***Case Title: The Case of UGent’s Student Protests***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: N/A
* **Date of decision**: June 13, 2024
* **Featured case**: N/A
* **Region**: Europe and Central Asia
* **Country**: Belgium
* **Type of expression**: Public Assembly
* **Judicial Body**: Court of Appeal
* **Type of law**: Civil Law, Constitutional Law
* **Main Themes**: Freedom of Association and Assembly / Protests, Political Expression
* **Outcome**: **Mixed Outcome or Restricts Expression?**
* **Status**: Closed
* **Tags**: university, students, protests,

***Analysis:***

* **Summary and Outcome**: Since May 6, 2024, students have occupied the Ufo building of Ghent University, demanding that their alma mater cut all ties with Israeli universities and companies as a response to the humanitarian crisis in Gaza. They later also demanded that the university would change its climate policy. UGent partially conceded by ceasing cooperation with some Israeli research institutions, but this did not fully meet the students' demands. As a result, the initially peaceful protest escalated, and a violent incident occurred on May 24, 2024.

Following a failed mediation and an ignored request from the rector to voluntarily vacate the building, the university submitted a unilateral petition for forced eviction to the president of the court of first instance. The First Instance Court rejected the university’s request. The president ruled that the violent escalation by outsiders did not change the peaceful nature of the protest. According to the court, the students' right to protest trumped the university's property rights *in casu*.

However, the court of appeal overturned the lower court's decision. The court concluded that the protest was no longer peaceful, that its duration and scale had become problematic, and that there were serious safety risks for the building’s occupants. Since the university was willing to negotiate and had already partially met the demands, the court ruled that UGent did not intend to restrict free speech nor the right to protest. Therefore, the petition for forced eviction was declared well-founded.

* **Facts**: On May 6, 2024 the students of the University of Ghent started to occupy the “Ufo” Building, the Foyer or University Forum of their campus. They started sleeping in tents inside the building as a form of protest against UGent’s cooperation with Israeli universities and research institutes. The protesters are using aliases and cannot be identified by the university. During the first couple of weeks, the protests at the Foyer were tolerated by the university, provided that the protesters followed the university’s safety instructions (for example, not blocking the evacuation routes). However, the university’s lax attitude shifted after an [isolated violent escalation](https://www.vrt.be/vrtnws/nl/2024/05/24/ugent-dient-klacht-in-voor-vandalisme-aan-rectoraat-door-pro-pal/) of the student protests, which led to damage to the university’s property, some injured personnel and a breach in safety instructions. The student protests claimed they were not responsible for this violence, but that “outsiders who infiltrated the building” were to blame. The university’s rector requested that the student protests were brought to an end by May 25, 2024. This request was ignored by the student protesters, so the university started a mediation procedure. On May 31, 2024 the university made a [public statement](https://www.ugent.be/nl/actueel/persberichten/stopzetting-samenwerking-israelische-partners-31-mei) that it would partially stop the cooperation between UGent and all Israeli partners who are connected with the Israeli government. If the company or research institute does not have any ties with the Israeli government, the university’s cooperation with them will continue. On June 3, 2024 the student protesters’ stopped the mediation procedure and made a [statement in the press](https://www.vrt.be/vrtnws/nl/2024/06/03/onderhandelingen-actievoerders-en-ugent-springen-af-bezetting-g/) that the occupation of the building would continue, because they “will not compromise on issues related to genocide and climate”. As a response, the rector gave the students until June 6, 2024 to vacate the building and remove all their belongings. When this request was once again ignored, the university filed an *ex parte* petition for a legal notice to vacate its campus and put an end to the students’ occupation of their property [Court of Appeal, Ghent (June 13, 2024), p. 9-10].
* In an *ex parte* hearing, only one party (in casu the University of Ghent) is heard by the judge, which means the other affected party does not have a chance to defend itself. Thus, the judge has an obligation to restrain and may only accept the aggrieved party’s *ex parte* petition in the case of “absolute necessity” ([Article 584, para. 4 Belgian Judicial Code](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;cn=1967101003&amp;table_name=wet#Art.584)). The petitioner asked the First Instance Court to give the protesters a voluntary notice to vacate. If the protesters would ignore this notice, the university demanded a title for forced eviction measures and a prohibition for the protesters to re-enter the university campus [Pres. Ct. Ghent (KG) June 7, 2024, AR 24/849/B, p. 2-3].
* The First Instance Court rejected the university’s petition. It started by emphasizing the relevant fundamental principles at stake in this case: the right to protest and demonstration, two fundamental rights “derived from freedom of expression and association” [p. 4]. However, these fundamental rights can be limited by the government when it is “absolutely necessary”, for example when protests could threaten public order, public health, or the fundamental rights of others (such as the right to work and the right to education). It is up to the Court to perform the “delicate” balancing exercise of these different interests. Here, the Court stresses that the right to protests only applies to “peaceful actions that do not involve violence against persons or property and do not incite hatred, discrimination, or violence” [p. 4]. The burden to prove the justification of governmental intervention in citizens’ exercise of their fundamental rights lays with the *ex parte* petitioner. [p. 4] The First Instance Court concluded that governmental intervention in the student’s right to protest was not (yet) justified. Different elements were taken into consideration to reach this conclusion: the “sensitive international context (the war between Hamas and Israel)” [p. 5], the university campus grounds as a “historic breeding place for public debate among students”, the Ufo building being a public building with free access for everyone, and the ongoing negotiations between the university and the student protesters. Regarding the violent incident, the Court mentions that “the violence of one or a few individuals should not be attributed to the group of protesters as a whole”. [p. 6] The Court admitted that, of course, the occupation is “obstructive” for the university and “limiting some of the university’s activities”. However, the free access to the university campus as a whole is not being impeded, nor has the protest caused any “serious or irreparable damage” to the campus [p. 6]. Nor did the student protests jeopardize the university personnel’s right to employment and the non-protesting students’ right to education, since the university’s examination activities could be organized in an alternative way. The First Instance Court concludes that the university’s *ex parte* petition for a forced eviction of the student protesters is not “absolutely necessary” ([Article 584, para. 4 Belgian Judicial Code](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;cn=1967101003&amp;table_name=wet#Art.584)) and thus, rejects the university’s request for a notice to vacate [p. 6]. It is the First Instance Court’s task to balance the different fundamental rights at stake in cases like this, and “the university’s right to property cannot outweigh the students’ right to protest” [p. 7]. Of course, the occupation of the “Ufo” cannot go on forever and – were the concrete circumstances to change – a different decision could be reached by the First Instance Court in the future.
* **Decision Overview**: This decision was overturned on appeal by Ghent’s Appellate Court. The Court reiterated the principles that were also mentioned by the First Instance Court: the right to freedom of expression, the right to assembly, and the right to protest are fundamental rights that apply to each citizen. The government can only limit these rights when it is “absolutely necessary due to public safety, protection of health, protection of fundamental rights of third parties such as the right to work, right to education, protection of property, or for the prevention of criminal offenses.” The intervention must still be proportionate, and the various interests and fundamental rights of those involved must always be weighed against one another. [p. 11]
* The University of Ghent claims that the occupation of the Ufo building has made it impossible for the university to continue its educational activities. Besides the fact that the auditoriums of the building are blocked, the University also claimed that there were legitimate safety concerns for the people residing or working inside the building. The construction of temporary “kitchens,” tents, and wooden structures has created fire hazards and evacuation concerns. Additionally, other criminal incidents have occurred, such as theft, vandalism, and sexually transgressive behavior. The University also claims that the student protesters are being directed by certain third parties (non-students). According to a testimony, “men with beards and of Palestinian origin” enter the building at night and “sleep there with their respective families (wife and children)” [p. 12].
* The Court thus states that the initial agreements regarding the safety in the building are no longer being respected. The Appellate Court admits that: “(i.) the university is pre-eminently a place where protest and a clash of ideas should be possible, (ii.) students have the right to protest peacefully and to bring certain social issues to the attention of the university or (more broadly) society, and (iii.) the Ufo building is a public building of the university, with free access” [p. 13]. However, ever since the violent escalation that occurred on May 24, 2024, the “occupation of the Ufo can no longer be considered a peaceful protest, initiated by engaged students” [p. 13]. Both the duration (over a month) and the size of the occupation have become problematic and have caused considerable nuisances for the university. Since the Ufo building is not furnished nor intended to be occupied for such a long period, the current use by its occupants has created severe safety concerns. According to the Court, the student protesters have been given plenty of time to make their case clear. The University of Ghent has been open to negotiation, has partially met the activists’ demands, and has sought mediation. This has already caused considerable costs for the university. The Court sees the activists’ wish for anonymity as a sign that they are not willing to take any responsibility. Thus, the Court concludes that the University’s petition to vacate its property is reasonable and proportionate: “the University in no way aims to curtail the activists' free speech and right to protest now that their point has been made and their demands have been met in part (and in a consultative and transparent manner)” [p. 13].

Dissenting Opinions of Judges …: N/A

***Direction:***

* **Outcome**: **Mixed Outcome or Restricts Expression?**

The First Instance Court rejected UGent’s ex parte petition for a forced eviction of the students protesting on their campus. By deciding so, the First Instance Court held that the university’s right to property could not outweigh the students’ rights to protest. The Appellate Court did not agree with this reasoning: five days after the First Instance Court’s decision, it decided to grant the university’s petition for a forced eviction. The Appellate Court reasoned that protests cannot go on forever and that this specific protest had caused fire hazards and safety concerns for the residents of the university building. The Court also claimed that the protests had become a hotbed for criminal activities and that the protests were being led by non-students of Palestinian origin. Although the Appellate Court raised some valid safety concerns, the lack of mention of the relevant constitutional rights (e.g., Article 19 of the Belgian Constitution, Article 11 of the ECHR) or reference to any pertinent ECtHR jurisprudence (e.g., ECtHR, *Obote v. Russia*, App. No. [58954/09](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2258954/09%22%5D%7D) (Nov. 19, 2019); ECtHR, *Laurijsen a.o. v. The Netherlands*, App. No. [56896/17](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2256896/17%22%5D%7D) (Nov. 21, 2023)) undermines the overall quality of the judgment. From a free speech perspective, this judgment does undermine the Belgian freedom of expression landscape.

***Perspective***:

* **Related International and/or regional laws**: N/A
* **National law or jurisprudence**:
  + [Article 584 Belgian Judicial Code](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;cn=1967101003&amp;table_name=wet#Art.584)
  + First Instance Court, Ghent, App. No. AR 24/849/B (June 7, 2024).

**Other national law or jurisprudence**: N/A

***Significance***:

* **This case did not set a binding or persuasive precedent either within or outside its jurisdiction. The significance of this case is undetermined at this point in time.**
* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

Court of Appeal Judgment (in Dutch) [Attached]

First Instance Judgment (in Dutch) [Attached]

* **Reports, Analysis, and News Articles**:
  + W. SCHOUPPE, Politie pakt 10 pro-Palestijnse actievoerders op die rectoraat UGent binnendringen, VRT, May 24, 2024, [link](https://www.vrt.be/vrtnws/nl/2024/05/24/ugent-dient-klacht-in-voor-vandalisme-aan-rectoraat-door-pro-pal/).
  + W. SCHOUPPE, Rechter wijst verzoek ontruiming UGent-gebouw af: "Studenten hebben recht om vreedzaam te protesteren", VRT, June 7, 2024, [link](https://www.vrt.be/vrtnws/nl/2024/06/06/ontruiming-ugent-pro-palestijns-protest-rector-rik-van-de-walle/).