



Green Legal Spaces Report 2023

English summary



Green Legal Impact Germany e.V.

Green Legal Impact Germany e.V. is a non-profit organisation that supports civil society in using the law to protect the environment and people. We educate and clarify, advise and coordinate civil society actors in legal action and promote strong environmental law and a strong civil society in public and political circles.

We consider climate activism and political engagement in general to be an essential element of a vibrant democracy, as it makes important contributions to the formation of public opinion. This role should be recognised by all four branches of government as an integral part of the democratic process.

Involved Organisations

Green Legal Impact
Germany e.V.;

Gesellschaft für Freiheits-
rechte e.V.;

Unabhängiges Institut für
Umweltfragen e.V.

Maecenata Institut für Phi-
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Content

This report documents the concerns of those involved in the face of increasing repression against the climate movement.

It describes the developments observed in extracts and anecdotally, without claiming to be exhaustive.

Acknowledgement

Special thanks go to the Grassroots Foundation, which made the realisation of this report possible.



We would also like to thank Ortha Dittmann, Kira Geadah, Eva Städele, Mirjam Herrmann, Dr. Vivian Kube, André Horenburg, Thorsten Deppner, Klara Magdalena-Kothe and Muriel Benz.

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Rising restrictions on climate protest

The pressure on climate activists in Germany is mounting as the global climate movement gains traction, driven by a diverse coalition committed to safeguarding our future through various means. Their efforts have heightened political attention on the climate crisis, yet, simultaneously, democratic participation faces increasing constraints, complicating climate advocacy and narrowing avenues for action. The Green Legal Spaces Report 2023 brings together firsthand accounts and insights from the climate movement in Germany, scrutinizing the multifaceted nature of state repression against climate activism and sparking a conversation about its ramifications on democratic discourse.

This summary briefly portrays the insights of the report, which delves into pressing concerns such as assembly authority restrictions on protests, disproportionate police responses, legal criminalization of activism, stricter legislative measures against protestors, negative media framing of climate activism, and additional hurdles. These insights support the imperative for strategies aimed at reinforcing constitutional protections and advancing policy reforms for effective climate defense, highlighting the critical juncture at which democratic engagement and environmental advocacy intersect.

Assembly authorities prevent protest

The climate movement is facing increasing restrictions by the public order authorities in exercising its fundamental rights. Underlying the authorities' ordinances is their legal obligation to guarantee freedom of assembly while protecting public safety. Restrictions on assemblies can only be imposed under certain conditions and when the rights of others are at risk. However, various conditions for assemblies are set and even bans on assemblies are becoming more common. Additionally, activists who are involved in assemblies are being targeted in certain instances with individual measures.

In Aschaffenburg, Nuremberg, Braunschweig and Stuttgart, general bans were imposed, prohibiting any kind of assembly in a specific location. These bans are particularly problematic as they are preemptive measures and usually contradict court rulings. Protesters who ignore these bans are threatened with fines of up to 3,000 euros. The practice of banning protests by general order is no longer limited to climate activism. Demonstrations on other issues are also increasingly being prevented in this way.

Unnecessary restrictions on the choice of location or route have also been observed and can significantly reduce the effectiveness and reach of a protest. The location of an assembly can give it symbolic power, but can also be crucial to its success. The location of an assembly can also be crucial for the infrastructure associated with the assembly. For example, the establishment of a camp, even for several days, is also protected by the freedom of assembly and may depend on a specific location. This right has been infringed in multiple instances.

In addition to restrictions on location, climate activists face a variety of conditions placed on their assembly. In some cases, the size of banners was restricted, and attempts were made to limit the communicative purpose of the assembly by minimizing influence on passers-by. Restrictions were often imposed at short notice, making effective legal protection more difficult.

The attempt by the authorities to pass on the costs incurred to the organizers is a threatening development for the exercise of freedom of assembly. Those responsible have been asked to bear the costs of demonstrations and the need to divert traffic or clean up afterward, increasing the risks of organizing peaceful protest and assembly.

Finally, there have been assembly-related injunctions against individual activists to prevent certain behaviour, as well as registration requirements that restrict the fundamental right to freedom of movement. In one case, activists in Munich were banned from transporting superglue for three months after taking part in Last Generation actions.

Disproportionate police practice

In order to ensure public safety, the police are authorised to use force within the limits of their legal competence. In the past, however, the use of force has increasingly violated legal limits, in particular the principle of proportionality. Prominent examples were the evacuation of protest camps in the Hambach and Dannenröder forests, where activists were injured by excessive police force.

The trend is particularly drastic in the use of pain grips, a form of violence that causes severe pain and can have long-term physical as well as psychological consequences. These techniques are often used against peaceful climate activists and represent serious violations of their fundamental rights. For years there have been reports of actions by various climate activist groups, such as End Gelände, Fridays for Future or Scientist Rebellion, in instances in Lützerath to the International Automobile Ausstellung in Munich. There are also many documented cases of sit-ins of the group Last Generation being dissolved with this measure. Even though pain grips are only allowed in exceptional situations and can be seen as harm to the victims, policemen are difficult to prosecute due to its short duration and lack of documentation.

The other main critical measure of the police is the use of preventive detention to prevent activists from taking part in protests. This practice, which is particularly prevalent in the state of Bavaria, is considered by various actors as a violation of freedom of assembly and is incompatible with the German constitution and international human rights guarantees. The possibility of preventive detention of activists for up to 30 days is particularly problematic due to its considerable length. The compatibility of the legal basis with the rulings of the European Court of Human Rights is highly questionable and currently disputed, although the Bavarian Constitutional Court has found the underlying norm to be constitutional.

Furthermore, restrictions on access to public institutions have been used against people with links to environmental activism. For example, a long-established lobbyist was denied access to the Bundestag because of his contacts with the climate movement. The proximity to activism raised doubts about his reliability and placed the entire environmental movement under general suspicion.

These are examples of disproportionate police action against climate protests that violate basic human rights and threaten democratic principles. An overarching issue regarding police violence is the lack of an independent body for victim's complaints.

Prosecution criminalizing protest

Activists not only face harsh policing practices but are increasingly being prosecuted for their actions. Law enforcement agencies are using their room of interpreting the law to the detriment of activists. Especially road blockades are being prosecuted as criminal acts of coercion and resistance against law enforcement officers, while overarching organisational structures are being investigated as criminal associations. A similarly worrying development can be seen in the authorities' approach to activists' painting and art actions, which are being prosecuted with increasing severity.

In addition to the intensification of the prosecution, there is also a problematic attempt to speed up the legal proceedings, which reduces the fundamental rights of legal representation. At the same time, there are concerns about politicized jurisprudence by biased judges. Overall, these developments in criminal prosecution are making legitimate climate protest more and more difficult, while at the same time discouraging those who are not yet active from taking action.

Implementing legislation to restrict protest

Not yet deeply concerning, however, not to be underestimated is the narrowing of the legal framework for protest. The new assembly law in North Rhine-Westphalia is an example of this negative development, following restrictive legislation in Bavaria. Part of the tightening is an absolute ban on participation in events where the public appearance of the participants, by wearing uniform-like clothing, conveys a readiness to use violence and thus has an intimidating effect. Overalls of the same color, which characterized the protest image against an open-cast mine in Germany, are also considered to be such uniform-like clothing. Climate activists are thus over-criminalized, despite their explicit rejection of violent forms of protest. Similar criticism has been levelled at the new assembly law in the state of Saxony.

Furthermore, in a worrying trend, some states are seeking to shift the financial burden of measures taken in response to protests onto activists. The regulation seeks to impose claims on individuals who remain after a blockade has been dispersed. In addition, the potential for significant personal financial burdens is expected to act as an indirect deterrent, discouraging widespread participation in protests.

In the future, there are concerns that if the political balance of power in Germany changes in the near future, stricter legislation on criminal law, criminal procedure and the right of assembly will also be introduced at federal level. Such changes have already been made in other liberal countries, such as the UK, Australia and the US, where laws have been passed banning loud and disruptive protests and criminalizing activists.

Negative framing in public discourse and other restrictions

In Germany, the categorization of activists as criminals or terrorists marks a significant shift towards increased restrictions and criminalization, legitimizing and paving the way for the implementation of stricter measures. Accompanying this trend are Strategic Lawsuits Against Public Participation (SLAPPs) and chilling effects.

A negative framing of climate-related protests can be observed in society, making participation in protests or even positive support for the movements even more difficult. This framing stems partly from state communication itself, for example through the public criminalization of protest groups, but also partly from the portrayal in traditional media. Here, too, activists are increasingly associated with concepts such as terrorism. The most striking example is the neologism "Climate-RAF", which conceptually equates the climate movement with the Red Army Faction, whose terrorism has claimed 34 lives since 1970. While this makes solidarity with the movement less attractive, it also ensures that harsher state measures appear legitimate. The result is not only the normalization of harsher punishments, but also an increasingly hateful discourse towards activists, including concrete threats and attacks during protests.

There are also private lawsuits such as SLAPPs, which currently play a minor role but are very effective in silencing activists. Non-state actors are filing lawsuits to intimidate activists and obstruct their work. Such lawsuits, filed by corporations or other private parties, aim to stifle protests by seeking large damages or injunctions. Activists are financially and personally overburdened by the time and money spent on legal proceedings, which ultimately limits their participation in climate protests.

State repression such as criminal prosecution and surveillance measures not only affect those directly involved, but also unsettle the climate movement as a whole. In connection with investigations against the Last Generation on charges of forming a criminal organization, authorities resorted to surveillance measures such as tapping the movement's press phone, which indirectly affected the freedom of the press of journalists involved.

These "chilling effects" lead to people censoring themselves and not making full use of their fundamental rights, such as freedom of assembly and freedom of expression, which hinders discussion and the democratic process.

Outlook

The democratic rights of participation promised by the Constitution must be constantly lived, upheld, claimed in and out of court and defended against attacks. The developments described in this report are worrying and in some cases alarming. They give cause for critical reflection on how to deal with climate protest in a democratic constitutional state. This question is likely to become even more urgent in the future. Current climate policy is far from meeting the constitutionally and internationally binding requirements of the Paris Agreement and a 1.5°C compatible reduction path. However, the more climate policy fails and the climate crisis worsens, the more people will protest to protect their livelihoods. If the state and society respond with repression instead of a consistent climate protection policy, there is a danger of an escalating spiral in which we risk losing not only the fight against the climate crisis, but also our democratic freedoms.

IMPRINT

© GLI, March, 2024

Published by

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Green Legal Impact Germany e.V. (GLI) is a non-profit organisation. It is registered at the Charlottenburg District Court, VR 38354 B.

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