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FREEDOM OF ASSEMBLY AND SPEECH IN GERMANY UNDER PRESSURE. (UN-)LAWFUL RESTRICTIONS BY AUTHORITIES, POLICE, AND THE COURTS

Abstract

The paper gives an overview on escalating limitations on freedom of assembly and freedom of speech in Germany, starting with the COVID pandemic. Broad and massive limitations on freedom of assembly during the pandemic found a 'follow-up' in the policing of Palestine protests since October 7, 2023 until to date. It seems that the pandemic somehow provided new patterns for restrictions on fundamental rights. Besides, new means of police coercion by so-called 'pain grips' were broadly implanted due to heavy public resentment during protests against climate change in 2024. Since Palestine protests started, especially the Berlin police – obviously under heavy political pressure – in addition to widespread administrative restrictions and obstruction of Palestine protests uses violence in form of targeted blows to the face to induce bodily harm. Violence thus is not used in policing riots but opinions. After October 7, 2023 and differently from the COVID pandemic, at least some Administrative Courts in German States however began to resume their task to protect civil rights against interference by the executive power and the police rather soon.

Keywords

freedom of assembly; freedom of speech; protest policing; Palestine protests; judicial control of policing

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Introduction

In Germany, freedom of public assembly (*Versammlungsfreiheit*) according to Article 8 of the Federal Constitution (*Grundgesetz*)[1] and freedom to express and disseminate one's opinion in public (*Meinungsfreiheit*) [hereinafter: freedom of speech][2] according to Article 5 *Grundgesetz* in general are considered to be sufficiently protected by the Federal Constitution as well as by most Constitutions of the German States (*Länder*).[3] While freedom of assembly for a long time was interpreted as encompassing freedom of speech in the context of demonstrations, today the Courts rather make a distinction between freedom of assembly, protecting the *form* of expression of public statements on the one hand and freedom of speech, protecting the *content* of such expression of speech during a public assembly.[4] Safeguards under the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (CFR) in contrast rather suffer under a shadowy existence in this field owing to a perception that constitutional protection is sufficient to guarantee essential liberties, even though some ECHR decisions declared policing in Germany to be in conflict with the ECHR.[5] Even though legal standards of freedom of assembly and freedom of

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[1] Text in English: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html [last accessed: 31.5.2026].

[2] Freedom of opinion (*Meinungsfreiheit*) from a constitutional point of view protects a much broader sphere of public statements than those connected with freedom of assembly.

[3] Extensively on the Act on Freedom of Assembly (*Versammlungsfreiheitsgesetz*) in the State of Hessen, *Staatsgerichtshof Hessen* at: https://staatsgerichtshof.hessen.de/sites/staatsgerichtshof.hessen.de/files/2025-03/2920_2931-urteil_mit_sondervoten_und_leitsaetzen_anonymisiert.pdf [last accessed: 25.5.2026].

[4] *Bundesverfassungsgericht*, BVerfGE 82, 236/258, full text at: https://www.servat.unibe.ch/dfr/bv082236.html [last accessed: 31.5.2026].

[5] See ECHR in *Russ v. Germany*, Application no. 44241/20, Judgment of 20.5.2025 and *Schwabe and M. G. v. Germany*, Application no. 8080/08 and 8577/08, Judgment of 1.12.2011. On policing in Germany see, e.g., *Basu v. Germany*; Application no. 215/19, Judgment of 18.10.2022; *Hentschel and Stark v. Germany*, Application no. 47274/15, Judgment of 9.11.2017; *Ostendorf v. Germany*, Application no. 15598/08, Judgment of 7.3.2013; *Epple v. Germany* – Application no. 77909/01, Judgment of 24.3.2005. See also J. Bücker, *The Questionable Concept of Protective Weapons*, at: https://verfassungsblog.de/the-questionable-concept-of-protective-weapons/ [last accessed: 31.5.2026] and C. Arzt, *Versammlungsfreiheit auch mit*

speech are well known in the executive branch in Germany, both are often contested by authorities in charge (*Versammlungsbehörde*) and protest policing[6] 'on the streets'.

In hindsight both, policing the pandemic and policing the new phenomenon of *Klimakleber,* must be considered as starting points of increasingly restrictive forms of protest policing in the face of assemblies and freedom of speech in at least (some) German cities. Severe restrictions on these freedoms became even more incisive in the context of the Israeli war on Gaza after the atrocious *Hamas* attacks on October 7th, 2023.[7] A formerly rather rights-based understanding of freedom of assembly and speech increasingly gave space to a restrictive way of policing both freedoms under the landmark of law and order (*öffentliche Sicherheit und Ordnung*). Since October 2023 preemptive bans, dissolution of assemblies, and violent protest policing have resulted in broad and deep limitations on freedom of assembly and speech as well as criminal conduct by large numbers of police officers, such as have not been

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Plastikvisier, at: https://verfassungsblog.de/versammlungsfreiheit-auch-mit-plastikvisier/ [last accessed: 31.5.2026].

[6] Still most instructive D. della Porta, H. Reiter (eds.), *Policing Protest – The Control of Mass Demonstrations in Western Democracies*, University of Minnesota Press, 1998.

[7] See C. Arzt (if not mentioned otherwise): "Verbot der politischen Betätigung eines Ausländers – Berlin: Meinungsfreiheit in Sachen Palästina nur für Deutsche?", *Grundrechte-Report*, 2026, p. 93; "Versammlungsfreiheit unter Druck – COVID, Klimaschutz, Palästina – Behördliche und polizeiliche Einschränkungen auf dem Vormarsch", *Kritische Justiz*, 2025, p. 553; "Protest Policing in Berlin – Vom Vorabverbot zur Versammlungsauflösung", *Grundrechte-Report*, 2025, p. 108; "Schmerzgriffe und Nervendrucktechniken der Polizei – Berliner Gericht setzt (ein paar) Grenzen", *Vorgänge*, 2025, 250/251, p. 189; "Sind Versammlungsverbote bald der Normalfall? Von Corona über »Klimakleber« zum Krieg in Gaza", *Grundrechte-Report*, 2024, p. 120; C. Arzt, A. Bosch, "Pro-Palästina Demos nicht erlaubt? Ethnographische und rechtliche Anmerkungen", *Bürgerrechte und Polizei/CILIP*, 2023, 133, p. 83; *Pro-Palästina als unmittelbare Gefahr? Zur Aushöhlung des Versammlungsrechts in aufgeheizten Zeiten*, 2023, at: https://verfassungsblog.de/pro-palastina-als-unmittelbare-gefahr/ [last accessed: 31.5.2026]; "Klimaproteste und die letzte Generation – Versammlungsfreiheit geht vor", *Vorgänge*, 2023, 241, p. 113; "COVID-19-Pandemie: Versammlungsfreiheit vor Gericht – Ein Verlaufsprotokoll in drei Phasen", *NK Neue Kriminalpolitik*, 2021, 400–420; "COVID-19-Pandemie und Versammlungsfreiheit – Ein Schönwetter-Grundrecht (?) vor Gericht", in Schwier (ed.), *Die Gewährleistung der Versammlungsgarantie unter pandemischen Bedingungen*, Rothenburger Beiträge, 2023, 111, p. 5; H. Aden, C. Arzt, J. Fährmann, "Gefährdete Freiheitsrechte in Krisenzeiten – Lehren aus der COVID-19-Pandemie", *Vorgänge*, 2020, 230, p. 99.

witnessed for decades in Germany and especially in Berlin. This now finds one of its major focuses in the slogan 'From the River to the Sea – Palestine will be free' which was banned by an administrative act (*Verwaltungsakt*) of the Federal Ministry of Interior (*Bundesministerium des Innern*), because considered to be a slogan of Hamas in whatsoever language used.[8] This highly contested verdict in consequence led to thousands of criminal investigations (*Strafgesetzbuch*)[9] against protesters under § 86a German Criminal Code and often contradictory Penal Court decisions.[10] Until today the slogan is the 'entry gate' established by the relevant authorities (*Versammlungsbehörden*) and police for aggressively policing any demonstration against the Israeli war in Gaza and beyond. Universities too, have shown themselves to be no be longer safe spaces for critical and controversial discussions on the Israel-Palestine conflict.[11]

Since October 2023, especially Berlin and Frankfurt am Main have crystallized as hotspots of protest and confrontation with the authorities and police on this topic.[12] Very often the authorities and the police intervened against demonstrations on the Palestine topic at least until the end of 2025. The rather liberal and rights-based understanding of freedom of assembly[13] established by the German Constitutional Court (*Bundesver-*

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[8] *Bekanntmachung BMI*, BAnz AT 2.11.2023 B10.

[9] The *Strafgesetzbuch* is available in English at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html [last accessed: 31.5.2026].

[10] See R. Brockhaus, Y. Ohle, "'From the river to the sea' – Dokumentation und Analyse der (bisherigen) strafgerichtlichen Rechtsprechung zu § 86a", *Kritische Justiz*, 2025, p. 650; see also in detail on this slogan K. Ambos, "'From the river to the sea …' – nicht per se strafbar, auch nicht gemäß § 86a Abs. 1 Nr. 1 StGB", *Juristenzeitung*, 2024, p. 620; D. Bax, *Faesers fatales Vermächtnis*, https://taz.de/Meinungsfreiheit-in-Deutschland/!6162451/ [last accessed: 31.5.2026].

[11] See J. Grimm, Y. Ohle, Y. Scheytt, "Universitäts-Besetzungen im Palästina-Kontext – Versammlungs- und Meinungsfreiheit auf dem Prüfstand", *Kritische Justiz*, 2025, p. 635.

[12] For a survey of Court decisions till October 2025 see: https://www.hwr-berlin.de/fileadmin/portal/Dokumente/Prof-Seiten/Arzt/Polizeirecht/%C3%9Cberlick_Urteile_Pal%C3%A4stina_Proteste_17.10.2025.pdf [last accessed: 31.5.2026].

[13] See, e.g., B. Koll, *Liberales Versammlungsrecht*, Nomos, 2015; A. Doering-Manteuffel, B., Greiner, O. Lepsius, *Der Brokdorf-Beschluss*, Mohr Siebeck, 2015; M. Breitbach, D. Deiseroth, *Geschichte des Versammlungsrechts*, Nomos, 2023, p. 743; see also T. Wihl, *Wilde Demokratie – Das Recht auf Protest*, Wagenbach, 2024.

fassungsgericht) in the famous *Brokdorf* case in 1985[14] lost much of its binding or at least exemplary power for the authorities and the police. Many Administrative Courts (*Verwaltungsgerichte*) too, especially in the beginning of the pandemic as well as for at least some weeks after October 7th, 2023 lost track of their essential task of protecting fundamental rights according to Article 19 para 4 of the German Constitution.[15]

In this article I shall argue that freedom of assembly and freedom of speech were severely curtailed in Germany starting with the COVID pandemic (I.) and a particular form of protest against climate change (so called *Klimakleber*) [II.]. Both found their sequel in the face of protests against the Israeli wars on Gaza and beyond (III), which will be the major focus of this contribution. The author does not follow a strict doctrinal approach which seems to be too narrow for this undertaking. Instead I will blend results from research on protest and social movements, media coverage, external observations of various protests on Gaza by the author in Berlin, and outcomes of a recently published evaluation of the new Act on Freedom of Assembly (*Versammlungsfreiheitsgesetz*) in Berlin[16] and selected exemplary Court decisions regarding *Gaza* protests.[17]

I. Freedom of assembly during the COVID pandemic

Freedom of assembly has been under considerable pressure in Germany during the COVID-19 pandemic. For the first time in decades, massive restrictions by statutory law, ordinances, and general decrees were introduced on a large scale and over a long period. Legislators, ministerial

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[14] *Bundesverfassungsgericht*, BVerfGE 69, 315; full text at: https://www.servat.unibe.ch/dfr/bv069315.html [last accessed: 31.5.2026]; abstract in English at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1985/05/rs19850514_1bvr023381en [last accessed: 31.5.2026].

[15] "Should any person's rights be violated by public authority, he may have recourse to the Courts".

[16] *Evaluation des Versammlungsfreiheitsgesetzes Berlin*, 2026, at: https://www.foeps-berlin.org/fileadmin/institut-foeps/Dokumente/FOEPSDIGITAL/FOEPS-Digital_19_EvaVersFG-Berlin.pdf [last accessed: 31.5.2026].

[17] See https://www.hwr-berlin.de/fileadmin/portal/Dokumente/Prof-Seiten/Arzt/Polizeirecht/%C3%9Cberlick_Urteile_Pal%C3%A4stina_Proteste_17.10.2025.pdf [last accessed: 31.5.2026].

administrations, authorities in charge of assemblies, and the police developed new standards for restricting freedom of assembly, which can be pulled from out of the toolbox and reapplied in future societal crises, by the use of, for example, widespread and long-lasting total bans of assemblies. In particular, the executive branch created legal instruments for total bans on assemblies in general and not only in a specific case as was the rule according to the '*Brokdorf*' decision[18] of the *Bundesverfassungsgericht*. The principles of 'friendly or rights-based handling of assemblies' (*Versammlungsfreundlichkeit*) – which had been firmly established by decisions of the *Bundesverfassungsgericht* as well as the Administrative Courts (*Verwaltungsgerichte*) over decades – were ignored or severely restricted by the administration and police. Freedom of assembly was in fact suspended for about one month by total bans *ex ante* or the requirement of a prior 'permit' (*Genehmigung*) for assemblies, a practice clearly in defiance of Article 8 *Grundgesetz* as well as in the federal and state Acts on freedom of assembly (*Versammlungsgesetz*). It took Administrative Courts[19] and the *Bundesverfassungsgericht* weeks and even months to regain their role and functions in safeguarding fundamental freedoms in a democracy during the pandemic.[20]

Different from legal 'tradition' and practice for decades, total bans on assemblies (*Versammlungsverbot*),[21] lasting for days or even weeks became the new 'normal' in the first months of the pandemic – a means that would be used again in some cities during gatherings of so-called 'climate activists' as well as in the context of protests against the Israeli war in Gaza. Needless to say, reasons and justification for these far-reaching bans varied. Some kind of restrictions or even bans might have been justified in the early phase of the COVID pandemic for reasons

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[18] *Bundesverfassungsgericht*, BVerfGE 69, 315.

[19] Each of the German States (*Land*) has at least one or more Lower and one Higher Administrative Court.

[20] See *Bundesverfassungsgericht*, Judgment of 17.4.2020 – 1 BvQ 37/20, para. 26, stating that in Constitutional Court summary proceedings (*Einstweilige Anordnung*), it must remain open whether it is covered by Art. 8 GG to subject the exercise of freedom of assembly to a general prohibition subject to prior authorization by statutory order and to place the granting of such authorization within the discretion of the administration. The court has not yet answered this question.

[21] See § 14 *Versammlungsfreiheitsgesetz Berlin*, https://gesetze.berlin.de/bsbe/document/jlr-VersammlFrhGBEpP14 [last accessed: 31.5.2026].

of public health. Nevertheless, blanket bans and preceding permit requirements clashed with a well-established constitutional understanding of freedom of assembly, which was not explicitly challenged during the pandemic, but rather 'suspended' for months.[22] It was not until years later that State Constitutional Courts and Administrative Courts (*Verwaltungsgerichte*)[23] conducted in-depth legal reviews of restrictions on freedom of assembly imposed by statutory law, ordinance, or general decree. The *Bundesverfassungsgericht* in almost thirty decisions on motions for preliminary injunctions against infringements on the freedom of assembly did not take a clear position on the legal question of whether assemblies during a pandemic may be subject to a permit requirement or a preventive total ban. In only two summary rulings did the petitioners succeed. A final judgment by the *Bundesverfassungsgericht* on the general admissibility of preventive bans or massive restrictions owing to a pandemic is still missing.

Summing up, it must be noted that the Administrative Courts in Germany in the first weeks or month of the pandemic 'capitulated' over protecting freedom of assembly. Freedom from a prior permit for an assembly was not safeguarded by the Adminstrative Courts effectively and there were even blanket preventive bans contradicting Article 8 *Grundgesetz*. Only after weeks, Administrative Courts gradually 'reanimated' essential principles of freedom of assembly which had been up to then recognized for decades. The *Bundesverfassungsgericht* contributed rather little to legal protection of fundamental freedoms. This certainly was a troubling experience at a time when it was crucial that principles of fundamental rights essential for democratic debate proved to be well

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[22] On the effects of policing the pandemic in Australia see https://theconversation.com/public-trust-in-australian-police-is-declining-covid-sparked-it-but-theres-more-to-the-story-283768 [last accessed: 31.5.2026].

[23] See, e.g., *Staatsgerichtshof Brandenburg*, Judgment of 20.6. 2025 – 45/20; *Verwaltungsgericht Berlin*, Judgment of 19.6.2025 – 1 K 541/21; *Verfassungsgerichtshof Sachsen*, Judgment of 12.6.2025 – Vf. 13-II-21 (HS); *Bayerischer Verwaltungsgerichtshof*, Judgment of 10.3.2025 – 20 N 21.2745; *Verwaltungsgericht Berlin*, Judgment of 13.2.2025 – 1 K 342/20; *Niedersächsisches Oberverwaltungsgericht*, Judgment of 19.12.2024 – 4 LA 81/24; *Oberveraltungsgericht Nordrhein-Westfalen*, Judgment of 26.11.2024 – 13 D 5/22.NE; *Verwaltungsgericht Stuttgart*, Judgment of 2.7.2024 – 5 K 2137/21; *Verwaltungsgericht Berlin*, Judgment of 11.4.2024 – 1 K 226/21; *Verwaltungsgerichtshof Baden-Württemberg*, Judgment of 11.4.2024 – 1 S 930/23.

established and 'crisis-proof', when most urgently needed. At this point, the *Bundesverfassungsgericht* failed, having not issued one final judgment on the topic.

II. Freedom of assembly during climate protests

Protests against climate policy in Germany by activists of the NGO 'Last Generation' stirred up political institutions, the media, and the public especially in 2023 and 2024. In support of their protests, the activists referred to a decision by the *Bundesverfassungsgericht* on the constitutional duties of government to protect the climate.[24] Instead of a substantive debate about (a lack of sufficient) protection against climate change, the media increasingly focused on the legitimacy of the specific form of protest, i.e., sticking oneself to the road to protest against the impact of traffic on climate change (so called *Klimakleber*). After initial 'restraint' and rather friendly means of policing, the judiciary and police responded to these protests with increasing repression. This went so far as to accuse members of the 'Last Generation' of being a 'criminal organization' according to § 129 the German Criminal Code (*Strafgesetzbuch*).

Versammlungsbehörden and the police again resorted to blanket bans and pre-registration requirements especially in Munich; disputed tools developed during COVID as outlined above. Preventive detention, which was ostensibly introduced to prevent 'terrorist crime' was factually used against climate protest.[25] Where protest still happened, coercive means of policing were regularly used. Very different from this approach, during the so-called farmer protests in early 2024[26] which also led to many road blockades, the police did not intervene, or did

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[24] *Bundesverfassungsgericht*, Judgment of 24.3.2021 – 1 BvR 2656/18.

[25] See, e.g., *Bayerisches Oberlandesgericht*, Judgment of 31.10.2024 – 103 ZBR-PAG 4/24; *Oberlandesgericht Celle*, Judgment of 16.4.2024 – 22 W 10/23; the *Bundesverfassungsgericht* will decide on the constitutionality of preventive detentions according to Baverian law (*Polizeiaufgabengesetz*) in 2026.

[26] See https://www.deutschlandfunk.de/bauernproteste-102.html [last accessed: 31.5.2026].

so only in a very restrained way. This very 'unequal' treatment of road blockades was obviously motivated by politics, not by differences in applicable law. A broadly used means of policing road blockades during climate protests were so-called pain grips or nerve pressure techniques (*Schmerzgriffe*),[27] which became a new and normalized form of policing dissent in recent years. This represents a new level of escalation in the policing of freedom of assembly. Unlike, e.g. the use of batons, pain here is not a by-product of the enforcement measure, but the enforcement measure itself. The advantage from the police's point of view is the lower 'visibility' of this form of violence compared to carrying people away or use of batons, or simply beating up demonstrators, which is practiced extensively against Gaza protesters in Berlin (see below). This is part of the 'professionalization' of the police, since use of force should appear as little crude and free of uncontrolled emotions as possible. If images of police brutality, visible fractures, wounds, or even blood are seen, this has an impact on the moral justifiability of the use of force. This somehow stimulated public debate on police violence by wilful criminal assault during demonstrations on Nakba Day 2025 in Berlin.[28]

III. Freedom of assembly and Palestine protests

Since October 7, 2023 certainly more than a thousand demonstrations against Israel's war and military action particularly in the Gaza Strip, as well as the annexation of an increasing share of Palestinian territories, have taken place in Germany.

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[27] See, e.g., H. Espin Grau, T. Singelnstein, *Schmerzgriffe als Technik in der polizeilichen Praxis – Zur Verselbständigung und Normalisierung polizeilicher Gewalt*, at: https://verfassungsblog.de/schmerzgriffe-als-technik-in-der-polizeilichen-praxis/ [last accessed: 31.5.2026]; C. Arzt, *Schmerzgriffe und Nervendrucktechniken*, p. 189; F. Roggan, R. Alleweldt, "Zum polizeilichen Einsatz von Schmerzgriffen", *Juristenzeitung*, 2025, p. 1015; but see also *Oberverwaltungsgericht Lüneburg*, Judgment of 26.2.2026 – 14 LA 8/25.

[28] See, e.g., J. Heidtmann, "Polizeigewalt in Berlin – Mit der Faust auf den Kopf", *Süddeutsche Zeitung* 21.5.2025; *idem*, "Propalästinensische Proteste – Es gibt diese überbordende Gewalt der Polizei", *Süddeutsche Zeitung* 29.6.2025.

1. Berlin: a hotspot of Gaza and anti-Israel protest

With about 30,000–40,000 residents of Palestinian origin,[29] Berlin is a focal point of protest against the Israeli warfare in West Asia and Gaza in particular. The immense number of fatalities in Palestine, the difficulties in expressing solidarity with the concerns of people in Gaza, and the often dismissive attitude in Germany towards their protest and grief – particularly in the first months of the conflict – present a major challenge for those affected.[30] From October 7, 2023 to August 12, 2024 nearly 400 formally 'notified' (*Anmeldung*)[31] assemblies against the war in Gaza and the occupation of the West Bank took place in Berlin alone. The police intervened by different means up to physical coercion against 138 of these assemblies. Besides, in the same period 16 gatherings took place that were not notified, 11 of which the police considered to disturb public safety. In the first few weeks following October 7, 2023 over 20 assemblies – roughly half of all such assemblies in Berlin – were preventively interdicted.[32] In the past, such a high number of preventive bans would have taken several years. Only after about one month, the number of preventive bans of particular assemblies declined significantly in the wake of Administrative Court decisions other than in Berlin, rejecting total bans with reference to freedom of assembly. In consequence, the authorities in charge (*Versammlungsbehörde*) and police rather shifted policing protest from bans to the imposition of broad and intense conditions and restrictions in advance as well as using various means of 'policing' demonstrations up to their dispersal. In Berlin,

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[29] Across Germany, there are approximately 200,000 people with family ties to Palestine, many of whom apparently cannot understand Germany's stance in this conflict; see "Und es hört nicht auf", *Frankfurter Allgemeine Sonntagszeitung*, 29.9.2025; see also M. Wegner, A. Reudenbach, *Policing Emotions*, manuscript Berlin, September 2025.

[30] See J. Grimm, L. Mauthofer, T. Sixta, *If Gaza Burns, Berlin Burns – Transregional Solidarity Protest between Appeal, Accountability, and Belonging*, 2026, https://www.researchgate.net/publication/401635136_'If_Gaza_Burns_Berlin_Burns'-Transregional_Solidarity_Between_Appeal_Accountability_and_Belonging [last accessed: 31.5.2026]; see also C. Arzt, A. Bosch, *Ethnographische und rechtliche Anmerkungen*.

[31] See § 12 *Versammlungsfreiheitsgesetz Berlin*, at: https://gesetze.berlin.de/bsbe/document/jlr-VersammlFrhGBEpP12 [last accessed: 31.5.2026].

[32] See *Berlin Abgeordnetenhaus Drucksachen* 19/20132 and 19/17059.

this strategy was increasingly 'supplemented' by massive use of means of (often brutal) physical force by the police against participants, particularly by targeted physical assaults against demonstrators.[33] Such assaults are not a legal means of coercion and yet were 'established' as a 'general' means of policing Gaza protest in Berlin. Violence by protesters most of the time was not a justifying motive of policing protest by violence of the police, but the motive was suppression of freedom of speech. This broad and massive repression of protests against the Israeli war in Gaza (and beyond) appears to stem from the so-called German 'reason of state' (*Staatsräson*),[34] a more or less unconditional support for Israel, which only began to show disruptions in the Summer of 2025. 'Images' of political dissent regarding the Israeli warfare were apparently restricted beyond reasonable restrictions from a legal point of view.[35] *Staatsräson* as a political concept, is by no means a legitimate justification of restrictions on fundamental rights in Germany.[36]

2. Policing Palestine-protests in Berlin

With regard to protest against Israeli wars and policies in the occupied territories, the Berlin police – in the awkward 'dual' function of relevant authority for assemblies (*Versammlungsbehörde*) and riot police (*Bereitschaftspolizei*) – are characterized by a particular legal rigidity on the

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[33] See, e.g., Heidtmann, *Polizeigewalt in Berlin*; *idem*, *Propalästinensische Proteste*.

[34] Most instructive Balibar at: https://www.fr.de/kultur/gesellschaft/ueberden-gesetzentwurf-zur-staatsraeson-94322998.html [last accessed: 31.5.2026]; see also K. Ambos, *Staatsräson nach Gaza – Das deutsch-israelische Verhältnis und das Völkerrecht*, 2026; *idem*, *Staatsräson als Strafgrund Zur vorgeschlagenen Erweiterung der Volksverhetzung*, at: https://verfassungsblog.de/israel-volksverhetzung-leugnung-meinungsfreiheit/ [last accessed: 31.5.2026]; R. Michaels, "Israels Sicherheit und Existenz zwischen Staatsräson und Rechtsstaatsprinzip", *Recht und Politik*, 2023, p. 32.

[35] See *VG Berlin*, Judgment of 14.7.2025 – 24 K 493/24; *VG Berlin*, *Urteil vom* 26.11.2025 – VG 1 K 22/24; *OVG Berlin-Brandenburg*, Judgment of 26.11.2025 – VG 1 K 187/24; *VG Berlin*, Judgment of 22.8.2025 – VG 1 L 683/25; upheld *OVG Berlin-Brandenburg*, Judgment of 22.8.2025 – 10 S 29/25; see also C. Arzt, *Verbot der politischen Betätigung eines Ausländers – Berlin*, p. 93.

[36] See K. Ambos, *Staatsräson als Strafgrund: Zur vorgeschlagenen Erweiterung der Volksverhetzung*, VerfBlog, 4.5.2026; see also contributions at https://verfassungsblog.de/staatsrason/ [last accessed: 31.5.2026].

one hand and brutality in their operations as riot police on the other. Most of the German States (*Länder*), unlike Berlin have a strict separation of both authorities. In Berlin in particular, policing Palestine protests since October 2023[37] contradicts any approach of de-escalation developed in Berlin over the last 2 decades or so. For weeks, assemblies in solidarity with the Palestine cause or in protest against the Israeli warfare were banned without plausible reason, thereby deliberately stoking tensions in order to subsequently lament precisely this very situation,[38] as was the case on the so-called Nakba Day on May 15, 2025. Policing demonstrations on the Palestinian cause in Berlin usually implies a massive and visible[39] presence and show of (technical) force by the police, thus provoking many participants by the mere presence of huge numbers of riot police in heavy gear. The police restrain freedom of assembly also by multiple intrusions into the demonstration itself, often beating up demonstrators[40] without any legal justification. Unlike in the past – for example during the so-called Revolutionary May 1st demonstrations[41] in Berlin – policing of Palestine protests in Berlin rarely involves ending or preventing violence against persons or property in the sense of Article 8(1) *Grundgesetz*, but primarily involves labeling certain expressions of opinion as being prohibited. This is regularly justified by the police asserting that certain statements are 'anti-Semitic' or 'an-

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[37] Heidtmann, *Polizeigewalt in Berlin*; *idem*, *Propalästinensische Proteste* and https://www.tagesschau.de/investigativ/ndr/polizei-pro-palaestinensische-demo-berlin-100.html [last accessed: 31.5.2026]; https://www.rbb24.de/panorama/beitrag/2025/08/demonstration-pro-palaestina-berlin-polizei-konflikt-israel.html [last accessed: 31.5.2026]; https://www.tagesspiegel.de/berlin/er-soll-bei-palastina-demo-zugeschlagen-haben-mehrere-anzeigen-gegen-einen-beamten--berliner-polizei-ermittelt-14263586.html [last accessed: 31.5.2026]; https://www.youtube.com/watch?v=ONFpIkJLSro [last accessed: 31.5.2026].

[38] See https://www.tagesschau.de/investigativ/ndr/polizei-pro-palaestinensische-demo-berlin-100.html [last accessed: 31.5.2026].

[39] A de-escalation concept prefers to have the police close to the spot, but not (offensively) visible as far as possible.

[40] On the intrusive nature of a mere presence of police, *VG Berlin*, Judgment of 21.11.2024 – 1 K 159/22, para. 68.

[41] See https://www.spiegel.de/geschichte/1-mai-in-berlin-die-geschichte-der-kreuzberger-krawalle-ab-1987-a-1144792.html [last accessed: 31.5.2026].

ti-Israel'[42] neither of which is penalized *per se* under German penal law. Interestingly, Jews and Israelis in Berlin demonstrating against Israel's military operations in the Gaza Strip are also repeatedly labeled as anti-Semites or Hamas-supporters.[43]

Even the use of the Arabic language – usually the native language of those affected in Gaza and including their families abroad – has for weeks been prohibited routinely in demonstrations.[44] Assemblies were restricted or even dispersed for the only reason that Arabic slogans or speeches were shouted. Participants and even spectators[45] of assemblies are filmed, harassed, and intimidated by the police. Thus, it is not violence in breach of Art. 8 *Grundgesetz* – protecting peaceful assemblies only – that the police consistently confront with physical force, but mere statements of opinion – a situation that frequently leads to verbal and physical altercations between demonstrators and the police. These confrontations are then classified by the police as resistance or physical assault (*Widerstand*) against law enforcement officers under § 113 or § 114 of the German Criminal Code (*Strafgesetzbuch*), 'punished', not by the Courts in charge, but by the use of force by the police themselves. The starting point for constantly repeated confrontations during these protests is rarely ever a 'disturbance of the public peace' such as incitement to hatred (*Volksverhetzung*) within the meaning of § 130 of the German Criminal Code (*Strafgesetzbuch*). Considered sufficient for prosecu-

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[42] From an empirical point of view see: F. Anderl, J. Grimm, N. Moya Schreieder, E. Steinhilper, T. Sydiq, *All Eyes on Gaza / Zusammen für Gaza. Profil der Solidaritätsproteste am 27. September 2025*, ipb working paper series, at: https://refubium.fu-berlin.de/bitstream/handle/fub188/50038/ipb-working-paper_2-2025_All-Eyes-on-Gaza_ENG.pdf?sequence=1&isAllowed=y [last accessed: 31.5.2026]; see also E. Hoven, "Antisemitische Äußerungen als Gegenstand des Strafrechts", *KriPoz*, 2025, 1, p. 10–19.

[43] See V. Caradonna, *Parole vietate, pensieri vietati. Memoria, solidarietà e lezioni da disimparare a Berlino*, https://www.roots-routes.org/parole-vietate-pensieri-vietati-memoria-solidarieta-e-lezioni-da-disimparare-a-berlino-di-vittoria-caradonna [last accessed: 31.5.2026].

[44] See *VGH Kassel*, Judgment of 25.11.2023 – 2 B 1662/23; see also *OVG Berlin-Brandenburg*, Judgment of 15.5.2025 – OVG 6 S 30/25, comment by T. Nailik, *Das vergessene Grundrecht*, at: https://www.lto.de/recht/hintergruende/h/vg-berlin-1l4725-sprachverbot-arabisch-palaestina-demo-versammlung [last accessed: 31.5.2026]; see also https://www.rbb24.de/politik/beitrag/2025/02/berlin-wittenbergplatz-palaestina-demonstration-polizei.html [last accessed: 31.5.2026].

[45] Caradonna, *Parole vietate, pensieri vietati*.

tion by the police is the mere use of the slogan 'From the River to the Sea …', which the Federal Ministry of the Interior (*Bundesministerium des Innern-BMI*) banned in November 2023 without providing any explanatory statement, claiming it was a slogan of Hamas.[46] Thus, a branch of the executive (and political) power prohibits the expression of a specific political opinion. In turn the police enforce this ban. The slogan itself however is used not only by Hamas and, according to an ongoing discussion in legal literature, cannot necessarily be attributed to be a shibboleth of Hamas.[47] Only this might constitute a criminal offence under § 86 or § 86a of the German Criminal Code (*Strafgesetzbuch*).

3. Policing Palestine-protests as 'danger management'

Crucial to the operational concept of policing assemblies are predictions as to whether – from the perspective of the *Versammlungsbehörde* and the police[48] – a 'dangerous situation' (*Gefahr*) is deemed to be likely (*Gefahrenprognose*).[49] Administrative Courts have repeatedly expressed severe doubt regarding the soundness of such predictions in the context of Palestine demonstrations.[50] A problematic feature of such forecasts is that assessment of assemblies by the police often suffers from a lack of information. As a result certain developments are anticipated based

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[46] See *BMI* Ban on Hamas, *Bekanntmachung BMI*, BAnz AT 2.11.2023 B10; but see Ambos, '*From the river to the sea …*' and *Landgericht Mannheim*, Judgment of 29.5.2024 – 5 Qs 42/23.

[47] See Brockhaus, Ohle, '*From the river to the sea*'; see also in detail on this slogan Ambos, '*From the river to the sea …*'; Bax, *Faesers fatales Vermächtnis*.

[48] In this context, also findings from secret services (*Verfassungsschutz*) are frequently relied upon; see, e.g., *VG Darmstadt*, Judgment of 9.9.2025 – 3 L 3485/25.DA, p. 5, even though the exchange of data between authorities of assembly, police, and secret services is not sufficiently regulated; see https://freiheitsrechte.org/uploads/documents/Demokratie/Tag-X/2026-03-17_Klage_VG_anonymisiert.pdf [last accessed: 31.5.2026].

[49] Extensively on this concept: *Evaluation des Versammlungsfreiheitsgesetzes Berlin*, pp. 179 *et seq.* and *passim*.

[50] See, e.g., *VG Frankfurt/M*, Judgment of 9.11.2023 – 5 L 3551/23.F, para. 7; *VG Bremen*, Judgment of 19.4.2024 – 5 V 949/24, para. 26 *et seq.*; *BayVGH*, Judgment of 26.6.2024 – 10 CS 24.1062, para. 29; *VGH Kassel*, Judgment of 7.10.2024 – 8 B 1898/24, para. 13; *OVG Berlin-Brandenburg*, Judgment of 18.7.2025 – 4 S 26/25, para. 8; *VG Frankfurt/M*, Judgment of 28.11.2025 – 5 L 4151/25.F, para. 26.

only on the police's 'experiential knowledge' of protests, groups, organizers etc. The rationale behind this concept is characterized by thinking in terms of risk-oriented extreme-case scenarios, in which the central question is: 'What could happen'? Police terminology typically refers to an approach of 'getting ahead of the situation'. In this context, the 'emotionalization' of the participants of assembly has apparently been invoked with increasing frequency as a discursive argument for an impending escalation (…) and used as justification for restrictions.[51] It is argued in case law to refer to a supposed causal link between the 'emotional nature' of an issue and its 'escalatory dynamic'.[52]

In politics as well as in the media, the loud and visible protests against the war in Gaza were sometimes characterized as a threat to public safety and order as well as social cohesion in Germany. This opens up discursive avenues for the criminalization and delegitimization of the solidarity movement with Palestine. Emotions in the context of assemblies are not evaluated scientifically, but framed according to social power structures and interpretive frameworks: Particularly relevant in this context are the emotional orders of the majority society determining which emotions are considered legitimate, or delegitimized, or even criminalized. At the same time, in this process, not only are certain forms and orientations of protest delegitimized, but discriminatory narratives are also reproduced. Emotions such as the need for 'security' are thereby privileged and protected. Emotions that lie outside this order – particularly those associated with migration and forms of expression labelled as anger and outrage – are framed as dangerous. Thus in the name of order, not only is the law enforced, but a specific emotional consensus is also stabilized, one that nevertheless remains politically contested.[53] In this setting, intimidation,[54] self-censorship even in academia,[55] as well as fear

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[51] Wegner, Reudenbach, *Policing Emotions*.

[52] *Ibid*., with further references; see also Breitbach, Deiseroth, *Geschichte des Versammlungsrechts*, chap. 3, para. 35 *et seq*., chap. 8, para. 258 *et seq*.

[53] In depth Wegner, Reudenbach, *Policing Emotions*.

[54] For further reading, see Anderl, Grimm, Schreieder, Steinhilper, Sydiq, *All Eyes on Gaza*.

[55] See J. Grimm, S. Chojnacki, N. M. Schreieder, I. El Ghoubashy, T. Sixta, *Deutsche Wissenschaft seit dem 7. Oktober – Selbstzensur und Einschränkungen unter Forschenden mit Nahostbezug,* Working Papers, Peace and Conflict Research, Freie Universität Berlin, https://www.interact.fu-berlin.de/_media/WP202501_v0_7.pdf [last accessed: 31.5.2026];

of voicing opinion on the streets or in certain discursive spaces are widespread reactions to repression.

IV. Freedom of speech and Palestine protests

The restriction or termination of a demonstration based on specific expressions of opinion is permissible only within the narrow limits of Article 5 (1) *Grundgesetz,* if the expression of a certain opinion in public violates the criminal law whereby the relevant criminal provision in the penal code (*Strafgesetzbuch*), itself must in turn be interpreted in the light of freedom of expression.[56] Besides an intrusion upon freedom of speech, restrictions or even bans on what may be said or propagated during an assembly might also constitute an infringement upon Article 5 (1) Sentence 3 stating: "There shall be no censorship".[57] However, in day-to-day practice it is not the Courts that decide on this legal topic beforehand, but the police officer present at a demonstration. Despite of a series of judgments by the lower Criminal Court (*Amtsgericht Berlin Tiergarten*) as well as the Higher Criminal Court (*Landgericht Berlin*), which rejected criminal prosecution for the slogan 'From the River to the Sea …',[58] the Berlin police are referring to other Court decisions. They continue to intervene against demonstrators shouting such a slogan a s well as others considered illegal by the police.[59] Ever since it was settled in administrative case law (outside Berlin) that prior bans on assemblies based solely on the possibility of legally controversial expressions of opinion contradict freedom of assembly, the police have resort-

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P. Ullrich, "Hochschulproteste zum Gaza-Krieg, autoritärer Anti-Antisemitismus und das Ende der Kritik", in M. Hawel, S. Kalmring, N. Schlosser (eds.), *Wozu noch kritische Wissenschaft*, Rosa Luxemburg-Stiftung, 2025, p. 169; *idem*, "Autoritärer Anti-Antisemitismus", *Vorgänge*, 2026, 253, p. 92.

[56] D. Deiseroth, M. Kutscha, in H. Ridder, M. Breitbach, D. Deiseroth (eds), *Versammlungsrecht*, Nomos, 2026, Artikel 8 GG, marginal 274 *et seq.*

[57] *Ibid.*, Artikel 8 marginal 287 *et seq.*

[58] In detail Brockhaus, Ohle, *'From the river to the sea'*.

[59] Internal police communications at the end of September 2025 indicated that the use of this slogan should continue to be treated as giving rise to an initial suspicion of a criminal offence. See, e.g. *Landgericht Berlin*, Judgment of 1.7.2025 – 528 Qs 66/25; to the contrary: *Landgericht Berlin*, Judgment of 23.4.2025 – 504 Os 75/25.

ed to a 'more flexible' strategy. Unlike preventive bans or restrictions (*Beschränkung*) of an assembly, the dissolution (*Auflösung*) of an assembly on the spot while taking place as well, as other obstructive means of policing directed specifically against the assembly or its participants during such an assembly, cannot be subject to timely review by Administrative Courts. Thus, the police have little to fear from subsequent review owing to the time lag and costs involved.

As of March 2026, more than 100 rulings by local (*Verwaltungsgericht*) and higher Administrative Courts (*Oberverwaltungsgericht*)[60] on protests against the war in Gaza and in support of the Palestinian cause can be traced in public sources.[61] Most certainly, not all rulings have been published, as publication is not required by law in Germany. Many Courts initially accepted total preemptive bans of assemblies on these topics in the first weeks following October 7, 2023, and – as an exception – also on the occasion of the anniversary' in 2024. It is not possible here to present and analyse in depth all of these Court rulings. However, most Administrative Courts in various States subsequently ruled – albeit with variations depending on the specific Court and State – in an increasingly nuanced manner at least after the first shock about the Hamas attack was settled. Interestingly, the Administrative Court in Berlin had to rule on very few[62] cases[63] despite hundreds of assemblies on the topic in Berlin, which are regularly subject to total bans or at least excessive restriction.[64] The low number of Court decisions in Berlin seems to depend on

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[60] No decision by the Federal Administrative Court (*Bundesverwaltungsgericht*) can be traced; presumably for procedural reasons.

[61] In particular *Beck-Online* and *Juris*.

[62] In discussions with attorneys, reference is made to a rather 'state supportive' view of the Berlin Administrative Court with reference to protest on the Palestinian cause.

[63] See, for example, *VG Berlin*, Judgment of 9.7.2024 – 1 L 261/2; *VG Berlin*, Judgment of 11.10. 2023 – 1 L 428/23; *VG Berlin*, Judgment of May 13.5.2022 – 1 L 180/22; on the other hand *VG Berlin*, Judgment of 22.8.2025 – VG 1 L 683/25 and *OVG Berlin-Brandenburg*, Judgment of 22.8.2025 – 10 S 29/25; *VG Berlin*, Judgment of 15.7.2025 – 1 L 634/25 and *OVG Berlin-Brandenburg*, Judgment of July 18.7.2025 – 4 S 26/25; *VG Berlin*, Judgment of 16.1.2009 – 1 L 11.09.

[64] See https://taz.de/Die-Polizei-hat-auf-die-Demos-zum-Nakba-Tag-in-Berlin-vor-allem-mit-Repression-reagiert/!6084539/, 2022 [last accessed: 31.5.2026] and https://www.morgenpost.de/berlin/article409004198/nakba-tag-pro-palaestina-protestzug-durch-neukoelln-verboten.html, 2025 [last accessed: 31.5.2026]. The restriction of the 2025 'Nakba Day' assembly by the authorities to be held as a stationary gathering only, had success-

the perceptions of activists and advocates in Berlin that cases on protest policing demonstrations against Israel hardly ever get through successfully in the Administrative Court in Berlin.[65] Although not banned, many demonstrations on this topic have been dissolved by the police or attacked with an unusual amount of police brutality.

Disputes on the admissibility of bans and conditions in preliminary injunctions were particularly frequent in Courts in the State of *Hessen*, with over 20 decisions. Another relevant share of decisions stems from the State of *Nordrhein-Westfalen*. There are around 10 decisions from *Bayern* and a comparable number from *Hamburg.* Administrative Courts in the State of Bad*en-Württemberg* ruled in a few cases. For all other federal states, no decisions, or only isolated ones, seem to exist.

In Frankfurt am Main, the *Versammlungsbehörde* repeatedly banned or imposed extensive restrictions and conditions on assemblies, regularly quashed by the Administrative Court (*Verwaltungsgericht Frankfurt*). Besides, the Court showed itself to be very sceptical on the constitutionality of relevant provisions in the new State law on assemblies in *Hessen*.[66] Administrative Court decisions in *Hessen* showed a dedicated rights-based and rule of law bound approach on when it came to intrusion upon freedom of assembly and freedom of speech by the *Versammlungsbehörde*. Shortly after October 7, 2023 the Court[67] stated:

1. To assume that, at a gathering registered under a different slogan, the dissemination of criminal pro-Palestinian and anti-Israeli ideas is 'certainly to be expected' (*HessVGH*, decision of November 9, 2023 – 2 B 1578 (…) requires substantial grounds; *vague assumptions are insufficient*,[68] as otherwise the constitutional protection of freedom of assembly would be rendered meaningless (different *HessVGH*, decision of November 9 – 2 B 1578/23 (…).

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fully been challenged at the Administrative Court, which was overturned by the Higher Administrative Court of Berlin-Brandenburg (*OVG Berlin* 15.5.2025 – OVG 6 S 30/25).

[65] See *Evaluation des Versammlungsfreiheitsgesetzes Berlin*, pp. 200 *et seq.*

[66] See C. Arzt, *Versammlungsfreiheit durch Gesetz? – Zum Entwurf eines Versammlungs 'freiheits' gesetzes in Hessen*, at: https://verfassungsblog.de/versammlungsfreiheit-durch-gesetz/, 2023 [last accessed: 31.5.2026]; see also: *Staatsgerichtshof Hessen*, Judgment of 6.3.2025 – P.St. 2920, P.St. 2931.

[67] All quotations of Court decisions translated to English by DeepL and the author.

[68] Italics hereinafter by the author.

2. Insofar as there are concerns that, following Hamas's terrorist attack on Israel and Israel's response thereto, assemblies within the federal territory could lead to criminal offences in the form of approval of criminal acts (§ 140 StGB), incitement of the people (§ 130 StGB), and resistance against law enforcement officers (§ 113 StGB), as well as violations of the right of assembly, the *competent authority must demonstrate that the specific assembly in question is sufficiently comparable, in terms of the organizer, circle of participants, number of participants, and topic, and is sufficiently comparable to those assemblies in which such violations have already been established* (in accordance with *BayVGH*, decision of October 19, 2023 – 10 CS 23.1862 (…).[69]

In a later decision, the same Court held:

1. Under the Constitution of the State of Hesse, an *assembly may be prohibited only if the fundamental rights of third parties or other legally protected interests of constitutional rank are threatened and the freedom of assembly must take a back seat*. Specifically, it appears doubtful whether the offences under § 86a and §140 of the German Criminal Code (StGB) protect the fundamental rights of third parties or legally protected interests of constitutional rank, as these provisions are intended to protect public and political peace as well as the constitutional order as a whole. The constitutional order does not appear to be capable of being weighed against the freedom of assembly, which it itself encompasses.
2. The state is obligated to strict neutrality when the expression of opinion is at issue. *State authorities, which are bound by fundamental rights, are not entitled to assess the content of the communicative purpose pursued by an event, or the suitability or meaningfulness of an event, as well as the actions and forms of expression planned within its framework, with regard to their intended contribution to the formation of public opinion*.[70]

At the end of 2023, the Higher Administrative Court (*Verwaltungsgerichtshof Hessen*) however held the slogan 'From the River …' to be a sym-

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[69] *VG Frankfurt/M*, Judgment of 9.11.2023 – 5 L 3551/23.F.

[70] *Verwaltungsgericht Frankfurt/M*, Judgment of 28.8.2025 – 5 L4151/25.F.

bol of Hamas which violated public safety owing to the ban issued by the Federal Ministry of the Interior, according to this Court.[71] The Court after a summary review owing to the urgent procedure (*Einstweilige Anordnung*) held that prohibiting the shouting of the said slogan was lawful. This was also confirmed for the slogan 'Jews are child murderers', which constituted incitement of the people under § 130 of the German Criminal Code (*Strafgesetzbuch*) from the Court's point of view. In contrast, the statements 'Israel is a child murderer' and 'Israel kills children' were held to be covered by the freedom of expression according to Article 5 (1) *Grundgesetz*).[72] Later on following a transfer of jurisdiction to a different Senate of the same Court, case law developed to be even more 'protective' on freedom of assembly and speech. The Court also pretty frankly criticized scantily substantiated prohibition orders (*Versammlungsverbote*) issued by the *Versammlungsbehörde* in Frankfurt. Outlining the legal baselines since the *Brokdorf*-decision by the *Bundesverfassungsgericht*[73] the Court reasoned:

> An *immediate danger* (*unmittelbare Gefahr*) is presumed to exist when there are specific circumstances that, in the ordinary course of events, make it *highly probable that harm will occur* and would therefore, if left unchecked, result in harm to the legal interests protected against the freedom of assembly (…). *Mere suspicions or assumptions are not sufficient.* The *burden of presentation and proof* regarding the existence of grounds for a restriction generally lies with the authority (…). For *risk assessment*, events related to previous assemblies may be used as evidence, provided they have sufficient similarities to the planned assembly in terms of the slogan, location, date, and the group of participants and organizers (…). Based on these standards, the prohibition order of August 27, 2025 *does not give the slightest support to the prognosis of an imminent danger* to the conflicting constitutional values of life, health, honour, property, human dignity, the general right of personality, the freedom of assembly itself, and the functioning of public institutions—which, according to the aforementioned case law of the State Constitutional Court, are the only factors capable of justifying a ban on assembly.[74]

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[71] *Bekanntmachung BMI*, BAnz AT 2.11.2023 B10.

[72] *Verwaltungsgerichtshof Kassel*, Judgment of 2.12.2023 – 2 B 1715/23.

[73] *Bundesverfassungsgericht*, BVerfGE 69, 315.

[74] *Verwaltungsgerichtshof Kassel*, Judgment of 29.8.2025 – 8 B 1859/25.

This was quite a 'slap' for the highly 'politicized' *Versammlungsbehörde* in Frankfurt.

In late 2023, the Higher Administrative Court of Nordrhein-Westfalen (*Oberverwaltungsgericht Münster*) ruled that the banning of an assembly based on a certain slogan must take into account the special guarantee of freedom of speech under Article 5 (1) *Grundgesetz*. The substance of expressions of opinion, which may not be prohibited under Article 5 (1), cannot be invoked to justify measures that restrict the fundamental right under Article 8 (1) *Grundgesetz*. The Court pointed out that expression of opinion as such can be judged under the law on assemblies (*Versammlungsgesetz*) only if the statements in question constitute a criminal offence.[75]

A few days after October 7, 2023 when demonstrations on the topic of Palestine were banned almost everywhere, the Bavarian Higher Administrative Court (*Bayerischer Verwaltungsgerichtshof*) upheld the constitutionally required standards for bans on demonstrations:

1. Taking into account the importance of freedom of assembly, the requirements for *assessing the risk of danger* must not be set too low when imposing restrictions under assembly law or a ban on assembly.
2. The *burden of proof* regarding the existence of grounds for a ban or restriction lies, in principle, with the authority.
3. The respondent (i.e. the assembly authority) has *not cited any credible evidence* that the assembly in question here would be sufficiently comparable to those assemblies in terms of the organizer, participants, number of participants, and topic, and that, for this reason, security-threatening events in other cities, such as Berlin in particular, could be used for the risk assessment of the assembly at issue here.[76]

Regarding 'From the River……' the same Court in mid-2024 ruled that the reasoning of an order by the *Versammlungsbehörde* was based solely on assumptions. The Court highlighted that 'criminal liability of the slogan (…) depends on the circumstances of the individual case, in particular the context of the statement and its organizational connec-

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[75] *Oberverwaltungsgericht Münster*, Judgment of 1.12.2023 – 15 B 1322/23.

[76] *Bayerischer Verwaltungsgerichtshof*, Judgment of 19.10.2023 – 10 CS 23.1862.

tion'. A 'blanket ban by way of a restriction on assembly [is] proportionate only if a risk assessment meeting constitutional requirements (…) indicates that the phrase will be used in a manner constituting a criminal offence'.[77]

The Higher Administrative Court of Baden-Württemberg (*Verwaltungsgerichtshof Mannheim*) to the contrary ruled earlier: 'Whether the use of the slogan in the context of an assembly constitutes a criminal offence cannot be conclusively determined given the review required in summary proceedings and the limited means of investigation available. Therefore, a balancing of interests is permissible, weighing the interest in using the slogan against the public interest in preventing it. This balancing of interests favours the public interest and thus works against the use of the slogan at a public assembly'.[78] Also in other decisions, the Court interestingly appears to be rather unimpressed by case law of the Mannheim Regional Court (*Landgericht Mannheim*)[79] in the same State on this issue.

In *Hamburg*, the authorities applied yet another restrictive approach. Not only specific assemblies were banned or subject to conditions or restrictions, but all pro-Palestinian assemblies – similarly to the situation during the COVID pandemic – were banned by general order for weeks. The Hamburg Administrative Court (*Verwaltungsgericht Hamburg*) came to the conclusion: 'Insofar as the general order covers all assemblies whose content relates to support for Hamas or its attack on the territory of Israel, the legal threshold required for a ban has not been exceeded at this time for all assemblies potentially covered by it, although in individual cases an assembly in this thematic context could certainly exceed this threshold'.[80] The individual ban on carrying a Palestinian flag during an assembly in Hamburg in December 2023 on the other hand was judged unlawful by this Court.[81]

Besides reviews of bans and restrictions by the executive branch and the police in the Administrative Court, thousands of criminal investi-

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[77] *Bayerischer Verwaltungsgerichtshof*, Judgment of 26.6.2024 – 10 CS 24.1062.

[78] *Verwaltungsgerichtshof Baden-Württemberg*, Judgment of 3.4.2024 – 2 S 496/24.

[79] *Landgericht Mannheim*, Judgment of 29.5.2024 – 5 Qs 42/23.

[80] *Verwaltungsgericht Hamburg*, Judgment of 8.12.2023 – 5 E 5290/23.

[81] *Verwaltungsgericht Hamburg*, Judgment of 20.8.2024 – 20 K 95/24.

gations in the context of the 'Palestine-protests' in Berlin alone[82] as well as nationwide[83] are still pending and there are comparatively few decisions by Penal Courts on this matter so far.[84] The most thorough examination of criminal liability for the slogan 'From the River …' so far was supposedly presented by the Regional Court *Landgericht Mannheim*.[85] However, in Penal Courts the reference to possible conflicts with freedom of speech and assembly tends to be less established compared to standards under administrative law.

Conclusions

This brief overview of soaring limitations on freedom of assembly and speech by protest policing in Germany starting with the COVID pandemic can only support preliminary conclusions. In depth analysis remains a task for future research. Widespread and massive restrictions on freedom of assembly imposed on everyone lasting for months during the pandemic proved to be a new 'regulatory model'. New modes of police coercion by 'pain grips' were broadly used during protests against climate change especially in 2024.

The broad and massive limitations on freedom of assembly during the pandemic have found certain parallels in the policing of Palestine protests since October 7, 2023. Since these protests started, in addition to widespread administrative restrictions, the Berlin police force in particular to this day uses targeted violence in form of blows to the face to induce bodily harm in Berlin as a new 'standard' means of policing. Besides, not only freedom of assembly is targeted by police, but also freedom of speech (e.g., 'From the River to the Sea ….'). Different-

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[82] For example: *AG Tiergarten*, Judgment of 28.10.2024 – 426 Ds 1053/24 jug.; *AG Tiergarten*, Judgment of 29.8.2024 – 246b Cs 1049/24; *Landgericht Berlin I*, Judgment of 23.4.2025 – 504 Qs 75/25.

[83] See *Amtsgericht Duisburg*, Judgment of 20.4.2024 – 206 Cs – 117 Js 239/23 – 201/23; *Landgericht München*, Judgment of 3.1. 2024 – 29 Qs 27/23.

[84] For an overview see Grimm, Ohle, Scheytt, *Universitäts-Besetzungen im Palästina-Kontext*.

[85] *Landgericht Mannheim*, Judgment of 29.5.2024 – 5 Qs 42/23; see also comment by Ambos, '*From the river to the sea …*'.

ly from the time of the COVID pandemic, Administrative Courts after October 7, 2023 began to resume their task to protect civil rights against interference by the executive power and the police. The often superficial, formulaic, and not infrequently boilerplate-based justifications for limitations on freedom of assembly and speech provided by the authorities (*Versammlungsbehörde*) were successfully challenged in Court. After some time at least, an interesting kind of 'displeasure' at some Administrative Courts about the reasoning for limitations on freedom of assembly and speech can be discerned.[86] This seems to demonstrate that some Administrative Courts reacted from a more rights-based approach in the context of the Palestine protest, compared to months of reluctance against intervention against the measure of the executive branch during the pandemic. A comparison of both events and reactions by the Courts has to take into account, however, differences between both challenges to fundamental freedoms and public safety. Yet it seems that (some) Administrative Courts seem to realize that diffidence during COVID went 'too far' perhaps.

To summarize, freedom of assembly and (related) freedom of speech came under pressure in Germany starting with the COVID pandemic and specific forms of climate protests (*Klimakleber*). Carefully and tightly woven 'safety nets' for both fundamental freedoms in a rights- and rule-of-law-based democracy are getting adopted since after October 7, 2023. Constraints on fundamental freedoms are criticized not only in Germany, but also on the international level.[87] These threats to fundamental rights have not ended yet at least in the capital of Germany, presumably for political reasons and because of pressure by the government.[88] A rights-based understanding of the basic principles of freedom of assembly and speech as well as applicable standards of the rule of law in this field need to be 'reconstructed' and consolidated to be resilient when the next crisis and challenges to these freedoms arise.

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[86] See, e.g., *Verwaltungsgericht Frankfurt/M*, Judgment of 28.8.2025 – 5 L 4151/25.F, para. 27 and Judgment of 6.10.2025 – 5 L 4953/25.F, para. 20.

[87] See, e.g., https://www.ohchr.org/en/press-releases/2026/02/germany-un-expert-warns-space-freedom-expression-shrinking-amidst-growing [last accessed: 31.5.2026].

[88] See *Evaluation des Versammlungsfreiheitsgesetzes Berlin*, pp. 160 *et seq.* and 172, 212.