



THE POWER OF 'THE STREET'

PROTECTING THE RIGHT TO PEACEFUL PROTEST IN POLAND

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GLOSSARY

WORD	DESCRIPTION
ABW	Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego)
BOR	Office for the Protection of the Government (Biuro Ochrony Rządu). Pursuant to a change in the law in 2018, the title in Polish is now Służba Ochrony Państwa.
CBA	Anti-corruption Agency (Centralne Biuro Antykorupcyjne)
KOD	Komitet Obrony Demokracji (Committee for the Defense of Democracy)
EC	European Commission
MIESIĘCZNICA	A monthly assembly commemorating the Smolensk plane crash on the 10 th of every month in central Warsaw
NCJ	National Council of Judiciary (Krajowa Rada Sądownictwa)
OBYWATELE RP	Citizens of the Republic of Poland, initially an informal group of activists registered as an NGO in April 2017
ONR	National Radical Camp (Obóz Narodowo-Radykalny)
PIS	Governing Law and Justice Party (Prawo i Sprawiedliwość)
SEJM	Lower chamber of the Polish Parliament
STRAJK KOBIET	Women's Strike, a grassroots movement formed throughout Poland in October 2016 in response to the proposal to introduce a near complete ban on abortions

EXECUTIVE SUMMARY

“It is not clear how my case will end as these are the last days of judicial independence in Poland.”

Ignacy (age 19), facing criminal charges for insulting a police officer during a protest on 1 March 2018, Warsaw

“It is very difficult to work in these conditions. I cannot fight the whole system... I don't know when, where and from whom I will get a punch.”

Judge Czeszkiewicz, upheld the rights of peaceful protesters and was later subjected to disciplinary proceedings

Almost every week, people take to the streets in various towns and cities across Poland to protest. They demonstrate against the government's ongoing attempts to restrict human rights, including women's rights; to challenge growing nationalism and xenophobia; and to oppose threats to the environment.

Attending a protest in today's Poland, however, requires not only determination and time, but also the phone number of a lawyer and the willingness to face the consequences, which range from harassment, verbal and physical assault, and police custody to the laying of fines or the application of criminal charges. Those who participate in protests in Poland are frequently threatened with detention and prosecution, if not outright violence at the hands of police or security officers.

This report is a follow-up to the October 2017 Amnesty International report *On the Streets to Defend Human Rights*. It documents the state response to peaceful protest in Poland which continues to be marked by ongoing harassment and prosecution. It also documents the effect of legislation adopted in 2016 that broadened the surveillance powers of Polish law enforcement agencies. As a result, people do not know when they are under surveillance or by whom, giving rise to a climate of uncertainty and fear.

Amnesty International has documented the following patterns of the increasingly shrinking space that raise concerns over the rights to freedom of assembly and expression in Poland:

- Crackdown on protest manifested by the use of force against demonstrators, lack of accountability for breaches of the human rights, and criminalization of peaceful protest;
- Differential treatment of assemblies in law and practice;
- Surveillance of activists;
- Undermining the independence of judiciary that plays an important role in upholding the right to freedom of assembly and expression.

CRIMINALISATION OF PEACEFUL PROTEST

Participating in peaceful assemblies and taking collective action are important means for the public to challenge governmental policies and practices with which they disagree, but also to fight injustice and demand respect for human rights.

In past years, expressions of public solidarity that have sought to send a message of defiance to the government have resulted in real change at critical periods in Poland, including with respect to the independence of the judiciary in July 2017 and to women's rights in October 2016. But as this report highlights, there is an ongoing and growing number of prosecutions of individuals for exercising their right to protest. The simple act of peacefully assembling to express collective dissent has landed hundreds of protesters in police custody and in lengthy court proceedings in their attempts to defend themselves against prosecution. These tactics can wear down protesters and have a chilling effect on others who may wish to participate in demonstrations, but may instead think twice.

Agnieszka, a local activist with Women's Strike in the town of Jelenia Góra, is one of those who have been enduring criminal proceedings for months. On 19 December 2016, she attended a small protest at the occasion of a visit of the Minister of Education from the governing Law and Justice Party. Agnieszka and another participant of the protest told Amnesty International that a group of strangers mingled with the activists and two of them assaulted Agnieszka. She hit one of the men with her hat. Later, she learned that the two men were in fact plain clothes police officers. Subsequently, the police started an investigation against her for an attack on public officials. In December 2017, the prosecutor pressed charges against her for "an interference with bodily integrity of a public officer" and "insult on a public official on duty", while the authorities discontinued her complaint (see the case in the section: Criminal charges against protesters).

Amnesty International has also documented cases where protesters prosecuted for their participation in assemblies were first summoned as witnesses and then, subsequently, treated as suspects. This practice raises concern that in these cases the police rely on the lower protections afforded to witnesses in comparison with suspected offenders in the criminal proceedings.

USE OF FORCE

This report documents cases of excessive use of force by the police during protests and demonstrations. In the majority of these cases, there was a lack of accountability for the police action, despite complaints filed by the activists.

Julia, age 60, joined the *Czarny Protest* (Black Protest) on 3 October 2016 in the town of Poznań to express opposition to proposals to further restrict access to abortion in Poland. The participants spontaneously decided to march towards the headquarters of the governing Law and Justice party. Once they reached the location, the police used truncheons and pepper spray directly against protesters, many of them women, ostentatiously in a response to an action of a small group of individuals who threw smoke grenades in the direction of the Law and Justice premises. Julia was injured during the police intervention. The police declined to assist her when she sought urgent medical treatment. The prosecutor later denied her complaint against the human rights violations she suffered (see the case in the section: *Use of force*).

DIFFERENTIAL TREATMENT OF ASSEMBLIES

Under Polish law "cyclical" assemblies, organized by the same entity at the same location several times a year, have priority over other assemblies notified in that location and at that time. This provision essentially gives priority to one form of assembly over others and, in practice, has led to bans of numerous assemblies in 2017 and 2018. For example, between April 2017 and March 2018, the governor of the Mazowian province banned 36 assemblies in Warsaw. The reason given was that the banned assemblies were announced in the same place or in the vicinity of "cyclical" assemblies. Such a double standard is also reflected in the way that law enforcement agencies police protests. This report presents cases where the police have failed to act to halt harassment or violence from far right or nationalist groups when it has been directed at counter-protesters. This type of policing appears deliberate, raising concern that state law enforcement actors may favour pro-government and nationalist demonstrations over other types of assemblies.

THREAT OF SURVEILLANCE

In parallel to tightening the laws affecting the exercise of the right to freedom of assembly, the government has vastly enhanced the surveillance powers of law enforcement agencies in Poland. The 2016 amendment to the Police Act introduced provision for secret surveillance, and did not include a requirement that such surveillance take place in the context of a criminal investigation. These extended surveillance powers could be used against those exercising their right to peaceful protest and expressing dissenting opinions in Poland.

After massive demonstrations in July 2017, when people in Poland defended the independence of the judiciary on the streets, two activists learned from the media that the police had had them under physical surveillance for at least six days during the protests. The prosecutor rejected their complaint arguing that the police did not breach the law and that the aim of surveillance was to prevent “provocation”. This case reflects a paradigmatic change in the use of surveillance against people for the lawful exercise of their human rights, such as organizing peaceful protests.

THE UNDERMINING OF INDEPENDENCE OF THE COURTS AND RIGHT TO FREEDOM OF ASSEMBLY

To date, the courts in Poland have largely upheld the right to freedom of assembly and expression, and have ensured that the exercise of these rights is not penalized. However, pursuant to the 2017 reform that effectively put the judiciary under political control of the government, there are growing concerns in Poland that activists, human rights defenders and others will lose one of the last pillars that guarantees protection and respect of human rights: the independent courts. The link between exercising the rights to freedom of assembly and expression and an independent judiciary is undeniable: the latter is necessary to ensure the former, and the former is necessary to defend the latter.

This report includes cases of judges who have become targets of political pressure, following 2017 reforms of the judiciary. It documents increasing harassment, including threat of disciplinary proceedings against judges who do not bow to political pressure.

The deteriorating situation with respect to the independence of the judiciary in Poland has been on the radar of the European Commission (EC) since 2016. In July 2017, after the Polish parliament adopted various amendments to laws on the judiciary, the EC concluded that there was “a systemic threat to the rule of law in Poland”. As the government proceeded with the reforms, the EC in an unprecedented move triggered Article 7.1 of the European Union (EU) Treaty on 20 December 2017. This procedure, which may lead to EU sanctions against Poland, reflects serious concern of the EU about the grave threat to a functioning independent judiciary in the country.

This report presents evidence that the law on assemblies, heavy-handed policing measures, resort to prosecutions, and expanded surveillance capabilities, alongside the adverse reform of the judiciary, threaten the rights of anyone defending human rights, including civil society groups and activists; journalists, including citizen-journalists; and others who choose to take to the street to express their opinions. The consequence is an ever shrinking space for critical voices and the defence of human rights in Poland. People and groups expressing dissent or simply acting independently of the wishes of those holding political power are subjected to harassment and pressure.

Cases presented in this report draw from research conducted between October 2017 and May 2018. During the research, Amnesty International interviewed 25 protesters and human rights defenders, and observed eight assemblies. Amnesty International communicated in writing its concerns over the policing of protests documented in this report with the police. In their replies to Amnesty International, the Deputy Chief of the Warsaw Police as well as the Chief of the Police in the city of Poznań, stated that the police used force only against those protesters who were violent.

KEY RECOMMENDATIONS

Peaceful protest is a human right, not a crime. The authorities in Poland must recommit to protecting the rights to freedom of assembly and expression, and to ensuring that the judiciary can adjudicate in a full, fair and independent manner to ensure that those who exercise those rights are protected and those who violate those rights are held to account. Amnesty International therefore urges the authorities in Poland to:

- Refrain from applying criminal sanctions to people who exercise their right to freedom of assembly by participating in peaceful protests and demonstrations. Any pending criminal charges against peaceful protesters should be dropped.
- Avoid the use of force unless absolutely necessary in policing protests and demonstrations.
- Ensure that any law or regulation that infringes on the right to peaceful assembly is amended or repealed to ensure respect for the right to peaceful assembly in accordance with Poland’s international human rights commitments.
- Explicitly recognize the legitimacy and contribution of all those defending human rights, to publicly support their crucial work, and to create a safe and enabling environment in observance of the Declaration on Human Rights Defenders.

- Repeal any laws that have undermined the independence of the judiciary and to restore full respect for the rule of law in Poland.

1. BACKGROUND

1.1 CONTEXT: CRACKDOWN ON THE RIGHT TO PROTEST IN POLAND

Engaging in public affairs through debate and protest has been an important feature of Poland's political culture for decades. Poland's political and social landscape has been shaped by a series of protests: from the 1960s student movements that demanded democracy, academic, cultural, and political freedom, through the food and wage riots of workers in the 1970s¹, to the 1980s' Solidarity movement that engaged in the struggle over democratization and labour rights and later in "negotiating with the government about the political future of the country".² In 1993, Poland witnessed large protests of workers against austerity policies that came at significant expense to social and economic rights.³ The 2000s were marked by increased mobilization of tenants and housing rights defenders in cities such as Warsaw and Poznań, protesting against housing evictions and for the rights of tenants.⁴ In 2016, people in Poland took a page from that history and started engaging in protests against government policies restricting human rights, including women's rights and other issues.

The context for the newly emergent activism and mobilisation was defined by a series of decisions by the governing Law and Justice Party, which came to power after the October 2015 parliamentary elections. These decisions included a series of legislative proposals adversely affecting the rights to freedom of peaceful assembly and expression.

In December 2016, the Parliament adopted an amendment to the Law on Assemblies, which provided that "cyclical demonstrations" had priority over any other assemblies at that location and at those times. The law entered into force in April 2017 and served as the basis for bans on any counter-assemblies in central Warsaw occurring in the vicinity of the pro-governmental "cyclical" rallies.⁵ The practice of banning and repressing peaceful assemblies in Poland signals a dangerous pattern in the treatment of protests that oppose government policies.

Further concerns over the right to freedom of assembly and expression have been raised by five UN Special Rapporteurs in relation to a law⁶ specifically tailored to address assemblies planned around the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP24), which is scheduled to take place in the town of Katowice in December 2018.⁷ The Special Rapporteurs were particularly critical

¹ <https://www.nytimes.com/1970/12/20/archives/poland-fires-of-discontent-scorch-gomulka-regime.html>

² Ost, D. *Solidarity and the Politics of Anti-Politics*. Temple University Press. (1990), p. 6

³ Ekiert, G. and Kubik, J. *Rebellious Civil Society: Popular Protest and Democratic Consolidation in Poland 1989–1993*. Ann Arbor: University of Michigan Press (1999)

⁴ For details see: <http://www.criticatac.ro/lefteast/it-takes-one-to-mobilize-one-polish-tenants-movement-as-an-example-of-a-mobilizing-organizational-structure/>

⁵ The last "Smolensk assembly" was held on 10 April 2018 and there are no immediate plans to continue them. For more details see: <https://www.salon24.pl/newsroom/857958,ostatnia-96-miesiecznica-upamietniajaca-ofiary-katastrofy-smolenskiej>

⁶ Law on the Organization of the Conference of the Parties to the United Nations Framework Convention on Climate Change. [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2120_u/\\$file/2120_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2120_u/$file/2120_u.pdf)

⁷ See the joint statement of the UN Special Rapporteurs from 23 April 2018: http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_POL_23.04.18.pdf

over the enhanced surveillance powers that could be used against protesters;⁸ and the general ban on spontaneous assemblies during the conference.⁹

HARASSMENT OF ENVIRONMENTAL ACTIVISTS

Environmental activists in Poland have already felt the heavy hand of the police in their effort to halt illegal logging in Bialowieza forest between July and November 2017¹⁰. Activists have reported the excessive use of force and harassment from law enforcement officials.¹¹ Twenty-eight activists face criminal proceedings for their participation in the protests against the logging.¹² Another 24 face charges for “trespass” allegedly committed during a peaceful protest in November 2017 in Warsaw.¹³

At the same time that the government has sought to restrict freedom of assembly, it has also sought to put unacceptable limits on freedom of expression. On 1 March 2018, an amendment to the Law on the Institute of National Remembrance (INR) came into force.¹⁴ The law makes it a crime to publicly claim that Poland had any responsibility for or complicity in the Holocaust.¹⁵ It also introduced a civil offence that involves a damage to “the reputation of the Republic of Poland” or the “Polish Nation”. The law criminalizes “an insult to or disrespect of” public institutions or national symbols, despite the fact that such speech is protected under Poland’s international human rights obligations.

1.2 METHODOLOGY

The research for this report was conducted between October 2017 and May 2018. The cases documented in the report originated between 2016 and 2018, and came to the attention of Amnesty International through media monitoring, including online platforms; direct observation by our researchers of events at demonstrations and assemblies in Poland; and first-hand accounts from human rights defenders and activists. The research also draws upon information on proceedings against the protesters provided by the legal aid network of a grassroots group Obywatele RP. Amnesty International Poland also fielded observers, who had been trained in impartial monitoring of assemblies, at some of the protests described in this report.

Amnesty International researchers interviewed 25 individuals who participated in demonstrations, their lawyers, and witnesses to some of the events documented in this report. One or more shorter interviews were conducted subsequently to gather updates on any legal proceedings in individual cases documented in this report. Descriptions of the cases in this report also drew on documentation made available to Amnesty International, including indictments, judgments and complaints against the police filed by the protesters.

Amnesty International researchers observed four demonstrations during the course of the research for this report and observers of Amnesty International Poland observed six of them between October 2017 and May 2018.

The research into the concerns over the erosion in the independence of the judiciary, summarized in the third chapter of this report (*Judiciary under pressure*), is largely based on an analysis of legislation, in particular amendments to laws adopted by the Polish Parliament in July and December 2017. Several reports by independent experts, intergovernmental organizations, and national professional bodies – including reports by the Council of Europe’s Venice Commission; the EU’s European Commission; and opinions from Poland’s Association of Judges, *Iustitia* – informed the research. Supreme Court decisions have also been referenced. Researchers also interviewed seven currently sitting judges from different courts in Poland; and interviewed the Dean of the Warsaw Bar Association.

⁸ Under the law, law enforcement authorities are empowered to collect, obtain, process and use personal electronic and digital data without necessary safeguards, and consequently unduly restrict the right to privacy. The joint statement of the UN Special Rapporteurs from 23 April 2018.

⁹ Art.22 of the Law on the Organization of the Conference of the Parties to the United Nations Framework Convention on Climate Change. [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2120_u/\\$file/2120_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2120_u/$file/2120_u.pdf)

¹⁰ The European Court of Justice ruled in April 2018 that the logging was unlawful: <http://www.dw.com/en/poland-violated-eu-law-by-logging-in-ancient-forest-rules-european-court-of-justice/a-43416062>

¹¹ Amnesty International, “Poland: Concerns over the use of force against protesters in Bialowieza forest” 25 October 2017. <https://www.amnesty.org/download/Documents/EUR3773442017ENGLISH.pdf>. Interviews with Amnesty International on 20 October 2017 and 31 January 2018 in Warsaw.

¹² Under Art.193 and 217 of the Criminal Code (trespassing).

¹³ Art 193 of the Criminal Code

¹⁴ The “Remembrance Law”. For details, see: <https://www.tvn24.pl/wiadomosci-z-kraju,3/nowelizacja-ustawy-o-ipn-weszla-w-zycie,818841.html>

¹⁵ Punishable with a fine or imprisonment for up to three years.

Amnesty International communicated in writing its concerns over the policing of protests documented in this report with the police.¹⁶ The Deputy Chief of the National Police responded to the concerns on individual cases documented in this report on 5 June 2018.¹⁷ In the letter he denied the allegations of physical surveillance of activists. In relation to the allegations in this report of excessive use of force against protesters, the Deputy Chief of the Warsaw Police and the Chief of the Police in the city of Poznań¹⁸ both stated that the police used force only against those protesters who were violent.

Protesters featured in this report are referred to by their real first name with the exception of a small number of individuals who preferred to remain anonymous for fear of potential negative consequences to their personal and professional lives. The names of protesters who lodged formal complaints against the police are noted in full with their informed consent.

¹⁶ In 2018: 5 and 18 April to the Warsaw Police; 20 and 24 April to the Poznań Police; 20 April and 7 May to the Opole Police. In 2017: 15 November to the Warsaw Police.

¹⁷ Letter on file with Amnesty International.

¹⁸ Letter from 7 May 2018 on file with Amnesty International.

2. CRACKDOWN ON PROTEST

The right to peaceful assembly has been under assault in Poland for the last few years, and the targeting of human rights defenders and activists continues to date. The Polish authorities have chipped away at the right to the freedoms of assembly and expression through executive decisions, legislative changes and heavy-handed policing operations. Despite such measures, people in Poland who oppose governmental measures that violate human rights, undermine the independence of the judiciary, and harm the environment, take to the streets to fight back.

Agnieszka, a 51-year old activist from Warsaw, has said that she has not had a holiday since late 2015 because she spends all her annual leave time at protests, police stations, meetings with lawyers and in court.¹⁹ Like hundreds of others, Agnieszka is facing several charges in relation to her peaceful participation in anti-government or anti-racist demonstrations. On 11 November 2017, together with 13 other women, she mingled into the Independence March in Warsaw, where many participants were calling for a “white Poland”. The women carried a banner with “Stop fascism” written on it.²⁰ “We showed the banner to the march. At first they were surprised. Then they started kicking us, calling us names and eventually removed us from the route. It’s not that we wanted to stop or block the march, we simply wanted to show them our message and leave,” said Agnieszka.²¹ Several of the women suffered injuries as there were no police present to protect them. On 5 December 2017, the police informed Amnesty International in a letter that the police operations on 11 November were carried out “adequately to the situation” and within the limits of the law.²² In February 2018, the women learned that the police had opened an investigation against 13 of them for interference with a lawful assembly.²³ The women had been charged under Art.52§2 of the Code of Minor Offences.

Amnesty International has repeatedly expressed concern that the use of provisions of the Code of Minor Offences and Criminal Code against persons exercising their right to freedom of peaceful assembly and expression is disproportionate and unnecessary under international human rights law.²⁴

The numbers of people affected are telling. As of March 2018, the legal aid team of a grassroots activist group Obywatele RP²⁵ reported 549 cases against protesters in the preparatory stage of prosecution under the Code of Minor Offences; and 62 court orders to pay a fine²⁶ involving 262 persons.²⁷ In addition, there were a number of prosecutions under the Criminal Code. At the time of writing, there were at least 36 cases

¹⁹ Interview with Amnesty International, 3 February 2018, Warsaw.

²⁰ See the video about the 14 women with the “Stop fascism” banner: <https://www.facebook.com/ObywateleRP.org/videos/732670540267720/>

²¹ Phone interview with Amnesty International, 14 November 2017.

²² The letter is on file with Amnesty International.

²³ Interview with Amnesty International, 3 February 2018, Warsaw.

²⁴ See for example: Amnesty International. Poland: On the Streets to Defend Human Rights. October 2017 (Index: EUR 37/7147/2017) <https://www.amnesty.org/download/Documents/EUR3771472017ENGLISH.PDF>

²⁵ One of the main groups of protesters, as of April 2017 a registered charity that also provides legal aid to those facing prosecution for their participation in protests and demonstrations.

²⁶ Fast track orders to be issued without a trial. The protesters contested these orders and opted to stand full trials in these cases.

²⁷ For statistics on the prosecutions of protesters see: <https://obywatele.org/wp-content/uploads/2018/04/Raport-ObyPomoc-Zbiorczy-do-2018-03-31.pdf>. A significant increase in the number of prosecutions under the Code of Minor offences was reported by the District Court in Warszawa- Śródmieście in the past two years. For example, while there were zero cases of prosecutions for breaches of the law in relation to assemblies in 2016 (Article 52.2 and 52.3 of the Code of Minor Offences), the number has reached 632 in 2017.

against protesters in a preparatory stage and five cases against nine persons at the trial stage.²⁸ Such fines and prosecutions - in addition to heavy-handed police practices as documented below - not only infringe on the right to freedom of peaceful assembly but they further threaten to have a chilling effect on people who might think twice before exercising their right to protest. In a meeting with Amnesty International on 13 April 2018, representatives of the national police expressed a commitment to improve their practice.

THE INTERNATIONAL STANDARDS

The right to freedom of peaceful assembly, together with the rights to freedom of association and freedom of expression, are enshrined in human rights treaties to which Poland is a party. Those treaties include the International Covenant on Civil and Political Rights,²⁹ the European Convention for the Protection of Human Rights and Fundamental Freedoms,³⁰ and the Charter of Fundamental Rights of the European Union.³¹ The full enjoyment of these rights is further articulated in the UN Declaration on Human Rights Defenders³² and the Council of Europe Declaration on Human Rights Defenders³³, as a precondition for creating a space in which individuals and groups can safely and freely protect and promote all human rights.

Poland has an obligation to respect, protect and fulfil these rights and to ensure that their own agents, including the police or other security forces, do not violate them. Under international law, no restrictions should be imposed on these rights other than those that are based on a clear and accessible law and are demonstrably necessary and proportionate for a legitimate purpose. Poland is also obliged to protect the exercise of these rights against interference by third parties, including other members of the public who might bring harm to protesters. In addition, states also have a *positive* obligation to facilitate the exercise of the right to freedom of peaceful assembly.³⁴ The right to freedom of peaceful assembly and participation in such assemblies are also protected by Poland's Constitution.³⁵

2.1 USE OF FORCE

In April 2018, after several requests under the Freedom of Access to Information Act, a Polish NGO, Helsinki Foundation for Human Rights (HFHR), published a report that had been prepared by Poland's Ministry of Interior in December 2015.³⁶ The Ministry's report provided an analysis of cases where the police used arbitrary and/or excessive force and outlined recommendations on how to address the problem. Drawing on interviews and observation of police operations across the country, the report found that 45 per cent of police officers had witnessed situations where their colleagues used unnecessary force.³⁷ As many as 87 per cent of police officers believed it was their duty to use "all available" means if the situation during an intervention spilled "out of control".³⁸ Amnesty International has documented cases and allegations of excessive use of force by the police during protests and demonstrations. These cases raise a number of concerns over the arbitrary and/or excessive use of force against protesters, and the lack of accountability for police action.

POZNAŃ, OCTOBER 2016: USE OF FORCE AGAINST PROTESTERS

On 3 October 2016, in the city of Poznań in western Poland, Julia, age 60, decided to join the *Czarny Protest* (Black Protest) in opposition to proposals that would have resulted in a near total ban on abortions.³⁹ It was the first time she had participated in a protest since the 1980s when she was part of the Solidarity movement. "I left the office at about 5pm and told my boss I was going to the rally. At 6pm, the organizers announced it was finished but the protest continued as a spontaneous assembly that slowly marched towards the headquarters of the [governing] Law and Justice party (PiS). There were women of all ages, from

²⁸ See note 27, p. 10 of <https://obywatelerp.org/wp-content/uploads/2018/04/Raport-ObyPomoc-Zbiorczy-do-2018-03-31.pdf>

²⁹ Article 21; see also Article 25.

³⁰ Article 11.

³¹ Article 12.

³² UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>

³³ Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted in 2008, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3e52

³⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

³⁵ Art. 57

³⁶ Ustawa z dnia 6 września 2001 r. o dostępie do informacji publicznej, Dz.U.2016.0.1764

³⁷ Ministry of Interior. *Report on police violence*. 2015, p. 5: <https://oko.press/images/2018/04/Raport-MSWiA-policja.pdf>

³⁸ *Report on police violence*. 2015, p. 7

³⁹ For more details see: <https://www.amnesty.org/en/latest/news/2016/09/a-dangerous-backward-step-for-women-and-girls-in-poland/>

16 to 70, mostly dressed in black.”⁴⁰ Tensions heightened when the crowd progressed closer to the PiS headquarters and the police surrounded the building from both sides at the front line.

Julia told Amnesty International that the police were standing in three lines equipped with helmets, shields and truncheons. At that point a lot of people from the front of the march had left and Julia was suddenly facing the police. A group of women sat on the ground between the police and the rest of the crowd. Julia saw a group of eight men dressed in black who started to throw smoke grenades. The police responded by moving towards the women sitting on the ground and removed them by force from the street to the pavement. After that, Julia noticed the police took someone to a police van. At that point, there were a lot of police officers around, some of them with police dogs.

“It felt like an operation against serious criminals. I saw a police officer beating somebody lying on the pavement and wanted to intervene but that is the last thing I remember. I lost consciousness and when I regained it, I was lying in a puddle. Someone was sitting on top of me and I heard people shouting: ‘Let her be!’ Then I fainted again. The next thing I remember, I was talking to three young women... who told me I was hit by two police officers on my head. They tried to help me stand on my feet but I fainted several times. Then we saw a group of police officers standing next to the police van and calling an ambulance, which took several policemen to the hospital. One of the young women told them I was beaten by police and needed to go to the hospital, too. The police officer advised that I should make my own arrangements. When I got to the hospital, I felt a sharp pain in my lower back as I walked. The scans of my head proved that I was beaten and I had also some surface wounds on my skull.”⁴¹

Due to her injuries, Julia was on a sick leave for four days. On October 6, 2016, she filed a formal complaint against the police in person. A police officer on duty at that time asked Julia if “she was sure that she had not done anything wrong to be treated like that by the police.” Subsequently, Julia filed a formal complaint with the prosecutor.

This case raises serious concerns over breaches of Poland’s obligations under international human rights law in relation to the use of force. The overarching principle set out in international law and standards is that law enforcement officials should seek to avoid resorting to force, and any use of force by police during public assemblies should be exceptional. Furthermore, “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”.⁴² If a person suffers injuries during the use of force, the police must ensure that assistance and medical aid are rendered at the earliest possible moment to anyone injured or affected.⁴³ Even in instances where demonstrators act in a violent way, police must use only the minimum force necessary to contain the situation and re-establish public order. In doing so, they must differentiate between those who are acting violently and those who are not. If only a minority of demonstrators act violently, it contravenes the principles of proportionality and minimum use of force if the police use force against the broader group of demonstrators. Nor is it permitted to disperse a demonstration simply because some protesters are committing acts of violence. In such instances, any police action should be directed towards the particular individuals involved in violent acts.⁴⁴

The District Prosecutor in Poznań Stare Miasto closed the proceedings in Julia’s complaint against the police in January 2017 on the basis that the assault on her was not visible on the videos from the protest.⁴⁵ The prosecutor also noted that there is no evidence on the videos confirming Julia’s participation in the demonstration. Finally, the prosecutor stated that while one of the witnesses whose name Julia provided lives abroad, the other witness “failed to describe the police officers” who were present on the site.⁴⁶

Allegations of unnecessary and excessive use of force in this case should be adequately addressed by the Ministry of Interior as it follows up on its own 2015 report, which noted that an unacceptably high number of police officers engage in such unlawful conduct.

WARSAW: REPORTS OF ABUSE AGAINST PROTESTERS IN POLICE VANS

Amnesty International interviewed several protesters who have alleged excessive use of force by the police against them in 2017 and 2018.

An incident of alleged physical abuse of a protester by a police officer was reported on 1 March 2018 in Warsaw. An activist named Rafal, a university lecturer in physics, participated in a blockade of a nationalist

⁴⁰ Acronym for Polish: Prawo i Sprawiedliwość

⁴¹ Interview with Amnesty International, 13 April 2018, Poznań.

⁴² UN Code of Conduct for Law Enforcement Officials. Article 3.
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

⁴³ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Basic Principle 5.

⁴⁴ OSCE Guidelines on Freedom of Peaceful Assembly, para. 167.

⁴⁵ For details about the complaint of another protester, see below: *Poznań: Criminalizing the protest*

⁴⁶ Decision of prosecutor to close the complaint from 26 January 2017 on file with Amnesty International.

march. The participants of the rally marched with lit torches and pre-World War II falanga symbols of the National Radical Camp. They also carried various banners such as “Many Jews... murdered Cursed Soldiers”.⁴⁷ As Rafal tried to climb through the police barriers around the march, he was apprehended by the police.

“They threw me to the ground, handcuffed me, then dragged me into a police van where I was punched in the face several times. Then the police officer instructed me ‘Sit down you whore!’ I protested: ‘How can you treat a defenceless person like this?’ and the moment I said it I realized: This is how they have been treating activists from antifascist groups for years.”⁴⁸



Police intervention against Rafal on 1 March 2018 in Warsaw ©Marta Bogdanowicz

On 2 March 2018, the police initiated proceedings against Rafal for insulting a police officer and damaging his jacket.⁴⁹ The Deputy Chief of Warsaw Police wrote in a letter to Amnesty International that Rafal attacked the police officer with his elbow.⁵⁰ Rafal filed a complaint against the police officer for abusing his powers and destruction of property.

On 27 April 2018, the police used force to remove protesters who attempted to block the arrival of the 15 newly-appointed judges of the National Council of the Judiciary (NCJ) to the NCJ’s first meeting (*see below: Judiciary under pressure*).⁵¹ The protesters opposed the meeting because they believed that the new members were elected by parliament under political pressure from PiS, pursuant to the government’s “reform” of the judiciary. Amnesty International and other independent experts and bodies have criticized such reforms as undermining the independence of the judiciary and eroding the rule of law in Poland.⁵²

⁴⁷ A group that is considered responsible for committing a number of atrocities against civilians in the first decade after World War II. See images from the march, for example: <https://www.fakt.pl/wydarzenia/polityka/narodowy-dzien-pamieci-zolnierzy-wykletych-marsze-i-przepychanki-w-warszawie/vke830n> or https://www.facebook.com/media/set/?set=ms.c.eJw9jskJwAAMwzYquePsv1hpjj6FBTKcXRPgKA~%3BUg~_YqJyliXoZBQ9Rvd~%3B78IDg~%3BxrdlpWbQsnn7KstSzYbzZ7fbdfr593P617P5U~%3BUCrT8nGw~----.bps.a.851537151695762.1073741873.559447160904764&type=1

⁴⁸ Phone interview with Amnesty International, 2 March 2018.

⁴⁹ Art. 226§1 and Art. 288§1 of the Criminal Code.

⁵⁰ Letter from 5 June 2018 on file with Amnesty International.

⁵¹ <https://oko.press/studenci-protelowali-przeciwko-upolitycznionej-krajowej-radzie-sadownictwa-policja-zareagowala-ostro-szarpali-ich-ciagneli-po-ziemi/>

⁵² See Amnesty International’s Q&A on the changes in Poland’s judiciary: <https://www.amnesty.org/en/latest/news/2017/08/poland-independence-of-the-judiciary-and-the-right-to-fair-trial-at-risk/> see also the Opinion of the Venice Commission, 11 December 2017: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e)

“The police intervened against us straight away without a warning and removed us from the street by force,” said one of the protesters, Tomek.⁵³ Another protester, Anna, reported that the police handcuffed her and at least three others in a police van where they were held for over 1.5 hours without receiving any information about what protocol governed their detention.⁵⁴ “Once we were [in a police van], a [female] police officer knelt on my ribs while she handcuffed me.” As a result of the police intervention, Anna suffered dislocation, sprain and tearing of joints and ligaments at wrist and hand level.⁵⁵ The recovery from these injuries took a full week. At the time of writing, she was in the process of filing a complaint against the police with the prosecutor.



Anna with injured arm after the protest on 27 April 2018 in Warsaw. The sticker on her plaster says: “Police did this do me”. ©JohnBob & Sophie art

ADAM, AUGUST 2017

During a protest against a nationalist group National Radical Camp (Obóz Narodowo-Radykalny, hereafter ONR) rally on the anniversary of the Warsaw Uprising on 1 August 2017, Adam was walking with a small group of protesters on a pavement parallel with the route of the far-right rally. He and others were holding banners saying “ONR are successors of fascists” and “No more war, no more fascism!” At one point, the police stopped Adam’s group and asked for their identity cards. Adam advised another protester, Danuta,⁵⁶ to request the ID of the police officer.⁵⁷ As Adam continued talking to Danuta, the police officer reportedly responded by punching him in his stomach and pushing him. Adam told the police officer that he had behaved “like a gestapo”. Adam told Amnesty International that after that, the police officer grabbed him by his backpack and T-shirt, and forcibly tossed him to the ground. The police officer requested to see Adam’s ID, but refused to show his. He also said if Adam continued to decline to present his ID, he would take him to the police station and press charges for calling him “a gestapo”. Subsequently, an officer took Adam inside a police van and handcuffed him. At the police station, Adam was first tested for alcohol, strip-searched and body cavity searched while squatting naked.

⁵³ Phone interview with Amnesty International, 30 April 2018.

⁵⁴ Secure communication with Amnesty International, 30 April 2018.

⁵⁵ Medical examination report, 27 April 2018, on file with Amnesty International.

⁵⁶ Danuta: see her case in Amnesty International report *On the Streets to Defend Human Rights*. October 2017

⁵⁷ Interview with Amnesty International, 19 October 2018, Warsaw.

The court ruled on 22 January 2018 that the arrest was lawful and justified, but irregular.⁵⁸ The court held that the police conduct was due to the fact that Adam was suspected of the offence of insulting a police officer by calling him a "gestapo".⁵⁹ It also held that even if Adam did this in a response to the action of the police officer, it did not excuse the unlawfulness of his action. Furthermore, it stated that the police had the right to check Adam's ID and he prevented them from performing this duty. According to the assessment of the court, the police officer was not under an obligation to show his ID to Adam.⁶⁰ The court found irregularities during the arrest. It held that the force used against him during the arrest was not appropriate as there was nothing in Adam's behaviour that would warrant the use of force.

The criminal proceedings against Adam for an insult against the police officer by calling him a "gestapo" were pending in District Court Warszawa- Śródmieście at the time of writing.

POLICE ACCOUNTABILITY AND THE RIGHT TO REMEDY

All state actors, including law enforcement officials, must be held accountable whenever the exercise of their powers results in the violation of a person's human rights.⁶¹ According to the UN Basic Principles on the Use of Force and Firearms, "[g]overnments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."⁶² Affected persons must be entitled to complain about any alleged unlawful use of force and to be involved in and informed about the investigation proceedings. In the context of protests in Poland, Amnesty International has documented a large number of complaints against the police for arbitrary deprivation of liberty and a number of cases when excessive use of force has been reported. While in the cases of deprivation of liberty of the protesters the courts repeatedly identified irregularities,⁶³ the complaints involving the use of force against protesters are often discontinued by the prosecutors.

In their research involving lawyers representing individuals (not protesters specifically) who have lodged complaints against the police, the Helsinki Foundation for Human Rights found that there were 538 complaints against the police for ill-treatment in 2016. Out of these, 387 cases were referred to the prosecutor or to the court for further proceedings.⁶⁴ Overall, since 2013, the number of complaints against the police in Poland have been consistently over 500 per year.⁶⁵

Amnesty International notes that police officers in Poland often do not wear identification numbers or other identifiers. Such practice is against international human rights standards and makes it extremely difficult for victims of police abuse to file a complaint against a specific officer.

2.2 CRIMINAL CHARGES AGAINST PROTESTERS

Amnesty International has documented several cases in Warsaw, Poznań and Jelenia Góra where the police have pressed charges against protesters for an alleged physical attack on a police officer. In all of these cases, the protesters involved have denied any use of force against the police. In the case from Poznań detailed below, the charges against some of the protesters were brought only after they filed their complaints against the police with the prosecutor. Amnesty International is concerned that the authorities may be applying criminal charges after the fact as punishment for protesters who file a formal complaint against the police for abuses they suffered when attempting to exercise their right to peaceful assembly.

POZNAŃ: CRIMINALIZING PROTESTERS

On 26 March 2018, Gosia, Joanna and four other activists attended the first hearing in their trial at the District Court Poznań Stare Miasto.⁶⁶ They faced charges of an attempted violent act against property committed in a

⁵⁸ Decision of the District Court on file with Amnesty International.

⁵⁹ Art. 226§1 of the Criminal Code: Insult of public official on duty.

⁶⁰ Under Polish law, police officers are not under obligation to show their ID card but are obliged to indicate their name and rank, and state legal basis of their action.

⁶¹ See for instance the Opinion of the Commissioner for Human Rights of the Council of Europe, CommDH (2009)4; see also: UNODC Handbook on Police Accountability, Oversight and Integrity, Vienna, 2011.

⁶² Basic Principle 7

⁶³ See the case of the complaints of protesters from 11 November 2017 in Warsaw described in the section *Differential treatment of protesters*.

⁶⁴ Helsinki Foundation for Human Rights. *Summary of the findings of the survey*. 2018, Figure 4: <http://www.hfhr.pl/wp-content/uploads/2018/04/Wyniki-badania-wsrod-adwokatow.pdf>

⁶⁵ 594 in 2013; 550 in 2014; 571 in 2015 according to Helsinki Foundation for Human Rights.

⁶⁶ <http://poznan.wyborcza.pl/poznan/7.36001.23187571.prokuratura-oskarza-uczestnikow-czarnego-protestu-naiciekawszy.html>

group.⁶⁷ Joanna faces additional charges of unlawful interference by violence or a threat thereof against an official on duty,⁶⁸ and Gosia is further charged with an attack on a public official on duty by “kicking and hitting”.⁶⁹

The case dates back to 3 October 2016 when they took part in the Black Protest against the proposal for a restrictive law that would have banned virtually all abortions. The protest turned into a spontaneous march toward the office of the governing Law and Justice Party. Once the rally got there, the situation escalated. Videos from the protest captured a small group of individuals dressed in black throwing smoke grenades toward the PiS headquarters. The police responded with force, including discharging pepper spray directly at the protesters and beatings with truncheons. During the police action, Gosia and two other protesters were arrested.

“Everybody was wearing black that day. It rained heavily and some friends gave me a waterproof jacket. It was neon orange, so I stuck out. At the time the police intervened, I was standing in front of the [PiS] building... holding a banner saying ‘*We shall not be servants: Neither at home, nor at work!*’”, Gosia explained to Amnesty International.⁷⁰ After a few minutes, the police surrounded the protesters holding the banner and took Gosia by force to one of the police vans.

Joanna was holding the banner together with Gosia. She told Amnesty International that at some point a police officer pushed her so hard that she fell to the ground. When she got up, she saw the police taking Gosia away. “She seemed to be injured. I tried to talk to the closest policeman, demanding information... In response, the police officer tried to detain me as well. The situation was very tense, especially after the police used pepper spray against the demonstrators... I saw a lot of injured people. My thighs and hands were badly burning for the next 24 hours.”⁷¹ As the police vans, with Gosia and another protester inside,⁷² were about to leave the site, some of the demonstrators attempted to block them. “I was standing in front of the car, I could not see much. We were resisting the departure of the police van but we were peaceful,” Joanna recalled.

The police later stated that they had arrested “the three most dangerous persons” who were subsequently charged with the offence of an attack on a public official on duty.⁷³ At about 7pm, the police van with the protesters arrived at the police station where they were tested for alcohol consumption, strip-searched, finger-printed, photographed for mugshots, and had their clothes tested for the presence of explosives. Gosia explained: “We spent the entire night at the police station in a detention cell. They let all three of us out after more than 23 hours. The only explanation we were given was that we were suspected of an attack on a police officer. The police did not allow us to call our lawyer.”

The police deny allegations of any unnecessary or excessive use of force. In a letter to Amnesty International dated on 7 May 2018, the chief of Poznań police stated that on 3 October 2016, the police intervened against those protesters “who attacked the police officers”. He also claimed that the police used force against those people who attempted to prevent the officers from performing their duties.⁷⁴

On 7 October 2016, Joanna filed a complaint against the police alleging abuse of power and unlawful use of force.⁷⁵ Later she learned that she had been charged in relation to her participation in the Black Protest on 3 October 2016. “In the course of the investigation, the prosecutor said that they will notify my employer, the university, about the proceedings against me. She asked me a number of personal questions and requested to know who I lived with. I mentioned my partner, Pawel. Two weeks later, Pawel who also attend the protest, received a notification that the prosecutor opened an investigation against him.”⁷⁶

In February 2018, the District Prosecutor rejected Joanna’s complaint on the basis that her allegations were unfounded and that the police acted proportionately in the situation.⁷⁷ In her decision, the prosecutor also argued that the protesters had participated in an “illegal assembly” and that Joanna voluntarily went to a site where she was “at risk”. The prosecutor also highlighted the fact that Joanna is a member of the Anarchist

⁶⁷ Art. 254§1 of the Criminal Code.

⁶⁸ Art. 224§1 of the Criminal Code.

⁶⁹ The other three activists are charged with an attempted violent act against a property committed in a group under Art. 254§1 of the Criminal Code, two of them are in addition to that also charged with a crime of an attack on public official on duty under Art. 222§1 of the Criminal Code.

⁷⁰ In Polish: “Wymawiamy służbę w domu i w pracy!”

⁷¹ Interview with Amnesty International, 13 April 2018, Poznań

⁷² The third protester was taken in a separate police van about 40 minutes later when the situation calmed down. Email communication with Gosia, 14 May 2018.

⁷³ Under Art. 222§1 of the Criminal Code. Information about the police action and classification of the offence is taken from the decision of the District Prosecutor in Poznań – Stare Miasto from 19 April 2017 to discontinue the proceedings in the complaint against the police intervention against the protesters.

⁷⁴ Letter from the Chief of the Poznań police is on file with Amnesty International.

⁷⁵ Art. 231§1 and 217§1 of the Criminal Code.

⁷⁶ Pawel is now one of the six activists facing trial. He is charged with the crime of an attempted violent act against property committed in a group under Art. 254§1 of the Criminal Code. Indictment against six protesters issued by the District Prosecutor in Poznań Stare Miasto on 6 November 2017 on file with Amnesty International.

⁷⁷ The decision of the District Prosecutor in Poznań Stare Miasto, 19 February 2018, p. 11, on file with Amnesty International.

Federation in Poznań, a group that attempts to “provoke the police”.⁷⁸ Even though the prosecutor admitted that the police used pepper spray against the protesters, she dismissed the allegation that the police used excessive force. The prosecutor concluded that the use of “incapacitating chemicals”, such as pepper spray was lawful and necessary for the “protection of life and health”.⁷⁹

Such a position is at odds with international human rights standards. Chemical irritants are by their very nature likely to have an indiscriminate effect, with a high probability of affecting not only those protesters who engage in violence but also bystanders and peaceful protesters. In order to comply with the principles of necessity and proportionality, chemical irritants may be used only in situations of generalized violence in order to disperse a crowd or when the level of violence has reached such a degree that law enforcement officials cannot contain the threat of further violence by directly and specifically targeting individual perpetrators.⁸⁰ They may only be used when people have the ability to disperse, not in confined spaces or in areas where exits are blocked or restricted. Clearly audible warnings must be issued prior to their use and people must be allowed sufficient time to leave the area. Any generalized use, which affects peaceful protesters or bystanders is likely to be disproportionate.⁸¹

The manner in which the chemical irritants were used by the police during the protest on 3 October 2016 in Poznań raises serious concerns. According to the video-evidence available, the police used the pepper spray directly against individuals assembled in front of the premises of the Law and Justice party.⁸² Such use of pepper spray is at odds with international standards and guidelines on the use of force. In several cases, the European Court of Human Rights has concluded that spraying pepper directly into protesters’ faces amounted to a violation of the prohibition of torture and other ill-treatment.⁸³ “[T]he use of ‘pepper spray’ can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract and of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it may cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging.”⁸⁴

The case of the Black Protest in Poznań also raises serious concerns over the use of force by the police during the demonstration. It is also disturbing with respect to the lack of investigation of allegations against the police; and the right to remedy for those whose rights were violated. There also appears to be much confusion in the office of the District Prosecutor in Poznań Stare Miasto who justified the use of force, in part, by reference to an “illegal” assembly. Peaceful assembly is a right, the exercise of which *does not* depend on permission from the authorities. International human rights law and standards do not permit states to impose a condition that planned assemblies require prior authorisation.⁸⁵

Under international human rights law and standards, failure to notify the authorities or to comply with other administrative requirements does not justify a conclusion that an assembly is unlawful.⁸⁶ Authorities may determine that an assembly is unlawful if, for example, its aim is to prevent another assembly from taking place thereby preventing other people from enjoying their right to freedom of peaceful assembly. But even in such cases law enforcement authorities are under an obligation to take only those measures that would be necessary and proportionate to a legitimate goal they aim to achieve. In particular with regard to any use of force in such situations, international standards are clear that in dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or, where that is not practicable, shall restrict such force to the minimum necessary.⁸⁷ In other words, the fact that an assembly is considered unlawful under domestic legislation does not as such justify the use of force by local law enforcement officials to disperse it.⁸⁸ The UN Special Rapporteur on the right to the freedom of assembly has been

⁷⁸ Decision of prosecutor to close the complaint from 19 February 2018 on file with Amnesty International.

⁷⁹ Decision of prosecutor to close the complaint from 19 February 2018 on file with Amnesty International, p. 10

⁸⁰ See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, paras. 57 and 61.

⁸¹ United Nations Office on Drugs and Crime (UNODC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) Resource book on the use of force and firearms in law enforcement, 2017, pp. 88-89.

⁸² See <https://www.tvn24.pl/poznan/43/kilkakrotnie-uderzono-mnie-palka-wciagnieto-do-radiowozu,681408.html>

⁸³ Art. 3 ECHR. See *Ali Güneş v. Turkey* (Application no. 9829/07), European Court of Human Rights judgement (2012); and *Çiloğlu and Others*, (Application no. 73333/01), paras 18-19, European Court of Human Rights judgement (2007)

⁸⁴ *Oya Ataman v. Turkey*, (Application no. 74552/01) European Court of Human Rights judgement (2006), paras 17-18.

⁸⁵ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies February 2016 A/HRC/31/66, para. 21.

⁸⁶ See European Court of Human Rights, *Éva Molnár v Hungary*, (Application no. 10346/05), 7 January 2009, para 37. The UN Human Rights Committee has concluded that the requirement of receipt of notification of an assembly by a state is often abused, resulting in de facto limits of the right of assembly, ensured in Article 21 of the ICCPR. Concluding Observations on Morocco [1999], UN Doc. CCPR/79/add. 113, para. 24.

⁸⁷ See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, paras 23, 61 and 62. See also: Principle 13 of the UN Basic Principle on the use of force and firearms:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

⁸⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 51.

unequivocal: banning and repressing peaceful assemblies just because “the messages conveyed do not please the authorities” is in breach of international human rights law.⁸⁹

JELENIA GÓRA, DECEMBER 2016

Agnieszka is a local activist with Women’s Strike (Strajk kobiet) in the town of Jelenia Góra. On 19 December 2016, the Minister of Education from the governing Law and Justice Party visited the town. “We were a small group and wanted to ‘welcome’ her. There were seven of us, all of different ages from 15 to 60 years. They did not let us into the meeting [only those with permits were allowed to attend], so we waited in front of the building for two hours. When the Minister appeared, we followed her chanting ‘Zalewska – demolka!’⁹⁰ I have a strong voice, so I was very audible. We were immediately surrounded by some people. Two men hit me under my knees, caught my arms and started to pull me. My hat fell off, so I grabbed it and started to defend myself. As I did that, I hit one of the men with the hat. The other participants saw it and came to help me. At that point, the Minister was already in the car and the men who attacked me had left.”⁹¹

Zbigniew, another protester told Amnesty International:⁹² “We were standing peacefully in front of the building where the Minister met the public... When she appeared and was about to leave, a group of people interfered with our protest... Somebody hit me in the ribs, pulled me by my hands... They didn’t have uniforms, they did not show any IDs, so we thought that they were some supporters of the Law and Justice Party.”⁹³

During the tussle with the two men, Agnieszka suffered minor injuries. She went to the hospital to get them examined and then contacted the police to report an assault. When she showed the police the images of her attackers, they reportedly said: “Ah, those are our colleagues”, implying that the men were in fact police officers.

“I was surprised as they did not show any IDs, nor did they mention they were from the police... In two days, the police came to my house and wanted to escort me to the prosecutor. I refused and told them I’ll go to the prosecutor later and on my own... I was first questioned as a victim: the prosecutor started an investigation into the assault on me. Later I was interrogated as a suspect in the case of an attack on a public official [the plain clothes police officers]. Initially, it was the District Prosecutor in Kamienna Góra that led the investigation, but in March 2017 the case was transferred to the Regional Prosecutor.⁹⁴ The investigation into the assault against me was closed in May 2017, no charges were pressed against those who insulted me. In December 2017, the prosecutor pressed charges against me for ‘an interference with bodily integrity of a public officer’ and ‘insult on a public official on duty’ arguing that I had attacked plain clothes police officers.”⁹⁵

Agnieszka reported that after the prosecutor pressed charges against her in relation to the protest on 19 December 2016 in Jelenia Góra, a police car was parked outside her house every evening for about two weeks. She also noticed wifi networks such as “operative-van-number4” [samochod operacyjny4] or “CBA” when she was connecting to the internet at home.

The prosecutor also pressed charges against Zbigniew for an ‘insult of a public official on duty’. The first court hearing against both protesters was held in March 2018. The trial was pending at the time of writing.

⁸⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, para. 59.

⁹⁰ The name of the Minister is Anna Zalewska. The protesters called the Minister ‘demolka’ (in English: demolition woman) expressing their disagreement with the educational reform that the Minister was pursuing. For details see for example: <http://www.newsweek.pl/polska/spoleczenstwo/reforma-edukacji-brak-podrecznikow-i-protesty-rodzicow,artykuly,408620,1.html>.

⁹¹ Phone interview with Amnesty International, 19 April 2018.

⁹² Phone interview with Amnesty International, 30 April 2018.

⁹³ For details see the video from the protest: <https://fakty.tvn24.pl/ogladaj-online,60/protesty-podczas-wizyty-minister-edukacji-sprawo-zbada-prokuratura,701877.html>

⁹⁴ i.e. to the higher level within the prosecution system. For details see: Art. 15 of the Law on the Prosecution. Dz.U.2017.0.1767 t.j. - Ustawa z dnia 28 stycznia 2016 r.

⁹⁵ Art. 222§1 and 226§1 of the Criminal Code.

Amnesty International has documented a number of cases of activists protesting against nationalist marches who are now facing criminal charges for an alleged attack on a police officer.

On 1 March 2018, the Law on National Remembrance (known as the *Holocaust Law*) entered into force. Rafal (see above: *Use of force*), was one of the organizers of a rally to commemorate the victims of Poland's "Cursed soldiers", a group that is considered responsible for committing a number of atrocities against civilians in the first decade after World War II. The rally finished at 7pm close to Rakowiecka Street where a nationalist march organized by the ONR was starting at that time.⁹⁷ Activists from various groups attempted to block the ONR march. The police intervened against a number of them, including a 19-year old student, Ignacy.

IGNACY: FROM A REFUSAL TO SHOW ID TO CRIMINAL CHARGES

Ignacy is a second year physics student. He started participating in protests in Poland in early 2016, when people first took to the streets to defend the independence of the Constitutional Tribunal. On 1 March 2018, he joined a rally in Warsaw to commemorate the victims of post-World War II atrocities in Poland. After the assembly ended, the participants approached the site where an ONR-organized nationalist march was starting, and attempted several times to block it by sitting down in front of it. The police removed them each time. As the nationalist march was approaching the Square Unii Lubelskiej, Ignacy saw about five women who sat on the ground on the route of the march. At that point he was standing on the pavement. A police officer reportedly approached him and demanded to see his ID. Ignacy asked for the officer's name, rank and reason for the ID-check. The police officer declined and subsequently took Ignacy by force to a police van. It was 9pm.

"In the police car they asked me again to show my ID. I asked for their names, ranks and reasons for the ID-check. They refused [and took Ignacy to the police station]. As we got there, they put me to a detention room and I saw Rafal [see the case above: *Use of force*], sitting and staring at the wall. He told me he got slapped in his face... At that point, I got scared... During the questioning they told me that I was detained on suspicion of disrupting public order under Article 51 of the Code of Minor Offences, and that I would be fined 500 zloty (120 eur). I refused to accept the fine and told them I would not leave until I got a protocol explaining the reason for my detention. I started to suspect something was wrong, when the police officers told me I was formally detained. They took my phone away but allowed me to keep my backpack. I had a book by Ludmila Ulitskaya, so I spent the night reading for seven hours. I could hear people shouting outside 'Let the lawyer in' but he was not allowed to enter the detention room for at least two hours. I asked several times for water, they eventually gave it to me after six hours. Before they released me, they gave me a protocol with the charges against me: 'interference with bodily integrity of a public officer' and 'destruction of property'.⁹⁶ One of the allegations against me is that I pushed a police officer and thereby damaged his mobile phone. This is not true. I know I haven't done anything wrong. On the contrary, I believe I did the right thing that day. It is not clear how my case will end as these are the last days of judicial independence in Poland."

On 9 March, Ignacy filed a complaint against his detention at the police station. The criminal case against Ignacy, as well as his complaint against the police were pending at the time of writing.

⁹⁶ Art. 222§1 and 288§1 of the Criminal Code.

⁹⁷ For the details of the segue, see (in Polish): <https://tvnwarszawa.tvn24.pl/informacje,news,zatrzymania-podczas-marszow-w-dniu-zolnierzy-wykletych,253949.html>



Ignacy standing on the pavement during the anti-nationalist protest in Warsaw on 1 March 2018. ©JohnBob & Sophie art

CRIMINAL CHARGES AGAINST JOURNALISTS

During a police intervention on the night of 24 to 25 April 2018, the police detained two journalists alongside nine protesters in a cemetery in the town of Łódź.⁹⁸ The protesters aimed to express their support of the 81-year old mother of Ms Agacka-Indecka, the former president of Poland's Bar Association, whose grave was about to be exhumed. The exhumation was being carried out on the order of the National Prosecutor within the context of the second investigation into the 2010 Smolensk plane crash.⁹⁹ The journalist and a videographer from an online outlet Oko.Press were reporting on the story and the action of the protesters. Now they too face charges of trespass. Robert Kowalski, the journalist explained to Amnesty International:

"This was the first time in my 20 years of journalistic career that I was detained by the police while working. I was at the cemetery before 1am, when five to six police cars entered the site. I heard somebody shouting: 'Take the camera!' Then a police officer pulled me by my arms... I was shocked that he was treating a journalist like that... they took me to a police van by force. Initially I thought they would release me once they understood I was a journalist but they kept me for over four hours. First, we stayed for three hours in the police van, and after 4am they took us to the police station. There they tested me for alcohol and then informed me about the trespassing charges."¹⁰⁰

The next day, the activists, as well the journalists and the videographer, were summoned to the police station in Łódź to provide their statements as witnesses.¹⁰¹ Summoning a person who is a suspect in a criminal proceeding as a witness is not routine procedure. Under Poland's Code of Criminal Procedure, suspects have a right to remain silent as they cannot be compelled to testify against themselves. Witnesses, however, are not necessarily granted such a right because they do not have the same status as suspects in a criminal

⁹⁸ Blokada ekshumacji smoleńskiej się nie udała. Robert Kowalski i operator OKO.press wśród zatrzymanych. 24 April 2018.

<https://oko.press/blokada-ekshumacji-smolenskiej-nie-udala-sie-robert-kowalski-i-operator-oko-press-wsrod-zatrzymanych/>

⁹⁹ 96 people, including the then president Lech Kaczyński, died during the plane crash. The government under the Law and Justice Party considered the investigation carried out in 2011-2012 inadequate, which prompted the National Prosecutor to order the second investigation: <https://www.tvp.info/34236917/w-warszawie-40-ekshumacja-ofiary-katastrofy-smolenskiej>

¹⁰⁰ Phone interview with Amnesty International, 25 April 2018.

¹⁰¹ Phone interview with Robert (25 April 2018) and Klementyna (26 and 30 April 2018).

investigation. In addition, while suspects have the right to a lawyer,¹⁰² the prosecutor may refuse to give consent to a lawyer's presence during the questioning of witnesses.¹⁰³

Amnesty International has documented additional cases where protesters were first summoned as witnesses and then subsequently treated as suspects in relation to protests in 2016 and 2017.¹⁰⁴ This practice raises concern that in these cases the police rely on the lower protections afforded witnesses in the preparatory stages of criminal proceedings, thus circumventing the fair trial guarantees afforded to persons suspected of a criminal offence.

2.3 SURVEILLANCE OF ACTIVISTS

In July 2017, protesters celebrated the President's veto of two laws that would have further undermined the independence of the judiciary. At that time, two members of one of the most vocal grassroots activist groups Obywatele RP,¹⁰⁵ Tadeusz Jakrzewski and Wojciech Kinasiewicz learned from the media that the police had them under physical surveillance for at least six days during the protests.¹⁰⁶ Leaked police recordings confirmed that the surveillance was not carried out on the basis of suspicion of criminal wrongdoing, but was simply related to their participation in protests. Both activists filed a joint complaint against the police with the District Prosecutor in Warszawa-Śródmieście alleging that the police abused their powers in breach of Article 231§1 of the Criminal Code, which prohibits police officers from exceeding their powers.¹⁰⁷

In January 2018, the Prosecutor rejected the men's complaint concluding that the police had not committed an offence.¹⁰⁸ In the decision, the Prosecutor noted that the surveillance was carried out in the context of large public assemblies in Warsaw and other places in Poland in opposition to the reform of the judiciary. Although he confirmed the authenticity of the recordings of conversations among police officers engaged in the surveillance of demonstrators, he highlighted that demonstrations took place around parliamentary buildings, the Supreme Court, and the Presidential Palace, and involved the risk of violence by certain protesters. The alleged threatening behaviour included a plan by protesters to "block or attempt to block government buildings... paralyze traffic... and disturb public order."¹⁰⁹ The Prosecutor took note that the police operation was supported by plainclothes officers who were monitoring the assemblies, including the meeting points of protesters and identification of prospective offenders against public order.¹¹⁰ It was in this way that the police observed one of the organizers of the protests, Pawel Kasprzak, and prevented his access to the parliamentary area at 10:20am on 18 July 2017. The Prosecutor noted that the police operation did not fall under the remit of lawful surveillance within the context of criminal proceedings,¹¹¹ but concluded that it was carried out with the aim to prevent "provocation" by some of the leaders of the protests and "escalation of protests".¹¹² Tadeusz and Wojciech appealed the decision of the prosecutor to the District Court and the appeal was pending at the time of writing. This case reflects a paradigmatic change in the use of surveillance by law enforcement agencies in Poland.

State regulation of surveillance significantly changed in January 2016, when an amendment to the Police Act introduced provisions on "operational" surveillance¹¹³ and collection of metadata.¹¹⁴ The law represents a departure from the previous regulation that permitted surveillance exclusively in the context of a criminal investigation.¹¹⁵ Poland's Commissioner for Human Rights concluded that these changes to the Police Act were unconstitutional, and raised concerns over the lack of safeguards against interference with the right to privacy.¹¹⁶ Both the Human Rights Commissioner and the Venice Commission have raised concerns over the

¹⁰² i.e. the police or the prosecutor cannot refuse lawyer's presence during the questioning. Article 83§2 of the Code on Criminal Procedure.

¹⁰³ Article 87§3 of the Code on Criminal Procedure.

¹⁰⁴ Cases of four activists summoned first as witnesses and then as suspected offenders on file with of Amnesty International.

¹⁰⁵ Citizens of the Republic of Poland

¹⁰⁶ Complaint of Tadeusz and Wojciech against the police for breach of their privacy rights, August 2017. On file with Amnesty International.

¹⁰⁷ In this case, as defined in Article 14 of on the Police Act: operational surveillance.

¹⁰⁸ Public part of the decision of the District Prosecutor from 4 January 2018 on file with Amnesty International.

¹⁰⁹ Public part of the decision of the District Prosecutor, p. 5

¹¹⁰ The public part of the decision of the District Prosecutor, p. 7-8

¹¹¹ The public part of the decision of the District Prosecutor, p. 9

¹¹² The public part of the decision of the District Prosecutor, p. 14

¹¹³ This includes measures such "as listening to and recording of the contents of telephone conversations and correspondence conducted via telecommunications networks (e-mails, messengers, etc.), in ordinary letters, recording 'live' conversations with listening devices, etc. Venice Commission, 2016, p.7.

¹¹⁴ Metadata may include information about phone calls placed or received, numbers dialed, duration of calls, geographical location of mobile devices at a given moment, web-sites visited, log-ins, personal settings, addresses of e-mail correspondence, etc. Venice Commission, 2016, p.7.

¹¹⁵ Venice Commission, p. 6.

¹¹⁶ Pursuant concerns over the lack of independence and legitimacy of the Constitutional Tribunal, the Commissioner withdrew his complaint to the Constitutional Court in relation to the 2016 amendment of the Police Act. For details, including summary of human rights concerns see (in Polish): <https://rpo.gov.pl/pl/content/rpo-wycofuje-wniosek-do-trybuna%C5%82u-konstytucyjnego-w-sprawie-inwigilacji>

extension of powers of law enforcement agencies without the introduction of necessary safeguards against abuse. Of particular concern was the absence of the state's obligation to notify the person under surveillance after the fact, leaving little or no remedy available to those whose rights may be violated.¹¹⁷

In addition, in urgent cases the law permits the prosecutor to authorize the law enforcement agencies to carry out surveillance without a court order for up to five days. After five days, the prosecutor must either obtain authorization from a court or suspend the surveillance and destroy any evidence gained through it.¹¹⁸ The implementation of this authorisation procedure is in practice highly problematic. Amnesty International interviewed several criminal lawyers, prosecutors and judges who expressed concerns that the system of authorization of a surveillance request is a mere formality.

A direct consequence of the shift in the use of surveillance – and information derived from it – from regulated use within the context of criminal proceedings to measures taken in a more “preventive” posture by law enforcement agencies is the emergence of a climate of uncertainty in relation to surveillance. Inadequate safeguards and broad surveillance power mean that anyone – human rights defenders, opposition politicians, lawyers or activists – can be monitored by the police or other law enforcement agencies.¹¹⁹ The adverse effect caused by this uncertainty and suspicion limits the space for free exercise of human rights, including the rights to privacy, freedom of association, peaceful assembly and expression.

Activists have reported to Amnesty International that they have been under physical surveillance by the police. During the night from 16 to 17 April 2018, a group of activists organized a picket in Warsaw at the grave of Jolanta Dorota Szymanek-Deresz, a lawyer and politician who died during the Smolensk plane crash in 2010. At about 2:30am, the picket was removed by the police and all the activists were ID-checked. One of them, “Piotr,” reported that he was followed by the police on his way home.¹²⁰ “As I was driving home, I noticed there was a police car behind us. We were meandering around small streets, slowing down at roundabouts. At one moment we got rid of them but the car reappeared right behind us after a few minutes. When the car suddenly stopped, I went to them and asked why they followed us. ‘We don’t know,’ they replied and continued their slow chase through the streets Niepodległości and Wiktorska. When I finally got to my house, they waved goodbye.”¹²¹

Other activists have reported to Amnesty International that they were followed multiple times including after two demonstrations against restrictive abortion legislation in Warsaw on 17 January and 23 March 2018. Rafał, recalls the second incident: “A few of us left Nowogrodzka,¹²² after the end of the assembly and started walking home. One of us shortly after that noticed that we were followed by three cars, they were slowly rolling behind us in the small streets we were taking.”¹²³

Amnesty International is concerned that physical surveillance of activists in the context of peaceful demonstrations and outside formal criminal justice proceedings appears to be a method of intimidation. Such practice is not compliant with international human rights law that requires states, including Poland, to ensure no individual is criminalized for exercising their rights to freedom of peaceful assembly and of association. Threats or use of violence, harassment, persecution, intimidation or reprisals of protesters are not permissible under international human rights law.¹²⁴

2.4 COURTS UPHOLD THE RIGHTS OF PROTESTERS

The courts play a crucial role in ensuring that the exercise of the rights to freedom of peaceful assembly and expression are not penalized. However, pursuant to the 2017 reform of the judiciary that effectively subjects the judicial branch to political pressure from the executive branch, it is unclear whether Poland's judiciary will be in a position to continue to uphold and guarantee the right to peaceful assembly, especially for protests that challenge the government's policies (See below: *Judiciary under pressure*).

Since August 2017, the courts in Warsaw and Wrocław have issued a number of decisions to discontinue proceedings under the Code of Minor Offences¹²⁵ and the Criminal Code¹²⁶ against 70 individuals who had

¹¹⁷ Venice Commission. Opinion on the Act of 15 January 2016, p. 26.

¹¹⁸ Art. 19§3.

¹¹⁹ Amnesty International, *Dangerously Disproportionate: The Ever-expanding National Security State in Europe*, January 2017, (Index: EUR 01/5342/2017)

¹²⁰ Not his real name.

¹²¹ Email communication with Amnesty International, 17 April 2018.

¹²² The street where the headquarters of the Law and Justice party reside.

¹²³ Interview with Amnesty International, 12 April 2018. Another two protesters confirmed that the group was followed on 23 March 2018 in Warsaw.

¹²⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2016. p. 22

¹²⁵ Mostly in cases of offences under Art. 51 or 90 of the Code of Petty Offences.

participated in protests.¹²⁷ For example, on 27 December 2017, Judge Kielak-Komorowska from District Court Żoliborz, dismissed the charges against activists who held a solidarity picket in front of a police station, where their colleagues were questioned in relation to their participation in protests.¹²⁸ They were holding a banner saying: “We have rights! [There are] the rights of physics, the rights of logic and human rights.”¹²⁹ One of the protesters, 82 year old Bogusław Zalewski, told Amnesty International: “The police opened about 800 proceedings against us... just because we are protesting.”¹³⁰



82-year old Bogusław Zalewski removed by the police during the anti-fascist protest on 1 May 2018 in Warsaw. ©JohnBob & Sophie art

On 13 March 2018, Judge Łukasz Biliński decided to drop the charges against four persons threatened with prosecution for blocking the streets during protests on 15 and 16 July 2017 in Warsaw.¹³¹ The court held that the protesters were exercising their right to freedom of assembly in line with the Polish Constitution.¹³²

On 20 March 2018, the District Court Warszawa- Śródmieście ruled that three protesters were “not guilty” of the offence of “disrupting a lawful assembly” on 10 July 2017. On that day, the protesters had jumped or had attempted to jump through the barriers separating a monthly cyclical pro-government assembly from the rest of the pedestrian zone in central Warsaw. The Judge concluded that this monthly demonstration did not qualify as a public assembly because it was not accessible to the general public, in particular to counter-protesters. If the assembly were to be considered public, law enforcement officers were required to police it by means other than barriers preventing public access.¹³³ On 20 April 2018, the District Court Warszawa-Śródmieście discontinued proceedings against seven counter-protesters who attempted to block the monthly assembly in central Warsaw on 10 May 2017. The Judge held that protesters were exercising their right to freedom of expression and that they did not mount a real threat to the monthly assembly.¹³⁴

¹²⁶ Art. 193 of the Criminal Code (trespass cases).

¹²⁷ See the summary report of Obywatele RP from March 2018:

<https://obywatelerp.org/wp-content/uploads/2018/04/Raport-ObyPomoc-Zbiorczy-do-2018-03-31-ENG.pdf>.

¹²⁸ See the summary report on proceedings against activists by Obywatele RP, April 2018, p.11. <https://obywatelerp.org/wp-content/uploads/2018/04/Raport-ObyPomoc-Zbiorczy-do-2018-03-31-ENG.pdf>

¹²⁹ <https://obywatelerp.org/sad-nie-ma-potrzeby-przeprowadzania-rozpraw/>

¹³⁰ For details of Bogusław’s story, see Amnesty International video, December 2018: <https://www.facebook.com/amnestyglobal/videos/1764429630236568/>

¹³¹ Under Art. 90 of the Code of Minor Offences.

¹³² <https://obywatelerp.org/sedzia-obywatele-maja-konstytucyjne-prawo-do-protestu/>.

¹³³ The decision from 22 March 2018 on file with Amnesty International. For a summary (in Polish), see: <https://oko.press/sad-miesiecznicze-smolenskie-zgromadzenie-publiczne-prywatne-spotkania/>.

¹³⁴ <https://obywatelerp.org/sad-umorzyli-postepowanie-bo-celem-obwinionych-bylo-wyrazenie-protestu/>.

Individuals participating in anti-government or anti-nationalist protests continued to be exposed to heavy-handed police measures, such as kettling¹³⁵ and extensive ID checks, and subjected to fines under the Code of Minor Offences and prosecutions. In a number of cases, the courts held that the practice of holding protesters in police vans amounted to detention.¹³⁶ Taken together, the restrictive and in some cases repressive measures contributed to a climate in which participation in peaceful protests involved a high degree of personal risk. Furthermore, there are also concerns over the chilling effect of such measures on the right to freedom of assembly.

Piotr, for example, is facing about 15 charges in relation to his participation in protests since November 2016. "Whenever you go to the streets now, you are up for a fine."¹³⁷ Many people are afraid to participate in protests as they fear consequences at work or for their private life. Apart from being prosecuted for his participation in protests, Piotr has also received a significant number of hate messages from random people over Facebook messenger. "A lot of them are from fake profiles," he noted.

Since the 2017 amendment to the Law on Assemblies, the governor of the Mazovian province (*województwo*),¹³⁸ has banned 36 assemblies in Warsaw. The reason given was that the banned assemblies were announced in the same place or in the vicinity of "cyclical" assemblies.¹³⁹ The governor's decisions were routinely made on the same day, just a few hours before the time of assembly, thus undermining any possible appeal against the decision. The practice of banning assemblies amounts to a serious interference with the right to freedom of assembly. The UN Special Rapporteur on the rights to freedom of peaceful assembly and the Special Rapporteur on extrajudicial, summary or arbitrary executions clarified that "[b]lanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly."¹⁴⁰

2.5 DIFFERENTIAL TREATMENT OF ASSEMBLIES

The Polish authorities have given priority to certain types of assemblies and protests over others, without credibly attempting to accommodate a variety of assemblies at the same place and time as required under international law and standards.

On 11 November 2017, shortly before 3pm a group of about 50 activists stood in Smolna Street in central Warsaw holding banners: "Here are the borders of decency", "Warsaw is disgraced" and "My motherland is humanity". They were standing about 50 metres away from the designated route of the Independence March, which included strong participation by nationalist groups.¹⁴¹ After a few minutes, the police told the protesters through a megaphone to immediately disperse as they were "obstructing a lawful assembly". Within less than 30 seconds, the police removed the protesters by force and detained them first in police vans and then at the police station for three hours. Thirty-six protesters filed complaints against the police challenging the lawfulness of the operation. One of the activists also alleged that her knee was fractured when the police removed her by force from the street; this is the subject of a separate complaint.¹⁴² In 28 cases, the court held that the detentions were lawful but unjustified and irregular. Although the court concluded that the police had the right to check the IDs of the counter-protesters, it found the use of force and the deprivation of liberty for about two hours were irregular. The court also took note of the fact that the police did not even try to check the IDs on the site.¹⁴³ In two cases the court concluded that the police action did not amount to a detention. Six cases were pending at the time of writing.¹⁴⁴ An internal investigation into the police operation on 11 November 2017 in Warsaw, opened by the Chief of the Warsaw Police in January

¹³⁵ A police tactic of surrounding or otherwise containing groups of people during assemblies.

¹³⁶ The police used the method of holding protesters in police vans on numerous instances during protests in 2017. See for example a series of 35 cases in which protesters complained the detention in police cars in the context of the counter-protest against the Independence March in Warsaw on 11 November 2017: <https://obywatele.rp.org/sedziowie-skarzacy-niewatpliwie-zostali-pozbawieni-wolnosci/>

¹³⁷ Interview with Amnesty International, 1 February 2018, Warsaw.

¹³⁸ i.e. Warsaw regional authority.

¹³⁹ See: <http://bip.mazowieckie.pl/contents/443>

¹⁴⁰ Joint report, 2016, para 30.

¹⁴¹ A video capturing the police intervention can be found here: <https://www.facebook.com/ObywateleRP.org/videos/732675136933927/>. Amnesty International has corroborated the authenticity of the video through interviews with the participants in the protest.

¹⁴² Phone conversation with Amnesty International, 26 April 2018.

¹⁴³ Decision of the District Court from 3 January 2018 on file with Amnesty International, p. 3

¹⁴⁴ The data are drawing on a letter of Poland's Human Rights Commissioner to the Chief of the Police, 25 April 2018: <https://www.rpo.gov.pl/pl/content/rpo-11-listopada-2017-r-policjanci-naruszyli-prawa-i-wolnosci-obywatelskie>.

2018, was closed on 14 March 2018. The investigation concluded that there was insufficient evidence that police officers had committed disciplinary offences.¹⁴⁵

As the police were busy containing and removing the counter-protesters in Smolna Street, thousands marched through Warsaw celebrating the anniversary of Poland's independence.

Close to Poniatowski bridge, a group of 14 women arrived at the Independence March carrying a banner saying "Stop fascism". (See Agnieszka's case in: *Criminalization of Protest Continues*). A few moments after that, some of the participants of the march attacked them. "They first pulled away our banner, then started tearing our clothes and kicking us. I was kicked several times in my back. There were some people, including the organizers, who protected us," an activist named Elzbieta told Amnesty International.¹⁴⁶ Eventually, one of the activists decided to call the police to report the incident. "They came after 30 minutes and asked us why we came there implying we were provocateurs."¹⁴⁷

Both groups, the counter-protesters removed by the police from Smolna Street, as well as 13 out of the 14 women from the bridge, currently face charges for interference with a lawful assembly.¹⁴⁸

Amnesty International considers that the general ban on all demonstrations taking place less than 100 metres away from "cyclical assemblies" is likely to exceed what would be permissible under international human rights law by disproportionately limiting the exercise of the demonstrators' freedoms of peaceful assembly and expression.

While the police justified the dispersal of the protest on Smolna Street by claiming they were protecting the rights of others, it was so wide-ranging and sweeping as to effectively prevent counter-protesters from expressing their views and being heard by the participants at the Independence March. Also, while the protection of the rights of others, as well as the protection of public order, may justify some measures being taken, especially when there is a sufficient likelihood that protests and counter-protests could lead to violence, a generalised ban against all assemblies taking place within 100 metres of a "cyclical assembly" would not be in keeping with the principles of necessity and proportionality.

Under international human rights law, Poland has an obligation to facilitate and protect assemblies, including simultaneous assemblies and counter-protests, in which one or more assemblies aim to express discontent with the message of other assemblies. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions in joint report highlighted that "[a]ssemblies, including spontaneous assemblies and counter-protests, should, as far as possible, be facilitated to take place within sight and sound of their target."¹⁴⁹

Incidents in other cities around Poland on the day of the Independence March also raise serious concerns about police conduct and/or negligence. Pyrotechnical material was widely used by the participants of the Independence March in the city of Wrocław on 11 November 2017.¹⁵⁰ The media reported that some of the marchers chanted: "Fuck the communists!"; "Fuck the citizens!"¹⁵¹ and "Kill the faggots!"¹⁵² When the march reached Świdnicka Street, a small group of a few dozen anti-racism activists, affiliated with Obywatele RP and Women's Strike, stood on the route with banners: "Here are the borders of decency" and "Fascism shall not pass". During the confrontation between the protesters and counter-protesters, the participants of the nationalist march set on fire the hair of one of the protesters.¹⁵³

"I was standing in the second row of the blockade of the march. We were peaceful and unable to move as the police were pushing us from one side and the nationalists from another. Then one of them hit me with a torch, which set my hair on fire. A police officer saw it but did not intervene," Gosia explained.¹⁵⁴ The investigation of the case was pending at the time of writing. In the aftermath of the march, the police started proceedings against 11 counter-protesters for interference with a lawful assembly.¹⁵⁵

¹⁴⁵ Letter of the Chief of the Police from 5 June 2018 on file with Amnesty International.

¹⁴⁶ Phone interview with Amnesty International, 14 November 2017.

¹⁴⁷ Phone interview with Amnesty International, 14 November 2017.

¹⁴⁸ At the time of writing there were 47 proceedings pending under the Code of Minor Offences and one case under the Criminal Code. See (p. 4) at: <https://obywatele.org/wp-content/uploads/2018/04/Raport-Obywatele-Pomoc-Zbiornicy-do-2018-03-31-ENG.pdf>

¹⁴⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies February 2016 A/HRC/31/66, para. 24

¹⁵⁰ See: <http://wroclaw.wyborcza.pl/wroclaw/7,35771,22632327,11-listopada-we-wroclawiu-narodowcy-maszeruja-przez-miasto.html>

¹⁵¹ Referring to an opposition group Obywatele RP (Citizens of the Republic of Poland).

¹⁵² For details, see in Polish: <https://oko.press/wypierdalac-wrazem-patriotyzy-mu-wroclawskiego-marszu-wielkiej-polski-niepodleglej-policja-pozwolila-zaatakowac-kontrmanifestantow-jedna-osoba-szpitalu/>.

¹⁵³ See video from the protest: https://www.youtube.com/watch?v=Sn_p4IhuNV8&feature=youtu.be

¹⁵⁴ Interview with Amnesty International, 22 February 2018, Wrocław.

¹⁵⁵ Art. 52§1 of the Code of Minor Offences.



An action by a group of activists on 13 November 2017, during which they aimed to highlight the lack of police intervention against those participants of the Independence March carrying prohibited pyrotechnic materials. The police have initiated proceedings against one of them for unlawful use of pyrotechnic materials.
©Katarzyna Pierzchała

Across Poland in November 2017, protesters tested the state's willingness to uphold their right to freedom of assembly. On 15 November 2017, the police in Poznań prevented anti-fascism protesters from assembling in Strzałowa Street, despite the fact that the protesters had notified the authorities of their demonstration.¹⁵⁶ A few hours before their rally was expected to start, various nationalist and far-right groups gathered at the site of the anti-fascist demonstration. To prevent a direct confrontation between the two groups, which had reached several hundred participants on each side, the police blocked the anti-fascist protesters on Rybaki Street, about 100 metres away from the location where their assembly was notified. According to media reports, a representative of the Poznań municipality requested that the police disperse the nationalist assembly as it was taking place on a site of another lawful assembly. The police reportedly asked the participants of the spontaneous nationalist assembly to leave the area but did not move to disperse it. That approach is starkly different from the types of police interventions against counter-protesters who are routinely removed from the routes of nationalist marches in Warsaw and other towns in Poland.¹⁵⁷ The UN Special Rapporteur on the right to freedom of assembly and the Special Rapporteur on extrajudicial executions have acknowledged the difficulty that opposing assemblies represent for the authorities.¹⁵⁸ However, they have also noted that differential treatment of assemblies might be criticised as bias.¹⁵⁹ The UN Special Rapporteur on the right to freedom of assembly has stressed that “[s]tate handling of demonstrations and counter-demonstrations in these contexts should ensure that each group can exercise its rights without undue interference by authorities or opposing rally participants.”¹⁶⁰

¹⁵⁶ See: <http://poznan.wyborcza.pl/poznan/7,89336,22652043,antyfaszysci-nie-zdemolowali-poznania-policja-stanela-za-to.html>.

¹⁵⁷ For example: Warsaw 11 November 2017, 1 March 2018; Wrocław 11 November 2017; Hajnówka 24 February 2018.

¹⁵⁸ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, para. 72

¹⁵⁹ For example the police in the United Kingdom have been criticized for the handling of the assembly of the English Defence League (EDL), which opposes perceived Islamism, for employing tactics that dissuaded would-be counter-demonstrators from participating in assemblies. “This has led to a perception of bias against Muslim community members, because EDL members were not subject to similar restrictions.” For details see: NETPOL Report on the policing of the English Defence League and Counter Protests in Leicester on 4th February 2012, <https://netpol.org/wp-content/uploads/2012/12/Report-on-the-Policing-of-the-EDL-and-Counter-Protests-in-Leicester2012.pdf>

¹⁶⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para 24.

3. JUDICIARY UNDER PRESSURE

The independence of the judiciary is essential to ensure the right to fair trial.¹⁶¹ In light of the high volume of prosecutions in what appears to be an effort to stifle various forms of dissent, the fundamental nature of such a guarantee is further put into sharp relief. To date, the judiciary has been upholding the rights of freedom of assembly and expression. As documented above, the courts in Warsaw and Wrocław have issued a number of decisions to discontinue proceedings under the Code of Minor Offences and the Criminal Code in a number of cases. (See the section *Courts uphold the rights of protesters*). However, pursuant to the 2017 “reform” of the judiciary, the independence of courts has been severely undermined. This raises serious concerns over the predicament of hundreds of protesters whose cases are currently pending in courts.

Amnesty International has documented here the first cases of harassment and political pressure experienced by those judges who have dismissed charges against peaceful protesters.

3.1 “REFORM” OF THE JUDICIARY

The summer of 2017 was marked by a significant mobilization of people in Poland in defence of the independence of the judiciary. Thousands of people took to streets in cities and towns all over Poland calling on the government and parliamentarians to stop adoption of a series of amendments to Polish laws that became known as the “reform” of the judiciary.¹⁶² They succeeded: the President of Poland vetoed two out of three amendments.¹⁶³ However, he signed the amendment to the Law on the Common Courts, which entered into force in August 2017. The amendment empowered the Minister of Justice to appoint and dismiss presidents and vice-presidents of courts. Despite continuing protests on the streets of Poland and warnings from the European Commission, the Polish Parliament eventually adopted the amendments on the Law on the National Council of the Judiciary and the Law on the Supreme Court¹⁶⁴ – the two previously vetoed laws – in December 2017.

EU’S ACTION TO SAFEGUARD RULE OF LAW

The European Commission (EC) responded on 26 July 2017 to the changes undermining the independence of Poland’s judiciary by giving Poland one month to address the systemic threat to the rule of law.¹⁶⁵ The EC also asked the Polish authorities “not to take any measure to dismiss or force the retirement of Supreme Court judges.” If such a measure were to be taken, the Commission was committed to triggering Article 7(1) TEU. The Polish government failed to address the EC’s

¹⁶¹ Amnesty International. 2016. *Fair Trial Manual*. (Index: POL 30/002/2014) pp. 108-109.

<https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>

¹⁶² The reform is referred to as “Dobra Zmiana” in Polish.

¹⁶³ On 24 July 2017, the President vetoed the amendments to the Law on the Supreme Court and the Law on the National Council of the Judiciary.

¹⁶⁴ Vetoed by the President in July 2017.

¹⁶⁵ http://europa.eu/rapid/press-release_IP-17-2161_en.htm

recommendations and moved ahead with the changes in the judiciary. As a result, the European Commission triggered Art. 7.1 of the EU Treaty against Poland on 20 December 2017.¹⁶⁶ This opened the possibility of sanctions against Poland. In April 2018, Poland responded with some proposed legislative changes. Amnesty International believes those proposals fail to address the EC's concerns.¹⁶⁷ In order to address these concerns, Poland will have to amend the Law on the Common Courts, the National Council of the Judiciary and the Supreme Court and remove the provisions that undermine the full independence of the judiciary and put the right to fair trial at risk.

The ostensible goal of the government's "reform" of the judiciary was to improve the work of the courts by speeding up proceedings and addressing corruption in the judiciary.¹⁶⁸ Critics have noted, however, that the real aim was to gain political control over the courts. In April 2018, the NGO Helsinki Foundation for Human Rights published a report in which it concluded that "[t]wo years of legislative changes in the judiciary resulted in removal of most of the safeguards of the judicial independence. It now rests primarily on the judges themselves."¹⁶⁹

Since 2016, the government of Poland has adopted legislation and taken measures undermining the independence of the judicial institutions in the country: the Supreme Court, the common courts, the National Council of the Judiciary and finally also the Constitutional Tribunal. First it compromised the independence and legitimacy of the Constitutional Tribunal.¹⁷⁰ As a result, the Venice Commission, the European Commission as well as other observers have questioned the legitimacy of the Constitutional Tribunal.¹⁷¹

The politicisation of the Constitutional Tribunal has directly translated into decisions that have affected human rights in Poland. For example, in March 2017, the Constitutional Tribunal ruled that the law that prioritizes certain types of assemblies over others (with priority given to so-called cyclical assemblies) was constitutional, which paved the way to bans on any alternative assemblies during the monthly pro-government assemblies.¹⁷²

In July 2017, the President of Poland signed an amendment to the Law on the System of Common Courts. The amendment entered into force in August 2017 and empowered the Minister of Justice to dismiss and appoint presidents and vice-presidents of courts. Within the first six months of the law entering into force, the Minister had the power to replace the presidents or vice-presidents without providing any justification. Using this power, the Minister dismissed and subsequently appointed at least 130 presidents and vice-presidents of common courts between September 2017 and February 2018.¹⁷³ There are 377 courts in Poland¹⁷⁴ and the government has acknowledged that the Minister has replaced about 18% of presidents and vice-presidents of the courts.¹⁷⁵

The amendment of the Law on the National Council of the Judiciary (NCJ) came into force in January 2018. The law gave Parliament the power to appoint the 15 judges that comprise the NCJ. The Polish Constitution, however, expressly limits the number of the members of the NCJ appointed by Parliament to six. On 5 March 2018, Parliament appointed the new NCJ members, 8 of whom happen to be the new presidents or vice-presidents of courts appointed since August 2017 by the Minister of Justice.¹⁷⁶

¹⁶⁶ http://europa.eu/rapid/press-release_IP-17-5367_en.htm

¹⁶⁷ See Amnesty International's Myth buster: <http://www.amnesty.eu/content/assets/MythBuster-CommissionVsPoland.pdf>

¹⁶⁸ The pro-government media has portrayed judges as "mafia", acting beyond the law.

<https://twitter.com/PolskieRadio24/status/981554179046035456>.

¹⁶⁹ Helsinki Foundation for Human Rights, *Od kadr się zaczyna*, Warsaw 2018, p. 28 <http://www.hfhr.pl/wp-content/uploads/2018/04/HFPC-Od-kadr-sie-zaczyna.pdf>

¹⁷⁰ Amnesty International. *Poland: Submission to the UN HRC*, 17 October-4 November 2016. <https://amnesty.org.pl/wp-content/uploads/2016/10/HRC-submission-Amnesty-International.pdf>. See also: The Opinion of the Venice Commission: CDL-AD(2016)026, Poland - Opinion on the Act on the Constitutional Tribunal; European Commission, Recommendation regarding the Rule of Law in Poland of 27 July 2016: http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm

¹⁷¹ The Opinion of the Venice Commission: CDL-AD(2016)026, Poland - Opinion on the Act on the Constitutional Tribunal; European Commission, Recommendation regarding the Rule of Law in Poland of 27 July 2016: http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm

¹⁷² The bans were issued by the regional government authority (*województwo*) in Warsaw.

¹⁷³ The estimate (130-160 presidents and vice-presidents) by Helsinki Foundation of Human Rights, 2018, p. 16: <http://www.hfhr.pl/wp-content/uploads/2018/04/HFPC-Od-kadr-sie-zaczyna.pdf> See also: <http://www.iustitia.pl/informacja-publiczna/2100-ostatecznie-130-prezesow-i-wiceprezesow-zostalo-odwolanych-przez-ministra-sprawiedliwosci>. The changes in the posts of presidents and vice-presidents of common courts continued even after February 2018. According to information published by the association of judges Iustitia, by May 2018, the total number of replaced presidents and vice-presidents was 194 (150 were removed by the Minister of Justice and 45 resigned). See the list: <http://monitorkonstytucyjny.eu/archiwa/3982>

¹⁷⁴ <http://sonar.wyborcza.pl/sonar/7,156422,22492032,sonarwsadach-pis-poprawia-ustawy-ziobro-powoluje-prezesow.html>

¹⁷⁵ Executive summary of the government's White Paper on the Reform of the Polish Judiciary, March 2018, p. 5:

https://www.premier.gov.pl/files/files/white_paper_en_-_executive_summary.pdf

¹⁷⁶ <http://wyborcza.pl/7,75398,23108831.krakowa-rada-ziobrownictwa-zobacz-kim-sa-nowi-sedziowie.html>

The amendment of the Law on the Supreme Court also includes provisions that allow reopening closed disciplinary proceedings against judges.¹⁷⁷ The law establishes the new Disciplinary Chamber¹⁷⁸ whose members will be elected by the politicized National Council of the Judiciary and whose “lay judges” will be elected by members of the Senate.¹⁷⁹ The judges interviewed by Amnesty International feared that once the new Disciplinary Chamber is elected, a series of disciplinary proceedings will commence against judges who have ruled against the wishes of the government in politically sensitive cases.¹⁸⁰

3.2 DISCIPLINING THE JUDGES

The 2017 “reform” of the judiciary introduced changes in disciplinary proceedings, which could be used against judges who rule in politically sensitive cases, including cases that involve anti-government protesters. In March 2018, the Minister of Justice declared that judges who will apply the Constitution directly to their judgments will face disciplinary proceedings as only the Constitutional Tribunal can make a decision on compliance with the Constitution.¹⁸¹

A criminal judge and member of the judges’ association Themis, Dariusz Mazur, told Amnesty International that the regulation on the new mode of disciplinary proceedings against judges and representatives of other legal professions is in many aspects in breach of due process of law.¹⁸² For example, members of first instance disciplinary courts are appointed by the Minister of Justice who is at the same time the Prosecutor General, entrusted with broad investigative powers.¹⁸³ Furthermore, it is permissible under the current law to carry out a hearing in disciplinary proceedings in *justified* absence of a judge or her/his counsel, which undermines the right to defence.¹⁸⁴ In relation to the disciplinary and criminal proceedings against judges, the new law explicitly allows the use of evidence obtained without judicial authorization and in violation of laws, including evidence obtained as a result of secret operational surveillance of telephone conversations, email communication etc.¹⁸⁵ The law grants extensive powers in matters of disciplinary proceedings to the Minister of Justice and the President of Poland.¹⁸⁶

Judge Mazur raised further concerns over procedural guarantees of judges facing disciplinary proceedings under the new regime:

“This means there is no real guarantee of the right to due process in disciplinary proceedings against judges. Taken together with the fact that the judges-members of the Disciplinary Chamber of the Supreme Court are elected by the politicised National Council of the Judiciary, and lay judges of mentioned Chamber are elected directly by the politicians [the Senators], this raises serious concerns over the independence of the judiciary. In addition, the judges-members of the Disciplinary Chamber of the Supreme Court are granted a high 40 per cent bonus to their salary, which raises questions whether the aim is to ‘corrupt’ them to be ready to pursue politically-motivated proceedings against their colleagues. The result of the ‘reform’ is an inquisitorial model of disciplinary proceedings against judges, which will politicize these proceedings and restrict procedural rights of the defendants. A consequence will be a ‘chilling effect’ on the work of judges, especially in cases that will have a political or media character.”¹⁸⁷

¹⁷⁷ Art. 124.1. The amendment of the Law on the Supreme Court entered into force in April 2018.

¹⁷⁸ The Chamber has two divisions: one serves as the first and the other as the second instance for disciplinary proceedings against judges, prosecutors, attorneys and notaries. Source: Art. 3 (Art. 27) of the Law on the Supreme Court <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000005/T/D20180005L.pdf>

¹⁷⁹ Under Art. 61§2 of the Law on the Supreme Court, the Senators will elect the lay members of the SC: http://orka.sejm.gov.pl/proc8.nsf/ustawy/2003_u.htm

¹⁸⁰ Amnesty International. “Reform” of the judiciary in Poland poses risk to the right to fair trial: Briefing by Amnesty International ahead of the General Affairs Council Meeting. March 2018, p. 7.

¹⁸¹ For details see in Polish: <http://www.gazetaprawna.pl/artykuly/1114526.ziobro-o-wyroku-wsa-w-gdansk-tylko-tk-ma-prawo-decydowac-czy-ustawa-jest-zgodna-z-konstytucja.html>

¹⁸² Phone interview with Amnesty International, 20 April 2018.

¹⁸³ Art. 110a of the Law on the System of Common Courts.

¹⁸⁴ Art. 115.a para 3 of the Law on the System of Ordinary Courts <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf>

¹⁸⁵ Art. 115c of the Law on the System of Ordinary Courts, Art. 19 of the Police Act, Art.168 of the Code on Criminal Procedure. <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf>

¹⁸⁶ Including the possibility of the Minister of Justice filing a binding objection to a decision of a Disciplinary Proceedings Representative on a refusal to initiate disciplinary proceedings - art. 114§9 of the Law on the System of Ordinary Courts

¹⁸⁷ Interview with Amnesty International, 14 April 2018, Krakow.

SUWALKI CASE

On 4 March 2016, 20 protesters affiliated with a group called the Committee for the Defence of Democracy (KOD) attended an exhibition opening in the building of the state archive in the town of Suwalki in north-eastern Poland. The exhibition was dedicated to the memory of General Władysław Anders and was attended by high-ranking government officials, as well as the daughter of the general, Anna Maria Anders, who was at that time a Law and Justice Party candidate for Senate in the upcoming by-elections. The protesters believed that Anna Maria Anders used the publicly funded event to promote her electoral campaign and attended in opposition to that.

“I said at the meeting: ‘This is not a place for an electoral campaign!’ and politely demanded an explanation whether the meeting was funded publicly or through Ms Anders’ private funds. What followed was a lot of noise that lasted about six minutes. Supporters of Ms Anders made some threats toward me along the lines that they would beat me up if I speak again. After the meeting had finished, the police chased us, they were stopping the cars, checking IDs,” said Marcin, one of the protesters.¹⁸⁸

Another protester, Bartek said: “This is a case of a clear repression... I was not doing anything, on the contrary, I was asking people to calm down.”¹⁸⁹ He was questioned by the police in April 2016, first as a witness. Three months later, Bartek learned that he was also indicted for disruption of public order by “shouting, making noise or causing alarm”.¹⁹⁰ “I had to travel to Suwalki from Warsaw 14 times... In the end I felt I was being punished by the authorities for doing something that I believed was inherently right”.¹⁹¹

In January 2017, Judge Dominik Czeszkiewicz from the District Court in Suwalki issued a decision that held that activists were not guilty of disrupting public order. Referring to, among other things, the European Convention on Human Rights, Judge Czeszkiewicz held that the protesters had not disrupted order, but merely exercised their right to freedom of expression at a public event. The police appealed the decision.

According to media reports, on 25 March 2017, the deputy Minister of Justice met with Regional Court Judge Jacek Sowul, who was responsible for the appeal. On 6 April, Judge Sowul overturned the *not guilty* verdicts and ordered a re-examination of the case.¹⁹² The case was re-examined on 29 June 2017. Judge Piotr Taraszkiewicz of the District Court in Suwalki ruled again that the protesters were not guilty. The police appealed again. In October 2017, Judge Sowul was promoted to the position of the president of the Regional Court in Suwalki.¹⁹³ On 26 October 2017 the Regional Court for the second time overturned the *not guilty* verdicts in the case of three protesters and ordered a re-examination. In the case of two protesters who did not speak during the ceremony and were merely present, the Regional Court upheld their not guilty verdicts.¹⁹⁴ In May 2018, the District Court in Suwalki held a hearing on the case of the protesters for the third time. It held that the activists disrupted public order but did not impose any penalty against them.¹⁹⁵

High-ranking politicians from the Law and Justice Party commented on and criticized the decisions of the District Court in Suwalki and explicitly targeted Judge Czeszkiewicz who issued the first *not guilty* verdict.¹⁹⁶

Judge Czeszkiewicz told Amnesty International: “After the [first not guilty] decision everybody was telling me to be careful. A few months ago, someone told me disciplinary proceedings against me have started. Now I know that they were simply waiting for me to make a mistake.”¹⁹⁷

On 17 January 2018, Judge Czeszkiewicz was assigned a criminal case involving a minor. He scheduled

¹⁸⁸ Interview with Amnesty International, 21 February, Warsaw.

¹⁸⁹ Interview with Amnesty International, 23 February, Warsaw.

¹⁹⁰ Article 51.1 of the Code of Minor Offences

¹⁹¹ Over a four-hour train ride.

¹⁹² <https://oko.press/sad-suwalkach-odpuszcz-dzialaczom-kod-beda-sadzeni-trzeci/> or <https://www.tvn24.pl/wiadomosci-z-kraju,3/suwalki-sedzia-jacek-sowul-i-kulisy-wyroku-przeciwko-dzialaczom-kod,784627.html>

¹⁹³ <https://bialystok.onet.pl/suwalki-nowy-prezes-sadu-okregowego-to-nominacja-polityczna/40b9cmh>

¹⁹⁴ Bartek was one of the two protesters who were cleared of their charges by this decision.

¹⁹⁵ <http://wiadomosci.gazeta.pl/wiadomosci/7,114883,23444733,krzyczeli-na-wieczu-senator-anders-sa-winni-ale-sedzia-nie.html>

¹⁹⁶ For example, in January 2018, the deputy Minister of Interior, Jarosław Zieliński, who was among the politicians who attended the exhibition opening, stated in a radio interview that in his decision, Judge Czeszkiewicz “encouraged breaches of the law”. Radio 5 interview with Zieliński (in Polish) <https://radio5.com.pl/pierwszy-gosc-w-2018/>

¹⁹⁷ Interview with Amnesty International, 25 February 2018, Białystok.

her interview for 26 January. The president of the Regional Court, Judge Sowul, intervened claiming that the case was urgent and the minor should have been interviewed faster. The case became the basis of disciplinary proceedings against Judge Czeszkiewicz.¹⁹⁸

The disciplinary proceedings against the judge were pending between January and May 2018. In April, the deputy disciplinary prosecutor at the Regional Court in Suwalki issued a disciplinary indictment against Judge Czeszkiewicz alleging procedural mistakes by scheduling the interview with the minor within 10 days, rather than immediately.¹⁹⁹ The case was expected to be heard by a panel of judges at the Regional Court in Białystok. Pursuant to the 2017 changes in the Law on the System of Common Courts, the panel would have been appointed by the Minister of Justice.²⁰⁰ However, on 28 May 2018, the deputy disciplinary prosecutor changed the decision from April and discontinued the proceedings against Judge Czeszkiewicz. He held that there were no grounds to open the case against the judge and that the “disciplinary effect” has been already achieved by the proceedings undertaken thus far.

This case points to the risks and possible use of the disciplinary proceedings against judges who adjudicate against the wishes of those in power. “Normally disciplinary proceedings under Article 107 of the Law on the System of Common Courts would be instigated in serious cases of professional misconduct. This is totally not-justified in the present case,” a judge with knowledge of this case told Amnesty International.²⁰¹

“It is very difficult to work in these conditions. I cannot fight the whole system. This is not a fair fight because I don’t know when, where and from whom I will get a punch,” concluded Judge Czeszkiewicz.

Amnesty International interviewed four other judges who had been subjected to disciplinary proceedings or other forms of pressure after they adjudicated cases related to the protests.²⁰² Igor Tuleya, a judge of the Regional Court in Warsaw, has been subjected to various forms of political pressure following a decision from December 2017. He had upheld the complaint of four opposition MPs against the decision of the Regional Prosecutor in Warsaw to discontinue an investigation regarding a particular Parliamentary session in December 2016. The session took place during a politically tense period when protests had been held inside and outside the Sejm over attempts to restrict the access of media to Parliament.²⁰³ In the decision, Judge Tuleya ordered the prosecutor to continue the investigation into the complaint.²⁰⁴ In January 2018, the vice-president of the Regional Court in Warsaw accused Judge Tuleya of revealing classified information in his ruling on the MPs’ complaint. The new president of the Regional Court in Warsaw²⁰⁵ informed the Assembly of the Regional Court of Warsaw on 26 January that the prosecutor had initiated criminal proceedings in the matter. In March 2018, some staff members of the Regional Court in Warsaw were questioned by the prosecutor within the context of preparatory proceedings.²⁰⁶ The proceedings may result in either disciplinary or criminal proceedings²⁰⁷ against the judge. The case of Judge Tuleya garnered a lot of media attention after some of the government party politicians commented that he was not suitable for the position of a judge pursuant to his decision in the MPs case.²⁰⁸

Another judge who has been subjected to a number of proceedings and investigations by the security agencies after he voiced his opposition to the government’s “reform” of the judiciary is Waldemar Żurek. A judge of the Regional Court in Krakow and a former spokesperson for the National Council of the Judiciary (NCJ), Żurek had faced disciplinary proceedings in relation to his participation in the protests in defense of the independence of the judiciary. Supported by the Association of Judges, Iustitia, he delivered a speech at a protest on 16 July 2017 in Warsaw. The speech prompted a pro-government newspaper *Gazeta Polska* to

¹⁹⁸ On 26 January 2018, the College of Judges of the Regional Court in Suwalki decided to open disciplinary proceedings against Judge Czeszkiewicz: https://siecobywatelska.pl/wp-content/uploads/2018/02/A_2018_02_15_09_09_57_286.pdf

¹⁹⁹ Phone conversation with Judge Czeszkiewicz on 20 April 2018.

²⁰⁰ Law on the System of Common Courts, Art. 110a§1.

²⁰¹ Phone interview with Amnesty International on 20 April 2018.

²⁰² See: Amnesty International. “Reform” of the judiciary in Poland poses a risk to the right to fair trial: Briefing ahead of the General Affairs Council Meeting, March 2018.

²⁰³ Information about Tuleya’s decision from December 2017 (in Polish): <https://www.tvn24.pl/wiadomosci-z-kraju.3/sad-uchyla-decyzje-prokuratury-w-sprawie-obrad-w-sali-kolumnowej.799622.html>

²⁰⁴ Link to the decision from 18 December 2018 (in Polish): <http://n-6-1.dcs.redcdn.pl/file/o2/tvn/web-content/m/p1/f/cd14821dab219ea06e2fd1a2df2e3582/d89a4961-1128-411a-bb8d-682818f56380.pdf>

²⁰⁵ Appointed by the Minister of Justice in September 2017: <https://wiadomosci.wp.pl/zioebro-zwolnil-trzy-wiceprezes-i-powolal-nowa-prezes-sadu-okregowego-w-warszawie-rzeczniczka-sadu-dla-wp-zwolnienia-bez-zadnego-zarzutu-6165741645256833a>

²⁰⁶ Interview with Amnesty International, 10 April 2018, Warsaw.

²⁰⁷ A judge can face criminal proceedings only once he/she is stripped of immunity by the disciplinary court. Art. 80§2c of the Law on the System of Common Courts.

²⁰⁸ For example Krystyna Pawłowicz: <https://wiadomosci.wp.pl/krystyna-pawlowicz-na-fb-dowiedzielo-igora-tulei-pan-nie-powinien-byc-sedzia-6087080985023617a>

call for disciplinary proceedings against him. The case was closed by the disciplinary prosecutor of the Appeal Court in Krakow, who held in August 2017 that there were no grounds on which to initiate disciplinary proceedings in the case.²⁰⁹

For the past two years, however, various state authorities have subjected Judge Żurek and his family members to several investigations. In February 2018, the Assembly of Judges of the Regional Court in Krakow adopted a resolution in which they labeled the various actions by law enforcement agencies against Żurek “repressive”.²¹⁰

During its first working session in May 2018, the newly appointed National Council of the Judiciary discussed the need to address “public activities of judges”. The new vice-president of the NCJ, Wiesław Johann stated that those judges who breach the principle of being “apolitical” should be subjected to disciplinary proceedings.²¹¹ He explicitly named judges Żurek and Tuleya as those who should face consequences for their public statements.

3.3 SURVEILLANCE OF JUDGES

Several judges told Amnesty International that the new legal regime providing for disciplinary proceedings paves the way to punish politically inconvenient judges.²¹² As outlined above, the changes in the Police Act, the legislation on the judiciary and the Code of Criminal Procedure have created structural conditions in which law enforcement agents could take advantage of provisions of the law to pursue politically motivated investigations against judges or prosecutors. The laws would permit, among other things, the use of unlawfully obtained evidence in criminal or disciplinary proceedings against judges and/or prosecutors. Three judges interviewed by Amnesty International expressed concerns that they might be under secret surveillance and the evidence obtained from these operations by the state security services could be used in any future disciplinary or criminal proceedings against them.

Wojciech Łączewski, a judge from the District Court Warszawa- Śródmieście, became a target of the governing Law and Justice party in March 2015 after he found the former chief of the Anti-corruption Agency (Centralne Biuro Antykorupcyjne, hereafter CBA), Mariusz Kamiński, guilty of abuse of power by a public official.²¹³ In November 2015, the President of Poland Andrzej Duda pardoned Mariusz Kamiński.²¹⁴ Judge Łączewski told Amnesty International that he had been informed by credible sources that he was under secret surveillance during several periods since January 2016.²¹⁵

In April 2016, the new chief of the CBA, Ernest Bejda, filed a complaint against Łączewski for disclosing the names of CBA agents in the written judgment in the case of *Kamiński and others*.²¹⁶ The case was being investigated by the District Prosecutor in Opole at the time of writing. Judge Łączewski as well as some media outlets have alleged that, pursuant to this complaint of the CBA chief, Łączewski had been under secret physical and online surveillance with short intermissions from January 2016 to September 2017.²¹⁷

In October 2017, the National Prosecutor denied allegations that Judge Łączewski had been subjected to secret surveillance.²¹⁸ In March 2018, Judge Łączewski learned from the District Prosecutor in Opole that in September 2017, agents of the Internal Security Agency (ABW) entered the safe at the District Court Warszawa- Śródmieście and seized a hard drive with classified information on it, including Łączewski’s notes

²⁰⁹ <http://www.rp.pl/Sedziowie-i-sady/308319942-Rzecznik-dyscyplinarny-brak-podstaw-do-postepowania-dyscyplinarnego-wobec-sedziogo-Zurka.html>

²¹⁰ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018. On file with Amnesty International.

²¹¹ As reported in: <https://siedlecka.blog.polityka.pl/2018/05/14/sedziowie-beda-mieli-dyscyplinarki-za-wyroki/>

²¹² Pursuant to the amendments of the Law on the System of Common Courts (Art.110a, 115c) and the Law on The Supreme Court (Art. 26)

²¹³ In a case related to corruption allegations, in which the CBA allegedly used unlawful methods. Judgment: Sygn. akt II K 784/10, [https://orzeczenia.ms.gov.pl/content/\\$N/154505300001006_II_K_000784_2010_Uz_2015-09-28_001](https://orzeczenia.ms.gov.pl/content/$N/154505300001006_II_K_000784_2010_Uz_2015-09-28_001)

²¹⁴ <http://wyborcza.pl/10,93568,19211269, chcemy-polski-bardziej-socjalnej-i-demokratycznej-ulaskawienie.html>

²¹⁵ Interview with Amnesty International, 25 June 2017 and 29 January 2018, Warsaw.

²¹⁶ Disclosure would amount to a breach of Article 265§1 of the Criminal Code. http://natemat.pl/236077_sedzia-laczewski-skazal-mariusza-kaminskiego-cba-przyglada-mu-sie

²¹⁷ See: <http://wyborcza.pl/7,75398,23289255,sedzia-ktory-skazal-kaminskiego-na-celowniku-cba.html>

or: https://www.polityka.pl/tygodnikpolityka/kraj/1724700,1_jak-wladza-walczy-z-obywatelami.read

²¹⁸ Interview with Amnesty International, 30 January 2018, Warsaw. See also:

<http://wiadomosci.dziennik.pl/wydarzenia/artykuly/561160,sledczy-podsluchiwali-sedziogo-laczewskiego-jest-oswiadczenie-prokuratury-kraiowej.html>

related to the case against Kamiński.²¹⁹ These allegations raise serious concerns over the breach of judicial privilege guaranteed by Poland's Law on the System of Common Courts.²²⁰

The 2016 changes in the surveillance-related legislation, taken together with the "reform" of the judiciary²²¹ present a risk for many in Poland, including activists and judges. These changes have undermined the checks and balances necessary for the protection of human rights against abuse.

²¹⁹ Laczewski's letter sent on 11 April 2018 to the National Prosecutor raising concerns over the breach of law by ABW agents. Letter on file with Amnesty International.

²²⁰ Article 80

²²¹ For details see below: *Judiciary under Pressure*

CONCLUSION AND RECOMMENDATIONS

The Polish authorities are progressively encroaching on public space normally open for the expression of dissent against governmental policies, legislation or narratives about the past.²²² The space for peaceful protest and open debate is shrinking, and the ones affected are not only the activists, but all people in Poland who might seek to exercise their rights to freedom of assembly and expression. Unacceptable restrictions on the right to peaceful protest, coupled with the systematic erosion of guarantees for an independent judiciary, threaten to create a toxic mix where human rights are under attack and a compromised judiciary will not have the independence required to hold those in power accountable for violations of those rights. Amnesty International urges the Polish authorities to comply with Poland's international human rights obligations by protecting and promoting the rights to freedom of assembly and expression, and by ensuring the right to fair process for all persons under the auspices of an independent and impartial judiciary.

On the rights to freedom of expression and peaceful assembly **The government and the Parliament should:**

- Amend the Law on Assemblies to remove the provision on “cyclical assemblies” that gives priority to such assemblies over others and requires a mandatory distance of at least 100 metres between two or more assemblies taking place simultaneously.
- Amend the Law on the Institute of National Remembrance and remove any provisions that criminalize statements that are protected under the right to freedom of expression and threaten to have a chilling effect on freedom of expression.

On prosecution of protesters **The Minister of Interior and the Minister of Justice must:**

- Ensure that no person is detained or prosecuted for activities protected by the right to freedom of peaceful assembly.
- Amend Articles 51 and 52 of the Code of Minor Offences to align them with international standards and ensure they are not used as sanctions against peaceful protesters.
- Ensure that effective and impartial investigations are carried out into all cases of alleged ill-treatment by state officials and bring those responsible to justice.
- Ensure that victims of human rights violations by law enforcement officials have access to an effective remedy and obtain adequate reparation, including compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The authorities must ensure that there are effective mechanisms to investigate complaints and that the police and prosecutors responsible for investigation of complaints against law-enforcement agencies are capable to act independently and adequately. In this regard, it

²²² See for example: <https://www.amnesty.org/en/latest/news/2018/03/the-dangerous-consequences-of-polands-holocaust-law/>

is essential that they provided with the training on human rights standards, including the right to freedom of assembly and expression.

On policing of assemblies

The Minister of Interior should:

- Authorize a broad range of options in terms of police response to protests and assemblies, including measures designed to de-escalate rising tensions.
- Ensure that the use of force in the dispersal of violent assemblies should be restricted to the minimum amount necessary, in compliance with UN standards for the conduct of law enforcement officials, and employed only if alternative means are ineffective and without any promise of achieving the intended result.
- End the practice of “detention for the purpose of ID-checks” and ensure that all detained protesters have access to lawyers without delay, and are provided with a formal protocol of their detention.
- Ensure that officers are individually identifiable at all times when they are policing demonstrations, by means of individual identity badges worn visibly on their uniform, including when they are wearing special gear, such as helmets or other protective clothing.
- Ensure that journalists are able to perform their duties unhindered and in safety when reporting from the scene of demonstrations or protests.
- Ensure continuation of training programmes for law enforcement agencies on policing and securing public assemblies in line with international human rights standards.

On ensuring a safe and enabling environment for human rights defenders and civil society Polish authorities should

- Publicly acknowledge the important role played by human rights defenders, in particular women human rights defenders and people of all genders promoting women’s rights and gender related issues, and ensure they are able to work in an environment free from violence, harassment and discrimination.
- Refrain from bringing criminal charges or any other proceedings or administrative measures against human rights defenders and other civil society actors that stem solely from the peaceful exercise of their rights. Investigate any complaints of misuse of procedures to target protesters and human rights defenders.

On surveillance

The government, law enforcement agencies and the prosecutors should:

- Reform laws governing surveillance - including the Law on Police and the Criminal Procedure Code – to bring the legal regime and related surveillance practices in line with international human rights law and standards. In particular, amend the law to:
 - Make sure that surveillance is only undertaken after prior, independent judicial authorization, and subject it to ongoing judicial scrutiny and independent oversight, on the basis of individualized reasonable suspicion of wrongdoing and the requirements of strict necessity and proportionality;
 - Strictly circumscribe the aim of communications surveillance measures to a narrow set of genuinely legitimate grounds, such as combating serious crime or acts amounting to a specific threat to national security.
- Refrain from seeking authorization for surveillance based on the exercise of human rights, including participation in unregistered groups and movements or participation in any peaceful assemblies.

On the judiciary**Polish authorities, particularly the government and the Parliament, should:**

- Amend the Law on the Common Courts, the National Council of the Judiciary and the Supreme Court and remove the provisions that erode the full independence of the judiciary and put the right to fair trial at risk.
- Ensure that judges can exercise their judicial functions free from retaliatory action or other forms of pressure, including politically motivated disciplinary proceedings, harassment and intimidation.

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THE POWER OF 'THE STREET'

PROTECTING THE RIGHT TO PEACEFUL PROTEST IN POLAND

Almost every week, people in Poland take to the streets to protest. They demonstrate against the government's attempts to restrict human rights; they challenge growing nationalism and xenophobia; and they voice opposition to threats to the environment. Attending a protest in today's Poland requires not only determination and time, but also the phone number of a lawyer and the willingness to face the consequences. These range from harassment, verbal and physical assault, and police custody to the laying of fines or the application of criminal charges.

This report is a follow-up to the October 2017 Amnesty International report *Poland: On the Streets to Defend Human Rights*. It documents the state response to peaceful protest in Poland. In light of the high volume of prosecutions of peaceful protesters and the related importance of an independent judiciary to protect their rights, the report also looks into a number of government reforms undermining such independence. It rings alarm bells over such developments, which threaten critical guarantees for the protection and respect of human rights in Poland.

Peaceful protest is a human right, not a crime. Unlawful restrictions on the right to peaceful protest, coupled with the systematic erosion of guarantees for an independent judiciary, threaten to create a toxic mix where human rights are under attack and a compromised judiciary will not be able to hold those in power accountable for violations of those rights.