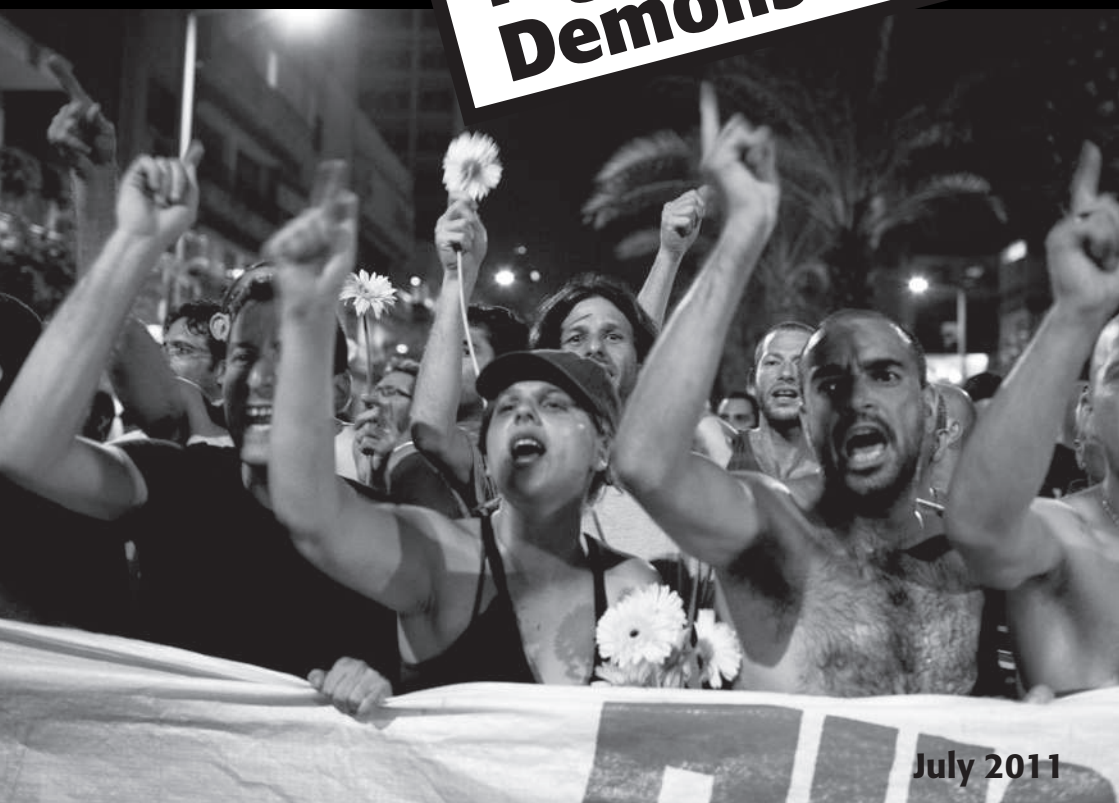


“The right to demonstrate and march is an inseparable part of the freedom of expression right. It constitutes a key tool with which to opine and place social issues on the public agenda.”

HCJ 2557/06 The Majority Staff v. the Israel Police

Rights of Demonstrators



July 2011

האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في إسرائيل
The Association for Civil Rights in Israel



www.acri.org.il

Tent Protest

Is it legal to set up a protest encampment?

Setting up a protest encampment falls under the basic right to freedom of expression. That right, however, may be restricted if there is real and near-certain fear that it might harm the public's safety. The law does not ban the establishment of a protest encampment on public grounds, and when the authorities consider whether a given encampment is legal or not they need to weigh the right to freedom of expression against the harm it might or does cause. The court has established parameters for the examination of this balance, including the duration of the protest act and the extent of harm it causes to the general population. The longer the protest lasts, the more the courts will be inclined to allow municipalities to evict encampments.

Is a permit required to set up an encampment?

The legal situation is inconclusive. Setting up an encampment might be in violation of municipal rules and by-laws pertaining to construction and planning as well as to observing order and sanitation on public grounds. These by-laws authorize municipalities to disperse protest vigils or ask the police to do so. They are, however, also authorized to let protesters deviate from by-laws and allow protest encampments.

Can the municipality state conditions when authorizing an encampment?

Municipalities may make encampments conditional upon certain terms, but these conditions must be reasonable and not prevent the protest itself. Reasonable conditions may include the demand that encampment be set up in a location that does not harm residents and/or the public; that proper sanitation be maintained in the encampment; or that the protesters pledge to restore order after their protest ends. According to ACRI, conditions handed down only because they convenience the city (such as the demand that all protest encampments be placed in a single location) are unreasonable.

How can one appeal against a city's refusal to allow an encampment, or unreasonable demands it raised as preconditions for the encampment's establishment or continued existence?

You can try to politely negotiate with the city officials in charge, and remind them that freedom of protest is a basic principle in Israeli law and society and that courts allowed the eviction of encampments only after months of protest. Should this fail, you can try to take the case to court.



Demonstrations

When does a demonstration require a permit?

A permit is required only when all following three conditions exist:

when the number of demonstrators exceeds 50;

when it is an open-air demonstration; and when it includes a march and/or political speeches (the law does not define the latter).

No permit is required for an open-air demonstration when it does not include speeches or marches, even if attended by hundreds. Demonstrations in the Knesset area do require a permit, regardless of the aforementioned conditions.

A permit can be obtained by filing a request at any police station.

Are the police authorized to set terms for a demonstration permit?

The police may demand that a demonstration march change its course, restrict the number of people who may attend it, or set terms for it only under special circumstances. The law does not specify these terms, but courts stipulate that the police may request that the demonstration organizers show permits from the emergency services and in case a stage is erected, ask for a certificate from construction and electricity engineers. Another accepted condition is that the organizers appoint ushers. The police also often request the approval of a safety engineer, but it may not force the organizers to pay for the safety engineer's work or for police officers who guard the demonstration.

In certain cases, demonstration organizers are asked to pledge that a certain type of messages is not sounded or presented in it. This demand is often baseless and organizers are advised to reject it. So since organizers cannot vouch for the conduct of all the demonstration participants, they are advised to refuse to make such commitments, which might serve as reason for dispersing the demonstration. Contrary to assertions often made by the police, the use of megaphones at demonstrations does not require an a-priori permit.

When are the police allowed to disperse a demonstration?

Ranking police officers may order a demonstration dispersed only if:

- A demonstration that requires a permit is carried out without one;
- Demonstrators violate their permit terms;
- The demonstration poses a threat to the public;
- Demonstrators turn violent (note: when a demonstration is met with violent opposition, this is not a good enough reason to disperse it, except when there is a real fear for the public's safety).

What can demonstrators do when the police decide to disperse a demonstration that did not require a permit?

An order to disperse a demonstration that did not require a permit on grounds that it does not have one is illegal. Even an unfounded fear of the violation of public order, particularly due to hostile reactions to the demonstration, cannot serve as legal grounds for a dispersion order. At the same time, a police officer who mistakenly believes the dispersion order was given legally might use force to disperse the demonstration. It is recommended that the demonstration organizers contact the police commander on the ground and conduct a polite dialogue to explain that the dispersion order is illegal.



Are the police allowed to use force against demonstrators, and when?

During demonstrations, a police officer may use force in the following cases:

- When arresting a demonstrator who attempts to resist arrest or flee;
- To disperse an unruly congregation that threatens the public;
- When the officer is attacked or tries to prevent a crime.

In any event, the force the police use must be proportional and limited to the attainment of the goal for which it was used. Complaints about police brutality may be filed with the Internal Affairs Department (IAD). To do that, you need the officer's details and to write down the chain of events as soon as possible.

What can be done when officers refuse to identify themselves?

Police officers are supposed to wear name tags at all times. An officer's refusal to identify or wear a badge constitutes inappropriate conduct, and complaints about it may be filed with the IAD. The complaints should include as many documented facts as possible regarding the officer's appearance and the precise time and place you encountered him or her.

Is it allowed to take pictures of officers in action?

Taking pictures of or filming police officers when they clash with demonstrators is legal. In most cases, when the police demand that people stop shooting or give them their cameras, they do so without proper authority.

Detention, Arrest, Interrogation

What is detention and when may the police detain a person?

Detention is a means to restrict a person's freedom of movement due to suspicions that a felony has taken place, or to prevent one. A police officer may detain a person who could provide information regarding a felony, ask for this person's identity and address, and interrogate him or her, or summon this person to a police station on a different date. A police officer who detains a person must identify himself, notify the person he is being detained, and provide the reason for the detention. Persons or vehicles may not be detained for more than 3 hours. When the police detain a large number of people, the officer in charge may extend the detention period by another 3 hours for reasons that shall be noted down.

What is the difference between a detention and an arrest?

Detention may be performed on site, but when a person is arrested, the police officer must take him to the station immediately, except in given irregular cases. A

detention may last up to 3 hours (or up to 6 hours under certain circumstances), while a person may be arrested for up to 30 days. When a person is arrested (i.e., placed under police custody), it is the police duty to either release him after 24 hours, or present him before a judge when seeking to extend his arrest (remand in custody) - except in irregular cases, which are not usually relevant when dealing with people arrested at demonstrations.

When may the police arrest a demonstrator?

A person suspected of committing a crime is considered innocent until proven guilty in a court of law. So an arrest must not serve as a punitive measure, but rather as a measure in irregular cases in which the suspect threatens the public's safety or might disrupt an investigation. By law, any police officer may arrest a demonstrator without a warrant provided there is a reasonable suspicion that this person broke the law and under the following circumstances:

The demonstrator might harm another's, the public's, or the state's security;
There is reason to believe that this person would not show up when summoned for questioning;

There is reason to believe that not arresting this person might cause the disruption of justice, including affecting witnesses or tampering with evidence;

Additionally, a person may be arrested if, while legally detained, he refuses to follow the instructions of the authorized detaining officer.

By law, a person should not be arrested if detaining him is sufficient.

What are my rights as a detainee, or when arrested?

- The arresting officer must identify himself and immediately notify the detainee of the reason for the arrest, immediately take the detainee to the police station, and present him or her before the officer in charge at the station.
- The detainee has the right to have a close person and a lawyer notified of the arrest and, with the exception of irregular circumstances, should be allowed to meet an attorney without delay.
- A person arrested has the right to be represented by a public defender, which the state shall finance after the arrestee's economic eligibility is examined.
- A person must be brought before a judge within 24 hours of the arrest, except in irregular cases, which are not usually relevant when dealing with people arrested at demonstrations.
- An arrested person who requires medical attention has a right to receive it. ACRI maintains that a person has a right to meet an attorney already when he or she is detained, and thus a detainee may demand that the detaining officer notify his or her lawyer and that this request be noted down.

Must the police supply translation services when interrogating a demonstrator who does not speak Hebrew?

By law, the interrogation of a suspect must be conducted in the suspect's language or one he or she knows and speaks, including sign language.

May the police release a person only under certain conditions, and what may these be?

The police has a right to release a person from custody only after this person complies with various restrictive terms such as bail, the duty to notify the police of any change of address or workplace, banning the person from leaving Israel and requiring that he or she deposit their passport (for no longer than 3 months), banning the person from entering a certain region or settlement, or requiring that they be or reside in a given region (for no longer than 15 days), banning the person from contacting a certain person (for no longer than 30 days), or placing the person under house arrest (for a period that does not exceed 5 days). When such terms are presented and the arrested person refuses to accept them, the police have the right to keep this person in custody even longer and bring him or her before a judge to set the terms of release. The court has the power to impose restrictions for longer periods than the police may.

ACRI believe that a restrictive term that bans participation in demonstrations illegally impairs on the right to protest.

Means of Identification

Which means of identification may the police take from me if I were arrested while demonstrating?

Means of identification include fingerprints, DNA samples (swab of inside the cheek, hair sample, or minimal blood sample), and pictures. An officer may take such means of identification from a demonstrator only when he or she is questioned under warning as a suspect, and only after being notified that the data will be saved in police databases. The police must ask for the suspect's consent; if no such consent is given, a police officer is authorized to use reasonable force only to take fingerprints and a mug-shot. As for the DNA sample – if the suspect refuses to give a minimal blood sample, they should be asked to agree to give hair or cheek sample. Should the suspect refuse, a police officer may authorize seizing a hair sample with reasonable force.

Refusal to give identification means might be considered a felony under pains of 6 months imprisonment, but a refusal to give a blood sample shall be considered such a felony only after the suspect had refused to give hair or cheek-cells sample. A DNA sample shall be taken only from persons suspected of any of a series of crimes listed in legislation, including violent and property crime.

■ Is it legal to set up a protest encampment? ■ Is a permit required to set up an encampment? ■ The municipality will not let me set up a protest encampment. How can I appeal? ■ When does a demonstration require a permit? ■ I was arrested. What are my rights? ■ Can I use a megaphone at a demonstration? ■ Is it allowed to take photos of police officers during the demonstration? ■ I encountered a violent cop. What can I do? ■ When are the police allowed to disperse a demonstration? ■ The police will only release a protester from arrest under the condition that the protester will not attend demonstrations. Is that allowed? ■ I was interrogated and asked for a DNA sample. Is that legal? ■ I don't speak Hebrew, will translation services be provided for me during interrogations?

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