluations of Violence Among Activists of Letzte Generation* (2025) 4 *HARM—Journal of Hostility, Aggression, Repression and Malice* 1-7.

for Future, though their confrontational style elicited polarized reactions and rhetorical counter-escalation from authorities.⁵³² By 2022, Letzte Generation became known for disruptive non-violent protests, including vandalizing art and museums, a tactic responsible for many incidents in Europe, with Germany, Italy, and the UK accounting for 60%, and Letzte Generation causing six major museum vandalism cases in Germany.⁵³³ Over time, media novelty faded, public support decreased and activist fatigue set in, driving Letzte Generation in late 2023 to shift from direct disruption to a larger mass mobilization plan informed by activist theory.⁵³⁴ However, this change failed to win significant support due to Letzte Generation's problematic reputation; in fact, previous study reveals that radical tactics come with a dilemma: while they increase the pressure on institutions, they are also viewed as less moral, resulting in lower affiliation with and public support for the cause.⁵³⁵

What distinguishes the German case is that, despite being one of the countries most affected by nonviolent but disruptive climate protests, it has not implemented new legislation particularly focused at introducing or strengthening consequences for such behaviour. Rather than establishing new criminal laws, German authorities have opted to depend on existing legal structures.⁵³⁶ Despite this apparent inactivity against those movements, a notable shift has occurred since 2006, when responsibility for regulating assemblies was transferred to the individual German Länder.⁵³⁷ As of now, eight out of sixteen states have enacted their own assembly laws; while some aim to modernize regulatory frameworks, others particularly those adopted in North Rhine-Westphalia (2021) and Hesse (2022), have been widely criticized, including by Amnesty International, for being unduly restrictive.⁵³⁸ These laws have introduced complex administrative requirements for registering protests and granted authorities expansive powers of surveillance, including the use of comprehensive video monitoring. More controversially, they contain vague and broadly worded prohibitions, creating the risk of criminal sanctions for activities such as organizing peaceful counter-protests, attending blockade training sessions, or even wearing protective clothing like masks.⁵³⁹ In North

⁵³² Ibid.

⁵³³ Kinyon, Dolšak and Prakash (n 389) 2.

⁵³⁴ Carla Hinrichs, interview by Jonas Schaible, ‘„Wir sind nicht mehr die Letzte Generation“’ (Spiegel, 19 December 2024) Spiegel- plus (online).

⁵³⁵ Matthew Feinberg, Robb Willer and Chloe Kovacheff, *The Activist's Dilemma: Extreme Protest Actions Reduce Popular Support for Social Movements* (2020) 119 *Journal of Personality and Social Psychology* 1086.

⁵³⁶ Philipp Sprengholz and Vanessa Tanja Meier, ‘Radical Climate Movements: Associations Between Government Response and Public Support’ (2024) *Environment and Behavior* (Advance online publication).

⁵³⁷ Carolyn Rowe and Ed Turner, *Decentralising Policy Responsibility and Political Authority in Germany: Introduction* in C Rowe and E Turner (eds), *Decentralising Policy Responsibility and Political Authority in Germany* (Springer International Publishing 2023) 1–24.

⁵³⁸ Amnesty International German Section, *Protect the Protest: Freedom of the Right to Peaceful Assembly under Pressure in Germany* (September 2023).

⁵³⁹ Ibid.

Rhine-Westphalia, for example, the law prohibits all forms of masking and imposes a blanket ban on assemblies on highways, measures seen as disproportionate and constitutionally questionable.⁵⁴⁰ Bavaria, meanwhile, had already pioneered state-level regulation with its Assembly Act of 2008, which was initially met with strong opposition for imposing excessive procedural burdens on protest organizers and authorizing intrusive forms of surveillance.⁵⁴¹ Though the Federal Constitutional Court struck down large portions of the law in 2009, some controversial provisions remain in place. Among them is Article 17 of the Bavarian Police Tasks Act (BayPAG), which permits the preventive detention of individuals based solely on administrative assessments rather than concrete criminal suspicion.⁵⁴² This practice, which has been used repeatedly against climate activists in recent years, raises serious concerns about fair trial rights and the risk of arbitrary detention. For example, comparable media reports indicated that the police conducted harsher penalties against members of the Last Generation than against farmers who employed the same tactics of protest.⁵⁴³ One of the most crucial turning points occurred in December 2022, when the Bavarian government classified Letzte Generation as a “criminal organization,” prompting pre-emptive arrests and public debate over proportionality, while simultaneously generating widespread support from civil society, artists, and intellectuals who viewed the group's nonviolent disruption as a legitimate form of climate protest.⁵⁴⁴ Authorities applied Sections 129 to 130 of the German Criminal Code, which are generally used to combat terrorist or criminal organizations, to outlaw the formation, support, or membership in these groups.⁵⁴⁵ Section §129 targets criminal organizations and allows imprisonment of up to five years, with harsher penalties for leaders or especially serious cases. It excludes political parties not declared unconstitutional and allows leniency or immunity for those who withdraw or help dismantle the group. §129a addresses terrorist organizations, prescribing imprisonment of one to ten years for those forming or joining such groups, especially if their aims involve serious crimes like murder, war crimes, or attacks on public safety.⁵⁴⁶ Members or supporters of such groups face similar penalties, particularly if their activities aim to intimidate the population or coerce authorities. §129b extends

⁵⁴⁰ Joschka Selinger, 'Versammlungsgesetz NRW: Bedrohung für Versammlungsfreiheit und Zivilgesellschaft' (*Gesellschaft für Freiheitsrechte*, 2 luglio 2023) <https://freiheitsrechte.org/themen/demokratie/vb-versammlungsrecht-nrw>.

⁵⁴¹ Bayerisches Versammlungsgesetz (BayVersG), Gesetz vom 22. Juli 2008, GVBl. S. 478.

⁵⁴² Amnesty International German Section, *Protect the Protest: Freedom of the Right to Peaceful Assembly under Pressure in Germany* (September 2023).

⁵⁴³ Johanna Maurin, 'Doppelmoral der Polizei' (*taz*, 4 March 2024) <https://taz.de/Proteste-von-Bauern-und-Klimaaktivisten/!5993493/> accessed 3 August 2025.

⁵⁴⁴ Heinze and Steinmetz (n 4), 300.

⁵⁴⁵ German Criminal Code, §§ 129–130, in Michael Bohlander (tr), *The German Criminal Code: A Modern English Translation* (Bloomsbury Publishing 2008).

⁵⁴⁶ *Ibid*, § 129a.

these laws to organizations operating abroad, requiring Federal Ministry of Justice approval in certain cases, especially where German interests are involved.⁵⁴⁷ §130 criminalizes incitement to hatred, including inciting violence or defaming groups based on race, religion, ethnicity, or other identities, with penalties of up to five years.⁵⁴⁸ This statute, which criminalizes the formation of or participation in a "criminal organization", has traditionally been reserved for cases involving organized crime syndicates, violent extremist groups, or terrorist networks. Its use against a nonviolent climate movement marked a watershed moment in German legal and political history and has generated considerable national and international controversy.⁵⁴⁹ Prosecutors argued that certain actions undertaken by Letzte Generation, including the coordinated sabotage of oil pipeline valves, the obstruction of airport runways, and provocative but nonviolent symbolic acts such as throwing mashed potatoes at artworks, constituted a systematic effort to disrupt public infrastructure.⁵⁵⁰ In their view, the level of internal organization, the repetition of disruptive tactics, and the explicit willingness to break laws in service of political goals fulfilled the criteria for §129. This interpretation extended the definition of "criminal organization" beyond its typical associations with financial gain or physical violence, applying it instead to a protest movement whose tactics, though disruptive, remained explicitly nonviolent and rooted in civil disobedience traditions.⁵⁵¹ The enforcement of this legal framework led to a series of sweeping police actions. In coordinated raids spanning seven federal states, over 170 officers were deployed to search homes and offices connected to the group; these operations were accompanied by the freezing of bank accounts, the temporary takedown of the group's website and donation infrastructure, and the initiation of comprehensive surveillance measures, including wiretapping and digital monitoring.⁵⁵²

The legal framework is only one dimension of the challenges facing the right to protest in Germany but equally concerning are the repeated reports of disproportionate police force during demonstrations. Research shows that a significant number of incidents classified by participants as unlawful police violence have occurred in the context of protests.⁵⁵³ Police have used pain-inflicting measures to disperse peaceful assemblies, notably those involving climate activists engaging in nonviolent civil disobedience, such as roadblocks. Observers have questioned whether these

⁵⁴⁷ Ibid, § 129b.

⁵⁴⁸ Michael Bohlander, *The German Criminal Code: A Modern English Translation*. Bloomsbury Publishing, 2008.

⁵⁴⁹ Katrin Höffler, J Kaspar, Tobias Reinbacher and Andreas Werkmeister, 'Die „Letzte Generation“ als „kriminelle Vereinigung“?' (2025) 37(2) *Neue Kriminalpolitik* 175.

⁵⁵⁰ Ibid.

⁵⁵¹ Amnesty International German Section, *Protect the Protest: Freedom of the Right to Peaceful Assembly under Pressure in Germany* (September 2023).

⁵⁵² Ibid.

⁵⁵³ Ibid.

measures meet legal norms of necessity and proportionality, particularly if less destructive alternatives, such as physically removing demonstrators without inflicting pain, are readily available.⁵⁵⁴ In some cases, the methods utilized resemble degrading or inhuman treatment, which may violate international human rights standards. For example, during the eviction of a climate protest camp in Lützerath in January 2023, numerous reports surfaced of police violence and restrictions on freedom of speech, assembly, and press.⁵⁵⁵ Adding to these concerns is the persistent lack of police accountability: several high-profile cases in Germany, such as the 2017 G20 meeting in Hamburg, have resulted in dozens of investigations into suspected police misconduct, with most of them being dropped without consequence.⁵⁵⁶ The lack of mandated identity badges for police officers in certain federal states, as well as on a national scale, greatly impedes efforts to identify and hold individual policemen accountable.

The scale and intensity of this response drew immediate attention from civil society and legal experts, many of whom viewed the actions as a disproportionate use of state power. Furthermore, the invocation of §129 against climate activists triggered widespread concern among national and international human rights organizations. Amnesty International, Human Rights Watch, and the United Nations Special Rapporteur on Environmental Defenders all issued strong statements condemning the German government's actions. They argued that the prosecution represented a chilling example of state overreach and a potential breach of Germany's obligations under international law, particularly the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters), to which Germany is a signatory.⁵⁵⁷ The Aarhus Convention explicitly protects the rights of environmental defenders and places obligations on states to ensure that environmental activism is not criminalized or suppressed through disproportionate measures.⁵⁵⁸ In May 2024, Human Rights Watch stated that using §129 against the Last Generation "threatens democratic liberties and suppresses lawful dissent": environmental activists in Germany who take peaceful measures such as blocking roads and highways to raise awareness of the climate issue are increasingly facing criminal prosecution.⁵⁵⁹ Many

⁵⁵⁴ Ibid.

⁵⁵⁵ Jannis Grimm, Hannah Franzki and Mariam Salehi, *Neue Radikalität? Protest, Gewalt und ziviler Ungehorsam – Versuche einer Grenzziehung* (2023) 2 Forschungsjournal Soziale Bewegungen 1–6.

⁵⁵⁶ Amnesty International German Section, *Protect the Protest: Freedom of the Right to Peaceful Assembly under Pressure in Germany* (September 2023).

⁵⁵⁷ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus), Aarhus (Denmark), 25 June 1998, entered into force 30 October 2001, 2161, UNTS 447.

⁵⁵⁸ Ibid.

⁵⁵⁹ Human Rights Watch, *World Report 2024: Germany* (Human Rights Watch, March 2024).

campaigners have faced significant charges, including disrupting public order and coercion, which can result in large fines or incarceration. According to Human Rights Watch, criminalizing lawful climate activity risks compromising fundamental rights to free expression and peaceful assembly. The UN Special Rapporteur on Human Rights Defenders and other UN human rights experts subsequently wrote to the German Government, expressing strong concern that “section 129 is primarily used to target organized criminal groups seeking to enrich themselves through illegal acts, or who pose a threat to the public, and underline our fear that in this case it appears to be being misused to sanction acts of civil disobedience” in contravention of human rights.⁵⁶⁰ Critics argue that using §129 in this context risks undermining democratic principles and the right to protest, particularly at a time when climate science indicates that urgent action is necessary. Legal scholars have pointed out that this case could set a dangerous precedent by conflating civil disobedience with organized criminality, thereby normalizing state surveillance and punitive action against movements engaged in legitimate political dissent.⁵⁶¹ There is also concern about the potential “radicalizing” effect such repression can have: repressive legal measures may delegitimize moderate protest and unintentionally strengthen more militant tendencies within climate activism by closing institutional channels for engagement.⁵⁶² Nonetheless, it is important to note that the case remains legally and politically unresolved: as of mid-2025, the formal indictments have yet to be adjudicated in court. Legal experts anticipate that the trials could have far-reaching consequences for both national protest law and the broader trajectory of environmental activism in Germany and beyond.⁵⁶³ Moreover, by the middle of 2023, 500 penalties and 2,000 court cases had been brought against Letzte Generation members.⁵⁶⁴ These sentences represent a major departure from Germany’s previous approach, where climate protest actions were typically met with fines or administrative penalties.

One of the most prominent and controversial cases of state action against climate activists in Germany between 2020 and 2025 is the criminal investigation and prosecution of five members of the climate action group Letzte Generation under §129 StGB - Bildung einer kriminellen Vereinigung (forming a criminal organisation).⁵⁶⁵ On 21 May 2024, the Neuruppin public prosecutor announced that charges had been filed against Mirjam Herrmann, Henning Jeschke, Edmund Schulz, Lukas

⁵⁶⁰ Emiline Smith and Angus Nurse, *Repression over responsibility: sanctioning of environmental activism* (Environmental Research Letters 2025).

⁵⁶¹ Lederer et al (n 95)1-9.

⁵⁶² Höffler, Kaspar, Reinbacher and Werkmeister (n 549).

⁵⁶³ Ibid.

⁵⁶⁴ Lederer et al (n 95) 8.

⁵⁶⁵ Damien Gayle, 'Alarm as German climate activists charged with 'forming a criminal organisation'' (The Guardian, 23 May 2024)

Popp, and Jakob Beyer.⁵⁶⁶ Alongside the allegation of forming a criminal organisation under §129(1) of the German Criminal Code, they were also charged with disrupting public services, coercion, and property damage. These charges arose from a series of high-profile protest actions, including blocking a fuel depot, attempting to shut down oil pipelines by manually turning emergency valves, entering the runways at Berlin-Brandenburg Airport to protest air travel, and throwing food at the glass-protected frame of a painting in the Barbarini Museum.⁵⁶⁷ A further development came on 19 June 2024, when the Flensburg prosecutor's office announced that charges had also been brought against another member, Miriam Meyer. She faced accusations of participating in a criminal organisation, trespass, and property damage. The acts cited in her case included attempts to disable oil pipelines, entering the security areas of Munich, Berlin-Brandenburg, and Sylt airports, spraying private jets with paint, planting trees on a golf course to symbolise environmental loss, and throwing paint-soaked tennis balls at the facade of the Bavarian State Parliament.⁵⁶⁸ Several of these actions were openly conducted as climate protests, and Berlin police stated that some did not create a direct risk to air traffic. Investigations linked to the group remain ongoing in Bavaria but a conviction under §129 carries a potential prison sentence of up to five years, while individuals deemed to support the group could face up to three years.

3.2 European Responses and Case Law on Climate Protest Regulation.

When analysing the state reaction to the rise in environmental protests in recent years, it is also critical to evaluate the transnational response. In recent years, individuals and organizations have increasingly used the European human rights protection framework to address environmental challenges. Council of Europe legal tools, such as the European Convention on Human Rights, the European Social Charter, and the Bern Convention, have been successfully used to improve environmental protection. The European Court of Human Rights has ruled on around 300 environment-related cases, applying human rights principles to issues like pollution, natural disasters, and climate change.⁵⁶⁹ Moreover, in 2024, the Council of Europe adopted Recommendation CM/Rec(2024)6 to support young people and environmental defenders in the context of the climate

⁵⁶⁶ Ibid.

⁵⁶⁷ Mary Lawlor et al, 'Germany: Criminal Proceedings and Investigations against Members of Climate Action Group Letzte Generation (Joint Communication)' (UN Special Rapporteur on Human Rights Defenders, 12 December 2024) <https://srdefenders.org/germany-criminal-proceedings-and-investigations-against-members-of-climate-action-group-letzte-generation-joint-communication/>.

⁵⁶⁸ Ibid.

⁵⁶⁹ Council of Europe, Human Rights and the Environment (Council of Europe, 2024) <https://www.coe.int/en/web/portal/human-rights-environment> accessed 28 July 2025.

crisis.⁵⁷⁰ The Council of Europe's Recommendation CM/Rec(2024)6, adopted in October 2024, is a comprehensive and human-centered policy document that calls on member states to better safeguard and empower young people involved in climate action. Recognizing this generation's grave environmental difficulties, the Recommendation emphasizes the importance of youth, particularly young environmental defenders, in addressing the climate issue.⁵⁷¹ It emphasizes that these people must be able to exercise their basic civil, political, economic, and social rights without fear of criminalization, intimidation, or disproportionate legal penalties. This involves protecting their rights to free expression, assembly, and protest, as well as ensuring that law enforcement and judicial systems respond in a fair, proportional, and respectful manner to the causes that these young people support. Beyond legislative safeguards, the Recommendation urges countries to promote meaningful and inclusive opportunities for youth participation in climate decision-making processes at all levels, including local, national, and international.⁵⁷² Education is a major concern, with the Council of Europe calling for the incorporation of climate literacy into both formal and informal educational systems. The Recommendation encourages the development of curricula and youth work practices that build green skills, support global citizenship, and prepare young people for roles in sustainable economies. It also recognizes the value of activism itself, proposing that skills gained through climate advocacy should be socially and professionally recognized.⁵⁷³ Finally, the Recommendation highlights the need for intergenerational justice and climate fairness: it portrays the climate crisis not only as an environmental or political problem, but also as a human rights issue that disproportionately affects the most vulnerable.⁵⁷⁴ The Council encourages nations to incorporate values of fairness, inclusivity, and long-term sustainability into all aspects of policymaking, stating that defending the rights of young people today is crucial for the well-being of future generations.⁵⁷⁵

Furthermore, international human rights organizations have taken note of the growing alarm about Europe's limited protest space. Both the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) have emphasized the importance of protecting the right to peaceful assembly, especially in light of

⁵⁷⁰ Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2024)6 of the Committee of Ministers to member States on young people and climate action (26 June 2024).

⁵⁷¹ *Ibid.*

⁵⁷² *Ibid.* 4.

⁵⁷³ *Ibid.*

⁵⁷⁴ *Ibid.* 7.

⁵⁷⁵ *Ibid.*

legislative and policing trends that disproportionately restrict climate-related protest.⁵⁷⁶ These institutions have highlighted the importance of maintaining public order while adhering to democratic ideals and the principles of proportionality and necessity and it contends that many European governments have responded not with policy changes, but with more punitive legislation and enforcement.⁵⁷⁷ Activists who engage in symbolic and peaceful disruption, such as occupying streets or buildings, chaining themselves to infrastructure, or removing official pictures, are frequently charged with "unlawful assembly," "coercion," or even under anti-terror laws.⁵⁷⁸ These judicial actions are frequently combined with administrative tools such as injunctions or preventive detention, which are intended to deter rather than proportionally sanction. At the same time, Human Rights Watch has expressed serious concerns about a growing trend in Europe and around the world to silence and prosecute climate activists rather than addressing the underlying causes of the climate catastrophe.⁵⁷⁹ As governments fail to meet their obligations under the Paris Agreement, break electoral promises, and ignore scientific warnings and court rulings, many citizens, particularly young people, are resorting to civil disobedience as a last resort to draw attention to the climate crisis and pressure policymakers to act. Rather than responding to this request with serious climate legislation, numerous European governments have chosen repression, as previously observed in the cases of Germany, Italy, and the United Kingdom.⁵⁸⁰ Although some of these measures were subsequently overturned or limited by judicial intervention, they nonetheless reflect a broader trend of securitization and repression targeting environmental advocacy across Europe. Human Rights Watch highlights that these measures are against international human rights standards that protect the rights to peaceful assembly, speech, and association; while disruptive actions such as traffic blockades may cause discomfort, they are not considered violence under international law and must not be responded with disproportionate force or punishment.⁵⁸¹ The organization cautions that these authoritarian approaches, smear campaigns, heavy police, legal harassment, and even arrests of journalists covering protests, pose a direct threat not only to environmental activists, but also to civil society and democracy in general. The organization emphasizes that repressive actions are frequently motivated by short-term political benefits and the power of fossil fuel companies. However, civil society

⁵⁷⁶ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly (3rd edn, edited version, CDL-AD(2019)017rev, 15 July 2020).

⁵⁷⁷ Ibid para 29.

⁵⁷⁸ Ibid para 152.

⁵⁷⁹ Human Rights Watch, Environment Defenders Face New Wave of Oppression (Commentary, 29 April 2024)

<https://www.hrw.org/news/2024/04/29/environment-defenders-face-new-wave-oppression> accessed 28 July 2025.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid.

involvement is critical to climate progress: activists raise public awareness, change policy, and hold governments accountable through campaigning, legal challenges, and peaceful action. Human Rights Watch urges governments to repeal laws that obstruct and criminalize peaceful environmental activism, and to redirect their efforts toward effective climate action.⁵⁸² Furthermore, during the General Assembly debate, several representatives referenced the recent global climate protests as a significant demonstration of widespread public concern, especially among young people, about the urgent threat posed by climate change.⁵⁸³ These protests were described as a powerful reminder that the international community must step up its efforts to address environmental challenges.⁵⁸⁴ Delegates stressed that the youth-led movements highlight the need for stronger political will and immediate, concrete action to reduce greenhouse gas emissions and protect vulnerable ecosystems. The discussions connected the urgency of climate action on Earth with the broader theme of sustainable development, emphasizing that environmental degradation affects not only life on the planet but also the peaceful and responsible use of outer space.⁵⁸⁵ Speakers called for enhanced global cooperation to meet climate goals and integrate sustainability into all aspects of policy, underscoring the role of multilateral institutions in supporting these efforts. The climate protests were therefore framed as both a moral and practical catalyst pushing nations toward greater accountability and collaboration in safeguarding the environment for current and future generations.⁵⁸⁶

Given the contemporary nature of the topic explored in this thesis, many relevant cases are still pending before international courts, particularly the European Court of Human Rights. The evolving legal landscape reflects not only the urgency of climate-related activism but also the growing tension between environmental civil disobedience and state responses grounded in public order and national security. Although definitive rulings are still awaited in many of these cases, it is already possible to identify a consistent trend in the legal arguments raised and the human rights principles invoked. One illustrative example is the case of *Lausanne Action Climat v. Switzerland*, where climate activists were convicted of trespassing after staging a protest in a bank branch to denounce fossil fuel investments.⁵⁸⁷ The applicants have brought the case before the ECtHR, claiming a violation of their

⁵⁸² Ibid.

⁵⁸³ UN, “Human Rights Defenders Face Jail, Retaliation for Engagement with ...” (Press Release, 2021) <https://press.un.org/en/2021/gashc4324.doc.htm> accessed 28 July 2025.

⁵⁸⁴ Benjamin Damoah, Sagini Keengwe, Samuel Owusu, Clement Yeboah and Francis Kekessie, *The global climate and environmental protest: student environmental activism a transformative defiance* (2023) 4(4) *International Journal of Environmental, Sustainability, and Social Science* 1180–1189.

⁵⁸⁵ Ibid 1189- 1192.

⁵⁸⁶ Ibid.

⁵⁸⁷ Paolo Mazzotti, *The Necessity Defence in (the Swiss) Climate Protest Cases: Democratic Contestation in the Age of Climate Activism* (2023) 29(3–6) *European Law Journal* 398.

rights to freedom of expression and assembly under Articles 10 and 11 of the European Convention on Human Rights.⁵⁸⁸ While the Court has not yet held a public hearing, the case highlights the increasing recourse to Strasbourg by climate defenders seeking protection for non-violent acts of protest. At the same time, the ECHR did not rule out activist groupings appealing for climate change, such as Verein KlimaSeniorinnen Schweiz, which it accepted as having standing despite the fact that none of its individual members met the victim-status criterion.⁵⁸⁹ The Court ruled that Switzerland violated Article 8 by failing to create and implement a clear, time-bound framework for reducing greenhouse gas emissions and protecting individuals from the serious health and environmental consequences of climate change. The group was denied substantive judicial review, highlighting the importance of civil society in holding governments accountable on climate policy.⁵⁹⁰ Another noteworthy pending litigation is the case *Friends of the Earth v. United Kingdom* (2024), a landmark collective application challenging the use of preventive civil injunctions against "persons unknown."⁵⁹¹ These legal instruments have been widely employed in the UK against groups such as Just Stop Oil, effectively criminalising future protest activity in a sweeping and pre-emptive manner. This case is significant not only because it involves a prominent environmental NGO rather than individual activists, but also because it raises structural questions about the compatibility of preventive injunctions with fundamental rights under the Convention. Friends of the Earth has filed a case with the European Court of Human Rights challenging the UK's growing use of anti-protest injunctions, which it argues suppress lawful environmental demonstrations and violate rights under Articles 6, 10, and 11 of the Convention. The organization contends that such measures effectively allow private companies and public authorities to create their own public order restrictions, bypassing traditional criminal law safeguards. It highlights that these injunctions are frequently obtained without notice, are costly to contest, and impose harsher consequences than comparable criminal offenses, creating a chilling effect on protest. This application marks the first time such orders in the UK have been brought before the ECHR, reflecting wider concerns about the increasing criminalisation of peaceful protest.

To conclude, this analysis will examine one of the few supranational cases involving Extinction Rebellion, which can be found in *Ludes and Others v. France*, arising from a series of coordinated

⁵⁸⁸ Emma Farge, *Activists Take Credit Suisse Climate Case to Europe Human Rights Court* (Reuters, 5 November 2021).

⁵⁸⁹ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [GC] 53600/20 (Grand Chamber) Judgment 9 April 2024.

⁵⁹⁰ *Ibid* para 6-1.

⁵⁹¹ Friends of the Earth, 'Legal Challenge Against Anti-Protest Injunctions Goes to Human Rights Court' (Friends of the Earth UK, 20 June 2024).

environmental protests across France beginning in 2019.⁵⁹² It concerns the criminal conviction of environmental activists for collective theft after they removed portraits of the French President from several town halls as part of the nationwide “Décrochons Macron” campaign, which denounced the State’s inadequate response to climate change.⁵⁹³ Beginning in early 2019 under the aegis of the citizen movement ANV-COP21, the activists carried out non-violent “temporary requisitions” of the portraits, publicly documenting their actions with photographs, videos, and tracts to symbolize the political void left by the government’s inaction; they openly refused to return the portraits until meaningful climate measures were taken, and were subsequently prosecuted for collective theft.⁵⁹⁴ The European Court of Human Rights examined three joined applications arising from similar actions in Lingolsheim, Paris, and La-Roche-de-Glun. In each case, national courts initially issued differing judgments, with some first-instance courts acquitting the activists on the grounds that their actions were political expression causing negligible harm, while the appellate courts reversed these decisions, emphasizing the refusal to return the portraits and the collective nature of the theft.⁵⁹⁵ Ultimately, the Court of Cassation upheld the convictions, reasoning that even if the activists’ motives were political, the symbolic value of the presidential portrait and the deliberate non-restitution justified criminal liability and suspended fines ranging from €200 to €500 were imposed.⁵⁹⁶ Before the Strasbourg Court, the applicants argued that their convictions violated their freedom of expression under Article 10 of the Convention. The Court accepted that the removal of the portraits constituted a form of political expression on a matter of general interest, namely, the fight against climate change, and that the criminal convictions were an interference with this right; it further acknowledged that the interference was prescribed by law and pursued the legitimate aim of maintaining public order and preventing crime.⁵⁹⁷ Assessing whether it was “necessary in a democratic society,” the Court noted that the activists had deliberately committed a minor offense to draw attention to climate inaction, that the acts were entirely non-violent and widely publicized as part of a political campaign, and that national courts had ultimately imposed very moderate sanctions, taking into account the absence of personal gain and the symbolic dimension of the acts.⁵⁹⁸ The Court considered that the French authorities had remained within their margin of appreciation and that the suspended fines did not amount to a disproportionate restriction on freedom of expression.⁵⁹⁹ By five votes to two, it therefore

⁵⁹² *Ludes and Others v France App nos 40899/22, 41621/22 and 42956/22* (ECtHR, 3 July 2025).

⁵⁹³ *Ibid* para 5.

⁵⁹⁴ *Ibid* para 6.

⁵⁹⁵ *Ibid* paras 11-36.

⁵⁹⁶ *Ibid* paras 23-26.

⁵⁹⁷ *Ibid* paras 111-113.

⁵⁹⁸ *Ibid* para 116.

⁵⁹⁹ *Ibid* para 120.

concluded that there had been no violation of Article 10. In their dissent, Judges Zünd and Šimáčková took the opposite view. They regarded the actions as a form of political performance with strong ironic and symbolic overtones, rather than a conventional theft; in their eyes, the activists caused no material harm, attacked no protected symbol, and posed no threat to public order.⁶⁰⁰ They stressed that criminal sanctions, even moderate and suspended, carry a chilling effect on civil disobedience and should be used only as a last resort in a democratic society, particularly when dealing with environmental activists acting as watchdogs of public debate. In their opinion, the minimal State interest in sanctioning such conduct was outweighed by the profound societal interest in protecting non-violent climate protest, and the convictions therefore breached Article 10.⁶⁰¹

3.3 The Pursuit of Proportionality in Regulating Public Demonstrations.

As noted at the outset of this chapter, Europe has witnessed an unprecedented surge in climate protest since late 2018, an evolution rather than a mere continuation of past mobilizations, characterized by massive, cross-border coordination, a flood of first-time participants demanding that governments “listen to the science,” and a blend of novel tactics and traditional civil-disobedience that together mark this wave as distinctly transnational. Recent climate demonstrations across Europe have gone beyond national borders, creating a truly pan-European movement that sees the whole continent as its platform for peaceful, collective dissent. Whether through livestreamed road blockades or synchronized “die-ins” in capital cities, activists have mastered what Sidney Tarrow calls “global framing,” casting their grievances in universal terms at European forums from COP summits to the European Ombudsman’s office.⁶⁰² They no longer bypass domestic channels in favor of distant UN bodies but instead press their case at every level of European governance, petitioning the Committee of the Regions or invoking infringement procedures under the Charter of Fundamental Rights. Fridays for Future and Extinction Rebellion have perfected the art of “scale shifts,” transforming a lone school strike in one city into coordinated mobilizations in scores of others, compelling both national parliaments and Brussels bureaucracies to take notice.⁶⁰³ In this tightly woven network, transnational solidarity fuels tactical diffusion, while European institutions serve not merely as adversaries but as opportunity structures to amplify local claims. What once seemed like a series of unconnected protests has grown into a continuous cycle: demonstrations in one country

⁶⁰⁰ Ibid paras 139-146.

⁶⁰¹ Ibid para 147.

⁶⁰² Tarrow (n 133) 59-68.

⁶⁰³ Ibid 120-124.

inspire new tactics across Europe, which then feed back into local debates about how far peaceful dissent can lawfully go.

European States have reacted to the surge in climate activism with a resolute and decisive response, often recasting peaceful protest as a matter of public order and national security. As analysed throughout the chapter, many of the constraints implemented, including Italy's recent "Decreto Sicurezza," reinstated hefty prison terms for obstructing roads and trains, while enlarging urban exclusion zones to keep demonstrators off city streets. In the United Kingdom, legislators empowered the police under the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023 to impose stricter conditions on gatherings, criminalizing tactics like "locking on" and authorizing suspicion-less stop-and-searches. Germany has gone a step further by branding Letzte Generation a "criminal organization" under anti-mafia statutes, triggering mass raids, account freezes, and intrusive surveillance normally reserved for terrorists. Police forces across Europe have displayed growing readiness to use pain-compliant tactics and mass arrests, even against non-violent blockades. At the same time the European Supranational Bodies, in particular the Council of Europe and the European Court of Human Rights, have developed legal instruments, recommendations and case law under Articles 10 and 11 of the Convention to protect non-violent environmental dissent and ensure that any restrictions are necessary and proportionate. International institutions, from the Venice Commission to Human Rights Watch, warn that these trends risk chilling free expression and assembly. Surveillance powers have been vastly expanded, with undercover officers and wiretaps now a commonplace feature of climate protests and even symbolic gestures, gluing oneself to artwork or lying in the road, could prompt criminal investigations and asset freezes. Rather than addressing climate grievances, states have doubled down on repression, treating any disruption as a threat to social order.

Despite the urgency of the climate crisis and the passion driving many protesters to act outside legislative channels, it is fundamental to guard against the temptation to cast all dissent as a security threat. John Rawls reminds us in *A Theory of Justice* that civil disobedience occupies a very particular moral and political space, a space defined by restraint, respect for the rule of law, and a conscientious appeal to the community's sense of justice rather than its fears.⁶⁰⁴ This concept is especially evident in the field of climate activism, where many protesters employ symbolic and nonviolent techniques to raise public awareness about what they see as serious environmental injustices. For Rawls, an act of disobedience earns its legitimacy only if it addresses a clear and grave injustice, if it follows a

⁶⁰⁴ Otfried Höffe (ed), *John Rawls: A Theory of Justice* (Brill 2013) 127–139.

sincere effort to work within the system first, and if it stops well short of imperilling the constitutional framework that undergirds our shared liberties.⁶⁰⁵ When protesters willingly accept the legal penalties for their actions, they demonstrate not contempt for law itself but devotion to higher principles that the law purports to serve. In this light, heavy-handed repression of non-violent dissent not only risks disproportionate punishment but undermines the very dialogue through which democracies renew themselves. Rawls warns that civil disobedience is meant to awaken reasoned deliberation among citizens and legislators alike; it is never intended to fracture social solidarity or to project protesters as enemies of the state.⁶⁰⁶ Moreover, indiscriminate injunctions, expanded police powers, and broad new public-order crimes tend to cast a chilling shadow over legitimate political engagement, deterring future generations from ever daring to challenge unjust laws or policies. Rawls's insistence on limited, symbolic acts acknowledges that the true health of a democratic society lies in its capacity to hear, even to tolerate, voices that disapprove of its prevailing course.⁶⁰⁷ When the state responds to peaceful disruption with the language of counterterrorism or criminal conspiracy, it forfeits the opportunity to transform dissent into constructive reform. In the end, the delicate balance between citizens who are willing to break minor laws in the name of fundamental rights and a state capable of responding with dialogue rather than repression is what preserves the moral legitimacy of both sides. At the same time, Habermas reminds us that acts of conscience lose their democratic function if they are reduced to ordinary crimes or, conversely, stripped of risk through blanket legalization; either extreme erodes the moral weight that gives civil disobedience its power.⁶⁰⁸ These actions are not peripheral disturbances but core expressions of a society's moral pulse, a living barometer of democratic vitality. Moreover, when analysing concepts such as conflict, it is fundamental to consider conflict not as something that can be fully resolved, but as an ongoing process that continually generates new tensions and opportunities for renegotiation. Collective conflict, in particular, does not merely reflect pre-existing interests; it plays an active role in shaping social identities and group formations, granting them both visibility and political significance.⁶⁰⁹ While the capital–labour divide has historically provided a central framework for interpreting these dynamics, the transformations of contemporary societies have introduced new and more complex lines of division.⁶¹⁰ This analysis resonates even more forcefully in the context of environmental protest, where disobedience is not driven by private

⁶⁰⁵ Habermas (n 68) 95-100.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid.

⁶⁰⁸ Ibid 100-110.

⁶⁰⁹ Angelo Junior Golia, *Conflitto collettivo e corti nell'evoluzione dell'ordinamento italiano*. La giustizia costituzionale dello sciopero (2025) 15–30.

⁶¹⁰ Ibid.

gain but by a collective moral claim: the duty to protect the planet for present and future generations. Opposition must address not only unjust laws but also the interconnected political, economic, and technological systems that drive environmental harm, as isolated reforms are insufficient to prevent ongoing damage. To maintain this legitimacy, states should adopt responses rooted in genuine proportionality, privileging dialogue and openness over repression, especially when the voices they confront are those sounding the alarm for our shared environmental future.

Conclusion

The emergence of transnational climate movements and their adoption of radical forms of protest have profoundly transformed the way societies and institutions engage with modern climate activism. Consequently, a diversity of governmental responses has been observed, shaped by a variety of factors including differing political cultures and legal traditions, as well as historical perspectives on freedom of expression and assembly. This thesis aimed at examining recent developments in the regulation of environmental protest, focusing on how selected European states responded to the emerging wave of environmental activism. The study has focused on Italy, the United Kingdom, and Germany not only because they have extensive constitutional traditions on the regulation of fundamental rights, but also because they represent (some of) the most reactive states to new forms of activism regarding climate. In fact, they were among the first European states to adopt specific legal provisions regulating and constraining this phenomenon, or to take advantage of existing statutory provisions to respond to it. Furthermore, while an analysis of the states and their evolutions in the field of rights was conducted, this thesis also sought to provide a supranational perspective. This proved to be a fundamental and unavoidable step, since supranational courts perform a dual function: they both harmonize human-rights standards across jurisdictions and act as a corrective check on national measures that may unduly restrict fundamental freedoms. Two doctrinal instruments of the European Court of Human Rights are of pertinence in this regard. The first of these is the living instrument doctrine, which demands that the Convention be interpreted dynamically and considering shifting social, political and environmental realities. This approach enables the Court to recognize new forms of group mobilization as protected democratic expression and to consequently see how and if the courts have evolved during time. The second is the margin of appreciation, which endows domestic authorities with a degree of discretion to adapt and implement Convention principles in ways that reflect national legal traditions, institutional arrangements and social norms. When considered collectively, these doctrines elucidate a salient ambivalence: the supranational framework asserts the imperative for rights-protective principles and proportionality yet concurrently authorizes adapted national responses.

This study has demonstrated that this emerging trend of protest has unquestionably provoked robust reactions from governments. These responses have frequently taken the form of a tightening and reinforcement of legal and policing frameworks, indicating a broader tendency toward a precautionary and defensive regulatory approach, rather than one oriented to openness or participatory engagement. While this phenomenon can be witnessed throughout the Western world,

it is most vivid in Italy, the United Kingdom, and Germany where each government has responded with specific policies. As discussed in this thesis, following recent legal reforms in Italy, the state's relationship with protest has shifted, and there has been a more robust response from the state apparatus. The increase in the state's criminal liability for protest can be traced back not only to the Decreto Sicurezza 2025, but also to the continuous promulgation of decree laws on security-related matters over the past decade. Roadblocks have been recriminalized, penalties for occupations have been increased, and the urban DASPO has been extended to allow prolonged exclusions from public space. Moreover, new offenses have been introduced, including the possession of materials deemed useful for terrorism, while penalties for property damage during demonstrations, often symbolic, have been increased. It is noteworthy that an additional aggravating factor has been introduced in cases involving defacement, particularly with respect to actions that are suspected of undermining the "honor" or "prestige" of institutions. Collectively, these measures serve to mitigate the scope of disruptive yet non-violent protest, primarily conceptualising such actions as matters for regulation under criminal law and public-order provisions, consequently diminishing their recognition as forms of political expression.

A similar trend has been observed in the United Kingdom, though with a different focus and divergent targets. The Police, Crime, Sentencing and Courts Act (2022) and the Public Order Act (2023) have increased the discretion available to the police and authorities. The Police, Crime, Sentencing and Courts Act 2022 further expanded the police's powers to impose restrictions on various forms of public protest, including marches, assemblies, and even single-person protests. In addition, the Act established more stringent offences and penalties for disruption, such as blocking roads or causing excessive noise. Building on this legislative foundation, the Public Order Act 2023 introduced a series of new criminal offences directed at protest tactics including "locking on", tunnelling, and obstructing key infrastructural elements. The Act also reinforced the powers of law enforcement officials to conduct stop-and-search operations, including those conducted without prior reasonable suspicion. The result is a protest environment in which the threshold for criminality has been lowered dramatically, and arrest rates for environmental activists are estimated to be three times the global average.⁶¹¹

In contrast to the other two, Germany, has not established new regulations especially targeting climate protests but has taken a different approach: a tougher and more extensive interpretation of existing frameworks. Some Länder, such as Bavaria and North Rhine-Westphalia, have enacted

⁶¹¹ Gayle (n 470).

assembly laws that have excessive administrative burdens, and immense powers for police. The Bavarian government's determination to identify Letzte Generation as a "criminal organization" broadly under §129 of the German Penal Code was an important shift. Reserved for organized crime networks or terrorist cells, §129 was used to validate raids, asset freezes, surveillance, and a temporary removal of an activist website. Activists have been wiretapped and pre-emptively detained, officially signifying a notable departure from former practice of fines or administratively imposed penalties. The tendency of non-violent climate activists to be described in terms analogous to organized criminals indicates an escalating degree of scrutiny by state authorities concerning the strategies and methodologies employed by these groups.

The European Union Framework offers itself as a forum for dialogue in a context where conflict around environmental protest has become heavily polarized. Furthermore, the supranational case laws discussed in this study demonstrate both an historical and contemporary jurisprudential direction which is embedded into the protection of fundamental rights, framed as constitutive or essential of democratic life. In addition, the Court exemplifies its consistency with the notion of the Convention as a 'living constitution' in the recent ruling of *Verein KlimaSeniorinnen Schweiz v. Switzerland*, in which the Court expressly recognized not only the urgency of protecting the environment, but also the standing and legitimacy of collective actors who act for this purpose. However, while recognizing that certain level of disruptive protest can be an appropriate response to the injustices threatening the environment, and sensitive to the necessary deliberative aspect of protests, the Court does not forsake the principles of proportionality and balance. In *Ludes and Others v. France*, the Court endorsed national authorities imposing proportionate sanctions within a margin of appreciation whilst reconfirming that the protection of freedom-of-expression is related to public order and crime-preventing considerations.

Jointly considered, the aforementioned developments raise questions about the proportionality of recent legislative measures and their impact on democratic freedoms. International human rights bodies have been forthright in their warnings. The UN High Commissioner for Human Rights, the Special Rapporteur on Environmental Defenders, Amnesty International, Human Rights Watch, and the Venice Commission have all cautioned that these laws risk eroding the right to protest at its core. The European Court of Human Rights has long insisted that restrictions on assembly must be "necessary in a democratic society" and that the burden is on states to exhaust less intrusive means before criminalization is justified.⁶¹² Overall, the trend emerging across Europe appears to be an

⁶¹² ECtHR, Guide on Article 11 (28 February 2025) para 209.

inclination to address these challenges through the introduction of new regulatory measures that impose penalties once protests occur, rather than through structured dialogue or engagement with the concerns of activists. Forms of protest that have long been recognized as part of democratic practices such as symbolic damage to property, roadblocks, or loud demonstrations, are now increasingly categorized as serious offenses, in some cases comparable to terrorism or organized crime. This shift highlights important implications and considerations. Scholars from Rawls to Habermas have emphasized that civil disobedience should be understood not as a threat to democracy, but as a means of testing and renewing it, a form of political expression that appeals to a community's sense of justice when institutions fall short. Responding to such acts with extensive surveillance, sweeping injunctions, or heavy prison sentences risks not simply containing protest, but weakening the very democratic framework it is meant to protect. The use of vague legal terms such as "serious disruption," "decorum," or "prestige" compounds these risks. Ambiguity in legislation opens the door to arbitrary enforcement and creates uncertainty for activists about what kinds of actions remain permissible. The result is a strong deterrent effect: harsher penalties, broader surveillance powers, and pre-emptive restrictions discourage not only disruptive actions but also more moderate and lawful forms of protest. This dynamic is particularly significant for younger generations, for whom such measures may reduce the available democratic avenues of participation. Paradoxically, attempts to stifle disruptive protest may in fact foster more radical responses by making moderate activism appear ineffective.

However, it is important to recognize that the methods of activism that some environmental groups use, without an aim toward violence, can create serious disruptions and even real disorder for ordinary people. Roadblocks, occupations of public venues or sites of industrial activity, and symbolic incidents of property damage are intended to dramatize inaction at the level of government, but those forms of activism can also disrupt lives, degrade vital services, and create costs. Attention-grabbing incidents, such as the shutting down of the Queen Elizabeth II bridge in the UK or daily invading-access blockage of motorways, not only created enormous delays and financial losses, which have multiple layers of impact directly on commerce and indirectly on people trying to get to medical appointments, funerals, or work. Although these effects were strategically designed to shock the public into recognition, they threaten to diminish sympathy for the larger environmental cause. This (un)balance is evident in the case of Extinction Rebellion, where the tactic of mass civil disobedience via street theatre and forms of urban disruption has been key to its public visibility, but has also prompted public backlash. Moreover, Extinction Rebellion has publicly situated itself in opposition to recognized forms of climate governance, and while it has succeeded in raising the issue of

ecological urgency onto the public agenda, its oppositional approaches to institutional processes, and reluctance to engage productively with them, put it in a place where it cannot utilize public pressure to move more fluidly to policy. This reflects a paradox of contemporary climate activism: tactics that garner attention and dramatize crisis and urgency, can cause one's movement to lose legitimacy among the very public and public institutions from whom cooperation is necessary for changing the scope of action on climate and environmental sustainability in the world.

It is essential to address this issue without depicting either states or activists as clear enemies and victims. Governments face the challenging task of harmonizing many commitments, including maintaining public order, ensuring economic continuity, and assuring the smooth running of critical services. The legislative reforms and policing tactics used in the UK, Italy, and Germany demonstrate an attempt to manage these tensions within national legal systems. However, activists frequently see these responses as excessive, and as representative of systemic inaction, over and above representative of the urgent pressures of the climate crisis. The relationship between state, regulation and protest, is a process of ongoing and unsettled negotiation that involves a moving threshold of balance and interaction between democratic norms, public accountability and requisite civic dissent. In conclusion, the trajectories observed in Italy, the UK and Germany should not be regarded as immutable and neither nor as the definitive equilibrium between the public interests/goods/values and the fundamental rights examined in this study. Rather, it's result of political choice, through how laws are written, the culture of policing, and a broader narrative to order/security. In this dynamic, the necessity for states to uphold proportionality and equilibrium in their responses to dissent arises, ensuring that measures implemented to preserve public order do not impose excessive restrictions on fundamental rights. This also endeavour further necessitates dialogue and collaboration between institutions and activists, thereby establishing a shared platform for addressing ecological concerns and democratic commitments collectively. Only then can states begin to make environmental protection and democratic participation mutually reinforcing, rather than mutually undermining.

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