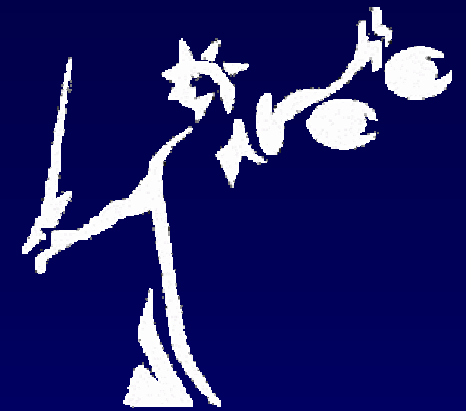


# The right to protest and the criminal law



Freedoms, Rights and Protest: JSHRN Annual Human  
Rights Conference

Saturday 19 March 2011



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JUSTICE

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# History

- ‘English law does not recognize any special right of public meeting for political or other purposes’

Lord Hewart CJ, *Duncan v Jones*  
[1936] 1 KB 218, 222.

- HRA 1998: a ‘constitutional shift’?

# Article 11 ECHR

1. Everyone has the right to freedom of peaceful assembly ...
2. No restrictions shall be placed on the exercise of these rights other than such as are **prescribed by law and are necessary in a democratic society**, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ...

# 'Peaceful assembly'

- All types of gatherings for a common purpose: meetings, marches, sit-ins.
- Violence must not be an intended result; sporadic violence by some will not extinguish rights of others
- No requirement assembly is lawful in domestic law

# Positive obligations

- State has duty to facilitate lawful demonstrations including protection from violent counter-protestors: must 'ensure that the competing groups tolerate each other'
- No duty to facilitate peaceful assembly on private land; but where essence of rights destroyed by this obligation could arise to regulate property rights

# Restrictions

- Must be prescribed by law;
- For a legitimate aim set out in Article 11(2);
- And necessary in a democratic society – ie for relevant and sufficient reasons, and proportionate to the aim(s) pursued;



# Restrictions (2)

- If the assembly is political, restrictions will be particularly closely scrutinised;
- Authorisation or notification requirements are not, per se, contrary to Art 11; but must not form a hidden obstacle to the right;
- A penalty for taking part in a prohibited assembly is permissible under Art 11 if it is proportionate.



# Recent ECtHR cases

- *Christian Democratic People's Party v Moldova* (no 2) (25196/04)
- *Hyde Park and others v Moldova* (nos 5 and 6) (6691/08 and 15084/08)
- *Uzunget and others v Turkey* (21831/03)

# Problem for discussion

Eric and Jodie are law students arrested at a protest against tuition fees in Parliament Square - because the police were not informed of the protest in advance as required by the Serious Organised Crime and Police Act 2005. E & J were protesting peacefully although there were some outbreaks of violence. They are convicted and fined £1000 each. Maximum fine is £5000.