

The Criminalisation of Social Protest in the Republic of Ireland: The Movement against Economic Austerity and Water Privatization

The Jobstown Aftermath and the ECHR

By [John O Shea](#)

Global Research, February 27, 2015

[Human Rights Ireland](#) 16 February 2015

Region: [Europe](#)

Theme: [Police State & Civil Rights](#)

The anti austerity and anti water privatisation movements in the Republic of Ireland gathered momentum towards the end of 2014, culminating in large scale protests in the capital and many towns and cities around the country. The state owned television and radio broadcaster continuously downplayed the strength of the protests, and provided a negative portrayal of protesters on daily and evening news ([see here](#)). Persistently focusing on incidental negative elements of this grass roots social movement. The Tanaiste, Ms. Joan Burton (Irish Deputy Prime Minister and member of the Irish Labour Party) met face to face with a minor demonstration at Jobstown, Dublin on November 15th 2014. Ms. Burton was initially struck with a water balloon as she entered the reception at An Cosan (Higher Education Centre. ([see here](#).) Afterwards, she became delayed in a parked car for more than 2 hours while attempting to leave the engagement, due mainly to a peaceful sit-in on the public road. She eventually left the scene after Gardai (police) reinforcements arrived.

The Aftermath

The Irish state responded to these events, three months later, beginning on Feb 9th 2015. Mr. Paul Murphy (Anti Austerity Alliance and elected representative to Dail Eireann) and councillors Mr. Kieran Mahon and Mr. Mick Murphy (both Anti Austerity Alliance) were the first three among twenty peaceful protesters arrested during a week long Garda action. Mr. Paul Murphy was brought to Terenure Garda station for the alleged 'false imprisonment' of Ms. Joan Burton in her car during the Jobstown demonstration ([see here](#).) Although he and the others engaged with the Police at some level, following legal advice he refused to answer questions about the Jobstown demonstration ([see here](#).) None of the twenty arrested were formally charged. These very public arrests occur two weeks before planned protests at the Annual Labour Party Conference in Killarney on February 28th 2015. In light of the events at Jobstown, this post examines the right to social protest and state obligations under the European Convention on Human Rights.

Civil Society and Democracy

The collective longing of a society, vocally expressed and manifested through association and peaceful assembly, is a fundamental cornerstone of democracy ([see UN High Commission report here](#).) Indeed, it forms part of the necessary ambit for progress and individual fulfilment, acting as a counterweight to both an authoritarian government and the

tyrannical market. Voluntary organisations forged in the community, and created to defend or advance the causes they believe in, are imperative to the realisation of the 'good society' ([see here](#).) This requires protection against arbitrary interference by the State.

Social Protest and the ECHR

The jurisprudence of the European Court of Human Rights has strongly favoured the right to freedom of expression and freedom of assembly on the 'public highway' against restrictions to the right by state authorities' ([see *Rassemblement Jurassien v Switz* here](#).) Thus, the unnecessary dispersal of demonstrations, the banning of marches, and according to Keir Starmer QC, the 'instigation of criminal proceedings' specifically against individuals in the aftermath of an assembly – all fall under the rubric of articles 10, and 11 of the European Convention on Human Rights.

The European Court recognises that the 'threat of arrest has a chilling effect' on the exercise of freedom of expression ([see *Steel and Others v UK* , para 99](#).) Significantly, the Court has categorically stated that punitive measures, regardless of how minimal, even those categorised as implying 'mainly moral force' are interferences with Convention rights. In the case of [Ezelin v France](#), a lawyer took part in a demonstration and was reprimanded by the French Bar Council, for not answering police questions, and for not disassociating from an element of the protest which abused the police and wrote graffiti on public buildings. The penalty was minor but had 'moral force.' The Court held that this sanction was not necessary in a democratic society, and contravened article 11 ([see para 53](#).) If these actions are taken in the aftermath of an assembly, such actions are considered as 'equal an interference as the physical removal of the applicants at the time' (*see Keir Starmer, p 630*.) Thus, the actions of state authorities 'must not discourage individuals, for fear of disciplinary sanctions, from making clear their beliefs.' ([see *Ezelin v France*, para 52](#).)

Spontaneous Demonstrations

Of course, a demonstration may 'annoy' or 'give offence to persons opposed' to that which is expressed during an assembly, ([see *Plattform Artze fur das leben v Austria*, note 23](#)), and minor disturbances are to be expected in public gatherings. In the case of [Bukta v Hungary](#) a minor detonation, during a spontaneous demonstration outside a venue where the Prime Minister was in attendance, did not convince the Court that there was a danger to public order, sufficient to warrant dispersal of the assembly. The court stressed that 'public authorities must show a certain degree of tolerance at public gatherings' ([see para 31](#).) With regards to the dispersal of an assembly by state authorities, including spontaneous demonstrations without a license – if a license is required by national law – the Court will support peaceful demonstration ([see *G V FRG*](#).) This means that peaceful intent by the organisers is sufficient. If an element of disorder materialises during an otherwise peaceful protest, as quiet often it does, the Court will balance the danger to public order, against the right to freedom of assembly. In doing so, the Court will assess not just the facts of the case at national level but the entire political backdrop in the state at that time. The UN Special Rapporteur, on the rights to freedom of peaceful assembly and association, pointed out that States 'should recognise the positive role of peaceful protests as a means of strengthening human rights and democracy' ([see UN High Commissioner Report](#).)

Blockades and Occupation

In [Steel and others v UK](#) the Court stipulated that expression may take the form of 'physically impeding the activities' of which the protesters disapprove. This constituted expressions of opinion within the meaning of article 10. It appears a certain amount of impediment will be protected, however if those protesting create a danger of serious physical injury to themselves and others, arrest most likely will be deemed a proportionate restriction of the right. The peaceful occupation of a building, even if clearly against domestic law, may also be regarded as peaceful assembly in certain cases ([see Cisse v France](#).) In this case the church did not make a complaint to the authorities about their occupiers.

In the case of [G v FRG](#), the Commission held that the conviction of a protester engaged in a spontaneous peaceful sit in, blocking the entrance to an American Barracks in Germany, was a violation of his right to peaceful assembly. His conviction 'needed to be justified as a restriction prescribed by law, and necessary in a democratic society for one of the purposes set out in Article 11 para. 2 of the Convention.' At the 14 year long Corrib Gas Dispute in County Mayo, Ireland, numerous incidents of police brutality have been documented ([see here](#).) Strategies in Rosspoint circa 2011, appear to include the continuous arrest of protesters outside Shell gates, then later released without charge. Thus the protesters were denied their right to freedom of assembly on the public highway or their right to a public hearing. Interestingly, it is reported in the Guardian Newspaper that Shell provided consignments of alcohol worth €35,000 to the Belmullet Garda station at Christmas 2007 ([see here](#).) The actions of the police in Rosspoint often appear to be in direct conflict with the State's positive obligation to enable lawful demonstrations to proceed peacefully.

Restrictions on the Right to Freedom of Assembly.

Restrictions and penalties must be prescribed by law, have a legitimate aim and be necessary in a democratic society. The term necessary implies the existence of a 'pressing social need' ([see Barthold v Germany, para 55](#).) The term 'pressing social need' must include the 'clear and present danger test' in light of the particular circumstances of the case ([see Arrowsmith v UK, para 95](#).) The contracting states have a margin of appreciation in assessing whether such a need exists but this goes hand in hand with European Supervision ([see Lingens v Austria, para 39](#).) Restricting rights to freedom of expression and freedom of assembly because of legislation 'which has just been contravened - does not constitute a legitimate aim within the meaning of article 11(2)' ([see Cisse v France, para 50](#))

Is breaking the law justified in certain circumstances?

The general aim of social protest and civil disobedience is to express ones political and social thoughts and opinions and effect positive change in our society. These rights, quiet simply must be protected by the state. There are occasions when breaking the law may be the only method available to the protester to adequately express his or her conscience. This issue arose in the Australian case of New South Wales District Court, *Regina v Kirkwood et al* 15th May 2002 (unpub), ([cited here](#).) In this case, 46 Greenpeace activists had deliberately broken the law, by invading a nuclear power plant, with the intention of highlighting the inadequate security at the plant. It was accepted by the presiding judge, that the objectives and motives of the protesters could not be achieved by demonstrating at the front gate. Their actions were necessary to demonstrate in graphic terms the woeful security at the plant, despite committing the crime of trespass. Thus, in the arena of civil disobedience, the end may in certain circumstances, legally justify the means.

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [John O Shea](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca