

LIMITS OF THE RIGHT TO PEACEFUL PROTEST IN ALGERIAN LAW AND COMPARATIVE LEGISLATIONS

Dr. MADJRI YUCEF

Faculty of law, University of souk Ahras, Algeria

Email: youcef.madjri@univ-soukahras.dz

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Abstract:

The right to peaceful protest is a fundamental right guaranteed by various laws and international conventions. It is considered one of the essential rights and freedoms, yet the regulations and restrictions imposed on it vary from one country to another depending on national legal frameworks. However, there are common safeguards aimed at protecting the right to peaceful protest within domestic laws, such as the right to peaceful assembly, the protection of public order and security, and ensuring the peaceful nature of demonstrations.

Keywords: Peaceful protest - Public order protection - Human rights - Non-violence - Protest authorization.

INTRODUCTION:

Demonstrations serve as a means for citizens to participate in public discussions on social and political issues. Therefore, safeguarding the right to peaceful assembly is crucial for the health of democratic societies. Many countries have long recognized this right, which is enshrined in numerous national constitutions.

However, in response to the increasing frequency of conflicts, authorities in several countries have adopted legal and other measures that threaten or restrict this right. These measures range from severe crackdowns on demonstrations and bans on gatherings to legislative changes that increase the likelihood of punishing those who organize or participate in peaceful assemblies.

Authorities are generally obligated to ensure every individual's right to freely express their views in public gatherings while also protecting assemblies from those who seek to deny others their right to protest and be heard. For instance, law enforcement agencies must effectively safeguard demonstrations against counter-protesters who aim to prevent or disrupt them.

Most constitutions acknowledge this right, which has become an essential aspect of democratic practices, allowing people to express their opinions and ideas peacefully and without violence. According to international human rights standards, the right to peaceful assembly and association is protected under various legal instruments. Article 20 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of peaceful assembly and association." Additionally, Article 21 of the International Covenant on Civil and Political Rights recognizes the right to peaceful assembly, while Article 22 safeguards freedom of association. Furthermore, Article 11(1) of the European Convention on Human Rights affirms: "Everyone has the right to freedom of peaceful assembly and to freedom of association [...]." Similarly, Articles 15 and 16 of the American Convention on Human Rights guarantee the right to peaceful assembly and freedom of association.

Against this backdrop, the main research question arises: **What are the limits to the exercise of the right to peaceful protest under Algerian law and international conventions?**

To address this issue, the study adopts a **descriptive methodology**, which is most suitable for legal research, while incorporating an analytical approach. The study is structured as follows:

First Section: General Framework of the Right to Peaceful Protest

The constitutional recognition of the right to assembly and protest is insufficient on its own, as constitutional provisions are often broad and general. Notably, there is no precise definition of the right to assembly. This right is perceived as a comprehensive concept that includes both the right to gather in a specific location in a static manner and the right to protest, which involves a more dynamic and impactful form of collective expression. (Duffy-Meuner & Perroud, 2016)



First: The Concept of Public Freedoms

A demonstration is a gathering organized on public roads with the aim of expressing a collective conviction. It may remain stationary (even taking the form of a sit-in), but it often takes the form of a moving procession. Demonstrations are a traditional feature of political and social life, particularly those occurring outside formal political forums, serving as a means of exerting pressure on political authorities.

There are several types of demonstrations, including:

- Labor demonstrations organized by trade unions;
- Demonstrations in support of international causes;
- Political demonstrations organized by political parties and activist associations, among others. (Vie Publique, 2022)

Freedom is a philosophical, political, economic, social, and ethical concept. The commonly accepted linguistic or traditional definition refers to the absence of repressive or restrictive constraints that prevent individuals from exercising their will to perform actions they wish to undertake without prior coercion. (Ihsan, n.d., p. 3)

From the perspective of natural rights, John Locke asserts that freedom is nothing more than equality in natural rights: *"We all have an equal right to be free from harm and interference by others, provided that our actions remain within the bounds of natural law."* Thus, we are free to fulfill our duties, pursue our plans, and carry out our projects. (Çoban Balci, 2020, p. 139)

Second: The Concept of the Right to Peaceful Protest

The right to freedom of peaceful assembly and association, as enshrined in the International Covenant on Civil and Political Rights and other human rights instruments, protects various forms of assembly. This protection is not limited to the traditional concept of public spaces (such as highways, streets, or other physical locations). Instead, the right to freedom of peaceful assembly and association must be interpreted to include any place where people can gather, including online spaces. (Global Information Society Watch, 2011, p. 2)

This right is considered fundamental within the human rights framework, as it allows individuals to express opinions or specific viewpoints collectively. Peaceful protest and demonstration constitute a means of expression that combines individual and collective, verbal and written methods. Despite their apparent distinction, these means often intertwine in protest settings, where verbal or visual expression is combined with public demonstrations in streets and squares. Protests may take the form of sit-ins, marches, or speech gatherings, ensuring visibility and audibility to those present. (Nouini, 2018, Issue 31)

Legal scholars, both Arab and foreign, have offered various definitions of peaceful protest. Some define a public demonstration as: *"A gathering of several people on a street or in a public place to express a collective will or shared emotions, regardless of the underlying motivations—whether political, social, economic, or religious—through chants, slogans, gestures, or other means."*

Others have sought a broader understanding, defining a demonstration as: *"A gathering of several individuals in a public street or square to express a collective will or shared emotions. If the gathering is stationary, it is termed an 'assembly,' whereas if it is mobile, it is referred to as a 'procession' (Cortege)." (Al-Khafajy & Al-Shokrawy, 2015)*

Third: Regulations Governing the Exercise of the Right to Protest

The regulations governing the right to peaceful assembly vary significantly between ordinary circumstances and exceptional circumstances, depending on the nature of the situation. However, the existence of an exceptional circumstance should not be exploited to undermine this fundamental right. The guiding principle is that necessity is assessed in proportion to the situation, meaning that only the minimum necessary measures should be used to maintain public order in all its dimensions. (Rahmouni, 2014, p. 293)

International law provides a narrow interpretation of the restrictions imposed on freedom of assembly and association. However, states often invoke national security, public order, and the

protection of morality to enact laws that entirely prohibit these rights. As a result, peaceful protests may be banned, violently repressed, or their participants arbitrarily arrested and prosecuted. Additionally, authorities closely monitor the establishment of associations by imposing restrictive laws and procedures. Organizations that aim to protect citizens' rights and interests are routinely subjected to bans, and their members face legal prosecution.

The United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association monitors compliance with these rights globally, ensuring that national laws align with international standards. (Alkarama, 2019)

1. Maintaining Public Order

The French Council of State has consistently emphasized the importance of preventing demonstrations when they pose a threat to public order. This is characterized by extensive judicial oversight, as the Council verifies whether there is an actual risk of public disturbance and assesses whether the administrative authority's measures are appropriate in both nature and severity relative to the threat.

The administrative judge seeks to balance public order requirements with fundamental freedoms, which often appear conflicting. In its rulings on marches and demonstrations, the Council considers the size of security forces deployed and the prevailing political climate.

For instance, the Council upheld the administrative authority's decision to restrict the route of certain demonstrations to mitigate potential risks. It also ruled that planned demonstrations by the General Confederation of Labour (CGT) in Paris posed a threat to public order, thereby justifying their prohibition. In this case, the court did not extend its review to assessing the seriousness of the facts or the proportionality of the ban.

Similarly, the Council rejected an appeal against the prohibition of a protest planned by an anti-inflation organization in front of Notre-Dame Cathedral in Paris, citing the risk of public disorder. This ruling was based on verifying the existence of a genuine threat to public order that justified banning the protest. (Al-Khafajy & Al-Shokrawy, Op. cit., p. 128)

2. Protecting National Security

Robert McNamara, in his book *The Essence of Security*, defined national security as: *"It is not merely achieved by a state's perception that it can improve its future conditions, but rather as a result of sustained economic, social, and political development under guaranteed protection."*

McNamara also highlighted the internal dimension of national security, emphasizing that development—not military power alone—is the foundation of true security. In his view, security is built on: Sound economic foundations, Stable social structures, Responsible media, A minimum level of order and stability, achievable only in a democratic society. (Rahhal, 2010, p. 112)

Second Axis: Guarantees for the Realization of the Right to Peaceful Protest in Domestic Laws and International Treaties

In many countries, national constitutions enshrine individual rights and freedoms, including the right to peaceful protest. However, these rights may be subject to certain conditions, such as the prohibition of violence. Additionally, domestic laws regulate peaceful assemblies and demonstrations, aiming to protect protestors' rights while ensuring the safety of participants and society as a whole.

On the international level, the Universal Declaration of Human Rights (UDHR) is a key document that safeguards fundamental human rights. Article 20 of the UDHR explicitly recognizes the right of every individual to freedom of peaceful assembly and association, which includes the right to protest. Similarly, several international covenants protect human rights, particularly the International Covenant on Civil and Political Rights (ICCPR), which guarantees in Article 21 that individuals have the right to peaceful assembly.

Furthermore, various mechanisms and safeguards exist to protect the right to peaceful protest, although they may vary from one country to another. It is important to note that in some circumstances, legitimate restrictions may be imposed on protest rights, such as those aimed at maintaining public order or protecting the rights and freedoms of others.



First: Guarantees in Domestic Laws

Although legislation differs from one country to another, the right to peaceful protest is generally regulated by national laws. These laws often share common elements, including:

- Recognition of the right to assembly and protest: Laws typically grant individuals the legal right to assemble and peacefully protest to express their opinions and concerns.
- Conditions and legitimate restrictions: These may include prior authorization requirements, designated protest locations, and other measures aimed at ensuring participant safety and public order.

1. The Right to Protest in Algeria

One of the key issues concerning the right to peaceful assembly in Algeria is the terminology itself. According to international treaties and conventions, the right to peaceful assembly or protest should be explicitly recognized. However, a fundamental question arises: Does the Algerian legislator refer to the right to assembly as the right to peaceful protest?

This terminological distinction is significant because Algerian constitutional texts—from the 1963 Constitution to the 2016 Constitution—refer to the freedom of assembly rather than explicitly mentioning the right to protest. Additionally, the Algerian Penal Code refers to "gathering", which may not necessarily align with the concept of peaceful assembly or protest as understood in international law. This raises a fundamental concern: why has the constitutional legislator avoided explicitly recognizing the right to protest?

The right to peaceful assembly is among the most fundamental political freedoms, forming a pillar of democratic systems. It is also one of the core human rights enshrined in various international treaties.

The 1963 Algerian Constitution recognized freedom of assembly in Article 19, affirming that this right is constitutionally protected. However, due to state dominance over political life at the time, this right was often exercised only in support of state policies. Most assemblies served to endorse government projects and political agendas, while gatherings aimed at opposing government policies—whether political, economic, or social (Bouteib, 2016, p. 621)—were virtually inconceivable.

2. In Iraqi Law

The Constitution of the Republic of Iraq (2005) guarantees the right to peaceful protest, provided it does not disrupt public order and morality. Article 38 explicitly states: "The state shall guarantee, without prejudice to public order and morality, the freedom of assembly and peaceful protest, as regulated by law." However, the Iraqi legislature has yet to enact a specific law governing peaceful protests, leaving authorities to rely on Coalition Provisional Authority Order No. 19 of 2003, published in the Iraqi Official Gazette, Issue No. 3979, on July 10, 2003.

Under Section 2 of this order, Articles 220 to 222 of the Iraqi Penal Code No. 111 of 1969 were suspended, as they imposed restrictions on freedom of expression and peaceful assembly. The order also designated the authority responsible for issuing protest permits and required organizers to notify authorities at least 24 hours in advance, providing details such as the names of organizers, the maximum number of participants, the protest route, and the duration of the gathering. Additionally, the order imposed restrictions on protesters, prohibiting the carrying of firearms, sharp objects, or any items that could be used as projectiles, except for those necessary to hold banners and signs. (Zuheiri, 2019)

3. In Egyptian Law

Successive Egyptian constitutions have affirmed citizens' right to peaceful protest. Article 50 of the 2012 Constitution states: "Citizens have the right to organize public meetings and peaceful demonstrations, unarmed, based on prior notification regulated by law." Similarly, Article 73 of the 2014 Constitution affirms: "Citizens have the right to organize public meetings, marches, demonstrations, and all forms of peaceful protest, unarmed, with prior notification as regulated by law."

These provisions demonstrate that the Egyptian legislature has upheld the right to peaceful protest while requiring prior notification, reflecting a legal framework aimed at regulating—rather than prohibiting—this right. (Abdel Aal, 2014).

4. In International Conventions

International human rights instruments recognize peaceful protest as an essential aspect of freedom of assembly. This recognition is reflected in several key treaties:

1. International Covenant on Civil and Political Rights (1966): Article 21 guarantees the right to peaceful assembly, while Article 22 affirms the right to form associations, including trade unions.
2. International Covenant on Economic, Social, and Cultural Rights (1966): Article 8 affirms the right to assembly.
3. Universal Declaration of Human Rights (1948): Article 20 explicitly guarantees the right to peaceful assembly.
4. Arab Charter on Human Rights (2004): Article 24(6) states: "Every citizen has the right to freedom of assembly and peaceful gathering." (Universal Declaration of Human Rights, 1948)

5. Safeguards for Protecting the Right to Peaceful Protest

To ensure this right, legal and procedural safeguards must be in place, including:

- Legal recognition: Affirming the right to peaceful assembly without discrimination.
- Protection from violence: Ensuring demonstrators' safety from threats.
- Freedom of expression and media: Guaranteeing unrestricted coverage of protests.
- Effective judicial remedies: Providing mechanisms to challenge violations of protest rights.

CONCLUSION:

Peaceful protest is a fundamental right that serves as an indicator of a state's commitment to human rights and the strength of its democratic institutions. It provides an essential mechanism for individuals to express their opinions and advocate for their rights without resorting to violence. Accordingly, states must not impose unlawful restrictions on this right, nor should they invoke it as a justification for suppressing opposition or adopting repressive measures against their citizens.

Based on the above, the following conclusions can be drawn:

1. The international legal foundation for freedom of opinion and expression is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). This foundation rests on key principles, including the right to hold opinions without interference and the right to freedom of expression through any medium, whether oral, written, or otherwise.
2. The exercise of the right to freedom of opinion and expression is intrinsically linked to other fundamental rights and freedoms, as it constitutes a core element of democratic governance.
3. Peaceful demonstrations play a vital democratic role by allowing individuals to defend their rights and freedoms, promote political discourse on matters of public concern, and advocate for alternative policies in line with democratic aspirations.

Recommendations

To strengthen and safeguard the right to peaceful protest, the following recommendations are proposed:

1. Enhancing constitutional safeguards to ensure that the right to peaceful assembly is recognized as a fundamental democratic right.
2. Preventing the use of excessive force against protesters by ensuring that law enforcement authorities do not resort to violent repression as a means of responding to legitimate demands.
3. Restricting the invocation of national security or public order as a pretext for imposing vague or arbitrary limitations on the right to protest. Any restrictions must be necessary, proportionate, and subject to adequate legal safeguards and effective remedies to prevent abuses.

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