POLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS

HARASSMENT, SURVEILLANCE, AND PROSECUTION OF PROTESTERS

AMNESTY INTERNATIONAL

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People hold candles and Polish national flags as they take part in a demonstration in front of the Polish Supreme Court on 23 July 2017 in Warsaw to protest against the legislation that aimed to put the judiciary under political control.
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GLOSSARY

WORD	DESCRIPTION
BOR	Office for the Protection of the Government
MIESIĘCZNICA	A monthly assembly commemorating the Smolensk plane crash on 10th of every month in central Warsaw
OBYWATELE RP	Citizens of the Republic of Poland, initially an informal group of activists registered as an NGO in April 2017
OSA	Citizens' Solidarity in Action, one the groups protesting against the 'Smolensk assembly' and against the "reforms" of the judiciary
PIS	The governing Law and Justice Party
SEJM	The lower chamber of the Polish Parliament
STRAJK KOBIET	Women's strike, an informal grassroots movement formed throughout Poland in October 2016 in response to the proposal to introduce an almost complete ban on abortions
TAMA	Association TAMA, a platform for pro-democracy activists

EXECUTIVE SUMMARY

“Wolność, równość, demokracja!”

“Freedom, equality, democracy!” one of the chants during the protests supporting an independent judiciary in Poland in July 2017

Thousands of people took to the streets in July 2017 in cities all over Poland. Many stayed in those streets for days as they demanded respect for the Polish Constitution, an independent judiciary, and for their human rights and freedoms. The public demonstrations were triggered by the government’s ongoing efforts to undermine the Constitution by consolidating extensive powers in the hands of the executive branch – at the expense of an independent judiciary free from political influence. But the protesters were met with a show of force and a set of policing measures that infringed their rights to peaceful assembly and freedom of expression.

In Warsaw, law enforcement officials, under the Ministry of Interior, responded to the demonstrations there by clamping down on protesters with enhanced security measures in the area around the Parliament and at the Presidential Palace. The police erected metal fences to keep the protesters out of sight and away from the parliamentary buildings. Hundreds of law enforcement officers patrolled the area daily and used a variety of techniques to prevent people from protesting, including surrounding or otherwise containing groups of people (i.e. “kettling”) even though they were not engaged in any violent activity; constant and varied forms of monitoring and surveillance amounting to harassment; threats of sanctions; and for some, the pursuing of criminal charges and prosecutions. Some of these police measures were unlawful as they were unnecessary and disproportionate, resulting in the violation of the protesters’ rights to freedom of expression and assembly. As this report documents, in some cases the response of the authorities amounted to ill-treatment, arbitrary deprivation of liberty and to violations of international fair trial standards.

The large-scale protests were a response to the government’s ongoing attempts to put the judiciary squarely under the control of the Minister of Justice. The Minister already wields a great deal of influence over judicial proceedings since his powers were extended through the reform of the prosecution service in 2016 when his function was merged with that of the Prosecutor General, the country’s highest prosecuting official. The ruling Law and Justice Party (PiS) had argued that the changes to the functioning of the judiciary were necessary to “cleanse” the courts of persons who “have lost the public trust”. A key component of the government’s plan was to diminish the role of the National Council of the Judiciary, an independent, constitutional body tasked with vetting of applications to serve as a judge; overseeing judicial appointments; and conducting ethics reviews of sitting judges. The government also sought to consolidate in the Ministry of Justice control over the composition of the Supreme Court and over disciplinary proceedings against Supreme Court judges. President Andrzej Duda vetoed the two pieces of legislation adopted by the Parliament in 2017 to effect these changes, a surprise move that was attributed, in part, to the mass and sustained protests.

Other pieces of legislation that have affected the independent functioning of the judiciary, however, were adopted and implemented in 2017. An amendment to the Law on Common Courts, which entered into force in August 2017, granted the Minister of Justice the power to appoint and dismiss presidents and vice-presidents of courts. No judicial review is available against a dismissal decision by the Minister of Justice, and the National Council of the Judiciary would need a two-thirds majority vote to block a dismissal decision. The law also changed the procedures for the promotion of judges, but failed to specify discrete and objective

criteria required for such advancements, leaving open the possibility that promotions could be made on an arbitrary basis.

The European Commission (EC) responded to the changes undermining the independence of Poland's judiciary on 26 July. Particularly, it 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 EC also opened infringement proceedings against Poland for breaching EU Law on 29 July 2017. The EC expressed particular concerns about the discriminatory character of the Law on Common Courts which introduced different retirement ages for male and female judges; and which concentrates the power over the Common Courts in the hands of the Minister of Justice. On 12 September, the EC announced that it moved to the second stage of the proceedings after it had received an unsatisfactory response from the Polish government.

It was on 12 July 2017, shortly before midnight, that the amendment to the Law on the Supreme Court was put on the agenda of the Parliament. This served as the trigger for people, who came out to protest in large numbers. The majority of MPs of the lower chamber of the Parliament (Sejm) voted in favour of the amendment on 20 July. The news was met with outrage and sadness among the protesters assembled at the barriers on the main access roads to the Parliament. The Minister of the Interior told the media the next day that the protesters' demands amounted to a "call for the demolition of the democratic order" and that the feistiest protesters would be severely punished. One protester speculated that a number of those demonstrating against the government's moves to undermine the judiciary would eventually end up in jail.

Protesters weeping in Warsaw at the Parliament after the announcement that the Sejm had adopted the amendment to the Law on the Supreme Court on 20 July 2017. © Amnesty International/Barbora Černušáková

This report documents the cases of some of the protesters who were subjected to harassment and intimidation; and prosecution for their participation in peaceful protests since 2016, with a particular focus on the demonstrations in July 2017. It also includes an analysis of laws that infringe on the right to freedom of assembly, for example by prioritising one type of assemblies – so called "cyclical assemblies" – over others. The report shows a pattern of containment of protesters by police during assemblies – including of people who were not violent or did not breach the law – and the various forms of harassment and for some, the laying of charges and prosecution, that protesters in Poland have faced since 2016.

The laws themselves infringe the right to freedom of assembly, and the measures taken by the authorities to implement them were often unnecessary and disproportionate. Taken together, they reflect an environment in Poland where there is an ever shrinking space for the public to express its opposition to repressive and often unlawful measures by the state, and they threaten to have a chilling effect on future endeavours to express such opposition via peaceful public assemblies.

On 24 July, the President vetoed the amendments to the Law on the Supreme Court and the Law on the National Council of the Judiciary. The news was celebrated as a victory for "people power" in the struggle to maintain an independent judiciary. During his opening statement at the UN Human Rights Council on 11 September 2017, the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein applauded the activism of protesters in Poland and deplored "the Government's increasingly visible control of key institutions, including the Constitutional Tribunal and national broadcast media."

But that (most likely short-lived) victory did not come without a cost. Dozens of people who tirelessly spent those hot days and nights of July 2017 on the streets and were exposed to abusive police practices that were unnecessary and disproportionate – have had to pay the price. They are emblematic of the struggle in Poland to preserve the rights to peaceful assembly, freedom of expression, prohibition of arbitrary deprivation of liberty, right to an effective remedy, and right to a fair trial by an independent and impartial judiciary.

KEY RECOMMENDATIONS

- Amnesty International urges the Polish government to ensure that any law or regulation that infringes on the right to peaceful assembly, specifically any measure that effectively bans a peaceful assembly or arbitrarily gives priority to one type of assembly over another, is amended or repealed to ensure respect for the right to peaceful assembly in accordance with Poland's international human rights commitments.
- Amnesty International calls on the Ministry of Interior to respect, protect and fulfil the right to the freedom of assembly and freedom of expression when people assemble to express their opinions in public places. Law enforcement officials should facilitate and not unlawfully restrict peaceful public assemblies.
- Amnesty International urges the authorities, in particular the prosecution service and the police, to refrain from applying criminal sanctions to people who participate in peaceful assemblies. Any criminal charges against peaceful protesters should be dropped.
- Amnesty International calls on law enforcement officials to avoid the use of force. Force should be used only as the last resort and only to the extent required for the performance of their duties. The use of the tactic of containment while policing assemblies should be avoided unless that measure is strictly necessary to isolate violent protesters or protesters breaching the law. All law enforcement officials taking part in the policing of public assemblies should wear visible identity badges. Police should immediately stop the practice of arbitrary deprivation of liberty of protesters.

METHODOLOGY

The research for this report was conducted between January and August 2017. Amnesty International carried out three field research visits to Poland: March-April (30 days), June (one week) and July (one week). Information used in this report was also gathered through desk research, in particular media monitoring, and analysis of applicable domestic and international laws and standards. This research also draws from reports submitted by monitors from Amnesty International Poland who attended and monitored the public assemblies held on 10 June and 10 July.

This report focuses on restrictions imposed by the authorities on public assemblies, including bans and fenced off public spaces. It also examines the measures and strategies adopted in the policing of public assemblies, in particular containment tactics. The evidence presented in this report was gathered through monitoring, interviews and collection of quantitative and qualitative data on cases of persons subjected to harassment and prosecution by the authorities for their participation in assemblies.

Amnesty International conducted 15 in-depth and 4 short interviews with protesters affected by the police measures, some of whom were subjected to prosecution. Most of the interviews were repeated in the course

of five months as legal proceedings against the protesters progressed. An Amnesty International researcher observed public assemblies from 20 to 24 July during which the researcher interviewed protesters and police officers on duty. Four legal representatives of protesters facing prosecution[1] and two prosecutors were also interviewed. Amnesty International communicated its concerns over individual assemblies with the Warsaw police and received written replies to those concerns; such replies are reflected in this report.

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 complaints against the police are mentioned in full with their informed consent.

Activists mourning the "death of democracy" at the Parliament on 20 July 2017 after the announcement that the Sejm *had adopted the amendment to the Law on the Supreme Court. © Amnesty International/Barbora Černušáková*

[1] 22 March, 24 and 25 July 2017, Warsaw.

1. PROTESTS AGAINST THE "REFORM" OF THE JUDICIARY

PARLIAMENT VOTES ON THE "REFORM" OF THE JUDICIARY. 14-20 JULY

> **"Sejm is not the private property of the Speaker!" ("Sejm to nie jest prywatna posiadłość Marszałka Kuchcińskiego!")**
>
> Obywatele RP

In July 2017 protesters were on the streets of Warsaw and other towns and cities across Poland for ten days. After the lower chamber of the Parliament voted on 12 July to adopt amendments to the Law on the National Council of the Judiciary and the Law on Common Courts, the laws swiftly moved to the Senate where they were approved in the early hours of 15 July. In addition, an amendment on the Law on the Supreme Court that concentrated an unprecedented amount of power over the composition of the Supreme Court in the hands of the Minister of Justice, was put on the agenda of the parliament on 13 July and was eventually adopted on 20 July. Following the 2016 amendments of the Prosecution Act, the minister already exercises increased powers and also serves as the Prosecutor General. The July amendments were widely condemned as eroding the independence of the Polish judiciary.[2] The first protesters gathered in the area near the Parliament on 13 July. On 14 July, the Speaker of *Sejm* (the lower chamber of the Parliament) issued an order to seal off access to the area by erecting metal fences of about 1m in height that served as barriers, and deploying security patrols in anticipation of ongoing protests.[3]

The Speaker justified his decision by the necessity to ensure "peace and order within the premises of the Parliament."[4] As a result, holders of a temporary or single entry permit were not be allowed inside the

[2] Amnesty International, "Poland: Independence of the judiciary and the right to fair trial at risk", 10 August 2017, https://www.amnesty.org/en/latest/news/2017/08/poland-independence-of-the-judiciary-and-the-right-to-fair-trial-at-risk/

[3] Order of the Speaker no. 7 from 14 July 2017. The metal barriers were placed on the main access road to the parliament in Warsaw during the night from 14 to 15 July by the firefighting services: "Strażacy musieli ustawiać barierki pod Sejmem. "Po raz pierwszy od 1989 r. Straż Pożarna została użyta do działań politycznych". Gazeta Wyborcza, 19 July 2017. http://warszawa.wyborcza.pl/warszawa/7,54420,22112979,strazacy-musieli-ustawiac-barierki-pod-sejmem-po-raz.html

[4] Order of the Speaker no. 7 from 14 July 2017. See (In Polish): https://oko.press/pis-zlapal-sejm-gardlo-stan-wyjatkowy-izbie-armatki-wodne-powitanie-protestujacych/

Parliament's restricted area until 21 July.[5] In addition, on 18 July, the Speaker restricted the access of MPs to the front of the parliamentary plenary where the Speaker sits.[6] This regulation eliminated any possibility for opposition MPs to access the microphone without the prior permission of the Speaker. The aim was to prevent the repetition of events from 16 December 2016 when opposition MPs disrupted a parliamentary session when the draft law restricting the media's access to the Parliament was discussed (See below: Taking It to the Streets).[7]

In response to the Speaker's decision to seal off the Parliament, a group of people convened a spontaneous protest at the barriers in the evening of 14 July. About 20 of them managed to get through the 1-meter high metal fences. The parliamentary guards stopped the group at the car entrance to the parliamentary area and the protesters sat down chanting: "Hands of the [Supreme] Court!" and "The Sejm is ours!"[8] About a dozen other protesters attempted to join them by jumping over these barriers declaring: "Barriers are only in your heads!" The police repeatedly stopped them and removed them by force: some were carried, some were pushed back over the metal fences.[9] The protesters argued with the police officers, claiming that the barriers should not be there because they were on a public street. From video evidence and interviews conducted by Amnesty International with the protesters, the protesters did not resist the police when they were removing them. At one instance the protesters attempted to push the barriers but the police stopped them.[10] Later the police took the personal details of 31 protesters who crossed the metal barriers and served orders that fined the protesters for "disruption of traffic".[11] It is important to note that the protest took place at night when there was almost no traffic and any traffic would have been obstructed by the barriers that were placed on the road anyway.

Amnesty International spoke to some of the protesters who had attempted to or did jump over the police barriers to approach the parliamentary area and were removed by the police on the evening of 14 July. Although they did not report excessive use of force by the police, they had large dark bruises in their armpit areas from the way the security forces and the police lifted them up and carried them away. One of them also reported that a police officer at some point asked him if he wanted to have a "one-on-one" fight.[12]

Following the protests, the fire brigades, in cooperation with the Ministry of the Interior, placed solid metal fences about 1.4 metres high along Wiejska Street in the parliamentary area during the night of 14 to 15 July.[13] The fence was placed more than 100 metres away from the parliamentary buildings and effectively rendered the protesters almost completely out of sight and sound of the Parliament. The Senate building remained within sight and sound from the back of the building facing a park. The protesters assembled in this area during the subsequent protests of 20-21 July.

During the night of 18 to 19 July, as the lower house of the Parliament debated the amendment of the Law on the Supreme Court, protesters attempted to block the exit roads from the Parliament. As they approached Górnośląska street (one of the roads in the vicinity of the Parliament), they were stopped by the police who encircled the protesters with a metal fence of about 1 metre in height in order to contain them. At that stage, the protesters were not blocking the road and were merely walking. One of them described the situation:

> The police kettled us.[14] I managed to jump over the fence to escape the kettle but they ran after me and stopped me. About four of them sat on my back. They grabbed my left arm and pulled it back which was very painful. Then they pushed their knees on my back and held my neck in a half-nelson. I thought I was going to faint. Then they carried me to the pavement and left me there.[15]

After about an hour, when the MPs had left the area after the debate was over, the police took the personal details of the protesters who remained in the kettle. One of protesters reported in written testimony that she demanded information from the police regarding the basis on which they had been held and had their ID

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[5] Order of the Speaker no. 7, para 1.
[6] Order of the Speaker no. 8 from 18 July 2017.
[7] See in Polish: https://oko.press/pis-zlapal-sejm-gardlo-stan-wyjatkowy-izbie-armatki-wodne-powitanie-protestujacych/
[8] See the video footage of the protest by Gazeta Wyborcza, 14 July 2017: https://www.facebook.com/wyborcza/videos/10155080393218557/
[9] See the video footage of Gazeta Wyborcza: https://www.facebook.com/wyborcza/videos/10155080393218557/
[10] See the video-footage of the events on 14 July 2017 on Wiejska Street by Obywatele RP, https://www.facebook.com/pg/ObywateleRP.org/videos/?ref=page_internal
[11] See in Polish: http://www.gazetaprawna.pl/artykuly/1058021,protesty-przed-sejmem-policja-postepowanie.html
[12] Phone interview [with protester], 14 July 2017. Images of bruises on file with Amnesty International.
[13] See in Polish: http://warszawa.wyborcza.pl/warszawa/7,54420,22112979,strazacy-musieli-ustawiac-barierki-pod-sejmem-po-raz.html
[14] In this case, the police surrounded the protesters with portable metal fences preventing them from leaving the site.
[15] Interview with Amnesty International, 20 July, Warsaw. A "half-nelson" is a wrestling hold whereby one arm is passed under an opponent's arm from behind and the hand is applied to the neck.

cards checked. A police officer replied to her that the police have the right to perform such actions and informed her there were no proceedings against her.[16]

An activist who did not participate in the protest and was standing on one of the exit roads taking pictures stated that the police physically assaulted her: "I was just standing there and one police officer grabbed me without any warning and pushed me against a traffic light post. He hit me in the face. I wasn't resisting... After that, more police officers came to the site, they completely blocked Górnośląska Street and kettled me there."[17] The police subsequently told the media that the activist did not have any evidence to support her allegations of police abuse.[18]

Police cordoned off an access road to the Parliament, Wiejska Street, at one end on 20 July 2017. Activists called on the police to release the protesters who were apprehended after they climbed through the fences separating the street from the area around Parliament. © Amnesty International/Barbora Černušáková

After the lower house of the Parliament adopted the amendment of the Law on the Supreme Court on 20 July, a group of protesters climbed over the barriers erected on the main access road to the Parliament.[19] They were immediately surrounded by a group of police officers. Another group of police officers pushed their way through people assembled on the other side of the barriers, where people were permitted to gather. A protester named Danuta was standing with a group on the side of the barriers where people were permitted to gather and stated: "A group of police officers came and tried to push us away. As they pushed through us, they injured my arm. At first I couldn't feel anything because of all the adrenalin. Then I realised the pain in my left arm – it was a tendon injury."[20] Danuta reported she was standing peacefully among the protesters and her injury occurred because the police used unnecessary force to push through people assembled in the street at the barriers. She was visibly tired and said she had slept very little during the protests, spending most of her time in the area around parliamentary buildings. "We don't agree with these

[16] Written testimony of the protester on file with Amnesty International.
[17] Interview with Amnesty International, 21 July, Warsaw.
[18] See in Polish: http://wyborcza.pl/7,75398,22118183,atak-na-sad-najwyzszy-demonstranci-bili-uzyli-gazu-pieprzowego.html
[19] Wiejska Street
[20] Interview with Amnesty International, 21 July, Warsaw.

changes [to the judicial system] and how else can we express this? The government doesn't talk and listen to us."[21]

A protester named Danuta stood behind the barriers on Wiejska Street on 20 July 2017. As the police pushed through the protesters, they injured her left arm.
© Amnesty International/Barbora Černušáková

Although in some situations it may be lawful for the police to take measures against protesters who are breaching public peace and order, for example by blocking traffic, pre-emptive measures such as containment of protesters who are not violent are not permissible in the context of public assemblies. If the authorities have specific information regarding the intention of some protesters to engage in violent and unlawful acts, the purpose of anticipatory identity checks or other measures should aim to identify such protesters and must be proportionate to the objective they seek to achieve (i.e. prevention of violence or unlawful behaviour by specific individuals).

The authorities in Poland have relied on Articles 51 and 52 of the Code of Minor Offences to target protesters.[22] Article 51§1 penalizes a number of public order offences such as disturbing the peace in the form of shouting, making noise or causing alarm, and offences involving moral depravity. The penalty under this article includes fines, the possibility of an arrest or restriction of liberty. Article 52§2 penalizes disruption of a lawful assembly; organizing an unregistered assembly; presiding over an assembly which has been discontinued; and unlawfully occupying or failing to leave a public place that another person or organization has the right to occupy as an organizer or chair of a public assembly. Offences under Article 52§2 are penalized with a fine or restriction of liberty.

Despite the fact that the offences under Articles 51 and 52 are defined under the Code of Minor Offences, they in fact trigger criminal sanctions as they envisage the possibility of deprivation of liberty. For this reason, Amnesty International is concerned that their use against protesters exercising their rights to freedom of expression and assembly is disproportionate and unnecessary under international human rights law.[23]

[21] Interview with Amnesty International, 21 July, Warsaw.
[22] In Polish: Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń.
[23] These rights are protected under international law, specifically under Articles 10 (freedom of expression) and 11 (freedom of assembly) of the European Convention on Human Rights and Articles 19 and 21 of the International Covenant on Civil and Political Rights, both of which the Republic of Poland is a state party to.

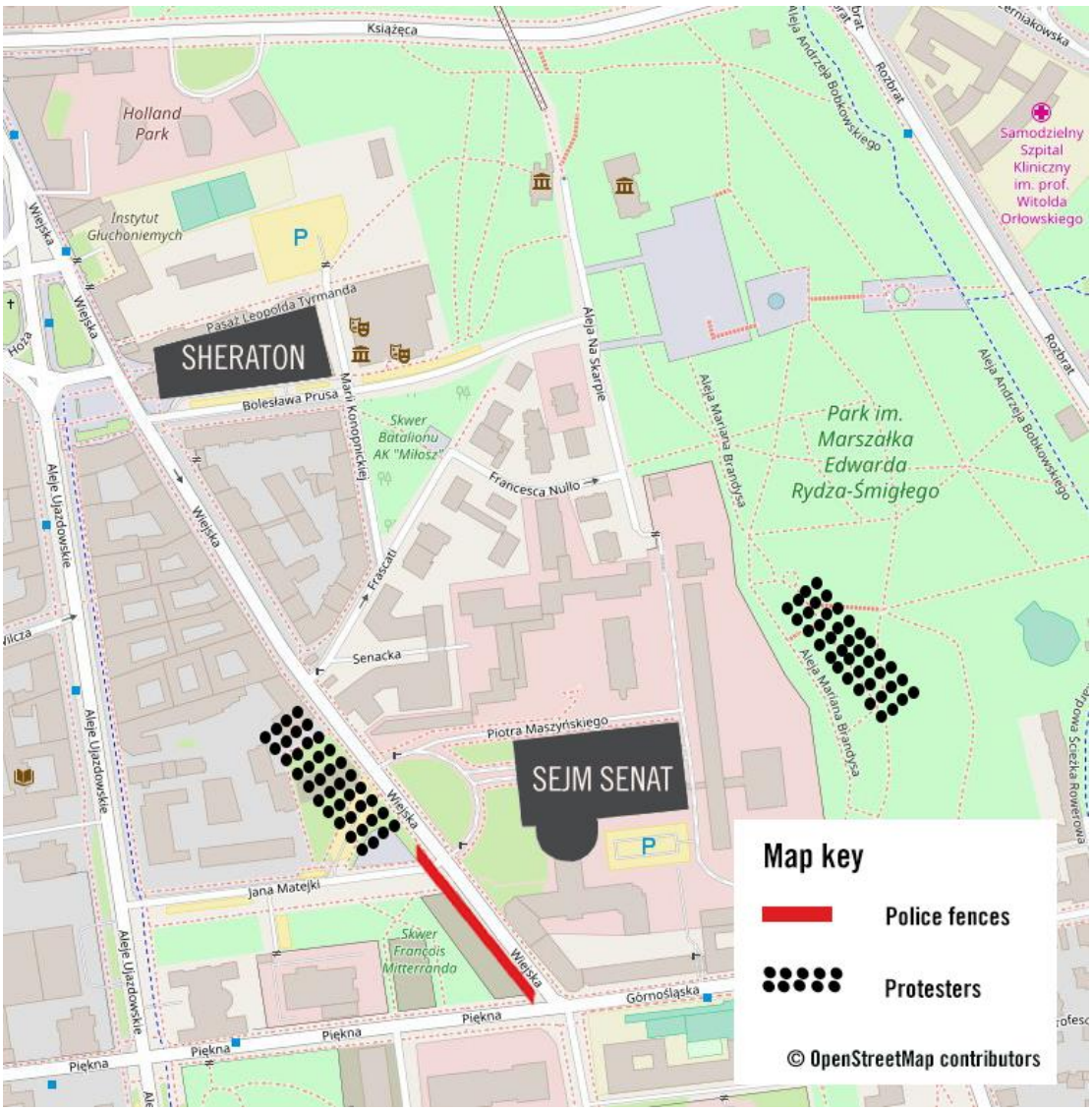
Most offences defined under Article 52§2 of the Code of Minor Offences appear to be incompatible with international human rights law, which does not permit state authorities to render peaceful assemblies unlawful merely because their organizers have not registered them with the authorities or have not sought permission to hold them.[24] Similarly, international human rights law does not permit criminal sanctions against counter-demonstrators as long as they exercise their right to freedom of assembly in a non-violent way. The police are under a positive duty to ensure that people can fully exercise their right to freedom of assembly. To this end they should facilitate the exercise of this right, even if it means accommodating needs of various groups occupying the same space at the same time.

When policing assemblies the police are obliged to use the least restrictive measures available and must not use excessive force.[25] In a limited number of cases monitored by Amnesty International the use of force was not necessary and proportionate to the harm it was seeking to prevent. In these cases the use of force by law enforcement officials was directed against protesters who were peaceful and did not appear to pose a threat to public order. In order to facilitate accountability for police actions, law enforcement officers taking part in the policing of demonstrations should always wear identity badges in visible places. They should always identify themselves as promptly as possible given the circumstances by their name and rank when undertaking measures against the protestors.

SENATE DEBATE ON THE AMENDMENT OF THE LAW ON THE SUPREME COURT. 20 – 21 JULY

For The amendment to the Law on the Supreme Court moved swiftly from the lower house of the Parliament to the Senate, where it was debated for two days from 20-21 July. On Thursday, 20 July, protesters decided to demonstrate their opposition to the amendment by an attempted blockade of several exit roads from the Parliament. One group of protesters sat down on Górnośląska Street and another group on Wiejska Street (see map below). The police responded with a massive operation during which they removed protesters from the streets,[26] checked the IDs of 270 people, and started procedures for charging protesters with "disturbing public order". According to the police, 52 persons agreed to pay fines for disturbing public order under Article 51.1 Code of Minor Offences. However, 200 refused to pay the fines and preferred that their case of disturbing public order be referred to court. One person was arrested for an attack on an MP from the Law and Justice Party.[27] The MP posted on his twitter account that the perpetrator spilled something on him and that he later noticed it was candle wax.[28] The incident reportedly happened in a shop close to the Parliament on the evening of 20 July.

[24] Guidelines on Freedom of Peaceful Assembly, Second Edition, OSCE Office for Democratic Institutions and Human Rights/Council of Europe's Commission for Democracy through Law (Venice Commission), Warsaw/Strasbourg 2010, para 71-73 (public order) and 80-84 (rights of others).
[25] Human Rights Handbook on Policing Assemblies, OSCE Office for Democratic Institutions, Warsaw 2016, pp. 30-32 (Use of Force as a last Resort).
[26] See video footage from the police operation on Górnośląska Street by OKOpress: https://www.youtube.com/watch?v=VJgeSq7UfBk
[27] See (In Polish): http://www.tvp.info/33305199/nocny-protest-przed-sejmem-policja-wystawila-52-mandaty-karne and also: http://forsal.pl/artykuly/1059389,blaszczak-wiekszosc-sedziow-to-przyzwoici-ludzie-jest-grupka-ktora-chce-sterroryzowac-srodowisko.html
[28] See (In Polish): http://www.polsatnews.pl/wiadomosc/2017-07-21/jedna-osoba-zatrzymana-w-zwiazku-z-naruszeniem-nietykalnosci-cielesnej-parlamentarzysty-przed-sejmem/



A street map indicating where Wiejska and Górnośląska Streets are in relation to parliament buildings.

In routine circumstances, persons who refuse to pay a fine on-the-spot are first summoned to the police station for identification purposes and then referred to court for legal proceedings. A refusal to pay the fine after a final decision of a court can lead to a prison sentence of up to 30 days.

Danuta described the blockade on Górnośląska Street during the night of 20 to 21 July: "Before midnight we started blocking the exit of Senators in a large group, there were mainly students. Some Senators joined us and sat with us on the ground. After 3am the police came and asked us to leave within two minutes. We refused and stayed another six minutes or so but then the police removed us by force. They took us behind a police cordon and held us there for two hours. They gave us fine orders for 300 złoty (about 70 euro), which we refused on principle and preferred to continue the proceedings in court. There are already five proceedings against me for participation in protests."[29]

During the night of the blockade, Parasolki, a women's legal aid group providing support to individuals, received over 50 phone calls from people whose identity cards had been checked; people who were fined; or protesters who would be charged and subjected to prosecution for their participation in protests. "Some of them had their IDs checked by the police during the protests and since it happened for the first time in their lives, they wanted to know what it meant. Many of them didn't want to pay the fine on principle and wanted

[29] Interview with Amnesty International, 21 July, Warsaw.

to understand the consequences," a Parasolki volunteer who was on call that night told Amnesty International.[30]

SENATE VOTE. 22 – 23 JULY

The Senate approved the amendment to the Law on the Supreme Court on Saturday, 22 July at 2:30am. Protesters split into several groups: one remained in the park at the back of the Senate building, the others went to block the exit roads. Angelika, one of the protesters (see the case below: Prosecution of Protesters) told Amnesty International:

> After the vote of the Senate in the early hours of Saturday, 22 July, [Zbigniew] Ziobro [the Minister of Justice], was expected to leave the Parliament area. About eight of us exited one of the main streets close to the parliament, Górnośląska, and were stopped by police officers. They encircled us and we found ourselves held in a cordon consisting of four police cars and a number of officers. After a while, we asked them to let us go as we didn't do anything, we simply walked on a street. A group of random pedestrians were also caught with us. The police held us for two hours, refused to inform us about the grounds for their action, claimed we were not detained but we couldn't leave… Nobody knew who the chief of the operation was. After an hour we asked the police officers to let us go to the toilet. They refused to escort us there. When Senator Borowski tried to intervene and get us out, the police said, they had orders from "elsewhere".[31]

The practice of prolonged ID checks during which individuals are entirely denied their freedom of movement may amount to arbitrary deprivation of liberty. The European Court of Human Rights has clarified that confinement to the spot and the threat of criminal charges should individuals refuse to remain and submit to a search amounts to coercion and is indicative of unlawful deprivation of liberty.[32] In subsequent case law, the European Court clarified that kettling could only be permissible where violence is taking place or is reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective.[33]

After the Senate adopted the amendment to the Law on the Supreme Court on Saturday, 22 July, about 300 people gathered at 8pm at the house of Jaroslaw Kaczyński, the chairman of the governing Law and Justice Party (Prawo i Sprawiedliwość, PiS). Equipped with a megaphone, they chanted "Away with the dictator!", "Free courts!" and "Defend our rights!"[34] At about 9pm a group of police officers apprehended a 19-year old protester, Adrian, who was holding the megaphone at that time.

Adrian stated that:

> They first took me to the side and wanted to see my ID. They checked it but then a policeman in plain clothes appeared, said that there were too many people and that they will finish the procedure at a police station. I wanted to know why. At first, they didn't explain anything, only later at the police station they said that I disturbed public order and that they were acting upon a complaint that they had received over the phone. I requested access to a lawyer but the police repeatedly refused to provide it.[35]

Adrian spent less than an hour at the police station as some of the activists waited for him outside, demanding an explanation from the police. He initially agreed to pay a fine of 200 złoty (about 50 euro) for disturbing public order. Subsequently, he refused to pay the fine, arguing that he had originally agreed to it under duress. The case was therefore referred to court as a minor offence. His first hearing is scheduled for October 2017. On 28 July, Adrian filed a request with the District Court in Warsaw for a waiver of the fine, complaining about the duress the police put him under and how he was denied access to a lawyer. He also argued that he did not commit a minor offence of disturbing of public order but was merely exercising his right to freedom of assembly.[36]

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[30] Interview with Amnesty International, 22 July, Warsaw.
[31] Interview with Amnesty International, 23 July 2017, Warsaw.
[32] *Gillan and Quinton v. The United Kingdom*. no. 4158/05. para. 57.
[33] *Austin and Others v. The United Kingdom*. nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012, para.12.
[34] Notes of the Amnesty International researcher from the assembly.
[35] Phone interview with Amnesty International, 8 August 2017
[36] Complaint of Adrian Richter on file with Amnesty International.

CONTAINMENT OF PROTESTERS

In the context of the protests, the police routinely contained groups of protesters, sometimes for more than two hours. The Warsaw police informed Amnesty International that this practice does not amount to formal arrest or deprivation of liberty, and that protesters are held by the police for the purposes of checking their identification and where applicable, proceeding with charging and fining people.[37]

On 24 July during a spontaneous assembly at the headquarters of the Law and Justice party on Nowogrodzka Street, about 30 to 40 persons from a civil society group, Obywatele RP, and other groups held a protest under a banner that read "Free Courts, Free People".[38] The protesters gave speeches with the use of a microphone with loudspeakers and a megaphone.

Police intervened in a peaceful spontaneous assembly at the headquarters of the Law and Justice party on Nowogrodzka Street on 24 July 2017. The assembly was not obstructing traffic and the police initially refused to provide grounds for the intervention against the protesters. © Amnesty International/Barbora Černušáková

The police closed the street from both ends and the assembly was held in a small space on a pavement separated from the entrance to the party headquarters by a cordon of police officers. There was also a small assembly (three persons) of supporters of the Law and Justice party that was held on the other side of the police cordon and that finished at 3pm. At about 2:30pm, the police asked the protesters assembled under the banner "Free Courts, Free People" to leave the area, and claimed that the protest was in breach of public order "by shouting, noise or other".[39] The protesters refused to leave and sat down. Some of them declared that they had a right to be there, using the loudspeaker. The police then started to remove those who used the loudspeaker and placed them in police vans. The police initially refused to provide the grounds for this action to the media, the protesters, and to Amnesty International's researcher, who was observing the protest. At 2:40pm, the police removed the protesters' sound-system without providing an explanation of the grounds for this action. At 3:15pm an on-site commander-in-chief explained to Amnesty International that the protesters were breaching public order and that they were being held in the police vans for identification purposes. The protesters remained in police custody for about 90 minutes. One of the protesters told Amnesty International that the police initially simply held them in the vans without taking any further action

[37] Letter from the Chief of the Warsaw Police to Amnesty International Poland, 26 July 2017.
[38] An Amnesty International researcher observed the assembly from 2pm until 5pm.
[39] Article 51.1 Code of Minor Offences

and only started to check their IDs about after 40 minutes.[40] This raises concerns over arbitrary deprivation of liberty that interfered with the protesters' right to freedom of peaceful assembly. Nine out of ten protesters held by the police during the protest on Nowogrodzka Street on 24 July filed a complaint against the police for unlawful arrest (*zatrzymanie*).[41]

Police removed a peaceful protester at the headquarters of the Law and Justice party on 24 July 2017. Protesters were initially not given an explanation for this action against them and were held in police vans for about 90 minutes. © Amnesty International/Barbora Černušáková

SURVEILLANCE BY THE POLICE

Since July 2017, the Polish media and nongovernmental organizations (NGOs) have been raising concerns over the surveillance of opposition politicians and protesters by the police and other security agencies.[42] In August, the newspaper *Gazeta Wyborcza* published an article according to which a specialised police unit had been established to monitor activists and other opposition actors. The newspaper quoted its source from within the police. According to this source, the police had followed some persons involved in the protests from the moment they left their homes until they went to bed.[43] According to an NGO, Helsinki Foundation for Human Rights, the law enforcement services "employed a wide array of operational measures, including on-foot and vehicle surveillance teams technically capable of accessing municipal CCTV network and recording audio and video."[44]

Police surveillance powers had been strengthened by an amendment to the Police Act in January 2016. Under the law, courts can authorise secret surveillance, including the content of communications, for a period of three months, which can be extended to eighteen, on the basis of a broad list of suspected crimes

[40] Phone interview with a protester held in the police van, 24 July 2017, Warsaw.
[41] Article.246.1 Code of Criminal Procedure
[42] See (in Polish): https://panoptykon.org/wiadomosc/tajne-operacje-z-motywacja-polityczna-czy-poczatek-konca-zaufania-do-policji
[43] See (in Polish): http://wyborcza.pl/7,75398,22255077,opozycja-tropiona-jak-przestepcy-tak-policja-inwigilowala-obywateli.html
[44] See: https://www.liberties.eu/en/news/surveillance-of-members-of-ngos-and-opposition-in-poland [please cite this with the group, title of the PR, date and then link as it is in English.]

and without having to consider proportionality. The amendment also allows security services and police broad access to telecommunications data, including internet data.[45]

On Sunday, 16 July, a day after the Senate had voted in favour of the amendments to the Law on the National Council of the Judiciary and the Law on Common Courts, an activist named Rafał left the parliamentary area and as he walked through a park, he noticed a man following him. According to Rafał, "He came to me and asked me whether my legs hurt and then reassured me they won't hurt me. I asked him if he was from the police and he nodded. Then he followed me all the way to the Presidential Palace."[46]

A few protesters remained in the area around the Parliament for several days and camped in tents pitched on a green area on Wiejska Street. On 23 July, a protester said that she noticed police officers openly taking notes on her movements. One of them was dictating to his colleague: "She woke up, she is going to have a shower."[47]

During the course of the protests in July, the Helsinki Foundation for Human Rights noted with concern that two protesters, Wojciech Kinasiewicz and Tadeusz Jakrzewski (see Prosecution of Protesters below) were put under police surveillance and the police justified the surveillance measures by stating that there was a risk that their behaviour "may disturb public order".[48]

Amnesty International is concerned about these reports of cases of surveillance of protesters as they may have a chilling effect on activism and amount to a violation of human rights. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that, "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence," and that "Everyone has the right to the protection of the law against such interference or attacks." The right not to be subject to unlawful state surveillance is also included in Article 8 of the European Convention on Human Rights.[49]

[45] Amnesty International. Poland: Submission to the United Nations Human Rights Committee. October 2016.
[46] Interview with Amnesty International, 20 July 2017, Warsaw.
[47] Interview with Amnesty International, 23 July 2017, Warsaw.
[48] Helsinki Foundation for Human Rights, 27 July 2017, http://www.hfhr.pl/en/police-target-opposition-politicians-and-ngo-activists/
[49] The right to private and family life.

2. TAKING IT TO THE STREETS

Public protests that began in early 2016 continued throughout 2017 with demonstrations against the Polish government's attempts to undermine the independence of the Constitutional Tribunal, restrict access to sexual and reproductive rights, limit media access to the Parliament, strengthen the surveillance powers of the police, and erode respect for human rights.

In December 2016, the Parliament adopted a restrictive Law on Assemblies.[50] It entered into force in April 2017 after the Constitutional Tribunal declared that it was compatible with the Constitution.[51] The law provided that "cyclical demonstrations" organized by the same entity at the same location several times a year had priority over any requests to hold assemblies at that location and at those times. One such "cyclical demonstration" is a pro-government rally that has been convened on the 10th day of every month to commemorate the 2010 Smolensk plane crash during which the then president Lech Kaczyński and 95 other people died. Pursuant to the law, the authorities have routinely banned counter-demonstrations in the area of the Presidential Palace where these monthly rallies are held. Despite the bans, protesters did convene counter-demonstrations in May, June, July, August and September of 2017 and dozens of counter-protesters were subjected to prosecutions for minor offences such as interference with a legal assembly;[52] or for criminal offences such as malicious interference with a religious act.[53]

The Speaker of the lower house of the Parliament (Sejm) had decided in August 2016 to issue a decision to restrict people's access to the area near the Parliament. Access to the area in front of parliamentary buildings would be granted only with a permit. Up until that point, that area was generally accessible to the public.

In December 2016, the government announced measures to restrict media and journalists' access to the Parliament. The move triggered large-scale protests that lasted two days from 16-17 December 2016, during which demonstrators blocked access to the Polish Parliament. In the face of mass protests, the authorities eventually refrained from implementing the restrictions on access, but the protesters learned that participation in demonstrations would come with severe consequences in Poland.

In January 2017, the Warsaw police launched a public appeal in an attempt to identify demonstrators caught on camera images from protests in front of the Parliament on 16 and 17 December 2016.[54] According to a police statement accompanying the appeal, people pictured in the images were being investigated in relation to "public disturbances" during the protests. Nongovernmental organizations had voiced concerns over the

[50] Helsinki Foundation for Human Rights. "Constitutional Tribunal: amendments to Assemblies Act constitutional despite all objections." 16 March 2017. http://www.hfhr.pl/en/constitutional-tribunal-amendments-to-assemblies-act-constitutional-despite-all-objections/

[51] Following the international and domestic criticism of the amendment, the President of Poland referred it to the Constitutional Tribunal in December 2016.

[52] Article 52.1 of the Code of Minor Offences.

[53] Article 195 of the Criminal Code. Amnesty International. "Poland: Concerns over large-scale prosecution of protesters", 22 June 2017, https://www.amnesty.org/en/documents/eur37/6567/2017/en/. Amnesty International also conducted phone interviews with some of the protesters regarding the 10 August 2017 assemblies.

[54] Accessed in Polish on 19 January 2017: http://www.policja.waw.pl/pl/dzialania-policji/aktualnosci/41147,Kto-rozpoznaje-te-osoby.html. Print-screen on files of Amnesty International.

"chilling effect" on future public protests and criticized the publication of the snapshots.[55]

Amnesty International interviewed three of the protesters whose images were published by the police and a lawyer representing some of the protesters. According to Polish law, the publication of the images was unlawful as it occurred at a stage of the procedure during which the police had not yet identified and charged the suspects (the *in rem* stage of the criminal procedure).[56] The police can only publish images of individuals who are on a "wanted list", which was not yet the case with the protesters. The publication of images negatively affected some of the protesters who feared for their safety after the images appeared in a number of media outlets and attracted hateful comments, primarily online. One of the participants at the protests, a university student named Piotr,[57] was charged with restricting the freedom of the media.[58] He described the events on 16 December 2016:

> I went to the demonstration as an individual, not as part of a group… A journalist from the national [government-controlled] TV was trying to broadcast live from the assembly. He and the cameraman were positioned in a space of approximately 6 square metres with about 30 other people. The journalist was in the centre, the protesters were around them. We were not violent, we were just standing there, making a lot of noise. People were shouting and the journalist was unable to transmit directly from the middle of the protest. At some point, we started passing a copy of the Constitution around and holding it in front of the camera. This is the thing I'm now being prosecuted for… They are certainly trying to scare people so that they don't protest.[59]

The authorities have also targeted those who have exercised their right to freedom of expression in the context of some of the protests in 2016. For example, a group of school teachers who symbolically participated in the Black Protest (#CzarnyProtest) on 3 October 2016 faced disciplinary proceedings.[60] The protests, during which thousands of women went on strike and stayed away from work or went to work wearing black, were triggered by a draft law that threatened to introduce a near total ban on abortion and the criminalization of women and girls who obtained abortions and anyone assisting or encouraging them to have an abortion. After the mass protests and a general women's strike on 3 October, the Parliament rejected the draft law.

Ten school teachers from the town of Zabrze wore black on the day of the 3 October protest and posted their picture on one of the teacher's private Facebook profile. In response, the Disciplinary Commission of the Educational Board of the Province of Silesia commenced disciplinary proceedings against them in February 2017. They were investigated for a breach of the Teachers' Ethics Code, namely for infringing the principle of teachers' impartiality by expressing their opinions at school and for neglecting their duties as teachers. The disciplinary charges were changed during the course of the proceedings to "manifestation of opinions in protest to changes in the law on abortion during the working hours at school".[61] In an interview with Amnesty International, the teachers alleged that serious irregularities occurred in the course of the proceedings, in particular that their individual casefiles were used interchangeably. All the evidence against them was based on the testimony of one person and newspaper articles based on this testimony. Nine out of the ten teachers were acquitted of all charges in February and March 2017.[62] In one case, the hearing within the disciplinary proceeding was postponed until September 2017.

The case has raised concerns that the disciplinary proceedings were intended to harass the teachers who participated in the protest.

Another example of prosecution for the exercise of the right to freedom of expression in the context of the protests is the trial against three activists from the Green Party for the "abuse of the symbol of "Fighting Poland" (*Polska Walcząca*)".[63] The alleged offence[64] was committed on 18 June 2016 during a women's rights march when the activists held a banner with the symbol of *Polska Walcząca* on which they had painted male and female gender symbols.[65] The first hearing of the trial took place on 2 August 2017. The activists argued that they had not committed any offence, on the contrary: the banner was a demonstration

[55] See in Polish: https://amnesty.org.pl/oswiadczenie-w-zwiazku-z-publikacja-zdjec-osob-ktore-braly-udzial-w-demonstracji-pod-sejmem/; and in English:
http://www.hfhr.pl/en/hfhr-protests-against-online-publication-of-sejm-protesters-images-on-police-website/
[56] Publication of images in the in rem stage without a court order breaches Art. 13.3 of the Press Law (Art. 13) and the Code of Criminal Procedure as well as the Civil Code.
[57] Not his real name.
[58] A criminal offence under article 44.1 of the Media Law
[59] Interview with Amnesty International, 5 April 2017.
[60] See in Polish: http://www.dzienniklodzki.pl/strona-kobiet/a/za-czarny-protest-pod-sad-bo-przyszly-do-pracy-ubrane-na-czarno,11773745/
[61] A copy of the report on the disciplinary proceedings from 10 January 2017 is on file with Amnesty Interantional.
[62] See (in Polish): http://www.newsweek.pl/polska/spoleczenstwo/protest-nauczycielek-z-zabrza,artykuly,407445,1.html
[63] Polska Walcząca is a symbol of Polish resistance during the WWII.
[64] Article 3 of the Law on the Protection of the Symbol of Fighting Poland.
[65] See here: https://stooq.pl/n/?f=1189613

of equality between men and women.[66] On 5 October 2017, the District Court in Warsaw- Śródmieście ruled that the three activists had not breached the law. The Court concluded that while the Constitution prohibits insults to the national symbol, the action by the activists did not amount to such an insult.[67]

2.1 MONTHLY ASSEMBLIES AND COUNTER-PROTESTS

Every 10th day of the month a religious procession is organized in the centre of Warsaw to commemorate the 2010 Smolensk plane crash during which the then president Lech Kaczyński and 95 other people died. The amendment to the Law on Assemblies that entered into force in April 2017 introduced restrictions for these protests by declaring a priority for "cyclical assemblies". Since the Smolensk commemoration processions meet the criteria for the "cyclical assemblies", they have priority over any other assemblies organized and proposed to be held at the same time and place. As of 10 June 2017, the Office for the Protection of the Government (BOR) had routinely declared as a "security zone" the entire street of Krakowskie Przedmieście in front of the Presidential Palace in central Warsaw. In order to access the area, a person is now required to get special security clearance from the BOR and the Smolensk assembly. This has prevented at least one group of protesters, the Solidarity Action of Citizens (*Obywatele Solidarnie w Akcji*, OSA), from accessing the site for a planned public assembly on 10 June and 10 July 2017. Despite a court decision confirming the legality of the OSA assembly, the police refused to allow OSA access to the area arguing that they were following an order of BOR.[68]

MONOPOLISING PUBLIC SPACE IN THE CONTEXT OF THE SMOLENSK ASSEMBLIES

The monthly use by the Smolensk assembly of the area around the Presidential Palace, the special security designation given to the area and requiring special clearance have severely limited public access to the entire area. According to an independent online media outlet OKO.press, on 10 August 2017, the area was secured by 2,500 police officers, and 500 police vehicles. The length of the metal fences used as security barriers on the site is reportedly two kilometres.[69] Given such restrictions, counter-protesters and others seeking to exercise their rights to freedom of assembly and expression on the site have little, if any, real and meaningful opportunity to do so. As of May 2017, the police response to the presence of counter-protesters has involved ID-checks, surveillance and prosecutions.[70] While in certain instances, the police have responded to the counter-protesters' attempts to block the cyclical Smolensk assembly in a manner that may meet the requirements of necessity and proportionality set out in international human rights law and standards, the anticipatory ID-checks, surveillance and assistance in the monopolisation of the larger area at the Presidential Palace raise concerns over disproportionate restrictions of the right to freedom of assembly. The practice of the police of prolonged ID-checks for up to two hours has amounted in some cases to arbitrary deprivation of liberty.

10 MAY

In anticipation of the 10 May 2017 Smolensk assembly at the Presidential Palace, the Polish authorities banned all other public assemblies in central Warsaw for that day.[71] In the cases of two of these demonstrations, a court subsequently quashed the ban on the basis that the Assembly Law does not authorise a ban on "simple" assemblies that would not disrupt traffic.[72] These two assemblies took place on 10 May in central Warsaw, one on Hoover Square, the other one on Twardowski Square. In relation to assemblies, international human rights law prohibits blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times. Such bans are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.[73] Relying on provisions of the Law on Assemblies,[74] about 1,000 people participated in a spontaneous non-violent protest on 10 May during which they sat down or stood in the area designated for

[66] "Ruszył proces trójki aktywistów "Zielonych" ws. znieważenia znaku Polski Walczącej", 2 August. In Polish: https://stooq.pl/n/?f=1189613
[67] See in Polish: http://www.hfhr.pl/transparent-polka-nie-podlegla-nie-stanowil-zniewazenia-znaku-polski-walczacej-wyrok-uniewinniajacy-aktywistow-zielonych/
[68] Interview with the police officers on duty on 10 June 2017. Letter of the Chief Commander of the Warsaw Police to Amnesty International, 26 July 2017.
[69] See in Polish:
https://oko.press/snajperzy-armatki-wodne-wiezniarki-gigantofony-czyli-comiesieczny-stan-nadzwyczajny/
[70] Amnesty International monitoring of the protests on 10 June and 10 July. Interviews with the protesters.
[71] There were at least three alternative assemblies planned for 10 May.
[72] See the summary of the decision in Polish: http://www.hfhr.pl/sad-okregowy-uchylil-zarzadzenie-wojewody-o-zakazie-organizacji-zgromadzenia/
[73] 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. 30
[74] Article 3.2 of the Law on Assemblies

the Smolensk assembly. During the protest, about 30 persons were removed by the police and 22 were reportedly charged for various offences, including "interference with a legal assembly".[75]

10 JUNE

On 10 June, dozens of protesters attempted to block the Smolensk assembly by sitting down on one spot on Krakowskie Przedmieście Street through which the participants of the assembly were about to march. The police removed the protesters by force and took the details of those who participated in the blockade. The police levelled fines against 91 protesters for disturbing a legal assembly. The majority, 80 persons, refused to pay and faced further proceedings. About a dozen protesters face criminal charges for "malicious interference with a religious act". The grounds for these charges, according to the police, were an attempt by the protesters to block a religious procession. On 28 June, the police summoned over 60 persons as suspects in the proceedings for interference with a lawful assembly.[76] Following questioning at police stations, a number of cases were referred to court in late July for further proceedings.[77]

10 JULY

The counter-protest on 10 July involved up to 1,000 people who gathered in Warsaw's Castle Square after two leaders of the Solidarity Movement from the 1980s, Lech Wałęsa and Władysław Frasyniuk, announced their support. During the night of 9 to 10 July, the police erected metal fences along the route of the Smolensk commemoration march in central Warsaw effectively closing it to the public. Protesters who gathered on the site at around midnight were contained without the possibility to leave until about 3am on 10 July and were eventually removed by force. Police officials argued that the police removed nine protesters by force because they refused to leave the "security zone" in the area of the Presidential Palace.[78] The case is currently under investigation by Poland's Human Rights Commissioner who has raised concerns over the protesters' right to freedom of assembly.[79] After the protest on 10 July in the evening, the police initiated 44 proceedings against the protesters who were accused of interference with a lawful assembly and malicious interference with a religious act.[80] Among those who were served orders to pay fines for interference with a lawful assembly were the organizers of the lawful assembly of the Solidarity Action of Citizens (OSA).

Another small alternative assembly that day was announced on Hoover Square, about 130 metres away from the Presidential Palace. Pursuant to the Law on Assemblies and the prioritisation of cyclical assemblies, the Governor of the Masovian Province banned their assembly at 4pm on 10 July. At 7:24pm, the police informed the participants that the assembly needed to be dispersed and requested that the protesters leave the area. The protesters refused to comply with the order to disperse and were served orders to pay fines for participation in an unlawful assembly and interference with the exercise of a religious act.[81]

10 AUGUST

On 10 August at 8:30pm a group of counter-protesters was standing in Castle Square (Plac Zamkowy) chained together by their hands and collectively holding a banner that read: "You betrayed Poland and your brother". The group waited for the Smolensk assembly to pass by them on their way to the Presidential Palace where the assembly ends. In the meantime, the police surrounded the counter-protesters and a senior police officer approached one of them, Rafał, and asked him if he had any dangerous items in his backpack. Rafał replied: "I do: I have a free will and sharp wit and won't hesitate to use them."[82] After this exchange, an officer with the anti-conflict team approached another protester and asked him to open Rafał's backpack, which he refused to do. At that point, more protesters joined the group, surrounded the police officers and chanted "We have the right to protest!"

The police did not intervene and waited for the protest to finish. When the protest ended at about 9pm, the police followed Rafał as he was about to leave and go home and asked for his ID. When the other protesters saw that the police were trying to remove Rafał, they sat down to prevent him from being separated from the

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[75] Article 52.2.1 of the Code of Offences. Source on the numbers: Niezalezna.pl, 11/05/2017, http://niezalezna.pl/98566-nasz-news-nie-tylko-adam-borowski-pobity-napasc-na-funkcjonariusza-podczas-kontrmanifestacji-1

[76] Article 52.1 of the Code of Minor Offences.

[77] Further details on the protests: Amnesty International Poland, "Report from the Observation of Protests on 10 June". 21 June 2017. In Polish: https://amnesty.org.pl/raport-z-obserwacji-zgromadzen-10-czerwca-2017/

[78] See (in Polish): https://www.rpo.gov.pl/sites/default/files/odpowied%C5%BA%20KG%20POlicji%20w%20sprawie%20dzia%C5%82a%C5%84%20w%20nocy%20z%209%20na%2010%20lipca%202017%20r.%20w%20Warszawie.pdf

[79] See (in Polish): https://www.rpo.gov.pl/pl/content/rpo-pyta-komendanta-stolecznego-policji-o-podstawy-prawne-usuniecia-uczestnikow-zgromadzenia-9-lipca

[80] Amnesty International Poland, "Report from the Observation of Protests on 10 July". 26 July 2017. In Polish: https://amnesty.org.pl/wp-content/uploads/2017/08/Raport-z-obserwacji-zgromadzen-10.07.17.pdf

[81] Amnesty International Poland, "Report from the Observation of Protests on 10 July". p 27. The "religious act" with which the protesters were supposed to interfere was the 'Smolensk assembly' whose participants pray at the Presidential Palace.

[82] Quote given by Rafał during a phone interview with Amnesty International on 11 August 2017.

crowd. In the meantime a senior officer arrived, giving his name and rank.[83] Rafał responded by showing the police his ID and opening his backpack for inspection.[84] Then the police started removing some of the protesters from the site and carried up to 10 of them to police vans. Rafał was put into a separate van and taken to a police station. The police explained to him that the purpose of his apprehension was to search his backpack as he allegedly refused to allow such an inspection on the site. Another protester was also taken to a police van but when the police attempted to drive him away, the remaining protesters and random pedestrians blocked the van's exit for about 20 minutes. The police van eventually left through the barriers that the police opened. Both apprehended protesters were taken to the Dzielna Street police station, held for two hours and released without charge or fine, but also without learning the grounds for their apprehension. Both filed complaints about unlawful arrest.[85] Amnesty International believes that this incident is likely to amount to an arbitrary deprivation of liberty by the police.

Under Polish legislation, the police may check a person's identity in order to establish and confirm personal details such as their place of residence and the validity of their identity documents. In doing so, the police must have grounds to believe that the person in question may have been involved in unlawful activities, witnessed an offence or is on the wanted list. Amnesty International is concerned that the police have repeatedly employed restrictive and intrusive anticipatory measures in the context of the "monthly" assemblies in Warsaw. Under international law and standards, law enforcement officials should not stop and search participants of assemblies unless there is a clear and present danger of imminent violence.[86] If the authorities have specific information regarding the intention of some protesters to engage in violent and unlawful acts in the context of public assemblies, the ID-checks and containment of protesters could meet the criteria of legitimate purpose, necessity and proportionality. However, the wide use of such measures in response to protesters peacefully expressing their opinions appears disproportionate. Moreover, apprehension and forced removal of protesters to a police station for the purposes of checking their ID is a measure that is both unnecessary and disproportionate and threatens to have a chilling effect on the right to freedom of assembly. The excessive length of time during which the demonstrators have their freedom of movement restricted by the police, without any lawful grounds for doing so, has amounted in some cases to arbitrary deprivation of liberty. Its only aim seems to be to prevent the protesters from exercising their right to participate in a peaceful assembly.

2.2 PROSECUTION OF PROTESTERS

In a number of cases, protesters have been charged and subjected to prosecution. The profiles in this section reflect a range of human right violations attendant to these cases.

TADEUSZ

Following the monthly protest on 10 May, one of the activists, Tadeusz Jakrzewski arrived at the vicinity of the Smolensk assembly wearing a T-shirt of the group Obywatele RP. According to Tadeusz, "This was supposed to be the first *miesięcznica* [monthly] that should have been quiet. We [the counter-protesters] were not supposed to be there… At some point the police approached me and told me the organizer [of the Smolensk assembly] doesn't want my presence".[87] After a short verbal exchange with the police officer, Tadeusz refused to leave the area and sat down on the site of the assembly. The police removed him to the nearby Ossolińskich Street. "They asked for my ID which I showed them but I didn't want to hand it over to the officer. This irritated him and they took it by force. I asked the police officers to show me their IDs which they didn't do. Then I asked to be let go. The police officers wouldn't let me go, they were nudging me from behind and at some point I told them: If you nudge me one more time, I'll slap you (*Dam wam w ucho*). On this basis they arrested me."[88]

The police first took him to a station in Warszawa-Śródmieście. At about 10pm, they moved him to another police station in Wilcza Street. At 2am, Tadeusz was transferred again, this time to the police station in Żytnia Street where he was held until 4pm the next day. Before his release, he was taken again to the Wilcza Street station where a police officer informed him about charges for use of "force or threat of violence to prevent an official to carry out his duty". [89] The offence is punishable by imprisonment of up to 3 years.

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[83] Phone interview with Rafał, 11 August 2017.
[84] A video on files of Amnesty International.
[85] Email to Amnesty International from a coordinator of legal aid of Obywatele RP, 22 August 2017.
[86] A/HRC/31/66, para. 49(g), OSCE *Guidelines on Freedom of Peaceful Assembly*, para. 154.
[87] Phone interview, 16 May 2017.
[88] Phone interview, 16 May 2017.
[89] Article 224.2 of the Criminal Code

Within a week the Warsaw prosecutor issued an indictment for making an illegal threat against a police officer and for use of violence by "grabbing a hand of a senior constable… in order to force on the police officer on duty to abandon his official duties," i.e. the ID-check.[90] Tadeusz denies any violence against the police officer and requested the charges against him to be dropped on the basis that he was not preventing the official in his duty as the official had already checked his ID and thus the duty had been performed. Moreover, he questioned the entire police action against him as his mere presence could not have represented any threat to the assembly.[91] Tadeusz's first court hearing was scheduled for 17 July but was postponed because the judge assigned to the case requested a change of department and the case was assigned to another judge. The confrontation between Tadeusz and the police officers seem to be related to his unwanted presence at the Smolensk assembly. As such, it raises concerns over the effects of the monopolisation of the public space by one assembly on any peaceful activity of counter-protesters.

ANGELIKA

Angelika, an activist from the town of Elbląg, participated in several protests against the monthly Smolensk assemblies as well as the July protests for the independence of judiciary. On 10 May, she managed to mix in with the people participating in the Smolensk assembly. Standing close to the speakers' stage, she heard the chair of the Law and Justice party, Jarosław Kaczyński, saying that there were no "hateful people with white roses" [symbols used by the protest group Obywatele RP] at the assembly. In response, she and her friend raised their white roses, and cried "Liar! Liar!"[92] After a while, she was approached by an organizer of the assembly and asked to stay on the site after the assembly finished. Angelika asked for an explanation and the organizer told her that she would be held responsible for interfering with the ceremony. Eventually she managed to leave the assembly but she was pushed and pulled by the participants and injured a tendon in her foot.[93]

That same evening, a police officer stopped her at a police station where a group of activist held a picket for Tadeusz (case above) who was held there and requested to see her ID. When she wanted to know the legal basis for such a request, the police officer could not offer one, so he called his superior and established that the police suspected Angelika of an offence of force or threat of violence against an official.[94] Next month, on 10 June, Angelika took part in the blockade of the Smolensk assembly (see above: Monopolising public space in the context of Smolensk assemblies). She was among the protesters whom the police removed, took their details and served with fine orders. Angelika refused to accept the fine and was expecting further proceedings against her.

> In early July on a Friday night I learned that my interrogation at the police station is scheduled for the next day, Saturday at 9am. I learned it from my neighbour with whom the police left the summons. The neighbour actually told me I was being criminally prosecuted… I had to swiftly find a lawyer and finally found one at 10pm that evening. We requested that the police interrogation be postponed until next Friday. We also filed a complaint over the breach of my privacy by the police officers who spoke to my neighbour.[95]

The visit of the police officer was related to the proceedings under the Code of Minor Offences for her participation in the June blockade. Angelika also faces criminal proceedings for her action during the Smolensk assembly in May for chanting "Liar! Liar!" during the speech of Jarosław Kaczynski.[96]

[90] Indictment against Tadeusz Jakrzewski. Issued on 17 July 2017. On files of Amnesty International.
[91] Interview with the lawyer of Tadeusz Jakrzewski, 24 July 2017, Warsaw.
[92] Interview with Amnesty International, 8 June 2017, Warsaw.
[93] Interview with Amnesty International, 8 June 2017, Warsaw.
[94] Article 224.2 of the Criminal Code.
[95] Interview with Amnesty International, 23 July 2017, Warsaw.
[96] Article 224 of the Criminal Code. Interview with Amnesty International, 8 June 2017, Warsaw.

PROSECUTION OF PARTICIPANTS IN THE 2016 PROTESTS

On 20 July 2017, Angelika climbed over the barriers separating the protesters from the parliamentary area. She – and others – were immediately removed by the police. She now faces charges and prosecution for her participation in the protests in Warsaw. © Amnesty International/Barbora Černušáková

Activists have reported regular use of criminal proceedings against their peaceful anti-government protests since 2016. In May 2017, the Warsaw prosecutor charged four persons with "trespassing" an area in front of the Parliament on 30 November 2016. The space at the entrance to the Parliament was generally open to the public until the speaker of the lower house of the Parliament changed the regulation in August 2016 and introduced a permit system for those wishing to access the parliamentary area.[97] One of the activists, Rafał, who is now facing multiple charges, both criminal and administrative for participation in various protests, described the types of protests he and other activists engage in:

> We decided to ridicule this regulation restricting the access of the public and started a series of actions of civil disobedience. First, we complied with the regulation and applied for a permit to enter the parliamentary area, which we were granted. On 14 December 2016, I entered the area with a banner [in my pocket] with a quote from Czesław Miłosz: "You, who wronged a simple man"[98] and a list of human rights breaches committed by the current government. Once in front of the Parliament, we opened it… After 14 seconds, I was apprehended by the guards. They tried to take the banner and instructed me to leave the area. I replied quoting articles from the Constitution and the European Convention on Human Rights on freedom of thought, expression and association. When they tried to force me out, I sat down. After that they gently grabbed me and carried me away. I wasn't resisting. There are dozens of cases like mine. Some people were taken out [of the Parliament area] just because they were wearing T-shirts saying "freedom".[99]

On 25 January 2017, Rafał and another activist entered the parliamentary area and presented a banner "We won't give our rights away". Holding the banner they sat down and blocked the car entrance into the Parliament. They were asked to leave and when they refused the guards carried them away. On 17 August, the Warsaw District Court dropped the criminal charges against the activists under Article 193 of the

[97] See in Polish: http://www.rp.pl/Polityka/160809701-Zarzadzenie-marszalka-Sejmu-Marka-Kuchcinskiego-Na-teren-Sejmu-tylko-z-odpowiednim-dokumentem.html#ap-1
[98] Czesław Miłosz was a Nobel-prize winning Polish poet.
[99] Interview with Amnesty International, 29 March 2017, Warsaw.

Criminal Code on the basis that trespassing would require a barrier such as a fence and there was none.[100] The activists were facing a fine of 1,000 zloty (234 euro) each.

SURVEILLANCE AND VISITS AT HOME

Several activists told Amnesty International that the police began visiting them at home as early as in January 2017 in relation to the protests in front of the parliament that took place on 16 and 17 December 2016. They reported regular visits during which the police first checked whether their home address corresponded to the one on their IDs. During the later visits, the police would inform them about their charges.

One activist described how on 10 May 2017, the police followed him and other activists from the time the activists met in the city centre in the early afternoon: "The message was clear, they wanted us to see them. Whenever any of us would leave the group, an undercover police officer would follow them."[101] As the activists approached Krakowskie Przedmieście where the Smolensk assembly was taking place, they were stopped and had their IDs checked by the police. The ID-checks took between 30 and 40 minutes, which delayed the arrival of these counter-protesters to the location. "This police action was deliberate to delay our arrival to the counter-protest," one of the participants told Amnesty International.[102]

Amnesty International has learned about several cases – a number of them reported from outside Warsaw – where police officers visited the homes of activists who participated in the protests on 16 and 17 December, 10 May and 10 June 2017.

"KAROLINA"[103]

Karolina participated in the counter-protest against the Smolensk assembly on 10 June. During the protest, about 90 people, including Karolina, sat down in an attempt to block a street that was on the route of the pro-government march. After their removal, the police took their personal details and served fines for interference with a lawful assembly.[104] On 13 June, police officers visited Karolina at her home outside Warsaw. They said they came for a "friendly chat". "They asked if I was planning to attend the next protest planned for 10 July. They also wanted to know what were my 'material conditions' and whether I had a husband and children. Then they inquired about the NGO where I work. My questions on the reasons for this visit remained unanswered by these police officers," she told Amnesty International.[105]

JERZY

Jerzy described his visit by police officers after taking part in the protests: "On 10 May, we exited Café Costa holding a banner 'Here are the borders of decency' (*Tu jest granica przyzwoitości*). We spread it across the pedestrian zone on Krakowskie Przedmieście and held it for about 18 seconds when the police intervened. They carried us one by one to one of the side streets. There were about 30 of us. It took an hour and 20 minutes for the police to take our details and to serve us the fine orders for 500 zloty (120 euro) for an offence of interference with a lawful assembly. I refused the fine declaring that I prefer my case to be heard in a court because I believe that I did nothing wrong."[106]

On 26 June, Jerzy, was cutting the lawn in his garden in a town outside Warsaw, when a police officer arrived and wanted to talk to him.

> He asked about my income which I refused to provide. I also refused the allegation that I committed an offence. After the interview, the police officer gave me a copy of my statement. The following month, I again participated in the protests during the monthly gatherings in central Warsaw. During one protest we sat down during the blockade on Krakowskie Przedmieście Street holding a small banner saying 'Yes to remembrance and sorrow. No to lies and manipulation' (*Tak pamięci i żałobie, nie kłamstwu i manipulacji*). The police removed us by force and again attempted to serve on-the-spot-fines. I refused to accept the fine order and provided them with my details for further proceedings. Some weeks later, a local policeman paid another visit to my home. This time, I didn't agree with the interview at home without a written notice. On 17 July, I was

[100] See in Polish: http://www.tvn24.pl/wiadomosci-z-kraju,3/blokowali-wjazd-do-sejmu-sad-uniewinnil-czlonkow-obywateli-rp,765159.html
[101] Phone interview, 16 May 2017.
[102] Phone interview, 16 May 2017.
[103] Not her real name.
[104] Amnesty International. "Concerns over large-scale prosecutions of protesters", 22 June 2017. https://www.amnesty.org/en/documents/eur37/6567/2017/en/
[105] Phone interview, 13 June 2017.
[106] Phone interview, 9 August 2017.

summoned to the police station, provided them with my personal data (my first and last name, date of birth and mailing address) and refused allegations of any wrongdoing.[107]

While Polish law permits police visits and questioning of those suspected of minor offences at home, it does not provide for informal visits. The police are obliged to provide a person subjected to questioning with a written record of the interview. Under the Code of Minor Offences Procedure, the police normally summon individuals to police stations to provide their statements. They may visit the suspected offender at home if the circumstances require such action to prevent delays or if it is necessary for other reasons, such as a health condition.[108] The standard procedure is to summon a person to provide his or her testimony at the police station.

Amnesty International is concerned that such informal visits by police officers to the homes of protesters may amount to intimidation of individuals participating in protests. Any evidence gathered in this manner should be automatically inadmissible as its collection in this manner does not meet fair trial guarantees under international human rights law. All persons suspected of an offence carrying a criminal sanction (as offences under Article 51 and 52 of the Code of Minor Offences do) have the right to legal counsel.[109] This right includes the possibility of having legal counsel present during questioning by the investigative authorities.[110].

[107] Phone interview, 9 August 2017.
[108] Article 41 of the Code of Minor Offences Procedure
[109] UN Human Rights Committee, General Comment 32, CCPR/C/GC/32, 23 August 2007. Directive 2013/48/EU 'on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty' requires EU member states to ensure that persons subject to criminal proceedings (or which may result in the deprivation of liberty) have the right to legal counsel during investigation and police questioning. Although proceedings in cases of minor offences may be exempted from this requirement, this obligation is still valid in proceedings before criminal courts. Since Articles 51 and 52 of the Code of Minor Offences envisage in fact criminal sanctions (deprivation of liberty) the Directive is also applicable to proceedings related to charges under these articles.
[110] Article 6 of the European Convention on Human Rights requires persons to be able to seek legal counsel from the initial stages of police questioning (*John Murray v. the United Kingdom*, § 63; *Öcalan v. Turkey* [GC], § 131; *Salduz v. Turkey* [GC], § 54; *Averill v. the United Kingdom*, § 59; *Brennan v. the United Kingdom*, § 45; *Dayanan v. Turkey*, § 31), if they are suspected of committing an offence which is subject to criminal charge, which may result in a deprivation of liberty.

3. RESISTING THE ABUSE OF POWER

3.1 COMPLAINTS AGAINST THE POLICE

The high number of prosecutions against protesters and the routine use of containment techniques against them prompted some grassroots activist groups to establish a system of legal aid for the participants of the protests. Two groups: Parasolki and Obywatele RP have been operating legal aid hotlines and facilitating access to lawyers for those who face prosecutions in relation to assemblies. Some participants seek remedy and compensation for damages individually.

On 7 August 2017, Danuta Zawadzka filed a complaint against the police for the unlawful use of force and an unjustified ID-check during a protest against a far-right assembly on 1 August in Warsaw. Danuta was standing on the corner of Krucza Street and Aleje Jerozolimskie Street holding a banner "ONR:[111] the successors of fascists". In her complaint, she alleged that a police officer pushed her by force towards the wall of a building in front of which she was standing. [112] Then the police officer requested her ID card. When she demanded information on the legal grounds of the action by the police, the officer replied that he was under no obligation to provide them because she was not under arrest. Shortly after that, several journalists approached the scene and under their pressure, the police officer eventually provided Danuta his name and rank. Subsequently, he checked her ID. Danuta alleged that during the entire procedure she was held by force. At some point, the far-right march passed by and they could hear chants such as "One bullet, one German" (*Jedna kula, jeden Niemiec*) or "Once with sickle, once with hammer against the red trash" (*Raz sierpem, raz młotem czerwoną hołotę*), so Danuta asked the police officer to intervene in relation to incitement to hatred but he ignored her.

In June 2017, Ewa Siedlecka, a journalist from the weekly newspaper Polityka filed a complaint against the police for unlawful deprivation of liberty.[113] She was among the more than 90 protesters who were removed by force during the counter-protest which took the form of a blockade in central Warsaw on 10 June. She told Amnesty International: "They told us we weren't arrested but they held us behind a police cordon and we were not able to leave for two hours. We weren't even able to use the toilet. The police wouldn't allow the lawyers who came to the site to help their prospective clients… They told us we were 'at the disposal of the police until [they] clarify the situation'. Such form of deprivation of liberty is not supported by law. The police claimed they needed to check our IDs and check whether we were not 'wanted' by the police. There were dozens of police officers and there was no reason why the ID-checks would need to take two hours. I refused to accept the fine order for interference with a lawful assembly and told the police that I was defending the freedom of assembly granted by the Constitution that the government is breaching. The court hearing about my complaint was scheduled for 11 September."[114] The District Court in Warsaw-Śródmieście rejected her complaint on 11 September arguing that the police acted lawfully and that although the action of checking IDs involves limiting the freedom [of movement] of a person, it does not amount to an arrest [*zatrzymanie*]. The court also refused to accept that the police took action against Ewa Siedlecka while she was exercising

[111] ONR stands for "Obóz Narodowo-Radykalny" (National-Radical Camp)
[112] Complaint of Danuta Zawadzka from 7 August 2017 on file with Amnesty International.
[113] Article 41.5 of the Constitution.
[114] 31 July 2017, email interview.

her right to freedom of assembly, arguing that the blockade did not meet the criteria for a spontaneous assembly protected by the law.

On 7 May 2017, Wojciech Kinasiewicz, an activist from Obywatele RP, filed a complaint against the police for their intervention against a lawful assembly on 10 March in Central Warsaw.[115] In his complaint he argued that the police officers committed an offence of abuse of power[116] when they prevented demonstrators from accessing the site of their lawful assembly. The assembly was registered on 9 February 2017 at the Warsaw Municipality and was supposed to take place on Krakowskie Przedmieście. In the complaint, Wojciech alleged that the police used force and pushed the protesters-participants of a lawful assembly away from the site where they had it registered. The police then created a cordon, which prevented them from accessing the site.

3.2 INTERNATIONAL LAW AND STANDARDS ON THE POLICING OF PUBLIC ASSEMBLIES

States have a positive duty to enable people to exercise the right of peaceful assembly and not to place restrictions on this right that go beyond those expressly permitted under international law.[117] In the context of the policing of assemblies, the rights of particular concern are those to freedom of expression and peaceful assembly; to freedom of movement; to life, liberty and security of the person; and to be free from torture and other cruel, inhuman or degrading treatment or punishment. Law enforcement agents must therefore facilitate assemblies so as to ensure that participants can exercise these rights. At the same time, they must take effective steps to ensure the safety and rights of participants, as well as of bystanders.[118]

In order to ensure this, state actors, primarily the police, should engage in a dialogue with organizers[119] and try to foresee problems and identify solutions that give due consideration to the rights of all involved, while also helping to defuse tensions. In general, law enforcement officials should use methods of persuasion, negotiation and mediation with a view to the peaceful settlement of any conflicts.[120] Force should be used only as a means of last resort to deal with violent individuals. Force should only be used against specific individuals who credibly pose a threat and the level of force should be proportionate to the risk. Police should never use force or other police tactics to pre-emptively prevent people from exercising their lawful right to participate in a peaceful assembly.

COUNTER-PROTESTS

Peaceful assembly is a human right, the exercise of which does not depend on permission from the authorities. International human rights law and standards do not permit states to require that organizers of assemblies seek prior authorisation. States may impose a requirement of prior notification, which enables the authorities to make the necessary plans and arrangements to facilitate the exercise of this right – including in instances where more than one assembly, for example, a counter-protest, is planned for the same place and time.

It is important to note however that, under international law and standards, the failure to notify the authorities or to comply with other administrative requirements does not make an assembly unlawful.[121] The Special Rapporteur on the rights to freedom of peaceful assembly and of association clarified that "[i]n the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial."[122] Under Article 21 of the International Covenant on Civil and Political Rights, authorities may determine that an assembly is unlawful if, for example, its aim is to

[115] Complaint of 7 May 2017 on file with Amnesty International.
[116] Article 231 of the Criminal Code
[117] See the 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, para. 14
[118] 7 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, para 41
[119] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, para. 38, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf. See also A/HRC/31/66, para. 38.
[120] for example, UN Basic Principles on the Use of Force and Firearms, Principle 20
[121] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. May 2012. A/HRC/20/27. para 29.
[122] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, May 2012. para 30.

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 the goal they aim to achieve. In particular with regard to any use of force in such situations, international law and 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.[123] In other words, the fact that an assembly is considered unlawful under domestic legislation does not as such justify the use of force by law enforcement officials.

CONTAINMENT TACTICS

Certain policing tactics are problematic given the obligation to respect the right to freedom of peaceful assembly. These include the containment of protesters ("kettling"), which consists of using police cordons to block protesters from leaving a certain area. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has concluded that "[this tactic] is intrinsically detrimental to the exercise of the right to freedom of assembly, due to its indiscriminate and disproportionate nature".[124] Moreover, he highlighted concerns that containment tactics could have a chilling effect on the exercise of freedom of peaceful assembly as people may refrain from attending peaceful demonstrations for fear of being contained.[125] The European Court of Human Rights, referring to the potentially coercive and restrictive nature of this measure, has underlined that it should be used only where there is a pressing need to prevent serious injury or damage.[126]

In view of such concerns, containment tactics, if used at all, should be strictly aimed at containing violence in order to enable the rest of the assembly to continue peacefully, and only for the shortest time possible.[127] They should not be used as a means of preventing people from participating in an assembly, even one that has not been declared or has been prohibited. Moreover, they should not be used as a preventive measure deployed on the assumption that some people might engage in violence. People accidentally caught in the containment should be allowed to leave and provisions should be made for people who need to access sanitation facilities, medical care or other types of assistance. Proper communication should be established between law enforcement officials and protesters to inform them about the purpose of the containment.

DEPRIVATION OF LIBERTY AND ARREST

Whether or not an assembly is considered to be unlawful under domestic law, Poland is obliged under international human rights law to take effective steps to ensure that no one is subjected to arbitrary arrest and detention, and to ensure that law enforcement officials comply with the absolute prohibition on torture or other ill-treatment.

Deprivation of liberty may violate human rights even if it is only for a very limited period of time. The European Court of Human Rights found this to be the case when the deprivation of liberty lasted for about 20 minutes and when the applicant was entirely deprived of any freedom of movement. In *Gillan and Quinton v the United Kingdom*, the ECtHR found this short deprivation of liberty to fall within the scope of Article 5 (right to liberty and security) of the European Convention on Human Rights because the applicants "were obliged to remain where they were and submit to the search and if they had refused they would have been liable to arrest, detention at a police station and criminal charges."[128]

In another case before the ECtHR a human rights activist travelling to an opposition rally was singled out because his name was in a database of "potential extremists". He was detained for 45 minutes on suspicion of carrying extremist literature, although he had no luggage with him. The ECtHR found that he had been detained arbitrarily because the deprivation of liberty lacked a legitimate purpose as the action against him could not be "reasonably considered necessary to prevent his committing an offence."[129]

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[123] UN Basic Principles on the Use of Force and Firearms. Principle 4.
[124] A/HRC/23/39/Add.1, para. 37.
[125] A/HRC/23/39/Add.1.
[126] *Austin and Others v. The United Kingdom*, no. 39692/09, 40713/09 and 41008/09.
[127] Amnesty International, Use of Force. Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by law enforcement officials, "Guideline 7f".
[128] *Gillan and Quinton v. the United Kingdom*, no.4158/05, § 57, ECHR 2010. In the case the ECtHR declared the deprivation of liberty to be falling within the scope of Article 5 although, as it found a separate violation of Article 8, it did not rule on whether Article 5 of the ECHR was violated as well beyond saying that it was indeed engaged.
[129] *Shimovolos v Russia*, no. 30194/09, ECHR 2011 §§56-57.

According to the UN Working Group on Arbitrary Detention "any detention must be exceptional and of short duration and a release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings."[130]

An arrest or detention without a basis in law is arbitrary on its face. In addition, an arrest or detention that is permitted under domestic law may nonetheless be arbitrary under international standards. Examples include where the law is vague, over-broad,[131] or incompatible with other human rights such as the rights to freedom of expression, assembly or belief[132] or the right to be free from discrimination.[133]

Amnesty International is concerned that the practice by the Polish police of depriving protesters of their liberty for periods of time amounting, in some cases, up to 2 hours or more, and under the pretext of ID checks, and as documented in this report, amounts to arbitrary deprivation of their liberty. This practice should stop immediately.

3.3 STRATEGIES AND TACTICS TO MAINTAIN PUBLIC ORDER

Many of the demonstrations that took place between October 2016 and August 2017 in opposition to the government policies were organized by grassroots groups such as Obywatele RP, Strajk Kobiet, OSA, TAMA and others, not affiliated with any political parties. According to Amnesty International's monitoring reports of the monthly assemblies in June and July 2017, as well as observation of the demonstrations around the "reform" of the judiciary, these protests were not violent. The protesters demonstrated against policies and amendments of legislation that introduced or aimed to introduce restrictions in access to sexual and reproductive rights, limit media access to the Parliament, strengthen the surveillance powers of the police, and erode respect for human rights.

Some of the grassroots groups, notably Obywatele RP, engaged in peaceful acts of civil disobedience during those protests. Activists affiliated with this group climbed over and through the barriers separating the protesters from public spaces. By breaching these security regulations, which as Amnesty International believes, themselves were not compatible with human rights law because they amount to a blanket ban on assemblies in specific places, they demonstrated their disagreement with them. By doing so they have also exercised their freedom of assembly and acted in defence of this right for others.

As of April 2017, when the restrictive amendment of the Assembly Law entered into force, they have been holding spontaneous demonstrations at the location of a pro-government "cyclical assembly". Amnesty International and many other international human rights organizations and institutions[134] consider the amendments to the Assembly Law which relate to "cyclical assemblies" to violate international human rights law and standards on freedom of assembly.

A number of protesters are now facing sanctions for exercising their right to freedom of assembly, which in some instances led them to violate domestic laws and security regulations, which themselves were often not compatible with human rights law.

Protesters now face de facto criminal sanctions which may involve imprisonment, in cases when individuals violated laws which purposefully restricted freedom of assembly and expression.

A person acting non-violently for reasons of conscience, and in the interest of defending human rights of others, should not be subjected to deprivation of liberty and other criminal sanctions for the acts they have committed, which may have breached domestic laws and regulations. The mere participation in assemblies which were not approved by the authorities should never be penalised in any form unless those taking part were violent.

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[130] Report of the Working Group on Arbitrary Detention, 19th Session of the UN Human Rights Council, 26 December 2011, A/HRC/19/57, para 56.
[131] See HRC Concluding Observations: Ethiopia, UN Doc. CCPR/C/ ETH/CO/1 (2011) §15.
[132] WGAD Opinion 25/2004 (Al-Faleh et al v Saudi Arabia) UN Doc. E/CN.4/2006/7/Add.1 pp16-20, §§13-20, WGAD, UN Doc. E/CN.4/2001/14 (2000) §§93-94; Article 19 v Eritrea (275/03), African Commission, 22nd Annual Report (2007) §§93-108; HRC Concluding Observations: Canada, UN Doc. CCPR/C/CAN/CO/5 (2005) §2, Uzbekistan, UN Doc. CCPR/CO/83/UZB (2005) §22; See Jung et al v The Republic of Korea, HRC, UN Doc. CCPR/ C/98/D/1593-1603/2007 (2010) §7.4
[133] A and Others v United Kingdom (3455/05), European Court Grand Chamber (2009) §§161-190 (nationality); See CERD Concluding Observations: Ukraine, UN Doc.A/56/18 (Supp) (2001) §373, Ethiopia, UN Doc. CERD/C/ETH/CO/15 (2007) §19, Turkmenistan, UN Doc. CERD/C/60/CO/15 (2002) §5 (belief), India, UN Doc. CERD/C/IND/CO/19 (2007) §14 (caste), CERD General Recommendation XXXI, §20.
[134] For example the Human Rights Commissioner of the Council of Europe and the Director of the OSCE Office for Democratic Institutions and Human Rights: http://www.osce.org/odihr/286166

RECOMMENDATIONS

ON BANNING OR IMPOSING OTHER RESTRICTIONS ON PUBLIC ASSEMBLIES

- The Ministry of the Interior must respect the right to freedom of assembly and freedom of expression when people gather and express their opinions in public spaces. Law enforcement officials should facilitate and not unduly restrict peaceful public assemblies. The lack of official notification of an assembly is not a valid ground on which to determine that an assembly is unlawful.
- 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.
- The local authorities and the police and/or other security forces must ensure that peaceful demonstrations and counter-demonstrations are equally accommodated where possible and adequately protected, and that individuals taking part in them can fully enjoy their right to peaceful assembly.
- The local authorities in Poland, especially the governor of the Mazovian province (*wojewoda*), should use their powers to ban public assemblies only as a measure of last resort. They must ensure that any prohibition complies with the criteria of necessity and proportionality set out in international human rights law; as a matter of principle assemblies which are non-violent should not be banned.
- Authorities must amend Articles 51 and 52 of the Code of Minor Offences so that they comply with international law and standards, in particular by removing de facto criminal sanctions for people exercising their right to peaceful assembly.

ON POLICING PUBLIC ASSEMBLIES

- Law enforcement officials should avoid the use of the tactic of containment, for example by "kettling" or otherwise cordoning off or surrounding protesters and not letting them go while policing assemblies unless such a measure is strictly necessary to isolate violent protesters or protesters who are breaking the law, and does not result in a disproportionate restriction of the exercise of the right to peaceful assembly by other protesters.
- Law enforcement officials should use force only when strictly necessary and to the extent required for the performance of their duty. In particular, the police must as far as possible apply non-violent means before resorting to the use of force. If the lawful use of force is unavoidable, the police must use it with restraint and in proportion to the seriousness of the law enforcement objective. In dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or, if that is not possible, must restrict it to the minimum necessary.
- All law enforcement officials conducting policing of demonstrations must wear identity badges in visible places. They must always identify themselves with their name and rank as promptly as practicable in the circumstances, when conducting stop and search operations or undertaking other policing measures against protesters.

ON PROSECUTION OF PROTESTERS

- The authorities, in particular the prosecution service and the police, should refrain from criminalising participation in peaceful assemblies; including in those that have not been registered with the authorities.

- Criminal proceedings against individuals solely for their participation in peaceful assemblies shall be dropped.
- The police should refrain from surveillance and home visits and other actions that can amount to intimidation and harassment of protesters as these measures can be unlawful and have a chilling effect on the exercise of freedom of assembly and freedom of expression.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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“POLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS”

HARASSMENT, SURVEILLANCE, AND PROSECUTION OF PROTESTERS

Thousands of people took to the streets in July 2017 in cities all over Poland. Many stayed on those streets for days as they demanded respect for the Polish Constitution, an independent judiciary, and for their human rights and freedoms. The public demonstrations were triggered by the government’s efforts to undermine the Constitution by consolidating extensive powers in the hands of the executive branch – at the expense of an independent judiciary free from political interference.

Those demonstrations were met with a show of force and a set of policing measures that often infringed on the rights to freedom of peaceful assembly and expression. Amnesty International has been monitoring the cases of protesters who now face prosecution and who experienced various forms of harassment, including containment practices such as “kettling”, surveillance, and police visits at home.

The Polish authorities must refrain from using criminal sanctions against people who have participated in peaceful assemblies. The rights to freedom of peaceful assembly and freedom of expression must be protected so that those who choose to protest in the public sphere can have their voices heard.

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