



Statewatch Analysis

The growing use of “preventative” arrests

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Examines police tactics to counter and thwart protests using mass and preventative arrests, new laws and “kettling” to deny the right to demonstrate

The Brussels noborder camp [1], held in the last week of September 2010, drew headlines but not for reasons the organisers’ had hoped. The Brussels police, backed by the mayor and local authorities, decided that it would not tolerate any protests from the camp and its estimated 500 participants. Almost all of the ensuing arrests were so-called ‘preventative’ [pre-emptive] arrests.

Mass arrests in Brussels

Police operations on Wednesday 29 September were heavily criticised after an estimated 300 people were arrested to prevent them from joining a demonstration by European trade unions. Several people resisting arrest were injured. Preventative arrests are not unusual in Belgium, which has the controversial legal concept of *bestuurlijke ophouding* or administrative detention, giving a police officer the right to make an arrest in order to protect public order in an “absolute emergency”. Because of the concept’s broad definition, the detainee has to be released within 12 hours and the arrest must be ratified by a trial judge (*procureur des konings* or *onderzoeksrechter*). In practice judges nearly always sanction arrests. The law also has additional criteria that make it possible to approve preventative arrests; one of these is if a person is unable or unwilling to identify themselves.

The large-scale arrest of protestors has created difficulties for the authorities because the right to demonstrate is a fundamental premise of a democratic system. On 29 September, protesters were on their way to a legal demonstration having agreed their participation with trade union officials. Some arrests were made at the demonstration, but most trade unionists did not react at the time or later. Only the FGTB-Wallone issued a statement protesting at the arrests [2]. Some left-wing organisations spoke out and the Human Rights League also denounced the police operation. A week later a demonstration - attended by 500 people - was held to protest at the arrests.

There was also a parliamentary debate after MPs Zoé Genot and Eva Brems, (*Ecolo, Écologistes Confédérés pour l’organisation de luttes originales*, Confederation of ecologists for the organisation of original struggles), demanded an explanation from Interior minister, Annemie Turtelboom [3]. She backed the police chief explaining that he had received information that “a few hundred anarchists” were planning to gather at the no border camp with plans to “commit violent actions”. After the arrests a Brussels police spokesperson

stated that they had made "preventative arrests of 148 demonstrators because they were carrying weapons...Also, 96 anarchists were arrested because they were trying to join the demonstration" [4]

Preventative arrests

The rounding-up of large groups of demonstrators who have not committed a crime has become an alarmingly familiar phenomenon at protests across the world. In *Statewatch* Volume 20 No. 2, I wrote about the policing of the G8 and G20 summits in Toronto, Canada, where more than 1,000 people were detained. Only 304 of them appeared in court, the remainder were released without charge. Many of the 304 agreed to pay fines of between \$50 and \$100, entering guilty pleas to avoid a court case even though it might have cleared them. Sociologist Christian Scholl, in his dissertation *Two Sides of a Barricade; (Dis)order and summit protests in Europe* [5], points to the fact that almost every summit protest reveals similar figures - a massive number of arrests with few convictions:

But it is difficult to get hold of reliable statistics. Police forces are reluctant to give the total figures of those arrested if it is high and demonstrators' legal teams are often too busy for good 'bookkeeping'. Also, the legal procedures can drag on for years. But in general you can state that many of the summit protests were 'dealt with' by resorting to the large-scale rounding-up of people without any prospect of serious charges being laid against them.

Scholl adds:

and if they need to find legal backing, the European definition of 'terrorism' is so vague and broad that even summit protesters fit it.

Special rules

In many European countries the law snuffs out potential political confrontation through preventative arrest, even when the protest is small. In the Netherlands for instance, mayors have the right to declare a "local state of emergency" through the General Local Regulation (APV, *Algemene Plaatselijke Verordening*) in the case of a threat of a disturbance to the public order. This is often used when far-right organisations plan a demonstration in a town and anti-fascists move to counter it. All demonstrations are then banned in a part of the town and activists discover that their civic and political rights have been cancelled for that day. Those who walk with a banner or refuse to show identification details can end up in jail.

A typical example of this was a demonstration by the fascist NVU (*Nederlandse Volks Unie*, Dutch Peoples Union) in Venlo on 12 June 2010. Initially, local Mayor Bruls tried to ban the demonstration, but the NVU appealed and a judge ruled the banning order illegal. The mayor then issued a *noodverordening* (Emergency Decree) [6], with so many restrictions that almost anybody could be arrested. This happened to at least 59 people, among them a group of clowns (because the emergency decree stated that it was forbidden to "cover your face" or even to carry material that can be used to cover your face, including face paint). Others were arrested two hours before the demonstration was due to start for having a banner with them (the poles could be considered a weapon) or a scarf (which might be used to conceal your face).

Many of those arrested were released after the fascist demonstration ended, with a *transactievoorstel* ('a proposal for a deal') to pay a fine of 300 euros. Rejecting the proposal meant that the case automatically went before a judge. On 28 October, five

demonstrators who rejected the proposal saw their fine reduced to 100 euros and one individual who refused to show identification saw their case dropped.

Plea bargaining

The *Transactievoorstel*, or 'plea bargain', is quite common in many countries. The victims of a mass arrest are often released once they have been detained for the maximum length of time permissible - and sometimes longer - with a piece of paper informing them that they can avoid further prosecution by paying a fine. This proposal is tempting, particularly for those who have travelled from abroad, because returning to defend oneself in court is expensive. Travel costs can be much higher than the proposed fine. However, paying the fine also means accepting the verdict.

“Kettling”

Another preventative policing method is “kettling”. This occurs when large numbers of police officers encircle a group of people - sometimes an entire demonstration - and detain them. The method is common in Germany, but has spread to other countries. In the UK it was used to curb protests against the G20-summit in April 2009. The first German “kettle” happened in June 1986 in Hamburg, where a group of 800 people was held for 13 hours. Ironically, the demonstration was organised to protest against the fact that the previous day demonstrators were impeded from reaching a demonstration to protest against the Brokdorf nuclear plant. The “Hamburger Kessel” was later judged to be illegal and those caught up in it were paid 200 Deutsche Mark compensation.

The method itself was not deemed illegal, only the manner in which it was used in Hamburg. Since this judgement the tactic has been used repeatedly in Germany, albeit people have seldom been held for such a long period of time. The Hamburger Kessel did have one positive effect: the creation of a group of critical police officers, now known as *Bundesarbeitsgemeinschaft kritischer Polizistinnen und Polizisten*, and initially called the “Hamburger Signal”. [7] These officers refuse to be deployed on some operations that are opposed by demonstrators, and they urge their colleagues to do the same.

Group guilt

Finally, although officially not fitting the category of a preventative arrest, there is the legal instrument of collective or group “guilt”. In the Netherlands for instance, article 140 of the penal code criminalises “participation in a group that has the intent to cause a crime”. This definition is so vague that almost anybody can be made to fit it, and it has been used to suppress protests and make arrests. A notorious case was the eviction of a large squat (Wolters Noordhof) in the city of Groningen. The squatters tried to defend their building and police rounded-up anyone present at, or around, the squatted building. The 139 people arrested were detained for over a month.

According to the prosecution anybody who participated in defending the squat, whether they made coffee or threw stones at the police, was equally guilty. A judge rejected this, stating that the law demands criteria to establish that they belong to the same criminal group, such as “prolonged participation in the...group”. The prosecution was unable to prove this. [8] In other cases, where the prosecution was able to establish that they had targeted certain people for specific reasons, the case went to court. Although judges regularly dismiss the use of this article to indiscriminately round up people, the authorities in the Netherlands continue to use these containment tactics against demonstrators and football fans.

This Analysis first appeared in Statewatch Journal vol 20 no 3/4

Footnotes

1) <http://www.noborderbxl.eu.org/>

2) *Statewatch issued an immediate report about those arrests*

<http://www.statewatch.org/news/2010/oct/01brussels-noborder.htm>

3) [http://www.fgtb-](http://www.fgtb-wallonne.be/sites/default/files/fichiers/lettre_bourgmestre_de_bruxelles.pdf)

[wallonne.be/sites/default/files/fichiers/lettre_bourgmestre_de_bruxelles.pdf](http://www.fgtb-wallonne.be/sites/default/files/fichiers/lettre_bourgmestre_de_bruxelles.pdf)

4) <http://www.zoegenot.be/En-marge-de-l-Euro-manif-et-du-No.html>

5) *De Standaard* 30. 9. 10.

6) 3. *University of Amsterdam* 2010: <http://dare.uva.nl/record/342633>

7)

<http://www.venlo.nl/actueel/berichten/Documents/NOODVERORDENING%20NVU%202010.pdf>

8): <http://www.kritische-polizisten.de/>

9) <http://www.burojansen.nl/artikelen/tips6.htm>

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