Report by the Legal Expert Group (LEG) on the right to demonstrate at universities

Introduction

Following the occupation of the University College Maastricht (UCM) building on Zwingelput by protestors and the subsequent eviction by the police on Tuesday, 10 June 2025, a group of concerned staff members from the Faculty of Law published a statement on the actions of the Executive Board (CvB). In response to that statement and after a series of meetings between representatives of the Executive Board and representatives of the signatories to the statement, it was agreed that a group of legal experts from the Faculty of Law would provide advice on the exercise of the right to demonstrate at Maastricht University (UM). The initiative was coordinated by **Belén Gracia, Rónán Riordan and Laura Visser**. The group of legal experts (LEG) consisted of:

- **Monica Claes**, Professor of European and Comparative Constitutional Law, Department of European Law
- **Alexandre Skander Galand**, Assistant Professor of International Law, Department of International Law Department
- **Šejla Imamović**, Assistant Professor of European Human Rights Law, Department of Public Law
- **Laurie Ritzen**, Assistant Professor of Criminal Law and Criminal Procedure, Department of Criminal Law and Criminology
- **Raymond Schlössels**, Professor of Administrative Law, Department of Public Law
- **Joost Sillen**, Professor of Constitutional Law, Department of Public Law
- **Eva van Vugt**, Assistant Professor of Constitutional Law, Department of Public Law Department

Eva van Vugt took a leading role in the project and made a substantial contribution to the drafting of the report.

This report contains the LEG's advice and consists of eight parts.

The first part of the report explains the nature and scope of the right to demonstrate, as well as the possibility of imposing restrictions on that right. We base this on the Constitution and on human rights treaties to which the Netherlands is a party, in particular the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). As a party to these treaties, the Netherlands must respect and protect the fundamental rights enshrined therein. Where relevant, account is also taken of the case law of the European Court of Human Rights (ECtHR), which interprets the ECHR in a binding manner, and of the opinions of the United Nations Human Rights Committee (UNHRC), in particular General Comment No. 37.

This section largely corresponds with the analysis of the Netherlands Institute of Human Rights (SIM), which published an advisory report to the Executive Board of Utrecht University in March 2025 on the university's internal regulations.[1] Yet there are also differences between this report and that of the SIM. In its analysis, the SIM bases itself exclusively on human rights treaties. However, protection of the right to demonstrate is mainly based on national standards, including the Constitution. The ECHR and UN treaty law set minimum standards that the national protection must meet, but Dutch law lays down the specific rules on the right to demonstrate in the Netherlands within that international framework. The second part of the report, therefore, describes the conditions that the Constitution imposes on restrictions on the right to demonstrate. This system of restrictions is written for the "vertical relationship" between citizens and the state. However, fundamental rights can also apply in horizontal relationships, i.e. between private individuals (citizens, companies or other private institutions). Under Dutch law, restrictions on the exercise of fundamental rights in horizontal relationships are less stringent than restrictions in vertical relationships. It is therefore important to determine whether UM is a "public authority" or a private entity under Dutch law.

The following sections of this advisory report discuss the question of who, under Dutch law, is authorised to restrict the right to demonstrate and under what conditions. Section three addresses this question regarding UM, section four with regard to the mayor, and section five regarding the police and the judiciary.

Whether or not UM should be classified as a public authority is also relevant to the type of interests that may be considered when assessing whether a restriction of the right to demonstrate is permissible in a specific case. The public authorities have less leeway to restrict freedom of demonstration than private actors. The government may restrict a demonstration only on the basis of a limited number of interests, such as the prevention of disorder (mentioned in the Constitution) or the protection of the rights of others (mentioned in the ECHR).[2] However, if the university is a private entity, its private law interests may also be considered (such as interests related to its property rights). The sixth part of the report focuses on this balancing of interests. Based on case law from the Dutch Supreme Court and the ECtHR, as well as General Comment No. 37 of the UN Human Rights Committee, several guiding principles for this balancing of interests in the specific context of universities are identified.

The seventh part of the report summarises the insights gained from the analysis in the previous sections. Part eight concludes with a step-by-step approach that the Executive Board can use to

[1] Study and Information Centre for Human Rights (SIM), Advice on the UU House Rules from a Human Rights Perspective (Faculty of REBO, March 2025).
[2] The Dutch court assesses both constitutional standards and those of the ECHR.

determine its policy concerning the exercise of the right to demonstrate on the university campus and in university buildings.

I. The right to demonstrate: definition, scope and conditions for its restriction

Demonstrating is the collective and public expression of a particular opinion.[3] The right to demonstrate, enshrined in Article 9 of the Constitution, Article 11 of the ECHR and Article 21 of the ICCPR, is therefore closely linked to freedom of expression and freedom of association.[4] The right to demonstrate also protects the expression of shocking, disturbing or unpopular opinions, even if they are perceived as offensive. However, the ECtHR, whose interpretation of the ECHR is binding on the Netherlands, draws a line at statements that incite hatred and violence: these are not protected by the right to freedom of expression and the right to demonstrate.[5] Incitement to hatred and violence is also punishable under Article 137d of the Dutch Criminal Code.

The right to demonstrate also includes the right "to choose the time, place and manner of holding the demonstration."[6] Demonstrations must, in principle, be able to be held "within sight and earshot of the target group and at a time when the message can have the greatest impact."[7] Demonstrations can take many forms: a march, a sit-in, a strike, and even the occupation of a publicly accessible building.[8] To be classified as a demonstration, it is important that the gathering is aimed at expressing an opinion; e.g., the occupation of a building to hold an illegal dance party falls outside the scope of the right to demonstrate.

---

[3] Parliamentary Papers II 1975/76, 13 872, no. 3 (MvT), p. 39. See also M. Emmerik, 'Juridische spelregels omtrent de demonstratievrijheid' (Legal rules governing freedom of demonstration), Justitiële Verkenningen, issue 51/2, 2025, p. 14. Solo protests do not fall within the scope of the right to demonstrate but are protected under the right to freedom of expression.

[4] European Court of Human Rights (ECtHR) (Third Section), Primov and Others v Russia [2014] ECLI:CE:ECHR:2014:0612JUD001739106, App. No. 17391/06, para. 92 (12 June 2014).

[5] ECtHR (Grand Chamber), Navalnyy v Russia [2018] ECLI:CE:ECHR:2018:1115JUD002958012, App. No. 29580/12, para. 98 (15 November 2018).

[6] ECtHR (Third Section), Lashmankin and Others v Russia [2017] ECLI:CE:ECHR:2017:0207JUD005781809, App. No. 57818/09, para. 405 (7 February 2017).

[7] Ibid. See also Administrative Law Division of the Council of State (ABRvS), December 3, 2025, ECLI:NL:RVS:2025:5683 (Demonstrating at abortion clinic), paragraph 8.2.

[8] ECtHR (Grand Chamber), Kudrevičius and Others v Lithuania [2015] ECLI:CE:ECHR:2015:1015JUD003755305, App. No. 37553/05, para. 91 (15 October 2015); ECtHR (Grand Chamber), Tuskia and Others v Georgia [2018] ECLI:CE:ECHR:2018:1011JUD001423707, App. No. 14237/07 (11 October 2018); ECtHR (Third Section), Cisse v France [2002] ECLI:CE:ECHR:2002:0409JUD005134699, App. No. 51346/99 (9 April 2002).

It is also important that the gathering is non-violent. Article 11 of the ECHR and Article 21 of the ICCPR only protect peaceful demonstrations.[9] Hooliganism (gathering to commit violence), therefore, also falls outside the scope of the right to demonstrate.[10] However, a demonstration should not be too quickly labelled as violent.[11] This requires more than a little pushing and shoving or a disruption of the normal course of events.[12] Wearing face coverings does not make a demonstration violent either.[13] There must be the use of physical violence that can cause injury, death or serious damage to property.[14] If individual persons commit acts of violence during a demonstration, that isolated violence cannot be attributed to other – peaceful – demonstrators, the organisers or the demonstration itself.[15] Peaceful demonstrators do not therefore forfeit the protection of the right to demonstrate on the grounds that a few other demonstrators are misbehaving.

If a gathering falls within the scope of the right to demonstrate, the government must refrain from unjustified interference in the exercise of this right. The free exercise of the right to demonstrate is therefore the starting point. Restrictions on that freedom are not permitted unless there is an objective justification for them. Strict conditions must be met for this.

Article 9 of the Dutch Constitution imposes different conditions on the restriction of the right to demonstrate than Article 11 of the ECHR and Article 21 of the ICCPR. The first paragraph of Article 9 of the Constitution stipulates that only the national legislature (the government and parliament together) is competent to impose any restrictions on demonstrations that it deems necessary.[16] For example, the legislature has made sedition (Article 131 of the Dutch Criminal Code) a criminal

[9] Article 9 of the Constitution does not impose such a restriction on the scope, but during the preparations for the comprehensive constitutional revision of 1983, the government did take the position that coercive measures are in principle not protected by this provision, Parliamentary Papers II 1976/77, 13 872, no. 6 (MvT), p. 37.

[10] ECtHR (Grand Chamber), Navalnyy v Russia [2018] ECLI:CE:ECHR:2018:1115JUD002958012, App. No. 29580/12, para. 98 (15 November 2018).

[11] UN Human Rights Committee, General Comment No 37 (2020) on the Right of Peaceful Assembly (Article 21), CCPR/C/GC/37, para. 17 (adopted 23 July 2020) (hereinafter: General Comment No 37 (2020)).

[12] General Comment No 37 (2020), para. 15.

[13] General Comment No 37 (2020), para. 60.

[14] If the organizers and/or participants of a demonstration have such violent intentions, it is up to the national authorities to prove this.

[15] ECtHR (Third Section), Primov and Others v Russia [2014] ECLI:CE:ECHR:2014:0612JUD001739106, App. No. 17391/06, para. 155 (12 June 2014); ECtHR (Third Section), Laurijsen and Others v Netherlands [2023] ECLI:CE:ECHR:2023:1121JUD005689617, App. No. 56896/17, para. 50 (21 November 2023).

[16] Article 9, paragraph 1, Gw: “The right of assembly and demonstration is recognized, subject to everyone's responsibility under the law.” The word “law” refers to a law in the formal sense, which has been enacted by the government and the States General.

offence, as well as incitement to hatred (Article 137d of the Dutch Criminal Code) and destruction of property (Article 350 of the Dutch Criminal Code).

The second paragraph of Article 9 of the Constitution then states that the law "may lay down rules for the protection of health, in the interests of traffic and for the prevention or suppression of disorder." This means that the legislature may authorise administrative bodies to regulate or otherwise restrict the exercise of the right of assembly and demonstration, but only for the purposes mentioned above. It is important that the legal basis for the restriction of the right to demonstrate by these administrative bodies is sufficiently specific: the legislature must have granted the power to an administrative body with a view to restricting this fundamental right. A general basis is not sufficient.

On this point, Dutch law is stricter than the ECHR and the ICCPR.[17] According to these treaties, the right to demonstrate may only be restricted if that restriction is based on a legal norm ("provided for by law"). Whether or not that legal norm is based on a formal law is irrelevant. The second condition is that the restriction of the right to demonstrate must serve a legitimate purpose that is in the public interest (e.g., the protection of public order or the rights of others). The third and final condition is that the restriction of the right to demonstrate must be necessary in a democratic society. According to case law, this means that (i) the purpose served by the restriction must outweigh the peaceful exercise of the fundamental right, (ii) the restriction must not go beyond what is necessary to achieve that purpose, and (iii) the least intrusive means available must be used.

Because the collective expression of certain opinions is essential in a free, democratic society, any restriction of the right to demonstrate requires careful consideration of the interests involved. How this balancing exercise plays out in a specific case depends on the circumstances of the case and will therefore vary from situation to situation. How this balancing of interests should take shape in the case of peaceful demonstrations, which may also include occupations at a university such as UM, is discussed in the sixth part of this report.

II. UM: public or private?

The ECtHR not only emphasises that the State must refrain from unjustified restrictions on the right to demonstrate (a negative obligation), but also recognises the obligation of the State to

[17] The ECHR sets 'only' a minimum standard for the protection of the fundamental rights enshrined in that convention (Article 53 ECHR). This means that the Netherlands, as a party to this convention, is free to offer more extensive protection to the right to demonstrate on the basis of national (constitutional) legislation, and thus to impose higher requirements on the restriction of that right.

facilitate and protect this right (a positive obligation). These negative and positive obligations apply to so-called “public authorities” - authorities charged with certain government tasks. This concept may also include private law entities insofar as they perform a public task. Whether UM should be formally and legally classified as a public authority or a private law entity is therefore irrelevant to the obligations arising from the ECHR: the fact that universities perform a public task means that they must respect and protect the rights enshrined in the ECHR.

However, under Dutch law, it is consequential whether UM should formally and legally be classified as part of the government or not. The Dutch Constitution applies to the Dutch State and its organs. In line with this, the system of restrictions in the Constitution is tailored to the “vertical relationship” between citizens and the government: by requiring a specific legal basis for the restriction of fundamental rights, the Constitution protects people against arbitrary interference by the government in the exercise of their fundamental rights.

Article 9 of the Constitution is therefore not written for so-called “horizontal relationships” between private individuals. Nevertheless, fundamental rights can also have an impact on such legal relationships. Suppose a private individual is inconvenienced by the exercise of the right to demonstrate by others. She can then go to the civil court on the grounds of unlawful act, as laid down in Article 6:162 of the Dutch Civil Code (BW), and demand that the demonstrators end their demonstration. If the court grants the claim, it will restrict the fundamental right on the basis of Article 6:162 BW. The fact that this (admittedly) formal legal provision was not specifically created to restrict the freedom of demonstration is irrelevant in this horizontal relationship.

Dutch law therefore imposes stricter requirements on the government when it comes to restricting the right to demonstrate: where a private individual can demand the termination of a demonstration on the basis of provisions in the Civil Code that are generally intended to protect his or her private interests, an administrative body can only restrict the right to demonstrate on the basis of a power specifically created for that purpose by the legislator. It therefore matters whether UM belongs to the government or is a private party, in other words, whether it is a legal entity under public law or a legal entity under private law.

Legal entities under public law are organisations established by the government with the aim of serving the public interest. They must be distinguished from legal entities under private law (associations, foundations, private limited companies), which are established by citizens or organisations to pursue a private purpose. Article 2:1, first paragraph of the Dutch Civil Code (BW) primarily designates the State, the provinces, the municipalities, the water authority, as well as all bodies to which regulatory powers have been granted under the Constitution, as legal entities under public law. According to paragraph 2, other bodies to which part of the government's tasks have been transferred only have legal personality if this follows from the law.

The Higher Education and Scientific Research Act (Whw) stipulates that UM is a legal entity under public law. According to Article 1.3 of the Whw, universities are "focused on providing scientific education and conducting scientific research (…)." Article 1.8 Whw further stipulates that the publicly funded universities listed in the Appendix to the Whw, including UM, have legal personality.[18] In short, UM derives its legal personality from the law and is therefore a legal entity established under public law. Formally, UM is therefore a "government body."

III. Is UM authorised to restrict the right to demonstrate?

It has been established that, as a legal entity under public law, UM must be classified as a government body. This means that the organs of UM, such as the Executive Board (CvB),[19] are administrative bodies within the meaning of the General Administrative Law Act (Awb).[20] As mentioned above, Article 9 of the Constitution requires that any restriction of the right to demonstrate by an administrative body must be based on a power granted to that administrative body by the legislature with a view to restricting this fundamental right.

Article 7.57h of the Higher Education and Research Act (Whw) provides the Executive Board with the authority to establish house rules. These are intended to promote "the proper conduct of affairs in the buildings and grounds of the institution."[21] It is obvious that this open standard should be interpreted in light of the public task that universities fulfil, namely, providing and conducting education and research. In the event of a violation, the Executive Board may take disciplinary measures such as a (temporary or permanent) denial of access to those buildings and grounds or even termination of enrolment.

However, Section 7.57h of the Higher Education and Research Act is too general to be regarded as a specific legal basis for restricting the right to demonstrate. The Higher Education and Research Act and in particular this provision were not created to impose restrictions on the exercise of the right of assembly and demonstration, but to regulate the structure and organisation of institutions of higher education. The Executive Board may therefore establish house rules with a view to promoting the proper conduct of business in the buildings and grounds

[18] This does not apply to the special universities in Amsterdam (VU) (based on the Association for Christian Higher Education, Scientific Research, and Patient Care), Nijmegen (based on the Radboud University Foundation), and Tilburg (based on the Catholic University of Brabant Foundation).
[19] Article 9(2), first paragraph, Dutch Higher Education and Research Act (Whw).
[20] Article 1:1, first paragraph, sub-a, Dutch General Administrative Law Act (Awb).
[21] Art. 7.57h Whw refers to the "institutional board," which, according to Article 1.1(j), is the executive board of a publicly funded institution.

of the university that is necessary for conducting research and pursuing education, but that authority is not intended to restrict the right to demonstrate.

UM and its bodies therefore do not have the power under public law to restrict the right to demonstrate. The fact that UM owns the university's land and buildings does not alter this. As a public authority, UM must "respect fundamental rights in every relationship it may have with citizens, including in private law relationships."[22] The Supreme Court confirmed this principle in a case brought by the municipality of Rijssen, which had refused to rent out a room in a conference centre it operated because of substantive objections to a hypnosis show by Rasti Rostelli. The Supreme Court considered that "the exercise of freedom of contract (and of owner's rights) by the government cannot be equated with that of a private actor," because "the municipality, as a government body, is obliged at all times to serve the public interest". This obligation entails "that the government, must observe the principles of good administration and respect the fundamental rights of its citizens when entering into and executing private law agreements."[23] In short, even as the owner of buildings and land, UM is bound in the exercise of its property rights by the conditions laid down in Article 9 of the Constitution regarding the restriction of the right of assembly and demonstration.

IV. Termination of a demonstration by the mayor

In the previous paragraphs, we noted that the Whw serves to regulate the structure and organisation of scientific educational institutions to promote their public task, and that it was not drafted to impose restrictions on the exercise of the right of assembly and demonstration. However, The Public Manifestations Act (Wom) does impose restrictions on those rights.[24] Because the right to demonstrate can have consequences for public order, the legislator has chosen to place the regulation of that right in the hands of the municipal authorities as much as possible.[25] For example, in Article 5 of the Wom, the legislator provides for the mayor's power to prohibit demonstrations under certain conditions.

---

[22] According to the government's explanatory notes on the drafting of the first chapter of the Constitution, which deals with the right of assembly and demonstration, see Parliamentary Papers II 1975/76, 13 872, no. 3 (MvT), p. 15; C.A.J.M. Kortmann, De grondwetsherzieningen 1983 en 1987 (2nd ed. 1987) pp. 43–50.

[23] Supreme Court of the Netherlands, Rasti Rostelli I [1996] NJ 728, Case No. 15 951, r.o. 3.5.1 (26 April 1996).

[24] This can also be read in the preamble: Whereas We have considered that, in view of Articles 6 and 9 (...) of the Constitution, it is necessary to lay down legal provisions concerning the exercise of the right to freedom of religion and belief and concerning the exercise of the right of assembly and demonstration, etc. etc.

[25] Parliamentary Papers II 1985/86, 19 427, no. 3 (MvT), p. 5.

The mayor may only exercise this power in public places that are open to the public by virtue of their designated use or established custom (Article 1(1) Wom). These include streets, squares, parks and a number of places in the vicinity, such as the freely accessible part of a railway station (but not behind the ticket barriers). The point is that everyone is free to enter these places without having to report their presence.[26]

For demonstrations in "places other than public spaces," the mayor may only issue an order to terminate the demonstration if it is accessible to the public and if the protection of health or the prevention or combating of disorder requires termination (Article 8(1) of the Wom). If necessary, the mayor may gain access to these demonstrations with the assistance of the police (Article 8(2) of the Wom).

"Places other than public spaces" include homes, places not accessible to the public and places accessible to the public. "Places not accessible to the public" are only accessible to members of an association or a specific group. "Places accessible to the public" are accessible to an unlimited number of people but are not intended for public use. This is because the purpose of staying there is specific.[27]

For UM, this means that the freely accessible part of the UM grounds (such as the area near Tapijn) is a "public place." Regarding demonstrations taking place there, the mayor can intervene sooner than in the case of demonstrations in UM buildings, which are not considered public. The interests of protecting health and combating or preventing disorder carry considerably more weight in public places than in non-public places.[28] With regard to a demonstration in the UM buildings that does not pose a threat to health or cause disorder, the mayor is therefore not authorised to take action. The situation is different for the police and the judiciary. They are also authorised to act in respect of demonstrations in non-public places provided that a criminal offence has been committed.[29]

V. Termination of a demonstration due to trespassing

Although demonstrators have the right in principle to choose the time, place and form of their demonstration, the ECtHR also states that this does not automatically entail that they have the

[26] M. Emmerik, 'Legal Rules on the Freedom to Demonstrate' (2025) 51 Justitiële verkenningen 16; B. Roorda, 'Commentary on Article 1 WOM', in E.R. Muller et al (eds), Tekst & Commentaar Openbare Orde en Veiligheid (Wolters Kluwer, Deventer 2023).
[27] B. Roorda, 'Commentary on Article 8 WOM', in E.R. Muller et al (eds), Tekst & Commentaar Openbare Orde en Veiligheid (Wolters Kluwer, Deventer 2023).
[28] Parliamentary Papers II 1985/86, 19 427, no. 3 (MvT), pp. 7–8.
[29] Ibid.

right to access public property, such as government buildings.[30] Dutch criminal law also sets limits on this by criminalising trespassing: “Anyone who unlawfully enters premises intended for public service, or who unlawfully remains there and fails to leave immediately at the request of the competent official, shall be punished with a maximum term of imprisonment of three months or a second category fine” (Article 139, paragraph 1, of the Dutch Criminal Code).

A “premises intended for public service” is a space used by a public-law body. Examples include the offices of the Tax and Customs Administration, courtrooms, provincial and municipal buildings, and the lobby of a ministry.[31] The buildings of UM can also be regarded as “premises intended for public service.” This has been confirmed in case law. In 1970, for example, the occupation of the Maagdenhuis building at the University of Amsterdam was classified as unlawful entry into premises intended for public service.[32] The same applies to the occupation of the Erasmus University library in 2004.[33]

Both examples show that it is not necessary for the service (providing scientific education or research) to be performed in public in the room in question for it to constitute trespassing. What is important is the extent to which the room in question is open to the public. For example, the reception area, indoor gardens and corridors of a faculty building are, by their nature, more accessible than for instance the Dean's office. The purpose of the premises is also important. For example, classrooms are accessible to lecturers, guest speakers and students, and laboratories to researchers. Other workplaces are open to those who have an appointment with a university employee (e.g., a student who has an appointment with their thesis supervisor). Anyone else may be denied access or permission to remain. Access to and presence in a room intended for public service is also limited to the hours or occasions for which access is permitted. As soon as UM closes and public service is no longer provided, access to its buildings and grounds is therefore revoked.[34]

If demonstrators enter or remain on UM premises “without permission,” they may be asked to leave. This request must be made on behalf of UM, for example, by (the chair of) the Executive Board or the Dean.[35] However, if the demonstrator refuses to leave, the offence of trespassing

[30] ECtHR (Grand Chamber), Tuskia and Others v Georgia [2018] ECLI:CE:ECHR:2018:1011JUD001423707, App. No. 14237/07, para. 72 (11 October 2018); (Third Section), Appleby and Others v United Kingdom [2003] ECLI:CE:ECHR:2003:0506JUD004430698, App. No. 44306/98, para. 47 (6 May 2003).
[31] Supreme Court of the Netherlands, Climate Protesters in the Hall of the Ministry of Economic Affairs [2025] ECLI:NL:HR:2025:1313 (30 September 2025).
[32] Supreme Court of the Netherlands, 12 May 1970 [1971] NJ 97.
[33] Supreme Court of the Netherlands, 12 October 2004 [2004] NJ 662, ECLI:NL:HR:2004:AP4260.
[34] P. Noyon, F. Langemeijer and G. Remmelink, Strafrecht (annotated commentary), art. 139 Sr, note 3.
[35] The term “authorized official” means “that the claim must be made on behalf of the person entitled (...) to the premises intended for public service,” see Supreme Court of the Netherlands, 13 November 2018

may be considered. In such a case, UM can report the incident to the police, after which the public prosecutor, authorised by the examining magistrate ("*rechter-commissaris*"), can order investigating officers to enter and clear the building.[36] The fact that UM can report the incident, and that the public prosecutor can order the clearing of a building, does not mean that they must always do so. To that end, they must first assess whether reporting the incident and clearing the building on the grounds of trespassing is necessary. This requires careful consideration of the interests involved.

VI. The limit of the right to demonstrate at universities: weighing of interests

We note that under Dutch law, the mayor has the authority to terminate a demonstration on UM premises, but only if this is necessary to protect public health and prevent disorder (Article 8 of the Wom). In addition, demonstrators who are present in one of the UM's buildings without permission may be arrested and prosecuted for trespassing (Article 139 of the Criminal Code). However, when applying these legal provisions, they must not conflict with Article 11 of the ECHR and Article 21 of the ICCPR.[37] This means that the termination of a demonstration by the mayor or an eviction on the grounds of trespassing must comply with the restrictions set out in these treaty provisions.

The first requirement ("provided for by law") will be met if the termination takes place on the basis of Section 8 of the Wom or Section 139 of the Criminal Code. The second requirement (a legitimate purpose) will also generally be met. A mayor who terminates a peaceful demonstration at UM will do so to prevent disorder and criminal offences or to protect health. The same applies to the eviction and criminal prosecution of demonstrators who are present on UM premises without permission. After all, trespassing ("*lokaalvredebreuk*," which literally translates to breach of the peace of a premises) is a criminal offence in order to protect the "peace" in a place intended for public service, so that public service —in the case of UM, the provision of scientific education and the conduct of scientific research— can actually be provided.[38]

The key question, however, is whether, in a specific case, the termination of a peaceful demonstration at UM is necessary in a democratic society. This requires that the prevention of disorder and criminal offences or the protection of health in a specific situation outweighs the

---

[2018] ECLI:NL:HR:2018:2100, r.o. 3.3.1–3.3.2.; Supreme Court of the Netherlands, 8 January 2019 [2019] ECLI:NL:HR:2019:13, r.o. 2.4.1–2.5.

[36] Article 551a, Dutch Code of Criminal Procedure (Wetboek van Strafvordering).

[37] Article 94 of the Constitution: "Legal provisions applicable within the Kingdom shall not apply if their application is incompatible with provisions of treaties that are binding on all (...)".

[38] J.M. ten Voorde, T&C Strafrecht, commentary on art. 139 Sr, para. 6.

exercise of the right to demonstrate and that the right to demonstrate is not restricted beyond what is necessary to achieve that legitimate aim. This requires a careful weighing of interests.

The starting point for this weighing of interests is that freedom of demonstration and freedom of expression are the foundations of a democratic society and therefore should not be interpreted restrictively. According to the ECtHR, any measure that prevents the exercise of these fundamental rights does a disservice to democracy and may even threaten it.[39] Both the ECtHR and the Human Rights Committee therefore emphasise that the mere fact that a demonstration leads to a disruption of the normal course of events can never be a sufficient reason to terminate a demonstration.[40] In fact, demonstrations are, to a certain extent, intended to disrupt the daily course of events and thus draw attention to certain social issues. When a peaceful demonstration leads to a certain disruption of normal activities, a certain degree of tolerance will therefore have to be shown.[41]

For demonstrations at universities, this means that a certain degree of disruption to teaching, research and other related activities must be tolerated. Examples of permissible disruption include making noise in communal areas, such as singing and chanting, with or without the use of a megaphone; gathering in the corridors; standing guard at the entrance to a university building; and peacefully occupying courtyards. Peaceful occupation of university buildings by students is also a recognised form of demonstration.[42]

In principle, the university must accommodate the disruption caused by a peaceful demonstration to education and research. Only when facilitating a demonstration imposes a disproportionate burden on the university according to objective criteria, and the university is significantly impeded in fulfilling its core function, a restriction of the right to demonstrate can be justified.[43] Consider, for example, a demonstration that makes it impossible for students to attend classes or take examinations for a prolonged period of time. Whether this is the case depends in part on whether the university has considered if the education or examination can be

---

[39] ECtHR (Grand Chamber), Kudrevičius and Others v Lithuania [2015] ECLI:CE:ECHR:2015:1015JUD003755305, App. No. 37553/05, para. 145 (15 October 2015); ECtHR (First Section), Stankov and United Macedonian Organization Ilinden v Bulgaria [2001] ECLI:CE:ECHR:2001:1002JUD002922195, App. Nos. 29221/95 & 29225/95, para. 97 (2 October 2001).

[40] General Comment No 37 (2020), para. 58.

[41] ECtHR (Grand Chamber), Kudrevičius and Others v Lithuania [2015] ECLI:CE:ECHR:2015:1015JUD003755305, App. No. 37553/05, para. 155 (15 October 2015).

[42] Study and Information Centre for Human Rights (SIM), Advice on the UU House Rules from a Human Rights Perspective (Faculty of REBO, March 2025) 5, referring to: ECtHR (Third Section), Cisse v France [2002] ECLI:CE:ECHR:2002:0409JUD005134699, App. No. 51346/99, paras. 39–40 (9 April 2002); ECtHR (Grand Chamber), Tuskia and Others v Georgia [2018] ECLI:CE:ECHR:2018:1011JUD001423707, App. No. 14237/07, para. 73 (11 October 2018); ECtHR (Third Section), Annenkov and Others v Russia [2017] ECLI:CE:ECHR:2017:0207JUD005781809, App. No. 57818/09, para. 123 (7 February 2017).

[43] General Comment No 37 (2020), para. 47.

moved to another time or place. As the duration of a peaceful demonstration increases, as well as the disruption it causes to education and research, the university may request demonstrators to leave its buildings or grounds and, if they refuse to comply with this request, call in the police on the grounds of trespassing. Such intervention is more likely to be justified in the case of a prolonged occupation of a university building lasting several days than in the case of a brief march through the corridors of such a building. Furthermore, even in the context of a peaceful demonstration, there may be an immediate and acute risk of serious physical injury, death or property damage, for example if safety regulations are not observed or if individual demonstrators (or counter-demonstrators) behave inappropriately. In order to assess this, UM must be able to monitor the course of a demonstration. If UM is unable to do so, for example because the occupiers of a university building do not allow such monitoring, intervention will be more easily justified.

The termination of a peaceful assembly by the police must nevertheless always be a last resort, and only if the disruption is "serious and persistent." Less severe means that are available and can limit the disruption must be exhausted. For example, the ECtHR considered the termination of an occupation of the rector's office by employees of a Georgian university to be a justified restriction of the right to demonstrate. In doing so, the ECtHR took into account that the employees had already been allowed to demonstrate for several hours in the Grand Hall of the central university building, after which the situation escalated, and they moved their demonstration to the rector's office. The size and duration of the demonstration, as well as the intimidating behaviour of the occupiers and the large number of chanting demonstrators in the corridors of the building, significantly disrupted the functions of the educational institution and the rector. After two hours, the police arrived and spent an hour negotiating with the professors to leave the rector's office peacefully. After they had been removed from the office, the professors were allowed to continue their demonstration in a university lecture hall.[44]

In recent case law, the Dutch Supreme Court has also warned that arresting, prosecuting, trying and possibly convicting peaceful demonstrators for trespassing can have a chilling effect on people who wish to exercise their right to demonstrate.[45] In such cases, removal from the building may be sufficient to achieve the intended objective. Arrest, detention for questioning, prosecution and punishment therefore quickly become disproportionate in light of the right of peaceful activists to demonstrate.[46] A recent ruling by the Dutch Supreme Court on a

[44] ECtHR (Grand Chamber), Tuskia and Others v Georgia [2018] ECLI:CE:ECHR:2018:1011JUD001423707, App. No. 14237/07, para. 74-79 (11 October 2018).
[45] Supreme Court of the Netherlands, 8 February 2022 [2022] ECLI:NL:HR:2022:126.
[46] See Supreme Court of the Netherlands, HR 19 December 2023 [2023] ECLI:NL:HR:2023:1742; N. Rozemond, 'De strafrechtelijke grenzen van het demonstratierecht' (2023) 3 Nederlands Tijdschrift voor Strafrecht 120.

demonstration at the Ministry of Economic Affairs illustrates this point. The demonstrators, who were peacefully protesting against the government's subsidy policy, were given every opportunity to demonstrate for several hours in the lobby of the ministry. When they were repeatedly asked to leave the building as closing time approached, this did not constitute an unacceptable restriction of the right to demonstrate, according to the court. When the demonstrators refused to comply with this demand, their presence became unlawful within the meaning of Article 139 of the Criminal Code and they could be removed. However, instead of taking the suspect to the police station for questioning and prosecution, the police could have released the suspect at another location after the arrest. Thus, in that case the restriction of the right to demonstrate went beyond what was necessary, thereby violating Article 11 of the ECHR.[47]

VII. Advice

The analysis shows that, under Dutch law, UM is not authorised to impose restrictions on the exercise of the right to demonstrate. As the "owner of premises intended for public service," it may determine the conditions under which someone may enter and remain on those premises. UM, therefore can determine who has access to its buildings, demand that someone leave those buildings as the rightful owner and can report trespassing if that demand is not complied with.

Whether or not persons are allowed to remain in the buildings or grounds of UM will depend on whether their presence and behaviour there impedes the "proper conduct of business" in light of the public service provided by universities. The Executive Board can specify this by drawing up house rules. These rules can, for example, specify which members of the public have access to the buildings and grounds. The house rules may also include the opening and closing times of UM. In addition, it may be stipulated that people must behave in a manner that does not interfere with the provision and pursuit of education and research in the buildings and on the grounds of UM. The house rules may also contain regulations to ensure safety within those buildings, such as keeping escape routes clear.

It is important to note that these house rules may not be specifically aimed at restricting demonstrations: after all, the Executive Board's authority to establish house rules is not intended to restrict the right of assembly and demonstration. Furthermore, regardless of the house rules, a high degree of tolerance will have to be shown if a peaceful demonstration against UM policy in a UM building leads to a certain disruption of daily activities.

[47] Supreme Court of the Netherlands, Climate Protesters in the Hall of the Ministry of Economic Affairs [2025] ECLI:NL:HR:2025:1313, r.o. 2.2.3–2.2.4, 2.3.7 and 2.4 (30 September 2025).

Intervention should only be considered when strictly necessary to protect the core functions of the university. Such an assessment must take into account all relevant facts and circumstances, including the size and duration of the demonstration; whether it remains peaceful; the location (e.g. a classroom, office space, library, laboratory or entrance); the specific impact on students and staff; and the feasibility of mitigating measures (such as relocating classes or examinations, temporarily redirecting access or adjusting timetables).

Calling in the police to end a peaceful gathering that is causing significant disruption should always be a last resort. The deployment of police can have a chilling effect on people who wish to exercise their right to demonstrate. The disruption to education and research must therefore be serious and persistent in order to justify restricting the right to demonstrate, and less severe measures to remedy the disruption must first be exhausted. This means that UM will have to make an effort to engage in dialogue with demonstrators to find alternative ways in which they can exercise their fundamental right in a meaningful way while minimising disruption to education and research. If demonstrators are not open to such dialogue, while the demonstration has been seriously impeding education and research for a long time and/or poses a direct and acute risk of serious physical injury, death or property damage, criminal intervention will be more likely to be justified.

VIII. Step-by-step approach

1. Universities, as places for debate and discussion, are key actors within a democratic society. Expressing opinions is crucial for a debate based on arguments, including those opinions that may shock, offend or disturb as long as they do not incite hate and/or violence.
2. Demonstrations are an important way for people to express their opinion, and are therefore protected under the rights to freedom of expression and of assembly and demonstration, guaranteed by the Dutch Constitution and various human rights treaties.
3. Demonstrations protected under these fundamental rights must be, on the whole, peaceful in nature. A demonstration is not peaceful if it is likely to cause injury, death or serious property damage. Sporadic and isolated acts of violence do not affect the peaceful nature of the demonstration.
4. Demonstrations can have many forms, for example, marches, sit-ins, occupations, encampments, among others. Demonstrators are free to choose the form and location that are meaningful to their message.
5. Demonstrations can be disruptive to the normal course of affairs. However, due to the vital importance of demonstrations in a democratic society, public authorities must in

principle refrain from interfering with demonstrations and must accommodate and facilitate them.

6. Under Dutch law, UM is a public authority that performs a public service, namely education and research. UM owns the buildings and campus on which this public service is provided.
7. As a public authority, UM can regulate the use of the buildings in the form of house rules to ensure a smooth operation of its core function. However, such rules must not go as far as to restrict the right to demonstrate.
8. Accordingly, a peaceful demonstration on UM premises should be tolerated and facilitated even if it is disruptive to its core functions, unless it imposes a disproportionate burden.
9. The assessment of whether a disproportionate burden exists requires a careful case-by-case analysis, as the threshold for establishing such burden is high. Mere inconvenience is not sufficient. For instance, disruption to classes, examinations, research activities, or meetings does not, as such, justify intervention where these activities can reasonably be rescheduled, relocated, or otherwise dispensed with for the relevant period.
10. Only where intervention by (authorised) public authorities, in particular by the police and judicial authorities, is strictly necessary to protect the core functions of the university should it be considered. Any such assessment must be context-specific and take into account all relevant facts and circumstances, including the scale and duration of the protest; whether it remains peaceful; the location (for example, a teaching space, office space, library, laboratory, or entrance); the degree of disruption caused to education and research; and the feasibility of mitigation measures (such as relocating classes or examinations, temporarily rerouting access, or adjusting schedules).
11. Before asking public authorities to intervene, UM should first try to resolve the situation through dialogue and practical solutions. This includes communicating with the organisers, engaging in negotiation, and exploring less restrictive means that allow the demonstration to continue in a meaningful way while reducing disruption.
12. If demonstrators are not open to such dialogue, while the demonstration has been seriously impeding education and research for a long time and/or poses a direct and acute risk of serious physical injury, death or property damage, criminal intervention will be more likely to be justified.
13. Nevertheless, the actions of the police and judicial authorities can have a chilling effect on the exercise of the right to demonstrate and should therefore only be invoked by UM as a last resort.