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Amsterdam, 23 August 2024

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**Subject: Advice on demonstration rights and draft UvA house rules**

Dear Central Student Council President,

You have asked us to advise the Central Student Council (**CSR**) of the University of Amsterdam (**UvA**) on the compatibility with the right to demonstrate of the draft 'house and conduct rules on or in university grounds/buildings of the University of Amsterdam (UvA)' (hereinafter '**draft house rules**') and the appendix 'rules for demonstrations/protests on UvA grounds and inside UvA buildings' (hereinafter '**appendix demonstration rules**').<sup>1</sup>

The UvA's current house rules date from 2015 and are outdated, according to the UvA itself. Following several pro-Palestine demonstrations in the past year and discussion about the application of the current house rules, the UvA Board of Governors (**BoG**) has promised the CSR to amend the house rules. The CSR provided feedback on a draft of the house rules and has a right of consent regarding the final version. Following the draft version of the house rules, you asked us to analyse whether the proposed rules are in line with the right to demonstrate as enshrined in the Constitution and the European Convention on Human Rights (**ECHR**).

It is noted here that the UvA's draft house rules have many similarities to the new 'guideline on protests by universities and colleges' published in May this year by the

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<sup>1</sup> University of Amsterdam, 'House and conduct rules on or in university premises/buildings of the University of Amsterdam (UvA)', including appendix 'Rules for demonstrations / protests on UvA premises and inside UvA buildings', dated 2024. Both are collectively referred to as house rules unless otherwise stated or this is clear from the context.

Universities of the Netherlands and the Association of Universities of Applied Sciences. <sup>2</sup>At your request, an analysis of this guideline has been included in an independent opinion. This opinion therefore refers only to the draft UvA house rules.

Based on our analysis, we conclude that there are several rules included in the draft house rules that are inconsistent with or at odds with the right to demonstrate.

In the following you will find our opinion. Chapter 1 concerns the introduction. Chapter 2 briefly explains the right to demonstrate in the context of the UvA. Chapters 3 to 7 deal thematically with a number of rules from the draft house rules, namely a number of general prohibitions, disruption of the daily course of events, occupations and blockades, overnight stays at the university, designation of other locations, compulsory identification, prohibition of face-covering clothing, duty to register and dissemination of information. To conclude, a conclusion follows.

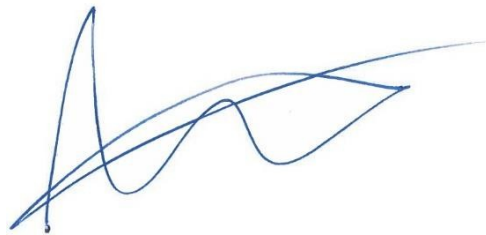
We hope you will read this opinion with interest. We are of course

available for further consultation.

Sincerely,



Thomas van der



SommenWil Eikelboom

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<sup>2</sup> Universities of the Netherlands and Association of Universities of Applied Sciences, 'Directive on protests by universities and colleges', 14 May 2024, available at: [https://www.universiteitenvannederland.nl/files/publications/Richtlijn%20protesten%20%20UNL%20%26%20VH\\_2.pdf](https://www.universiteitenvannederland.nl/files/publications/Richtlijn%20protesten%20%20UNL%20%26%20VH_2.pdf)

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## 1. INTRODUCTION

1. According to the UvA, its draft house rules aim to "create a pleasant studying and working climate and facilitate the possibility of discussions and debates".<sup>3</sup> The UvA states that it endorses and supports the right to demonstrate and demonstrating is therefore allowed.<sup>4</sup> Demonstration rules are indicated in the appendix:

"The UvA respects the principle that demonstrators can choose time, place and form of the demonstration. The protection of legitimate interests of others (especially students and staff) limits this freedom, in particular where this concerns the UvA buildings."<sup>5</sup>

2. In its memo of 26 June 2024 on the draft house rules, the UvA indicates that section 7.57h HRA is the legal basis for the house rules.<sup>6</sup> This allows the CvB to issue regulations and take measures regarding the proper conduct of business in the institution's buildings and grounds. Also by virtue of the right of ownership over its buildings, the UvA may set rules on access and use. However, such rules may not conflict with the right to demonstrate. The following discusses what the right to demonstrate at the UvA entails.

## 2. DEMONSTRATION RIGHTS AT THE UvA

3. The UvA is a semi-public institution. The legal status of universities is usually complex and consists of an organisational structure that includes both public and private bodies.<sup>7</sup> As the UvA recognises that it is a public legal entity, this opinion will take that as the starting point.<sup>8</sup> In that capacity, the UvA (rightly) considers itself bound by public law norms and fundamental rights.<sup>9</sup> In its relationship with protesters, this creates obligations for the UvA.
4. The right to demonstrate is a fundamental human right enshrined in Article 11 ECHR, Article 21 International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup> , Article 12 Charter of Fundamental Rights of the European Union (EU Charter)<sup>11</sup>

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<sup>3</sup> House rules, introduction.

<sup>4</sup> UvA, 'Draft house and conduct rules and rules demonstrations and protests on or in university grounds/buildings of the University of Amsterdam (UvA) Legal Affairs (NB), dated 26 June 2024, p. 2.

<sup>5</sup> Appendix demonstration rules, introduction.

<sup>6</sup> Ibid.

<sup>7</sup> The complexity of the legal status of universities has been the subject of a report by the Ministry of Education, Culture and Science. See: Education Inspectorate "Confusion in multiplicity" June 2023.

<sup>8</sup> UvA, 'Draft house and conduct rules and rules demonstrations and protests on or in university grounds/buildings of the University of Amsterdam (UvA) Legal Affairs (NB), dated 26 June 2024.

<sup>9</sup> UvA, 'Draft house and conduct rules and rules demonstrations and protests on or in university grounds/buildings of the University of Amsterdam (UvA) Legal Affairs (NB), dated 26 June 2024, p. 2.

<sup>10</sup> The UN Human Rights Committee monitors compliance with this Convention. Where relevant, the interpretation of this committee will also be referred to.

<sup>11</sup> This provision is to be interpreted in accordance with Article 11 ECHR.

and Article 9 of the Constitution. <sup>12</sup>The Public Demonstrations Act (**Wom**) elaborates on the right to demonstrate. This opinion focuses on the ECHR.

5. A demonstration falls within the scope of Article 11(1) ECHR if it is a peaceful demonstration. It follows from the peacefulness requirement that the European Court of Human Rights (**ECtHR**) takes as its starting point that a demonstration no longer falls under the protection of Article 11 ECHR "(a) if there is violent behaviour, (b) if the protest action is violent in character or (c) if the organisers or participants (otherwise) reject the foundations of a democratic society."<sup>13</sup> A demonstration without violent intent that faces isolated acts of violence is not automatically considered non-peaceful and therefore does not automatically lose the protection of Article 11 ECHR, and a demonstrator who does not use violence himself remains protected under Article 11 ECHR if there is sporadic violence by other demonstrators. <sup>14</sup>Furthermore, it is up to the government to prove that the organisers had violent intentions.<sup>15</sup>
6. The right to demonstrate is in principle form- and forum-free within the limits of Article 11(2) ECHR.<sup>16</sup> Freedom of form means that a demonstration is not bound to a particular form as long as it is a collective expression of an opinion. <sup>17</sup>Forum freedom implies that, in principle, demonstrators are free to choose the time, place and manner of carrying out the demonstration. The freedom of form and forum implies that protesting at the university is in principle allowed.
7. A demonstration may disrupt daily business. <sup>18</sup>Such disruption is not in itself sufficient to justify a restriction on the right to peaceful demonstration. Therefore, it is important that a certain degree of tolerance is applied. According to the ECtHR, what degree of disruption of daily business should be tolerated and what degree of tolerance should be applied must be assessed on a case-by-case basis.<sup>19</sup>
8. Under 11(2) ECHR, a restriction on the right to demonstrate is only permissible if three conditions are met.<sup>20</sup> First, the restriction must be provided for by law. The legal powers granted to the executive, as well as their

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<sup>12</sup> The terms right to demonstrate, freedom of assembly and association and freedom of demonstration mean the same thing in this opinion.

<sup>13</sup> N. Swart and B. Roorda, 'The scope of the almost sacred right to demonstrate', *NTM/NJCM Bulletin* 2023, p. 40. See also ECHR 10 February 2019, 14237/07, para 2, EHRC 2019/24, cf. B. Roorda, (Tuskia and others v Georgia) and ECHR 15 October 2015, no. 37553/05 (*Kudrevious and others v Lithuania*), paragraphs 92-94.

<sup>14</sup> N. Swart and B. Roorda, 'The scope of the almost sacred right to demonstrate', *NTM/NJCM Bulletin* 2023, p. 40. See also ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 February 2024), para. 29.

<sup>15</sup> ECHR 2 February 2010, no. 25196/04 (*Christian Democratic People's Party v. Moldova*), para 23.

<sup>16</sup> ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 February 2024), para. 18-22.

<sup>17</sup> B. Roorda, 'The freedom of demonstration and assembly: the international law and constitutional framework, in: B. Roorda, J. G. Brouwer, and A. E. Schilder (ed.), *Answers to recent demonstration and meeting law issues*, Ministry of the Interior and Kingdom Relations 2021, p. 15.

<sup>18</sup> HR 19 December 2023, ECLI:NL:HR:2023:1742, para 2.3.6.

<sup>19</sup> ECHR 15 October 2015, no. 37553/05 (*Kudrevious and others v. Lithuania*), para 155.

<sup>20</sup> Article 11(2) ECHR.

scope, must be clearly defined. <sup>21</sup>Importantly, the law should be accessible to citizens and the consequences should be foreseeable.<sup>22</sup>

9. Second, the restriction must serve one of the legitimate purposes listed in Article 11(2), namely the interests of national security, public safety, the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others. In the draft house rules, the UvA specifically appeals to the prevention of disorder and the protection of the rights of others.
10. Third, the restriction on the right to demonstrate must be necessary in a democratic society. It must be examined i) whether there is a pressing social need for imposing a particular restriction and ii) whether the restriction is proportionate to the legitimate aims mentioned above. <sup>23</sup>The proportionality requirement thus requires balancing, on the one hand, the legitimate aim under Article 11(2) ECHR and, on the other hand, the freedom in the expression of opinions through words, actions or even silence by an assembled group.
11. Thus, in the event that a demonstration is peaceful, the UvA cannot impose restrictions on the right to demonstrate without question. In certain circumstances, a restriction may be justified. The limits of the right to demonstrate are partly dictated by the circumstance that the UvA, as owner of its buildings and grounds, must be able to guarantee safety, among other things<sup>24</sup> and the UvA in its capacity as employer is obliged to prevent undesirable behaviour at the university.<sup>25</sup> A clash of fundamental rights may occur between those of protesters on the one hand and those of the university and third parties on the other. Swart and Roorda argue that in a situation of clashing rights, it should not be assessed which right prevails, but whether one right constitutes a legitimate restriction on the other.<sup>26</sup>
12. To the extent that the UvA imposes restrictions on the right to demonstrate in its house rules, these must meet the requirements of Article 11 ECHR. The UvA has no powers to impose restrictions on demonstrations taking place outside its buildings and premises. Indeed, the draft house rules do not apply in that situation.
13. The Public Demonstrations Act (Wom) stipulates how and what restrictions may be imposed by the government on demonstrations. Article 1 paragraph 1 Wom distinguishes between public places and 'other than public places'. This is important because the mayor is authorised to impose restrictions on demonstrations in public places to protect health, in the interests of traffic and to combat or prevent disorder. <sup>27</sup>In the case of other than public places, the

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<sup>21</sup> ECHR 15 October 2015, no. 37553/05 (*Kudrevicius and others v. Lithuania*), para 108-110; ECHR 15 November 2018, no. 29580/12 (*Navalnyy v. Russia*), para 114.

<sup>22</sup> ECHR 15 October 2015, no. 37553/05 (*Kudrevicius and others v. Lithuania*), para 108-110.

<sup>23</sup> A. J. Nieuwenhuis, M. den Heijer and A.W. Hins, *Chapters on Fundamental Rights*, Nijmegen: Ars Aequi Libri 2021, p. 115-120.

<sup>24</sup> Rb. Amsterdam 19 February 2015, ECLI:NL:RBAMS:2015:1182, para 4.6 (see until the sentence "After all, it has its own responsibility in this.").

<sup>25</sup> Article 1.12 CAO Dutch Universities 1 April 2023 - 1 June 2024.

<sup>26</sup> N. Swart and B. Roorda, 'The scope of the almost sacred right to demonstrate', *NTM/NJCM Bulletin* 2023, p. 48.

<sup>27</sup> Articles 2-7 Wom.

mayor 'only' authorised to enter that place and, if the protection of health or the control or prevention of disorder so requires, to stop the demonstration (Article 8 Wom).

14. UvA's buildings will in principle be intended for students and staff and will not usually be designated as public places.<sup>28</sup> These buildings may nevertheless be places open to the public according to their function.<sup>29</sup> Their open character means that more patience is required before restrictions can be imposed on a demonstration there. For these places, the UvA can impose restrictions as long as this is in line with the right to demonstrate. For certain UvA premises, it can be said that these do constitute public places because they are open to the public by virtue of established use.<sup>30</sup> In such a case, both the university and the mayor will be authorised to impose restrictions.
15. In terms of proportionality, the possible *chilling effect* of a measure should be taken into account,<sup>31</sup> referring to the risk that restrictive measures prior to the demonstration, such as a pre-arranged ban, could discourage participants from participating. Also, measures during the demonstration (such as using police force to end the demonstration)<sup>32</sup> and after (such as imposing sanctions on demonstrators)<sup>33</sup> lead to a *chilling effect*.
16. In this context, it is important to note that the UvA can attach sanctions to violating the house rules pursuant to section 7.57h paragraph 1 of the WHW. There is also a provision on sanctions in the appendix of demonstration rules.<sup>34</sup> The sanctions to which this house rule refers mean that a demonstrator will be "denied access to the university in whole or in part for the period not exceeding one year, or enrollment will be terminated for the same period,"<sup>35</sup> or that the student's access to the institution is permanently denied or his enrolment permanently terminated.<sup>36</sup> In other words, participating in a demonstration that violates the house rules can result in a drastic sanction. This creates a clear risk of a *chilling effect*.

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<sup>28</sup> See B. Roorda, 'The freedom of demonstration and assembly: the international law and constitutional framework, in: B. Roorda, J. G. Brouwer, and A. E. Schilder (ed.), *Answers to recent demonstration and meeting law issues*, Ministry of the Interior and Kingdom Relations 2021, p.16.

<sup>29</sup> The category 'other than public places' includes places open to the public that are accessible to persons and where residence is purposeful, but which are therefore not intended to be public. See M. Buitenhuis, "Demonstrating at universities: how to deal with demonstrations at non-public locations?", akd.eu, 3 June 2024, accessed at: <https://akd.eu/nl/insights/demonstreren-op-universiteiten-hoe-omgaan-met-demonstrations-at-non-public-locations>.

<sup>30</sup> See B. Roorda, 'The freedom of demonstration and assembly: the international law and constitutional framework, in: B. Roorda, J. G. Brouwer, and A. E. Schilder (ed.), *Answers to recent demonstration and meeting law issues*, Ministry of the Interior and Kingdom Relations 2021, p. 16.

<sup>31</sup> ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 Feb 2024), para. 78.

<sup>31</sup> ECHR 11 October 2018, no. 14237/07 (*Tuskia and Others v. Georgia*), para. 72; ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 February 2024), para. 78.

<sup>32</sup> ECHR 14 February 2006, no. 28793/02 (*Christian Democratic People's Party v. Moldova*), para 77.

<sup>33</sup> ECHR 29 November 2007, no. 25/02 (*Balçık and Others v Turkey*), para 41.

<sup>34</sup> Article 1.3(6) Annex demonstration rules.

<sup>35</sup> Section 7.57h (1) of the Higher Education and Scientific Research Act.

<sup>36</sup> Section 7.57h (2) of the Higher Education and Scientific Research Act.

17. In the following, the draft house rules that are problematic in the light of the right to demonstrate are discussed thematically. For each rule, the consideration will always have to be whether it constitutes a restriction on the right to demonstrate and, if so, whether it serves a legitimate purpose and is necessary, and meets the requirement of proportionality.

### 3. GENERAL PROHIBITIONS AND RESTRICTIONS

18. The UvA's house rules contain several general prohibitions or restrictions regarding the exercise of the right to demonstrate. By their nature, general prohibitions relate poorly to the right to demonstrate. The starting point is that so-called "*blanket restrictions*" on the exercise of the right to demonstrate do not meet the proportionality requirement.<sup>37</sup> Because the proportionality test is situation-dependent (think, for example, of the place, time and number of demonstrators), it must be assessed separately for each case whether a restriction or prohibition is proportionate to the legitimate aim. As a result, general bans or restrictions are therefore, in principle, likely to violate the right to demonstrate.

19. The following general restrictions and prohibitions in the draft house rules are problematic:

Rule 1.2 draft house rules: "The buildings and the rooms and facilities therein or thereto and the grounds [...] shall be used only for their intended purpose".

Rule 1.2 draft house rules: "Staying overnight in the buildings, thereby present spaces, facilities and land is not allowed".

Rule 1.4 draft house rules: "For (fire) safety reasons, posters and other informational material may only be hung on special designated designated wall notice boards, in other places these are removed."

Rule 1.5 draft house rules: "Organising events is allowed unless there are any of the meetings listed below [...]: Meetings of a political party".

Rule 1.6 draft house rules: "It is not permitted in UvA buildings and grounds, to wear clothing that completely covers the face or covers it in such a way that only the eyes are uncovered or rendered unrecognisable".

Rule 1.1(2) Annex demonstration rules: "[...] Occupying or blocking a building [...] is not allowed."

Rule 1.1(3) Annex demonstration rules: "\_Colleges and examinations to (distort). [...]"

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<sup>37</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 38.



Rule 1.1(4) Annex demonstration rules: "[...] it is not permitted during a demonstration [...]: - spend the night on the UvA grounds or in the UvA buildings; [...] - obstruct or block (emergency) routes and entrances and exits."

Rule 1.2 Annex demonstration rules: "Demonstrations or protests should be notified by a staff member or student at least 48 hours prior to the action [...]."

20. These general bans and restrictions in the draft house rules are too absolute in nature. They leave no room for demonstrations in which case a ban would constitute an unjustified restriction on the right to demonstrate. For all these rules, there are easily conceivable situations in which such a ban would be too great a restriction on the right to demonstrate.
21. Questions are also raised as to what legitimate purposes these rules are intended to protect. The suggestion with some rules that these prohibitions are necessary to allow demonstrations to take place peacefully cannot be followed and is not in line with the principles of demonstration law, as will be explained in more detail below. Without a legitimate purpose, one does not get to the question of whether a restriction is proportionate.
22. In particular, general prohibitions and restrictions have a *chilling effect*, as they may discourage demonstrators from participating in a demonstration in advance if, because of a violation of the draft house rules, they assume that the demonstration does not enjoy the protection of the right to demonstrate.

#### 4. FORM AND FORUM OF DEMONSTRATIONS

##### 4.1. DISRUPTION OF DAILY OPERATIONS

23. As mentioned, demonstrators are free to choose the form, place, time and message of their demonstration.<sup>38</sup> Often inherent in a demonstration is the disruption of daily business.<sup>39</sup> If the location of the demonstration, for example a UvA building, is crucial for the participants, then an order to change it may constitute an interference with the right to demonstrate.<sup>40</sup> However, this does not mean that rights are "automatically created" to access places such as university buildings,<sup>41</sup> but neither can access to such places be denied without question.
24. The actions of protesters become reprehensible when daily life and activities lawfully carried out by others are deliberately seriously disrupted, in a

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<sup>38</sup> See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 6 and Rb. Amsterdam 3 April 2020, ECLI:NL:RBAMS:2020:2126, r.o. 5.5: "This means that the basic principle is that everyone is free to demonstrate and express their opinions, regardless of the location, time(s) and regardless of the subject matter thereof."

<sup>39</sup> See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 47.

<sup>40</sup> ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 February 2024), para. 20; ECHR 27 November 2012, no. 58050/08 (*Sáska v Hungary*), para. 21. See also ECHR 11 October 2018, no. 14237/07 (*Tuskia and Others v Georgia*), EHRC 10 February 2019, 2019/24, cf. B. Roorda, para. 3.

<sup>41</sup> ECHR 11 October 2018, no. 14237/07 (*Tuskia and Others v Georgia*), para. 72; ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 Feb 2024), para. 21.

degree greater than in the case of a 'normal' exercise of the freedom to demonstrate.<sup>42</sup> The UN Human Rights Committee has also ruled that disruption of the legitimate activities of third parties is permissible unless it results in a disproportionate burden.<sup>43</sup> It already follows from this that the UvA will always have to weigh up whether the (announced) disruption is such that a restriction is justified.

25. Rule 1.1(3) Annex Demonstration Rules ignores this through its absolutely worded nature:

"It is not allowed to disturb or disrupt lectures and exams. Research activities or the work of staff must also be able to continue during a demonstration or protest."

26. Rule 1.1 bullet 4 draft house rules is also too strict in this sense. The same applies to rule 1.3 paragraph 3 Annex demonstration rules insofar as it would impose an obligation to comply with the instruction to move the demonstration to another location. These general prohibitions on disrupting daily activities at the UvA therefore constitute an unauthorised interference with the right to demonstrate.

#### 4.2. OCCUPATIONS AND BLOCKADES

27. According to the ECtHR, occupations and blockades also enjoy in principle the protection of Article 11 ECHR.<sup>44</sup> Although Articles 10 and 11 ECHR entail freedom of form and freedom of forum, it is not true that there is always a right of access to private property, but it may be justified in circumstances.<sup>45</sup> Illustrative is the ECtHR case *Tuskia and Others v Georgia* in which it was held that an occupation of the university rector's room fell within the scope of the right to demonstrate, although the restriction on the right to demonstrate (eviction by the police) was justified in those circumstances.<sup>46</sup>

28. Rule 1.1 paragraph 2 Annex demonstration rules embrace a ban on occupations and blockades at the UvA:

"Occupying or blocking a building does not count as a (peaceful) demonstration/protest action and is not allowed."

29. The UvA wrongly assumes that occupations and blockades are not demonstrations and by definition are not peaceful. This is incorrect. From case law

<sup>42</sup> *Kudrevicius v Lithuania* ECHR 26 November 2015, no. 37553/05 para 173.

<sup>43</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 47.

<sup>44</sup> ECtHR 15 October 2015, no. 37553/05 (*Kudrevicius and Others v. Lithuania*), paras 97-99; ECtHR 1 September 2022, no. 23158/20 (*Makarashvili and Others v. Georgia*), paras. 89-92; ECHR 11 October 2018, no. 14237/07 (*Tuskia and others v. Georgia*), para. 74; Rb. Amsterdam 2 May 2019, ECLI:NL:RBAMS:2019:4022, para. 6.3; Rb. Amsterdam 5 October 2012, ECLI:NL:RBAMS:2012:BX9310, para 7.1.

<sup>45</sup> ECHR 6 May 2023, no. 44306/98 (*Appleby and others v. United Kingdom*), para 47; ECHR 11 October 2018, no. 14237/07 (*Tuskia v. Russia*), para 72.

<sup>46</sup> ECHR 11 October 2018, no. 14237/07 (*Tuskia and Others v Georgia*), para 74-75.

of the ECtHR follows that whether an occupation or blockade is peaceful requires an individual assessment. It cannot therefore be assumed on the basis of a general prohibition.

30. In doing so, rule 1.1(4) Annex states demonstration rules:

"In order [...] for the actions to take place peacefully, it is in any case not allowed to obstruct or block (emergency) routes and entrances and exits during a demonstration [...]."

31. This ban also goes too far where the UvA assumes that a peaceful demonstration requires that no route or entrance/exit may be obstructed or blocked. As long as safety is not at stake, such a broadly formulated ban is too great a restriction on the right to demonstrate. Inherent in certain forms of demonstrations, such as a parade, is that routes can simply be obstructed. Occupations also involve the closure of certain entrances or exits. As long as the intention is peaceful and there are no disproportionate security risks, a restriction is not justified. That restriction cannot therefore be given in advance.

#### 4.3. OVERNIGHT AT UNIVERSITY

32. As already noted, freedom of form and forum entails that demonstrating overnight falls under the protection of Article 11 ECHR if the demonstration is peaceful. As long as the demonstration is peaceful, a certain degree of disruption of the daily routine is also permissible.<sup>47</sup> Moreover, it must be possible for demonstrators to demonstrate within sight and earshot of their target audience.<sup>48</sup> The ECtHR does not exclude the possibility that a temporary encampment as such can be a form of protected political expression in certain situations.<sup>49</sup> A demonstration where people stay day and night can also fall under the right to demonstrate.<sup>50</sup>

33. Under rules 1.2 draft house rules and 1.1 paragraph 4 appendix demonstration rules, it is not allowed to spend the night on UvA premises. Rule 1.2 draft house rules reads:

"[...] Staying overnight in the buildings, premises, facilities and areas is not allowed."

34. Rule 1.1(4) Annex Demonstration Rules reads:

"In any case, in order to maintain safety for everyone at the institution (...) and to allow actions to take place peacefully, it is not permitted during a demonstration or protest to: - staying overnight on UvA grounds or in UvA buildings; (...)."

35. The draft house rules suggest that a demonstration involving staying overnight at the university is not peaceful or would be unsafe, but that lacks a

<sup>47</sup> ECHR 15 December 2012, no 5631/16 (*Peradze and Others v Georgia*), para 36.

<sup>48</sup> ECHR 7 February 2017, no 57818/09 (*Lashmankin and Others v Russia*), para 426.

<sup>49</sup> ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 Feb 2024), para. 21.

<sup>50</sup> ECHR 20 February 2014, nos 9117/04 and 10441/04 (*Nosov and Others v. Russia*), para 53.

justification and this will have to be assessed on a situation-by-situation basis anyway. A general ban on demonstrations involving spending the night in a UvA building or on a site is therefore at odds with the right to demonstrate. Without a substantiation of why this would create unsafe situations in the concrete case, which moreover cannot be mitigated with any additional conditions, such a far-reaching restriction cannot be accepted outright.

#### 4.4. DESIGNATING ALTERNATIVE LOCATION

36. In principle, demonstrators are free to determine the location of a demonstration given the freedom of form and forum, whereby they must be able to demonstrate within sight and hearing distance of their target audience.
37. Rule 1.3(3) demonstration rules annex contains the possibility for the UvA to designate an alternative location:

"If teaching, research or other activities on campus are in danger of being disrupted, the university representative, in consultation with the organisers, may designate an alternative location to continue the demonstration or protest, provided it is and remains peaceful."

38. Designating an alternative location may be at odds with the right to demonstrate because it is thus in principle up to the demonstrators to decide where to demonstrate. It does not follow from the rule that designation is only done if the expected disruption is such that a restriction is justified. As mentioned, some degree of disruption will have to be tolerated.

### 5. PRIVACY

#### 5.1. DUTY TO IDENTIFY

39. Collecting personal data, such as having to show an identity document, is at odds with the right to demonstrate. The UN Human Rights Committee considers it impermissible to collect personal information and data from participants in demonstrations unless accompanied by adequate safeguards.<sup>51</sup> The UvA is not allowed to collect personal information and data from participants in demonstrations, and UVA does empower itself to do so with rule 1.3 draft house rules. Compulsory identification solely on the basis of participation in a demonstration violates the right to demonstrate. Moreover, an identification requirement can have a *chilling effect*.<sup>52</sup>

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<sup>51</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 60-62.

<sup>52</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 10, 36, 61, 94. See also, possibly, V. Aston, 'State surveillance of protest and the rights to privacy and freedom of assembly: a comparison of judicial and protester perspectives', *European Journal of Law and Technology* 2017, Vol 8, No 1.

40. Rule 1.3 draft house rules reads:

"On the premises and in the buildings [...] security may ask to show identification. In the work and learning zones of the buildings, a valid employee, college or visitor card is required. In the other zones, an ID valid in the Netherlands is also accepted".

41. The demonstration rules annex does not specify that this rule *does not* apply at the time of a demonstration at the UvA. It is assumed that the UvA also applies this rule during demonstrations.
42. This rule is problematic because it follows that through private security, the UvA can request the showing of a legal identification document during a demonstration which has a *chilling effect* on participating in a demonstration.<sup>53</sup> Secondly, it is problematic because it allows the UvA to prevent demonstrators from being able to participate in a demonstration anonymously.
43. In certain situations - not being a demonstration - the UvA may and will have to be able to establish whether the persons on its premises and in its buildings are students or employees of the UvA, which can be done with a student or employee ID card. When registering students and when taking exams, an identification obligation is justified. However, there is no legal basis for security to ask for *legal* proof of identity during a demonstration. In any case, it does not follow from the Compulsory Identification Act, which sets out the authority for the police and certain supervisors to ask for proof of identity.<sup>54</sup>
44. This is avenged by the fact that the UvA does not seem to have guidelines for its security guards regarding the rules for asking for an identity document.<sup>55</sup> This creates additional risks of discrimination.

## 5.2. RECOGNISABILITY/FACE-COVERING CLOTHING

45. The UvA adopts the ban on face-covering clothing from the Act partially banning face-covering clothing in the draft house rules. Rule 1.6 draft house rules and rule 1.1 paragraph 5 appendix demonstration rules prohibit the wearing of face-covering clothing at the UvA, both in regular situations and during demonstrations. Rule 1.6 draft house rules reads:

"It is not permitted in UvA buildings and grounds, to wear clothing that completely covers the face or covers it in such a way that only the eyes are uncovered or makes them unrecognisable, unless this is necessary for medical reasons. [...]"

46. Rule 1.1(5) Annex Demonstration Rules reads:

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<sup>53</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 60-62. Parliamentary Papers II 2003-04, 29218, no. 3, p. 4.

<sup>54</sup> Section 2 Compulsory Identification Act; Section 8 Police Act; Section 6 Special Investigation Services Act.

<sup>55</sup> UvA, 'Policies and regulations', accessed at: <https://www.uva.nl/over-de-uva/beleid-en-regelingen/lijt-beleid-en-regulations.html?cb=>.

"At the demonstration or protest, the organisers are always recognisably present for the university representative and approachable for the conduct of the demonstration/protest."

47. Thus, although the wearing of face-covering clothing in university buildings and grounds is generally prohibited by law - unlike in public places where there is no general prohibition - such a prohibition where it concerns a demonstration on university grounds is potentially contrary to the right to demonstrate. After all, the basic principle is that participants in a demonstration - including organisers - may remain unrecognisable unless a ban on face-covering clothing is necessary to combat or prevent disorder.<sup>56</sup> Restrictions on this principle are the exception and may only be imposed in specific cases such as where there is reasonable suspicion or when displaying an inadmissible symbol.<sup>57</sup> However, it follows from the Act partially banning face-covering clothing that this ban is on universities for the purpose of unhindered communication between people. Moreover, rules restricting demonstrators and organisers from participating anonymously in a demonstration obviously have a *chilling effect*.
48. The ban on face-covering clothing during demonstrations at the UvA constitutes an interference with the right to demonstrate and is therefore only permitted if it meets the requirements set by the ECHR. We are not aware of any case law in which the Act partially prohibiting face-covering clothing is tested against the ECHR and the right to demonstrate. Restraint in drafting rules on this is appropriate because there may be a situation where the Act partially prohibiting face-covering clothing should be disapplied if its application during a demonstration at the university violates Article 11 ECHR.

## 6. REGISTRATION OF DEMONSTRATIONS

49. A notification requirement for a demonstration is not incompatible with Article 11 ECHR. For public places, the municipal council is authorised to draw up rules on prior notification of a demonstration.<sup>58</sup> The UvA is now also introducing a notification requirement for holding demonstrations at the university.

50. Rule 1.5 draft house rules reads:

"[...] The following activities require registration at servicedesk-fs@uva.nl:  
- Holding a demonstration or protest,"

51. Rule 1.2 demonstration rules annex reads:

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<sup>56</sup> P. Zoeten and B. Roorda, 'Ban on face-covering clothing at demonstrations', in: B. Roorda et al (ed.), *Answers to recent demonstration and meeting law issues*, Groningen: University of Groningen 2021, p. 257. UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 60.

<sup>57</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 51 and 60.

<sup>58</sup> Sections 3 and 4 Wom.

"Demonstrations or protests should be notified by an employee or student to the university (via servicedesk-fs@uva.nl) at least 48 hours prior to the action so that safe conduct can be ensured and arrangements can be made on how the demonstration or protest can take place. That notification will include one or more organisers who will act as contact person. In the case of demonstrations in a public place then the notification will be forwarded to the mayor."

52. In principle, an obligation to register is permissible, but failure to register a demonstration in advance - regardless of whether this violates the rules - may not be a ground for restricting or terminating a demonstration.<sup>59</sup> Moreover, demonstrations can also arise spontaneously and prior notification is therefore not possible in those cases.<sup>60</sup>
53. Insofar as it was intended by the obligation to register that the UvA could or could not give its *permission* for a demonstration after registration, this is obviously contrary to the right to demonstrate. It is important not to create the impression that a non-registered demonstration is not permitted. Indeed, in that case, such a rule could have a *chilling effect* on the exercise of the right to demonstrate.

## 7. DISSEMINATING INFORMATION ABOUT DEMONSTRATIONS

54. Article 10 ECHR enshrines the right to freedom of expression. This article is often invoked simultaneously with freedom of demonstration and should therefore be considered in conjunction with Article 11 ECHR, with Article 11 considered *lex specialis* of Article 10.<sup>61</sup> Rule 1.4 draft house rules concerns the dissemination of information at the university:

"In the premises, distribution of flyers, posters and similar activities for educational, research and valorisation-related topics for non-commercial purposes is allowed [...].

"For (fire) safety reasons, posters and other information material may only be hung on special wall noticeboards provided for that purpose, in other places they will be removed."

55. The wording of the rule leaves ambiguity as to whether the dissemination of information about a demonstration is allowed. To the extent that it would be prohibited, it would violate the right to demonstrate and freedom of expression (Article 10 ECHR). Calling to participate in a demonstration is seen as a form of organising that demonstration as it helps create the collectivity needed to

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<sup>59</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, no. CCPR/C/GC/37, para. 72.

<sup>60</sup> ECHR *Guide on Article 11 of the European Convention on Human Rights* (29 February 2024) para. 102-103.

<sup>61</sup> ECHR 14 November 2017, no. 41226/09 (*Isikirik v Turkey*), para 42; ECHR 26 April 1991, no. 11800/85 (*Ezelin v France*), para 35-37; Supreme Court Prosecution Service 12 February 2019, ECLI:NL:PHR:2019:202, para 5.6.

being able to collectively express an opinion.<sup>62</sup> Thus, preventing the dissemination of information about a protest is a restriction on the right to demonstrate.

56. It fails to see what security reasons there might be that justify allowing information to be disseminated only in designated places. Nor is there any justification as to why fire safety would justify it.

## 8. FINAL

57. In this opinion, the UvA's draft house rules were examined with a view to their compatibility with the right to demonstrate. In the process, a number of general bans were identified that violate demonstration law because they ignore an assessment of whether the restriction or ban in a specific situation serves a legitimate purpose, the restriction is necessary and whether the restriction is proportionate to the legitimate purpose.
58. It was then pointed out that a number of prohibitions wrongly took as their starting point (i) that a demonstration may not disrupt daily activities at the UvA (it may), (ii) that occupations and blockades cannot, by definition, be a peaceful demonstration (that is incorrect) and (iii) that overnight stays at the university cannot be part of a safe and peaceful demonstration (that is also incorrect). It was further raised that the UvA may only designate an alternative location for a demonstration if that restriction serves a legitimate purpose and is proportionate. The proposed authority to also have to be able to show proof of identification at demonstrations if UvA security guards ask for it is contrary to the right to demonstrate. As for the ban on face-covering clothing, this may also constitute an unjustified restriction despite there being a legal ban at universities on wearing such clothing. Both rules ignore the important principle that demonstrators should be able to participate anonymously in a demonstration.
59. It was also pointed out that while the obligation to notify does not in itself violate the right to demonstrate, failure to notify cannot in itself be a ground for imposing restrictions. Finally, it was indicated that if a ban on disseminating information about a demonstration was introduced, it would violate the right to demonstrate and freedom of expression, and that no justification was offered for the restriction to hanging information in certain places.
60. In conclusion, we conclude that the UvA's draft house rules contain a large number of provisions that do not meet the requirements of the right to demonstrate as guaranteed in the ECHR and the constitution. This constitutes an unjustified infringement of the right to demonstrate at the UvA and has a *chilling effect* on participation in demonstrations there.

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<sup>62</sup> N. Swart and B. Roorda, 'The scope of the almost sacred right to demonstrate', *NTM/NJCM Bulletin* 2023, p. 35.